



# **Trends in the Governance Sector of the Lao PDR**

**Richard Slater & Khamlouang Keoka**  
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**Swiss Agency for Development  
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## About SDC



The Swiss Agency for Development and Cooperation (SDC) is Switzerland's public agency for social and economic development in developing nations.

Active in Lao PDR since 2006, SDC manages and implements Swiss support in response to the needs of the marginalized rural poor and contributes to the country's efforts to graduate from the Least Developed Countries category, by 2020. We partner with local and international development organizations to empower both local government and Lao citizens to sustainably reduce poverty, promote gender and ethnic equity, good governance, and increase the food security of the nation. SDC values accountability and transparency, while promoting a more active civil society that fosters transition to democracy.

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Governance reform is widely recognised as being one of the mainstays of sustainable progress in developing countries. An efficient administration, backed by the rule of law and wide public participation in civic matters, can provide a cornerstone for stability and equitable economic growth.

The Lao PDR has certainly made great strides in economic development over the first dozen years of this century. This report attempts to gauge the progress made in governance. The Lao Government has repeatedly committed itself to various aspects of reform and has received continued support in its efforts from a range of development partners, notably UNDP.

This report shows that significant advances have been made in certain areas, notably in the greater responsibility taken by the National Assembly, in the recent advent of civil society organisations, and in the steps towards decentralising delivery of public services. At the same time, significant challenges remain for Laos. Many reforms remain stymied by a lack of human capacity at various levels and while the law has become much stronger and clearer on paper, awareness and enforcement of law remain weak.

This Working Paper explores these matters in some detail. It is at times frank and at times encouraging, providing food for thought for all policy makers, advisors and development practitioners.

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## Acronyms & Abbreviations

ADB	Asian Development Bank
ASEAN	Association of South East Asian Nations
CSR	Corporate Social Responsibility
CSO	Civil Society Organisation
DDF	District Development Fund
DoS	Department of Statistics
EU	European Union
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GPAR	Governance and Public Administration Reform
IMR	Infant Mortality Rate
INGO	International Non-Governmental Organisation
Lao PDR	Lao People's Democratic Republic
LBA	Lao Bar Association
LDC	Least Developed Country
LNCCI	Lao National Chamber of Commerce and Industry
LPRP	Lao People's Revolutionary Party
LSMP	Legal Sector Master Plan
MDG	Millennium Development Goals
MoE	Ministry of Education
MOF	Ministry of Finance
MOHA	Ministry of Home Affairs
NA	National Assembly
NGPAR	New Governance and Public Administration Reform
NPA	Non-Profit Association
NSED	National Socio-Economic Development Plan
ODS	One-Door Service
PEFA	Public Expenditure and Financial Accountability
PER	Public Expenditure Review
PETS	Public Expenditure Tracking Survey
PFMS	Public Financial Management Strengthening
PIMS	Personnel Information Management System
PPM	Participatory Planning Manual
PRF	Poverty Reduction Fund
SAO	State Auditor Organisation
SC	Standing Committee
SDC	Swiss Agency for Development and Cooperation
SOE	State-Owned Enterprise
SPC	Supreme People's Court
UN	United Nations
WFP	World Food Program
WTO	World Trade Organisation

## Introduction

### Structure

This study on *Trends in the Governance Sector in the Lao PDR* will examine the main institutions of government as well as key processes of governance including justice, decentralisation, equitable service delivery and participation. The review contains an executive summary, six substantive chapters, a conclusion and recommendations.

Chapter 1 of the study will examine the past context, present character and the evolving nature of the main branches of government under the one-party democratic centralist state system of the Lao PDR comprising the Party, the National Assembly and the Executive, followed by a brief review of the policy making process and concluding with the main changes and future trends.

This is followed by a series of chapters on the evolving context of key processes of governance, beginning with Justice (Chapter 2) and followed by Decentralisation (Chapter 3), Equitable Service Delivery (Chapter 4) and Participation (Chapter 5). The analysis in each of these chapters is based on an examination of the current situation, recent changes, drivers of change and future trends. Chapter 6 examines the main underlying structural factors that cut across the system of government and the processes of governance that determine the overall political economy of the state.

Chapter 7 provides a concluding overview as well as a brief assessment of some factors that may serve to restrain the change process. Chapter 8 summarises the main recommendations arising from the analysis covering a canvas of potential actions by the Swiss Agency for Development and Cooperation (SDC) and/or other donor partners. These are broadly divided into strategic recommendations intended to address some of the underlying structural issues

associated with the change process, and operational recommendations which relate more closely to the change processes that SDC is currently supporting. Recommendations on economic governance focus on issues concerned with foreign direct investment (FDI) in natural resource development which have a negative impact on equitable service delivery, and are not intended to relate to wider economic issues of monetary and fiscal management.

### *Method*

The study was undertaken on an intermittent basis over a period of six weeks from December 2011 to February 2012. It is based on analysis of a considerable volume of secondary data, reports and publications as well as two-week period of intensive in-country fieldwork.

Field investigations incorporated a variety of methods including information gathering based on a structured checklist, and semi-structured meetings with key informants and a wide range of stakeholders from government, donor agencies, international non-governmental organisations (NGOs) and non-profit associations (NPAs), formal associations, the media, the private sector and other parts of society.

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## **Executive Summary:**

### **Evolution and Context of the Governance Sector**

There has been a slow but steady evolution of the system of governance since the establishment of the Lao PDR in 1975. For the first 15 years, the country was governed by the Lao People's Revolutionary Party (LPRP) in the absence of any formal constitution or judicial system. The respective agencies of government were fully subordinated to the one-party state model of democratic centralist government. Paradoxically, strong central Party control coexisted with weak governance, in that the Party was unable to extend direct control over all its agencies at provincial level. This resulted in a period through the 1980s that was characterised by a significant degree of decentralisation. Whilst this was consistent with an historical pattern of ruling regimes in Laos, it was also a function of the inability of the Party to exercise adequate direct control over fiscal and administrative matters at provincial and district levels. The combination of fiscal and administrative decentralisation, coupled to a weak central state with inadequate resources and capacities to manage central-local relations in an



effective manner, resulted in serious fiscal problems and poor overall governance. Certain provinces were able to take full advantage of their fiscal autonomy, whilst other provinces remained in deficit and the centre lacked sufficient fiscal buoyancy to engage in any systematic revenue sharing.

The 4th Party Congress of 1986 saw a significant shift in policy towards greater economic liberalization with the introduction of the New Economic Mechanism, which represented a shift from a command and centrally planned economy to a market economy. While economic transition was high on the reform agenda, the New Economic Mechanism was subsequently accompanied by certain political reforms, culminating in the adoption of the Constitution on August 14, 1991. This marked the transition from direct administration by the Party towards a modern state structure comprising a legislature, judiciary and executive as the main institutions of the government, functioning under the guidance of the Party. The National Assembly represented the main legislative organ with its rights and duties defined in the Constitution and by the Laws on the National Assembly. Regional assemblies ceased to exist by the time of third Legislature.

This period also marked the reassertion of central control over provincial administration with the Central Bank being granted authority over monetary policy and management and the introduction of a national budget process to direct central and local expenditure, which had to be approved by the National Assembly. Recentralisation also served to increase central government control over the executive machinery, with all recruitment to the civil service having to be approved by the Department of Public Administration in the Prime Minister's Office. The recentralisation drive also led to the abolition of *tasseng* as the lowest tier of administration. Districts became the main locus of local administration and service delivery, with responsibility for managing large geographic areas with limited staff while provincial administrations became the repository of most technical

expertise and resources at the sub-national level. PM Instruction 01/2000 attempted to provide some clarity on the roles of local administration at provincial, district and village level but had limited operational impact.

Over the years the focus of day-to-day administration and management has shifted from the Party to the formal structures of the executive machinery, which is headed by the Prime Minister and by the Council of Ministers, comprising Deputy Prime Ministers, heads of line ministries and other significant agencies. The leadership structure in government presides over the civil service, which has slowly increased in size following an initial downsizing in the early 1990s. The civil service is classified into five grades ranging from support staff to professional grades. Each of these grades is divided into 15 steps through which staff progress based on educational qualifications and tenure. From 2001 the responsibility for personnel management was transferred from the Central Committee of Organisation and Personnel, under the Party, to the Department of Public Administration and Civil Service in the Prime Minister's Office. This subsequently evolved into the Public Administration and Civil Service Authority.

The Constitution was extensively amended in 2003 to better reflect contemporary political and economic reality. It was passed by the National Assembly and promulgated by presidential decree after first being endorsed by the Politburo. Article 3 of the Constitution continues to assert the Party as the leading nucleus of government and Article 5 reaffirms democratic centralism as the basis of the system of governance. Thus the prevailing system of governance, in which all branches of government are subordinate to the Party and the Politburo is the highest authority of the Party, was formally reasserted in 2003 and provides the general context within which the contemporary system continues to function. It also provides the context within which all subsequent reforms have taken shape.

Whilst gradual changes in the composition, functions and character of the respective branches of government have continued to take place, these have not altered the fundamental hierarchy of the single-party state but have, nevertheless, served to provide a means of strengthening elements of representative government, basic rule of law, steadily improving administrative competencies and local service delivery. At the same time the distinctive functions of the legislative, executive and judicial branches of government are emerging in a more obvious manner, and in a form where the rudiments of a system of checks and balances are now more visible than a few years ago. There has also been a reduction in the number of key decision-makers holding significant power in more than one branch of government, which not only reinforced Party supremacy but also confused lines of authority and functions.

### **Recent Developments**

In spite a high degree of structural continuity in the Lao system of governance, there have been a number of recent changes and developments in the composition, character and functioning of the respective branches of government. These changes, although small in themselves, represent a notable shift towards a more open, professional and effective system, with the emergence of some degree of autonomy allowing for limited checks and balances across the system. At the same time these changes are leading to a greater degree of openness in the system and a widening of choice around policy options and alternatives. Whilst it is recognised that such changes are incremental in nature and do not represent any fundamental change in the power structure of government, they do, nevertheless, provide a path towards improved governance and the formation of a platform for future reform.

The overall framework for governance reform is reflected in the National Socio-Economic Development Plan for the period 2006-2010

and the accompanying Strategic Plan on Governance, which emphasises the government's commitment to building "an effective, efficient, well-trained, honest and ethical public service". This plan highlights the need for greater accountability, transparency and public participation in planning and decision making as well as more accessible and efficient legal enforcement institutions. The Government's framework identifies four major governance themes; "Public Service Improvement, People's Participation, Rule of Law and Sound Financial Management". Each of these areas is seen as playing a critical role in ensuring the balanced and sustainable development of Lao society and administration. The following section will briefly consider the nature of these changes as they relate to the Party, Legislature, Executive, judiciary, local governance, service delivery and participation.

## **The Party, National Assembly and Executive**

### **Current Situation**

Government in the Lao PDR is based on a single-party system in which the Lao People's Revolutionary Party (LPRP) presides over a rapidly growing free-market economy and a vibrant Buddhist culture as a symbol of national identity. As defined in the 1991 Constitution the Party has a "leading role" in all the main governance institutions of the country including the executive, legislature/ assembly, unions and other mass organisations, and the military. In this context the Party and Government are essentially one and the same and there is no distinction between the political and executive arms of government. The main function of the Party is to provide direction, formulate policy and provide guidance on all aspects and across all branches of government.

Membership of the party is by invitation and dependent on evidence of strong commitment to Party work and future potential.

Membership is crucial for advancement in government and provides privileged access to the wider machinery of government. Whilst the absence of a multi-party system inherently limits the extent of political contest, the Party is not a static entity and there is a certain amount of heterogeneity based around personal, group and regional loyalties. This provides a dynamic element in the power structure with a degree of competition that may coalesce around different policies and/or issues.

### **Recent Changes**

There has been a gradual shift towards more coherent and strategic policy development. Previously, as reported by a SIDA study in 2003, the Party's macro-policy targets tended not to match local conditions and the reality of diverse socio-economic situations, and were not always based on sound research. Another change has been the gradual elimination of duplicative institutions in the Party and Government in areas such as personnel management, audit and inspection and training and growing acceptance of the need for less overlap of people holding dual positions in Government and the Party. There is a greater recognition of the issue of corruption and a growing realization of the economic and social danger that this poses in terms of hindering economic development and poverty reduction. The Party is aware that this issue will need to be addressed in order to comply with standards and conditions associated with greater regional and global integration and membership of bodies such as the Association of South East Asian Nations (ASEAN) and the World Trade organisation (WTO).

**The Party and Government are essentially one: there is no distinction between the State's political and executive arms. While Party membership is crucial for advancement in government, the Party is not a static entity –competition between people and ideas is reinforced through personal and regional loyalties.**

**With increasing education and knowledge levels among senior members, and greater interaction with donor partners, a gradual shift has occurred towards more coherent and strategic policy development: the Party now recognises the importance of governance reform and international integration.**

The breakthrough strategy announced at the 9th Party Congress of 2011 recognises the importance of governance reform through a mutually reinforcing portfolio of political and administrative actions to strengthen the delivery of development priorities as defined in the National Socio-Economic Development Plan (NSED) and other key strategies.

### **Drivers of Change**

A key driver of change is the Party's more strategic approach to decision making, which has become based on more comprehensive and coherent policies and plans developed by the executive administration, often with donor support. Policies and plans are now founded on more systematic analysis of prevailing conditions and a more strategic focus on goals and priorities. This has been further reinforced through the activities and contributions of sector working groups and steering groups, bringing together representatives of different agencies to contribute to the policy process. Although sector policies may be selectively interpreted at senior Party level, they have nevertheless contributed to a more strategic debate and understanding amongst senior Party members, many of whom have been involved in the policy formulation process.

Another reason for change in the character of Party functioning can be attributed to the altering composition of the Politburo and Central Committee. A new generation of younger and more educated personnel who have risen through the ranks of



government are now beginning to enter the upper echelons of Party leadership. These members bring with them a more professional grounding in administration, greater familiarity with economic and social development trends and issues, plus more understanding and interest in the imperatives of regional and global integration. Although this emerging group remains rooted in the one-party state system, and hence continues to exercise loyalties to the State, members are beginning to infuse the system with new ideas on strategy and greater tolerance for some degrees of flexibility in governance.

The Party is today much more aware of issues around growing inequality and disparity between different regions, ethnicities and socio-economic groups. Explicit reference was made to this in a statement at the 9th Party Congress to “avoid too much development disparity between different regions and rich and poor” and in calls to stabilize the socio-political situation to maintain unity. In a direct reference to the issue of patronage, the Party referred to the need to “curtail the trend of selecting and promoting personnel from the same family lines, clans, groups or regions”. The Party has also made statements on the need to maintain healthy self-criticism and mutual criticism and to ensure adequate disciplinary measures are taken against members who commit offences.

Other factors contributing to a greater acceptance of reform include the imperatives of regional and global integration,





particularly those associated with the ASEAN Economic Community, the ASEAN People's Forum, access to the WTO, and achievement of the United Nations' Millennium Development Goals (MDGs), as well as the requirement to maintain external support from donors and investors.

## National Assembly

### Current Situation

The National Assembly (NA) is a uni-cameral institution with 132 members (25% female) elected from a pre-selected list of 190 nominated candidates. Most members come from central or local administrations and are elected on five-year terms from multi-member constituencies across all 17 provinces. The NA undertakes a legislative and oversight function and has six permanent committees covering law and justice; economics, planning and finance; social and cultural affairs; ethnic affairs; defence and security; and foreign affairs. There is also a Standing Committee (SC) of ten full-time members. The Assembly convenes in two ordinary sessions per year, each normally lasting two to three weeks. The Assembly agenda for the next five years includes the approval of 91 laws, comprising 48 new laws and 43 amended laws.



Overall the NA faces many constraints in terms of being able to function as an effective representative Assembly. These include the limited degree of choice over candidates that are pre-selected from an approved list; an electoral process that lacks consideration of policies and options; sessions of limited duration, compromising the extent and quality of policy and legislative debate and the scrutiny of budgets and accounts; plus a lack of the capacity, experience and resources that would enable members to be effective representatives.

Whilst these constraints represent a substantial bundle of problems, the NA is beginning to assume a much more assertive role in the consideration of laws and the scrutiny of government and budgets. There has been a gradual change in the functioning of the Assembly over the years with more critical debates on issues of national concern such as logging, corruption, lack of budget transparency, land concessions etc. Members have established offices at provincial level to strengthen links with citizens and Assembly sessions have been televised.

### **Recent Changes**

The NA's evolving role has been further strengthened by a number of more recent changes over the last two legislatures. Although almost all NA members are party members, the electorate has exercised more discretion as to whether or not to support favoured party candidates over other approved candidates. Analysis shows the current Assembly membership is younger and more educated than in the past and two-thirds of all members now have university and post-graduate degrees. There fewer NA members holding dual administrative and legislative positions.

At the same time the Assembly has benefited from donor funding and technical support, which has helped to improve internal management and constituency linkages, provided access to comparative experience on assembly functioning, and organised inter-session activities.

**While the National Assembly is beginning to assume a more assertive and critical role in scrutinising government budgets and representing constituency interests, public awareness of the Assembly's functions as a representative body remains low.**

Most significantly the Assembly has been granted more authority to undertake oversight, with the State Audit Organisation reporting directly to the Assembly. This has enabled members to assume a more effective scrutiny role in terms of public expenditure and the issuing of directions to address budget anomalies and audit queries.

### **Drivers of Change**

One main driver of change in the legislature comes through its evolving composition: a raft of newly elected members, many with higher educational qualifications, are eager to take on a more meaningful oversight role through active participation in Assembly Committees and by participating more purposefully in the scrutiny of public expenditure.

New members are also more aware of their role in representing regional and constituency interests. This may lead to sub-power bases within the broader framework. Members, especially the heads and members of standing committees, have a better understanding of their role and function than in the past and many have received several rounds of training under donor assistance.

Another reason for the changing role and character of the Assembly can be attributed to the direct interventions of a donor-support initiative, SELNA, which has helped to fund a series of capacity development activities, improve Assembly management, operate more productive inter-session activities and provide

exposure to comparative models of Assembly functioning. All this has contributed to a qualitative change in the scrutiny of government.

Whilst the general public remains somewhat confused by the role and function of elected members, with some people not comprehending that members are elected to the Assembly, there is a growing awareness on the part of citizens that they may raise issues either directly with Assembly or through a new hot line system. Finally, and perhaps most significantly, the Party itself has recognised the need for a more active Assembly capable of performing an oversight and scrutiny role as a core part of the wider structure of government, and one which will in the long run help to uphold the legitimacy of the political system.

## **The Executive**

### **Current Situation**

The Prime Minister is head of Government and presides over a 29-member Council of Ministers, comprising four deputy prime ministers (each with sectoral responsibility), 18 ministers, heads of agencies and the Governor of the Bank of the Lao PDR (Central Bank). Ministers are appointed by the National Assembly on the recommendation of the Prime Minister and the Party. Each minister nominates vice ministers and departmental heads (director-generals), who must then be approved by the Party leadership and the Prime Minister.

The executive arm of government is responsible for implementing and enforcing government policies, programmes and projects and has the authority to issue binding decrees to implement and enforce policies and laws. Most ministries have de-concentrated structures that interact with provincial administrations and districts. Party cells operate within every ministry and provincial

administration, and there is active recruitment of promising young professionals into the Party.

There are 130,000 staff, including teachers and health staff, working as civil servants in the public administration system. Around 82,500 staff (44% female) work at district level with a further 28,666 (35% female) at provincial level and 21,297 (44% female) at central level. More than 52% of all civil servants work in the education sector. Only 10% work in the health sector, 6% in agriculture and just 2% in public works. Nearly two-thirds of all civil servants are below the age of 40.

A number of problems continue to affect the operation of the civil service, including low levels of capacity and skills, pay bands that do not reflect the jobs or responsibilities being performed, plus outmoded and non-transparent systems and procedures that lead to poor quality and slow delivery of services. Accountability systems are weak and levels of discretion remain high. The total wage bill of the Civil Service accounts for just under 5% of GDP.

### **Recent Changes**

There have been a number of changes in the executive machinery of government in recent years, contributing to the gradual development of a more competent and professional civil service. The number of line ministries has grown to 18 to provide greater policy direction and management over a more comprehensive range of sectors and services than in the past. The size of the civil service has grown to over 130,000, including teachers and health workers, the vast majority of whom are at district and local level. The agency responsible for the management of the civil service has recently been upgraded from a sub ministry to full ministry status as the Ministry of Home Affairs (MOHA).

The policy framework for strengthening the civil service is

contained within Decree 82/PM of 2003, which defines the framework for selection, recruitment, deployment, grade and step determination, training, and disciplinary action. Another important initiative is the Decree on incentives for civil servants working in remote areas, entailing government approval of a budget allocation of 62 billion kip (about US\$7.7 million) for the fiscal year October 2011-September 2012. This represents an important step in recognising the effort of civil servants working in rural and remote areas and in encouraging them to work in such areas, which is especially relevant for teachers and health workers. It is estimated that around 22,300 civil servants will be eligible for an additional allowance equivalent to 50% of a monthly salary.

A number of pilot initiatives over the last five years have been designed to contribute to improved performance. These include the development of a web-enabled personnel information management system, the preparation of specimen job descriptions across all departments, the development of methodologies for organisational restructuring, the formulation of a Civil Service Strategy and Code of Conduct, a substantial amount of capacity building and training (funded largely through multi donor support to the Governance and Public Administration Reform Programme), as well as bilateral initiatives on training and capacity development. Most recently, MOHA has designed a new comprehensive programme for strengthening governance and public administration. This is intended to bring together its internal work priorities with additional donor funding to assist in strengthening a range of areas, including the institutional and legal frameworks for public administration; organisation and management systems; local administration and service delivery; civil service management, research and training. Altogether this represents an ambitious agenda designed to improve performance of the public administration system and will complement new Party policy directions on service delivery and decentralisation. Here a critical future area of concern is the need for an improved pay and

grading system that will relate more closely to responsibility and performance rather than educational qualification and tenure.

### **Drivers of Change**

The main driver of the recent changes in the executive arm of government can be attributed to a growing interest on the part of the Party and senior government functionaries in the need to develop an efficient and effective public administration capable of formulating strategic policies and plans in line with national priorities. There is wide recognition in all branches of government that an effective and accountable civil service is key to implementing and managing public infrastructure and services which are crucial foundations for future economic growth, and the basis for realising improved human development outcomes.

The Party and senior functionaries in government have been eager to support initiatives designed to improve performance of public administration and to increase the effectiveness of service delivery. There is a strong interest in meeting MDG goals in the medium term and in graduating from LDC status by 2020. It is widely understood at all levels of government that this requires a better resourced, more competent and motivated civil service. Evidence of this increased understanding can be seen in the recent decree to provide an additional salary allowance up to 50% to civil servants willing to deliver services in remote areas.

**Evolving ministry structures and emphasis on governance reform are helping to develop a more effective public administration. Although the civil service remains hampered by low capacity, poor salaries and non-transparent systems, steps are being taken to improve staff conditions, accountability and efficiency. If governance reform is to be effective, it should ideally be locally owned and driven, incremental in nature and practical in ambition.**

Another important factor has been the prominence given to governance reform in the NSEDP as expressed in the Strategic Plan on Governance and the Governance Round Table which brings together government and donors to work towards a shared objective. This has set out the four key pillars of reform and includes a strong emphasis on strengthening public administration. The high-level policy endorsement of such reform has enabled proponents in government as well as donor partners and project staff to push the reform agenda and support specific reform initiatives.

A number of initiatives can also be directly attributed to the long-standing partnership between donors and the government to support governance and public administration reform through the GPAR programme, which has been functioning for more than a decade. This programme represents a long-term commitment to the process of reform and has been implemented in a manner which has built strong ownership within the government, especially the MOHA. This combination of funding, technical support and partnership has facilitated the piloting of a number of reforms that are likely to be mainstreamed over the course of time.

### **Future Trends**

It is clear from the above that whilst the overall structure of the one-party state system in Laos remains firmly entrenched, a number of significant changes have taken place that clearly indicate a trend towards a more open, accountable and effective government, even within the constraints mentioned above. This trend is unlikely to reverse as the Party leadership has become far more aware in recent years of the principles of good governance as a necessary underpinning for political stability and greater integration into the regional and global economy. This means that there is a degree of certainty in terms of the government's commitment to reforms, although these will be selectively pursued and adopted in a manner that does not undermine the structure of the State.



This presents an interesting challenge to those engaged in helping to formulate and support the process of governance reform. Progress in this will require a high degree of political awareness as to what is feasible and practical, as well as a sound understanding as to which reforms can have important beneficial impacts for citizens without necessitating a fundamental restructuring of the system as a whole. Here the main risks are associated with the promotion of an externally driven reform agenda without adequate ownership on the part of government and the risks associated with unrealistic reform time frames which are driven by programme and project imperatives rather than the objectives of reform itself.

## Legal Sector and Justice System

### Current Situation

Establishment of the rule of law has been a gradual and evolving process over the last two decades. A body of law is slowly being developed and applied in the courts. The Government is committed to strengthening the rule of law and has approved a sizeable number of new laws and statutes. A growing number of educated and informed citizens are aware of the emerging body of law and its implications. Although the vast majority of citizens remain



largely unaware of laws, they are familiar with traditional forms of dispute settlement and operate comfortably within the context of village mediation.

A legal structure has been established, along with professional personnel, and a Legal Sector Master Plan has been formulated to strengthen human resource development. However, the large number of new laws that has been approved or drafted has made it difficult for officials to master and apply them. Even in the Ministry of Justice, and among the few professional lawyers, knowledge of the new laws and their application is sketchy. The interpretation of some laws is unclear and requires testing in a constitutional court.

An encouraging sign in moving towards further reforms and improvements in the legal sector is that at its 9th Congress the Party clearly accepted the objective of making Laos a “Rule of Law State” and is consequently considering different options for how to bring about the requisite changes. Although there have been no formal legal cases against public bodies, the government is now taking a strong interest in exchanging views and ideas with countries such as Vietnam and China, where the legal system operates with sufficient independence to be in a position to bring a case against a public body. Vietnam has established a separate administrative court to address this issue and there have been many cases in Vietnam and China where senior members of the Party and government, including Politburo and Standing Committee members, have faced legal charges and severe penalties.

The main challenges in strengthening the system to move towards a more fully developed rule of law state include the need to build and strengthen the body of independent professional lawyers and to develop mechanisms that enable the justice system to function in a more independent and professional manner. This will require a clearer separation of powers between the agencies of the justice system, plus substantial improvements in the nature

and operation of legal processes and procedures and in the capacity of those within the agencies to implement such processes.

There is also a need for a substantial increase among people at all levels of society in awareness of the law, the rights of citizens under the law and the application of the law. Many stakeholders point out that with a strong, more independent and effective legal system, many of the underlying problems or weaknesses associated with the underlying economic, political and social structures could be addressed, thus elevating support for strengthening the rule of law as a key strategic platform that is at the same time consistent with current Party and government policy.

### **Recent Changes**

There has been a recent move to rationalise the former 103 District Courts into 39 Area Courts, ensuring at least two courts per province. This is part of judicial restructuring, bringing local justice under the Supreme Court rather than the Ministry of Justice, and is significant in that it attempts to align the courts to the resources available to run these effectively.

There has been a steady increase in the size and competency of the judiciary over the last few years, with plans to expand the number of judges to over 1,500 by 2020. Within the court system, specific chambers have been established for family and juvenile cases and the justice ministry is setting up a Notary office. There are now ten legal centres offering a wide variety of legal advice and 12 private law firms, including four international firms licensed to provide legal advice.

There has been substantial progress in the drafting and approval of a total of 88 laws to date. These include several important laws on the legal sector itself, such as the Law on the People's Court,

the Law on the Public Prosecutor, the Penal Law and the Law on Criminal Procedure. At the same time more than 400 international laws and treaties have been ratified - including six of the nine core UN human rights treaties - and the Ministry of Justice has participated in the first drafting of the ASEAN Declaration on Human Rights.

Another important development has been the strengthening of the village mediation system, which for most citizens provides a more accessible, familiar and meaningful means of addressing legal issues and disputes, than does entering into the alien environment of courts and judicial processes. Indeed, many legal systems worldwide are struggling to introduce such systems as a low-cost, swift and effective means of delivering justice.

Under a new law, defence lawyers will now be able to meet clients suspected of a criminal offence before police investigations are completed. Both the Ministry of Justice and the National Assembly Standing Committee on Law support this welcome initiative.

A comprehensive Legal Sector Master Plan (LSMP) 2009 has been formulated to help establish the rule of law as a solid foundation of the justice system by 2020. The Plan places considerable emphasis on the development of human resources within the legal sector, in particular training of all personnel including Judges, Prosecutors and the Police, and upgrading the educational qualifications of these personnel.

### **Drivers of Change**

A number of important recent changes are directly attributable to increased recognition by the Party leadership of the significance of the rule of law in underpinning the structure and systems of governance and in mediating social and economic relations in society as whole. There is an understanding that established rule of law principles are a prerequisite for engaging with the external world in a structured and productive manner, for example in terms of attracting investment, in

negotiating avenues for export, or in engaging with donor partners and other international agencies.

**Despite increased allocation of resources to establish new legal structures and staffing, the justice system displays fundamental shortcomings from investigation through to prosecution, sentencing and enforcement. There are signs that the Party and Government are committed to incremental reforms and rule of law, a fundamental prerequisite of good governance, is gradually being developed and applied. The process is likely to take many years and will require more focused support from donors and a sector-wide approach along the whole chain of actors and institutions.**

Statements at the 9th Party Congress clearly demonstrate the Party's commitment to moving towards a Rule of Law State and the Government has been showing a keen interest in exchanging views and ideas with countries such as Vietnam and China on how the legal system can operate with sufficient independence to be in a position to bring a case against a public body.

Another important influence on the change process can be attributed to the plethora of international treaties and conventions that have been ratified in recent years. The Legal Sector Master Plan also represents a driver of change in the justice sector. It sets out an ambitious reform agenda that the justice ministry has committed to, and has already had some impact in terms bringing about change in the sector. Most significantly the plan addresses the issues of weak investigation and poor enforcement, which represent major challenges in the sector. Finally but not insignificantly, donor partner assistance is helping to improve access to justice and international law as well as supporting the drafting of new laws and amendments. Taken together, these

activities have led to a degree of engagement and influence that has contributed to the change process.

### **Future Trends**

The slow but discernible trend towards legal sector reform is a fundamental prerequisite of good governance. In spite of an increase in resources in terms of structures and staffing, there are fundamental shortcomings and weaknesses in the operation of justice from the level of investigation through to prosecution, court procedure, judgements, sentencing and enforcement. In spite of these weaknesses, there are signs that the Party and Government are committed to putting into place incremental reforms that will result in a more effective legal system capable of delivering justice across all segments of society, including within the government system itself. Given the political sensitivity of such changes, it is likely that the process will take many years although it is evident that certain subjects, such as commercial law, may gain more traction in terms of the development and codification of legal frameworks and the potential operation of fast-track legal processes.

At the same time, although there has been substantial assistance in the drafting of new laws in a wide variety of sectors, focused support from donors has been limited in nature and largely confined to a few selected areas of the legal system that may have more instant appeal, such as access to justice and international law. It is clear that the lack of a well functioning legal sector is a major obstacle to addressing a number of underlying structural problems in the contemporary political economy of Laos and hence this sector represents a critically important aspect of governance reform. Without an effective system of enforcement and inadequate legal processes it will be difficult to realise the goal of good governance.

The reforms required to address all the problems of the sector represent a substantial task, and one that it is unlikely a single donor alone can address, since support requires a sector-wide approach to address the various complementary and reinforcing interventions along the chain of actors and institutions.

In the meantime, a more feasible approach may be to focus on the enforcement of a much smaller number of laws and decrees of strategic significance in terms of wider development. These may include the responsible management of natural resources, FDI investments and the utilisation of public money (allocation and spending) in the context of the 2006 Budget Law.

## **Decentralisation**

### **Current Situation**

Laos has a unitary system of governance based on multiple subordinate levels of the same government, where sub-national units of administration have no constitutional powers over functions and finances. Local governance remains an elusive goal in the context of recent Lao political structuring, which has seen early decentralisation built around provinces, districts and *tasseng* alongside local councils with a high degree of administrative and fiscal autonomy at provincial level, revert to a more centralised system based on de-concentrated local administration functioning in the absence of any formal representative structures at local level.

Since 2000, the Government and Party have followed a policy of de-concentration. The current system is based exclusively on administrative units functioning at provincial and local levels in the absence of any system of elected representation. Decentralisation only finds expression as a form of de-concentration of State authority, where sub-national units have the responsibility for

implementing centrally determined policies. Prime Minister's Decree 01/2000, which highlighted the need for more clarity on central-local relations, has in practice done little to clarify the roles and responsibilities of sub-national units, nor has it yet helped to strengthen managerial autonomy at different levels of administration.

The State Budget Law of 2006 has provided a framework for strengthening central fiscal control through initiatives such as the National Accounting System, although the process is not yet complete. Whilst central control has increased national revenues and provides an improved basis for more equitable fiscal transfers to provinces, it has clearly reduced fiscal autonomy at district level. Policies, laws and reforms underpinning the changes in relationships (between policymakers as the service providers and citizens as clients) are fragmented and lack clarity. This blurring of the roles and responsibilities of different tiers of administration compromises the ability of citizens to hold government to account and the ability of policymakers to hold service providers to account. Although there are mechanisms in place for community participation in the social sectors, the effectiveness of this participation is constrained by the inability of the system to be able to respond to citizens' views on policies, resource allocation and investment priorities.

The District Development Fund (DDF) component of the Governance and Public Administration Reform (GPAR) programme represents one of the most significant initiatives in promoting decentralisation to date. The DDF has piloted decentralised planning and financing of local infrastructure and services through discretionary block grant funding to 35 districts, and is in the process of being up-scaled to 66 districts through a proposed new phase. The DDF has shown that local administration can be used more effectively to manage and deliver small investments which target locally identified and prioritized needs and services in a manner that is cost effective, and with greater added value



than when the same services are delivered directly from the centre or province.

### **Recent Changes**

There has been little significant change to the structure and/or form of de-concentrated administration in the last few years in spite of the opportunity provided by Decree 01/PM to redefine more clearly the mandates, responsibilities and functions of different tiers of administration and/or to provide more operational autonomy to districts.

One of the more important developments in this arena in recent years has been the piloting of discretionary block grants to district administration accompanied by capacity and systems development for improved budgeting, planning and expenditure management of local administration under the DDF. This initiative has provided strong evidence of the efficacy of greater fiscal and managerial autonomy at local level, resulting in significant value addition in terms of service delivery (see GPAR Outcome Evaluation 2005) when combined with participatory planning and implementation.

**Party policy calls for strengthened local administration to improved service delivery and the Ministry of Home Affairs is formulating proposals for greater autonomy in district budget management and staffing plus establishment of locally elected councils in the provinces. Previous attempts at decentralisation prior to 1991 resulted in a fiscal crisis and recentralisation. However, the Government is now considering granting more power to districts and has the positive example of the recent DDF pilot activities, which provided discretionary block grant funding.**

The most significant recent development, however, is contained in a policy statement of the 2011 Party Congress which

highlighted the need to strengthen local administration as a means of ensuring improved service delivery to local citizens.

At the same time, MOHA is now in the process of formulating proposals for greater district autonomy in planning, budgeting expenditure management and staffing, and will in due course be working on proposals for the establishment of elected councils at provincial level. It is anticipated by MOHA that DDF pilot experience will provide the basis for the proposed way forward, which may include the provision of discretionary block grant funds in some form.

### **Drivers of Change**

A previous attempt at decentralisation prior to 1991 resulted in weak administrative control at provincial level plus a fiscal crisis at the centre. The Government ran short of cash and was unable to meet recurrent expenditure outlays in some months and also unable transfer money to help equalize disparities across provinces.

This experience led to recentralisation of government, and since the 1991 Constitution, despite an attempt to clarify the mandates and functions of local administration in Decree PM 01/ 2000, there has been little will to consider any form of administrative restructuring or assigning of new powers over revenues and functions to local administrations. At the same time, donor-supported initiatives to strengthen fiscal management have resulted in the centralisation of revenue management and the introduction of a new uniform National Accounting System.

A growing interest in the need for improving local service delivery has led the Government to reconsider granting more authority to district administration. This has been complemented by the positive experience of discretionary block grant funding under the multi-donor funded DDF component of GPAR. This initiative

has provided strategic funding for fiscal devolution and decentralised planning and expenditure management at district level. The experience has provided a template for future reforms and is likely to influence a new decree that will replace PM 01/2000 and help shape subsequent policies aimed at strengthening local administration.

## **Future Trends**

The Government is seeking ways of increasing the effectiveness of local administrations, as a prerequisite for more effective service delivery, and as reflected in the new strategy announced at the 9th Party Congress in 2011. This new trend towards decentralisation is likely to be influenced by initiatives such as DDF in areas such as planning and expenditure management as well as greater autonomy over administrative and staffing functions at district level. It is also likely that local administrations will have greater power and authority over expenditure, including planning and implementation of schemes at local level.

There is also a strong possibility that a greater representative element may be introduced to provincial governance through the establishment of local councils at provincial level. These councils are likely to be granted authority to oversee the functions of provincial administration and to scrutinise provincial budgets and expenditures. Such an initiative would provide an important additional element of political representation and, being closer to the electorate, would provide a new avenue for strengthening voice and accountability.

There is a risk that a push towards decentralisation in the absence of capacity at local level could undermine local development activities and service delivery. This is unlikely, however, given the reasonably limited mandates that will be granted. The DDF has shown that districts are able to assume more responsibility and

to deliver higher quality services with limited supervision and support. There is also a risk that the process could proceed too fast and lead to failure, ultimately resulting in a second swing back to centralisation. At the same time there is a slight risk that donors will not be able to adjust existing programmes or funding commitments in an adequate manner and will thus not be in a position to support the process.

## **Equitable Service Delivery**

### **Current Situation**

Laos is enjoying a period of sustained economic growth, with GDP growth reaching 7.5% in 2010. This has been primarily driven by expansion in the primary and tertiary sectors, especially mining (gold and copper) hydropower, and infrastructure, along with growth in the services sector (9% in 2008). Although agriculture remains the single largest employer, providing work for about three-quarters of the workforce, the share of agriculture as a proportion of GDP has declined.

There has been a steady decline in the number of people below the poverty line, from 34% in 2002/03 to 28% by 2007/08 (MPI, DoS 2010). Although the population grew by more than one million between 1992/93 and 2007/08, the absolute number of poor declined to just over 1.5 million. There has been a steady improvement in a number of critical human development indicators, with for example net primary school enrolment increasing.

In spite of these improvements the country remains one of the poorest in the region. A sizeable proportion of the total population live on the margins of poverty and are vulnerable to economic and environmental changes and shocks. Disparities, such as gender inequalities, are growing at all levels of society and in all regions, although they are more pronounced among

ethnic communities. Rural-urban disparities are most pronounced for children and the 2007 Public Expenditure Review identified a lack of a pro-poor focus in many areas of the budget.

In response to the above, the Government and donor partners have developed various initiatives on equitable service delivery, including the Village Development Fund (VDF), which has provided a devolved fund for livelihoods and small infrastructure in 54 districts. The Leading Committee for Rural Development and Poverty Reduction oversees the Poverty Reduction Fund (PRF), which is designed to bring about a measurable reduction in 30 priority districts in Phase 1, and in the 274 poorest kumban (village clusters) in Phase 2. The PRF also has 350 billion kip to spend on infrastructure in the 26 poorest districts. The DDF represents another initiative to promote equitable service delivery. Equity approaches have also been emphasised in sector projects such as the Lao Extension for Agriculture Project (LEAP) which has targeted poorest households with a strong emphasis on women and ethnic groups. All initiatives promote greater inclusion in terms of gender and ethnicity.

### **Recent Changes**

In order to address NSEDP targets and MDG priorities, the Government has actively promoted a strategy of targeting service delivery, initially at the 47 poorest districts and now the 64 poorest areas. This strategy has served to guide the Government's VDF initiative and has been incorporated into the PRF which is implemented with donor partner support.

The Leading Committee on Rural Development and Poverty Eradication provides direction to the various initiatives designed to increase equitable service delivery through a targeted approach focusing on the poorest areas. As a consequence there has been an increase in the delivery of basic education, health, agriculture and small-scale infrastructure services in many remote areas.

The PRF has refined its targeting mechanism for reaching the poorest and most service deficient communities in its current phase by focusing on *kumban* rather than districts and the programme now covers over 270 of the poorest *kumban* as opposed to 21 of the 47 poorest districts.

Laos remains one of the poorest countries in the region, with many people living on the margins of poverty. Disparities and inequalities are growing, with rural people, women, children and ethnic communities more vulnerable to economic and environmental shocks. In the last five years steps have been taken to increase the pro-poor policy focus, with local administrations being strengthened to improve service delivery equity. Sustained technical assistance and different forms of funding are needed to further develop the targeting of services.

This has been complemented by other governance and service delivery initiatives such as that of DDF, which has also developed a methodology and process for strengthening equitable service delivery as well as the direct provision of discretionary block grant funding to districts for small-scale infrastructure and services. Various evaluations have shown that this initiative has been successful in building the capacity of district administrations for more equitable service delivery, as well as increasing access to services for many remote communities and households across 30 districts.

### **Drivers of Change**

Much of the recently declared rationale for strengthening local administration has been associated with the need to improve service delivery as a core governance objective. This emphasis on strengthening service delivery largely emanates from an improved socio-economic and sector planning process, which has shown

that aggregate growth and poverty reduction has been accompanied by widening inequalities and disparities that have distinct social, ethnic and geographical characteristics. Inequalities and disparities manifest themselves in human development outcomes which can be measured against MDG goals.

Another driver of change has come from the elevation of service related goals and targets in the national planning and policy formulation process, which has placed equitable service delivery at the centre of the 6th and 7th National Socio-Economic Development Plans (NSEDP) over the last five years. This has led to a much greater focus on delivery-targeted services focusing on the poorest areas and communities as part of the wider development strategy, and has given shape to a number of specific programme and project interventions.

At the same time the Party and Government recognise the potential dangers of ignoring inequalities and disparities across regions, ethnic groups and social strata. The Party has explicitly referenced the need to address this problem to ensure unity and avoid social unrest.

### **Future Trends**

The reality of growth and inequality, which are simultaneously prevalent in many developing and transitional countries, means that there will continue to be a strong government emphasis on increasing equitable service delivery in a variety of ways. This is reinforced by the fact that the Government is committed to meeting MDG targets and graduating from LDC status by 2020.

The 7th National Socio-Economic Development Plan (2011-2015) recognises both the incidence of poverty and growing disparities, and the importance of delivering more services in a more equitable manner. The NSEDP also recognises the need to improve service delivery at local level through participatory approaches and

processes. This is further reinforced by the National Programme for Rural Development and Poverty Eradication, a key input to the NSEDP that has identified a series of national priority goals further reinforcing the principles and approaches of equitable services.

This trend is likely to be reinforced by the donor community, which is firmly committed to focusing development assistance on the poorest and most service deficient communities. The trend may be further accentuated in the context of current austerity measures in a number of donor partner countries, where governments will come under pressure to focus aid on direct, measurable and tangible outputs that have direct benefit for poorest. Whilst this is a noble objective in itself, it could undermine the need to support systemic reforms that may, in the long run, make a greater contribution to poverty reduction and social well being.

The implication of sustained emphasis on equitable service delivery is that not only will there be a continuing need for funding in the short run, but there will be an equally important need for technical assistance to help develop and refine new methods for targeting services and to ensure that funding is aligned to service deficiencies and disparities, since these are few well developed tools and procedures to guide this at present. At the same time there will be a need to experiment with different forms of funding, including support for recurrent services as well as capital. This is an area that requires greater attention in order to address the need for improved service outreach.

## **Participation**

### **Current Situation**

There are a variety of forms of participation ranging from indirect participation through representative institutions such as the



National Assembly, to the approved Party mass organisations and formal business associations, other interest groups and civil society organisations (CSOs), Non Profit Associations (NPAs), the media and other forms of communication. It appears that the overall environment, in both formal structures of decision making as well as in the planning and implementation of local-level development, is much more conducive to participation than it was a few years ago. Decree 115 of 2009 on Association marks an important step in the formal recognition of Non Profit Agencies as partners in development. The 7th NSEDP explicitly mentions the role of civil society in development and functionaries in government are more accepting of NPAs and CSOs as potential partners in the delivery of services.

The main institution of representative government, through which citizens participate indirectly in the process of legislative approval and oversight of public expenditure, is the National Assembly and its 132 members elected from multi-constituency provinces. A number of features constrain the National Assembly in its functioning. These include the nature and composition of members, all of whom are elected from a pre-approved list of



candidates primarily from within government, the short duration of sittings in relation to the increasing volume of work, plus the capacity and resources of members and lack of constituency management. However, Assembly members are becoming younger and better educated, have assumed a more pro-active role in the approval of legislation and scrutiny of government budgets and expenditure, and are making Assembly observations public through TV and other media. Many mass organisations and professional associations have also begun to change their way of working. The Lao Federation of Trade Unions has begun to play a more substantial role in promoting workers' rights and interests while the Lao National Chamber of Commerce and Industry (LNCCI) reports good progress in pushing the policy envelope in a number of sectors including tourism, business, mining and leasing.

The civil society sector is small and nascent with only 80 NPAs active in development. These organisations are primarily engaged in community development activities rather than advocacy, and are still struggling to establish their credibility with government and donors. Decree 115 marks an important step in the formal recognition of NPAs and CSOs as partners in development.

Civil society remains largely nascent under Laos's democratic centralist regime, with the main forms of political participation mediated through formal mass organisations closely associated with the ruling Party. Over the years there has been a gradual emergence of a variety of formal associations backed by government as well as a more recent mushrooming of private schools, colleges and training centres. Such organisations are rarely engaged in development and remain largely conservative in nature, although some, such as the Chamber of Commerce and Industry are beginning to function more effectively as lobby groups.

There has been a burgeoning of cable and satellite TV with coverage extending into remote areas. There are five national daily newspapers with a circulation of 12,000, reaching

provinces and remote districts, and some papers offer more critical insights into policy than in the past. There are 29 national TV stations offering a wide mix of channels via cable and satellite connections. Official government-run media remains less popular and all media remains subject to censorship. Most media organisations practice a reasonable degree of self censorship although in recent years there has been greater acceptance of discussion of issues of concern. There has been significant growth in web-enabled media which provides a more educated segment of the population with access to news debates and exposure to topical issues, although almost none of these directly relate to the Lao context.

### **Recent Changes**

Recent changes in the character and functioning of the National Assembly have already been discussed in the section above on government. Hence this section will be confined to an assessment of the main changes affecting civil society and the media.

There has been a positive shift in official views and attitudes towards civil society organisations as those in government recognise the need to open up the space in service delivery for a wider range of actors and resources. In spite of a slow and intrusive registration process, NPA stakeholders feel that the overall environment for civil society is improving and that there are new opportunities for engagement based on strategic alliances with those in government who express an interest in aligned areas. This provides a useful platform for CSOs/NPAs and individuals in government to coalesce around a set of related interests.

A recent and significant development relates to a change in the legal environment governing non-profit associations, which may now seek registration and formal recognition. Whilst the registration process is onerous and slow, this nevertheless represents an important step in opening up the space for alternative actors to work alongside government. It should be recognised that these

organisations will be largely confined to service delivery rather than advocacy or rights based activities.

Opportunities for participation in decision making and local-level development are growing. The NA and other state organisations have become more involved in government policy and oversight while the environment for civil society is improving. NPAs and CSOs now have legal recognition, but their status remains nascent and most avoid a rights-based advocacy approach. Some formal associations are beginning to function more effectively as lobby groups. The number of media outlets and access to foreign media has risen but while discussion of policy is now tolerated, censorship remains tight. Expanding mobile phone and internet networks provide potential avenues for web-enabled participation, although the State has begun to increase controls.

While there has been a major expansion in print, radio and TV media in recent years in terms of access, choice and coverage, the content remains largely confined to the dissemination of official news and information or entertainment. A new media law has enhanced the role of mass media. Although popular interest in the media is almost wholly restricted to foreign (Thai) entertainment, increased access to foreign news is exposing people to new ideas and events. Mobile phone networks are quickly expanding and have reached over one million subscribers generating greater access to communication for over 60% of the rural population. New forms of communication, based on various forms of social media accessed through portable web-enabled technology, offer significant opportunity for information sharing and dissemination as well as potential avenues for participation which could be actively explored and developed in the future.

## **Drivers of Change**

The essential driving force behind the recent changes in approach to participation would appear to be based on a series of complementary factors. At the formal level, it is increasingly understood in government that the National Assembly can and should play a more pro-active oversight role over legislation and expenditure, since it can provide a level of checks and balances without threatening the foundations and fabric of the system within which it operates and derives its authority.

At the civil society level, there is a growing acceptance that NPAs can operate as potential partners in community development and this has been reinforced by donors and NPA internal positioning on this issue. At the same time the domestic CSO sector is seen as more easily managed than international NGOs, which often assume an advocacy role that is less comfortable for the Government. Whilst domestic media remains largely censored, it is increasingly difficult for the State to control access to the rapidly expanding flow of information both regionally and virtually. There is thus a widening window of opportunity for new forms of participatory engagement in governance by a growing body of citizens.

## **Future Trends**

As already shown in the Governance section, the representative role of the National Assembly is gradually taking shape with a new composition and character, enabling it to assume a more pro-active policy oversight role. With focused funding and support on building more effective constituency representation and greater oversight capacity, the role could be substantially enhanced in future.

There is a positive trend in the overall direction of increased participation of citizens in governance through various formal,

semi-formal, and informal institutions. Around 80 NPAs are active in the development sector and there is also increasing acceptance in government towards civil society organisations as potentially useful partners in community development. Although NPAs and CSOs have adopted an essentially embedded role in support of existing development processes, rather than adopting a more rights-based advocacy approach, this is probably a more pragmatic and instrumental strategy in the present context.

Web-enabled communication remains an untapped mechanism for voice and active citizenship. Whilst it is accepted that the current cultural context of Laos is such that the vast majority of the population are largely apathetic to government and simply opt out of any form of structured participation, there is a substantial opportunity to shape ideas and channel energies in a more meaningful way through social media, which offers growing outreach in a highly accessible and evolving form. It is likely that the Government will begin to exercise more control over the use of social media: just recently users of mobile phones have been required to register with the authorities for security purposes.

## Recommendations

### Strategic Recommendations

#### *Political Governance and Social Processes*

1. Improved rule of law is a fundamental prerequisite for more effective governance and requires a much more holistic approach to the building of structures and systems that can provide a “good enough” and “sufficiently sound” legal system as an improved basis for due process, greater **transparency** and political and economic certainty. Here, support initiatives will need to address a wider range of concerns than at present. Notwithstanding

donor contributions to support law drafting, the bar association and international law, there remain many problems with the legal process in general and with weak investigation and enforcement in particular. While addressing these problems would ideally require a sector-wide programme approach, a pragmatic way forward could be to focus support on strengthening enforcement of one or two specific laws that would help to address the underlying problems associated with weak natural resource and land management, and with the 2006 Budget Law, especially in respect of service delivery funding.

2. The National Assembly is emerging as a governance institution with the potential to strengthen the **accountability** of the respective agencies of government. Analysis of the current system and associated structures of democratic centralism shows that there are limited checks and balances horizontally across the different branches of government and limited formal **participation** in decision making





vertically at different tiers and levels of government. The National Assembly provides a narrow window of opportunity to address both these dimensions of governance through greater capacity to assume more effective scrutiny and oversight of all the governance institutions, and a mechanism for people at all levels of society to raise key concerns and issues on a national platform through their constituency members. Analysis has shown that the NA is beginning to assume a new scrutiny and participatory role in government with greater legitimacy. However, the constraining lack of resources, support and expertise which compromise its scrutiny role and limit the depth of constituency representation, both of which could become powerful drivers of change if addressed effectively.

3. There is a need to strengthen existing mechanisms for policy and operational dialogue based on Sector Working Groups. Whilst these mechanisms provide structured engagement with senior decision makers and offer an opportunity to discuss and address issues of key concern in the respective sectors, the role and composition of the Groups need to be examined to determine how their role could be optimised at the technical, operational and policy levels of dialogue. It may be opportune to consider how to broaden the composition to include a wider constituency of interests in key sectors, potentially covering NA members, provincial governments, new local development partners and the private sector. Another issue is the absence of cross-sector working groups to address some of the more fundamental issues across all sectors, and which could be addressed far more effectively through a single coherent approach.
4. As education and socio-political awareness improve, people become increasingly capable of formulating ideas



and voicing concerns. The challenge lies in whether there are effective means for stimulating ideas and articulating **voice**. Social media through web-enabled technology is fast becoming a dominant form of communication that has the power to reach out to many different social segments, and hence constituencies of interest, in a highly effective manner. The challenge is to convert these energies into structured interest groups able to articulate and communicate a coherent voice to the Government and public. A key component of such a strategy would be to develop specific modalities to reach out to a new younger generation of future civil society actors who already have a modern world view and a distinct pan-Asian outlook. This will require exploring new modes of engagement with higher learning institutions and through social media forums, youth conventions, events, exposure visits etc.

5. Another important facilitator of change will be the gradual transition from more effective de-concentration of government to a more decentralised system of governance. A more enabling policy environment is emerging for such a transition as the Government is currently working on new policy agenda for strengthening local administration through greater delegation of powers and responsibilities over fiscal, human and physical resources. This may be complemented by a strengthening of local political accountability and a deepening of local representation through newly-established provincial councils. Here, the main challenge in the medium term will be to help the government introduce a more decentralised approach, within the existing state framework, in order to increase local autonomy for more effective local development. This in turn will help to bring about more equitable service delivery and open up spaces for greater local participation in addressing local needs, reducing disparities and

promoting diversity, all of which constitute the fundamental rights of citizens. The NGPAR in general and the DDF in particular provide good entry points for contributing to this strategic issue and can play a useful role in facilitating and shaping the change process.

### *Economic Governance and Natural Resources*

6. Improved **governance of natural resources** in relation to natural resource management is a critical requirement in addressing the underlying structural weaknesses of the current economic model of development noted in Chapter 6. Here, there is good potential to work in different ways with the larger donor community to help develop more effective tools and models for assessing the short- and long-run economic, social and environmental impacts of FDI investments, as well as developing options for optimal use and management of natural resources to shape emerging policies.
7. There is a need to assist government work towards meeting the standards, protocols and future membership of the Extractive Industries Transparency Initiative. This is designed to improve governance and revenue transparency in extractive industries and is involved in reporting, auditing and publishing revenues and payments received by governments from such industries.
8. There is also a critical requirement for the government to develop a much more coherent and effective approach to the formulation and negotiation of public private partnerships around FDI investments, including all aspects of the transaction management process in general and the structuring of concession arrangements in particular. Another area of concern is the need to develop more effective strategies and approaches for economic

diversification in areas such as small and medium enterprise development.

9. There is an opportunity to assist the Government in reviewing the existing status and potential of different models of corporate social responsibility associated with FDI investments in natural resources and land concessions. This would include assessing impacts on local communities and the wider environment, and helping to formulate new policy options and strategies for incorporating good CSR practices in terms of escrow (dedicated) funding and implementation into FDI policy.

## **Operational Recommendations**

10. The primary focus of the PRF is to address important and growing symptoms of the underlying structural processes that contribute to the persistence of poverty and inequality. The PRF provides a useful mechanism to address poverty reduction in a targeted manner with a reasonable scale of funding, and to focus on building the capacity of



communities to participate in the planning and delivery of project-related services. The current PRF phase targets *kumban* as the primary unit for planning and funding of services as a means to strengthen the focus on poor communities. Whilst the PRF will improve immediate access to services for poor communities and help bring immediate and measurable change for beneficiary communities, its contribution to wider structural change will depend mainly on its ability to influence policy. Its long-term success will be therefore determined by the degree to which it becomes institutionalised across government.

11. There is a requirement to develop a mechanism for measuring and assessing service delivery gaps and variations across different communities within districts and across different districts. This would provide a basis for more systematic, rational and transparent planning of equitable service delivery, based on addressing relative differences in the variation of services by population and geographical area. This would help to strengthen the equitable as opposed to equal dimension of service delivery.
12. There is a need to establish a robust evidence base on impacts of variable levels of service as well as on the impacts of relocation and land concessions. In the absence of such an evidence base it is difficult for implementing agencies and development partners to influence the wider policy agenda in a meaningful way. In order to develop the evidence base it will be necessary to commission research on the causes of problems as well as the extent and impact of problems affecting equitable services delivery.

13. At the same time it will be necessary to develop a sound information management system that can better monitor progress and track achievements in projects and programmes, especially pilot initiatives, as a means of demonstrating what can work and how effectively different approaches work. Such information could be used internally by ministries as well as externally at Sector Working Group and Round Table levels to influence policy formulation.
14. There needs to be much stronger focus on funding operational expenditure for service outreach rather than funding capital development, and there is a need to complement this with experimentation on the use and efficacy of different forms of safety nets as targeted interventions for the poor.
15. There is an urgent need for better understanding of the characteristics, strengths and potential risks associated with ethnic diversity, in terms of indigenous economic and social systems and the development of strategies and policies to capitalise on the strength of ethnic diversity. Service delivery should be more relevant to diverse communities as a means to off-set the strong existing bias towards uniformity of systems and services.
16. In order to strengthen equitable service delivery, it may be necessary for government and donors to consider new delivery arrangements based on partnerships with select Not for Profit Associations that could help extend service outreach. However, stakeholders from the NPA/civil society sector claim there is a lack of trust on the part of donors and government.
17. There is an opportunity to engage with NPAs to broaden partnerships in service delivery at local level and to

understand the way of approaching advocacy in the political economy context. Here, there would appear to be two main opportunities to enhance engagement with NPAs. The first would be to develop a responsive small-grant facility which would enable NPAs to apply for different levels of funding in relation to capacity and the defined objectives and outputs of the grant facility itself. Management of the grant facility could be contracted to a professional agency to reduce transaction costs and such an agency could also assist in capacity building in defined areas. Another useful intervention could be to provide resources to enable potential NPA partners to engage in systematic research in areas related to their work. This would provide them with an evidence base to engage in dialogue with government, whilst simultaneously developing their internal capacity in structured fieldwork and project management.

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## Conclusion

This review of the governance sector in Laos has examined the main government institutions and key processes of governance including justice, decentralisation, equitable service delivery and participation. The review has considered the past context, present character and the evolving nature of the main branches of government under the one-party democratic centralist state system of the Lao PDR. It has also examined the evolving context of key processes of governance, and the underlying political economy structures and constraints. Overall, the review has shown that in spite of a number of fundamental constraints, the system of governance is gradually changing to accommodate a greater plurality of views and stronger checks and balances within the essential unitary and hierarchical nature of state formation.

The Party remains at the apex of government and plays a leading role in all aspects of government and across all the main institutions





of the State. Whilst the single-party system generates a high degree of uniformity and exclusivity in decision making, there are signs that the character of Party leadership is changing with an infusion of younger, more educated and regionally inclined leadership group in the upper echelons of the Party as well as in the National Assembly, Council of Ministers and Executive machinery. The main impact of this change can be seen in a more flexible interpretation of ideology to accommodate an open market economy, greater economic differentiation, and the legal and institutional requisites for regional integration.

The changing context of Party leadership and ideology has had a slow but increasing impact on both the structure and functioning of government, as well as on the processes of governance in relation to justice, decentralisation, service delivery and participation. The analysis contained in this review clearly demonstrates that there have been small but significant changes in a number of institutions of government. Apart from changes in the composition and character of the Party itself, the National Assembly has begun to assume a more pro-active oversight role in the legislative and budgetary process. The executive machinery of government has expanded, with an increased number of ministries and a larger number of personnel working in the civil service.





In line with changes and improvements in the structure and systems of government, there have also been a number of changes to governance processes. The foundations of a modern legal sector have been established, with a number of new laws governing legal processes as well as a judicial structure based on a Supreme Court, higher regional courts and area courts alongside a judiciary, public prosecution service and an emerging legal profession. However, the review has also highlighted many shortcomings in the legal system in relation to limited access to justice, inadequate independence, weak investigation, poor judicial procedure and lack of robust enforcement.

**Despite fundamental constraints, the system of governance is gradually changing to accommodate a greater plurality of views and stronger checks and balances. While the single-party system generates a high degree of uniformity, there are signs that the character of leadership is changing. The main impact of this can be seen in more flexible interpretation of ideology to accommodate an open market economy, greater economic differentiation, and the legal and institutional requisites for regional integration.**

The review has also shown that government has experimented with different forms of decentralisation at different times, resulting in the current system of de-concentrated administration based on limited autonomy at district level combined with a higher degree of operational autonomy at provincial level. To counter the negative consequences of decentralisation as experienced in the period prior to 1991, there has been a minimalist interpretation of policy statements such as PM/01 2000. This has been accompanied by a policy thrust on fiscal centralisation, reflected in the 2006 Budget Law to counter national cash shortages and revenue imbalances across provinces. However, an initiative to manage decentralisation and fund more local development through discretionary block-grant funding of infrastructure and

services, alongside a general desire to increase the levels and coverage of service delivery, is changing the situation: the Government is now open to the possible introduction of moderate reforms to increase local control over staffing, planning, budgeting and expenditure management, in order to increase the performance of local administration. Provincial councils may also be introduced to strengthen the representative element in local government.

Whilst growth and poverty reduction have contributed to the overall socio-economic well being of citizens, the process of development is also leading to an increase in disparities and inequalities, which manifest themselves in geographic, ethnic, gender and age dimensions of society. The Government is increasingly aware of the socio-political danger of growing disparities in society. It has consequently been active in supporting initiatives focused on more equitable service delivery targeted at higher risk areas and populations in partnership with donor-funded programmes.



Finally, the review has shown that there is a positive trend in the overall direction of increased participation of citizens in governance through various formal, semi-formal, and informal institutions. As highlighted above, the representative role of the National Assembly is gradually taking shape with a new composition and character enabling it to assume a more pro-active policy oversight role. With focused funding and support on building more effective constituency representation and greater oversight capacity, the role could be substantially enhanced in future. The review has shown that there are around 80 Non Profit Associations active in the development sector. There is also increasing acceptance in government towards civil society organisations as potentially useful partners in community development. This has been accompanied by a new Law of Association, which provides an avenue for formal legal recognition. Although NPAs and CSOs have adopted an essentially embedded role in support of existing development processes, rather than adopting a more rights based advocacy approach, this is probably a more pragmatic and instrumental strategy in the present context. Whilst there has been a major expansion in print, radio and TV media in recent years in terms of access, choice and coverage, the content remains largely confined to the dissemination of official news and information or entertainment. New media provide a substantial opportunity to shape ideas and channel energies in a more meaningful way, especially through social media, which offers potential for extensive and growing outreach in a highly accessible and evolving form.

Juxtaposed alongside these changes are a number of potential restrainers of change relating to the underlying character of the economy, political structure and socio-cultural practices. Here, the main obstacles to change derive from the economic model of FDI-driven natural resource development, from the inherent nature of the political system, and from the persistence of traditional socio-cultural patterns of behaviour which reinforce

hierarchical relations emphasising loyalty and subservience over achievement.

At the political level there are a number of “retained” characteristics of the one-party system which continue to manifest themselves in a high degree of concentration of power, rigid hierarchy, high degree of overlap of authority and responsibility across all branches of government, and weak civil society. These characteristics serve to inhibit the extent and pace of change. Whilst there has been a slow evolution in the structure and form of government over the last few decades, as well as a number of changes in the nature of the system and its style of functioning since 2003, there would appear to be no immediate prospect for greater political pluralism in any formal sense. While the party-state will continue to exercise full political and administrative power, it is likely that a greater element of internal heterogeneity and the infusion of a more technocratic approach to government will change the overall context of governance in the country.

A number of issues concerned with the emerging economic model of natural resource extraction also present barriers to change. The requirement for land as the basis of the model necessarily affects a sizeable proportion of citizens who remain



as smallholder cultivators: much of the land required for natural resource development is used by the rural population as a central means of livelihood. The ensuing process of land alienation among affected rural communities is exacerbated in cases where inward investments require arable land for plantation purposes.

This is further aggravated by a context in which promotion of certain forms of FDI, involving deals struck in a somewhat flexible manner, is given greater emphasis than the interest in ensuring safeguards and mitigations are in place and capable of providing adequate protection for smallholders, especially ethnic groups in remote locations. The lack of sound economic governance in terms of land and investment management poses a considerable risk to achieving the wider goals of equitable and sustainable development.

Overall, however, it can be seen that the evolution of governance in the Lao PDR has reached a point while the essential structure of the one-party system remains firmly in place, the character and functioning of the system has changed quite substantially to accommodate the shift towards a modern, open market-based economy, high rates of growth, greater regional economic and cultural integration, and the emergence of a new educated middle class superimposed on a largely subsistence-based rural population with growing inequalities across different regions and ethnic groups. The combination of these factors has led to a change in the nature of government to accommodate the need for stronger and more effective governance institutions, a wider plurality of socio-economic interests, and pressures to ensure all citizens have access to basic minimum services.

Finally, it may be interesting to speculate on the future development of the political regime. As noted above, there are some signs of the beginnings of an evolution towards a more modern one-party state. In China, for example, the State has successfully turned a system that once resembled a closed family business into

one that can be likened to a modern communist corporation. The old ideology of cadre and popular struggle has been replaced with that of meritocracy, stability and wealth accumulation. This system has successfully resisted any move towards political democracy, continuing a strong commitment to one-party rule in which the governing group has transformed itself into a modern mandarin bureaucracy presiding over an expanding free-market economy. Whilst the contemporary Lao political system remains firmly rooted in the one-party state, there are signs that the character of the regime is in transition from an ideologically-driven to a more technocratic governing class. Whether the regime will transform into a modern mandarin bureaucracy capable of delivering sufficient welfare to offset any overt pressure for change will only become clear over the course of the coming years, as the impact of greater regional and global economic integration becomes more apparent.





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# **Chapter 1: The Party, National Assembly and Government**

## **Introduction**

Government in the Lao PDR is based on a single-party system in which the Lao People's Revolutionary Party (LPRP) has a "leading role" as enshrined in the Constitution of 1991. Under a single-party system there is no distinction between the political and executive arms of government: rather government is the administrative arm of the Party, which determines policy through an all-powerful 11-member Politburo and a 61-member Central Committee alongside a Cabinet of Ministers presided over by the Prime Minister, functioning under the State President and Vice President. The Party, the military and the Government form the basis of the democratic centralist power structure of Laos and there are no strong interest groups outside the established machinery.

Within this context it is important to recognise that the prevailing system of government is a product of particular historical processes and forces that are themselves deeply rooted in traditional political culture and practices. This includes a long tradition of personal and family loyalties and clan allegiances, a small and powerful elite, and a high degree of regional autonomy, all of which meant that the traditional political economy was not based on the strong bureaucratic state found in many Asian countries. Despite a change of political form in 1975, with the coming to power of the LPRP, many aspects of traditional political culture remain, although they are now found within a different political form. In Laos the very concepts of governance, administration and law are still evolving and there remains a need to continue to build and strengthen unity and national identity. At the same time there are growing and inevitable pressures for change arising from the country's internal development as well as its integration into the wider regional and global economy and society.

Much of the current socio-economic and administrative reform agenda is contained within the 7th National Socio-Economic Development Plan (2011-2015). This plan emphasises the importance of growth with equity and stresses the need for government, including the public administration machinery and the legal system, to be accountable, effective, transparent and responsive. The Strategic Plans on

Governance (2006-10 and 2011-15) both emphasise the Government's commitment to building "an effective, efficient, well-trained, honest and ethical public service that is able to meet the needs of the multi-ethnic Lao people", across four major themes of governance relating to: "Public Service Improvement, People's Participation, the Rule of Law and Sound Financial Management". Both the 7th NSEDP and the Strategic Plan on Governance thus provide the basic enabling framework for strengthening the operation of the respective arms of government and enhancing participation and the rule of law. The plan stresses the need to improve organisational structures without compromising security, to simplify administrative rules and procedures, to improve human resource management and to upgrade the skills of civil servants to improve their effectiveness, efficiency, and ethical behaviour.

## **The Party**

The LPRP, which was founded in March 1955 as the Lao People's Party, is broadly structured along democratic socialist lines. Irrespective of its ideological base, the contemporary reality is one in which a single ruling party presides over a rapidly growing free market economy and a vibrant Buddhist culture as a symbol of national identity. Under the 1991 Constitution, the LPRP and its mass organisations comprising the Lao Front for National Reconstruction, the Lao Women's Union, the Lao Federation of Trade Unions and the Lao People's Revolutionary Youth Union, are the only legal political entities and thus function in the absence of any formal political opposition.

As also enshrined in the Constitution, the Party plays a "leading role" in all main governance institutions of the country including the executive, legislature/ assembly, unions and other mass organisations and the military, in a context where the Party and Government are essentially one and the same. The main function of the Party is to provide direction, formulate policy and provide guidance on all aspects and across all branches of government. A Party Inspection Authority monitors the whole apparatus of the Party and reports to State President.

The Politburo is the highest body of the Party with 11 members. These

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are currently the President, Prime Minister, Party Secretariat Standing Committee Member, National Assembly President, four Deputy Prime Ministers, Head of Government Office, President of the Party and Government Inspection Committees, and the Minister of Education. Three former Politburo members continue to act as Party Advisers with an influence on the Politburo and Government. All Politburo members are elected from and by the Party Central Committee (CC) of 61 members (five females), who are in turn elected at the Party Congress. Interestingly, the 11 Politburo members are not necessarily those who have received the most votes in the Central Committee election of the Party Congress. The current State President is the most senior Politburo member followed the Prime Minister, although the previous Prime Minister was the one of the more junior members of the Politburo. Six of the Politburo members are from ethnic groups representing Lanten, Phou Noy, Katang, Akha, Hmong and Chinese/Sino-Tibetan ethnic groups.

Day-to-day Party matters are the responsibility of the nine-member Secretariat of the Party Central Committee. Four of the members are also Politburo members (two being among the youngest from the Politburo) and the remaining five are all Central Committee Members. Women and ethnic groups are not well represented in the upper strata of the Party and there is only one female member, who is also from the Hmong ethnic group. This member has moved up several places in the Politburo hierarchy. There are no women in the Secretariat of the Party Central Committee nor in the Party and Government Inspection Committees.

The Party has 191,780 members, representing around 3% of the population, a similar ratio to that found in Vietnam. Membership is by invitation and dependent on evidence of strong commitment to Party work and future potential. Prospective members have to be approved at various levels of the Party hierarchy. This results in the exercise of power by right of Party membership. All senior officials will necessarily be Party members and Party cells within each ministry/institution will invite those with potential to become members. Members of the government are appointed by the Party and not necessarily drawn from the National Assembly. Membership is crucial for advancement in government and provides privileged access to the wider machinery of government.

The Party is based on a unitary and hierarchical structure with a hybrid

culture that is both patrimonial and technocratic, combining traditional ways of mediating relations with more functionalist modes of bureaucratic management. Whilst behaviour is not entirely governed by personal relations, but also by more technical functions and duties, traditional patterns of behaviour based around loyalties, reciprocity and obligations remain a dominant factor in Party culture.

**Under the Constitution, the LPRP and its mass organisations are the only legitimate political entities and thus function in the absence of any formal opposition. Major challenges for the Party leadership include improving access to rural services, keeping food prices stable, increasing agricultural production and handling the impacts of land concessions granted to foreign companies.**

Whilst the absence of a multi-party system inherently limits the extent of political contest, the Party is not a static entity and there is a certain amount of heterogeneity within the Party based around personal, group and regional loyalties. This provides a dynamic element in the power structure with a degree of competition that may coalesce around different policies and or issues. The substance of such competition will rarely if ever enter the public domain but may manifest itself through a reshuffling of positions in top echelons of the Party.

The level of internal dynamic is well illustrated by the changes in the Politburo and Central Committee following the resignation of Prime Minister Bouasone Bouphavanh in December 2010 and the 9th Party Congress of March 2011, which consolidated the position of the current Prime Minister Thongsing Thammavong. Many commentators have argued that the previous PM did not have the requisite experience or support base to be in a position to maintain the post. There are now a number of intelligent and dynamic members of the Politburo who are likely to act as a progressive force on emerging policy within the constraints of a broadly conservative political structure. However, proposals for change and reform are likely to focus initially and somewhat cautiously on ways of improving the performance of government and increasing internal efficiency and effectiveness - necessary but not particularly controversial issues.

Whilst strong economic growth and insulation from the 2008-09 global

financial crisis has helped to maintain the political status quo, major challenges remains in improving access to services for the rural population, keeping food prices stable and increasing agricultural production. Another challenging issue for the Party leadership is the impacts of land concessions granted to foreign companies for plantations, mining, logging, hydropower and recreation projects.

The Party still has control of around 200 state-owned enterprises (SOEs) operating in a number of sectors such as cement, pharmaceuticals, banking (four state owned hold 80% of deposits).and these enterprises have benefited from protection and subsidies which have undermined competitiveness and long term profitability. Mindful of this issue, the Government has been considering various measures to enhance efficiency and productivity, and while reluctant to sell the businesses outright, has been trying to get them listed on the stock market. All substantial Lao-owned businesses have close ties with the ruling Party.

## **National Assembly**

The 1991 Constitution assigns legislative and oversight functions to the National Assembly, which has evolved from an initial People's Supreme Assembly in 1975 with just 45 members to the current National Assembly 7th legislature with 132 members. The NA is a single chamber institution with members (deputies) elected on a five-year term from multi-member constituencies in all 17 provinces. Representation is based on one member for every 50,000 people or 1:30,000 voters.

Members are elected from a pre-selected list of 190 nominated candidates, including 47 from central government, 143 from local administration, 45 incumbents of the previous assembly, 4 from SOEs and 5 from the private sector. This demonstrates the limited degree of the separation of powers and interests between the executive and the legislature, as the latter is predominantly made up of members of the executive, who mostly obtain leave of office for the duration of the legislature to work either at central or provincial constituency level. Since the total number of candidates is only marginally more than the total seats, the election process involves deleting a small number of candidates from the list rather than actively selecting candidates, non



of whom will have been involved in an individual election campaign.

The final composition of the 7th legislature includes 42 members from central government (against 47 candidates) and 90 from local administration (against 143 candidates). The fact that some candidates from central government, albeit a small number, were not elected by provincial constituencies does indicate the emergence of a more dynamic process since voters in Vientiane Capital, Vientiane Province and Khammouane Province did not necessarily return all candidates from central government. Another feature is that two provinces did not return any candidate with a military or security background.

Although there is no quota system for women or ethnic groups in the Assembly, women are well represented. The 6th legislature comprised 29 women deputies out of a total of 115 members, whilst representation of the Hmong ethnic group stood at around 6%, in proportion to their population. In the current 7th legislature there are 33 women members although some provinces returned no women candidates to the legislature.

The NA has six permanent committees, each responsible for a specific functional area: Law and Justice; Economics, Planning and Finance; Social and Cultural Affairs; Ethnic Affairs; Defence and Security; and Foreign Affairs. There is also a Standing Committee (SC), which consists of ten full-time members: the President and two Vice-Presidents of the National Assembly, the Chief of the Cabinet and the Presidents of all six functional committees, and is chaired by the NA President. When the Assembly is not sitting, the SC substitutes for the full assembly in its role of reviewing public petitions and considering complaints from citizens. If required, the SC can request the Office of the Supreme People's Prosecutor and the People's Supreme Court to review and re-consider a court decision, or instruct the government to address the petitioner's grievance.

**Features constraining the National Assembly's ability to function effectively include: the limited degree of choice over candidates during elections; an increasing volume of legislative work; the lack of time in assembly sessions for adequate policy debate; lack of discussion on policy alternatives. At the same time, a number of recent developments provide potential entry points for significant change.**

The Assembly convenes in two ordinary sessions per year, each normally lasting two to three weeks. The main functions of the NA include: receiving statements from line ministries, reviewing petitions related to administrative, court or individual decisions, state official decisions or conduct, reviewing the state budget, plus voting on new legislation and on amendments to existing legislation. NA sessions have been reduced from four-five weeks to two weeks, with the increased workload leaving just one day for consideration of a law.

During its inaugural session the latest Assembly approved a new State President, Vice President, President of People's Supreme Court, President of the Public Prosecutor Office, Prime Minister and National Assembly President as well as amendments to the law on taxation. The Assembly agenda for the next five years includes the approval of 48 new laws and 43 amended laws. In the light of its short sittings there is concern that it does not have adequate time to debate these new laws and amendments

There are many features of the Assembly which constrain its ability to function as an effective agent of participatory governance, acting on behalf of citizens and with responsibility to voters. These constraints include the limited degree of choice over candidates, whose pre-selection from an approved list constitutes a process of "managed" representation. Another constraint is the electoral process itself, in which the lack of any discussion or presentation of policy alternatives severely limits voters' choice. This is further reinforced by the process of de-selecting candidates. The limited number and shorter duration of sessions have also severely compromised the scope for serious debate on key legislative proposals and for the effective scrutiny of policies, budgets and expenditure, a problem exacerbated by an increasing volume of

work. This has become more serious with the introduction of a new law on lawmaking, which requires the observance of a new process in the formulation and promulgation of a law. Finally, the role of the Assembly is compromised by the limited experience of its elected members and the lack of resources to enable them to better represent their constituencies. Whilst these constraints represent a substantial bundle of problems, a number of important developments have taken place recently that provide potential entry points for significant change (see analysis of Assembly in section on Participation).

## **Executive Machinery**

The Prime Minister, currently Thongsing Thammavong, is head of government and a senior member of the Politburo. All senior officials in government are Party members and the Party decides all ministerial appointments. Ministers are appointed by the National Assembly on the recommendation of the Prime Minister and the Party. Each minister nominates vice ministers and departmental heads within his ministry, who must then be approved by the Party leadership and then by the PM. The minister (usually the Secretary of the Party cell), deputy ministers and a number of Party cell members will generally constitute the leadership group within the ministry.

The Council of Ministers comprises the PM, four Deputy Prime Ministers and Ministers of Agriculture and Forestry, Foreign Affairs, Industry and Commerce, Information, Culture and Tourism, Justice, Labour and Social Welfare, Defence, Health, Security, Science and Technology, Public Works and Transport, Natural Resources and Environment, Home Affairs, Post, Telecom and Communications, Finance, Energy and Mines, Education, Planning and Investment, plus the Head of the Office of the Government, the President of the Government Inspection Authority, the Head of the Anti-Corruption organisation, and the Governor of the Central Bank.

The executive arm of government is responsible for implementing and enforcing government policies, programmes and projects through 18 Ministries and three institutions with ministry status, including the Central Bank and the Government Inspection Authority. The executive administration has the authority to issue binding decrees to assist with

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the process of implementation and enforcement of policies and laws. Most ministries have de-concentrated structures that interact with 17 provincial administrations and 143 districts covering 8,654 villages and 1.057 *kumban*. Party cells operate within every ministry and within provincial administrations, and there is active recruitment of promising young professionals into the Party. Active involvement in the Party assists promotion within the executive. Hence almost all senior civil servants will, necessarily, be Party members.

Around 130,000 civil servants, including teachers and health staff, work in the public administration system. Around 82,500 staff (44% female) work at district level with a further 28,666 (35% female) at provincial level and 21,297 (44% female) at central level. More than 52% of all civil servants work in the education sector, only 10% in the health sector, 6% in agriculture and just 2% in public works. Nearly two-thirds of all civil servants are below the age of 40. The civil service staffing structure is based on five grades, ranging from clerical and support staff (Grades 1 and 2) to professional staff (Grades 3-5). Each grade is further divided into 15 steps matching respective points on the salary scale. Progression within each grade is based on seniority (i.e. a step increment every two years of service) or educational qualification. Salaries are extremely low and highly compressed across a range from \$50 to \$150 per month.

In 2009/10 a total of 10,180 additional staff were recruited, although ministries had requested an additional 30,000 staff. The MOHA issues an annual circular on staffing needs known as the "Staff Quota Instruction," requesting bids from ministries and provinces for additional staff, based on net increase after retirements and other sources of attrition. Once it receives the envelope for staff numbers provided by the MOF Budget Department, it distributes the increases to ministries who in turn allocate the new staffing. The criteria used by MOHA for allocating staff increases are broadly based on workloads as assessed by ministries, as well as policy priorities. A degree of misalignment of staff and budget allocations may be detected at the provincial and district levels. Whilst the funds for district education and health services are included in the budgets of the provincial education and health departments, staffing decisions are made by the provincial governors, who may decide to allocate new staff to other activities. The

MOHA maintains a central database of all civil servants and is currently piloting a new integrated personnel management information system known as the PIMS. The total wage bill of the Civil Service accounts for just under 5% of GDP.

The Civil Service staffing structure is based on five grades ranging from clerical and support staff (Grades 1 and 2) to professional staff (Grades 3-5). Each grade is further divided into 15 steps matching respective points on the salary scale. Progression within each grade is based on seniority (i.e. a step increment every two years of service) or educational qualification allowing progression through multiple steps depending on the type of qualification obtained. Salaries across the Civil Service and for all levels are extremely low, ranging from around \$50 to \$150 per month at the highest end. The salary range is highly compressed from entry level at Grade 1 (405,000 kip) to final level at Grade 5 (1,263,000 kip) with a mere threefold increase in salary from the lowest administrative support staff post to the highest professional post. Interestingly, the minimum wage for manual workers in the private sector has recently been raised from the equivalent to Grade 1 of the civil service to the equivalent of Grade 3.

The State Audit Organisation (SAO) is the entity responsible for auditing all government revenues and expenditures. Dr Bouasy Lovanxay, appointed by the National Assembly, leads the SAO, which reports to the National Assembly twice per year. The SAO has its own staff from central to district level. The SAO has increased its capacity quite substantially with support from the ADB and has begun to assume a much more effective role in audit. It has recently raised objections relating to the provincial budgets and accounts which have been reported to first National Assembly session of the 7th Legislature. Some of the recent changes to the SAO are captured in the section on changes and trends below.

The number of registered corruption related offences in State institutions is extremely low. Given the limited number of checks and balances across and between the various arms of government, addressing the twin issues of immunity and impunity is a real challenge, and one compounded by ineffective and insufficient internal and external government control mechanisms and weak investigative capacity in the anti-corruption and legal enforcement bodies (see section on Justice).

Salaries across all five grades of the Civil Service are extremely low: manual workers in the private sector earn as much as Grade 3 civil servants and staff numbers are low in many key services, particularly at local level. While the State Audit Organisation has begun to assume a more effective role, the number of registered corruption related offences in state institutions is extremely low and tackling impunity remains a challenge. Many services display poor quality and slow speed and both the Government and the Party have recognised the need to improve public administration.

Despite robust growth and progress on human development, gender inequality remains a barrier to progress. A number of institutions have been established to help strengthen gender equality such as the Lao National Commission for the Advancement of Women, a government body mandated to work with line agencies to ensure that gender is mainstreamed, and the Lao Women's Union. Gender issues are mainstreamed in most donor funded programmes to ensure that gender-related targets and indicators are included. The MAF (2010) includes provisions for a significantly greater investment in women and girls as a proven MDG multiplier. The new five-year plan for the advancement of women (2011-2015) is designed to advance linkages with the national programmes. However, it should be noted that women are far more influential in Lao society than their official representation in government would indicate. The wives of a number of senior Party officials are active in the Lao Women's Union, and wives in particular have always served as a conduit for those seeking political favours.

## **Civil Service Management**

A number of problems continue to affect civil service management and performance. These relate firstly to the low number of staff in many key service delivery functions such as education, health and agriculture, particularly at local level. Secondly, the overall standard of technical qualification, competency and skill of staff is low, and thirdly pay bands are based on qualifications and length of service rather than jobs and responsibilities. This combination of problems explains the continued presence of donor partner involvement in a number of human resource

development projects and initiatives.

Other problems affecting the public administration system include the persistence of outdated and ineffective systems and procedures, resulting in the poor quality and slow speed of many services, coupled to low levels of transparency and poor systems of accountability. Both the Government and the Party have recognised the need to improve public administration and there is strong support amongst decision makers at ministerial level and in the Politburo for initiating reforms that will help to improve performance in public administration through human resource development, improved systems and procedures, and revised operational guidelines and regulations.

The Governance and Public Administration Reform Programme (GPAR) represents the main initiative to strengthen the functioning of public administration at national, provincial and district levels. It focuses on the development of institutional and legal frameworks, organisation and development, civil service management and training. Recent phases have addressed institutional reform as well as decentralised service delivery through separate projects at the national and sub-national level. These projects have piloted initiatives to improve service delivery and developed a series of policies, laws, regulations and guidelines to support implementation. GPAR activities have focused on four broad areas: the development of policy initiatives to strengthen public administration through civil service, people's participation, rule of law and sound financial management; formulation of strategies and plans to assist in policy implementation; training and capacity building; and implementation support, including equipment and infrastructure.

To complement these developments the Governance Sector Working Group has evolved into a high-level body led by two senior ministers. It offers a strong platform for coordinating joint activities between several ministries, the National Assembly, the Supreme Court, development partners and civil society, working towards implementation of the National Socio-Economic Development Plan (NSEDPlan) and the Strategic Plan on Governance 2011-20.

Experience to date demonstrates important lessons around building effective ownership for organisational and management reforms in the

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executive machinery through a series of carefully structured steps in implementation. These begin with an understanding of the Government's main priorities and build on these to achieve improvements through piloting new systems and procedures which can be gradually scaled-up and replicated. An important lesson from this experience is that whilst changes have been slow to implement and modest in nature, they are nevertheless in line with the Government's own thinking on reform rather than representing an externally imposed agenda. Thus the initiatives are more sustainable in the medium and long terms.

## **The Policy Formulation Process in Government**

The system of decision making within the single-party structure of government is characterised by a strong degree of conformity and consensus which requires issues and proposals to be discussed and agreed upon at senior level before any action is taken. If the decisions imply a change to the accepted status quo, the processes of obtaining consensus and agreement will take longer as consultations will need to include a wider constituency of senior Party officials. In such a system, it is rare for any senior official to take an important decision without having discussed the matter at several levels within the Government and Party, including the Party cell within the sponsoring agency or ministry, with vice ministers and ministers of other concerned ministries, and/or with key members of the Politburo or Central Committee depending on the significance of the issue under consideration. Such discussions will usually take place on a more informal basis in the early stages of the process, but will later be undertaken on a more formal basis at inter-ministerial and cabinet level, where the discussion will be accompanied by a policy paper or technical reports. This means that any important matter will need to go through several rounds of consultation in order to clarify the likely response of government and Party. Such a process helps the process of reaching a consensus and gaining approval. All of this may require several rounds of discussion with key individuals and groups as well as behind the scenes lobbying and discussion to build a constituency of support for a proposal. Depending on the nature of the matter under consideration, it may take several months or even years before it is clear if there is a consensus and if this will lead to agreement.



Decisions implying a change to the status quo require several rounds of discussion with key individuals and groups plus substantial political lobbying and discussion. Depending on the proposal, this may take months or years. Building support revolves around strategic use of personal relationships and other gestures. This process of competition and debate could be seen as 'Lao style' democracy. Recent policies and pronouncements imply recognition among Party elements of the significance of encouraging direct participation in the process of development to reduce the potential for diverging interest between the Party and citizens.

This process is not only designed to help reach a consensus but also to avoid any obvious criticism and censure of the proponent of the matter under discussion. Senior officials would far rather engage in a lengthy process of deliberation than to be seen taking a decision that will not meet with the approval of other senior government members. Whilst a consensual approach avoids such confrontation it reduces the level of risk that any senior individual would otherwise have to face in taking a particular policy position. However, just as with any policy-making process there is still a need to adopt various tactics to help build a constituency of support which, in the context of the Lao political economy, will tend to revolve around making strategic use of any influential family or personal relationships as well as other compensatory gestures.

Whilst the need for consensus at the upper levels of the Party hierarchy helps to increase the level of internal transparency it does not substitute for a broader degree of transparency. Nevertheless, the fact that neither government nor the Party represent a completely homogenous group means that there is a degree of internal debate and competition which could be seen as a form of internal 'Lao style' democracy. Whilst organisational freedom and a free press are core ingredients of any definition of multi-party democracy, much depends on the people's perception of what is democratic under a one-party system. In other words there may be a sense of democratic legitimacy behind the wall of one-party rule. The gradual introduction of elements of competitive democracy which, in turn, generate legitimacy will help to achieve a balance between the interests of the Party and citizens, rather than

allowing such interests to become divergent. Recent policies and policy pronouncements at the 9th Party Congress of 2011 would imply a gradual recognition amongst the progressive elements of the Party leadership of the significance of promoting greater socio-economic development in line with MDG goals and targets as well as encouraging direct participation in the process of development as key elements of reducing the potential for any diverging interest between the Party and citizens.

## **Conclusion: Recent Changes, Drivers of Change and Future Trends The Party**

### ***Recent Changes***

The basic elements of the Party structure comprising the Politburo, Central Committee, Party Congress and Party cells remain substantially in place and continue to exercise a leadership role in policy making, oversight and monitoring of government. This is facilitated by close party-state inter linkages, whereby all senior staff in all branches of government are necessarily Party members and where decision making in government entails close interaction with Party functionaries. However, there have been a number of recent developments that have altered the character of Party leadership.

There has been a gradual shift towards more coherent and strategic policy development. The SIDA study 2003 reported that the Party's macro policy targets tended not to match local conditions and the reality of diverse social-economic situations, and were not always based on sound research. Another change has been the gradual elimination of duplicative institutions in the Party and government in areas such as personnel management, audit and inspection and training.

There has also been growing acceptance of the need for less overlap of people holding dual positions in government and the Party. There is a greater recognition in the Party of the issue of corruption in government and a growing realization of the economic and societal danger that this poses in terms of hindering economic development and poverty reduction. There is also an understanding that this can have extreme socio-political consequences, as witnessed in recent years

and months across the Arab world. At the same time the Party is fully aware that this issue will need to be addressed in order to comply with standards and conditions required for greater regional and global integration (with ASEAN, the WTO etc.).

The breakthrough strategy announced at the 9th Party Congress of 2011 recognises the importance of governance reform through a mutually reinforcing portfolio of political and administrative actions to strengthen the delivery of development priorities as defined in the NSEDP and other key strategies.

### ***Drivers of Change***

A key driver of change relates to a more strategic approach to decision making adopted by the Party based on more comprehensive and coherent policies and plans developed by the executive administration, often with donor support. Such policies and plans are based on more systematic analysis of prevailing conditions and a more strategic focus on goals and priorities. This has been further reinforced through the activities and contributions of sector working groups and steering groups, bringing together representatives of different agencies to contribute to the policy process. Although sector policies may be selectively interpreted at senior Party level, they have nevertheless contributed to a more strategic debate and understanding amongst senior Party members, many of whom have been involved in the policy formulation process.

Another reason for change in the character of Party functioning can be attributed to the change of composition in the Politburo and Central Committee. A new generation of younger and more educated personnel who have risen through the ranks of government are now beginning to enter the upper echelons of Party leadership. These members bring with them a more professional grounding in administration, greater familiarity with economic and social development trends and issues and more understanding and interest in the imperatives of regional and global integration. Although this emerging group remains rooted in the one-party state system, and hence continues to exercise loyalties to the state, members are beginning to infuse the system with new ideas on strategy and greater tolerance for some degrees of flexibility

in governance. The absence of political pluralism should not be confused with internal homogeneity, as all senior functionaries need to be able to cultivate a support base within the Party linked to family, kinship and regional loyalties. Such internal power bases may over time begin to be associated with specific reforms, ideas and strategies that may compete with others.

**There has been a gradual shift towards more coherent and strategic policy development, a growing acceptance of the need for less overlap between government and the Party and greater acceptance of the economic and societal danger that corruption poses. A new generation of younger, more educated individuals are entering the Party leadership, bringing a more professional grounding, greater familiarity with economic and social trends, and more understanding of regional and global integration.**

The Party is much more aware today of issues of growing inequality and disparity between different regions, ethnicities and socio-economic groups and at the 9th Party Congress made a call to “avoid too much development disparity between different regions and rich and poor” along with references to the need to stabilize the socio-political situation to maintain unity. In a direct reference to the issue of patronage the Party also referred to the need to “curtail the trend of selecting and promoting personnel coming from the same family lines, clans, groups or regions. To avert possible civil unrest or protest, as found in neighbouring countries, the Party has also made statements on the need to maintain healthy self-criticism and mutual criticism and to ensure adequate disciplinary measures are taken against persons who commit offences.

Other drivers of change include the imperatives of regional and global integration, particularly those associated with the ASEAN Economic Community, the ASEAN People’s Forum, conditionality of access to the WTO and achieving the MDGs, The desire to maintain external support from donors and investors is also contributing to a greater acceptance of reform.

## **National Assembly**

### ***Recent Changes***

The NA's evolving role has been further strengthened by a number of more recent changes over the last two legislatures. These include a membership composition in which the electorate has exercised more discretion as to whether or not to support favoured Party candidates over other approved candidates, although almost all NA members are party members. The current Assembly membership is more educated and younger than in the past and two-thirds of all members now have university and post-graduate degrees. There are fewer NA members holding dual administrative and legislative positions.

At the same time the Assembly has benefited from donor funding and technical support, which has helped improve internal management, give access to comparative experience on assembly functioning, provide inter-session activities and improve constituency linkages.

Most significantly, the Assembly has been granted more authority to undertake oversight, with the State Audit Organisation reporting directly to the Assembly. This has enabled members to assume more effective scrutiny role in terms of public expenditure and the issuing of directions to address budget anomalies and audit queries.

### ***Drivers of Change***

One of the main drivers of change in the legislature relates to the recent composition with a raft of newly elected members, many with higher educational qualifications who are eager to take on a more meaningful oversight role through active participation in Assembly Committees and in participating more purposefully in the scrutiny of public expenditure. Although new members remain a part of the same Party and broad national power base, they are also more aware of their role in representing regional and constituency interests, which may constitute a sub-power base within the broader framework. Members, especially the heads and members of standing committees, have a better understanding of their role and function than in the past and many have received several rounds of training under donor assistance.

Another reason for the changing role and character of the Assembly can be the direct interventions of a donor support initiative, SELNA, which has helped to fund a series of capacity development activities, improve Assembly management, operate more productive inter-session activities and provide exposure to comparative models of Assembly functioning. All this has contributed to a qualitative change in the scrutiny of government. Whilst the general public remains somewhat confused by the role and function of elected members, there is a growing awareness on the part of citizens that they may raise issues either directly with Assembly or through a new hot line system. Finally, and perhaps most significantly, the Party itself has recognised the need for a more active Assembly capable of performing an oversight and scrutiny role as a core part of the wider structure of government, and one which will in the long run help to uphold the legitimacy of the political system.

## **The Executive**

### ***Recent Changes***

A number of changes in the executive machinery of government in recent years have contributed to the gradual development of a more competent and professional civil service. The number of line ministries has grown to 18 to provide greater policy direction and management over a more comprehensive range of sectors and services than in the past. The size of the civil service has grown to over 130,000, including teachers and health workers, the vast majority of whom are at district and local level. The agency responsible for the management of the civil service has recently been upgraded from a sub ministry to full ministry status as the Ministry of Home Affairs (MOHA).

The policy framework for strengthening the Civil Service is contained within Decree 82/PM of 2003, which defines the framework for selection, recruitment, deployment, grade and step determination, training, and disciplinary action. Another important initiative is the decree on incentives for civil servants working in remote areas. This has entailed government approval of a budget allocation of 62 billion kip (about US\$7.7 million) for the fiscal year October 2011-September 2012. This represents an important step in recognising the effort of civil servants working in rural and remote areas and in encouraging

them to work in such areas. This is especially relevant for teachers and health workers. It is estimated that around 22,300 civil servants will be eligible for an additional allowance equivalent to 50% of a monthly salary.

A number of pilot initiatives over the last five years have been designed to contribute to improved performance. These include the development of a web-enabled personnel information management system, the preparation of specimen job descriptions across all departments, the development of methodologies for organisational restructuring, the formulation of a Civil Service Strategy and Code of Conduct, as well as a substantial amount of capacity building and training, funded largely through multi-donor support to GPAR as well as bilateral initiatives on training and capacity development.

There has also been a significant change in the role and function of the State Audit Organisation in terms of the inspection of government income and expenditure. The State Audit Law of 2007 has enhanced the SAO's independence by having it report to the National Assembly rather than the Prime Minister as previously. Following a peer review carried out by the New Zealand State Audit Office (OAG) significant technical assistance has been provided by NZ OAG and the ADB. There has been a doubling of staff numbers and regional offices have been opened. An Action Plan for 2009-20 has been developed, focusing on capacity building and defining resourcing requirements. At the same time, the SAO has begun to assume a more assertive role in the scrutiny of government budgets and expenditure and has reported a number of anomalies to the National Assembly. Specifically, it has raised objections in relation to a total of 485.9 billion kip of provincial revenues from logging and other activities having been put aside in special accounts rather than being surrendered to the Treasury. This amount was thus not reflected in the 2009-2010 annual budget execution report sent to the Ministry of Finance. The SAO has observed this to be a severe and repetitive case of financial misconduct that contravenes Article 6 of the Budget Law.

Most recently, the MOHA has designed a new comprehensive programme for strengthening governance and public administration. This is intended to bring together its internal work priorities with

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additional donor funding to assist in strengthening a range of areas including: the institutional and legal frameworks for public administration; organisation and management systems; local administration and service delivery; civil service management, research and training. Together this represents an ambitious agenda designed to improve performance of the public administration system and will complement new Party policy directions on service delivery and decentralisation. Here a critical future area of concern is the need for an improved pay and grading system that will relate more closely to responsibility and performance rather than educational qualification and tenure.

### ***Drivers of Change***

The main driver of the recent changes in the executive arm of government can be attributed to a growing interest on the part of the Party and senior government functionaries of the need to develop an efficient and effective public administration capable of formulating strategic policies and plans in line with national priorities. There is wide recognition in all branches of government that an effective and accountable civil service is key to implementing and managing public infrastructure and services which are crucial foundations for future economic growth and the basis for realising improved human development outcomes.

The Party and senior government functionaries have been eager to support initiatives designed to improve performance of public administration and increase the effectiveness of service delivery. There is a strong interest in meeting MDG goals in the medium term and graduating from LDC status by 2020. It is widely understood at all levels of government that this requires a better resourced, more competent and motivated civil service. Evidence of this increased understanding can be seen in the recent decree to provide up to 50% additional salary allowance to civil servants willing to deliver services in remote areas.

Another important factor has been the prominence given to governance reform in the NSEDP, as expressed in the Strategic Plan on Governance and at the Governance Round Table, which brings together government and donors to work towards a shared objective. This has set out four



key pillars of reform and includes a strong emphasis on strengthening public administration. The high level policy endorsement of such reform has enabled proponents in government as well as donor partners and project staff to push the reform agenda and support specific reform initiatives.

A number of initiatives over the last five years have been designed to improve government performance and the MOHA has designed an ambitious agenda for strengthening governance and public administration. There is strong interest in meeting MDG goals and graduating from LDC status and it is widely understood that this requires a better resourced and more competent civil service. High-level endorsement of such reform has enabled proponents to push the reform agenda.

A number of initiatives can also be directly attributed to the long-standing partnership between donors and government to support governance and public administration reform through the GPAR programme, which has been functioning for more than a decade. This programme represents a long-term commitment to the process of reform and has been implemented in a manner which has built strong ownership within the government, especially the MOHA. This combination of funding, technical support and partnership has facilitated the piloting of a number of reforms that are likely to be mainstreamed over the course of time.

### ***Future Trends***

It is clear from the above, that whilst the overall structure of the one party state system in Laos remains firmly entrenched, there are a number of significant changes that have taken place which clearly indicate a trend towards a more open, accountable and effective government, even within the constraints mentioned above. This trend is unlikely to reverse as the Party leadership has become far more aware in recent years of the principles of good governance as a necessary underpinning for political stability and greater integration into the regional and global economy. This means that there is a degree of certainty in terms of government commitment to reforms, although these will be selectively pursued and adopted in a manner that does

not undermine the very structure of the State.

This presents an interesting challenge to those engaged in helping to formulate and support the process of governance reform. This requires a high degree of political awareness as to what is feasible and practical, as well as a sound understanding as to which reforms can have important beneficial impacts for citizens without necessitating a fundamental restructuring of the system as a whole. Here the main risks are associated with the promotion of an externally driven reform agenda without adequate ownership on the part of government and the risks associated with unrealistic reform time frames which are driven by programme and project imperatives rather than the objectives of reform itself.

## **Chapter 2: Legal Sector and Justice System**

### **Introduction**

The Lao PDR has experienced a gradual move towards establishing a modern justice system. This is slowly evolving from an initial set of socialist law principles and Party directives, primarily aimed at maintaining law and order, to a more recognisable legal system based on rule of law principles. The rule of law is a fundamental principle in state-society relations that applies whenever individuals or organisations interact with the legal system and the State. The rule of law embodies principles such as the legality and transparency of decisions, the right to be heard, right of appeal and the right to information. Transparent decisions are a fundamental part of the rule of law.

In the early post 1975 years, the justice sector was structured around a system of People's Courts, administered by the Party and dealing with cases on the basis of interpreting Party directives, without reference to any former body of law. A Supreme Court was subsequently established in 1983 to act as a court of appeal but it was not until the early 1990s that courts could function with reference to a body of law in the form of new civil and criminal codes, operating within the framework of the new Constitution. Since then the basic structure of a modern legal system has gradually been put into place.

The present Constitution, adopted in 1991 and revised in 2003, provides for certain basic elements of the rule of law such as subordination of the Party and Government to the Constitution and laws, and recognition of a number of civil, political, social and economic rights. The 7th NSEDP refers to the need for the state authority to operate under the rule of law and to fight corruption in a determined manner. The country has promulgated several important laws on the legal sector itself including the Law on the People's Court, Law on the Public Prosecutor, the Penal Law and the Law on Criminal Procedure.

The country has ratified more than 400 international treaties and agreements with other countries but fewer than 100 domestic laws have been promulgated, which means there is a major gap between domestic and international law, making it difficult to enforce international treaties in the absence of a wider domestic framework. In response to this, the President has passed Ordinance No 1/2009 to elevate international treaties to guiding principles occupying a position similar to that of the Constitution.

However, there is little or no expertise in the system at present to hear cases on international treaties and hence enforcement and implementation will be a slow and lengthy process. To date, these treaties have mostly been used to bring about change in economic and business practice. Moreover it is anticipated that these treaties will have the effect of helping the legal process to move towards compliance with international obligations and over time it is expected they will have an impact on the application of domestic law. The country has become a party to six of the nine United Nations core human rights treaties and recently hosted the first drafting of the ASEAN Declaration on Human Rights. Laos has also formulated a national action plan to take forward a number of recommendations to strengthen training of prosecutors, law enforcement agencies and judiciary.

## **Organisation and Structure of the Justice Sector**

The legal sector now has a Supreme People's Court (SPC) at the apex of the system, three regional Appeals Courts, 17 Provincial Courts and 103 District Courts, which have now been merged into 39 Area Courts with at least two courts per province. As part of judicial restructuring,

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these are now under the Supreme Court and not the Ministry of Justice. This was done to rationalise courts in line with the availability of the requisite number of judges as stipulated under the law. As is common in many countries, the Supreme Court mainly deals with matters of a constitutional nature and important appeal cases. There are also military courts which form a separate part of the legal system but these will not be considered in the analysis below. A single chamber hears both civil and criminal cases.

The President of the SPC and the Supreme Public Prosecutor are appointed by the National Assembly on the recommendation of the President. Judges are appointed by the NA Standing Committee on the recommendation of the President of the SPC, although all names are approved by the Party. There are currently more than 500 judges working in the court system with plans to expand this to over 1,500 by 2020. The Prosecution service comprises 850 Public Prosecutors, 215 of whom are women, working across 140 Public Prosecutor Offices at district, provincial and central levels, and supported by an additional 530 staff. Within the court system there is provision for a variety of chambers to be set up to focus on trade, family and juvenile matters and further plans to establish a family registration office, notary office, and legal advice offices. The Justice Ministry is setting up a Notary office but there is at present no family registration office to implement the 1992 law on family registration, which is legally a Justice Ministry function.

Lao justice is slowly evolving from an initial set of socialist principles and directives to a recognisable system based on rule of law. There are currently over 500 judges, with plans to expand this to over 1,500 by 2020. Lawyers complain of inadequate recognition while officials say lawyers do not assert themselves enough. Much is expected from the proposed Law on Lawyers, which would clearly lay down the rights and duties of lawyers. The system of village mediation represents an effective and economical means of resolving local disputes that could be further developed.

There are 109 officially recognised lawyers in Laos although an estimated 135 lawyers are working at present. There are ten legal centres offering a wide variety of legal advice and 12 private law firms, including four international forms licensed to provide legal advice.

The Lao Bar Association (LBA) has 88 members, including nine women, and operates from nine offices in Vientiane and seven regional offices. The Association has a number of important functions such as protecting lawful rights and the interests of individuals and legal entities, acting as a regulatory body for licensed lawyers, providing legal training, legal dissemination and legal aid services. The LBA has established a telephone hotline for people seeking advice on legal issues. It has benefited from donor support under a UNDP-led initiative with support from AusAid and the EU. This has primarily focused on building the capacity of the LBA through initiatives designed to increase knowledge and awareness and improve access to justice for those ordinarily unable to seek advice. Most association members still prefer to provide such advice in their offices rather than appearing in court. While lawyers complain of inadequate recognition by officials, officials say that lawyers do not assert themselves. There is a lack of analytical thinking and presentation skills, while the role of lawyers is not well understood. Much is expected from the proposed Law on Lawyers which would clearly lay down the rights and duties of lawyers. Until now defence lawyers have been working under Decree 64 on the Lao Bar Association and the Ministry of Justice has recognised the limitations of this, having publicly stated these procedures are outdated and unsuitable for moving towards international integration.

## **Village Mediation**

Under the Constitution the village head (nai baan) is responsible for law and order at local level including the implementation of laws and enforcement of decisions of the State. Civil disputes are largely dealt with by a system of village mediation based on round table meetings in the office of the village head, who may or may not be present and does not act as a judge: agreements are rather arrived at through consensus. Once a decision is reached the village head is responsible for recording the decision and agreement. Penalties can include written warnings and fines and periodic reporting to the village head to monitor compliance. Any person may call for a mediation meeting and if the matter involves a more serious issue the police may be requested to attend. The village head will usually issue a summons for the respective parties to attend the meeting. It should be noted that the system of village mediation represents a very effective and economical means of

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resolving local disputes without having to escalate the issue to a higher level with all the attendant administration and costs involved.

Indeed, the concept of local level mediation and dispute settlement is now being actively considered as an alternative to the court system in many western countries where processing legal cases often results in significant delays in the justice system and escalating costs which are often disproportionate to the case being heard. If a matter cannot be resolved through village mediation it may be referred to the police and courts for resolution. At the same time, there may be cases where socio-cultural factors impinge on the proceedings in such a way that it may be difficult to ensure a fair outcome, although in such circumstances it is possible for one of the parties to refer the case to the courts. However, it should be noted that a recent Ministry of Justice initiative for increasing the efficiency of village mediation through the launching of a case-free village campaign, may on occasion result in certain cases not being referred upwards in order to comply with targets and expectations.

In spite of the progress made towards establishing a modern legal system with the basic structures and personnel in place and an ambitious Legal Sector Master Plan for further improvements, close examination of the system suggests there remain many challenges that are yet to be addressed.

## **Operation of the Justice System**

It is estimated that around 1,000 formal cases that reach the court system each year, 60-70% of which are civil cases, with the remainder mostly concerning crimes of the person. Most civil cases involve land disputes and land has become the single most litigated subject in the country. Whilst village mediation works well to filter out many minor disputes that might otherwise clutter the system, it is not known how many cases exist that never come to court in the first place. Although economic crimes exist it is generally recognised by stakeholders that the system does not have the capacity or will to detect such cases, many of which may involve well connected individuals and groups able to insulate themselves from the law in various ways.

Despite the village mediation system filtering out many minor cases, the courts remain overloaded. Around 70% of all cases are civil and concern land disputes and land issues, family and property disputes and divorce and other family matters. Disputes concerning large investments rarely come to the court system for a judicial decision but are dealt with by the Government or may go to arbitration. The Supreme Court is mostly a final court of appeal and rarely deals with constitutional cases. The law also provides an opportunity for citizens to appeal to the National Assembly, which can and has intervened.

The courts remain overloaded, with most cases involving land disputes. In criminal cases, the police lack capacity and are not sufficiently independent to guarantee fair access to justice. In theory, a defendant can only be held for 24 hours and has the right to contact a lawyer. In practice, the police do not observe due process but supplement their income by negotiating rights and release in return for favours and payments. The Justice Ministry has publicly recognised the limitations of current procedures and, under a new ruling, defence lawyers will be able to meet clients before police investigations are completed.

Whilst citizens in theory enjoy the protection of the law with respect to crimes against the person and property, the police lack the capacity and resources to provide requisite levels of protection, are not sufficiently independent to guarantee that citizens will gain fair access to justice, and lack the expertise to conduct effective follow up and investigation on behalf of the complainant or victim.

### ***Investigation, Prosecution and Defence***

Once a case is brought to the notice of the police it is their duty as the main investigating agency to generate sufficient evidence for them to bring about a charge and for the prosecution to proceed subsequently with the case. In practice, the low levels of professionalism and expertise in the police has a serious detrimental impact on the functioning of the legal system. It is reported that they often fail to find sufficient evidence for the case to proceed or that they indulge in wilful or negligent destruction of evidence which would otherwise lead to a suspect being charged.

After a case is brought by the police, it is the duty of the Public Prosecutor's Office to assess the evidence and determine whether there are sufficient grounds for taking the case to court. This is mostly an independent decision by the office of the prosecutor, except in cases of a security or political nature in which the Party will be necessarily consulted. As there is no law on evidence it is not clear what is admissible in court, so it is generally left to the police to collect evidence. Without the involvement of defence lawyers there is no counter evidence.

Although there is a notion of the presumption of innocence in the law, especially in cases of a criminal nature, in practice this is often not applied and defendants may be held in custody for many months while prosecutors assemble the case against them, during which time they will often not have access to any legal counsel. In theory, under the law, a defendant can only be held for 24 hours during which time his/her family has to be notified and the defendant has the right to contact a lawyer. In practice the police do not have a clear understanding or interest in upholding the rights of defendants and observing due process. This opens up an opportunity for the police to supplement their income by negotiating rights and release in return for favours and payments.

One of the major shortcomings of justice system procedure to date has been the inability of most defendants in criminal cases to access a defence lawyer. The State will only provide a defendant with a lawyer in serious cases being heard at the Supreme Court. Lack of access to defence lawyers is due partly to weak procedure on rights and process, partly to the inability of suspects to engage and pay for a lawyer, and partly to the small number of practising criminal lawyers available. The Ministry of Justice has recognised the limitations of current procedures, publicly stating they are outdated and unsuitable for moving towards international integration.

Under a new law, defence lawyers will now be able to meet clients suspected of a criminal offence before police investigations are completed. This law is aligned to the Law on Criminal Procedure and aims to comply with the International Convention on Civil and Criminal Rights. Interestingly, during consultations on the drafting of this law,



most officials expressed strong reservations on suspects having the right of access to a defence lawyer before an investigation had been completed. However, both the justice ministry and the National Assembly Standing Committee on Law are in support of this new law, which is a serious and welcome initiative to uphold the principle of being innocent until proven guilty and has been a missing element in the operation of the justice sector to date.

### ***Court Hearings and Judgements***

Since most defendants have no legal representation in court, nor any familiarity with court procedures, it is extremely difficult for them to present a credible defence case. The lack of legal counsel also means there is no prior agreement with the Public Prosecutor as to what evidence will be used in court, thus making it considerably easier for the prosecution to ambush the defendant.

Under Lao law it is not clear on what principle verdicts are actually reached. There are ordinarily two accepted practices for reaching a verdict in most justice systems, where the burden of proof could either be based on “the balance of probability” or as is the case in many criminal cases, “beyond reasonable doubt”. The latter implies a stronger commitment to the presumption of innocence and is a further safeguard against convicting an innocent party. In the current system a judgement is deliberated and agreed upon by a bench of three judges. This formerly comprised a judge and two Jury members. In practice it proved difficult to co-opt two sufficiently knowledgeable and willing citizens to serve as impartial jury members. A verdict is reached on the basis of a majority decision. Since the vast majority of judges are inexperienced and young, many with just two or three years of experience, they mostly accept the evidence brought before them and the quality of judgements is often weak. At present there is no access to judgements and hence it is difficult to examine precedent and question.

Under Lao criminal procedure there are guidelines on the quantum of sentence for different categories of crime and similarly for civil cases and levels of penalty. As in any justice system, cases may not fully match the categories mentioned and hence there is a need for interpretation of sentencing guidelines. In many legal systems such guidelines comprise

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substantial volumes of text and have to be fully understood by all legal professionals. In the absence of such detailed guidelines there is scope for substantial injustice and/or weak application of the law.

In practice, the outcome of a case may be decided less by technical analysis than by individual connections, offers of consideration, family ties and other interventions. Reaching a decision can be even more tricky where it involves competing interventions, each desirous of a different outcome and where a case may thus have to be evaluated on the basis of competing influence rather than the weight of evidence. Whilst there is an underlying acceptance in many cultures, including Lao, that traditional loyalties can be used to influence outcomes, the depth of such practice within a formal setting will in the long run affect the perceived legitimacy and primacy of the law in the eyes of citizens. As in many legal systems around the world, judges have a greater degree of independence in reaching a verdict and deciding the quantum of punishment in cases that are essentially private in nature and that do not impinge on the State. In those cases that do impinge on State, security and/ or constitutional matters, judgements will be submitted to higher authorities and proceedings may be conducted in a strictly confidential manner and in the absence of counsel, depending on the perceived gravity of the case.

Whilst the legal system in Laos has a substantial and growing body of law, there are many weaknesses and loopholes in the operation of the present system which undermine the degree of legal certainty and the establishment of a fully functioning rule of law. Part of the problem lies in poorly defined and applied procedure and part in low levels of capacity and resources. Increased professionalism is required in all branches of the system including investigation, prosecution, defence, court procedure, judgement and sentencing.

In addition, laws tend to be interpreted by a Standing Committee of the National Assembly, comprising the president, vice president and presidents of the various NA Committees, rather than by an expert panel of judges in a higher court. This will obviously result in a more conservative interpretation with little scope for legal creativity. However, a more important issue relates to the application and enforcement of the law, since the underlying structure provides sufficient

scope for the system to be applied to suit key interests.

**In Lao law it is not clear on what principle verdicts are reached.**

**Judgements are often made by inexperienced judges. Guidelines on sentencing exist but the outcome of a case may be decided less by technical analysis than by individual connections or other interventions: cases may be evaluated on the basis of competing influence rather than weight of evidence. Increased professionalism is required in all branches of the system.**

There have been a variety of initiatives designed to strengthen the organisation and operation of the legal sector, including support to the Lao Bar Association, and the International Law Project, which was designed to establish systems and procedures to assist in alignment with international treaties and conventions and support for legal drafting. These initiatives have contributed to a more conducive environment for the establishment of an effective rule of law system with respect for human rights. However, while important steps have been taken to improve legal frameworks, these have not always been fully implemented or translated into a tangible advancement in terms of rule of law standards. This is because of continuing weak institutional structures and systems and low levels of capacity amongst staff at all levels of the system. The experiences of these initiatives demonstrate that positive results can more easily be attained if efforts are concentrated in a limited number of specific areas, identified together with the Government to increase ownership and commitment.

## ***Enforcement***

As long as there are serious perceived weaknesses in the system, there will be a strong tendency by all parties to be influenced by endogenous factors such as personal and political relations, patron-client obligations, and gifts and payments, as well as by exogenous factors such as political policies and directives, administrative targets and cultural and societal influences.

Stuart-Fox (2011) argues that law in Laos is determined at three levels: firstly by reference to Party policy (in Lao *nayobay*, which has taken on

the additional meaning of “manipulating the law” in cases where a ‘policy ruling’ is made in favour of an individual); secondly by reference to the written text as passed by the National Assembly; and finally in response to those who are in a position to influence a legal outcome. Stuart-Fox points out that the last is widespread and consequently legal authorities may find themselves evaluating a case not on the basis of the law as it stands, but on which of two conflicting influences and interventions represents the more critical and powerful interest, in a context where failure to make the right decision has cost some justice officials their jobs (Stuart-Fox, 2011)

All this serves to undermine the very concept of rule of law and creates a climate where it is generally seen as pragmatic and legitimate to by-pass legal processes and procedures and resolve matters in other less formal and more familiar ways. Whilst this may be a sensible strategy in many minor cases that serve to clutter legal systems, in more important cases involving aggrieved parties or serious malpractices, this strategy simply breeds a frontier-like mentality where transactions function outside the rule of law. This may create an attractive environment for individuals and enterprises with a strong interest in short term gain but does not provide a satisfactory environment for long-term development and wider regional and global integration. Whilst there are serious weaknesses in the operation of legal procedures as noted above, a more widespread problem is that poor enforcement may result in a substantial number of potential cases never coming to court in the first place. Firstly, and mostly in the case of petty offences, it is often easier for members of the law enforcement agency to ignore the offence especially if the offender is known personally or known to be well connected. In other cases it may be seen as more expedient to impose an on-the-spot penalty which can be accepted informally. Finally, there may be internal or external pressure brought to bear on law enforcement agencies not to pursue a case for a variety of reasons.

Another problem relates to the fact that the law is little known by most citizens, and worryingly not particularly well known by those responsible for applying and enforcing it. This largely derives from the fact that there are inadequate channels for making new laws known to people, although the more educated classes are becoming gradually more familiar with the law and may refer to the law to defend themselves or

others. A large proportion of the rural population is illiterate and will not therefore use the law, instead resorting to more familiar methods of dispute settlement or using the influence of others to assist their case. Many laws have been drafted by foreign experts, and given the lack of legal and language training resources in the Ministry of Justice, some have yet to be translated. Although laws are supposed to be available in the official government gazette, this is often not the case as officials lack the resources and skills to translate and publish laws, or may be reluctant to release information into the public domain without referring the matter upwards.

The Public Prosecutor's Office and the Government Inspection Agency both function to monitor implementation of laws and may initiate action on taking any public agency to court for transgression of the law. Both organisations are understaffed, lack expertise and as an integral part of the government system, lack sufficient independence to be in a position to pursue a public agency. As a result there have been no formal cases brought against any government agency to date. Action has been taken against individuals within agencies that have failed to comply with the law or transgressed beyond a legal mandate, but such cases are dealt with in a more customary manner, described by some stakeholders as "dealing with issues within the family", where transgressors have been subsequently "loop lined" into less important and less influential positions or may have found themselves out of position and favour altogether.

## **Key Issues and Potential Entry Points**

The main challenges in enabling the system to move towards a more fully developed rule of law include the need to build and strengthen the body of independent professional lawyers, and to develop mechanisms that enable the justice system to function in a more independent and professional manner. This will require a clearer separation of powers between the agencies of the justice system plus substantial improvements in the nature and operation of legal processes and procedures and in the capacity of those within the agencies to implement such processes.

It is seen as legitimate to bypass legal procedures and resolve matters in less formal ways. A more widespread problem is that poor enforcement may result in a substantial number of cases never coming to court in the first place. Many rural people are illiterate and will not use the law, instead resorting to more familiar methods of settlement or using the influence of others. At state level, no formal cases have been brought against any government agency.

There is also a need for a substantial increase - among people at all levels of society - in awareness of the law, the rights of citizens under the law and the application of the law. Stakeholders point out that with a strong, more independent and effective legal system, many of the underlying problems or weaknesses associated with the underlying economic, political and social structures could be addressed, thus elevating support for strengthening the rule of law as a key strategic platform that is at the same time consistent with current Party and government policy.

However, it is recognised that this is a substantial enterprise and is unlikely to be something that one donor alone can address, since such support requires a sector-wide approach to address the various complementary and reinforcing interventions along the chain of actors and institutions. In the meantime, a more feasible approach may be to focus on the enforcement of a much smaller number of laws and decrees of strategic significance in terms of wider development, which may include responsible management of natural resources, FDI investments and the utilisation of public money (allocation and spending) in the context of the 2006 Budget Law.

## **Conclusion: Recent Changes, Drivers and Future Trends**

Overall it can be seen that whilst many of the rudiments of a functioning legal system are now in place, there are a wide range of problems that continue to affect the sector and undermine the establishment of a well functioning rule of law system. These range from fundamental issues in terms of the level and degree of independence of the various justice agencies including the police, public prosecution, lawyers and

judges, to a wider range of shortcomings in terms of the application and operation of the system of justice.

### ***Recent Changes***

There has been a recent move to rationalise the former 103 District Courts into 39 Area Courts ensuring at least two courts per province as part of a judicial restructuring under the Supreme Court rather than the Ministry of Justice. This is significant in that it attempts to align the courts to the resources available to run these effectively.

The size and competency of the judiciary has steadily increased over the last few years, with over 500 judges now working in the court system. There are plans to expand this figure to over 1,500 by 2020. The Prosecution Service now employs 850 Public Prosecutors, 215 of whom are women, working across 140 Public Prosecutor Offices. Within the court system specific chambers have been established for family and juvenile cases and the justice ministry is setting up a Notary Office. There are now ten legal centres offering a wide variety of legal advice and 12 private law firms licensed to provide legal advice, including four international companies. Membership of the Lao Bar Association has grown to 88, providing a range of citizen advisory services including a recently established telephone hotline.

There has been substantial progress in the drafting and approval of a total of 88 laws to date, including several important laws on the legal sector itself. Over 400 international laws and treaties have been ratified. Another important development has been the strengthening of the village mediation system which provides a far more accessible, familiar and meaningful means of addressing legal issues and disputes for most citizens, than does entering into the environment of courts and judicial processes.

Under a new law, defence lawyers will now be able to meet clients suspected of a criminal offence before police investigations are completed. Both the justice ministry and the National Assembly Standing Committee on Law are in support of this new law which is a serious and welcome initiative.

A comprehensive Legal Sector Master Plan was formulated in 2009 to help establish the rule of law as a solid foundation of the justice system by 2020. The Plan places considerable emphasis on the training of all personnel including judges, prosecutors and the police, and upgrading the educational qualifications of these personnel.

### ***Drivers of Change***

A number of important recent changes are directly attributable to an increased recognition by the Party leadership of the significance of the rule of law in underpinning the structure and systems of governance as well as the mediation of social and economic relations in society as whole. There is an understanding that established rule of law principles are a prerequisite for engaging with the external world in a structured and productive manner in terms of attracting investment, negotiating avenues for export and in engaging with donor partners and other international agencies.

Statements at the 9th Party Congress clearly demonstrate the Party's commitment to moving towards a Rule of Law State and the Government has been showing a keen interest in exchanging views and ideas with countries such as Vietnam and China on how the legal system can operate with sufficient independence to be in a position to bring a case against a public body.

Another important influence on the change process can be attributed to the plethora of international treaties and conventions that have been ratified in recent years. There is a growing realization that whilst the ratification of some treaties may be more symbolic in nature, others require the Government to open itself to peer inspection and to participate in peer reviews. These reviews can result in the formulation of recommendations for action that cannot be ignored without significant loss of face or potential future exclusion. Whilst economic treaties exert may exert more influence at present, social and environmental treaties will become increasingly important motivators for improving enforcement.



The main challenges in enabling the system to move towards rule of law include the need to strengthen the body of lawyers, and to develop mechanisms that enable the justice system to function in a more independent and professional manner. This will require a clearer separation of powers between justice system agencies plus substantial improvements in legal processes.

The Legal Sector Master Plan also represents a driver of change in the justice sector. It sets out an ambitious reform agenda that the justice ministry has committed to and has already had some impact in terms bringing about change in the sector and most significantly the plan addresses the issues of weak investigation and poor enforcement, which represent major problems and challenges in the sector.

Finally, a small but not insignificant factor explaining change relates to the presence of donor partner support in the area of improving access to justice and international law as well as the array of donor support for the drafting of new laws and amendments across the system as a whole. Taken together these activities have led to a degree of engagement and influence that has contributed to the change process.

## **Future Trends**

The slow but discernible trend towards legal sector reform is a fundamental prerequisite of good governance. In spite of an increase in resources in terms of structures and staffing, there are fundamental shortcomings and weaknesses in the operation of justice from the level of investigation through to prosecution, court procedure, judgements, sentencing and enforcement. In spite of these weaknesses, there are signs that the Party and Government are committed to putting into place incremental reforms that will result in a more effective legal system capable of delivering justice across all segments of society, including within the government system itself. Given the political sensitivity of such changes, it is likely that the process will take many years although it is evident that certain subjects, such as commercial law, may gain more traction in terms of the development

and codification of legal frameworks and the potential operation of fast-track legal processes.

At the same time, although there has been substantial assistance in the drafting of new laws in a wide variety of sectors, focused support from donors has been limited in nature and largely confined to a few selected areas of the legal system that may have more instant appeal, such as access to justice and international law. It is clear that the lack of well functioning legal sector is a major obstacle to addressing a number of underlying structural problems in the contemporary political economy of Laos and hence this sector represents a critically important aspect of governance reform. Without an effective system of enforcement and inadequate legal processes it will be difficult to realise the goal of good governance.

The reforms required to address all the problems of the sector represent a substantial task, and one that it is unlikely a single donor alone can address, since support requires a sector-wide approach to address the various complementary and reinforcing interventions along the chain of actors and institutions.

In the meantime, a more feasible approach may be to focus on the enforcement of a much smaller number of laws and decrees of strategic significance in terms of wider development. These may include the responsible management of natural resources, FDI investments and the utilisation of public money (allocation and spending) in the context of the 2006 Budget Law.

### **Chapter 3: Decentralisation**

This chapter will consider the current status of decentralisation in Laos. It will begin with an explanation of the recent evolution of decentralisation, showing that there have been different forms of decentralisation at different points in time. It will go on to examine the present character and status of decentralisation in terms of political, administrative and fiscal decentralisation, as well as voice, accountability and transparency.

## Historical Context

Government in Laos is based on a centralised system of administration implemented uniformly throughout the country with level of responsibility divided between central ministries and provincial and district administration. Within this context, the country has experienced a number of phases of decentralisation over the last few decades. The early post-revolutionary years were characterised by substantial decentralisation as lack of revenues at the centre required provinces to be fiscally self-sufficient. This decentralisation was accompanied by a high degree of economic and financial autonomy. With the introduction of the 'New Economic Mechanism (NEM) in 1986, provinces were given greater control over revenues and budgets and were permitted to conclude trade agreements with foreign states with which they shared a border, while provincial administrations were no longer supervised by central ministries. Even the State Bank was decentralised, with branch managers appointed by local authorities. Whilst most of the revenues were retained by provinces to fund services, including health and education, a percentage of revenue was supposed to be passed upwards to central government.

This early experience of decentralisation failed to bring about intended benefits. Provincial administrations were ill-equipped to take on new responsibilities. Revenues were diverted by powerful local officials for their personal consumption and little was remitted to central government. Even where provincial officials tried to function in accordance with their new responsibilities, they lacked capacity and delivery systems. Revenues were used for the benefit of Party members and as a consequence teachers and health workers were often left unpaid. Services collapsed and many government staff turned to other employment. As there was no centralised system for revenue-sharing (to take into consideration the needs of the poorer provinces), services were inequitably provided across provinces. By mid-1989 the central government had lost all control over what was going on in the provinces. There was no effective monitoring of national priorities and targets, nor was there any effective oversight of provincial revenue and expenditure by the Ministry of Finance. As a result, greater powers of patronage accrued to provincial officials, particularly to provincial governors.

The Party decided on a course of radical re-centralisation in 1991, with the enactment of a new Constitution which abolished the people's councils and administrative committees at provincial, district and village levels, and reinforced central control and authority across the respective arms of local administration. Provincial Party secretaries were appointed as Governors holding ministerial rank and with a few exceptions were directly accountable to the Central Committee. This reaction seriously set back local governance and democratic participation at the local level. The abolition of the people's councils and administrative committees at province, district and village levels effectively eliminated popular participation in local government and reinforced Party power at the centre. Since 2001, there has been a further drive to recentralise revenues to address revenue shortages, which caused periodic cash rationing and difficulties in ensuring a more equitable distribution of grant funding to revenue-deficit provinces.

## **Decentralisation as De-concentration**

Political decentralisation is characterised by local systems of political representation in which citizens participate in government through elected representatives at the local level. In Laos, the main elements of the local political system are defined in Articles 3 and 5 of the Constitution. Article 3 emphasises the Party as the leading nucleus and Article 5 effectively means that all state organs (including at local level) are organised in the same way as the ruling party, i.e. as hierarchical organisations in which information (about social issues and concerns, for example) flows up the hierarchy and decisions flow down. Whilst there has been a form of representative government through local councils in the past, the current system at provincial and district level is based exclusively on administrative units functioning in the absence of any system of elected representation. The Constitution does, however, provide for a single National Assembly with elected representatives from multi-member constituencies at provincial level - the only form of political representation in the current system of government. Whilst the representative role of the NA is analysed in more detail in the section on Participation below, Assembly members do provide a mechanism for citizens at the local level to raise concerns on a national platform.

Administrative decentralisation seeks to redistribute authority, responsibility and financial resources for providing public services among different levels of government. It is the transfer of responsibility for planning, financing and management of certain public functions from the central government and its agencies to field units of government agencies, subordinate units or levels of government, semi-autonomous public authorities or corporations, or area wide, regional or functional authorities. There are three major forms of administrative decentralisation: de-concentration, delegation and devolution.

In Laos, decentralisation as a policy of the state finds expression only as a de-concentration of state authority, where sub-national units have the responsibility for implementing centrally determined policies. This is well articulated in the law on local administration promulgated in October 2003. Article 5 of the law stipulates that 'the organisation and functions of the local administration are implemented in accordance with the principle of centralised democracy and de-concentration, which divides responsibility among management levels. The village level reports to the district level, the district level reports to the provincial level, and the provincial level reports to the government under the guidance and responsibility of the Party Committee. The Constitution gives no clear guidance on provincial and district responsibilities except to specify that the leaders at each level must ensure implementation of the Constitution and the law and must carry out decisions taken by a higher level.

Although democratic centralism was brought in through the Constitution, centralisation has been slow and incomplete. In spite of the Party's inclination to centralise decision making, provinces have enjoyed a surprising degree of autonomy in shaping social policy. This independence is partly due to limited resources and poor communications with Vientiane. Central government has also encouraged direct contact along the borders with China, Thailand and Vietnam and trading agreements with neighbouring jurisdictions. Provincial governors still exert considerable influence over line ministries in their jurisdictions. Although ministers wield considerable power as high ranking members of government, they hold equal rank with provincial governors, and their authority outside the capital depends on their relative position in the Party hierarchy. Only a close analysis of the relative positions of Party members provides clues to the effectiveness of national policies at provincial, and

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hence local, levels. Since governors and ministers enjoy equivalent rank, organisational lines of responsibility in government are not well articulated. Consequently, national policies and regulations are selectively implemented and enforced at local level. Although somewhat constrained by the Constitutional reforms of 1991 and 2003, provincial administrations continue to exert a high degree of power at regional level and hence reforms to central-local relations have been a part of wider deliberations within government on market transition.

**In Laos, decentralisation as a state policy finds expression only as a de-concentration of authority, where sub-national units have the responsibility for implementing centrally-determined policies. Provinces do enjoy autonomy in social policy, due to poor communications with Vientiane, trading agreements with neighbours and the influence of governors. However, districts have to deliver a range of public services with little or no autonomy which constrains the effectiveness of service delivery.**

The public service is guided by the regulations contained in the PM Decree 171 of November 1993. Initial attempts at addressing central-local roles and responsibilities were not particularly successful. For example, PM Decree 01/ 2000, which focused on central-local relations, has done little to clarify the roles and responsibilities of sub-national units of government. The entire six-page advisory note simply reiterates government policies beginning in the early 1990s to recentralise and then de-concentrate central authority. As a result, the interpretation and implementation of PM 01 has been undertaken in a minimalist way and many administrative and fiscal impediments remain as a major challenge to local development and inter-government relations.

To strengthen the public service and address various weaknesses, in October 2003 the Prime Minister issued Decree 82/03 on public service regulations with supporting instructions. The instructions set out the responsibilities of public servants at central, provincial and district levels. Central administration has macro level responsibility for the public service throughout the country and is expected to develop strategic and public administration development plans based on the directives, plans and policies of the Party. Ministries and provinces are then

supposed to formulate their plans to implement central policies and strategies and as such, undertake functions on behalf of the centre and provide periodic reports. Responsibility for management of the civil service lies with the MOHA.

At present the instructions supporting PM Decree 82/03 provide the strongest evidence of a centralised system of administration. Districts do not have management responsibility for the public service. They execute functions on behalf of provinces and report on all matters to provinces. This represents a major challenge for districts, which have to deliver a range of public services with little or no managerial autonomy. This constrains performance and effectiveness of service delivery. Whilst the decree instructions provide a list of responsibilities for all levels of administration, there is insufficient clarity on how these responsibilities are shared between the various tiers of administration, especially in relation to matters of policy making, implementation and oversight. Furthermore, although headcount management is at the centre, the instructions are silent on the responsibility for managing the financial resources required to maintain the civil service establishment.

The Law on Local Administration of October 2003 does little to strengthen the PM Decree 82/03 in terms of the division of responsibilities for policy making, oversight and implementation. The requirement for dual reporting lines (ministry and province) as described in Article 10 of the law, adds to the ambiguity in terms of roles/responsibilities and does little to address the historical tensions in centre-province relations.

## **Fiscal Decentralisation**

Fiscal decentralisation should allow local administrations to raise and/or manage revenues that are transferred from central government, as well as giving the authority to make decisions on expenditure. The fiscal framework is a key factor in determining the overall character and form of local administration.

As Laos has a unitary system of governance based on multiple subordinate levels of the same government, sub-national units of administration have no constitutional powers over revenue and expenditure. The extent and nature of decision-making powers over

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finance is determined by the centre and has varied over time. As noted above, early experiences with decentralisation which included a strong measure of fiscal autonomy at provincial level proved unsustainable and there has been a concerted attempt to re-centralise fiscal management over the last decade as expressed in the State Budget Law of 2006.

With development partner assistance, the Government has established new (centralised) procedures for planning, budgeting and accounting. The Public Financial Management Strengthening Programme (PFMSP), launched in 2006, was designed to complement and support the implementation of the new State Budget Law. This was designed to address weaknesses in the financial management systems at the central level. A major thrust of the programme was to assist in the centralisation of financial management functions. A multi-donor trust fund was established to facilitate implementation of the PFMSP. The priority areas covered by the programme are treasury centralisation, budget execution, accounting, financial reporting; and revenue policy and administration.

Although the 2006 Budget Law proposed three types of taxes (central, shared and provincial), the precise definition and formula has not yet been approved by cabinet and the old system, which divides taxes on the basis of tax payers rather than types of taxes, continues to prevail. This system is messy and complicated, operating in the absence of a uniform tax identification numbering system, and thus requires a lot of effort to modernise and streamline.

In spite of these efforts at centralisation of revenue functions, provinces still retain a lot of autonomy in terms of budget allocation and expenditure management. There is also a degree of discretion over the setting of fees and tariffs, such as for water supply. This can lead to tensions between provinces and the centre as in the recent case where tariff discussions between a provincial administration and a Malaysian company in relation to a potential water concession caused some alarm at central government level.

Public financial management reforms will continue to be a critical aspect of improving the central–local fiscal framework, including for budget planning and execution, which are key factors underpinning equitable



service delivery and enhanced poverty reduction. The Public Expenditure Tracking Survey (PETS) of 2008 and the Public Expenditure and Financial Accountability (PEFA) assessment of 2010 provide valuable insights into some of the challenges faced by government in managing the transition to fiscal recentralisation coupled to administrative de-concentration. Both studies highlight a wide variety of weaknesses which compromise the governmental ability to engage in devolved funding arrangements. The main weaknesses that need to be addressed to improve the effectiveness of financial resources utilised at the local level may be summarised as follows:

- A formula for the equitable apportionment of revenues to sub-national, government based on population, area and relative poverty. needs to be developed and made operational.
- Little information is available locally about the likely financial resources to be expected for service delivery.
- Unpredictability of service delivery. To fix this, the budget should be formulated in the context of a clear medium expenditure framework
- Spending units such as schools and health centres have no role in budget preparation
- Capacity in budget execution and reporting is low at provincial and district levels

## **Voice, Accountability and Transparency**

The provision of primary services is the exclusive responsibility of sub-national administration and here provinces have authority over expenditure in areas such as primary education and health. Provincial expenditure for education and health represent more than two-thirds of total spending. This makes effectiveness of sub-national spending of critical concern.

Although Laos is cited as one of the ten top movers in human development (UNDP 2010), one-fifth of all villages still do not have a school, only 8% of villages have their own health centre, and the doctor/ population

ratio is one of the lowest in Southeast Asia. For Laos to exit LDC status by 2020 there will need to be significant additional investment in human development along with more effective management of service delivery at local level. The level of responsiveness of service providers to citizens is low. Poorer communities and ethnic groups are often excluded in the design and oversight of policies and programmes, although the Government has adopted a conscious approach to more equitable service delivery (see section on Equitable Service Delivery). However, in spite of attempts to engage citizens in participatory planning, the space for citizen mobilisation and expression of voice is deeply constrained. Efforts to improve the accountability of government and service providers and to amplify the voice of citizens can play a significant role in addressing the problems with public services.

The transition from a decentralised system of government back to a centralised and de-concentrated system has been slow and has not been accompanied by sound rules and regulations. The lack of clarity on roles and responsibilities between different tiers of administration levels compromises the ability of both citizens to hold government to account, and for policy makers to hold service providers to account. Although there are mechanisms in place for community participation in the social sectors, the effectiveness of this participation is constrained by the inability of the system to be able to respond to citizens' views on policies, resource allocation and investment priorities. At the same time it is recognised that changes in the relationships between policy makers, service providers and citizens/clients over the last two decades has complicated this issue.

**Despite attempts to engage citizens in participatory planning, space for mobilisation and expression of voice is constrained. Effective, equitable and affordable services can only come once the building blocks of voice and accountability are in place and when there is transparency in the way scarce public financial resources are utilised. With the Government's drive to strengthen local administration, there is an opportunity to adopt mechanisms for holding service providers and policy makers to account, enabling citizen voice and creating an environment of transparency.**

As the importance of provincial and district governments in service

provision increases, so does the importance of transparency at the sub-national level. Greater transparency helps to provide much greater clarity on the functioning of government. It also enables weaknesses in sub-national public financial management to be exposed and allows for the tracking of financial flows from the source to points of delivery. Accountability to the public is increased and civic engagement and public debate is enhanced. Finally, transparency makes it easier to compare performance across and within provinces and fosters sub-national competition. Weaknesses in voice and transparency, however, lead to poor responsiveness.

The PETS (2008) and the PEFA (2010) have identified a range of shortcomings in the current system that compromise accountability and transparency. PETS has highlighted the following difficulties in being able to hold policymakers and service providers to account, and in promoting greater transparency in resource allocation, utilisation and quality of services:

- It is difficult to obtain a clear and comprehensive picture of the functional allocations of central and sub-national government expenditure for service delivery at either budget presentation or execution stage. This is because 40% of the expenditure which is under the control of the 17 provinces is shown by province rather than by function. Nine out of ten schools and health centres rely on off-budget resources from donors, NGOs, parents/patients and communities to cover their operating costs.
- There is no transparent basis for the allocation of central government funding to provinces to ensure at least a minimum level of public services can be financed in all districts. Many of the revenue streams remain outside the budgetary system. This exclusion is contrary to requirements in the new budget law. In order to be able to make choices between new investments and operations, current and capital expenditure should be brought into an integrated framework. Annual financial statements of revenue and expenditure do not show

expenditure financed from fees and charges

- As the budget and donor programs are heavily skewed towards investment expenditure, there are scant resources to meet the running costs of service provision. Although the Budget Law centralises revenues and expenditures, the formulae for the equitable apportionment of revenues to sub-national government based on population, area and relative poverty have not been fully operational.
- The central budget as an instrument of government policy is weakened by the facts that a) provinces enjoy a substantial measure of independence in the financial allocation of expenditure, and b) staffing allocations are determined by a process unrelated to the budget.
- To be able to hold policy makers accountable for health and education outcomes, there is a need for information about, or scrutiny of the results achieved in service delivery;
- It is difficult to hold teachers and health workers accountable and responsive in a context where they have to hold multiple jobs because their salaries are low and not paid on time. Although parents and patients actively participate in frontline services, accountability is blunted by asymmetries of information and conflicts of interest.

As a result of these shortcomings, not only do citizens have great difficulty in being able to hold government to account, they also have difficulty in knowing who to engage in order for their 'voice' to be heard. Effective, efficient, equitable and affordable service delivery can only come once the building blocks of voice and accountability are in place and when there is transparency in the way scarce public financial resources are allocated and utilised. Given the extent of the problems outlined above, establishing mechanisms for voice and accountability, and for promoting transparency in the provision of public services, can be extremely difficult.

However, in spite of these challenges there have been a small number of initiatives that will provide a useful foundation for the incremental strengthening of accountability in government. These initiatives include the implementation of a pilot Citizen Report Card under the GPAR programme, and a shift towards greater community level monitoring of infrastructure and services through targeted development projects such as DDF and PRF.

## **Key Issues and Potential Entry Points**

In a de-concentrated administrative and fiscal system, and where there are inadequate fiscal resources to provide basic levels of service to all, a key priority is to effectively implement the Budget Law. Although much progress has been made, implementation has not been at the pace planned. A further injection of coordinated donor-funded resources will be required to help the Government deliver its PFMS plan between 2012 and 2015. Implementation needs to be properly sequenced and requires continued political support and significant implementation capacity and systems development. It also implies that the revenue-sharing framework that aligns policies with the budget must be finalised. In a de-concentrated setting, the expected results that are likely to have a significant positive impact at the local level from implementation of the Budget Law are:

- Greater accountability and strengthened controls in public financial management practices at provincial and district levels
- Much better alignment of the budget with policies
- Government will have the ability to uniformly execute policies throughout the country
- Ability to ensure that budgeted funds get spent on items for which the budget was allocated
- Better reporting and monitoring at national and sub-national levels of government

Alongside technical implementation of the Budget Law, there is a need to develop systems and procedures to strengthen accountability and voice in relation to local expenditure and service delivery. This could

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include mechanisms that would enable civil society and community groups to work with the public by showing how budget numbers relate to issues that affect people's daily lives – from public health and education to wealth distribution. It is important for people to be assured that public funds are used to meet the basic needs of society, especially the needs of the poor.

The Government's drive to strengthen local administrations so they can deliver better public services provides a window of opportunity. Local service delivery frameworks would enable context-specific mechanisms to be established for holding service providers and policy makers to account, enabling citizen voice and creating an environment of transparency.

Public service regulations provide for performance management of staff and the Government is keen to extend such systems to local administration. However, this is a major challenge as there is insufficient information to track the performance and effectiveness of services and no indicators for assessing the quality, timeliness, efficacy and costs of services. There is a similar gap in assessing the quality of inter-government relations. This is of particular importance given the history and the tensions between centre-province and the need for fully implementing a de-concentrated system of government.

There is a requirement to formulate indicators that would help track progress on changes in local administration at the local level and between the four levels of government within a de-concentrated setting. The indicators should be designed to track accountability, transparency, voice, capability and responsiveness. Indicators must be meaningful and few. The criteria for inclusion should be based on whether the indicators are going to track changes (positive/ negative) to public services that matter most to people, service providers and policy makers.

One of the challenges for the new GPAR programme and for the governance sector as a whole is drawing from and building on the different initiatives that relate to local administration and avoiding duplication and overlap. This is especially the case as the main thrust of the programme is about improved service delivery, effective protection

of poor and vulnerable people's rights, and greater participation in transparent decision making. This requires close working relations with other key MDG sectors such as health and education, which will have new delivery structures, modalities and arrangements that will affect the nature of local service delivery. For example, the organisation and management of primary health care at all levels is defined in the health sector strategy and addresses issues of relationships within and across sectors. A similar approach has been adopted by the education sector, which is now proposing to introduce school-level block grants. Both sectors have extensive involvement in community engagement in service delivery.

The new GPAR programme can provide a platform for lesson learning. It would need to create appropriate institutional, organisational and individual incentives and mechanisms for sharing good practices and learning. This would also encourage programs to draw on what is already there, avoid duplication and overlap, and improve implementation by drawing on lessons learned. For example the Education Sector Development Framework, 2009–2015 (ESDF) makes reference to progressive service assignments to lower levels and the introduction of school block grants through the District Education Bureau. It also refers to the Village Education Development Committee, which has responsibility for supporting education service delivery and development at the community level. The ESDF proposes changes to the inter-government relations. Many of the service delivery issues being addressed in the ESDF are common to other services and some are being addressed by GPAR.

## **Conclusion: Recent Changes, Drivers of Change and Future Trends**

In spite of government pronouncements on the importance of accountable and effective local administration, there have been few institutional changes to the system of local administration over the past few years, other than a gradual recentralisation of the financial function accompanied by implementation of the new centralised budgeting and accounting system developed with donor partner support. In April 2003 the Government promulgated a new policy on governance reform which talked of empowering the lower or local levels of government organisation. However, in the absence of any clear framework

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delineating the roles and responsibilities, functions and finances of de-concentrated administration there has been little change in the form or substance of local administration on the ground.

### ***Recent Changes***

There has been little significant change to the structure and/or form of de-concentrated administration in the last few years in spite of the opportunity provided by Decree 01/PM to redefine the mandates, responsibilities and functions of different tiers of administration, or to provide more operational autonomy to districts.

One of the more important developments in this arena in recent years has been the piloting of discretionary block grants to district administration, accompanied by capacity and systems development for improved budgeting, planning and expenditure management of local administration under the GPAR District Development Fund (DDF) component. This initiative has provided strong evidence of the efficacy of greater fiscal and managerial autonomy at local level, resulting in significant value addition in terms of service delivery (see GPAR Outcome Evaluation 2005) when combined with participatory planning and implementation.

The establishment of the new Ministry of Home affairs (MOHA) in July 2011 represents a significant step towards strengthening governance, civil service management and local public administration, all of which fall under the responsibility of MOHA. The new ministry is now in the process of formulating a policy proposal for greater administrative de-concentration and has already held several rounds of discussions at technical and strategic level with ministries and provinces, including high-level dialogue chaired by the Deputy Prime Minister. Senior functionaries in MOHA have pointed out that DDF constitutes an essential model that the ministry hopes to develop, although it is recognised that all features of the DDF model may not be introduced simultaneously.

The most significant recent development, however, is contained in a policy statement of the 2011 Party Congress, which highlighted the need to strengthen local administration as a means of ensuring improved service delivery to local citizens and the establishment of local councils



after 2015. At the same time, MOHA is now in the process of formulating proposals for greater district autonomy in planning, budgeting expenditure management and staffing, and will in due course be working on proposals for the establishment of elected councils at provincial level. It is anticipated by MOHA that DDF pilot experience will provide the basis of the proposed way forward, which may include the provision of discretionary block grant funds in some form.

The new National GPAR Programme (2012-15) provides an opportunity for addressing organisational and capacity challenges at national and sub-national levels. A major focus will be on clarifying and improving relationships and fiscal arrangements between different levels of the administration. Key components will be to introduce new policy and legal frameworks for strengthening local administration, plus the organisation and management capacity of local administration. It will mainstream the formula-based block grants for planning and budgeting at district level through the budget. In addition, the programme will contribute towards improving the delivery of MDG-related services and enhancing access to service for the poor. The programme will be implemented through a results-based monitoring and management arrangement. High level oversight responsibilities are shared between the Ministries of Home Affairs, Finance, Planning and Investment, Justice and with selected provinces.

### ***Drivers of Change***

A major restrainer of change in this area of governance is the negative experience of previous attempts at decentralisation prior to 1991. This resulted in weak administrative control over the development process at provincial level plus a fiscal crisis at the centre, manifested in periodic cash shortages with the Government not able to meet recurrent expenditure outlays in some months and also unable to develop any system for inter-governmental fiscal transfers to help equalize financial and physical disparities across provinces.

**The establishment of the new Ministry of Home Affairs is a step towards strengthening governance, civil service management and local public administration. The most significant recent development is a 2011 Party Congress statement on the need**

**to strengthen local administration as a means of ensuring improved service delivery to local citizens and the establishment of local councils after 2015.**

This experience led to recentralisation of government, as reflected in the 1991 Constitution and reaffirmed in the 2003 Constitutional Amendment. In spite of an attempt to clarify the mandates and functions of local administration in Decree PM 01/2000, there has been little will to consider any form of administrative restructuring. At the same time, donor-supported Ministry of Finance initiatives designed to strengthen fiscal management in alignment with the 2006 Budget Law have resulted in the centralisation of revenue management and the introduction of a new uniform National Accounting System to be adopted across all branches of central and provincial administration. In this context there has been little appetite on the part of government to consider assigning new powers over revenues and functions to local administrations.

A growing interest in the need for improving performance of local administration to deliver services in an effective manner has led the Government to reconsider the relevance of granting more power and authority to district administration. This has been complemented by the positive experience of recent pilot activities associated with the provision of discretionary block grant funding under the multi-donor funded DDF component of GPAR. This initiative has provided limited but strategic funding for fiscal devolution and decentralised planning and expenditure management at district level. The experience has provided a template for future reforms and is likely to influence the drafting of a new decree that will replace PM 01/2000 and help shape subsequent policies and strategies aimed at strengthening local administration.

### ***Future Trends***

A new policy direction is emerging which reflects current government interest in increasing the performance and effectiveness of local administration and is reflected in the new breakthrough strategy of the 2011 9th Party Congress. This demonstrates increased recognition of the importance of greater managerial autonomy at local level as a

prerequisite for more effective service delivery.

This is significant in that it marks a new trend towards decentralisation which is likely to be influenced by the experiences of initiatives such as DDF in areas such as planning and expenditure management, as well as complementary changes leading to greater autonomy over administrative and staffing functions at district level. Here, there is a possibility that local administrations will be assigned greater power over the recruitment, appointment, promotion and transfer of staff. It is also likely that local administrations will have greater power and authority over expenditure, including planning and implementation of schemes at local level. It is possible that that local administration may also be granted some level of discretionary block grant funding along the lines of the DDF programme, although this will depend on the Government's overall budgetary position and may only materialise in the medium term.

There is also a strong possibility that a greater representative element may be introduced to provincial governance through the establishment of local councils at provincial level. These councils are likely to be granted authority to oversee the functions of provincial administration and to scrutinise provincial budgets and expenditures. Such an initiative would provide an important additional element of political representation and, being closer to the electorate, would provide a new avenue for strengthening voice and accountability.

There is a slight risk that a push towards decentralisation in the absence of capacity at local level could undermine local development activities and service delivery. This is unlikely, however, given the reasonably limited mandates that will be granted in the first instance. At the same time the DDF has shown that districts are readily able to assume more responsibility and to deliver higher quality services with limited supervision and support. There is also a risk that in the enthusiasm of the moment, the process could proceed too fast and lead to failure. This would ultimately result in a second pendulum swing back to centralisation. At the same time there is a slight risk that donors will not be able to adjust existing programmes, projects or funding commitments in an adequate manner and will thus not be in a position to support the process.

## **Chapter 4: Equitable Service Delivery**

This section examines the issue of equitable service delivery in Laos in terms of a broad development approach with the intention of ensuring that service delivery is focused on areas and populations most in need. This approach underpins a number of programme and project interventions designed to address poverty reduction or strengthen the capacity of local administration to plan and manage services in a more equitable manner.

The section begins by examining the nature and extent of poverty and inequality in Laos, as the starting point of any intervention to improve equity in public service delivery. This entails a summary review of the macro picture on poverty and growth, as well as an assessment of both the distribution of income and non-income poverty and the nature and severity of emerging disparities. It will then examine the main government response to the delivery of equitable services including those of the PRF and DDF. Finally, and in the context of the issues and constraints already identified, the section will consider potential entry points for strengthening equitable service delivery. The main drivers of change affecting the nature and shape of activity in this area are considered separately in the section on underlying structural factors driving contemporary development.

### **Macro Poverty Context**

Major changes in the structure of the Lao economy over the last decade have contributed to an impressive average annual GDP growth rate of 7% and an increase in per capita GDP to US\$900 in 2008 (World Bank 2009). This has resulted in an impressive global ranking of 43 out of 179 countries in terms of growth. This growth has been primarily driven by the expansion of the primary and tertiary sectors, especially mining (gold and copper) hydropower, infrastructure as well as the services sector. Although agriculture continues to employ about three quarters of the workforce, agricultural output as a proportion of GDP has declined from 50% five years ago to 27.7% in 2010/11, despite overall agricultural sector growth of 2.8%. The overall macro-economic picture is sound with the country generating \$2.2 billion in export

revenues in 2010, rising at more than 11% per year and accounting for one-third of GDP.

Economic growth and development has led to a decline in the number of people below the poverty line but at the same time inequality is rising. The share of national consumption expenditure for the poorest quintile is just 8%, against 44% for the highest quintile, and a sizeable proportion live on the margins of poverty, with no social safety nets.

Steady growth and development of the overall economy has led to a decline in the number of people below the poverty line. Measured in terms of food and essential non food requirements, the ratio of poor people declined from 34% in 2002/03 to 28% by 2007/08 (MPI, DoS 2010). Although the population grew by more than one million between 1992/93 and 2007/08, the absolute number of the poor declined to just over 1.5 million. Alongside improvements in income poverty there has been a significant improvement in service delivery, with half of the population gaining access to water and sanitation services. Nearly a million or about 57% of urban inhabitants have access to improved safe water systems. There are four central, four regional, 12 provincial and 127 district hospitals, 835 health centres and almost 2,000 pharmacies throughout the country. Immunisation programs have expanded and reached 72% of the population. Over two-thirds of the population and almost all district towns have access to electricity. The Government secured 30,000 tonnes of national rice reserve and contributed of 3,000 tonnes under the ASEAN+3 Emergency Rice Reserve Agreement.

In spite of these improvements Laos remains one of the poorest countries in the region with 44% of the population living below the international poverty line of \$1.25 per day and as many as 77% of the population living on less than \$2 per day. A sizeable proportion live on the margins of poverty and are thus highly vulnerable to changes in economic, social and environmental circumstances such as loss of access to land, deaths in the family and natural disasters. This is exacerbated by the absence of social safety nets and lack of anti-poverty measures. Given the extractive nature of economic growth it is not surprising to find that a disproportionate level of benefit has flowed to higher income

groups, as evidenced by the fact that consumption shares have only increased for the highest quintile over the last 15 years. At the same time there has been a substantial rise in inequality, especially in locations that have seen reductions in poverty, such as urban areas and areas along the Thai border. The share of national consumption expenditure for the poorest quintile is just 8%, whereas it is 44% for the highest quintile (MPI/ DoS 2010). Ensuring equitable poverty reduction remains a challenge, given that the Gini Coefficient rose from 32.6 in 2002 to 35.4 in 2007 (LECS IV)

## **Fiscal Context of Pro Poor Services**

The 2007 Public Expenditure Review (PER) identified a lack of pro-poor focus in many budget expenditure areas intended to relate to national priority sectors and programmes across the 47 poorest districts. The PER 2007 and 2012 both noted, notwithstanding many data deficiencies, that expenditure in education and roads appeared to be reasonably efficient and equitable whereas expenditure in agriculture and health appeared neither efficient nor equitable. An examination of the sector breakup of recurrent budget allocations for the period 2007/08-2009/10 shows that social sector expenditure as a percentage of total recurrent expenditure remains low and fluctuating in education and health.

The Ministry of Planning and Investment (MPI) indicated in March 2009 that the social sector shares of total recurrent expenditures was to be increased to 30% in line with 30% for the economic sector and 40% for infrastructure, mainly roads. Another feature identified by the PER was that the share of recurrent expenditure on administration was unusually high, as compared to in other countries. A second important observation was that any shift in total spending towards the social and productive sectors would need to be reflected in a similar shift in recurrent budget allocations. The PER noted that while spending on the social and productive sectors had grown over the previous three years by 33%, spending on administration grew by 45%.

## **Non-Income Poverty**

There has been a steady improvement in a number of critical human development indicators in line with the overall reduction in poverty over the last two decades. Education spending was just under 12% of total public expenditure in 2008 as compared to 0.5% on defence and security, with nearly 50% of this amount being targeted at primary education. Net primary school enrolment has increased from 58% to 94%, close to the targeted MDG for 2015. The Under-5 Mortality Rate and Infant Mortality Rate have both been gradually decreasing over the last ten years and are close to MDG4. Non-income poverty, however, remains a serious issue and the country faces multiple challenges in meeting a number of “off-track” MDGs. The overall rate of chronic malnutrition (stunting) amongst the under-5 population stands at 37%, an alarmingly high rate given the levels of GDP growth. The country still has much to do to meet a number of key MDG targets, including those related to nutrition, mother and child health and gender equality. The continued lack of access to key MDG services has meant that Lao ranks 133 out of 182 countries on the Human Development Index (UNDP 2007).

## **Growing Disparities**

Income and non income poverty are characterised by a wide range of geographic, social, ethnic and gender disparities. Rural poverty is almost twice the rate of urban poverty. There are also substantial regional variations in poverty rates. The north of the country continues to lag behind other regions with a poverty head county of 33% in 2007/8 compared to 23% and 30% respectively in the southern and central regions. The incidence of poverty is greatest in the remote and sparsely populated areas of the east and southeast along the Vietnamese border. The lowland Mekong basin areas have intermediate levels of poverty whilst the lowest rates are found in and around Vientiane and other urban centres. Villages that are distant from markets and which lack basic infrastructure record average poverty rates of 43%; a fall of just 5 percentage points since 2002/3. Whilst there is general agreement that the percentage of population below the poverty line is highest in the remote eastern areas, the extent poverty in terms of absolute number of poor is significantly higher in the Mekong river valley region

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and Savannakhet, where the largest number of the poor reside.

**There is a lack of pro-poor focus in many areas of budget expenditure with social sector expenditure remaining low. Although a number of critical human development indicators show steady improvement, rural poverty is almost twice the rate of urban poverty and is most pronounced for children.**

Consumption poverty varies across the 49 officially-recognised ethnic groups and is far more pronounced amongst children, with 45% of under 5s and 35% of children aged 5-18 living in poverty. Most children experiencing consumption poverty are from households that have no road access, are severely affected by unexploded ordnance and/or are Mon-Khmer speaking. Urban-rural disparities are most pronounced for children, with 82% of rural children suffering from severe deprivation as compared to 40% in urban areas (UNICEF 2011). Whilst overall improvements in IMR have reduced the national average to 70 per 1,000 live births, IMR exceeds 100 in five provinces: Luang Namtha, Khammouane, Saravan, Sekong and Attapeu.

Poverty levels amongst the three major non Lao-Tai groups rise to as much as 54% in some groups as compared to 25% among the Lao-Tai (considered the majority group). The high rate of malnutrition is most pronounced in a number of eastern and northern areas, where as many as 44% of the under-5 population suffer from chronic malnutrition.

In spite of steady improvements in education over the last decade, recent evidence in school census data shows a marked drop in the completion rate for five years of primary schooling, with an increase in the drop-out rate after Primary Grade 1. This problem will have a serious negative effect on the achievement of MDG2, which requires that all boys and girls complete a full course of primary schooling and that 95% of those completing Grade 1 will reach the last grade of primary education. Recent MoE analysis shows the enrolment and completion rate for girls in the 56 most educationally disadvantaged districts is lower than the national average. This has a direct impact on MDG3 indicators promoting gender equality and the empowerment of women, and contributes to the mere 6% growth in the share of women in non-agriculture wage employment between 1995-2005.



A rapid assessment of the issue by the Ministry of Education (Sept 2011) attributes much of the problem to a number of underlying structural issues in the wider economy and society, including persistent poverty and growing inequality. Many emerging economic opportunities are connected to primary sector wealth extraction and production, leading to relocation and alienation of communities from traditional sources of livelihood. These underlying socio-economic trends generate both push and pull forces on poor families and lead to the withdrawal of children from education and their re-engagement in low-income activities. Other problems are sectoral and concern poor teacher skills, high student to teacher ratios, incomplete schools and lack of facilities.

**In spite of improvements in education, recent evidence shows a marked drop in the primary school completion rate, especially for girls and ethnic minorities. Persistent poverty and growing inequality lead to withdrawal of children from education and their engagement in low-income activities. Other problems are poor teacher skills, high student-teacher ratios, incomplete schools and lack of facilities.**

Unexploded ordnance remains a serious and persistent problem affecting 25% of the total land area or around 2,500 villages (one-third of total villages). This has a long-term impact on socio-economic development and functions as a multiplier to attaining other MDGs. MDG 9 was therefore added to the original eight MDGs. The incidence of poverty in the 40 districts where more than 50% of all villages are affected by unexploded ordnance is 47%, compared to 27% in districts where fewer than 10% of villages are contaminated. Similar rates of disparity in human development performance are seen where the literacy rate remains below 75%: it is as low as 40% amongst rural Sino-Tibetan ethnic groups as compared to the 100% literacy in urban areas.

Gender inequalities exist at all levels of society and in all regions although they are more pronounced among ethnic communities. In general, women and girls are the most disadvantaged people in the poorest parts of the country, where there is no road access. Whilst there has been steady progress in school enrolment rates for girls from Lao-Tai groups this has not been shared by either boys or girls from other ethnic groups. Lao-Tai boys complete an average of 6.2 years of schooling

as compared to an average of one year for Hmong-Mien girls. Similar disparities exist in terms of access to health care, with 27% of women from Lao-Tai speaking households using institutional birth facilities as compared to just 6% of women from Hmong speaking households.

## **Strategy for Equitable Service Delivery**

The Government is committed to poverty reduction and pro-poor service delivery and its broad strategy is articulated in the 2004 National Growth and Poverty Reduction Strategy and in the NSEDP. The 7th NSEDP (2011-2015) recognises the incidence of poverty and disparities and the importance of delivering MDG services to priority areas. This includes an emphasis on the delivery of services at local level based upon participatory methods. The National Program for Rural Development and Poverty Eradication, which is a key input to the NSEDP, has identified the following five priority goals for increased attention in rural areas:

- Small-scale infrastructure and service delivery and livelihood development
- Decreasing the service and income gap between rural and urban areas
- Ensuring more integrated economic and social development, taking into account the importance of natural resource management and environmental conservation
- Encouraging the participation and initiative of local communities based on the participatory development approach
- Improved international and regional cooperation.

The Leading Committee for Rural Development and Poverty Eradication is an institutional mechanism to strengthen government capacity to implement more equitable service delivery and to oversee and guide the implementation of specific initiatives on rural development and poverty reduction in priority areas. It is also responsible for implementing development as defined in Decree 285/ PM, which includes promoting the security and political development of local communities. In its poverty and development role the Committee acts as a facilitator helping to

coordinate and harmonise initiatives across 64 priority focal areas (previously 47 districts). In practice, this has meant being able to take stock of different poverty-related initiatives and to reflect these in a single planning document. In practice it has been difficult to harmonise different initiatives that are implemented through line ministries and hence, together with the MPI, the Committee has developed a draft manual to guide the process. Work is ongoing to simplify this so it is more widely applicable. However, many of the pro-poor initiatives implemented by different ministries continue to reflect varying approaches in terms of the nature of the type of service being delivered and the method of delivery.

A key aspect of the Government's strategy has been targeting services towards those communities most in need and to address the range of disparities discussed above. A detailed study on the spatial patterns of poverty has demonstrated a strong link with geographical factors such as agro-climatic conditions and access to rural markets, and provides a useful basis for more precise targeting. It should be noted however, that some of these correlations are breaking down as new forms of development associated with concessions and commercialisation of agriculture generate wealth and disparities in new areas.

In response to the need for improved targeting, in 2007/08 the Government identified 47 poorest districts where the incidence of poverty was 44% or more and another 35 second-priority districts with poverty incidence of over 36%. Non priority districts have been defined as those with a poverty incidence of less than 20%. Almost all the 47 poorest and many of the 35 second-poorest districts are rural, remote upland areas, inhabited by ethnic groups and hence display many of the factors reflecting inequality noted above. Following Decree 285/PM the Government has modified the method of targeting from a definition based on 47 poorest districts to 64 focal areas.

Decree 285/PM of 2009 on Poverty and Development Criteria has broadened the definition of development to include criteria based on institutional factors such as political awareness and maintenance of law and order, as well access to socio-economic infrastructure and services. Under these criteria, poverty is defined on the basis of income or income equivalent to meet minimum standard calorific intake of food and

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basic needs (clothing and shelter) as well as access to other basic services such health, education, water supply and roads. Development is defined in both institutional and socio-economic terms in relation to effective village mediation (case-free village); access to a package of minimum health care services (model healthy village) as well as other physical and socio-economic parameters.

**The 7th NSEDP recognises the incidence of poverty and disparities and the importance of delivering MDG services to priority areas. Whilst the strategy of targeting services to areas most in need is sound, in practice there is no necessary correlation between working in a poor district and covering poorest villages, since implementing agencies tend to focus on the villages that are easier to reach.**

Whilst the concept of targeting services to areas most in need is a sound strategy, there remain significant variations in poverty within poor districts and across villages and *kumban*. In practice it has been found there is no necessary correlation between working in a poor district and the coverage of poorest villages since implementing agencies will mostly tend to focus on the villages that are easier to reach. At the same time there are inadequate arrangements for targeting routine sector expenditure, leading to a situation where one-sixth of public education spending goes to the poorest quintile of the population. Just one-fifth of total public health expenditure goes to district health facilities and village health centres which primarily serve the poor.

The Leading Committee for Rural Development and Poverty Eradication directs donor-partner initiatives targeted at poverty reduction in the poorest districts as well as government initiatives, with a budget of around 350 billion kip, representing service delivery in the remaining 26 poorest districts. This is equivalent to US\$4 million per annum or around \$154,000 per district per annum from a variety of different government programmes operational in these districts (some of which will be implemented in the 21 districts). Around 10% of the total government funded investment has been used for assisting relocation in 21 districts and transition away from shifting to permanent cultivation in 18 districts. This is designed to encourage smallholders to make more efficient use of land resources through the occupation of new locations

with access to land for permanent cultivation, although there is evidence that the benefits to smallholders are not always apparent and that in some cases there can be negative economic and social consequences. The consolidation of villages into larger socio-economic clusters has resulted in the vacation of 103 former villages now merged into larger units, representing a 1% reduction in the number of villages per annum.

The current Rural Development and Poverty Reduction Plan 2011-15 anticipates a total investment of Kip 350 billion (\$4 million) per annum to ten border areas based on contributions from the Government and the Government of Vietnam, plus an anticipated investment of 2,355 billion kip for the remaining 54 focal areas from the Government and development partners. The plan includes 967 projects in areas such as village consolidation and relocation (900 billion kip); agricultural production (600 billion kip); infrastructure development (972 billion kip); social sector services (271 billion kip); strengthening local governance (49 billion kip) including Party security, inventory of statistics and dissemination of decrees; and international cooperation (6.5 billion kip) study visits.

A number of initiatives have been conceptualised by the Government and donor partners to address the various dimensions of equitable service delivery involving community-driven approaches targeted at the poorest communities. These include the Government's main initiative under the VDF, providing a devolved fund for livelihood activities and small infrastructure in 54 districts under the Ministry of Planning and Investment, with a rotating fund component, as well as the PRF of the Leading Committee for Rural Development and Poverty Eradication in the Prime Minister's Office, designed to bring about a measurable reduction in poverty and reduced levels of disparity in 30 priority districts (including 21 of the 47 poorest districts) in Phase 1 and in 274 *kumban* in Phase 2.

The District Development Fund (DDF) represents another initiative to promote equitable service delivery through the provision of block grants for infrastructure and services to poorer communities. It works in 35 target districts in Phase 1, scaling up to 66 districts under a proposed new phase. Equity approaches have also been emphasised in sector projects such as the Lao Extension for Agriculture Project (LEAP). All

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initiatives promote greater inclusion in terms of gender and ethnicity.

The VDF was launched in 2003/04 through the Ministry of Planning and Investment as a devolved budget allocation with a revolving fund component, primarily to promote livelihood activities for cultivation and animal husbandry, handicrafts, processing, and trade. The VDF and the Nayobai Bank were designed to provide opportunities for households in poor villages to increase livelihood opportunities through improved household production whilst also promoting participation and ownership in livelihood activities and improved linkages with local level administration. The Government initiated the VDF approach in 47 first priority districts and has established 528 village funds to date, covering 35,000 families from 54 districts with a revolving fund of 42.5 billion kip, of which 6.8 billion kip is in community savings. The modality involves participation in the form of consultation

In order to assist the process of planning for poverty reduction, the MPI initiated a participatory planning initiative to complement the NSEDP, with particular focus on the poor districts and *kumban*. This has been supported by UNDP, with funds to allow the MPI, line ministries and other agencies to work with poor districts, local district administrations and communities to develop short- to medium-term *kumban* model plans which can then be replicated by local staff in other *kumban*. This process has then informed the revision of the Participatory Planning Manual, undertaken by a committee chaired by the MPI and the Leading Committee. The main aim has been to ensure that manual can be used as a guideline on participatory planning after further simplification and field testing by GIZ. Whilst this is welcome, there is an issue arising from the fact that different initiatives have formulated varying planning processes. Although there is broad convergence, some of the details of the processes and procedures differ and this may be confusing for any district which is involved in more than one government or donor initiative.

## **Poverty Reduction Fund (PRF)**

The Poverty Reduction Fund is one of the key modalities designed to achieve measurable improvements in equitable service delivery and poverty reduction. The PRF was established in 2002 as an operationally

autonomous entity to fund small-scale infrastructure and services identified through strong participatory processes in the poorest districts of the country. The PRF works under the Leading Committee for Rural Development and Poverty Eradication and has a board of directors drawn from various line-ministries and chaired by the Deputy Prime Minister.

Phase 1 of the PRF (2003-2011) covered 30 districts in eight provinces with a total budget of US\$42 million, comprising \$35 million from World Bank International Development Association credit and grants and \$7 million from SDC. These funds have been supplemented by community contributions in the form of labour and materials estimated to be worth \$6.5 million. Both the geographical coverage and managerial process of PRF have emphasised the equity dimension of service delivery by targeting districts with a high incidence of poverty, the incorporation of participatory methods into all aspects of the planning and management cycle, and the delivery of small-scale infrastructure to enable public access to basic services that will impact on the income and human development dimensions of poverty.

As an autonomous agency working outside but alongside government, equipped with sufficient financial, managerial and technical resources, PRF has been able to implement infrastructure and services in rapid and extensive manner across all 30 districts, 23 of which fall under the previous definition of 47 poorest districts. Phase 1 of the PRF has covered 2,185 communities with 3,396 sub-projects, including the construction or upgrading of 3,042 km of rural roads and 91 bridges, 1,237 water supply points, 592 schools, 62 health dispensaries and 155 irrigation schemes. Overall, implementation has been assessed as satisfactory and PRF investments have enhanced access of poor rural villages to basic socio-economic infrastructure linked to better access to markets, health and education services and clean drinking water.

Respective evaluations of the PRF have reported a wide range of positive impacts in terms of more equitable service delivery. A quantitative impact evaluation found that the PRF has improved health and education outcomes, and access to roads. In northern districts, water and sanitation projects provided through the PRF have decreased the incidence of diarrhoea in beneficiary villages. In southern districts, where literacy

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rates were comparatively low, education infrastructure and services delivered through the PRF have improved literacy rates in beneficiary villages, although - perhaps not surprisingly - this impact is less in communities where education levels are higher and services have been introduced more recently.

As a model for equitable service delivery, the PRF represents a mission-mode approach to addressing poverty reduction through a specific purpose vehicle designed to bring about change in the incidence of poverty and in the nature of disparity in more vulnerable districts. The geographical and technical focus of fund activities are such that it may have more limited impact on reducing the absolute number of poor, the largest number of whom reside in lowland districts and communities that do not necessarily have a high rate of poverty. The PRF focuses on every village in a district rather than the poorest. In Phase 1 PRF poverty targeting was essentially based on district level data, which favoured poor districts but not necessarily poor villages or households.

PRF Phase 2 (2011–2014) will continue to support the Government's poverty reduction agenda by financing investments in small-scale infrastructure in poor communities that will improve access to basic services and markets in remote and inaccessible areas, and will continue to emphasise participatory approaches as a means of strengthening citizens' engagement and voice in equitable service delivery. The current phase has a budget of US\$65.7 million, comprising \$25 million from the World Bank, \$10 million from the Government, \$13.2 million from SDC and \$17.5 from AusAid.

Phase 2 includes a number of significant changes, with a clearer overall objective and a new form of targeting using the poverty criteria defined in Decree 285/PM, overlaid with data on spatial distribution of poverty and triangulated with other projects to identify 274 poorest *kumban* in ten provinces, plus ten *kumban* in an eleventh province. Each *kumban* will receive four cycles, instead of the eight cycles in PRF1, of funding of \$30,000-\$50,000, or a total investment of \$120,000-\$200,000 over the project period, depending on population size.



A number of initiatives are addressing equitable service delivery via community-driven approaches targeted at the poorest. These include the VDF, providing a devolved fund for livelihood activities and small infrastructure; the PRF, designed to measurably reduce poverty and disparity, and the DDF. Overall, stakeholders have expressed strong satisfaction with the respective infrastructure and services provided through these initiatives and beneficiaries are reporting improvements in livelihoods.

Under PRF 2 the equity aspect of delivery is significantly more pronounced since investments are now targeted at *kumban* rather than districts. The *kumban* have to prioritise schemes and locations based on poverty ranking so that at least 60% of the total budget and all micro-projects are located in the poorest villages. PRF 2 has also introduced a new approach to monitoring achievement, focusing on the extent of measurable improvement in poverty reduction in beneficiary communities based on the collection of quantifiable impact data.

A recent evaluation of capacity building under the PRF (September 2011) points out that there is a high level of understanding and awareness of PRF approach, methods and procedures amongst staff at both *kumban* and district level. Government staff recognise the value of a targeted, participatory approach to addressing local needs in a priority manner. All stakeholders from government and the community highlight participation as one of the most important aspects of the PRF approach, although government stakeholders tend to see this as relevant to PRF work alone and point out the continuing importance of a top-down approach as a means of transferring knowledge and skills to the community.

All stakeholders report that PRF processes and schemes are well managed, coordinated and sustainable, although local leaders point out that sustainability is conditional on future funding for aspects of maintenance. The PRF has also introduced feedback and grievance complaints systems. The majority of calls to date have been concerned with obtaining basic information on the project and of the few calls that have reported complaints, most concern the work of contractors.

## **District Development Fund (DDF)**

The District Development Fund (DDF) initiative covering a total of 35 districts across five provinces is based on the provision of discretionary block grants to district administration for funding small-scale infrastructure and services that are planned and implemented in participation with poor communities. Since the DDF entails working through local administration to deliver pro-poor services (including operational grants for service outreach in health and education), there is a significant emphasis on building the capacity of government in planning and budgeting, engineering design, contracting, monitoring and quality assurance, and expenditure management. The DDF constitutes a model of governance reforms in which capacity development and direct service delivery occur simultaneously.

DDF capital investments have covered over 352,000 beneficiaries through 286 local infrastructure projects, with bulk of these in water supply and health (31%), roads and related public works (30%) and education (23%).

The 2010 Mid-term Evaluation notes that the DDF helped to make service delivery more equitable, accountable and effective through a targeted approach that has helped to minimize bias towards funding of schemes at district level and in more accessible communities. The scale of investment has been distributed between district and village level on a 30:70 basis to promote greater equity across the district. In addition the project has helped to develop the capacities of over 3,000 government staff, 20% of whom are women, working at district and sub-district level. It has also developed the capacity of 18,000 community members including 6,500 women and 1,600 village heads, including 320 women heads.

Under the DDF financial allocation formula, provinces with a greater number of poor households receive more money, whilst the services provided under DDF funding are focused as far as possible on off-track MDGs. However, the DDF recognises that it is not possible to ensure all funds benefit the poorest since, for example, around 30% of all households in a poor village are not poor and yet will benefit from DDF services.

At the same time an examination of the pattern of funding by type of village in Saravan province shows a highly variable picture in terms of the number of poor villages covered by the DDF, which varies from as many as 67% in some districts to less than 30% in others. Closer analysis reveals the DDF has been largely successful in targeting poorer villages in those districts with a smaller number of poor villages but much less successful when the number of poor villages rises and the percentage coverage declines. This is partly, if not wholly, the result of budget constraints and the incremental nature of funding roll-out, which has prevented a larger number of villages being covered in the project time frame. In other cases, the non inclusion of poor villages is the result of the presence of other funds from donors, international non-governmental organisations (INGOs) or government.

The DDF includes participatory planning and implementation processes and procedures, although the project realised early on that with all aspects of implementation managed by and through the district administration, certain procedures needed to be streamlined in order to be more practical and sustainable. This has meant replacing an annual participatory plan process with a rolling plan which is then updated annually and hence will entail less participation in any particular intermediate year.

Although the DDF has produced an extensive menu of participatory planning tools and techniques, it is ultimately the responsibility of the district to ensure the integrity of such processes at field level. Whilst this may result in a reduced level of participation, it does however serve to develop the overall capacity of district and *kumban* staff to implement a devolved and equity-focused process of service delivery. DDF thus approaches the equity dimension of service delivery from an institutional perspective, in which district administrations understand how to measure disparities and address equity as part of routine service delivery, and where participation involves building partnerships between the community and the administration, thereby helping people to participate in their own development.

## Gender and Ethnicity

All stakeholders in the PRF and DDF emphasise the need for women and men to participate separately, since women - especially those from ethnic groups - are more confident and articulate amongst themselves and tend to prioritise different needs from men. Although women have been extensively involved in all aspects of community planning and in implementation of schemes at community level, very few have taken on more public roles related to these initiatives at *kumban* or district level. Both the PRF and DDF have delivered capacity development activities to women. Capacity development activities under the DDF have covered 17,000 people in total, just over one-third of whom are women.

The PRF and DDF emphasise the need for women and men to participate separately and promote capacity development activities among women. The pro-poor service delivery initiatives of both funds also focus on ensuring equal rights among ethnic groups. Women and ethnic group stakeholders report that their specific needs are taken into account and that all villagers are treated equally, irrespective of gender or ethnicity.

The pro-poor service delivery initiatives of both the PRF and DDF have a strong focus on ethnicity and ensuring equal rights among ethnic groups. These communities are an integral part of the various initiatives by virtue of the fact that they comprise the majority of the population in the remote, rural mountainous areas covered under each fund. Whilst the PRF has developed an ethnic group policy framework to ensure adherence to the World Bank's safeguard policies, the DDF has embraced UN charter principles for women and ethnic groups. Women and ethnic group stakeholders report that their specific needs are taken into account and that all villagers are treated equally irrespective of their gender or ethnicity.

In almost all cases the respective programmes and projects focusing on equitable service delivery have led to development of road networks, water supplies, schools, and health facilities, and improved access to agricultural extension services and inputs. Beneficiaries, project staff

and government officials agree that these initiatives have improved access to basic infrastructure in the participating districts. Overall, stakeholders have expressed strong satisfaction with the respective infrastructure and services provided through these initiatives. Beneficiaries report improvements in livelihoods after local infrastructure sub-projects have been implemented, and a strong interest in receiving further infrastructure and services. Evaluations show that water supply systems relieve women from a significant burden of time and work, permit the cultivation of cash crops, and lower the incidence of diarrhoea; roads and bridges provide remote villages with better access to markets and public services; and the construction of schools embodies the hopes of parents that children will do better than they have themselves.

## **Key Issues and Potential Entry Points**

### ***Equality v Equity***

One of the main constraints to equitable service delivery in the past, retained in the interests of maintaining unity, harmony and security, has been a tendency to emphasise the importance of delivering equal amounts of service to all rather than focusing resources on those most in need. This has changed in recent years with the introduction of targeted poverty reduction and service delivery programmes delivered by government and donors. However, these programmes do not impact on the capital or recurrent budgets of routine service delivery delivered through line ministries, which often remain focused on the basis of provincial priorities. There is a need to work with line ministries at provincial and district level to develop mechanisms that will provide a greater equity focus in services. There is also a need to democratise the process of delivery by placing more emphasis on listening and analysing, rather than guiding and directing the change process.

### ***Disparity Analysis***

In order to address underlying equity issues in service provision it is necessary to move beyond participatory approaches in micro-planning towards a system that can provide an objective assessment of inter-community and inter-district disparities in services. This requires developing the tools and techniques to assess the level of variation in

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service delivery or access to services in comparison with a standard delivery norm or current average, adjusted for population size and geographical area. Differential levels of access to and delivery of services will necessarily vary according to the population and catchment area, hence the need to adjust for both in order to identify real levels of disparity. Such an analysis will reveal communities and groups that have a higher than average level of provision and those that are below average, and will thus help local administration to target delivery on a more equitable basis. Another constraint is the lack of data to monitor the status and progress of key indicators associated with more equitable service delivery. At the same time stakeholders in local administration point out that they lack the capacity, funds and human resources to deliver services in a differentiated manner that would provide greatest benefit to the poorest.

### ***Understanding Inclusive Social Structures***

There is strong evidence to indicate that the traditional socio-political structures of many ethnic groups, who make up 40% of the population in Laos, are inherently inclusive and non hierarchical and thus distinct from patrimonial socio-political structures found amongst the lowland population. Research has shown that the social organisation of many upland villages has traditionally been based on very egalitarian structures and processes. Traditional upland communities are often very vocal within their group, although they display reticence and deference in the face of outsiders. Given the significant focus of equitable service delivery on upland ethnic communities, there is a requirement to better understand indigenous structures and processes and to adapt programme planning and decision making tools and techniques accordingly. This requires a deeper understanding of traditional social structure and the politics of local decision making, rather than striving to impose external and unfamiliar working practices intended to increase inclusion in a context where inclusion is already well developed. Paternalistic structures throughout the country hinder participation, having a direct impact on equitable service delivery. This approach includes strengthening the planning process to be inclusive, transparent and accountable in order to be more relevant to the needs of poor communities.

There is a need to work with ministries at local levels to provide greater equity in services and to democratise the delivery process by emphasis on listening and analysing. Since services are rarely tailored to the needs of diverse communities, many programmes are undermining traditional socio-economic and cultural organisation by delivering standard infrastructure and services in a uniform manner.

### ***Diversity as Distinct from Disparity***

Many stakeholders have highlighted the issue that in pursuit of reducing disparities in access to MDG-related services, programmes and projects are either intentionally or unintentionally eliminating diversity and undermining traditional socio-economic and cultural organisation and livelihoods. The delivery of standard infrastructure and services packages in a uniform manner often reduces the potential beneficial impact since services are rarely tailored to the specific needs of diverse communities. At the same time, many communities have been relocated so as to improve access to services that end up being of marginal benefit. This often results in negative economic and social consequences. Many services could be better adapted to the specific needs and aspirations of diverse communities but this requires a different service delivery model, allowing communities to make conscious and meaningful choices. For example, adapting educational curricula to the linguistic and learning needs of diverse communities would greatly enhance the take up of services by those communities. Similarly, local health systems are often complex and eclectic and need to be incorporated into local delivery models. Stakeholders point out the irony that while government and development partners recognise biodiversity, they often wittingly or unwittingly undermine human diversity. This is a significant issue in the multi-ethnic context of poverty and disparity in Laos.

### ***Safety Nets and Credit***

Many stakeholders in the sector highlight the need for an innovative and creative approach to the concept of a portfolio of equitable

services. This would include a variety of social safety nets and would have the advantage of being more precisely focused on the most vulnerable communities. If designed correctly it could be self-targeting in nature: only those most in need would wish to access the service and this would automatically reduce potential leakage. It would be particularly relevant to households suffering from chronic malnutrition, those exposed to sudden shocks of food security or ill health, and those combating sudden loss of productive assets. Relocation cases, where inward investments have taken over the main source of livelihoods for households or communities, will also often require safety nets to mitigate negative consequences.

### ***Discretionary Funding to Enhance Equity***

Local administrations lack the funds (capital and recurrent) to address local manifestation of disparity. This issue is integrally linked to the discussion on decentralisation and the issues raised elsewhere on strengthening decentralisation and the possible move towards the introduction of discretionary block-grant funding and school block grants. These would provide a vital aspect of strengthening equitable service delivery and thus represent an excellent entry point for influencing this issue more widely. Stakeholders also highlight the need to include mechanisms for recurrent funding. This has a proven ability to increase the efficacy of social sector programmes such as health and education, which in remote areas primarily depend on recurrent funding for service delivery and outreach. This will be a component of the new DDF package and will require close tracking to ensure optimal effectiveness.

### ***Service Delivery Partnerships***

Although civil society organisations are generally still in the early stages of development following the 2009 Non-Profit Associations Decree that opened legal space for their formal recognition, there is reasonable potential for developing new partnerships with emerging NPAs and CSOs to broaden the constituency of actors engaged in service delivery. This would also strengthen the diversity of development models and increase the opportunity for knowledge sharing and cross learning. Party-affiliated mass organisations, such as Lao Women's Union and the Lao Youth Union, have strong mobilization and



grass-roots outreach roles and are engaged in many project related activities, but have limited funding and technical expertise.

## ***Multiple Approaches***

Multiple approaches to local development persist, although the Government has recently strengthened harmonisation efforts. For example, the PRF is participating in a task force co-chaired by the Leading Committee for Rural Development and Poverty Eradication and the Ministry of Planning and Investment, seeking to harmonise local development planning approaches. The MPI has indicated that preliminary outputs will be shared with partners in 2011. In the meantime, different projects continue to implement their own approaches. Several projects focus on participatory planning and local government capacity-building in rural areas, including the District Development Fund, the Lao Northern Upland Development Project, LEAP and the Khammouane Development Project (PO87716). Many stakeholders in the donor community feel there is inadequate coordination, learning and harmonisation across these projects, whilst government stakeholders complain of multiple protocols, different management systems and a variety of technical procedures which confuse local administration and create inefficiencies in government.

## **Conclusion: Recent Changes, Drivers of Change and Future Trends**

### ***Recent Changes***

There has been a gradual change in attitude, perception and action on the part of the Government towards the notion of equitable service delivery, which is inextricably linked to prevailing patterns of poverty and growing levels of disparity and inequality. This change can be most clearly seen in terms of a reorientation of government development priorities from security, law and order, in which the main objective of service delivery was implementing laws and rules, to the current context of delivering MDG-related infrastructure and services to areas where poverty is highest and service disparities greatest. This is a significant shift in approach, derived in part from the consistent emphasis placed on service delivery and MDG targets by MPI, with influence from UN agencies.

The service delivery emphasis of the previous phase of the GPAR programme has also helped to reinforce the overall acceptability of the concept of equitable service delivery, which is now embedded into the MOHA programme on governance reform. This aspect of GPAR has helped to shape aspects of broader service delivery improvements through One Door Service Centres, as well as providing a rationale in and outside government for other aspects of civil service improvement in areas such as PIMS, Job Descriptions and Code of Conduct etc. The service delivery language that has infused the dialogue on civil service reform has, in itself, helped to reinforce the concept and widen its acceptability. Interestingly, other initiatives including a provincial government initiative to establish a user satisfaction tracking system for business registration in Luang Prabang, also cite the importance of service delivery as key element in local administration.

Another key aspect of change relates to the work of the National Leading Committee on Rural Development and Poverty Eradication, under the Prime Minister's Office, as a high-level institutional body to strengthen the focus on equitable service delivery. The Leading Committee is also involved in the delivery of equitable services through the PRF and related initiatives. The Leading Committee has also developed a manual to help provide greater consistency in participatory planning.

In support of more equitable service delivery there have been a number of changes related to improved targeting and focusing of services to reach those most in need. Whilst targeting was initially based on the 47 poorest districts, this has subsequently been modified to encompass 64 focal areas. The criteria for the definition of poverty and development have also been modified in Decree 285/ PM based on income or equivalent criteria as well non-income criteria. At the same time the PRF will now be targeting 274 of the poorest *kumban* in recognition that districts are still too aggregated to be able to ensure that services reach the poorest.

### ***Drivers of Change***

Much of the recent declared rationale for strengthening local administration has been associated with the need to improve service delivery as a core governance objective. This emphasis on strengthening

service delivery largely emanates from an improved socio-economic and sector planning process, which has shown that aggregate growth and poverty reduction has been accompanied by widening inequalities and disparities that have distinct social, ethnic and geographical characteristics. Inequalities and disparities manifest themselves in human development outcomes which can be measured against MDG goals.

Another driver of change has come from the elevation of service related goals and targets in the national planning and policy formulation process, which has placed equitable service delivery at the centre of the 6th and 7th National Socio-Economic Development Plans over the last five years. This has led to a much greater focus on delivery targeted services focusing on the poorest areas and communities as part of the wider development strategy, and has given shape to a number of specific programme and project interventions.

At the same time the Party and Government recognise the potential dangers of ignoring inequalities and disparities across regions, ethnic groups and social strata. The Party has explicitly referenced the need to address this problem to ensure unity and avoid social unrest. This is all the more apparent in a context where there has been recent widespread protest in Myanmar and across the Middle East.

### ***Future Trends***

The reality of growth and inequality, which is prevalent in many developing and transitional countries, means that there will continue to be a strong government emphasis on increasing equitable service delivery in a variety of ways. This is reinforced by the fact that the Government is committed to meeting MDG targets and graduating from LDC status by 2020.

The 7th National Socio-Economic Development Plan (2011-2015) recognises both the incidence of poverty and growing disparities, and the importance of delivering more services in a more equitable manner. The NSEDP also recognises the importance improving service delivery at local level through participatory approaches and processes. This is further reinforced by the National Programme for Rural Development and Poverty Eradication, which is a key input to the NSEDP and has identified

a series of national priority goals that further reinforce the principles and approaches of equitable services.

This trend is likely to be reinforced by the donor community, which is firmly committed to focusing development assistance on the poorest and most service deficient communities. The trend is only likely to increase in the context of current austerity measures in a number of donor partner countries, where governments will come under pressure to focus aid on direct, measurable and tangible outputs that have direct benefit for poorest. Whilst this is a noble objective in itself, it could undermine the need to support systemic reforms that may, in the long run, make a greater contribution to poverty reduction and social well being.

The implication of continuing emphasis on equitable service delivery is that not only will there be a continuing need for funding in the short run, but there is an equally important need for technical assistance to help develop and refine new methods for targeting services and ensuring that funding is aligned to service deficiencies and disparities. There are few well developed tools and procedures to guide this at present. At the same time there will be a need to experiment with different forms of funding, including support for recurrent services as well as capital, which is an area that requires greater attention if service outreach is to be improved.

## **Chapter 5: Participation**

### ***Introduction***

This section examines various aspects of participation in terms of formal representative structures and arrangements for enabling citizens to participate in public policy and decision making. This occurs through elected representation as well as through Party mass organisations, enabling people to participate in various national development activities and formal member associations such as the Chamber of Commerce and Industry.

This is followed by an analysis of civil society in a variety of forms, ranging from Non Profit Associations and other civil society organisations groups to more instrumental forms of participation designed to increase citizen engagement in the planning and delivery of services at community and

project level. This form of bottom-up participation is significant in that it helps to establish legitimate and more active citizen engagement in decision making. Such engagement is reported to lead to increased efficiency and effectiveness of funding and implementation activity, thus providing a solid foundation for new civil society initiatives to open up and populate new spaces for participation. Finally, the section will consider the role of the media and other forms of communication that provide a new platform for future engagement and activism.

## **Policy Framework for Participation**

A broad policy and legal framework for participation has been evolving over recent years, with greater recognition that participation of citizens in specific aspects of government can contribute to the achievement of development goals and aspirations. Both the NGPES and the NSEDP recognise the critical importance of access to information as a means to enhance participation and socio-economic development. Hence, the overall environment for greater levels of participation in both formal structures of decision making, as well as in the planning and implementation of local development, would appear to be much more conducive than they were a few years ago. Decree 115 of 2009 on Association marks an important step in the formal recognition of NPAs as partners in development. The 7th NSEDP explicitly mentions the role of civil society in development, referring to Decree 115/PM of 2009, which encourages professional groups to form associations to contribute to the development process within the context of the Lao law and Constitution. The 7th NSEDP also calls for an expansion of people's participation and for each government organisation to conduct participatory monitoring and evaluation at all levels.

The National Assembly has a progressive view on civil society as a potential resource for assisting in its role of monitoring and overseeing government agencies. National Assembly members welcome increased dialogue between civil society and government. Line Ministries argue that CSOs such as parent- teacher associations can be helpful in improving the effectiveness and responsiveness of service delivery, whilst the Ministry of Agriculture, for example, views producer associations as important mechanisms for improving agricultural productivity and marketing.

Overall, there has been an important shift in official government views and attitudes towards the CSO sector, which is now seen as a potential partner in development and one that in the long term can assume the role of INGOs. The Government has recognised the value and utility of CSOs as agents in the wider development process with potential capacity and commitment to improve citizen participation in planning, implementing and monitoring service delivery and development.

However, if this is to be a meaningful objective the Government and its development partners will need to help create the conditions for broader participation in policy-making and decision-making at all levels and by all groups in society. At the same time, stakeholders in civil society point out that the political environment has changed in recent years in favour of a more pluralistic approach to concepts and ideas, which include the value of participation in society either through informal or formal mechanisms.

## **National Assembly**

Although the size of the National Assembly membership has grown in recent years, this reflects the general growth in population rather than any fundamental increase in the depth of participation. (For basic details on NA role and function see section on Government).

As already mentioned, at the last election members were elected from a pre-selected list of 190 Party approved candidates, of whom 47 were women. Since the number of candidates is only marginally more than the seat total of 132, the election process involves deleting a small number of candidates from the list rather than actively selecting candidates, non of whom will have been involved in an individual election campaign. The electoral committee tends to decide on the composition of candidates and there is a Party view that the list should include technical experts and business people, as well as those in government. Candidates have to conduct campaigns together as a group rather than individually and hence there is no discussion of specific policy priorities other than those of the Party. Candidate information is given on a template which lists only basic details such as name, profession and date of birth.

The 7th NA Legislature is comprised of members from four linguistic groups. The largest representation is that of the Lao-Tai with 99 seats (26 held by females), followed by the Mon-Khmer speakers with 21 seats (5 female). The Hmong- Mien have 7 members (2 female) and the Sino-Tibetan speaking group 5 (0 female). Compared to the previous legislature, the current membership is more educated and younger with an average age of 53 years. The youngest is 37, while the oldest is 69 and two-thirds of all members have university degrees.

Separation of powers and interests between the executive and the legislature is limited, as the latter is predominantly made up of members of the executive and those approved by the Party. Candidates working for the Government mostly obtain leave from office for the duration of the legislature in order to work at constituency level.

Whilst many features of the National Assembly constrain its ability to perform as a representative body, as seen in Chapter 1 on Government, a number of recent and significant changes are enabling the Assembly to evolve into a more effective agent of participatory governance. The NA's senior leadership has acted as a significant driver of change. Significantly, the current Prime Minister was NA President at a time when the NA was increasing its role and is thus likely to be supportive of a more effective Assembly. An important change in the 7th Legislature has been the number of new candidates entering the Assembly, many of whom were not necessarily the favoured candidate on the approved list. This means that the 7th Legislature not only has members who are not in other branches of the government but also a few representatives who are not Party members.

Interestingly, a number of stakeholders within and outside government, including NA members themselves argue that the Assembly has begun to assume a check and balance role through closer scrutiny of budgets and expenditure, questioning of policy and making its observations public. NA members also point out that they have begun to play a more active role in amending and reviewing legislation, particularly focusing on the Public Prosecutor, People's Court, Notary, Public Investment and NA Laws. The NA added three new chapters and 36 new articles to the NA Law, demonstrating its ability to modify legislative processes. Since the 6th Legislature, the NA has also been actively discussing the concept of local councils.

There has been an important shift in official government views and attitudes towards the CSO sector, which is now seen as a potential partner in development, and one that in the long term can assume the role currently performed by many international NGOs. A number of stakeholders argue that the National Assembly has begun to assume a check and balance role through closer scrutiny of budgets and expenditure, questioning policy and making its observations public. Public understanding of the National Assembly's role is limited, with citizens viewing it as an ombudsman or mediator rather than an active representative body.

Although the formal NA committee system was established in 2005, almost none of the committees, with the exception of the law committee, were operational over succeeding years. This aspect has now changed and committees hold pre and post session meetings, review relevant legislation and on occasion may challenge the Government. There is increasing capacity to comprising two one-week inter-sessions which entail questioning Ministers, Vice Ministers or Director Generals on different aspects of policy and management. This has involved presentations by Ministers to NA members with almost 2/3rds of all members present. Although these were discussions were often consensual in nature there have led to much constructive criticism. Other initiatives have included establishing a telephone hotline facilitated a closer interaction between citizens to the government. Hundreds of calls were recorded, shared with and discussed by National Assembly members. There is a NA Newspaper which was originally produced on a quarterly basis but is now printed as the weekly Phouthen Paxason Newspaper (People's Representative). This documents important events and activities of NA members with the aim of communicating Assembly's achievements to the public. The Newspaper also publishes articles on science, technology and socio-economic and cultural issues. Issues on land, corruption, unfair social treatment and many other topics have been posed to relevant government agencies to seek clarification are often published in the Newspaper. The NA also airs the Phouthen Pasaxon programme on radio every Saturday morning from 7.30 to 8.00 AM on the AM and FM 107.3 Mhz frequency through Lao National Radio.



Other improvements have taken place with donor partner funding (UNDP) which have assisted in establishing inter-session activities for NA members. Increasing to comprising two one-week sessions which are entail questioning Ministers, Vice Ministers or Director Generals on different aspects of policy and management. This has involved presentations by Ministers to NA members with almost two-thirds of all members present. Although these discussions were often consensual in nature there have led to much constructive criticism. Other initiatives have included establishing a telephone hotline facilitated a closer interaction between citizens to the government. Hundreds of calls were recorded, shared with and discussed by National Assembly members. There is an NA newspaper which was originally produced on a quarterly basis but is now printed as the weekly *Phouthen Paxason* newspaper (People's Representative). This documents important events and activities of NA members with the aim of communicating Assembly achievements to the public. The newspaper also publishes articles on science, technology and socio-economic and cultural issues. Issues on land, corruption, unfair social treatment and many other topics have been posed to relevant government agencies to see clarification are often published in the newspaper. The NA also airs the *Phouthen Paxason* programme on radio ever Saturday morning from 7:30 to 8:00 AM on Lao National Radio.

Other important changes include an increase in the permanent membership of the NA so that now there are three permanent members in each province. At the same time, the budget for the NA offices now comes direct from the Assembly itself, thereby enhancing its financial independence. However, resources remain limited and there are only 4-10 office staff supporting NA members in any province, none of whom have had any formal training.

The overall understanding of the public with regard to the National Assembly is still somewhat limited and most citizens are not familiar with the details of its role and functions. Where citizens do have a clearer notion of its role, they will mostly point out that it is the place to file a complaint against government. This demonstrates that citizens largely view the NA as an ombudsman or mediator rather than an active representative body. This also reflects the limited overall engagement of citizens with the formal arms of government and their low expectations in terms of representation and participation. The role of government is still seen primarily as one of

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maintaining law and order and providing a safe environment for citizens to live and work. Nevertheless, things are beginning to change and many stakeholders point out that the National Assembly has become a more vocal entity, with members prepared to speak out and at times to question or even reject government submissions. This is well illustrated by the recent NA pronouncements on provincial budget anomalies highlighted by the SAO.

## **Mass organisations**

The four mass organisations in Laos, all of which have Party approval, are the Lao Front for National Construction (LFNC); the Lao Federation of Trade Unions; the Lao Women's Union; and the Revolutionary Youth Union. These are supplemented by peasant associations which also enjoy official backing. The main function of the LFNC, formerly the Lao Patriotic Front, is to promote national unity and providing a means for other organisations, religious associations and individuals to participate in meeting Party goals as members of the LFNC. In this sense it provides a mechanism for those, including ethnic groups, who are not Party members to be affiliated to the Party.

The Federation of Trade Unions provides the only legal voice of workers and has a rather unusual dual role of representing the organised workforce in terms of maintaining reasonable minimum wages and working conditions, whilst ensuring these do not result in making the sector uncompetitive in terms of attracting foreign direct investment. Although these dual objectives could be seen as weakening the concept of a trade union, it could also be argued that maintaining an acceptable balance between the cost of wages and the level of profitability will benefit the larger body of workers in the long run as the sector expands and new jobs are created. The Lao Federation of Trade Unions has gradually begun to play a more active role in protecting the rights and interests of the workforce amid burgeoning economic growth, as demonstrated by new moves to increase the minimum wage and interventions to resolve a dispute with a sugar company refusing to pay workers in Savannakhet.

The Lao Women's Union has been one of the most active mass organisations in the country, with the main objective of promoting the role of women in the economy and government. Its primary focus has been to run training and human resource development activities for women across the country, as well as representing women's interests to the Party and Government. In this way it is able to function as a useful pressure group to help offset traditional male dominance in the economy and government.

The Lao Revolutionary Youth Union is active in schools, where it serves as a recruiting ground for the Party. Though it does organise youth activities, it serves principally as a means of political indoctrination of young Lao. The Youth Union was established in 1955 as the Youth Combatant Association and has around 311,000 active members aged 15-30. The Youth Union operates across the country with the mandate of educating youth on policy guidance, party resolutions and state law, the government's socio-economic development plan and congress resolutions, and in further training young people to become good citizens. The Youth Union publishes its own magazine, newspaper, television and radio programmes targeting young people. Membership tends to be urban-centric and is seen as an avenue for potential advancement for younger people with more limited opportunities.

## **Professional Associations**

In addition to the formal mass organisations there are a number of professional associations. The more established associations such as those for handicraft producers and travel agents are very closely connected to the State and tend to be conservative in nature, while newer associations (millers, traders, fair trade etc.) tend to be more effective in representing member's interests. The Lao Bar Association, which works under the supervision of the Ministry of Justice, stands out as one of the most effective and semi-independent associations, although it has benefited from substantial donor support. The Association has a number of important functions such as protecting lawful rights and the interests of individuals and legal entities, acting as a regulatory body for licensed lawyers, providing legal training, legal dissemination and legal aid services. An established telephone hotline facilitates people seeking advice and assistance on legal issues. The LBA provides insights

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to law students about the legal profession by working closely with the Faculty of Law and Political Sciences of the National University of Laos and Souphanouvong University.

There are also other more informal groups and associations at local level such as those for water users, and commodity producer groups, which are registered at district level. These associations operate like self-help groups to address common issues faced by all members. There are also charitable foundations, which are often linked to former political leaders and other charismatic or wealthy individuals or religious associations.

Some associations, especially those in the business community, can be quite effective in representing member interests, using close links with government in an instrumental manner. The Lao National Chamber of Commerce and Industry (LNCCI) is registered as a social organisation under the Ministry of Commerce and Industry. The LNCCI was established in 1996 under Decree 316/PM and its membership includes 25 business associations covering sectors such as handicrafts, furniture, agriculture, timber, hotel and restaurants, mining and manufacturing. Members benefit from access to markets, information, training, trade fairs and exhibitions, and many form associations to gain access to training and donor support. The LNCCI reports good progress in pushing the policy envelope in a number of key areas such as introducing a visa on arrival facility for tourists and businessmen, assisting in the formulation of new mining laws, advising on new and more transparent criteria for concession bidding, introducing banking and insurance reforms with regard to leasing, and lobbying to control illegal import of meat and vegetables from China. In December 2011 the LNCCI organised the first “Made in Laos” expo in Vientiane Capital.

## **Non-Profit Associations**

More formal civil society organisations, constituted as Non-Profit Associations (NPA) with a largely socio-economic orientation, represent a relatively new and emerging phenomenon. There were an estimated 200 NPAs operating and registered in 2008, of which 32 were working in the development sector. More recent estimates place the number of development NPAs at 80, alongside 70 INGOs. Most Lao NPAs have no more than a handful of staff and around 4-5 years operational

experience, demonstrating that the sector is still nascent, with limited experience and restricted capacity. Prior to Decree 115/09 these associations registered through a variety of modalities.

There have been a number of initiatives designed to enhance capacity, including informal networking supported by DED, Concern and GAA to support peer learning, coordination and solidarity among a limited number of NPAs. Recently a consortium of aid agencies initiated a joint programme supporting an emerging civil society for inclusive development, targeting poverty alleviation and good governance. The programme was designed to contribute to creating a more vibrant civil society and to provide a more coordinated and relevant approach to improving the capacities of CSOs across different subjects. Although managerial and administrative capacities are generally weak, some organisations have been able to undertake a reasonable level of outreach training at community level, covering 1,000-2,000 trainees in various locations.

The main actors in the sector define their mandate largely in terms of community development, which provides a useful and strategic entry point for broadening participation as a whole. Stakeholders point out that the sector largely comprises young, professional and committed people who have the potential to foster, build and mentor a more vibrant constituency of actors in the voluntary sector able to engage in development in partnership with government and donors alike. They also point out that NPAs in Laos have deliberately taken on an “embedded” character to be in a position to work alongside government. This is a conscious strategy that has been adopted to establish legitimacy, thereby enabling them to operate more freely and flexibly in future. Whilst the degree of embeddedness does mean that local NPAs are much less focused on advocacy than development, it does not mean that soft and embedded advocacy cannot take place. On the whole this is a rational and pragmatic approach to gaining a foothold in a new and expanding development arena in the country.

**The international NGOs and emerging NPAs represent important resources that can be used for promoting development. In a resource-scarce context with multiple development challenges, widening the development partnership is not only pragmatic but a necessary strategy in the context of the evolving political economy of Laos.**

Decree 115/PM of 09 represents an important positive step in helping NPAs gain formal legal recognition. A perennial problem in the past was the lack of formal recognition, meaning that CSOs had no legitimate mandate to engage in development work and making it difficult to enter dialogue with government. While the decree is seen by stakeholders as a welcome initiative, providing the potential for a more productive partnership with government and the community, no NPAs were involved in drafting the decree and the registration process itself is seen as complex, intrusive and constrained. Although around 80 organisations expressed interest in registration, only ten were granted registration in the first two years, although now 16 organisations have either permanent or temporary registration. The granting of official registration licenses has been restricted to those with close links to government or those working in the business sector. The Lao Biodiversity Association has a former high ranking official of the National Social Sciences Institute; the Lao Culture Preservation and Promotion Association has an ex Minister of Information and Culture. Other registered associations include the Lao Disabled People's Association, the Lao Promotion and Assistance to Disadvantage People's Association, and the Lao Coffee Producer's Association.

The process of registration requires scrutiny of the NPA's objective, name and board members and the granting of registration can be conditional on making changes to any of these aspects. Given the complexity and level of intrusion in the process, some organisations have adopted the strategy of waiting to determine the advantages arising from registration before proceeding further. Other CSOs have linked up with formal mass organisations and thus may not require registration.

Overall however, stakeholders feel that the CSO environment is gradually improving and there is an opening up of space for different actors to work in partnership with government and the community. Actors in the sector point out that new opportunities can be realized through the formation of strategic alliances with those in government who have similar views on certain issues and topics, and that this has been facilitated by the fact that there is more open discourse on such matters in the Government. This opening up of discourse on aspects of development provides a useful platform for CSOs to form strategic alliances around a body of related interests in government in order to be better placed to work together towards a common development objective. In the same way, CSOs recognise that they could form stronger alliances with National Assembly members and help them to undertake a more effective watchdog role through scrutiny of policy and wider discourse on development.

Stakeholders argue that Laos has the potential to formulate an alternative development pattern. It has already made the transition from a socialist economy to a market-oriented economy and now stands at a crossroads in terms of socio-economic transition. Those active in the CSO sector are eager to influence the direction of change towards a sustainable model of development within the broader context of Lao polity and society.

Whilst the general environment for NPAs is seen by most actors within the sector to be moving in a positive direction, INGO stakeholders point out that, rather ironically, their operating environment appears to be getting more constrained. New minimum investments are required to qualify for the establishment of a representative office, new and more stringent visa rules have been established for staff, who will no longer enjoy exemption from income tax, and operational permits have been reduced from two years to one year.

Overall, the INGO and emerging NPA sector represents an important resource that can be used for promoting development in a resource-scarce context. There are multiple development challenges in the need to extend services to the poorest and most remote communities, in an ethnically diverse landscape with multiple disparities and variances across communities. The complexity of this task, coupled to limitations in

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financial, human and technical resources, means that widening the development partnership is not only pragmatic but a necessary strategy in the context of the evolving political economy of Laos.

## **Citizen Participation in Planning and Service Delivery**

One of the main manifestations of participation to date derives from citizen engagement in participatory planning and implementation of services through a wide range of development projects that emphasise participatory approaches. In addition, there are varying degrees of participation in the formal system of annual planning and budgeting, as reflected in the draft Participatory Planning Manual of the Ministry of Planning and Investment and the Leading Committee on Rural Development.

**Participatory processes to date, whilst being confined to planning and implementation of services, have helped to offset gender bias in local decision making, although women still participate less actively and in smaller numbers than men.**

The Participatory Planning Manual sets out a process of bottom-up planning, which begins at the family level, drawing on inputs from community members, and is collated and prioritized into a village and *kumban* level plan which is then submitted to the district. The degree of participation at village level varies from more extensive engagement with households, involving simple tools and techniques, to less intensive participation based on discussions at the regular monthly village meeting. Once the village has agreed its priorities, these will be submitted to the *kumban* through the elected village head. The *kumban* itself was originally conceived as a unit of government primarily designed to promote political and ethnic unity through control and development involvement, managed by appointed functionaries working alongside district staff and sometimes with provincial line departments.

Although the mechanisms for greater participation in *kumban* planning have been formally defined in the manual and include group discussions and feedback based around specific sets of interest (i.e. farmers groups, women's group, mixed groups etc.), in practice this rarely happens and the process is altogether more guided and directed than contested and



debated. The manual is being simplified at present to make it more practical and widely applicable. At the same time, there is trend towards strengthening participation at the *kumban* level, and this is being reinforced in as many as 274 of the poorest *kumban* through facilitated processes under PRF 2. Organisations such as the Gender and Development Group have also attempted to strengthen participation in local planning and development, facilitating forums or workshops to bring together different interest groups in a structured manner under the chair of a senior district government functionary.

Participatory planning processes have opened up the space for more active engagement of different sections of society at community level. Experience has shown that whilst people are prepared to speak out in the presence of the village head, they are much more reluctant to do so in the presence of outsiders, including government functionaries. This means that in the absence of external facilitation it has been difficult to capture community views and concerns. This has a serious implication for any attempt to promote participation, which requires intensive levels of support, especially at the initial stages, if it is to result in meaningful engagement.

At the same time this newly opened space for participation has clearly demarcated boundaries where the focus of engagement is more technical in nature, primarily concerning the type and location of service to be provided. However, this space clearly provides an opportunity for promoting more active citizenship in terms of increased voice and accountability of government. Participatory processes to date, whilst being confined to planning and implementation of services, have helped to offset gender bias in local decision making, although women still participate less actively and in smaller numbers than men. Stakeholders also point out that these have helped people gain a better understanding of the local context and appropriate forms of intervention and linkages with government. All this provides the essential base from which citizens can graduate to more extensive engagement and active citizenship.

## Media

A key dimension in widening participation relates to the availability of information and the means to make this accessible to a wide diversity of citizens. In order for citizens to participate in and engage with society as a whole, they need information that is more than simply propaganda and/or the dissemination of laws. They need information that will allow them to consider options and make informed choices about their own development strategies and actions. Laos faces a number of challenges in this regard. Firstly, the Government still retains a strong sense of the need to promote unity and security, given the recent history of war and socio-political fragmentation, and consequently tends to approach the issue of information in a cautious and controlled manner. Secondly, the socio-physical characteristics of the country, with extensive ethno-linguistic diversity, means that there is no single, simple information channel or medium that can disseminate to all citizens equally. Thirdly, the prevailing high levels of illiteracy and poverty limit the degree of engagement people have with the wider regional or national context. Finally, there are strong cultural barriers to using information in a challenging or confrontational manner and, while this is a common feature in many Asian consensual cultures, this is more pronounced in Laos than in many neighbouring cultures including Vietnam, Cambodia and Myanmar and Thailand.

The media has grown rapidly and plays a key role in disseminating official news to all layers of the society. The dissemination of print media products from the capital now reaches more readers in many provinces and remote districts. There are five national daily newspapers: *Paxaxon* (People); *Pathet Lao*; *Khaokila* (Sports Daily News); and the English-language *Vientiane Times* and *KPL News*. There are several weekly newspapers published in Vientiane and distributed nationwide such as *Renovateur*, (French language) and *Van Athit*. KPL News is available on the web in Lao, French and English. Since the 1990s a small number of regional Lao-language newspapers have been established along with six magazines and a private Lao newspaper (Vientiane Mai). Apart from these, there are many other in-house newspapers and journals published by the Party Central Committee and various state bodies, public organisations and official institutions. On the whole the print media remains conservative and cautious and practices an

extensive degree of self censorship. Some newspapers, particularly the Vientiane Mai and Vientiane Times, along with foreign newspapers and magazines provide increasing space for reflecting citizens' opinions on various topics such as land and corruption issues.

A new media law has been enacted enhancing the role of the mass media and an increasing number of participatory communication initiatives (e.g. community radio pilot projects) have contributed to improving the environment for progress. A number of aspects of the media have opened up over the last few years as a result of increasing commercial penetration of media space by private media companies, and new channels of communication that are beyond the reach of government to control. These include mobile phones, internet and social media, DVDs and other forms of communication.

Through Thai television, among the most popular forms of media in Laos, the urban population has become increasingly aware of issues of debate and protest in Thailand and Myanmar. In contrast Lao media is viewed as dull and predictable, though the Government has recognised the need to upgrade it through substantially increased investment.

There are 29 national television stations, of which three are central-based Lao TV channels broadcasting daily news and entertainment programmes country-wide. Lao Star TV can be accessed in 25 countries around the world and Lao National TV screens ethnic language programmes. Two Chinese cable television companies provide satellite access to numerous foreign TV channels. There are over 30 radio stations including national radio, province and district radio and some community radio stations. Private companies broadcast radio programmes at specific times for commercial and entertainment purposes. Satellite TV dishes are now reaching many remote mountainous areas, allowing people to access not only government media but various sources of information.

Among the most popular forms of media is Thai TV, received through satellite and cable. Its professionalism and financial resources allow it to produce and televise a wide range of drama, entertainment and news programmes, which are accessible to most of the Lao population

in varying degrees. Whilst popular interest is mainly confined to entertainment, the urban population has become increasingly aware of issues of debate and protest which have manifested themselves in neighbouring Thailand and are beginning to unfold in Myanmar. The level of awareness on such issues is surprisingly high in urban centres. Lao State broadcast media, comprising National Lao Television, Security TV and State Radio, suffer from a lack of resources and professionalism, relying on poorly trained journalists and heavily censored content. The result is less entertaining programmes focusing on news, government propaganda and light entertainment in formats that most viewers consider dull and predictable.

Almost all stakeholders in urban centres claim that they hardly watch Lao TV, although there is some openness towards listening to Lao radio, which features commercial inputs that have infused a more modern format. These stakeholders are quick to point out that official Lao media lacks debate and interest. Part of the problem relates to the lack of training for journalists and media professionals. The National University of Laos has initiated a new mass media degree and the Ministry of Information, Culture and Tourism runs in-house training twice per annum, sometimes with assistance from experts from European and Asian countries.

With current economic growth and the inability to close off the inflow of global media, the Government has recognised the need to upgrade the quality of radio and television broadcasts and of newspapers and magazines, through a substantially increased investment in the media sector. Besides this direct investment, the mass media is also being encouraged under Decree No. 36 of 1993 to obtain income from other sources to improve its quality.

## **Internet and Mobile Technology**

Internet and mobile phone use are growing rapidly, expanding beyond urban centres and the middle classes to an increasing number of the rural population. Use is mostly confined to personal and social messaging, social media exchange and entertainment. There has been substantial growth in mobile phone ownership, from 55,000 in 2002 to around one million users now. Mobile networks are quickly expanding coverage

in remote rural areas and 60% of the rural population has access to a mobile phone. With a lack of government restrictions, internet usage has also grown substantially, but at a slower pace. Informal estimates put internet users at around 100,000, most of whom are government officials, intellectuals and students, media and business people. It should be noted, however, that the Government has introduced more stringent regulations over the mobile phone market, requiring users to register all their contact details prior to obtaining a connection.

There is good potential for developing new approaches to participation through new communication channels that can be tailored for different forms of social media that will address a wide range of political, socio-economic and cultural issues of concern and interest to the broader population. Such an initiative would build on the expanding network and provide information outreach to over one million people directly, and no doubt to many more indirectly. With over 15 million Lao speakers in Thailand, the opportunities for wider communication and debate are significant. There is an emerging interest amongst some sections of civil society and donor partners in developing a broader coalition and potential interventions around these issues. This represents a different approach to civil society, where rather than focusing on specific advocacy or development organisations, the focus is on mechanisms that are less threatening in the sense that they have no organisational status yet are more powerful in terms of forming and shaping ideas through the use of new networks and forms of social interaction.

## **Key Issues and Potential Entry Points**

### ***National Assembly is Critical for Representation***

The National Assembly is one of the key agents in ensuring participation in government through a formal representative structure that has constitutional status, legal recognition and formal legitimacy. It provides an important check and balance role in relation to the other branches of government. The Assembly is thus a vital part of the representative structure of the wider government system and provides space for the participation of citizens in governance.

There are a number of issues that need to be addressed if the NA is to evolve into a more effective representative body in the longer run. Firstly, the timing and duration of sessions severely constricts its ability to function, Secondly, concerns have been raised about the process and quality of debate given the high workload, with 91 laws to be approved within a period of 100 days as set out in the 7th Legislature Assembly Agenda.

In spite of many shortcomings in the electoral process, nature and form of representation, role and functions and capacity and resources, encouraging developments have served to strengthen the representative role of the Assembly in recent years, although these have been incremental in nature. As some stakeholders have argued, the Lao National Assembly is more progressive than the Supreme People's Assembly in China in terms of its role and the way in which its members have interpreted that role in recent years. Strengthening the National Assembly is a crucial aspect of the wider task of helping to establish a distinct and unique governance system based on structures that exist and have legitimacy.

There is no formal representation below the National Assembly at provincial, or district level. However, there has been a slow but growing interest in deepening scrutiny at provincial and district through more effective auditing and controlling of provinces and hence governors. Although the 2006 Budget Law centralised revenues, this has not yet been fully implemented - hence the desire of central government to strengthen audit at provincial level. This is consistent with the view of Party leadership that there is a need to adjust the balance of power in favour of the centre by strengthening the role of national bodies to oversee and scrutinise activities at provincial level. At the same time there is recognition of a complimentary need to develop arrangements that will increase operational autonomy at lower levels and strengthen representation. This represents a broadly favourable environment for the possible emergence of provincial councils, alluded to at the 9th Party Congress. Given that such councils may well materialise in the next few years, there is good scope for deepening forms of formal participation in government with closer outreach and links to districts than the present National Assembly constituency operation.

## ***Participation as an objective not a process***

Participatory planning and appraisal techniques used by a variety of projects in many contexts will help to strengthen community engagement, often to good effect. However the use of externally designed tools and techniques to stimulate greater involvement in local decision making is often time consuming, costly and not particularly replicable in the absence of facilitation. Here there is a need to experiment with a variety of mechanisms that will allow for good enough levels of participation to offset any obvious biases in decision making. In communities without significant socio-economic differentiation, one of the main issues to address will be gender bias and this can be achieved through a relatively simple but conscious approach to ensure female participation in local decision-making and prioritisation processes. Here the main consideration is to ensure that participation is seen as an objective and not a process, and may in fact take many diverse forms rather than compliance with a particular set of methods.

## ***Enhancing the Role of Civil Society***

A key factor in enhancing the role of civil society is the degree of willingness on the part of government to develop new ways of working with different types of actor. Whilst government has developed a sense of confidence in working with the private sector, it remains cautious of private voluntary agencies. There are increasingly more educated and progressive cadres in the Party who recognise the need for developing new ways of working, but it is not clear if this translates into an acceptance of more active citizenship in processes of decision making. There are signs, however, that the Party and Government recognise the need for a broader partnership with civil society actors for implementing development programmes. The National Assembly has a progressive view on CSOs as a potential resource for helping it perform its role in monitoring and holding state agencies to account, and NA members welcome increased dialogue between civil society and government. There is also recognition that different actors may have different skills in reaching out to remote communities to increase access to services. In this context there is an important emerging space for formal civil society organisations to become more active in development and service delivery. At the same time there is greater acceptance of

citizen participation as a means to improve planning, enhance service delivery and strengthen accountability of the government.

However, a number of political constraints still persist. There remains a strong culture of top-down direction and management of citizens. This culture persists is widely practised across all government institutions. The text of the 9th Party Congress, referring to the nature of engagement of citizens, talks of “creating a space where people can study holistically and receive information on Party and government policies and action plans; this will create public awareness and unite people to implement the policies and plans of the Party and State.”

Stakeholders in the CSO sector recognise these limitations and advocate a pragmatic approach to this problem based around focusing CSO efforts and activities on local development, service delivery and capacity building at community level rather than advocacy on rights and entitlements. Such an approach is generally uncontroversial from the government perspective. Most CSOs therefore see themselves as a partner to government, bringing in new knowledge and innovative models. Stakeholders in the CSO sector are also keen to evolve new ways of working that will enable them to operate along similar lines to the existing formal mass organisations and associations. It is clear, for example, that formal associations such as the LNCCI, with stronger links to government, have been able to address some policy issues and promote change, albeit along narrow interests.

New partnerships and approaches will gradually empower civil society organisations to participate in implementation and monitoring and to identify shortcomings and improvements in service delivery, thus laying the foundation for more meaningful engagement in the long run. There is however, a clear limitation on the absorptive capacity of CSOs to take on funded development activities, given their own limitations in terms of staff, resources and systems. The potential for substantial increase in the number and scope of civil society organisations is limited, although more could be done to enable these organisations to partner with government in a variety of service delivery and development activities. Although many Non Profit Association actors feel they can absorb more funds, to make this practical substantial capacity building would be needed in programme management and fund administration.



Given the possible emergence of provincial councils in the next few years, there is good scope for deepening forms of formal participation in government with close outreach and links to districts. There is now greater acceptance of citizen participation as a means to improve planning, enhance service delivery and strengthen accountability. However, the culture of top-down direction and management of citizens remains strong, and most in the CSO sector advocate a pragmatic approach to local development rather than focusing on advocacy and rights and entitlements which will only be opposed by officials.

Since most NPAs are set up by well intentioned people who are also well connected, there is a useful window of opportunity emerging to assist CSOs to enter the development space and capitalise on the energies and commitment of those actors who government acceptance to open up new avenues for participation and new spaces in development. Once their role is better established it may be possible for them to develop more capacity to build citizen awareness on rights and entitlements, and to help monitor the degree to which these obligations are met by government.

### ***New Forms of Participatory Networks and Engagement***

There is an increasing need in the contemporary development context of Laos to identify new and more innovative ways to broaden participation and engagement in public policy dialogue and influence. As seen above, there are already established mechanisms for certain defined groups, such as the private sector, NPAs and others, to begin dialogue with government. With donor-partner backing these groups have begun to participate in formal development partner meetings, sector working groups and round table meetings.

There is however, increasing scope to explore new ways of engagement based on existing and rapidly expanding forms of virtual communication through the internet and internet-enabled mobile technology. This can be used to disseminate public information and economic market information, but also to open new spaces for dialogue and debate on

public policy. These forms of communication have already expanded access to information for millions of users around the world and have the potential to reach out to a substantial number of the population in Laos. It is known that mobile technology has empowered many poorer people (and often poor women) in countries such as India and Bangladesh to engage in market transactions and to access credit and services in new and effective ways.

Whilst it is recognised that such forms of information and communication may only appeal to a limited number of predominantly urban middle-class people in the first instance, with intelligent editing, information can be easily tailored and presented to appeal to specific segments of the population (young, middle aged and elderly) to great effect. At the same time, it is recognised that this enterprise will tend to be oriented to more articulate and advantaged sections of society with the capacity and interest to engage in advocacy and to debate on issues of public concern. These new forms of virtual media are unlikely to be a channel for ordinary citizens to represent themselves, but do offer enormous potential for younger sections of the future elite to find new ways of networking and articulating with the State. It is precisely from this group that the next generation of entrepreneurs, intellectuals, and administrators who will shape the future policy direction of Laos will emerge. In the long run, these spaces for participation will become more important as an influence on policy than many more formal civil society organisations, which depend on a small but vocal leadership that make claims to representation with no substantive support beyond a limited membership group.

## **Conclusion: Recent Changes, Drivers of Change and Future Trends**

The overall environment for greater levels of participation in formal structures of decision making and in the planning and implementation of local level development would appear to be much more conducive than it was a few years ago.

### ***Recent Changes***

There have been a number of recent changes in the character and functioning of the National Assembly, enabling it to evolve into a more

effective agent of participatory governance. In the 7th Legislature there are fewer members who are senior Party and government functionaries and a number of members were not necessarily the favoured candidate on the approved list. This means that the 7th Legislature not only has more members who are not in other branches of the government but also representatives who are not Party members. At the same time, the Assembly has begun to assume a check and balance role through closer scrutiny of budgets and expenditure, questioning of policy and making its observations public. The current Assembly membership is more educated and younger than in the past.

There has been a positive shift in official views and attitudes towards civil society organisations as those in government recognise the need to open up the space in service delivery for a wider range of actors and resources. Decree 115/PM of 2009 on Association marks an important step in the formal recognition of NPAs as partners in development. In spite of a slow and intrusive registration process, NPA stakeholders feel that there is an opening up of space for different actors to work in partnership with government and the community, and that new opportunities can be realized through the formation of strategic alliances with those in government who have similar views on particular certain issues. This provides a useful platform for CSOs/NPAs and individuals in the Government to coalesce around a set of related interests.

Many mass organisations and professional associations have begun to change their way of working. The Lao Federation of Trade Unions has begun to play a more substantial role in promoting workers rights and interests. The LNCCI reports that they have made good progress in pushing the policy envelope in a number of sectors including tourism, business, mining and leasing.

A new media law has enhanced the role of mass media and helped to increase the number of participatory communication initiatives. There has been a major expansion in print, radio and TV media in recent years in terms of access, choice and coverage, though content remains largely confined to the dissemination of official news or entertainment. Although popular interest in the media is almost wholly restricted to foreign (Thai) entertainment, increased access to foreign news is

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opening up new ideas and events. There has been a substantial growth in internet and mobile technology with over 1 million mobile phone subscribers with access to a wide array of web-enabled social media.

### ***Drivers of Change***

The essential driving force behind the recent changes in approach to participation would appear to be based on a series of complementary factors. At the formal level, it is increasingly understood in government that the National Assembly should play a more pro-active oversight role over legislation and expenditure, since it can perform a check and balance role without threatening the foundations and fabric of the system. The senior leadership of the National Assembly has also acted as a significant driver in this process, including the current Prime Minister, who was the NA President and recognises the useful role the Assembly can play in the oversight of various aspects of government.

At the civil society level, the main changes can be attributed to a growing awareness in Government, especially the executive machinery, that civil society organisations can play a useful role in the delivery of services and are more easily managed than INGO actors. At the same time, there has been consistent pressure from donor partners to open up space for civil society organisations to assume a more effective role in supporting local development processes.

### ***Future Trends***

As already shown in the governance section, the representative role of the National Assembly is gradually taking shape with a new composition and character enabling it to assume a more pro-active policy oversight role. This is likely to continue over the next few legislatures. With focused funding and support on building more effective constituency representation and greater oversight capacity, the role could be substantially enhanced in future.

There is a positive trend towards increased citizen participation governance through various formal, semi-formal, and informal institutions. There are around 80 Non Profit Associations active in the development sector and there is increasing acceptance from the Government of civil society

organisations as potentially useful partners in community development. Although NPAs and CSOs have adopted an essentially embedded role in support of existing development processes, rather than adopting a more rights based advocacy approach, this is probably a pragmatic and instrumental strategy in the present context.

## **Chapter 6: Underlying Structures and External Influences**

### ***Economic Governance***

The underlying structural character of the Lao economy is a significant factor in determining the nature of contemporary political economy and is thus a key driver of change. There has been considerable expansion in both foreign and domestic investment with over US\$1 billion recorded in the first half of the 2010-11 fiscal year, a 66% increase on the previous year. \$900 million of this was foreign investment, over half of which was accounted for by import of equipment. The value of foreign aid in the same period was \$304 million, roughly equivalent to real capital foreign direct investment.

The country is rich in natural resources especially land, forest, minerals, water and hydropower potential. Preliminary results from a current study on land management (Heinimann 2011) under LMRP indicate that more than 5 million hectares of land has been allocated to concessions, equivalent to 21% of the total land area. Of this 4.2 million hectares relates to mining exploration areas, accounting for 10% of the total land area. By 2009-10 hydropower and mining alone were contributing over 35% of total GDP and 20% of total revenue in 2009-10 (World Bank Lao Development Report 2010). At the same time, the revenue generated from this economic model is substantial and has been the driving force behind the rapid rise in annual government revenue, which was estimated at of around \$1 billion per year (2010) and projected to rise to \$2 billion over the next five years, largely on the back of minerals and hydropower.

As a result, the country has already reached tenth position in a ranking of mineral dependent world economies. The political economy of raw material extraction is a complicated issue. While many mineral dependent countries see mining as an effective path to development there is a

serious danger that such dependency will lead to “addiction”. This can be a precarious development path, particularly in a context where the major source of national economic wealth relates to taxes and fees imposed on externally-controlled operations with investment regimes that allow profit repatriation. The LNCCI reports that the Government has issued 120 mining concessions to date but only a few are operational as many concessions have been acquired for speculative purposes by investors who are not able to meet the operational conditions laid out in the contract. There are also damaging environmental impacts from poorly-controlled mining in areas through practices such as gold dredging, which releases mercury and cyanide into freshwater. The Government has placed a moratorium on all further mining concessions while it considers arguments about the positive and negative impacts of mining on the economy. Given the vested interests in the sector, it remains unclear as to how the Government will proceed.

After mining, the second largest type of land concessions relate to agriculture. These cover over 330,000 hectares, almost all concentrated on favourable arable land, which constitutes no more than 20% of the country’s total land area. The largest single type of agricultural concession is rubber, which currently accounts for 43% of all agricultural concessions (Heinimann et al 2011). FDI in rubber and similar commodities is adding a layer of complexity, with increasing penetration of rural space by large commercial actors increasing levels of vulnerability among the rural poor, who experience reduced access to land and other natural resources and lack the skills required to diversify into new forms of livelihood. A further problem is that 40% of the ethnic population in mid- and upland areas are bearing the brunt lost access to land and traditional livelihoods.

## **Land Governance**

The economic vulnerabilities are exacerbated by poor land governance. There are a variety of institutions involved in allocating and regulating land concessions as each level of administration (district, province, and national) can approve concessions up to a certain size in area. This decentralised approval system, coupled with weak governance processes and highly dynamic investments, further reinforces vulnerabilities. Given the weak overall management of land concessions

and investment there is no consistent data and information on the number, size and location of investments or investors in land and natural resource development in the country. As a result, neither policy makers nor development actors have an evidence base for the benefits and trade-offs of past and current land investments. This greatly hinders effective and transparent land governance and economic management.

Over 85% of all agricultural investments are foreign, most of come from China, with the balance being Thai, Vietnamese, Korean and Indian inward investors (Heinimann et al 2011). Although there are secondary gains from informal charges and payments to facilitate entry and operations, the benefits of these gains are largely if not wholly channelled into conspicuous consumption rather than production, with minimal wider benefits. Moreover, Chinese investors have been pressuring the government to increase the quota for more competitive Chinese migrant labour, thereby further driving down wages. The World Food Programme (WFP) argues that this model of economic development is not only exacerbating inequality but also induces environmental shocks associated with deforestation, droughts and floods.

**Dutch disease, which can undermine long-term economic performance and result in a 'resource curse', is often worse in aid-dependent countries such as Laos. Mining exploration areas cover 4.2 million hectares or 10% of total land area. FDI in rubber and similar commodities leads to penetration of rural space by large commercial actors, increasing vulnerability among the poor, while investors push for increased foreign labour quotas, thereby driving down wages. WFP argues that this exacerbates inequality and also induces environmental shocks.**

Estimates show that land concessions to date have affected over 1,000 villages, 22% of which have been affected by as many as four concessions, and 26% of which have poverty rates above 50%. Whilst advocates argue that concessions make use of and add value to under-used land, critics point out that they have serious detrimental impacts on livelihoods, food security and poverty, as well as on biodiversity. The implication is that there is an urgent need to assess the current and future impacts in more detail and to introduce more diligent and transparent management of vital land resources.

Hydropower offers significant opportunities in terms of contributing to growth, with a projected two new dams coming online every year for the next two years. The Nam Theun 2 project is seen as a model in terms of environmental and social mitigation. However, even here, income opportunities have been foregone as long-term price agreements with Thailand have pegged revenue from electricity sales, delivered through a dedicated line to Thailand, at 4.2 cents per unit, substantially below the Thai domestic price of 8 cents. At the same time, the projected growth in revenues accruing from large-scale hydropower projects over the next few years may not materialise if the consequences of continuing recession in Europe affect the Thai economy. The lack of credit among the European banks which dominate large project lending will also limit the scope for investment and expansion, demonstrating the vulnerability of dependence on a narrow economic base.

## **Management of FDI**

The precarious nature of a growth model based on primary sector activities in mining and commodities will be substantially heightened by any rising operational costs or downward trends in world commodity prices, especially in a context where there has been limited economic diversification. Fluctuating commodity prices can mask long-term vulnerability and dependency, resulting in a situation where those with the greatest need to avoid dependency on a narrow sector are often the least able to do so.

It is for these reasons that many economists have identified a close correlation between a fast-expanding natural resource based economy and the “Dutch disease” effect, where a rapid inflow of foreign direct investment coupled to a sharp rise in commodity prices will lead to real exchange rate appreciation, rising labour costs and structural imbalances that undermine the competitiveness of the sectors, especially light exports, that are needed to help diversify the economy and reduce vulnerability. Manifestation of Dutch disease is often worse in cases where a country is also heavily aid dependent, as in Laos. Dutch disease often undermines long-term economic performance in resource dependent economies, resulting in a ‘resource curse’. Laos also suffers the disadvantage, in economic terms at least, that there is almost no value chain addition to mineral and ore extraction as most processing is done elsewhere. Many would argue that during a resource boom, economic and political interests coalesce to lock



economies into a specific developmental trajectory based on the emergence of a rentier class inextricably linked to the dominant political structures and systems.

This process is exacerbated by a number of factors including the speed and scale of such transformation. All forms of economic growth create opportunities for individual wealth creation but some forms have a greater distributive effect. One of the essential problems of growth through large-scale commercialization of the primary sector, including extractive processes and plantation production, is that circuits of capital generated from such growth are inherently narrow. When these are superimposed on externally-driven investment with necessary provisions for repatriation of profits, then wealth creation is confined to the small segment of co-investors and others who play instrumental roles in investment mediation. At the same time, there is competition for access to land between the different interests of the natural resource economy, including mining, hydropower, agricultural commodity production and the vast mass of subsistence smallholders. It is, not surprisingly, the latter category that are the losers in this as their access to land gets squeezed between the competing interests of large primary sector actors.

**A problem with growth through primary sector commercialization is that wealth creation is confined to those with roles in investment mediation. It would be prudent to concentrate less on providing incentives and to focus instead on attracting progressive investment through better economic governance, transparency and legal certainty. A broad and stable internal political coalition can encourage pro-growth policies and supporting institutions if there is space for the debate and adoption of alternative strategies.**

Another challenge arising from the underlying structure of the emerging economic model is the degree to which the revenue generated from the model can be optimized, given that these revenues will provide the major source of investment in infrastructure and human capital in future years. When the source of revenue growth is generated within an investor-friendly climate, characterised by varying degrees of flexibility, inducements and incentives, there is a risk of substantial potential revenue loss in the scramble for inward investment. This can be further exacerbated when negotiations are conducted at various levels of

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government offering varying degrees of incentive. It is reported by observers that many concessions have been granted to investors at low lease rates over long durations without any Corporate Social Responsibility (CSR) obligations.

A more strategic approach requires a coordinated and coherent effort to managing land concessions and generating the information required for negotiating benefits and trade-offs. It would be prudent for the Government to concentrate less on the provision of incentives, formal and informal, and to focus instead on ensuring that the foundations of economic governance, transparency and legal certainty are in place as a more powerful force for attracting progressive inward investment. In the absence of this, the economic space will tend to get populated, if not dominated, by companies of potentially dubious credibility. However, there are cases of productive and responsible investment in all sectors. Nam Theun 2 is a showcase project and a number of large Australian investments are undertaken in a fully transparent and responsible manner with CSR provisions to mitigate any negative consequences. What is required is a step change in the governance of concessions to be applied to all FDI within a much tighter rule of law.

Overall, it can be seen that a major limitation of the current development model is highly dependent on a natural resources sector which has innate vulnerabilities. Much of this growth is directly linked to China's scramble for food and mineral security. There has been little or no growth in the smallholder agriculture in which the vast bulk of the population are engaged, while competitiveness in the non-resource economy is sliding and there is little development in the domestic manufacturing sector. There is a need to slow down and refocus investment management. Wealth creation is largely related to a limited number of actors who intervene in circulation, rather than production of capital. Alongside the conspicuous consumption of imported goods that results, an increasing number of smallholders have reduced access to land, food security and livelihoods. This can only be adequately offset through effective redistributive processes. Although revenues from charges, fees and taxes are available for investment in infrastructure and services, unless these are optimally negotiated and well managed, the redistributive effects will be limited and wider wealth creation will be severely compromised. When many governance institutions are weak

and lack basic managerial capacities, there is no guarantee that these earnings will be well managed.

Ultimately, the nature of the underlying economic model is inextricably linked to the political system within which it operates. Political coalitions lay the foundation for development of state and other institutions, and changes in coalitions drive changes in policy responses to resource booms. Even if it is not possible to entirely avoid the symptoms of Dutch disease, it may be possible to keep them in check despite the fragility of state institutions and systems. A broad and stable internal political coalition can encourage the adoption of pro-growth policies and supporting institutions, provided there is space for alternative strategies to be debated, considered and adopted in a manner that will not undermine the essential stability of the dominant political coalition. As new strategies are developed, economic policies will change and vulnerabilities and dependencies may decline.

## **Political Structures and Processes**

The political system in Laos is based on a concept of democratic centralism, characterised by a unified hierarchical structure in which open debate takes place within a closed (Party cells) environment at lower and intermediate levels of the Party (democratic aspect), whilst decision making, direction and leadership take place at the highest level of the hierarchy (Politburo and Standing Committee). Once a decision is made by majority vote, there is a strict requirement to adhere to and uphold the directives of the highest authority (centralist aspect).

The system is further characterised by strict Party discipline and the subordination of the minority to the majority. Whilst the directing bodies of the Party are elected (Party cells and Standing Committee), members of the highest decision-making body (Politburo) tend to be preselected from among the elected based on a mix of competency, suitability and patrimony. Those that attend the five-yearly Party Congress are elected from the Party cells and have an opportunity to influence broad policy and strategy within a generally consensual environment.

As defined in the Constitution, the Party plays a leading role in all aspects of the State including the legislature, judiciary, and executive. In practice this means that senior functionaries in all branches of government are appointed by the Party and assigned roles by virtue of Party membership and loyalty.

One of the outcomes of this form of democratic centralist structure and system is that the strong central direction of policy implementation at all levels of administration can eliminate the confusion and contradictions of more pluralistic contexts. This system has clear advantages in terms of establishing and consolidating political unity and stability, which is a fundamental requirement in any post-conflict state, where there is an urgent need to ensure security and law and order as the basis for any subsequent development. At the same time political unity and stability is a positive attribute in any fragile state where government structures and systems are not yet fully in place.

Moreover, political unity provides an opportunity for developing medium- and long-term development perspective and strategies that are not subject to sudden changes and reversal. This stands in contrast to many more pluralist political systems, where policies are often used for the purposes of political party expediency and voter manipulation, rather than for any development rationale. There is ample evidence from other Asian countries that pluralistic political systems can breed populist policies designed to win votes, but which often undermine development strategies. For example, the widespread distribution of heavily subsidised goods and rations to win over votes often leads to enormous leakage and costs that outweigh any developmental gain.

However, the potential strengths of a one-party system with a high degree of political uniformity can only be realised in a context where policy making is informed and shaped by a high degree of internal expertise, and where there is an efficient, effective and responsive bureaucracy able to deliver high quality service to citizens.

Whilst the unified political party system in Laos has created a stable and secure environment for the rapid development of a market economy, which has had a strong positive impact on GDP growth, the system is struggling to deal with growing economic dependency, increasing

disparities and inequalities, and the requirement for effective law enforcement. These problems are partly a product of the political system itself, and hence part of the solution lies within the political realm, in terms of strengthening those aspects of governance that remain weak. There are signs that the Government has begun to realise the necessity of introducing incremental reforms that will address a wide range of existing problems and challenges. These are not only about increasing the efficiency and performance of the administration in delivering services but more crucially about strengthening transparency and accountability within the Party and Government at all levels.

A number of factors would help to create a more enabling environment. These include providing more public access to information; opening up new spaces for debate and dialogue with government; more effective audit and scrutiny by the agencies charged with this task (including the National Assembly, Government and Party Inspection Authorities and State Audit Organisation); curtailing extra-legal behaviour within the system by reducing the extent and scope of discretion in decision making; and adopting a more effective and independent law enforcement process.

**Strong central policy implementation at all levels can eliminate the confusion and contradictions of more pluralistic contexts. This system has clear advantages in establishing and consolidating political stability, a fundamental requirement in any post-conflict state. However, while the unified political system in Laos has created a stable environment for a market economy with strong GDP growth, the system is struggling to deal with growing economic dependency, increasing inequalities, and the requirement for effective law enforcement.**

There are signs that there is some momentum in government around a number of these issues. The 9th Party Congress resolution emphasised the need for a clear distinction of roles between the Party and State; the National Assembly has been granted the power to appoint the State Audit Organisation as a more independent body to audit government accounts; the NA is now more inclined to question and scrutinise government policies, laws and activities; there has been a concerted effort to rejuvenate aspects of the Party and Government, as evidenced

by the entry of younger cadres at senior level; two-thirds of NA members now have graduate or post-graduate degrees; there are a number of new, younger and well-educated vice ministers in government; there is more diversity of opinion and open dialogue and all levels of the Party; and actions have been taken to address cases of gross misconduct and corruption, although these have been handled internally within the Party and Government.

## **Culture, Social Relations and Patrimony**

Laos has a long tradition of patron-client relations that have reproduced themselves over multiple periods of history to provide a framework of social hierarchy articulated within the socio-political structures that evolved over time. A key feature of traditional social structure was the *sakdina* (feudal) system characterised by a complex web of reciprocal duties and obligations between those at different levels of the social hierarchy. The system was governed by a code of practice in which leaders were obliged to observe certain standards of behaviour towards others in return for duty and loyalty. While the system was structured around innate hierarchy and strong patron-client relations, in Laos such patronage behaviour was rarely accompanied by the substantial social distance found in many other Asian cultures. In Laos traditional *sakdina* relations provided sufficient space for different social strata to have various forms of contact beyond ritualised economic activity, and in this sense was not fundamentally exploitative. As these relations were mediated by and through a weak state structure, there was a higher degree of interaction between different social strata.

These factors help to explain the continuity of traditional social systems over time, where deeply embedded modes of behaviour are reproduced and reinforced through notions of mutual respect and cultural identity. Whilst the change of regime in 1975 resulted in an end to the politico-economic superstructure of the former regime, it has not resulted in any fundamental change to the underlying modes of social conduct in spite of various attempts, such as collectivisation and political education, to eradicate traditional notions of social hierarchy and behaviour. Although the change of political order post-1975 has offered new channels of upward social mobility, especially for Party functionaries, these have blended over time with more traditional

notions of social hierarchy, resulting in a hybrid culture which is both technocratic and patrimonial. The new hierarchy of the Party combines traditional patron-client relations with more functionalist modes of behaviour associated with technocratic management. In this hybrid culture, traditional notions of duty and obligation have been reinvented around the granting of favours and privileges mediated through a modern form of patrimonialism, in which the old sakdina culture has been reproduced and reinvented through new circuits of patronage and wealth creation infused with an ideology of egalitarianism which helps to obfuscate the objectives and outcomes.

In this context, it can be seen that Party and social hierarchy are inextricably linked, where one's position in the Party reflects one's position in the social hierarchy. The political system has not replaced concepts that underpinned the old social order but has reinvented these so that upper echelons of the Party hierarchy continue to retain a strong historical social base rooted in the persistence of sakdina culture. Here it is common to find members of the upper strata taking on the symbolic trappings of past hierarchy. This helps to consolidate and legitimise authority and thus reinforces the dominant political structure. A key feature of this socio-political culture is that everything works on the basis of family and personal relations as opposed to formal procedures and due process and almost everything is negotiable. Whilst economic capital is important, its main significance is the way it converts into social and political capital. Upland villages, in contrast, have quite different socio-economic relations. These are largely egalitarian in nature and make decisions only when all parties are satisfied through a system of consensus which can require a long drawn out process.

**The Party combines traditional patron-client relations with more functionalist modes of behaviour, with notions of duty reinvented around the granting of favours. A key feature of the socio-political culture is that everything works on the basis of family and personal relations as opposed to formal procedures, and almost everything is negotiable.**

Another feature of traditional Lao culture which continues to shape attitudes and behaviour is the tendency to avoid issues rather than confront them, unless the issues have an immediate and direct impact

on an individual. This is well illustrated by the Lao saying of kin khau to so khouam pheun (eat our rice and don't discuss the issues of others). This attitude means that people are not naturally inclined to question and argue in a direct form and would rather ignore than confront issues. This passive laissez-faire attitude encourages the Government's top-down and directive approach in dealing with communities.

## **Physical Factors**

Another driver of change is linked to the physical terrain of Laos, with 42% of the population living in mid-and upland areas remote from markets and services. Language barriers and varying cultural practices and attitudes complicate communication. The physical characteristics of demography and poverty have a serious affect on the ability of government to deliver public services in areas that are difficult to access. As a consequence, the Government has developed a strategy of relocation to facilitate service delivery and encourage growth-centre development while reinforcing political security. This strategy has acted as a driver of change for many remote rural communities, with around 100 villages experiencing some form of physical dislocation each year.

Relocation of remote communities can have negative consequences. Detrimental impacts on community livelihood strategies are widely reported alongside other unforeseen consequences. The World Health Organisation has reported instances where a substantial rise in inward migration has resulted in outbreaks of serious communicable disease such as malaria and dengue, while WFP has reported higher malnutrition where communities have been dislocated from their traditional means of livelihood.

## **External Influences**

The Lao PDR has been gradually integrating with the world economy since the early 1990s. A steady process of economic liberalisation and reform has arisen from Laos joining the Association of Southeast Asian Nations in July 1997, its associated commitments to the ASEAN Free Trade Area, and from the process of joining the World Trade Organisation. At the same time the country has been actively seeking direct foreign



investment to facilitate economic growth and has remained heavily dependent on multi-lateral and bilateral donor agencies for budgetary support. All of this has served to influence the overall direction of economic policy and the wider political economy, which have also been heavily influenced by the evolving economic policies of China, Vietnam and Thailand.

In spite of the inevitable pressures for change arising from the wider political economy of the Asia region, the government is broadly supportive of reform but keen to ensure the process does not undermine the status quo of the political establishment. Laos is increasingly interested in regional experience in helping to inform and guide the development of economic, and to a lesser extent political, policies. Vietnam clearly has the ability to exert major influence in Laos, especially in the area of governance reforms. This is evident in much of the terminology used for governance and public administration reform, e.g. with Laos following its neighbour in establishing the Ministry of Home Affairs and a similar set of governance reforms. Important new reforms in Vietnam that will probably influence Laos include:

- Greater de-concentration of technical human resources management functions to line ministries and local government
- Civil service recruitment and promotion policies
- Pay and remuneration reforms, creating a salary structure that is sufficiently differentiated to motivate and reflect personal capacity and performance
- Greater financial autonomy through the use of block grants
- Civil service training policy

Whilst China has traditionally had a more volatile relationship with Laos, it clearly exerts a strong influence in the economic realm, where Chinese investors are beginning to dominate whole sectors such as large-scale agricultural commodity production and mining. South Korea is also likely to be a major new player in the economy and will begin to exert more influence over the next few years.

The relationship with Thailand is complex due to long historical and cultural ties and the increasing influence of Thai culture on the younger generation. This has been substantially reinforced in the last ten years as Lao youth has gained more access to Thai media.

**Steady economic liberalisation and reform have arisen from integration with the world economy. Foreign investment is facilitating economic growth but Laos remains dependent on donor support and is increasingly interested in regional experience to guide development. Vietnam exerts major influence, especially in governance reforms while Chinese investors are beginning to dominate whole sectors and South Korea is becoming a major player. With many more countries willing to establish cordial relations, Laos can play off such interests to generate useful dividends.**

Australia may be one of the more influential of the non Asian countries although its influence is still limited. A new generation of the Lao educated class has studied in Australia and has some social and cultural affinity with the country, but this almost never translates into anything more substantive. Australia does have significant FDI interests, with two leading Australian mining companies responsible for around US\$2 billion of investment. Whilst officials from these companies claim the relationship with government has been cordial and transparent at the highest level, such relationships are confined to specific business-related issues.

Similarly ASEAN is an influential force, but more in the economic sphere and vis-à-vis economic and trade reforms. Southeast Asia is assuming increasing geo-political importance, with ASEAN growing in influence and Japan, South Korea, China, India, and increasingly the US, confirming an interest in the region. These trends can be helpful in that there are many more countries willing to establish cordial relations with Laos, which can play off such interests. If such relations are managed well they could generate useful dividends. There is now, for example, greater acceptance of US support for development, which includes the WTO project. This is involved in law making and so has political content.

## Donor Partners

The World Bank, Asian Development Bank and Japan have been expanding commitments to Laos in recent years and are the biggest donors. The banks have been pushing fiscal centralisation and have greater leverage to influence and encourage change in this area than any single bilateral partner. Australia is gearing up to be a larger player in the development arena and may become the biggest of all bilateral donors in a few years. Germany is expanding its programme in Laos based on the country's continuing status as one of the poorest countries in Asia. Whilst China defines itself as a developing country and thus doesn't give aid per se, it does provide commercial and soft loans and may become a significant player in the short and medium term.

The political economy of aid in Southeast Asia is an interesting topic. Cambodia, for example, has shown a keen interest in donors as long as they can be controlled and provide funding without conditionalities. In Laos, donor aid is seen as a necessary medicine, but the quicker the Government can reach a point of greater self sufficiency in budgetary terms the better. At the same time, many western donors are faced with a position where the credibility of their systems and ideas would appear to be under question by many observers in Asia.

Donor coordination is managed by UNDP, which has been placing substantial emphasis on using donor funds to address the MDG targets, which do not represent the exclusive agenda of the Government. Some commentators in the donor community and Government see the UN as too narrowly focused on MDG achievement and hence missing opportunities to address other underlying issues that may determine the course of MDG achievement. This strategy results in a situation in which donors primarily fund social development while the Government funds growth without the benefit of donor contribution and influence. Stakeholders point out the need to connect these two funding systems more closely into a virtuous circle rather than separate them as at present. Here, donors may miss the opportunity to work with the Government to address crucial policy connections and underlying constraints. Stakeholders report that some line ministries are essentially driven by donors and yet still lack the capacity or systems to

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spend donor funds. Many complain of different reporting systems for different donors. Given the need to enable ministries to be more self reliant in future, donors such as the ADB are keen to take a new interest in building line ministry capacity.

There is also a view amongst some stakeholders that the donor partner community as a whole is rather conservative and does little to explore the “grey” areas of policy and practice in government, in spite of being a major contributor to the national development budget and a partner in the implementation process. SDC and the EU are recognised as more credible than many other donor partners in this arena, although the EU is viewed as more bureaucratic and hence slower to respond.

## **Increasing Exposure to External Ideas**

A significant driver of change is the influence of increasing exposure to external trends, events and ideas both within Asia and from around the world. This driver is likely, in the short to medium run, to be mostly confined to the urban population but extends well beyond the traditional elites and upper class groups to a large number of the young population. These groups are already well integrated into aspects of global culture and look mainly to Asia for wider reference points on music, fashion and entertainment, with a strong interest in Thailand, South Korea, Japan and Singapore. There is also continuing long standing cultural interest in the USA and Europe and growing interest in Australia as destinations for study and scholarships. Much of this interest consolidates around a desire amongst many young people to learn English. All of this serves to opens up new ideas and opportunities. A key source of exposure to new trends and ideas is the growing population of students accessing different forms of tertiary education institutes, where there is a high degree of peer interaction and exchange. This opens a space for the development of new ideas and is a growing source of intellectual and semi-intellectual energy and curiosity in global media. This will begin to translate into a more coherent and articulate discourse on aspirations, opportunities and constraints.