

## Pro-poor water supply legislation development for public-private-community partnerships in Lao P. D. R.

*K. Apaylath and T. Meadley, Lao P. D. R.*

The Government of Lao P.D.R. (GOL) has developed a national policy for growth and poverty eradication to move from least-developed country status. One of the cornerstones in this policy to act as a catalyst for the development of the country is the provision of sustainable water supply services to 90% of urban, small town and rural communities by 2020. This is a daunting challenge for the water supply sector partners in Lao P.D.R.. Currently more than 80 small towns and 5,000 remote villages lack water supply, whilst those currently with services often suffer from poor operational management leading to degradation of the infrastructure. GOL recognizes there is a need to mobilize new management and financing mechanisms to attain access to sustainably operated and maintained water supply services to reach the 2020 target presented in the National Growth and Poverty Eradication Strategy (NGPES). This paper presents an overview of recent government-led studies to develop pro-poor water supply legislation.

### Box 1. Lao P.D.R. at a glance<sup>a</sup>

Total Population:	5.5 million	Percent of Population with: -	
Urban/Rural:	22/78%	Access to improved water supply nationally	58%
Population growth (annual):	2.8%	Access to piped water with household connection:	
Life expectancy at birth:	54.5 years	Vientiane:	62%
Infant mortality rate: (per 1,000 live births)	87	4 Secondary Towns <sup>b</sup>	65 %
Main childhood diseases:	1st. Malaria	Other provincial capitals/ small towns	18 %
	2nd. Diarrhoea		
UNDP HDI Rank (2003)	135/175		
GNI per capita (Atlas method)	US\$330		

Exchange Rate: BCEL, 9 June 2004. US\$1= LAK 10,600

<sup>a</sup> Data from 2002 unless otherwise stated

<sup>b</sup> The 4 Secondary Towns are Luang Phabang, Thakek, Savannakhet and Pakse.

### Country context

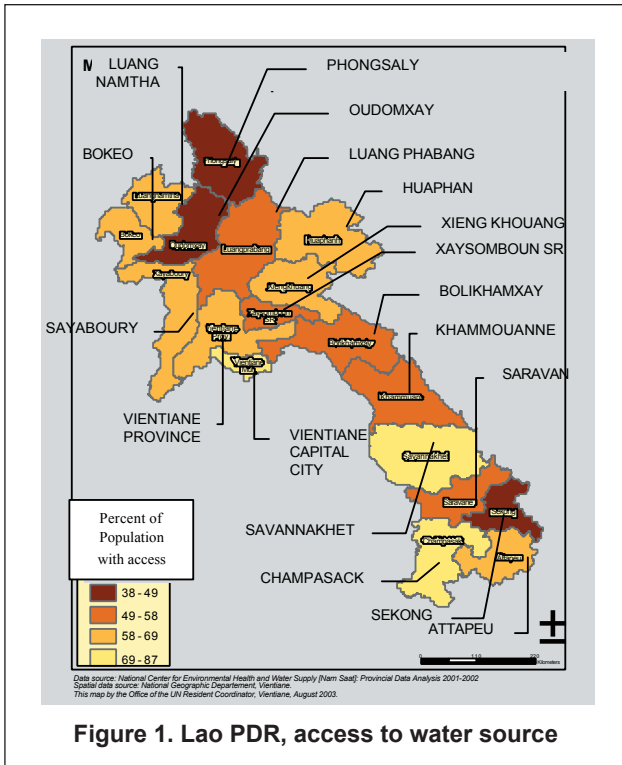
Lao P.D.R. is richly endowed with natural resources. The Mekong River flows through the length of the country, and there are 11 major tributaries flowing from the east to this major confluence.

Water is plentiful in the rainy season (June-November), but there are periods of water shortage toward the end of the dry season (December-May). Average annual rainfall ranges from 1400 - 3000 mm. Although forming 25% of the catchment area for water resources in the Mekong River Basin (MRC, 2003), Lao P.D.R. accounts for 'only about 8% of the basin's total population'.

The Lao words for mother and water are 'mae' and 'nam' respectively. Thus, the Mekong River 'Á'úŌŒ°œ mae nam khong' (Mother Water Khong) and water generally hold

traditional and cultural significance for the Lao people. A water festival that heralds the rains for the coming wet season celebrates the New Year in April. Small streams and large rivers burst their banks as torrential rains pour down on the country during the rainy season.

Lao P.D.R. is an ethnically diverse country. The land area is about 236,000 km<sup>2</sup>. The population of 5.5 million citizens is dispersed through 142 districts, with about 78% of the population living in the rural area. The current annual population growth is 2.8%, the highest in ASEAN countries, which means that the population of Lao P.D.R. will double by the year 2025. This rapid increase is already affecting the environment through the increased use of natural resources. In remote areas, water supply infrastructure is limited, while there is a lack of access to adequate sanitation facilities. Lack of safe water supply, poor sanitation and inadequate



hygiene are still leading factors for the high mortality in children under 5 years old in Lao P.D.R.

There are some 11,000 villages, most of which have a small number of households (50 - 200) and an average of 6 persons/household. About 58% of these rural villages have access to clean water, and about 36% have improved household latrines. Thus, there remain some 5,000 villages without access to water supply and some 7,000 villages without adequate sanitary facilities. Many of these villages are in remote areas, inaccessible for 6 months of the year due to the rainy season and lack of road infrastructure. The villages are usually ethnically homogenous, and often many of the people in the community (especially women) do not speak the national Lao language. Villages next to each other can be from different ethnic groups, with their own language, culture and beliefs. There are also concerns about the long-

term sustainability of water supply and sanitary systems already constructed.

Access to improved water services (urban and rural) nationally in Lao P.D.R. is estimated to be about 58% (refer Figure 1). In the capital Vientiane and the four secondary towns (refer Box 1) about two-thirds of the population have access to piped water with household connections. But in the remaining provincial and small towns, about 82% of the urban population do not have access to piped water supply services with household connection.

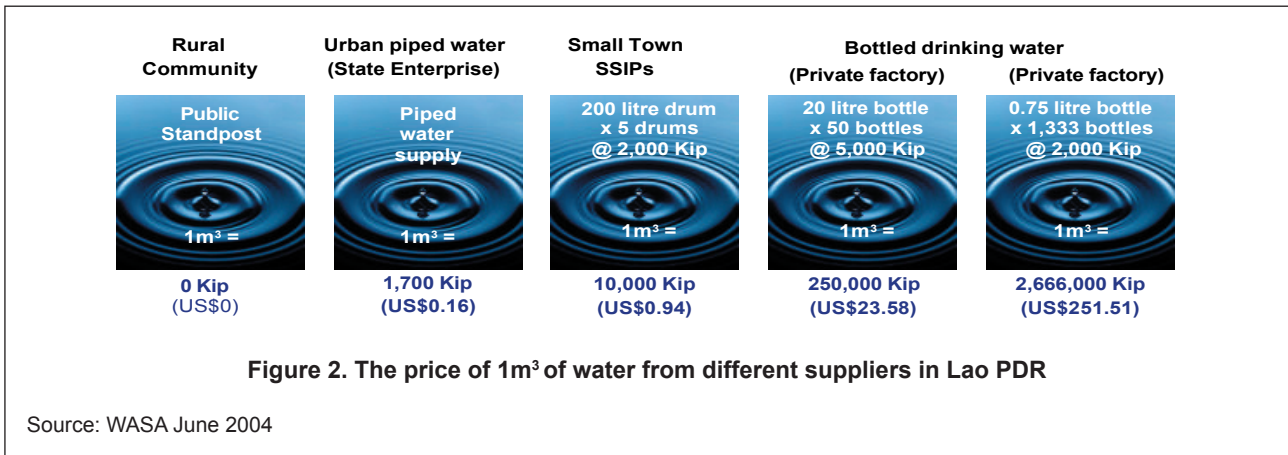
How then can an economically poor country with plentiful water resources provide equitable water supply services to the remaining more than 80 unserved urban centres/small towns and 5,000 villages? Limited infrastructure and lack of attractive financing and professional support mechanisms for entrepreneurs often characterize these small towns and villages.

**Strategies**

With regard to strategies, in 1997 the National Centre for Environmental Health and Water Supply (Nam Saat) developed and launched the National Strategy for Rural Water Supply and Sanitation, a comprehensive guideline framework to encourage demand responsive community approaches in the provision of rural water supply and sanitation services. This process is being institutionalised through the National RWSS Programme. The strategy emphasizes the importance of informed choice so that communities can make decisions based on all the relevant facts, and their ability and willingness to contribute. A range of options is offered for water supply. The Strategy was revised through a consultative process in 2004, and approved by the Minister of Health on 8 June 2004. However, there is currently no detailed strategy for urban water supply.

**Policy**

Both urban and rural water supplies are covered by an overarching policy for ‘Management and Development of the Water Supply Sector’ (Prime Ministerial Decision, No. 37/PM).



**Existing situation for water supply**

Lao P.D.R. is one of the poorest countries in East Asia. However, it is moving into a progressive phase of expansion, moving from a land-locked to a land-linked country, and looking to escape from the least-developed country status by 2020 through a National Growth and Poverty Eradication Strategy (NGPES). In this strategy, 72 poor districts are identified for development focus, of which 47 districts are accorded priority.

The urban and small town water supply sector comprises 145 officially designated urban centres in 142 districts. Financed through grant aid and credit, there are 30 existing formal piped water supply schemes in the larger urban centres and 28 more have agreed funding.

Of the remaining 87 smaller, mostly poorer towns, there are no formal piped water schemes with household connection. Some towns have basic water services through communal standposts or services provided by small-scale independent providers (SSIPs). Water is supplied either by pipe to nearby households or customers go to collect water from the SSIP where the water is pumped untreated from a shallow well or river. The cost of water from the unregulated SSIPs in these poorer small towns is expensive at 10,000 - 15,000 Kip/m<sup>3</sup> (equivalent to about US\$1.00 - 1.50/m<sup>3</sup>) (see Figure 2). This compares to about 1,700 Kip/m<sup>3</sup> (equivalent to about US\$0.16/m<sup>3</sup>) in the larger, wealthier urban centres with piped, household water supply that have tariffs set by the provincial authorities. There is usually no unit price for water from public standposts in rural areas, although some communities contribute a monthly fee. Bottled drinking water companies are able to receive a good income from selling water that has been treated.

Urban water supply systems are owned by Provincial Government, and managed through a delegated model of State-owned Enterprises (SOE). A water supply enterprise is known as ‘Nam Papa’ in Lao language. The Nam Papa SOEs are responsible to their respective provincial authorities. However, there are no performance agreements with

their respective delegating authority.

In the rural area, water systems are generally paid for through external grant funding from international NGOs and bilateral/ multilateral agencies. Some projects are also supported through credit from international development banks. There are examples in the south of the country where communities are combining with private entrepreneurs to construct water systems.

At present water tariffs do not reflect investment. As mentioned in the Lao P.D.R. Small Town WSS Case Study, existing investments are in the order of US\$135 per capita for the larger towns and cities. Designs are generally based on 20-year projections and users are not involved in the technology choice. An average cost for gravity-flow water systems in the rural area is about US\$10 per capita for a 15-year design period. A new National Water Tariff Policy has been recently launched in April 2004, which is seeking to use comparative competition and guidelines for social fairness in tariff decision-making to assist the poor.

There are a small number of existing private investments in water supply in Lao P.D.R., which tend to be build-own-operate (BOO) type contracts. These are simple contracts based on shared private and community financing, with a high level of trust between the partners. The model is not widespread due in part to limited financial resources and the high costs of commercial debt. GOL has recently enacted a new decree on the promotion and development of small and medium sized enterprises (Decree No.42/PO, 20 April 2004), through which it is expected new banks for entrepreneurs (refer Article 8 of this Decree) will be established to encourage local business development and reduce the time to start a new business (see Figure 3).

There are also plans to develop a one-stop shop for registering businesses through the Ministry of Trade, which could be a model to develop for small and medium scale businesses in the water supply sector.

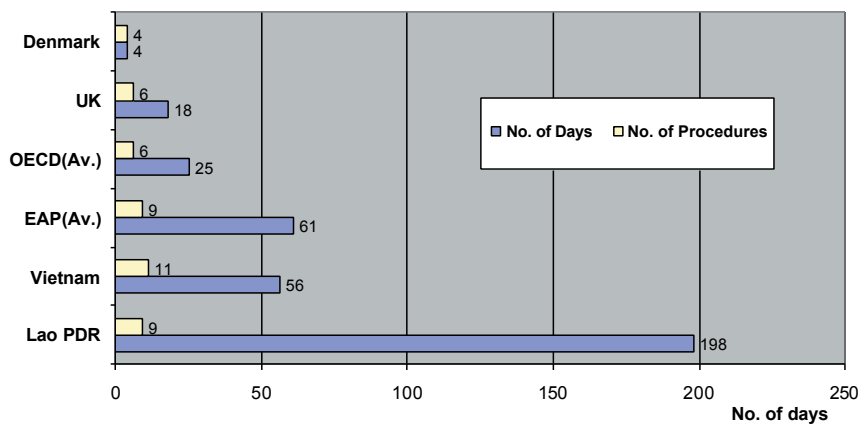


Figure 3. Number of days to start a business

Source: WB (2004)

**Box 2. Current institutional arrangements for water supply**

	URBAN WATER SUPPLY	RURAL WATER SUPPLY
Ownership	National Government	Community*
Oversight		
District		□
Province	□	
Ministry	MCTPC	MOH
Operations	Nam Papa State Enterprise	Community
Central level support	Dept. of Housing and Urban Planning	Nam Saat Central
Legal basis	No. 42/PR	Undefined
Policy	No. 37/PM	No. 37/PM
Strategy	Under development	Yes
Regulatory body	Water Supply Authority	None
Financing	National Government (Loans/credit)	Donors/Community (Grant/in-kind)
Decision-making	Local Government	Community
Management	Institutional	Village Committee
Management Model	Delegated	Community

\*The water systems are handed over to communities to manage, but there is currently no legal basis for this arrangement.

**Development of a water supply law**

The concerned actors in the sector are now looking to see how an overarching water supply law can be developed that reflects on-going developments in both the rural and urban sectors. The current institutional arrangements are highlighted in Box 2.

**Private sector involvement in water supply**

Prior to recent studies in 2002 (URI and WSP-EAP, May 2003) and 2003 (WASA, June 2004) on private sector mapping, little was known about the involvement of the private sector in water supply.

Two of the key findings are: -

1. There are nearly 1,300 private companies involved in water (bottled drinking water, ice factories, construction and materials supply)(see Figure 4), but very few formally registered water supply businesses;
2. There are small-scale water supply entrepreneurs in many of the small towns and that they are using a step-by-step approach to system development.

The experience of the small-scale private water suppliers' sector in Lao P.D.R. is characterized by close community-contractor relationships, flexibility in financing arrangements, design that matches demand and rapid expansion to serve new connections and neighbouring communities. Costs are typically \$15 per capita or less. Most small-scale suppliers are not formally registered.

For the steps to involve the private sector, a national workshop in September 2003 recommended that for autonomous companies to develop properly there needs to be a recognised system for financial management, licensing, qualifications and credit worthiness. It was also noted that Lao companies

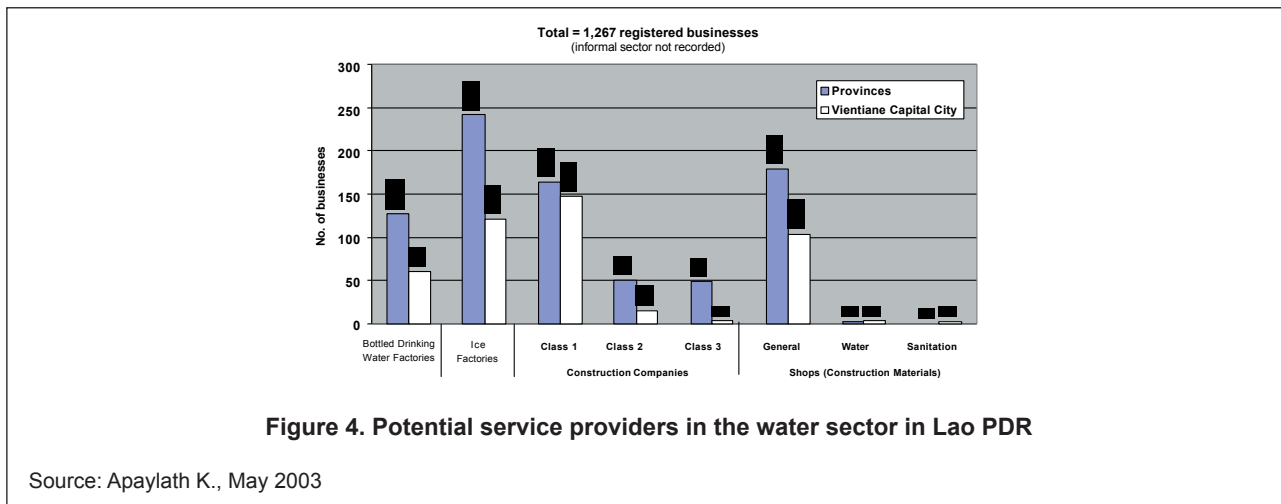
should be given preference in any bidding procedures.

The workshop proposed that: -

- the cost of interest needs to be reduced;
- a water supply management and financial training centre be established;
- government staff be enabled to run private water supply businesses as they had the experience but lacked funding;
- different management options should be available throughout the country; and
- clear steps for government staff to know how to involve the private sector need to be developed so that the public sector can facilitate the private sector through guarantees, clear ownership guidelines and incentives such as tax breaks.

These findings mirror and strengthen the suggestions at the 'Forum on Private Sector Mapping', held in August 2002 (URI and WSP-EAP, May 2003).

- Private companies want to know more about:
  - Government development plans for water supply and sanitation.
  - International cooperation on water supply and sanitation development.
- The consolidated information drawn from 129 surveyed companies shows that for the private sector to be able to invest in water supply and sanitation:
  - Document procedures need to be simplified.
  - Opportunities should be given to local companies.
  - Taxes should be reasonable.



- The consolidated replies from the survey of construction companies, drinking water and ice factories (total 209 companies) recommend that incentives should focus on:
  - Payment to be on time as defined in the contract.
  - Opportunities to be given to Lao companies before international companies.
  - Decrease taxes, especially income tax.
  - Give advice on new technologies.
  - Advertise and encourage people to understand about water supply and sanitation.

**Culture, tradition and customary law**

When considering the development of a suitable, locally appropriate national water supply law that covers both urban and rural areas of Lao P.D.R., it should be important to also reflect upon the national socio-economic and political development and unique historical background of Lao P.D.R. This is particularly necessary with respect to the culture, tradition, and customary law of the various ethnic groups.

Depending on the source of information, there are 5 linguistic families represented in Lao P.D.R. - Tai (Lao), Austroasiatic, Mao-Yao, Sino-Tibetan and Others (Chazée, 1999). These are commonly referred to through 3 groupings; the Lao Loum (Lowland Lao), Lao Theung (Midland Lao) and Lao Sung (Highland Lao). The 1995 National Census ‘distinguished 47 main ethnic groups and a total of 149 subgroups (Chazée, 1999)’.

**Building consensus**

For the water supply law to be effective and easily applied throughout the country, the factors mentioned above should be discussed and agreed at village, district, provincial and central levels so that the law is applicable in a wide range of situations at the local and national levels, which should also represent the ethnic diversity and present development situation of the country. The water supply law should also address the issues of the different service providers and customers as represented in Figures 2 and 4<sup>a</sup>.

The recent study undertaken by the Water Supply Authority

on ‘Implementation of the National Water Tariff Policy and Development of Management Models’ followed a process of consensus building at village, district and provincial level. The findings were then presented to senior sector partners at central level for discussion and agreement. For a water supply law to be relevant in the many varied contexts in Lao P.D.R., a similar process of consensus building should be appropriate.

**Present legal framework**

Since 1989, GOL has been undertaking a process of strengthening the rule of law (UNDP Lao P.D.R., 2004). The major focus for this development was the launching of the Constitution in August 1991 (amended May 2003). Following this launch, a number of legislative enactments have been promulgated across all sectors. The enactments have varying degrees of authority, depending on the seniority of the administrative level issuing the legislation.

Support to this process of strengthening the legal system in Lao P.D.R. has included projects from the GOL and United Nations Development Programme in Lao P.D.R. on improving the legal drafting process; the implementation and dissemination of laws and other legal instruments; and improving the effectiveness and efficiency of the public administration organisations responsible for carrying out these laws (UNDP Lao P.D.R., 2004). The World Bank, Asian Development Bank and other external support agencies have also been assisting GOL with the development and implementation of laws, decrees, policies, strategies etc.

**National growth and poverty eradication strategy**

Approved by the National Assembly in October 2003, and supported by international development organisations, the Lao P.D.R.’s ‘National Growth and Poverty Eradication Strategy (NGPES)’ sets out a framework for poverty reduction in Lao P.D.R. (refer DHUP, 2004, Annex 2). In line with the Millennium Development Goals for 2015 (refer DHUP, 2004, Annex 3 for water supply related MDG information in Lao P.D.R.), the NGPES seeks to raise Lao P.D.R. from the level of least-developed nation status by 2020.

At a participatory workshop in Vientiane in December 2003 on ‘Actions to Scale-up the National Poverty Eradication Programme for Water Supply and Sanitation’, the government staff and sector partners found that:

- the enabling environment for legislation related to water supply requires clarification;
- one of the most important issues for development of the sector is to improve and open up the policy by enforcing and putting into practice existing legislation and regulations and improving the government’s support mechanisms.

The workshop recommended that there was a need to compile, review and assess/evaluate the existing legislation related to water supply to clarify the existing situation, identify gaps and promote access to this information through better dissemination.

In Lao P.D.R. there are 145 urban centres and about 11,000 villages. For the mostly smaller, poorer communities without water supplies, these will need new support mechanisms to be able to receive these services. Where water supply services exist there are problems related to operation, maintenance and ownership, as the legal framework for these services is not clear and not well understood.

**Identified legislation related to water supply**

There are more than 100 identified Lao legal instruments related to water supply (see Table 1) that need to be analysed to assist in improving the enabling environment for implementing water supply services in Lao P.D.R.

The existing laws in Lao P.D.R. are more directly related to water resources or policies related to management of the water supply sector than to implementation and options for service provision. In urban areas, there is currently only one type of water supply utility officially recognized, which is the State-Owned Water Supply Enterprise, known as Nam

Papa. In the rural areas (the responsibility of Nam Saat), water supply systems are generally community managed; but there seems to be no direct legal basis for their ownership and arrangements to support communities in the operation and maintenance of these systems.

However, when considering the application of the existing water-related laws, it is not clear how these link in their wider perspective to, for example, town or village planning, business law and operations, communities rights and obligations, land law, ownership, tax, decentralization, poverty reduction strategies etc. and the consequent roles and responsibilities of the different actors in the sector. To encourage new investment into the sector and for guaranteeing commercial operations of water supply systems, the actors in the sector are requesting clarification of existing laws so that they can identify clear steps for implementation and application of the legislation.

Although there is a central registry for laws in Lao P.D.R., there is no central registry for decrees, regulations, orders etc. as these are generally issued by individual ministries and kept at the respective cabinet office of each ministry. There is a section within each cabinet responsible for preparation, collation and dissemination of these legislative acts. The Water Supply Authority has collated the known existing legislations from each of the different cabinet offices and brought them together for the first time (WASA, 2004, Section B.4.)

**Legal basis for water supply companies**

The 1994 Business Law (No. 42/PR) sets out the process of registration for a business enterprise, and some limited information on the rights and obligations of partners and shareholders, the nature of byelaws, the transfer of shares, and the audit procedures. Article 16 states: “An enterprise will be considered as lawfully created only when properly registered.”(Refer Figure 3 for time taken to start a business in Lao P.D.R.). The Business Law identifies four types of enterprises, all of which are relevant to the water sector:

- Private Enterprise (Sole-Trader or Company);
- State-owned Enterprise (all shares owned by the State);
- Collective Enterprise (a business cooperative – created by farmers, handicraft artisans and small traders to join funds and labour for the conduct of production, trade and services); and
- Joint Enterprise (Private or State-owned Enterprises in a joint venture with local or foreign parties).

**GOL sector offices for legislation development**

The main GOL sector Offices that would be involved in the development of water supply legislation are: -

1. Department of Housing and Urban Planning (MCTPC)
2. Urban Research Institute (MCTPC)
3. Water Supply Authority (MCTPC)

**Table 1. Type and number of Lao legalisations related to water supply (in ranked order of importance)<sup>b</sup>**

Type	Number
1. Laws	29
2. Decrees	35
3. Orders	1
4. Decisions	7
5. Ministerial Orders	3
6. Provisions	9
7. Regulations	4
8. Strategies	4
9. Notices and others	7
<b>TOTAL</b>	<b>99</b>
10. Copies not yet found	14

4. Department of Hygiene and Disease Prevention (MOH)
5. National Centre for Environmental Health and Water Supply (MOH)
6. Water Resources Coordination Committee (PMO)
7. Ministry of Justice, Department of Legislation

### Outline framework for a water supply law

A proposed framework that seeks to address the problems for water supply in Lao P.D.R. has been identified through the recently completed study on development of water supply management models (WASA, June 2004c). Priority issues have been identified. The challenge is how to tackle each of the priority issues and promote the critical factors for success within an overall guiding water supply law. These should be addressed in a strategic, step-by-step manner. Further clarification is required for each of these issues to develop the water supply law in Lao P.D.R.

### Concluding remarks

In summary, the legal basis is in place for a range of types of enterprise to register as water service providers, including private contractors. However, the overall framework needs to be better understood and clarified with regard to other aspects of the law (ownership, property, contract arrangements, land law etc.), perhaps through a consolidation of existing legislation. Thus, the water supply law and concurrent capacity strengthening to implement the law is required because: -

- water supply is a priority of the Government of Lao P.D.R. as identified in the NGPES and in line with the policy of decentralization to local government;
- to reach the targets for the Millennium Development Goals for water supply in Lao P.D.R., clarification and formalization of a water supply law is required to bring together the existing legislations to provide the enabling environment and for this to be well understood by sector partners;
- the government is supporting a process of decentralization of responsibility for water supply provision to local levels;
- there is a lack of skilled staff in the sector with knowledge of the law and business promotion support to small and medium scale enterprises;
- there are undefined responsibilities in the sector;
- a specific law for water supply will make coordination convenient for donors and enable the government to attract funding from international organisations and the private sector, particularly with respect to assisting the 47 priority poor districts as identified in the NGPES.

Therefore, in line with the NGPES, GOL is aiming to prepare a pro-poor water supply law to put people at the heart of the WSS sector development process in Lao P.D.R.

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### Notes

- a. Sustainability and cost recovery issues are also taken in to consideration. Refer WASA (2004, Section A.1.).
- b. These principal existing legislations are recorded in more detail in DHUP (2004, Annex 5) and WASA (June 2004, Section B.4.).
- c. WASA, June 2004, Section A.1., page 14.

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**Contact address**

Mr. Keophilavanh Apaylath  
Director, Urban Research Institute, Done Phalane Road,  
Vientiane, Lao P.D.R.

Thomas Meadley  
Team Leader, Water and Sanitation Program - East Asia and  
the Pacific, Lao P.D.R. Country Office, World Bank Office,  
Vientiane, Lao P.D.R.

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