

DONOR-DRIVEN LAND REFORM IN CAMBODIA – PROPERTY RIGHTS, PLANNING, AND LAND VALUE TAXATION

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With 4 figures, 5 tables and 1 photo

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Summary: This paper focuses on legal and economic instruments of the multi-donor-driven land reform in Cambodia with its overarching aim of achieving tenure security and reparation after the Khmer Rouge. Land tenure applies to state public/state private property and private property. The essential property form for public land management is state public property. This property must be interpreted in the future as the property of Cambodian people that serves all human beings in the country. Having a common, participatory and legally binding land use planning system for Cambodia, the planning authorities at the national down to the communal level are able to guide and to restrict the use of land in order to protect and promote the public interest. Private land use rights should not be mixed up with private property rights. Private land use under conditions of tenure security is far more efficient than state land use. Yet that does not automatically require private property. State public property with the guarantee for private land use, e.g. through transparent and participatory leasing and redistributed ground rents, ensures fair and equal redistribution of land if the Cambodian government enforces compliance with these regulations for the benefit of the local people.

Zusammenfassung: Der Beitrag untersucht rechtliche und ökonomische Instrumente für die Geber gestützte Landreform in Kambodscha, deren wichtigstes Ziel die Schaffung rechtssicherer Nutzungsrechte ist. Nutzungsrechte umfassen öffentliches und privates Eigentum. Das wichtigste Eigentumsarrangement für öffentliches Landmanagement ist das Eigentum der Gemeinwesen. Dieses Eigentum sollte zukünftig verstärkt im öffentlichen Interesse genutzt werden. Ein auf Partizipation und rechtliche Bindungskraft hin ausgerichtetes Planungssystem würde die Planungsträger in Kambodscha in die Lage versetzen, die Landnutzung im Interesse des Gemeinwesens zu steuern. Private Nutzungsrechte dürfen nicht mit privaten Eigentumsrechten verwechselt werden. Private Landnutzung ist effizienter als staatliche, was aber notwendigerweise kein Privateigentum voraussetzt. Öffentliches Gemeineigentum, welches für eine Landnutzung im Allgemeinwohl beispielsweise mit befristetem Leasing und der Rückverteilung der Bodenrente kombiniert wird, vermag eine gerechte Nutzung des Grund und Bodens herbeizuführen, wenn die Regierung für eine entsprechende Rechtssicherheit Sorge trägt.

Keywords: Land reform, property rights, land use planning, leasing public land, land value increment tax, Cambodia

“No man made the land”
(JOHN STUART MILL 1848, 233)

1 Introduction: Cambodia’s land reform – from Marx to market?

After decades of civil war and the Communist Khmer Rouge domination of “Democratic Kampuchea” (1975–1979), Cambodia has followed a concept to transform a socialist system into a market-oriented democracy. This process includes legal reform assistance from above, aiming at subsidiary legislation related to adjudication, titling (land privatization and the creation of private property rights) and decollectivization (LIPTON 2009). The introduction of formal property systems – for which Cambodia is not

well prepared – is still incomplete. In today’s Cambodia, rich and powerful people are included in areas of wealth. These wealthy urban investors are on the rise. They could be land owners and thus members of the ruling power elite coalition who always know the access codes to valuable resources (DAVY 2009). They become the arbiters of land disputes and tend to decide in their own interest rather than for the public good.

The politically motivated award of state land – approximately 80% of the Cambodian territory consists of public land – to political elites has been a concern in Cambodia ever since that period. In general, donor-initiated land registration programs risk becoming a way of *ex post* formalized land grabbing. Ineffective government can render the land registration system not worth the cost of setting it up (DEININGER and FEDER 2009).

Tenure security for all land use rights – possession and property rights – is extremely weak. The price for this weakness is high. Cambodia's struggle for the just distribution and equal allocation of wealth from its natural resources, namely land, provides insignificant results. Yet the land titling process through the donor-driven Land Administration Sub Sector Program (LA-SSP¹⁾), disposing of the formalization of *de facto* possession rights into *de jure* property rights, results in 250,000 to 300,000 new land titles annually. The registration process is clearly pro-poor, with costs of around USD 5 per title. However, at least 12 million parcels are still unregistered and unsurveyed.

However, Cambodia shows a high rural poverty rate, land concentration and “anarchy in illegal land possession, illegal claim of state land and protected areas as privately owned and unlawful logging” (RGC 2008, 6). The Land Law of Cambodia from 2001²⁾ was expected to ensure an equitable, proper and efficient system of land management, land distribution, land tenure security, eradication of illegal settlements or land grabbing, and the control of ownership concentration for speculative purposes. At present it is not clear if the Land Law, the land-related Sub-decrees and the Constitution will be able to fulfil these (political) expectations. The uncertainties surrounding the implementation and penetration of the Land Law and the Constitution for tenure security of the land poor and towards ministries or public and private actors in land administration are relatively high. The principal questions discussed in this paper are as follows: To what extent can land reform approaches be realized in Cambodia under the existing political and legal circumstances, characterized by a lack of ability and willingness to enforce compliance with land reform regulations? Which level of significance can be found for the legal empowerment for land reform within the context of Cambodia's “fight for law” (MENZEL 2008)? Can

¹⁾ LA-SSP – formerly named the Land Management and Administration Project (LMAP) – is currently implemented by Germany through its organization GTZ, which is responsible for “Land Policy Regulatory Framework”, “Institution Building” and “Resolution of Land Conflicts”. The project partners Finland and Canada are engaged in the components “Land Registration and Award of Titles” and “Land Parcel and Property Assessment” respectively (see <http://www.gtz.de/en/themen/laendliche-entwicklung/11786.htm>) (Date: January 20, 2010).

²⁾ Kingdom of Cambodia, Land Law from October 18, 2001.

privatization be seen as the only property guideline for redistribution? Is the land fairly distributed, something which can be considered the only goal of a just, sustainable and non-confiscatory land reform which is described in the following as a contingency plan, underlined by the vision of an ideal system of sustainable land management and administration for Cambodia?

2 Land reform and property rights

2.1 Declaration on land policy of 2009

On July 1, 2009, Cambodian Prime Minister HUN SEN signed the Declaration of the Royal Government on Land Policy. According to this policy document, emphasis is to be given to state reform as part of state (public) land management and especially to land and environmental laws with their impact on the use of non-renewable resources (land, forests, commodities). Public land management as an indispensable element of land reform means the management of all state (public) land. This would appear to be stating the obvious. However, in the case of the Kingdom of Cambodia, the statement is anything but a truism. The implementation of public and private land management faces problems such as unclear boundaries, a weak rule of law, and the unfinished issuing of documents for mapping, property registries, valuation, and taxation. All property-related documents were destroyed during the Khmer Rouge era, which makes Cambodia a unique case for land reform in several ways. Cambodia can hardly be compared with neighbouring states like Vietnam or Thailand. Figure 1 shows a general map of Cambodia.

The Cambodian land management and land administration started from scratch after the Khmer Rouge and with the beginning of the World Bank-initiated land sector program in 2002. From 1975 until the departure of the Vietnamese troops in 1989, private property was abolished. Private use of state land was only permitted through the allocation of plots (*krum samaki*) to each family. In 1989, the Cambodian state “invalidated ownership rights in force before 1975, but revived the concept of private rights (...). Although the 1992 Land Law extended private property rights, the majority of people did not receive any formal allocation of land or certificates of title” (LEUPRECHT 2004, 12; see Tab. 1).



Fig. 1: Overview map of the Kingdom of Cambodia

2.2 Redistribution instead of restitution

The highly questionable executive regulation from June 3, 1989 can be interpreted as one of the main reasons for the lack of property inventory with clear distinctions between public and private property, for ongoing anarchy encroachments, evictions, land disputes, boundary conflicts and “land grabbing” in case of “‘development’ which harms rather than helps ordinary people” (LICADHO 2009, 28). After 1989, the Cambodian government decided on redistribution – instead of restitution – as part of reparations and compensation. The land redistribution policy can be regarded as a “social contract” between Cambodians who suffered under the Khmer Rouge. In contrast, the redistribution also causes new injustices, since forced evictions undermine this social contract approach. Former possession rights often fail to be recognized by the state and its judiciary. They are regarded as being inferior to newly acquired land rights via titling. Additionally, land (re-)distrib-

ution models such as common property resources, community-based and participatory natural resource management (e.g. community-based agriculture, forestry or fisheries organized by producer cooperatives and associations) are underdeveloped and under-supported by or simply unknown to the farmers or fishermen. Collective choice arrangements between Cambodian parties jointly using a commonpool-resource or creating formal and informal rules for resource allocation as suggested by 2009 Nobel Prize winner ELINOR OSTROM (e.g. OSTROM 1990) lack political and personal commitment.

2.3 Land property categories

Cambodia has adopted a market economy system (Article 56 Constitutional Law³⁾), including

³⁾ Kingdom of Cambodia, Constitution (as amended) from July 13, 2004.

Tab. 1: Overview of the land property regimes and land administration in Cambodia since the pre-protectorate time

Khmer feudal	Protectorate rule / monarchy/ republic	Radical maoist	Socialist	Market system / representative democracy
Usufruct	French private property	KR communal property	Collective property (<i>krom samaki</i>)	1992 Land Law 2001 Land Law
	Possession through use	No private possession	Possession through use	Prior possession required for ownership
No formal registration required	Formal registration started			Formal registration required
Taxes on crops	Taxes on land			Taxes on land – partially implemented (e.g. transfer tax, unused land tax, property tax)

the rights for all Cambodians to own any amount and kind of land (Article 44 Constitutional Law). The legal framework for individual private property rights – the cornerstone of Cambodia’s land reform under the “tenure security” approach – includes the Constitution from 1993, the Land Law, and Sub-decrees. Five main categories of property for land can be distinguished in Cambodia: state public property, state private property, private property, monastery property, and indigenous property. Private property is protected under the Constitution and the Land Law. Systematic or sporadic land registration transforms use rights (e.g. possession rights) and ownership into private property rights. Private property rights ensure “exclusive” interests like the right to exclude others, to enter, use or to dispose of the property. State property can be divided into two forms: state *public* property and state *private* property. State public property serves public purposes, e.g. roads or schools, to be used for the benefit of all Cambodians. It can be transformed into the category of state private property (Article 15 Land Law) and finally into private property (Article 17 Land Law).

State private property can be sold and leased by the state to any private individual. The legal instrument that opens the door for these transforming procedures comprises governmental Sub-decrees (RENDALL 2003). The Cambodian Land Law does not recognize communal property. Hence, no “silver bullets” (ADLER et al. 2006) can be presented to solve local land disputes and to map the boundaries of the rural and urban communal land to prevent land grabbing by wealthy investors. The lack of national-level

approval of the communities’ maps, the absence of involved authorities throughout the mapping process, and limited access to GIS technologies clearly disadvantage Cambodian communities. Land sales provide short-term benefits for the owners without reinvesting these profits for productive purposes and are thus seldom work to the community’s benefit.

Public land management means the use of public land in the public interest. Article 44 of the Cambodian Constitution mentions the term “public interest”: “Expropriation of ownership from any person shall be exercised only in the public interest as provided for by law”. Avoiding land speculation and combating illegal claim of state land mirror constitutionally demanded public interests; expropriation measures may be used as a powerful (and controversial) instrument for the just and equal distribution of plots. Expropriation is a legally justified instrument of the Leviticus (THOMAS HOBBS) who represents the legislator’s power of eminent domain. However, experience shows that expropriations could be realized only as fair and just *ultima ratio* compensated in advance. At present no clear definition of the terms “public interest” or “fair compensation” exists constitutionally in Cambodia. Under the current Land Law, expropriation is not expressly mentioned. Neither the (drafted) Expropriation Law⁴⁾ nor the (drafted) land valuation policy as the future indispensable framework for takings, compulsory purchase and compensation has yet been fully implemented or politically approved.

⁴⁾ Kingdom of Cambodia (Council of Ministers): Law on Expropriation, revised and drafted version from October 9, 2009.

3 Land reform and spatial planning

Land reform also needs a sound and hierarchical land use planning system which is broadly missing in Cambodia (THIEL 2009; THIEL 2010), apart from piloted planning in selected regions and communes. An ideal comprehensive spatial/land use planning system – if finally realized – will develop, organize, and protect the entire territory. Legal protection of any land use rights would be effectively achieved with integrative, strategic territorial planning and the harmonization of regionally and locally legal binding significant instruments and measures (e.g. commune land use planning) (see Tab. 2).

Rural development through coherent land use planning is a cornerstone within Cambodian land reform policy papers such as the governmental “Rectangular Strategy” (RGC 2008). However, sufficient compliance with the land use planning objectives has not been achieved yet. Regionally significant plans and measures have to be harmonized and carried out in comprehensive development concepts while satisfying the requirements of the current land use planning policy. In addition, rural and infra-

structural development such as village renewal can be very costly for the state. Hence the Cambodian municipalities may be entitled to limited value capture in the future. To ensure the development of local public transportation, communication infrastructure, water and energy supply or public health care services for rural development, landowners should be forced to take over some of these infrastructure costs.

Therefore rural development needs a property steering component to integrate the interests of the landowners affected by rural development and its modules that directly improve land values. However, even the best plans are useless if they cannot be realized. In some cases, plans are blocked by misanthropic private landowners who do not accept the planning determinations for their plots and the restrictions of their private property. Private land owners mostly hope to increase and bag the ground rent (“rent seeking”). Neutral land use planning in Cambodia – i.e. without any private speculative interests – can only be achieved by skimming off the ground rent through land value taxation. Spatial and binding land use planning are to be developed

Tab. 2: Existing land use planning instruments and their legal basis (simplified)

Planning Level	Planning Instrument	Legal Basis
National	Specific Development Plan e.g. Phnom Penh Strategic Development Plan	1994 Law on Land Management (Art. 5; Art. 10)
	Provincial/Municipal Development Plan e.g. Provincial Master Plan	1994 Law on Land Management (Art. 5)
	National/Provincial/Municipal/District Land Use Master Plan	1994 Law on Land Management (Art. 6; Art. 7; Art. 9)
District	District Strategic Development Plan Piloted in some districts; Strategic policy document for district development, based on the results of scenarios and guided by development theories; plan reflects the political will of the district population and complies with national planning guidelines (legal bindingness)	2008 Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans (Organic Law) (Art. 100)
Commune/Village	Participatory Land Use Planning (PLUP)/Commune Land Use Planning (CLUP) Piloted in some communes/villages	Sub-decree on Commune Land Use Planning
	Initial State Land Use Plan (I-SLUP) Using of selected components of the CLUP for implementing of Social Land Concessions through the Provincial authorities and Commune Councils	

as prime instruments of national property policy (“Eigentumspolitik”) which perceives fair and equal land allocation, land distribution, and land use intervention.

4 Land reform, valuation, and taxation

4.1 Property rights and land reform

Today, the bilateral and multilateral donor organizations involved in the rule of law – and land reform – processes in developing countries are more focused on property rights reforms than at any time in the last half century (BRUCE 2008). In the year 2000, “neoliberal” interpretations of property models dominated and were seen as a necessary foundation for development due to the “Washington Consensus”. However, the recent national elections in Venezuela, Bolivia, and Ecuador show that this private property rights orientation no longer applies everywhere (RIDDELL 2008; BROMLEY 2008). The property rights theory – familiar to environmental economists as the Coase theorem (COASE 1960) – plays an inferior role in the international land reform discourse. According to this neo-institutionalist theory, property rights are to be given into the hands of private owners who feel responsible for the assets and their highest and best use. Owners must therefore be able to exclude others from using their property (e.g. DEMSETZ 1967; POSNER 1977).

Public and private property, planning and value are indivisible elements of any land markets. When land is valued, the exclusive rights form the basis for the value determination. Without state and private property, no valuation and no land value would be possible (WEHRMANN 2008; THIEL 2010). A future land valuation and taxation system in Cambodia will define the contents of a “fair market value” according to the International Accounting Standards (IAS). However, *the* land value does not exist. Controversies between classical and neoclassical economists about the economic land value or about the exchange value mirror the difficulties in explaining the creation of the land value or the ground rent. A distinction must

be made between at least three categories of land value for state and private properties as well (see Tab. 3).

4.2 Land and property valuation

The framework for land valuation in Cambodia has its legal basis in the concept of “immovable property” (Article 2 Land Law). The term “land” has to be interpreted as land including constructions or improvements (assets) *and* property rights which are appraisable for mortgages, to determine co-ownership value and for capital gain. Land valuation in Cambodia will be constructed as a sub-layer of the multipurpose cadastral system for public and private land (WILLIAMSON et al. 2010). The value of a site is calculated out of the net present value of the extra surplus – a surplus which normally can be achieved through public land use planning without any investment by the land owner. Based on the theory of DAVID RICARDO, the ground rent for agricultural land rises in proportion to the population and is therefore not directly related to the efforts and enterprise of land owners (RICARDO 1817). Following RICARDO, ground rents are generally unearned and could be a proper subject of land value taxation (ANDELSON 2000).

This theory can be transformed to different qualities of land subject to future sound land use planning in Cambodia, in particular subject to the legally binding determinations of local land use plans. These plans should be supported by land value increment taxation (LVIT) and land property taxation. Property-based taxation started in 2010 in Cambodia with a 0.1% tax rate of the asset’s value. For LVIT, taking only site (land) values for public purposes is characteristic. This tax was highly influenced by HENRY GEORGE (1879) and his “single tax” approach as a value capture instrument. It consists of a recurrent tax by which (parts of) the annual windfall profits on land ownership from community growth or public investment are consequently taxed away (ANDELSON 2000). However, to implement LVIT in Cambodia, the national, regional and local state authorities responsible for land valuation and taxation would face the difficulties of partly skimming off

Tab. 3: Plurality and meaning of land value categories

Land value category	Legal plurality and content of land use
Territorial land value	Content, duration, and intensity of the land use rights (land tenure; legal plurality)
Economic land value	Gain from the real estate use
Ecologic land value	Ecological quality (“ecological fitness”)

the potential rent-seeking gains (windfall profits) of the land owners to achieve an even distribution of wealth between Cambodians. Windfalls are caused by increased land values and demand for land by outside investors, especially in Phnom Penh.

Today, basic information on land and property sales, on land valuation systems and techniques for property tax and land value tax are limited in Cambodia and considered suspect. No confidence can be found in the reliability of the sales prices recorded as the basis for the tax payment. Efforts are being made to improve the situation by systematic registration (LA-SSP) and by the introduction of GIS-based land information databases, but progress is still slow. The property tax – not to mention the LVIT as a potential sustainable, easily levied own-source revenue at the *local level* – can be interpreted as politically contentious in Cambodia.

The theory and practice of land taxation, combined with the Ricardian rent in particular of unimproved land, is highly controversial. Much more detail is needed to justify the sustainability of a future simple revenue generation system, e.g. through computer-assisted mass appraisal options (CAMA) which are based on the IAS-defined market value (SMOKE 2008). At present though, the housing market and the export-oriented economy are at risk. The global financial and property difficulties caused by subprime mortgage loans have hit Cambodia in particular, with a rapid downturn in house prices of 25–30% up until the end of 2009, an ensuing “bust” and a spike in defaults (WORLD BANK 2009). However, by improving tools for valuation and taxation, Cambodia could serve as an example for the development of a land tax under highly adverse circumstances.

5 Land reform and leasing

5.1 Leasing of public land versus private property

Leasehold tenure comprises time-restricted private land use rights on state public land. It would help to put economic pressure on the private land owners so that the planning authorities are able to grant access to land for the Cambodian people without high transaction costs. Evidence from China, Hong Kong, Singapore or Vietnam shows that public ownership of land in an overall framework of capitalism is a distinctive characteristic of their land policies. In these countries, leasehold rents also serve as a major segment of public revenue (ANDELSON 2000; BOURASSA and HONG 2003; BRUCE 2008). Cambodia could avoid

the consequences of exclusive private property rights by implementing public leasehold and could achieve a land use system similar to the land leasehold tenure regulations in many modern states. Land use planning by the Cambodian state would become far more neutral than today if private property on land were at least partly replaced by public land leasing. The combination of *public* land leasing, but *private* land use rights and partly skimmed-off ground rents is based on a land reformer’s approach. MILL (1848), GEORGE (1879), and DAMASCHKE (1922) criticized the designation of private property rights for land and other natural resources. They strongly supported the idea of public land leasing. MILL contended: “No man made the land” (MILL 1848, 233).

The core arguments against private property for non-renewable resources are: if all property rights are left in the hands of private individuals, land use planning will sometimes become useless. Economic interests (rationalities) mostly dictate a phenomenon that can be observed by the increasing importance of foreign direct investments (FDI) in the Cambodian agriculture and commodity sector (see Tab. 5 below). These land use arrangements are not necessarily effective. Under such conditions, land use planning can hardly fulfil its neutral function. Because of high opportunity costs, only a certain part of the possible investment can be executed. Once property rights have been assigned to single individuals and their successors, it would virtually be impossible to modify the distribution of land in favour of the poor (DAVY 2009). In addition, land distribution is unequal, since the access to land is not guaranteed for the majority of the people (LÖHR 2009).

The land property – as suggested by HANS BERNOULLI (1946) – should generally belong to the municipality or the commune in the name of public interest. Following the ideas of BERNOULLI, every Cambodian may have equal chances to get access to land and its products via local leasehold rights and auctions (bidding) of the secured land use rights. Certainly, such an innovative land allocation and distribution system causes higher rents. Increasing land values and thus higher leasehold fees would easily exclude the urban poor from the land use if regular adjustments to ground rents are being made. A revolving (local) land fund can solve this problem by pooling the paid ground rents and by redistributing these rents in equal shares to the Cambodian people (LÖHR 2009). The land use rights granted have to be paid by the users according to their economic capability: the lower the income per household, the lower the cost for the leasehold and hence

the transaction cost. In a sound leasehold system, skyrocketing land prices, land hoarding, land concentration and intransparent public and private land sales as they occurred in Cambodia from 2005 to 2008 would not be repeated to the same extent. The comprehensive concept comprises four steps (see Tab. 4).

5.2 Leasing of public land in Phnom Penh: the example of “Boeung Kak Lake”

Normally, vibrant land markets show a singular aspect: the total supply of land is anything but elastic. The supply can normally not be increased due to higher demand; the amount of land stays more or less the same. Only the land prices and the land rent rise, since there are nearly no substitutes for land. Additionally, agricultural land is lost in favour of settlement areas and infrastructure projects, which can be shown in the form of urban sprawl and suburbanization tendencies or private “land making” by legally converting public land into private property, specifically in the capital Phnom Penh. Certainly,

land leasing does not automatically lead to a sustainable land use for the people’s benefit. An illustrative example for the problematic and highly sensitive relationship between leasing of state land, the recognition of private land use rights and the safeguarding of local interests affected by construction development can be provided by the “*Boeung Kak Lake*” project in central Phnom Penh. On August 26, 2008, the controversial filling of the 90-hectare large Boeung Kak Lake began by permanently pumping sand from the Tonle Sap River into the lake through a drainage system (see Photo 1). The project is being carried out as a joint venture between the municipality of Phnom Penh (10%) and a private developer (90%), based on a 99-year leasing agreement. It poses a threat to the livelihoods and economic existence of the lake residents, approximately 4,000 families. They are going to be “resettled” 25 kilometres away from Phnom Penh city.

The real estate development of the lake follows the “Greater Phnom Penh 2010” master planning which includes the conversion of areas of “new land” belonging to the state as public property to state private property. Conversion areas are mostly

Tab. 4: Granting and redistributing of ground rents

1. Level	Allocating	Land use planning and implementing of a public land leasing system
2. Level	Sucking	Skimming-off a portion of the ground rent by leasing fees
3. Level	Funding	Pooling the partly skimmed-off ground rents
4. Level	(Re-)Distributing	Paying the skimmed-off and pooled ground rents in equal shares to all Cambodians

Tab. 5: Foreign Direct Investments (FDI) and Economic Land Concessions (ELC) in Cambodia in 2010

Year 2010	ha	total
Total Area of Cambodia	18,103,500	
Agricultural Land	5,356,000	30% of total area
Fertile Land	3,807,000	21% of total area
Economic Land Concessions (ELC)	1,400,000	19% of agriculture land 36% of fertile land
Foreign Direct Investments (FDI)	300,000	29% of ELC
Wood production	108,368	36% of FDI
Agro fuels, especially Jatropha	91,200	30% of FDI
Food production	66,400	22% of FDI
Others	35,000	12% of FDI

Sources: <http://www.mekong.net/cambodia/facts.htm>; <http://www.maff.gov.kh/elc>; own calculation



Photo 1: “Land making”: Filling-in of the Boeung Kak Lake in Phnom Penh. (Photo: THIEL 2009)

filled in with dredged silt deposits, and are then rented or sold by private developers for urban and industrial purposes. Leasing of state public land and public entities still serving public purposes is only possible for a maximum of 15 years (RGC 2006). However, the public purpose of the lake has been politically abandoned by an agreement between the municipality of Phnom Penh and the private developer in order to transform the waterbody into private property as a precondition for the 99-year leasing contract. Figure 2 illustrates the legal steps from state public property to private property.

Leasing of public land is legally separated into property of the state as a lessor for state public property and private land use rights for the people acting as lessees. The private individual in Cambodia – based on the common public land leasing model which exists on a wide scale in Singapore, Hong Kong, Australia (BOURASSA and HONG 2003) or

in certain German cities (LÖHR 2009) – owns a building, factory, hotel, farmhouse or any other improvement on the land through leasing agreements, but not the land itself. The land remains state public property. The Land Law 2001 as the essential legal framework for land reform has to be revised as far as the amendment about leasing of public entities and lands (which still serve a public purpose) is concerned. State public property, a state land inventory, political commitment, and transparent leasing contracts which meet international law standards should be essential parts of leasehold in Cambodia. These guidelines should secure land use rights of the local people and safeguard their interests. In addition, they assist the process of passing through social and environmental impact assessments which are necessary preconditions to set up land leasing models pursuing private *and* public interests.

6 Land reform and concessions

Unlike leasing, concessions play an increasingly dominant role as part of land reforms in Cambodia in view of the social, agricultural, and industrial use of state and private land. Two forms of land concessions can be distinguished according to Articles 48-62 Land Law (see Fig. 3): Social Land Concessions (SLC) and Economic Land Concessions (ELC). In Cambodia, concessions define legal rights to occupy land for (mostly peaceful and uncontested) possession rights and private ownership. They certainly do not have the intention of maintaining a strategic state public property land portfolio which is alienated to be sold to private individuals.

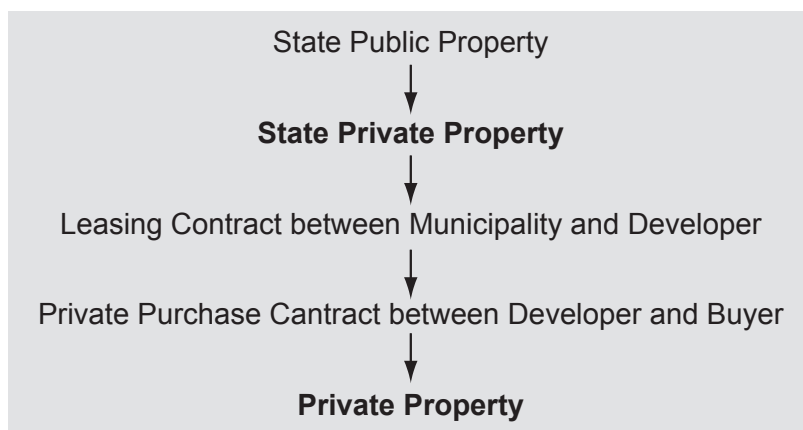


Fig. 2: Steps of privatization from state public land to private land

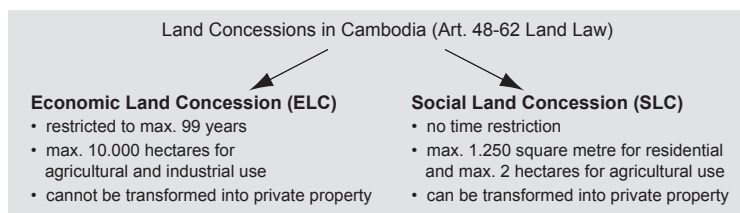


Fig. 3: Main forms of land concessions

6.1 Social land concessions: difficult institutional arrangements

SLC are reserved for the landless and land poor citizens (RGC 2003). SLC can achieve better allocation, but not always equal distribution. In particular, SLC cannot reduce the amount of transaction costs for the access to land, unless the state authorities distribute the land at low cost or with subsidies to the SLC applicants. SLC play a central role in projects for social land allocation in development zones on former state public land. The main pilot project in two communes located in the Cambodian Kratie province contains preparatory land use planning (settlement plan) and mapping of community, private, and state plots. The former state public land was registered as state private land which will be transferred to private ownership of the individual beneficiaries after five years of latency (see Fig. 4).

The LASED (Land Allocation for Social and Economic Development) project started in 2009. Although the distribution of land (on average 20 metres by 40 metres for each family) is seen as an unprecedented action plan to help Cambodia's poor families, in view of the transformation from public to private property in favour of the target land recipients, the term "concession" appears to be misleading. As mentioned, SLC lead to private property after five years of land use with the right for the concessionaire to exclude others from the use of the concession land. Moreover, SLC lack effective implementation and show insignificant results due to rising land prices in recent years as a result of massive competition for land through private developers and "anarchic encroachments". Encroachers occupy land without titles for highly speculative purposes (NEOU and BECKER 2009). The main problem consists of the (re-) distribution of land in Cambodia which hardly serves the poor. Hence, SLC can be interpreted as merely "window dressing". Although there is sufficient fertile land available for SLC, the competition for these areas is high and the costs of making land suitable through the provision of an adequate infrastructure for settlement and agriculture are overwhelming.

6.2 Economic land concessions: the vehicle for foreign direct investments

In contrast, a continuously increasing amount of agricultural land is allocated by the ruling elites to investors through economic land concessions. Economic Land Concessions (ELC) were legally planned to respond to an economic purpose allowing the beneficiaries to use the land for industrial purposes (RGC 2005; RENDALL 2003). They are now used mainly for the flow of foreign direct investments from France, China, Kuwait, and Qatar – to name just a few investing countries. ELC serve as the legal vehicle for foreign direct investments through leasing at the expense of the former (e.g. indigenous or communal) private land users such as small-scale farmers who are involved in agriculture for subsistence purposes. FDI are mostly made in the sectors of agribusiness, mining and forestry, in particular for rubber plantation, rice cultivation, and commercial planting of biofuels and biomass production (Tab. 5). Doubtlessly, this development may threaten food security and can foster "land grabbing". In Cambodia – as is the case worldwide – projections suggest an increasing demand for biofuel and biomass production.

ELC are *de jure* restricted to a maximum size of 10,000 hectares (Art. 59 Land Law). *De facto*, several ELC are above this limit (WORLD BANK 2009). In 2010, they reached a total amount of 1.4 million hectares of Cambodia's total land area of 18.1 million hectares – or 36% of the fertile land – and this trend is increasing (see Tab. 5). Since 1992, economic concessions have been awarded to 65 companies, many with close connections to the ruling party (LIPTON 2009). ELC are used to the detriment of the land needs and tenure security of the rural poor. They mostly serve the single investor's profit rather than the social contract for redistribution in favour of the citizenry.⁵⁾

⁵⁾ Speculation tendencies for non-productive purposes by just trading with the shares of the concessionaire companies are also on the rise. Additionally, ELC cause deforestation and village displacement, since "it is extremely difficult to obtain even 10,000 hectares (...) that is not subject to overlapping claims, existing farmland, established villages and/or illegal squatters" (Phnom Penh Post 2010).

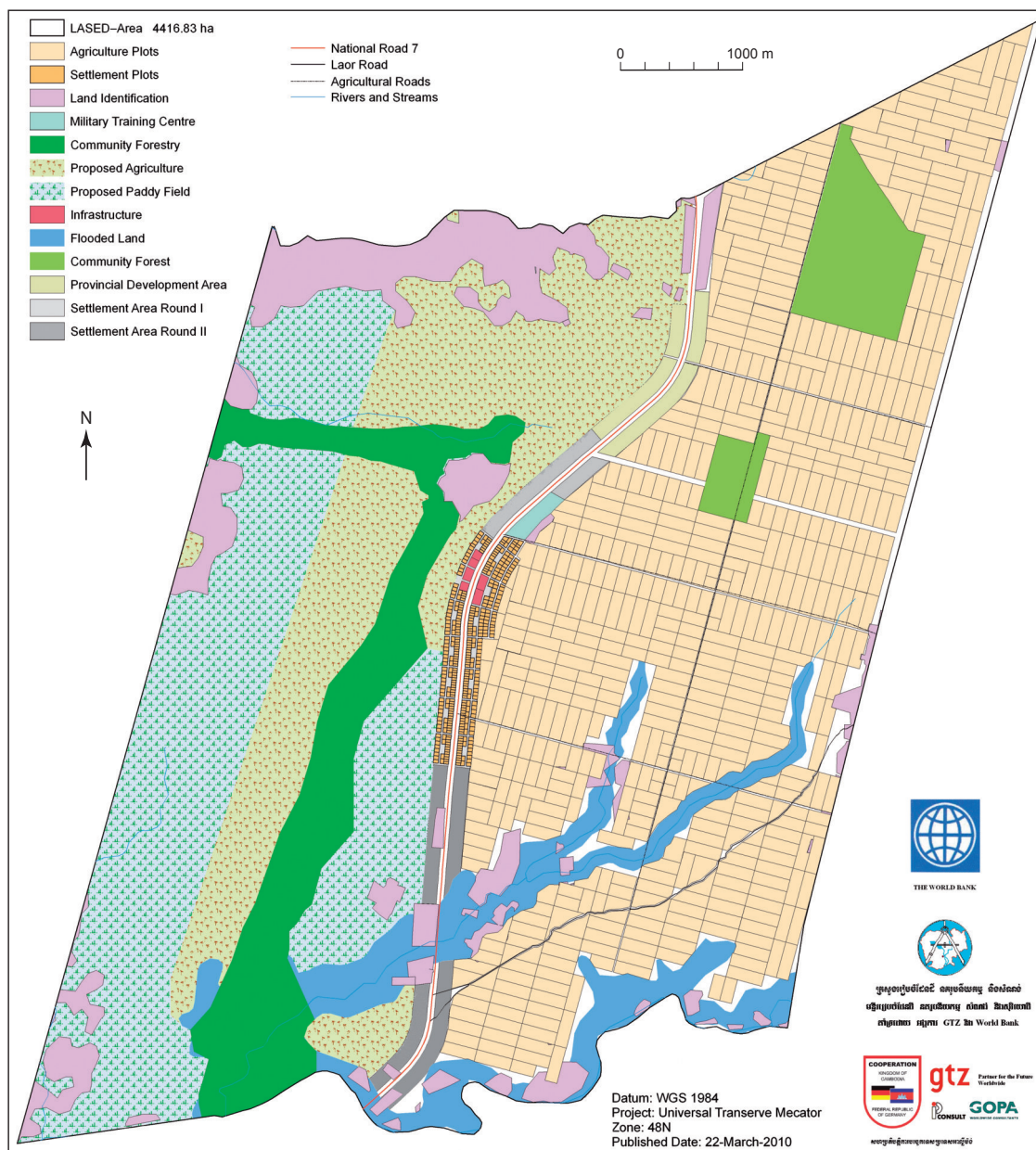


Fig. 4: Preliminary land use plan for social land concession in Kratie Province (Provincial Department of Land, Kratie, with support from IP/GOPA-GTZ 2010)

Rent-seeking activities and speculation are common. The concessions are time-restricted up to 99 years (Art. 61 Land Law) and have an average duration of 70 years. Given this timeframe, the right of an economic concessionaire is nearly comparable to the eternal right of a private owner. Moreover, ELC can be used as a legal instrument to convert state public land into state private land (Art. 14 and 15 Land Law; see Fig. 2) by Sub-decree. The maximum concession duration of 99 years may be too

long. Average durations up to 15 to 20 years – for ELC and other leasing contracts as well⁶⁾ – would

⁶⁾ The possibility to restrict leasing contracts for the use of State public properties for the duration of 15 years is already provided by Article 18 of the Sub-decree No. 129 (RGC 2006). This regulation should be integrated into the Sub-decree No. 146 on ELC in order to limit the duration to 15 years to prevent long-term speculation and rent-seeking tendencies.

make sense in order to gain efficient control and the ability to constitute gradual, more sustainable land use forms in the case of failure and misuse of the concession.

7 Conclusion and outlook

This review of the past and recommended steps as part of the contingency plan for the Cambodian land reform allows a number of conclusions. *First*, the problems occurring in today's Cambodia that seem at first glance to be a problem of land dispute resolution, legal enforcement, and insufficiently compensated eviction and expropriation mainly have to do with a one-dimensional orientation towards the creation of private property rights for land as a non-renewable natural resource. *Second*, in a broad absence of a developed civil society, something which Cambodia shares with other post-conflict countries, the structural feature of the "elite capture of law" has led to a distribution of state land in favour of the rich and powerful. *Third*, land redistribution as reparation had a difficult start since the beginning of the land reform process in the mid-1990s. A lack of commitment of the ruling elites to respect existing land legislation can be observed.

However, as a consequence of the Land Policy Declaration of July 2009, the Royal Government of Cambodia henceforth has the unique opportunity to implement reliable land reforms and an equal allocation and distribution of land by using planning and taxation tools. *Fourth*, land reformer's property concepts can provide the legal and economic basis for finding a just land use system for Cambodians. Specifically, the private property rights paradigm seems to be the problem instead of the solution for the current land use problems. Governing structures based on the creation and conceptualization of private property rights, enforced by external authorities and international "advisors", are neither always necessary nor optimal. Instead, different design principles of robust using and leasing rights institutions for the management of the non-renewable resource land have to be built up in the future, including community-based environmental governance systems or common pool resources. Property and land value taxation will eventually become an important source of national and sub-national revenue, flanked by a modern land inventory and transparent leasehold agreements for the social contract with *all* Cambodians.

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