

Law for State Land Management in Cambodia

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Key words: Access to land, Land distribution, Legislation, Security of tenure, Spatial planning

SUMMARY

Access to land empowered by law is a crucial issue for sustainable development of a modern, prosperous Cambodia where the social and ecological responsibilities are well developed and embedded in a State Land Management. The State is the main actor in the land sector and has to guarantee State public property which cannot be transformed into private property. Cambodia shows still 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. State Land Management in Cambodia must give an answer to these problems. It is an interdisciplinary approach of land policy, land law, land economy and planning law for the use and valuation of land properties (immovable properties).

The legal framework for property includes the Constitution from 1993, the Land Law from 2001, and Sub-Decrees. Private property is protected under the Constitution and the Land Law. Only natural persons or legal entities of Khmer nationality shall have the rights to own land. Private property rights ensure “exclusive” interests of the property. The essential property form for State 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, as a public interest. Having a land use planning system in the future, the Cambodian planning authorities are able to guide and restrict the use of State public property in order to protect and promote the public interest.

State Land Management needs a broader basis within the Constitution than today. One of the main purposes of public oriented and constitutionally justified land management is to ensure access to land to all Cambodian people for their private use. Private land use under conditions of tenure security is more efficient than State land use. But that does not automatically require private property. State public property with the guarantee for private use, e.g. through land leasing, is absolutely sustainable, sufficient, efficient and effective for Cambodia.

State Land Management in Cambodia must – as a future task - comprise constitutional law, land law, planning law, concessions and leasing on State land that cannot be transformed into private property. State Land Management can also be a State driven concept of Good Land Governance in other (developing) countries. The Constitution and the Land Law shall empower the Government to guarantee a market economy for all Cambodian people based on State public property that is not allowed to be sold to the people. It must be interpreted as a public interest in the future that the (eternal) ground rent as the economic gain of the land use is skimmed-off and, in the next step, is redistributed to all Cambodians in equal shares.

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1. STATE LAND MANAGEMENT AND LAW IN CAMBODIA

State Land Management is the management of all State (public) land. This seems to be trivial. But, in the case of the Kingdom of Cambodia, this statement is anything else but a truism. Implementing State Land Management faces numerous problems like the often confusing difference between State public (Art. 17 Land Law) and State private land (Art. 14 and Art. 15 Land Law), unclear boundaries, a weak rule of law and the unfinished recovery of administrative documents for titling, mapping, properties, and taxation. Property related documents were destroyed during the Khmer Rouge period (1975-1979). Given these preconditions, State Land Management must start at nearly “point zero” in Cambodia, although some efforts have been made in that direction (RGC 2006b). No coherent State Land Management system has been installed in Cambodia yet, despite the “Declaration of the Royal Government of Cambodia on Land Policy”. This document underlines the importance of State immovable properties, of a complete State inventory of properties for dispute resolution, a land valuation system for State property and a land use planning system for State land (RGC 2009).

The State is always the main actor in the land sector and has to guarantee State public property which cannot be transformed into private property. State Land Management in Cambodia needs a broad(er) basis within the Constitution from 1993, the Land Law from 2001, Environmental Laws, Sub-Decrees, and within the land related policy papers than at present. One of the main purposes of public oriented and constitutionally justified land management is to ensure access to land for all Cambodian human beings for their private use. Private land use under conditions of tenure security is far more efficient than State land use. But that does not per se require private property. State public property with the guarantee for private use is absolutely sufficient, efficient, effective, and sustainable for Cambodia.

My paper focuses on legal and economic instruments for an effective and efficient State Land Management. This can be achieved by a variety of instruments:

- implementation and enforcement of law
- dispute resolution
- economic instruments, and
- calculation valuation of State immovable properties.

State Land Management means the use of public land in public interest. Art. 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*”. Art. 58 of the Constitution declares: “*State property comprises land (...)*”. Expropriation is a legally justified instrument of the “Leviticus” (Thomas Hobbes) who uses the power of “eminent domain” which per se represents the legislator. However, experience shows that expropriations should be realized only as fair, just and in advance compensated “ultima ratio”. Under Cambodian Land Law, expropriations are not mentioned expressly. They are subsumed

under “eminent domain” and “abandonment of land”. The State is allowed to take privately owned land for public purposes. “Privately owned” land is normally registered. Once a person is registered as the owner, the ownership is guaranteed by the State (Art. 1 and Art. 226 Land Law), documented by the cadastral land registration system (Art. 229 abbr. Land Law).

A clear differentiation has to be made between “expropriation”, “eviction”, and “relocation” in the context of urban restructuring processes occurring on State land. In Cambodia, State public or State private land cannot be owned by and registered for private people, except a Sub-Decree or registration procedure statutes this. Article 43 Land Law says: “*In no case can the public property of the State be the subject of acquisition of ownership*”. Consequence: The relocated – not expropriated or evicted – people would have to leave the land in case of development. The people have to do this without compensation for any improvements they have made on these plots (Rendall 2003). This situation may differ from State private land which can be transferred to anyone without conditions and is subject to possession. Although Article 30 Land Law gives the right to request a definitive title of ownership if they, for no less than five years, enjoyed peaceful, uncontested possession of immovable property than can lawfully be privately possessed. “Privately possessed” however, cannot be realized neither for State public property nor if the register prohibits the taking of possession in “good faith”. An acquirement in good faith is only possible according to the register with land certificates (titles) for both, State and private property. If the State is already registered as the owner, no purchase or possession in good faith is possible. If possession takes place by private people and against the good faith of the land register, this act is called “encroachment”. The term “public interest” should be integrated into Art. 58 Cambodian Constitutional Law in order to clarify that State public property is of essential public interest. Avoiding land speculation and combating illegal claim of State land must be constitutionally demanded public interests. Social housing and any sustainable use of forest, fisheries, and other resources should also clearly be defined as public interest of the Cambodian State. To sum up, State Land Management means sustainable land use management.

2. GOOD LAND GOVERNANCE AND LEGAL EMPOWERMENT FOR STATE LAND MANAGEMENT

The Royal Government of Cambodia (RGC) “*attaches priority to granting land ownership rights to poor households and vulnerable groups for housing, farming and small businesses*” and wants to “*ensure land use efficiency*”. 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 2008a). The solution of these enormous problems is a superior national goal in achieving poverty alleviation, ensuring food security, equitable economic and social development, fair distribution of land and natural resources, secure housing and environmental protection. The Rectangular Strategy Phase II (RS) and the National Strategic Development Plan (NSDP) follow doubtlessly the principles of Good Governance. These political guidelines shall be clearly reflected within a comprehensive State Land Management and Land Policy.

Land Laws, Planning Laws, Property Laws and the Constitutions are of crucial importance for good land governance in each country, not only in Cambodia. The Land Law of Cambodia from 2001 was expected to be implemented to ensure an equitable, proper and efficient system of land management, land distribution, land tenure security, eradication of illegal

settlements and land grabbing, and the control of ownership concentration for speculative purpose (RGC 2005a). 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 for implementing and penetrating of the Land Law to the Cambodian land rich and land poor in the sense of legal empowerment (Commission on Legal Empowerment of the Poor et al. 2008) and towards involved ministries, public and private actors are relatively high. In the future, the implementation of regulations of the Land Law, but also the publication of decisions of the Cambodian Constitutional Council dealing with property, expropriation and compensation cases – to name just a few “legal hot spots” – should be strengthened and ensured.

Due to international human rights law, the term “tenure security” means the right of all individuals and groups to effective protection by the State against forced evictions. From the perspective of international law, secure tenure is only one of seven components of the right to adequate housing, and directly linked to the access to land (UN Habitat 2004). However, tenure security should not, under any circumstances, be mixed up with private property rights. Accessibility, affordability, habitability and location as part of international human rights laws can be guaranteed by the State (Art. 17 Land Law) at any time without private property. Land policy comprises State and communal arrangements which influence the value, the use, the allocation and distribution of land (Davy 2005). The need for a national land policy in Cambodia is obvious because of land speculation, rent-seeking and the loss of fertile farm land due to its conversion into construction sites and real estate objects. The current land management challenges and developments on the real estate land markets and real estate financial systems worldwide including the “financial tsunamis” and bankruptcy of banks meet doubtlessly demand for a socially and economically well-balanced land policy. State Land Management should therefore maintain a strategic land portfolio with public property that doesn’t allow alienation, but that does assure non-speculative purposes for the benefit of all Cambodians.

3. State Land Property And Land Valuation

Astonishingly, the property rights theory – in environmental economics well known as the Coase theorem (Coase 1960) – plays not a dominant role in the scientific land management world. Property Rights, according to Coase, should be given into the hand of one owner who feels responsible for the asset. Owners must be able to exclude others from using their property (exclusive property rights; exclusivity). Property issues lack acceptance within the public and political discussion. This ignorance, indeed, was not always the case: *“There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. And yet there are very few, that will give themselves the trouble to consider the original and foundation of this right”* (Blackstone 1766).

State and private land, property rights, planning and value are undividable elements of land markets. When land is valued, the exclusive property rights are the basis for each calculation: Without property, no valuation and no land value. *The* land value does not exist. Controversies about the economic land value or about the exchange value between Adam

Smith, David Ricardo, John Stuart Mill, Karl Marx, Alfred Marshall or Joan Robinson – the classical or neoclassical economists – mirror the difficulties in explaining the creation of the land value or the ground rent. A land valuation system in Cambodia has to implement the fair market value according to the International Accounting Standard (IAS). In economic theory, at least three categories of land value – for State and private properties – have to be distinguished:

- the territorial land value regarding to content, duration, and intensity of the land right
- the economic land value as an indicator for the gain from the real estate use
- the ecological land value as an indicator for the ecological quality.

Experiences with Western States oriented property rights and obligations on land are still limited in Cambodia. Private property in land is protected under the Cambodian constitution and the legal system through Art. 44 of the Constitution, Art. 4, 8, 14-17 and 66 of the Land Law, Art. 2 of the Law on Land Management, Urban Planning and Construction from 1994, and Art. 138-226 of the drafted Civil Code. Art. 2 Land Law has special importance for land valuation, because it describes three forms of “immovable property”. The land markets and the – currently drafted – land valuation system for Cambodia base legally on immovable property. “Land” in Cambodia can be interpreted as land including constructions (assets) and property rights which can be appraised for mortgage, determining co-ownership value and for capital gain (LMAP Canada 2008a). Land valuation is a sub-layer of the cadastral system for State and private land (LMAP Canada 2008b). What is being appraised of real estate is the private and public real property itself with its rights and obligations according to the theory of property rights as a bundle of rights (Demsetz 1967; Posner 1977). Imagine a bundle of sticks where each stick represents a distinct and separate right or interest. The bundle of rights contains the interests of a real property owner (Appraisal Institute of Canada 2005). 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 landowner.

To be sure, the common, provincial or federal law can limit and restrict certain rights or give the possibilities for expropriation. In Cambodian Land Law reality, too often the law is relatively weak to penetrate effectively through the (poly-)rationalities (Douglas 1966) of owners, their acquisition strategies for property and their rent-seeking driven individualistic/egoistic economic expectations towards the “highest and best use of land”. Based on the theory of David Ricardo, the ground rent (for agricultural land) rises proportional to the population (Ricardo 1817). This theory can be transformed to different qualities of land subject to land use planning in Cambodia, in particular to the legally binding determinations of land use plans.

4. STATE LAND LEASING

Private land use does not necessarily have to be linked with private property. Exclusive private rights e.g. for immovable property are not legally demanded in Cambodia, neither by the Land Law nor by the Constitution. More than that, nearly all property-oriented Western states made the painful experience that private property rights due to the value of the land and due to the rent of land have often negative consequences for State Land Management. Private property rights are to some amount obstacles for a land use planning policy and for a social

land law. The “*control of ownership concentration for speculative purpose*” – as one of the clear political aims in the NSDP 2006-2010 – would not be that necessary to mention like in today’s Cambodia if there would not be exclusive private property rights for non-renewable natural resources like land, soil, and commodities (especially oil and gas).

The RGC should try to avoid the consequences of exclusivity of private property rights. Cambodia can achieve a land use system similar to the land leasehold tenure regulations in many modern States. In addition, they are also able to skim-off the economic ground rent completely through taxation like income tax, unused land tax and other tax forms that have to be constitutional before implementation. In other words: Land use planning by the State would become neutral, when private property on land would be totally replaced by public land leasing. The combination of public leasing, but private land use rights and skimmed-off ground rents bases on a land reformer’s approach. Land reformers like Henry George, Adolf Damaschke, Franz Oppenheimer, Michael Flürscheim, but also economists like John Stuart Mill or Léon Walras criticised private property for land. “*No man made the land*”, is a famous quotation from J. St. Mill (Mill 1848). The arguments (Löhr 2008) for such a sceptical interpretation of private property for immovable goods like land and commodities are:

- If all property rights are left in the hand of private people, any land use plan is useless. Economic interests dictate, the arrangement is not effective, and negotiations will fail.
- Because of high opportunity costs, only a certain part of the possible investment can be executed.
- Land distribution is unequal. The access to land is not guaranteed for a lot of people.
- The way of land use is determined by economic power which is not a sound legitimating base for a sustainable land use management.

The property of land should belong to the municipality or commune. This strategy was the idea of Hans Bernoulli, a Swiss architect. Everybody should have the same chance to get access to land and its products via leasehold rights and auctions of the private land use rights. But a good land use policy causes higher rents and land values and higher leasehold fees, if an adjustment to ground rent is made. A revolving land fund can solve this problem by pooling of the paid ground rents and – in the next step – by redistributing of the ground rent in equal shares to the people (Löhr 2009; Löhr 2008). The whole concept comprises of four steps:

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

The granted land use rights have to be paid by the users due to their economic capability. The lower the income per household, the lower the cost for the leaseholds and the transaction costs for this household. In a sound State Land Management system land hoarding for speculative purpose and “rent seeking” would not make sense anymore. “Sky rocketing” land prices as they occur in Cambodia from 2005-2008 would not longer exist. Normally, land markets show a singular aspect: The total supply of land is not elastic. The supply of land cannot be increased due to a higher demand. The amount of land stays more or less the same. As a

consequence, only the land prices and the land rent rise, because there are nearly no substitutes for land. The advantage that is given to the landowner is only given up by him if compensation is paid. Keynes called this kind of compensation the “liquidity bonus” (Keynes 1936). Additionally, more and more agricultural land gets lost in favour of settlement areas and infrastructure which can be shown as urban sprawl and suburbanisation tendencies, specifically in the capital Phnom Penh.

Moreover, leasehold tenure can avoid the lack of tenure security for indigenous land rights and for communes/*sangkat*. It can help to register land systematically to women who primarily tend to achieve secure land use rights for their families to do subsistence farming or smallholder business. However, to ensure effective land ownership security for farmers and the equality in access to land for marginal groups like women, the young and the poor remain major challenges. This is valid for the land management not only in Cambodia, but in particular for developing countries. The current systematic land registration program (LMAP; in future: LASSP) focuses on “creating” private ownership and tenure security. LMAP could even result in higher land values and rent-seeking behaviour of the landowners: *“While higher land values benefited village sellers, proceeds from land sales were not normally invested in productive pursuits”* (Analyzing Development Issues Team et al. 2007). LMAP has also to cope with “extra-legal” practices like non-registered subsequent registration of transferred private ownership: *“Results of this study revealed that the vast majority of subsequent land transfers (...) were not being updated on the Land Register, nor were land purchasers paying the 4 percent transfer tax. In fact only 1 respondent household had completed this transfer registration”* (Analyzing Development Issues Team et al. 2007).

The land register does not reflect accurate data about the size, the land value and demographic information about the transfer of private property rights for former State land. Of course, leasing rights cannot solve specific problems that threaten land tenure security and other gender implications regarding to the land use like separation, divorce, abandonment, multiple marriage relationship and death of the husbands who were co-owner of the land (Mehrak et al. 2008). But leasehold tenure on State public land without speculation tendencies can give legal security to foster political and economic stability and can avoid the occurrence of land conflicts.

Although leasehold tenure regulations exist in the Cambodian Land Law (Art. 106-113), these leasing rights cannot be compared with the common model of leasehold rights. In Germany, the leasehold system (“Erbbaurecht”) is based on common/public property for land including the right to use the site and on full private property for the building. This property-differentiation was unfortunately not adapted by the Cambodian Land Law. Instead, the very few regulations stipulate registration, maintenance and the “quiet enjoyment” between lessor and lessee. In Cambodia, even the improvements or any constructions a lessee makes during the leasing period become the property of the lessor without the need to compensate the lessee for these investments (Rendall 2003). Doubtlessly, this regulation doesn’t seem to be very helpful in order to gain attractiveness of public land leasing in Cambodia. The Land Law should be legally revised as far as its norms about leasing are concerned.

The private person – based on the common leasing model like which exists in Hong Kong, Australia or Germany – can own a building, factory, hotel, farmhouse or any other

improvement on the land, but not the land itself. The land remains forever as public State property and cannot be privatized. This regulation is already provided by Art. 15-18 of the Sub-Decree No. 129 (RGC 2006a). Land Leasing for State Land Management could be legally separated into property of the State as a lessor for State public property according to Art. 17 Land Law and for the people as lessees. Under the leasehold tenure, someone does not have to buy the land, because it remains as State public property. The lessees could save the money for a building of good quality, e.g. with renewable energy supply or are able to achieve a better (university and school-)education for their children by investing the saved money in books, school fees or teaching courses.

Compared to land leasing in other countries, in Namibia only the land users in communal areas have leasehold tenure titles in contrast to freehold tenure land titles in commercial areas. Leasehold titles and leasehold tenure land use rights are registered by the Communal Land Boards with assistance of the traditional authorities (TA). Leasing rights on State (communal) land are recognized by the Communal Land Reform Act (CLRA). Leasing plays an important role in the Namibian Land Policy and thus in the land reform process. The CLRA stipulates the mechanisms and rules for the allocation of leasehold land rights for business purposes as well as the allocation of leasehold rights for agricultural uses. In Bangkok, people in temporary settlements negotiate time-restricted land rental contracts with the land owners similar to leasing rights for the existence in areas that would otherwise be beyond their reach. In Tanzania, temporary occupation licences can promote efficient utilisation of public land. “Anticretico” in Bolivia or land proclamations in the Philippines are several examples for intelligent and effective rental and leasing systems on State land without private property, but with affordable transaction costs for the urban poor (UN-Habitat 2004). State public property is a necessary precondition to set up land leasehold tenure on non-transferable State public land for public interest. In summary, *conditio sine qua non* for leasing models is a reliable State Land Management on public land, a State land inventory, political commitment, subsidies, and transparent leasing contracts which meet international law standards.

5. CONCESSION MANAGEMENT FOR STATE LAND MANAGEMENT

Concessions play a very dominant role in Cambodia for the social, agricultural and industrial use of State land. Two forms of land concessions can be mentioned: Social Land Concessions (SLC) and Economic Land Concessions (ELC) according to Art. 48-62 Land Law. In Cambodia concessions mean legal rights to occupy land for possession and private ownership instead of maintaining State public property with time-restricted private land use rights.

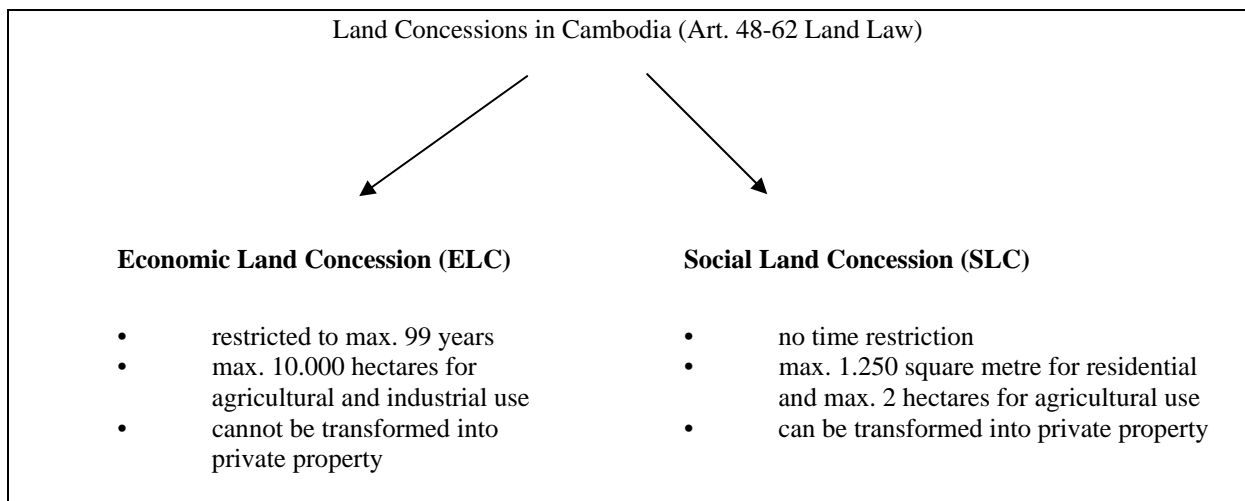


Fig.1: Main Land Concessions in Cambodia

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 automatically solve the problem of transaction costs for the access to land, unless the State authorities distribute the land for low cost or with subsidies towards the SLC applicants. SLC play a central role in projects for land allocation in Kratie province in a development zone on former State land. The LASED (Land Allocation for Social and Economic Development) project has started successfully in 2009, after some preparations to allocate State land. The distribution of land (20 metre-by-40 metre plots for each family) is seen as an unprecedented plan to help Cambodia's poor families (Neou/Becker 2009). Pilot projects contain the reclassification of former State public land to be registered as State private land for SLC which will be transformed into private ownership of the individual beneficiaries after five years of latency.

Because of this reasons, the term "concession" for SLC is very delusive. SLC lead to private property with the right for the concessionaire to exclude others from the use of the concession land and therefore to the opposite intent of equal distribution and social purposes. Moreover, SLC lack effective implementation due to rising of land prices in the last years as a result of massive competition for land through private developers and a loss of concession land for other (sometimes highly speculative) purposes. The reasons for the deficits of the SLC can also be found in the land economy as mentioned above (fixed and inelastic supply). This economic diagnosis is valid all over the world, but is easily forgotten or even ignored. Only the land prices and the ground rent rise which is the basis for land speculation, land hoarding and land grabbing with negative consequences for the availability of land for SLC. The main problem is: Nearly all land is already distributed in Cambodia – there are simply no areas left for SLC.

ELC respond to an economic purpose allowing the beneficiaries to use the land for industrial purposes (RGC 2005b). ELC are de jure restricted to a maximum size of 10.000 hectares (Art. 59 Land Law). De facto in reality several concessions are above this limit and have reached an amount of total 2,7 million hectares of Cambodia's total land area of 18,1 million hectares in 2004 (Leuprecht 2004). This takes place with increasing tendency at present where joint

venture contracts for rubber plantations for 20.000 hectares via ELC in the Cambodian province Monduliri have been signed in April 2009 (Phnom Penh Post 2009). Additionally, ELC are time-restricted up to 99 years (Art. 61 Land Law). Given this duration, the right of an economic concessionaire is comparable to the right of a private owner. ELC can also be used as a legal instrument to convert State public land into State private land (Art. 14 and 15 Land Law) by Sub-Decree. The maximum ELC duration of 99 years may be too long. Average durations up to 20 years would be rational in order to have efficient control and the ability to determine alternative land use when the concession contract ends. In summary, both land concessions in reality can hardly change Cambodia as a country still ruled by “the rich and powerful” (Menzel 2008).

6. STATE LAND USE PLANNING

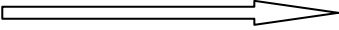
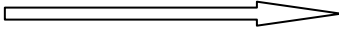
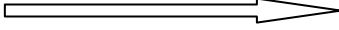
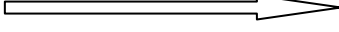
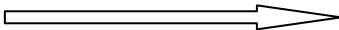
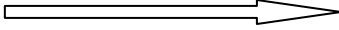
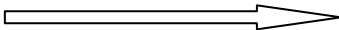
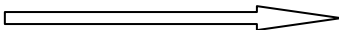
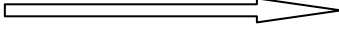
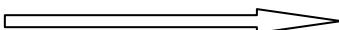
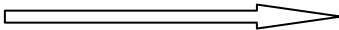
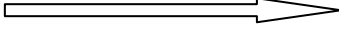
State Land Management needs a sound land use planning and spatial planning system. “*The State shall protect the environment and the balance of natural resources and establish a precise plan for the management of land*” (Art. 59 Cambodian Constitution). The vision of Cambodia’s land use planning policy is that its entire territory shall be developed, organized and protected by integrative, strategic territorial planning and the harmonization of regionally significant instruments and measures. Sufficient compliance of the land use planning objectives shall be achieved. Regionally significant plans and measures shall be harmonized with each other and carried out in comprehensive development concepts as well as coordinated with the requirements of the current land use planning policy.

Having a land use planning system in place in the future, the Cambodian planning authorities are able to guide and restrict the use of State public property in order to protect and promote the public interest. Land use plans on national, provincial, district and communal/*sangkat* (RGC 2008b) level can achieve the land use control due to the designated social and economic purposes. Suitable legal instruments that can avoid rent seeking for residential, agricultural and unused land are land use planning safeguards. Planning and construction law safeguards are commune statutory rights to buy land via pre-emption rights. Planning purposes for public interests include:

- the conservation of the landscape for rural and urban biodiversity
- the protection of open space in the cities
- areas for social housing and concessions
- zoning purposes (e.g. to avoid conflicts over nuisance), and
- determinations for agricultural uses in order to achieve food security.

Land use planning should start in Cambodia as part of the official land policy strategy and the Rectangular Strategy Phase II of the Royal Government of Cambodia. It is also a necessary precondition for land leasing and for land concessions. The Rectangular Strategy gives the following important guidelines and “core values” for the future State and private land use planning policy and its legally binding. The following table uses the international consented spatial planning terminology and not – unlike the Cambodian Land Policy Declaration from 2009 (RGC 2009) – categories like “National Land Use Master Plan” or “Provincial Land Use Master Plan” (RGC 2009). The Royal Government of Cambodia and the Ministry of Land Management, Urban Planning and Construction (MLMUPC) should avoid using these master plan terminologies. “Master Plans” are not legally binding and therefore cannot contain

determinations with legal consequences towards the landowners, their social and ecologic responsibilities, and land values.

Issues related to State land use planning in the Rectangular Strategy (Phase II, 2008)		Suitable Land Use Planning instrument
Rural poverty rate remains high		Comprehensive Land Use Planning
Gap between the rich and the poor remains a challenge		Comprehensive Land Use Planning
Land concentration is on the rising trend		Comprehensive Land Use Planning and Sectoral Land Use Planning
Landless people are on the rising trend		Comprehensive Land Use Planning
Urban-rural inequality remains a challenge		Sectoral Land Use Planning (e.g. national urban development plan) Informal Planning instruments (e.g. Master plan)
Areas under economic land concessions have not been utilized efficiently		Comprehensive Land Use Planning
Anarchy in illegal land possession increases		Comprehensive Land Use Planning
Illegal claim of State land and protected areas as privately owned		Sectoral Land Use Planning (e.g. Nature Protection Plan)
Unlawful logging		Comprehensive Land Use Planning
Pressure on and destruction of natural resources through poverty and internal migration		Sectoral Land Use Planning (e.g. Nature Protection Plan)
Decentralization of public services at communes/ <i>sangkat</i> level		Comprehensive Land Use Planning (e.g. Regional/Provincial/District/Municipality Plan)

Tab.1: Land Use Planning Tasks within the Rectangular Strategy, Phase II (2008)

Land use planning is therefore an instrument of national property policy, serving land allocation, land distribution and land use intervention purposes. Land use plans should

designate the permissible use of each plots of urban land as preparatory land use plans (development plans) and legally binding land use plans (zoning plans). Such an interlocking set of land use plans according to table 1 on national, provincial, district and commune level is necessary to avoid urbanization, urban sprawl tendencies, underused land hoarding and destruction of fertile farm land. Land use plans can control certain designated purposes, e.g. the conservation of the landscape for biodiversity/agricultural uses or to protect the open space. Spatial and specifically legally binding land use planning on district/communal level in Cambodia should be determined by:

- the preferences of public and private land owners
- the rule of law and any territorial planning regulations that are legally binding
- public and private finance institutes for mortgaging of leaseholds and concessions
- the land market, based on land and business valuation methods to identify land rental value and to revise legal Sub- and Royal-Decrees setting concession fee rates, usage charges for natural resources and royalties on a regular basis
- agreements meeting international leasing tenure standards for urban and rural agricultural State public and private land as it was shown for a State Land Management model in Lao PDR (Schumann et al. 2006), and
- land taxation (revenue), leasing fees or royalties.

Excellent planning instruments in order to strengthen the land use planning for the Kingdom of Cambodia are land use planning safeguards, e.g. municipality's statutory right to buy land and to control land prices (pre-emption law) or to expropriate private land for public interest which is legally allowed by Art. 44 of the Cambodian constitution, as mentioned above. Land re-allocation is a suitable planning instrument for (re)adjustment of plot boundaries. The Cambodian municipalities should be – as a future planning challenge – entitled to limited value capture. To ensure developing of local public transportation and communication infrastructure, water and energy supply, of public health services, and sanitation in the context of village renewal and rural development, private land owners should be charged with a certain amount of these infrastructure costs.

Rural development is an important cross-sectoral issue spanning from democracy to decentralization and improvement of rural infrastructure (RGC 2005a). But development in rural areas can be costly and depends on the cooperation of the involved private land owners. Therefore rural development needs a property steering instrument and component in order to integrate the poly-rationalities of the land owners (Douglas 1966) affected by rural development planning instruments and modules with consequences for their properties.

But even the best plans are useless when they are blocked by private land owners who – in some cases – do not accept the planning determinations for their plots and the restrictions for their private property. They hope to increase and bag the ground rent (rent seeking). A leasehold tenure system is able to give economic pressure in order to fulfil the planning authority's needs without land hoarding or speculating tendencies and to give access to land without high transaction costs for time and money (Löhr 2008).

7. FINAL POLICY RECOMMENDATIONS FOR STATE LAND MANAGEMENT

Old land reformer's property concepts can provide the legal and economic basis for finding an effective and efficient State Land Management model for Cambodia. Specifically, the private property rights paradigm seems to be the problem instead of the solution for the actual land use problems as they are mentioned in table 1 above. Different institutions for the management of the non-renewable resource land have to be built up in Cambodia in the future. In summary, this cross-cutting strategy comprises of:

- different property forms and tenure securities for land beyond the 100%-private property rights solution for the use of natural resources and any immovable property
- effective and efficient State Land Management with non-transferable public property and a State Land inventory
- leasehold tenure contracts, eventually combined with innovative land taxation models (redistribution of the ground rent for the benefit of the people as an “add up”)
- indigenous land use rights, eventually combined with leasehold rights
- rural development and village renewal as essential elements of land use planning
- property-steering functions of the land use planning policy (property policy) and
- reduced transaction costs for the access to land.

The Royal Government has now the unique opportunity to clarify and implement reliable State Land Management for the benefit of all Cambodians.

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