



## Social Land Policy for Sustainable Rural Development in Cambodia

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**Abstract** On 1st of July 2009, Cambodian Prime Minister Hun Sen signed the “Declaration of the Royal Government on Land Policy”. According to this document emphasis should be given to State reform, land law, and environmental law with their impacts on the use of non-renewable resources (land, water, and soil). The implementation of the Cambodian social land policy should start with the need to ensure access to land and to sustain rural development and environment for a modern, prosperous Cambodia. The legal framework for sustainable rural development and land policy includes the Constitution from 1993, and the Land Law from 2001, and Sub-Decrees. Land policy can be interpreted as a central element of property policy. Property is protected under the Constitution and the Land Law from 2001. State public property must be interpreted as the property of all Cambodian people, or as social land policy, that serves the purposes of humans living in the country as a public interest, particularly in rural areas. With a land use planning system the Cambodian planning authorities are able to guide and to restrict the use of land property to foster sustainable rural development. Social land policy needs a broader basis in Cambodia than at present State public property with the guarantee for private use, e.g. through land leasing and concessions, is absolutely sufficient, efficient and effective. Social land policy is an interdisciplinary approach of good governance, land and constitutional law, land economy, spatial planning, and gender issues. This policy can also be a state-driven concept for rural areas in other (developing) countries. It must be legally classified as a public interest so that the eternal ground rent, as the economic gain of the land use, is appropriated and then distributed to all Cambodians in equal shares.

**Keywords:** Social land policy, sustainable rural development, land law, Cambodia

### INTRODUCTION

On 1st of July 2009, Cambodian Prime Minister Hun Sen signed the “Declaration of the Royal Government on Land Policy”. According to this document emphasis should be given to State reform, land law, and environmental law with their impacts on the use of non-renewable resources (land, water, and soil). Moreover 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”. In 2009 Cambodia still experienced a high rural poverty rate, high land concentration and “anarchy in illegal land possession, illegal claim of state land and protected areas as privately owned and unlawful logging” (RGC, 2008). A national goal has been established in order to solve these problems, especially rural poverty (World Bank, 2007). This goal aims to alleviate poverty by ensuring food security, equitable economic and social development, fair distribution of land and national resources, secure housing rights and environmental protection.

Development under the “new rural paradigm” depends on government activities at all levels and including local stakeholders (OECD, 2006). Hence rural development is a cornerstone of social land policy and good land governance. The “rule of law” can be interpreted as a central element of land policy and environmental governance issues for water, forests and land (Deininger, 2003).

Land Law, Planning Law, Property Law and the Constitution are crucial for the appropriate use of natural resources in Cambodia. The Land Law of Cambodia from 2001 was expected to be implemented to ensure an equitable and efficient system of land management. This includes provisions for fair land distribution, land tenure security, eradication of illegal settlements and encroachment, eradicating land grabbing, and the control of ownership concentration for speculative purposes. At present it is not clear if the Land Law or the planning instruments, let alone other policy documents and regulations, will be able to fulfill all of these expectations. This article outlines the necessities for implementing a social land policy for rural development, a spatial planning system, and socio-ecologic and environmentally-sound land policy in Cambodia. This process has started from “point zero” because of the lack of the State’s awareness of urban and rural land inventories.

## **METHODOLOGY: SOCIAL LAND POLICY AND THE “RULE OF LAW”**

Social land policy in Cambodia should try to answer the following core questions (Graefen and Baldi, 2009): what kind of arable land and how much of that should be allocated (land reform)? Which land uses are envisaged? Are the beneficiaries of the State’s interventions in land markets landless households or also land-poor people? Approximately 80 % of Cambodian territory consists of State property (World Bank, 2008). The management of public land is of crucial importance for rural development, but implementation faces numerous problems. These include the often confusing difference between State public land (Art. 17 Land Law) and State private land (Art. 14 and Art. 15 Land Law), unclear boundaries in urban and rural areas, a weak rule of law, and the unfinished recovery of administrative documents for titling, mapping, properties, and taxation (for land value and land property).

The methodology of this paper follows the “rule of law”: 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 needs to be broadened in Cambodia within its Constitution, the Land Law, and Sub-Decrees. One of the main purposes of public-oriented and constitutionally-justified land management is that it ensures private land access for all Cambodian people (Suárez et al., 2009). Private land use under the conditions of tenure security is more efficient than State land use, but that does not *per se* require the designation of private property. State public property with a guarantee for private land use is absolutely sufficient, efficient, effective, and sustainable. State public or State private land cannot be owned by private people, except with a legal document such as a Sub-Decree or registration procedure.

## **RESULTS AND DISCUSSION**

### **Common property and cooperatives for rural development**

Land use models with the concept of common property resources (CPR) or community-based natural resource management (CBNRM) with regulations, participation and decentralization strategies for avoiding a land-free-for-all-mentality are underdeveloped in Cambodia (CBNRM, 2009; Markussen, 2008). Land management and socio-ecological land policy (RGC, 2009b) also need a sound land use planning system which is completely missing (Thiel, 2009), apart from some pilot planning at regional and communal level. An innovative land use alternative might include agricultural associations and service/producer cooperatives or group rights under control of women’s groups on common property resources (land, forest, water) (Ostrom, 1990). These are additional instruments which can secure gender-equal land rights. Cooperatives need to be based on key principles such as strictly voluntary membership and exit options, autonomy and independence from government activities, self-organization, and governance, including autonomous decisions about objectives, strategies, and management (Kirk, 2004).

Cooperatives may be suitable for landless and land-poor female-headed households for residential, rural and agricultural community empowerment. They encourage self-help groups,

house construction and business communities, income generation for women and agriculture food processing. Agricultural extension services can be a basis for food security and poverty reduction in Cambodia since 80 % of the population lives in rural areas (World Bank, 2007). Moreover, cooperatives and associations can provide access to micro-credit institutions and build up credit/loan/mortgage communities including value chain business approaches.

### **Spatial planning for rural development**

Although the Cambodian Constitution states that “the State shall protect the environment and the balance of natural resources and establish a precise plan for the management of land” (Art. 59 Constitutional Law) a coherent, hierarchic spatial planning/land use system for urban and rural areas is still under-developed. Ideally rural development in Cambodia would be based on a comprehensive spatial planning system which would develop, organize, and protect the entire rural territory. Legal protection would be achieved with integrative and strategic territorial planning, and the harmonization of regionally - and locally - significant instruments and measures. These include Commune Land Use Planning (CLUP), Participatory Land Use Planning (PLUP) and Initial State Land Use Plan (I-SLUP), which are part of the land allocation process for social and economic rural development (LASED) project in three Cambodian provinces.

Sufficient compliance with the land use planning objectives would be achieved. Regionally significant plans and measures would be harmonized and conducted with comprehensive development concepts while satisfying the requirements of the current land use planning policy. Rural development and land management are cornerstones within Cambodian policy papers aiming at food security, poverty reduction, and agricultural extension, such as the Rectangular Strategy (RGC, 2008). Rural and infrastructural developments that ensure cultural preservation and community empowerment such as village renewal can be very costly and time-consuming to undertake. This depends on cooperation with land owners who have to pay for the supply of infrastructure systems. Hence, the Cambodian municipalities should be entitled to some limited value capture. To ensure the development of local public transportation and communication infrastructure (energy supply, public health services, sanitation and water supply) in the context of village renewal and rural development, land owners should be required to bear some of these infrastructure costs. Moreover development in rural areas depends on the poly-rationalities and properties of the involved land owners. These poly-rationalities can be divided into individualist bias (private property), egalitarian bias (common property) and hierarchist bias (rearranged land use rights) (Davy, 2009). Therefore rural development needs a property steering component to integrate these rationalities of land owners affected by rural development planning instruments and their modules. However, even the best plans are useless when they cannot be implemented. In some cases plans are blocked by private land owners who do not accept the planning determinations for their plots and the restrictions on their private property. Instead these private land owners hope to increase and appropriate the ground rent (or “rent seeking”).

This interlocking set of land use plans on a national, provincial, district and communal level is necessary to avoid urbanization, urban sprawl, hoarding of underused land, the destruction of fertile farm land and, with growing importance, to gain comprehensive, systematic and transparent information for the assessment (screening and monitoring) of large scale foreign direct investments (FDI) in agriculture, hydropower and mining. Land use plans should protect land that has been designated for a special purpose, such as the protection of a landscape for biodiversity and agricultural uses, or to prevent development of an open space or fertile land area for other uses (e. g. conversion of farmland which reduces food security).

### **Public property for rural development**

Land use regulations must satisfy the public interest. The term “public interest” should be integrated into Art. 58 of Cambodian Constitutional Law to clarify that State public property is of essential public interest. Avoiding land speculation and combating illegal claims for State land must be a constitutionally-demanded public interest and hence a cornerstone of State land

management. Social housing and any sustainable use of forests, fisheries, and other resources should also clearly be defined as public interests of the Cambodian State. The problem of (private) encroachment on State (public) land raises the question whether there is enough public, and political, awareness of the need for socially-balanced land distribution. Thus the State has a responsibility to provide “secure land rights for all” (UN-Habitat/GLTN, 2008) and social citizenship in Cambodia.

However, social land policy shows insufficient results in implementation, in spite of increasing capacities and political commitment from the Ministry of Land Management, Urban Planning and Construction (MLMUPC). At present, there is a demand for mapping in the context of tenure security for Cambodia’s indigenous communities since land disputes and “land grabbing” by the rich and the powerful are rising in the face of an “elite capture of law” (Menzel, 2008). Practices of public administration, which are not foreseen by law, fill the gaps between traditional and modern concepts of law, and land disputes are decided in the interest of private individuals or wealthy urban investors (Adler et al., 2006).

Ground rent-seeking, speculation, a massive competition for land through Economic Land Concessions (ELC) and FDIs are causing deforestation, a decreased amount of land available, latent conflicts, anarchic encroachment, and both legal and illegal land transactions. These processes are faster and seem more rational to some members of indigenous communities than mapping, registering of collective title, and legislation processes for indigenous land rights. Individualist rationalities of the indigenous people in remote areas towards short-term profit, in particular for cash needed for health treatment, motorcycles, education and household consumption, from the land resource are stronger than the long-term management and maintaining of community ownership for scarce natural resources.

### **Land leasing for rural development**

Leasehold tenure on land can reduce transaction costs for access to agricultural and residential land since it is the market mechanism that offers the greatest short-term potential for increasing the access of the poor to land (Bruce et al., 2006). Private land use (land rights and land tenure) does not have to be linked to private property. Private-property-oriented western nations have effectively created a situation in which private property rights have negative consequences for land use planning, land allocation, and land distribution because of the incremental economic value and rent of the land. Private property rights are, to some extent, obstacles for a sustainable land use planning policy and for a social land law. The “control of ownership concentration for speculative purpose” (one of the clear political aims of the National Strategic Development Plan (NSDP) from 2006-2010 (RGC, 2005)) would not be necessary if there were no exclusive private property rights for non-renewable natural resources such as land, soils and other assets.

Cambodia can achieve a land-use system similar to the land leasehold tenure regulations in many modern states. In addition, the Cambodian state could partly appropriate the economic ground rent through taxes such as 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 ownership of land would be replaced by public land leasing. All citizens should have the same chance to access land and its products via leasehold rights and auctions of the private land use rights. But such an innovative land allocation and distribution system causes higher rents, land values and thus higher leasehold fees if an adjustment to ground rents is made. A revolving (local) land fund can solve this problem by pooling the ground rents paid and then redistributing these rents in equal shares to the people (Löhr, 2009). A leasehold tenure and distributed ground rents system can prevent tenure insecurity for indigenous rural land owners and for communes. Instead, the Land Administration Sub Sector Program (LA-SSP) in Cambodia focuses on systematic land registration rather than registering time-restricted land leasing rights to create private ownership and tenure security. Leasehold tenure can reduce transaction costs for access to agricultural land. Leasehold tenure regulations that already exist in the Cambodian Land Law 2001 (Art. 106-113; Rendall, 2003) are excellent land tenure alternatives to private property rights and absolutely equivalent to secure land tenure rights. The granted land

use rights have to be paid for by users because of the economic potential. The lower the income per household, the lower the cost of the lease and the transaction costs for this household. In a sound public land management system land hoarding for speculative purposes and “rent seeking” would no longer exist. Moreover leasehold tenure can avoid the lack of tenure security for indigenous land rights and for rural communes. It can help register land to women who primarily tend to achieve secure land use rights for their families to undertake subsistence farming or smallholder businesses. However, major challenges remain in ensuring effective land ownership security for farmers and equality in land access for marginal groups like women, the young and the poor. This is valid for land policy not only in Cambodia but also for other developing countries.

## **CONCLUSION**

Based on the “Declaration of the Royal Government on Land Policy” from 2009, the Cambodian legislator has a unique opportunity to elucidate and improve social land policy throughout the whole territory, in particular for rural areas where 80 % of the population lives. Therefore, land policy should include:

- Different property forms and tenure securities for land beyond the private property rights solution for the use of non-renewable natural resources and any immovable property;
- Effective and efficient State land management with non-transferable public property;
- 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, customary and other informal land use rights, eventually combined with leasehold rights, in particular for agriculture land;
- Rural development and village renewal as essential elements of land use planning policy;
- Property steering function of the spatial/land use planning policy (property policy) and
- Reduced transaction costs for the access to arable land.

Social land policy, State land management and spatial/land use planning policy need framework arrangements guaranteed by the institutions responsible for land use development in Cambodia. The Council of Ministers, national ministries, the legislature, the Council for Land Policy, the institutions of the provinces, districts, municipalities and the civil sector must consider these planning and property issues for the Cambodian people. Different institutions for the management of the non-renewable resource land have to be built up in the future.

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