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Topic: “Land Policy – a ubiquitous and transferable issue?”

The presentation focused on the concept of “land policy” in general with special emphasis on property (rights) and land reform as part of land taxation and valuation, before the background of the current real estate development, urban construction boom and, interlinked with that, the rent-seeking phenomenon in Phnom Penh. 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. 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 discourse on “legitimate tenure rights” and the continuum of land rights developed by UN-Habitat brought diversified attitudes about the “land question”. The property rights theory – familiar to environmental economists as the Coase theorem – 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.

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. A future land valuation and taxation system in Cambodia (see relevant chapters of the “White Paper on Land”, draft version from April 2014) 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.

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. Following Ricardo, ground rents are generally unearned and could be a proper subject of land value taxation. 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 (see the publications of John Stuart Mill; Adam Smith; Henry George; Sun-yat sen; Joseph Stiglitz; Maurice Allais).

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 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; a building code is necessary in the near future (see also: Phnom Penh Post, edition from 11.11.2014, p. 1 f.; „Building for the future – UK report highlights Cambodia’s need for construction standards“).

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 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. 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. 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.

Leasehold tenure comprises time-restricted private land use rights on State public land. It would help to put economic pressure on the private landowners 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. 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. John Stuart Mill and Henry George criticized both 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” (1848).

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. 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. In addition,

land distribution is unequal, since the access to land is not guaranteed for the majority of the people.

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.

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 (see also: Hermann Heinrich Gossen; Leon Walras). 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 – as an indeed comprehensive and transferable land policy approach – 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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