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Land Reforms and the Tragedy of Anticommons

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Abstract: Most of the land reforms of the recent decades have followed a theoretical basis, which might be described in brief by "formalization and capitalization" of individual land titles (de Soto 2000). This privatization agenda has been strongly supported for example by the World Bank, the IMF or by governmental development cooperation. It is supposed that formalization and individualization of property rights should help to enhance the efficiency of the land markets by awarding the fruits of improvements to those who bear the costs. However, there is an obvious gap between theory and practice: Within the privatization agenda, benefits of unimproved land (such as land rents and value capture) are reaped privately by well-organized actors, whereas the costs of valorization (e.g. infrastructure) or opportunity costs of land use changes are shifted onto poorly organized groups or society as a whole. Hence, the "capitalization" of land titles is connected with external costs. Consequences include rent seeking and land grabbing. Also, formalization of land titles is used as a means of land grabbing. In developing countries, formal law often transpires to work in favour of the winners of the titling process and is opposed by the customary rights of the losers. This causes a lack of general acknowledgement of formalized law (which is made responsible for deprivation of livelihoods of vulnerable groups) and often leads to a clash of formal and customary norms. Due to this clash of norms, many countries are falling into a state of de facto anarchy and a new form of "de facto open access". The consequence might be a "tragedy of anticommons" (Heller 1998). Protection laws, e.g. for primary forests are no longer complied with; encroachment and destruction of natural resources is spreading. However, the real problem is not the formalization of land titles but the capitalization of the titles. A central counter-measure is to skim off land rent and incremental value as far as possible in favour of the community ("decapitalization" of land).

This could be executed by an intelligently designed leasing or land taxation framework. Within such a decapitalization framework, the land use planning could be more neutral and independent than today. Neutral planning could provide space for a diversity and coexistence of lifestyles, legal and economic models. Good governance and the rule of law could be supported better than is the case at present. This holds true for natural protection laws in particular. Examples and evidence are provided particularly from Cambodia, which has many features in common with other countries in Asia and Sub-Saharan Africa in this respect.

Keywords: tragedy of anticommons; property rights; land reform.

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1. Introduction

The number and size of projects designed to formalize property rights in developing, threshold and transitional countries have increased exponentially during the past decades (e.g. Thailand, Indonesia, Philippines, Ghana, Bolivia). Most of the theoretical basis and justification for land titling, land registration and land administration projects that formalize property rights are based on a privatization approach. Subsequently we understand under “privatization approach” the formalization of individual and capitalized use rights on land (discussed in detail in section 2.2.). Among others, the privatization also comprises water resources, which are often connected to the property rights on land. The proponents of privatization postulate that once, due to land scarcity and an increase of land values, the marginal benefits of internalization of external effects by private ownership might outweigh its marginal costs [1]. The original idea stems from the property rights theory emanated from research work carried out by Coase [2], Demsetz [3], Posner [4] and others. According to the property rights theory, the efficiency of land markets can be increased by means of an unambiguous allocation and specification of property rights. Besides, access to loans might be granted, tenure security provided and land conflicts might be eased.

Popularization within the stressing of formalization has been done particularly by de Soto [5]. In brief, his agenda could be described with the words “capitalization by formalization”. The “capitalization by formalization” agenda has been adapted by the International Monetary Fund, the World Bank, the World Trade Organization and also governmental development organizations.

However, the agenda has often been criticized. Non-government organizations (NGO) working on environment and human right issues are particularly vocal in arguing that private property on land means the loss of livelihood and forced evictions, especially among socially and economically vulnerable groups. Governmental development organizations are taking greater notice of this criticism [6], but some promising conceptual alternatives are beyond the scope so far.

2. Methods

2.1. Hypothesis

Subsequently, we want to show that the privatization agenda – in contrast to the assumptions of the Property Rights theorists – causes a decoupling of benefits and costs of land. The consequence is rent seeking and state capture behaviour at the expense of poorly organized groups. Among other things, formalization is abused for land grabbing. Hence, the aims of privatization are scarcely possible to attain.

The formalized law turns out to work for the powerful groups, whereas customary law is the law of the losers. The consequence may be a clash of norms and a lack of recognition of the formalized law. In the end, a state of anarchy may develop. If neither the formal law nor the customary law works satisfactorily, the consequence may be a state of de facto open access. The biggest loser is the environment, which is degraded.

Examples and evidence are provided particularly from Cambodia, which has many features in common with other countries in Asia and Sub-Saharan Africa in this respect. However, due to a lack of reliable data, much of the evidence can only be provided in anecdotal form. More research is necessary. In order to provide some comparison to developed countries, examples from Germany are provided.

2.2. Theory

From a legal point of view, private property rights grant the possibility to exclude other persons from an asset. Moreover, owners may do with their property as they like. From an economic standpoint, a completely privatized ownership title may be interpreted as encompassing all four sets of rights mentioned below [7] (the following economic classification is abstract and derived from Roman law). However, besides this, the privatisation agenda leads to a specification of the elements of the bundling of property rights in private hands.

Table 1. Property rights on land (from an economic point of view).

Exclusive rights, based on …	**… control and use**	**… value and rent**
Asset (stock)	Right to control and to change the asset according to one's needs (not emphasized in this article). Latin: *abusus*	Right to sell the asset and to participate in its value (disposal). Latin: *ius abutendi*
Utility (flow)	Right to use the asset. Latin: *usus*	Right to appropriate any returns on the asset, here: the land rent (!). Latin: *usus fructus*

The Property Rights theorists stress in particular the necessity of coupling a secure right of use with the usus fructus right and the right to sell the asset. This is what we want to call a “capitalized” use right. A capitalized use right might be achieved of course by full private property titles. Since 1989, the Royal Government of Cambodia (RGC) has pursued a privatization policy. So far, some 1.7 million plots have now been registered, and around 1.25 million land titles had been allotted by November 2009. However, the registration of an additional ten million parcels is still pending in order to formally establish the land tenure security that is envisaged [8].

To date, some 80% of Cambodian territory is still state owned. This data includes concessions for agriculture, forestry, and mining [9]. However, also long-term leasehold arrangements may provide capitalized use rights. For example, as in other developing countries, the RGC leases out “Economic Land Concessions” (ELCs) (besides other types of concessions) for economic exploitation. The formal fees are often ridiculously low (currently, fees for Cambodian ELCs are between 0 US $ and 10 US $ per year and hectare [10], [11]). Hence, investors can reap the land rent privately (“usus fructus right”). Basically, the rights might also be sold (“ius abutendi”) if the government agrees to do so. Hence, for investors such concessions are even more advantageous than full property titles, because the holder does not have to pay a purchase price (apart from bribes that are often paid).

According to the view of Property Rights theorists, the coupling of a secure right of use with the usus fructus right and the right to sell the asset makes a unique assignment of benefits and costs of improvements to the acting persons possible. Yields are allocated to those persons who bear the investment costs [12]; investments in improvements (e.g. setting up a building or tilling a field) would be stimulated because beneficiaries and originators of this income are the same. Benefits and costs are coupled. Thus no negative externalities appear from this and the efficiency of land markets will rise. Furthermore, an overuse of resources could be avoided. Many proponents of the privatization agenda assert historical progress towards more formalization and capitalized property rights in response to higher land values, caused by rising scarcity of land [13]. Apart from misleading wording – Hardin [14] was in fact describing a tragedy of open access, while commons are always characterized by controlled access – the problem of the “tragedy of commons” seems to be solved at first glance within the privatization agenda.

However, an important aspect is often concealed in the relevant literature: The right to take the yields (usus fructus) and the right to sell the asset (ius abutendi) is not limited to the “improvements” (such as plantings or buildings). Improvements (and their value) have to be clearly distinguished from land (and its value). The most important sources of the value of unimproved land are differential rents due to the location, the intensity of use or the quality of the land compared with marginal land (where the yields just cover the costs; [15], [16]). A share of the differential rent may turn into an absolute rent if land gets so scarce that even marginal land can earn a rent. The theory about differential rents was originally created for agricultural land, but can be applied to any kind of land if certain modifications are made. Neither differential rents nor absolute rents can be tackled by market entry of new actors or by an extension of supply of land (exception: more land conversion) and has therefore a semi-monopolistic character [17]. Most of the differential rents derive or rise mainly by accident or by

public activities. In specific terms, an important cause of increased land rents relates to changes in the land use planning. The costs of planning (direct costs as well as indirect costs such as streets, water and electricity supply) are mostly carried to a significant degree by the community. Moreover, the community bears the opportunity costs, caused by waiving land use alternatives (e.g. public spaces). Hence, whereas the benefits of land use changes (higher land rents) are reaped mostly privately, the costs are borne by a high degree by the public.

However, the benefits of the land owners are not limited to the land rent. Due to underdeveloped capital markets in developing or threshold countries, land is often used as a store of value. Often the land is bought in the hope that it can be changed from agricultural land to settlement areas. Due to the fact that oftentimes the investors are non-agriculturalists, a valorization by improvements is not intended – either due to a lack of know-how or access to capital. In many cases, the rationale for the land taking (or: land grabbing) is obviously speculation. According to the findings of the World Bank, only about 10% of the areas granted by ELCs are in use [18], [19], [20]). Such hoarding of idle land causes an effective shortage of land supply. In countries as Cambodia, the unused land is also often not leased out to needy farmers, because the owners are afraid that one day their property rights will be contested. In such cases, legal protection would be difficult to obtain because of a weak legal system.

Against this background, the starting point of our analysis might be formulated as follows: Due to a decoupling of benefits and costs of land use, capitalization of use rights on land fuels rent seeking. According to Tullock [21] we understand rent seeking as being closely connected with external costs, which are shifted from powerful and well-organized beneficiaries onto poorly organized groups.

Table 2. Benefit-cost structure of land and improvements.

Private property		**Unimproved land**		**Comparison:**
		Investment	**Postponed investment**	**Improvements**
Benefits	Individual / private benefits	Land rent (Stress on: “Usus fructus”)	Unused land as store of value (Stress on: “ius abutendi”)	Yields
	Public / external benefits	Insignificant	Insignificant	Insignificant
Costs	Individual / private costs	Insignificant	Insignificant	Operating costs, investment costs
	Public / external costs	Planning, infrastruc-ture, alternatives not realized	Land blockades	Insignificant
Benefit-cost structure		Decoupling		Coupling
Consequences		Rent seeking, state capture, market failure		No aberrations

The decoupling of benefits and costs is an important driver for a multitude of aberrations [22]: Land use planning is not neutral, land use is not efficient and access to land might be denied. Such mechanisms are particularly dangerous if no strong institutional framework (public law, e.g. natural protection laws, building codes) exists to restrict private property in order to reduce the aberrations.

3. Results and Discussion

3.1. Lack of Neutrality of Planning

Private property rights on land are "weak" private rights by nature. Unlike other assets, private property on land is restricted by public law, at least in countries with a working rule of law. The owners of land should not be able to do whatever they like, because this may have impacts on other actors (external costs). Hence, when the rule of law is working and public law is enforced by a strong state, private property on land is more diluted than property on other assets. Regarding land, the planning framework is one of the most important restrictions to private property on land.

Planning is necessary to avoid rationality traps [23] and to protect such forms with weak financial endowments, which cause important positive external effects. Such forms of land use, which are moving beyond efficiency and profitability, are not only important for the cohesion of the social system, but in many cases also for the resilience of the ecological system [24]. However, from the perspective of an individual, spatial planning causes opportunity costs because the unsuccessful stakeholders cannot realize intended projects. The opportunity costs especially of powerful stakeholders may be high if they cannot realize profitable projects, because space is provided for land use alternatives with high external effects but with a low ability to pay. Nonetheless, planning has to balance the competing demands of various stakeholders, including vulnerable groups with low budgets (e.g. indigenous groups) and the protection of nature. Hence, in order to create space for a diversity of forms, good planning should be able to resist well-organized and economically powerful special interests.

Planning in its restricting function to private property affords a strong and independent state as well as the rule of law. However, if property titles allow the land owners to reap the benefits of unimproved land, whereas the (opportunity) costs of land use planning are externalized [25], the result might be rent seeking and capture of the planning authorities. Thus, the "neutrality of planning" [26] is challenged by economically powerful private actors. Social and economical forms, which may provide significant external effects, but which are also moving beyond the profit logics, have to give way for the economically and politically powerful actors. Examples for such rent seeking activities are manifold and not limited to developing countries:

- Although the rule of law works satisfactorily in Germany, plans are often changed in favour of economically and politically powerful pressure groups. This often happens in a subtle way. According to § 1 (6) of the German Building Code ("Baugesetzbuch"), different interests should be weighted. Indeed, often commercial or industrial projects are preferred, e.g. over the alternative of

conserving areas for natural protection. Another example is the frequent conversion of farmland into settlement area (which is generally called “last crop rotation” – “letzte Fruchtfolge”). In Germany, the issues discussed include the loss of biodiversity, rising infrastructure costs or the problem of provision for elderly people or single parents in remote areas. The German government wants to reduce daily conversion to 30 ha per day by 2020. Research programs such as “REFINA” and several think tanks are to provide concepts to stop the “consumption of land” [27]. To date, these efforts have essentially been unsuccessful. The recent reduction in land consumption (78 ha / day in 2009) was mainly caused by the economic crises, and not so much by a higher effectiveness of land use policy [28].

- In Cambodia, the planning system is in its infancy and the rule of law is weak. A concrete example is representative of many grievances in Cambodia: In Phnom Penh, the Boeung Kak lake (80 ha of total 90 ha lake area) was filled up with sand in order to develop the lakeside by a joint venture between the Chinese company “Inner Mongolia Erdos Hungjun Investment Co” and the Khmer company “Shukaku Inc” (owned by the powerful senator Lao Meng Khim). The area was provided by lease at 0.60 US $ / sqm / year. The destruction of the lake was not in accordance with the Master Plan of Phnom Penh, which indicated protection of such areas. Phnom Penh lost its last big lake, which is not only an important attraction, but also a livelihood for many families [29]. According to human right groups more than 4,000 families are displaced. The households affected were denied land titles shortly before the lake area was leased out [30].

A “captured” (local) government is no longer a neutral trustee of the common good. Although the grievances in Germany are far less extreme than in Cambodia, this is no reason to transfer and cement such institutions uncritically into a state without a countervailing working rule of law. Capitalized land titles in the context of a weak public law (including land use planning) must result in severe aberrations.

3.2. Lack of Compliance with Natural Protection Laws

Similar features can be considered with natural protection laws. Cambodia has good and sophisticated natural protection laws, particularly for forest protection [31]. However, compliance is obviously poor. Cambodia has one of the highest deforestation rates in the world [32]. The poor enforcement is obviously caused by a lack of capacity, but also by an obvious lack of political will or simply because of corruption. Some of the most wealthy and powerful Cambodians made a fortune with illegal logging of primary forest on their estates. In the mid-1990s, senior government ministers awarded between 30 and 40 logging concessions to Cambodian and foreign-owned companies. Over seven million hectares of forest – or 39 percent of Cambodia’s land area – were signed away in these contracts on terms that greatly favoured the interests of the concessionaires. All the concessionaires proceeded to break the law or the terms of their contracts, or both, in order to reap fast profits. By the end of the decade, they were responsible for most of the illegal logging in Cambodia [33]. Again, the benefits are reaped privately by powerful actors; the costs are externalized to weak actors or the society as a whole. The state had turned a blind eye to the violation of the protection laws. Another

example: When applying for an ELC, the required environmental impact assessments are often not done properly or even not done at all – in contrast to the legal requirements. The beneficiaries of the illegal activities are often closely connected with the political elite. If the rule of law works, the abusus right on land is in the hands of the state, not in the hands of the holders of the use right. In Cambodia, due to a lack of enforcement of laws for the protection of natural resources (particularly forests), the "abusus" right (table 1) is in fact shifted into private hands. Seen in this way, the property rights on land in Cambodia are even stronger than property titles in developed countries (as for example Germany).

4.3. Land Titling and Land Grabbing

The supporters of the privatization paradigm consider individual and capitalized property titles as a proper means to guarantee tenure security. Tenure security is considered to be important to harvest the fruits from improvements (see table 2). However, the empirical proof of a higher farm output as a consequence of titling [34] is discussed controversially [35]. More important, even if this proof were provided properly, it says nothing about the necessity of titling individual and capitalized use rights on unimproved land in order to achieve tenure security. On the contrary, in many developing countries formalization of capitalized land titles is obviously "abused" as a tool for a special form of rent seeking: Land grabbing [36]. Powerful actors use land titles to reap the benefits (land rents and flexibility advantage), while vulnerable groups and households have apparently sometimes been arbitrarily excluded from the titling system [37], [38]). The elite know how to play the formalization game. It has access to legal advice and personal connections to key governmental decision makers. In contrast, poorly educated rural people are defenceless when new land titles are suddenly claimed out of the blue. They do not understand what is going on until it is too late. With little understanding of formal legal procedures and no financial and political backing, they have barely any chance of successfully defending their traditional claims, which are often based on customary law. Hence, formalized law turns out to be a tool for appropriation of land by powerful groups at the expense of poor groups. Under these circumstances, formalized law is the law of the winners, whereas customary law is the law of the losers.

Actually, Feder and Nishio [39] admit that land registration "may provide opportunities for 'land grabbing' by those who are better informed, are more familiar with formal processes, and have better access to officials and financial means to undertake procedures for registration." NGOs criticise in this regard that the attempt of solving the land disputes within the privatization agenda seems to be like putting the fox in charge of the chicken. There is little constitutional state and rule of law in countries such as Cambodia to prevent such aberrations. According to the empirical investigation of the World Bank, a lower recognition of customary land rights even increases a country's attractiveness for land acquisition [40]. Human Rights organizations [41] notice that land grabbing and forced evictions have escalated significantly over the last ten years in Cambodia.

As a consequence, formalization of capitalized land titles may even contribute to a higher inequality of land ownership. Since 1989, when the privatization policy started, the inequality of land has risen in Cambodia continuously. Whereas at the start of the reform the land distribution was almost equal,

current inequality is very high – also in comparison with other South East Asian countries (Gini coefficient of land distribution: 0.65 [42]). As of 2004, it was estimated that 20-30% of landowners already hold 70% of the country's land, while the poorest 40% occupied only 10% [43]. An Oxfam GB survey [44] also gave an insight into the consistency of land ownership: The main land owners are businessmen (31%), high-ranking officials (with the title "His Excellency", 23%), so-called "okhna" (a title given as a reward for financial contributions of more than 100,000 US $), high-ranking military officers (generals, 15%) and members of the National Assembly (8%). As in other countries, for Cambodia it also turned out that formalizing of individual land titles "supplies a mechanism for transfer of wealth for the educational, economic and political elite" [45]. The unequal distribution of land makes the access difficult for needy people.

Considering concessions, the allocation of benefits from land is not driven by market forces (as with private property on land), but by the state – oftentimes in the form of undisclosed payoffs to political cronies (by so-called "unsolicited proposals to the government"). In Cambodia, ELCs now account for about 25 percent of the country's agricultural land [46]. In addition, there are extensive concessions regarding forestry, mining and other commercial activity. Although the land reserves seem to be abundant at first glance, in fact most of the land is already distributed. The central government grants the concessions, usually without consulting regional or local administrations. Oftentimes also social impact assessments are conducted inadequately or not carried out at all. The resulting overlapping land claims often lead to disputes, which concessionaires do not even try to solve by negotiating agreements with the people affected. Instead, they simply contact the central government, which has allotted the concession to them, because they expect that the government will "resolve" such conflicts in their favour, using police or armed forces if necessary.

More than 80% of Cambodians currently live in rural areas. About 21% of rural households are involuntarily landless, while a further 45% are land poor (owning no more than 1 hectare per household; [47]). The people who lose their livelihoods by land takings then join the queue of landless migrants, moving either into the big cities or encroaching on protected areas (see section 3.4.).

3.4. The "Tragedy of Anticommons"

However, in our view the central problem is not the formalization per se, but the titling of capitalized rights, which allows the individual and exclusive reaping of semi-monopolistic rents ("capitalization"). Due to the aforementioned exclusion of weak groups from titling, land grabbing etc. is a manifestation of rent seeking of powerful groups at the expense of economically and politically weak groups. However, although the RGC as well as development assistance organizations intend to combat (land) poverty, the privatization approach is still guiding their land use policy (since 1989).

This is despite the fact that, in a historical view, the genesis of individualized and capitalized use rights is anything but a success story. Exclusion of the needy and squeezing of the land rent by landlords runs through economic history as a main theme. This endemic source of conflicts provoked the genesis of social countermovements again and again (stretching back to feudal times, e.g. in the German peasants revolt in the early 16th century [48]). Resistance against exclusion from access to

land by law (feudal society) or by price (bourgeois society) was put up in legal and illegal forms. The same holds true for the present situation: Besides open violence, the resistance mainly involves ignoring formal law and the reference to manifold forms of customary law:

- The first form is an open violation of the formal law by the losers of the privatization agenda. Particularly the peripheral area of Cambodia is being filled with ELCs. Since 2006, 300,000 ha of ELCs have been granted [49]. At the same time there is huge migration pressure from the central area, where the land is scarce and more concentrated, into these areas [50]. Owners of large estates consider their property and their investments to be threatened, particularly by encroachment. Encroachment also affects state (public) land, which formally regulates the traditional commons in Cambodia. The consequence of encroachment is often a degradation of natural resources. Encroachment problems are often "solved" violently.

- The second form is the adherence to customary law. New claims, set by formal law and superimposed on customary law, are often not recognized. Within customary law the access to land is regulated and the livelihood is secured. In Cambodia, like in many other developing countries, this is often done by using some forms of common property (in a wide sense, which also includes forms of open access [51], [52]). Because customary law is as numerous as the communities to which it refers (often small communities, which are based on kinship relationship), space is provided within the claims of customary law for a plurality of social forms. The overriding effect of formal law is a latent threat to the access to resources by poor people as well as to social diversity.

However, in both forms, the rationale for ignoring formal law is mainly the need for access to land for an actual livelihood instead of reaping differential rents or capturing value. Concerning the second form, most of the people affected are not even integrated in the market and have a low income. The first form is more complex: Besides those who need access for their livelihood, there are also reports in Cambodia about encroachers who try to contest formally acknowledged claims or at least to extort compensation (for giving up the encroachment) from the legal owners, sometimes supported by powerful backers.

Of course, the lack of acceptance of formal law is also an education problem, at least in Cambodia (where the intellectual class was widely eliminated by the Khmer Rouge). However, the lack of compliance with formal law and the split between the law of the winners and the losers shake the very foundations of the privatization approach: "The point is that, if property has no social legitimacy, it is no property because it lacks the basic ingredient of property, recognition by others …" [53]. However, the beneficiaries of the privatization agenda refer to the enforcement of formal law and insist on overriding the customary law, if necessary with police power. Nonetheless, due to a weak government in many countries of the Third World, also the enforcement of the privatization agenda is often weak. The consequence is a failure of the agenda and sometimes even a regression of formalized law due to the resilience of customary law [54]. In fact, this may lead to a legal vacuum and at least a partial de facto open access situation (this is precisely what the widespread encroachment in Cambodia amounts to). Such de facto open access contributes to accelerating inter alia the overuse of resources (e.g.

deforestation [55]). In such cases, the failure of the privatization approach happens because exclusionary attempts fail ("tragedy of anticommons" [56], [57]), although in theory the conditions for privatization are favourable (rising scarcity and increasing value of land). Yet the influx of displaced people into peripheral regions, combined with a lack of effective access controls, only causes further degradation of natural resources that had been stable commons in the past. A telling example is the province of Pailin in Cambodia, where about 50 percent of the primary forest has been destroyed and agricultural land gradually degraded in recent years.

4. Conclusion: Toward a Paradigm Shift in Development Policy

The picture painted above seems to be quite black. By supporting capitalized land titles, governmental development assistance supports vouchers for rent seeking which weakens the rule of law, which is already quite weak in the countries. However, there are conceptual alternatives. The alternative derived out of the analysis above is based on the subsequent pillars: Fighting rent seeking and strengthening the state as trustee of the common good, decapitalization of the use rights, encouraging a variety of forms and supporting the principle of subsidiarity and decentralization. Of course it is not realistic that such an alternative blueprint is implemented in a pure form. The purpose of the draft is to show a direction toward which development assistance might move forward step by step.

4.1. Decapitalization of Use Rights

In opposition to the de Soto agenda ("formalization and capitalization") we have tried to demonstrate that a central problem of the privatization agenda is the capitalization of land rights.

Like in other developing countries, the financial sector is still comparatively weak in Cambodia. A lack of attractive financial investment alternatives was an important reason for the boom in the real estate market from 2004 until 2008 [58]. Hence, money was diverted away from the productive sectors of the economy and instead inflated the value of land, hampering the development of the real economy as well as of the financial sector [59]. The "formalization and capitalization" approach enhances such aberrations.

As shown above, privatization strategies on land intend to bundle essential property rights in the hands of private-sector actors, including the right to take the differential rent and the value of the land. By doing this, also rent seeking is encouraged, because the land rent is reaped by strong and influential groups, whereas the costs are shifted onto poorly organized groups. Moreover, land is used as a store of value and a means of speculation, which lowers the effective supply of land and thus may end up in failure of the land market.

Therefore, in our view only strong private use rights are sufficient for an efficient use of unimproved land. In particular the private reaping of differential rents and private value capture is not necessary. Hence, we are calling for an unbundling of property rights: The use right shall be basically private, but the "usus fructus" right and the "ius abutendi" right should be given into the hands of the

state, as well as the “abusus right” (see table 1). The dilution of the “usus fructus” right and the “ius abutendi” right is more important the stronger the private “abusus right” (i.e. the weaker the public law and planning system) and vice versa. The unbundling of property rights might be done by a decapitalization of the land use rights [60] Basically two methods are available to achieve this goal [61]:

- Lease arrangements may refer to an agricultural lease or ground lease. Within a decapitalization scheme, the commune or the state is the owner of the plot, and a private-sector actor has the (long-term) right to use the plot, e.g. for agriculture or by setting up and using a building. The crucial point is to set up an arrangement to skim off the land rent by the leasehold fee in a reliable way. In this case, the land might be completely decapitalized.

- Another mechanism is taxation. The idea is therefore basically to skim off huge parts of the differential rent by a land tax. This idea was heavily promoted by Henry George [62]; before him, David Ricardo [63] also thought about skimming off the differential rent with a tax. However, for many technical and legal reasons such a tax which skims off the differential rent completely (but not the income from improvements!) is difficult to put in place. On the other hand, a site value tax seems to be quite viable. Nonetheless, for legal (e.g. Art. 14 of the German constitution) and practical reasons [64] a site value tax is only able to skim off a share of the land rent and to transfer only a share of the economic value into the hands of the community or of the state. However, precisely the weakness of the site value tax option could turn out to make it a viable political option. If a valuation system (according to the blueprint of the German public real estate assessment boards) is put in place comprehensively, a site value tax could be introduced with marginal effort [65]. In order to intensify the use of land, a tax on unused land was introduced in Cambodia. However, this tax is not levied in a comprehensive way. In order to avoid discussions about when land is in use and not in use, land should be taxed without considering the actual use to which it is put — it should be a tax on imputed proceeds. Furthermore, a tax rate of 2% on the land value as it is assessed by the “Land Committees” is not enough to avoid any aberrations if price hikes of 10 to 60% occur (as has happened in the past). For these and other reasons, a site value tax could be levied on the value of unimproved land, without regard to buildings and fixtures. Hence, an efficient use of plots is not discouraged and does not distort the way land is used, as a compound tax base does. The rate of a site value tax should be fixed without being changed according to the actual use of the site. A fixed tax rate always results in the same tax burden for the owner. The owner of the land cannot avoid the tax if it has the character of a fixed cost. The only way to lower the effective burden of the tax is to use the site efficiently. Furthermore, fixed costs can hardly be shifted onto tenants’ shoulders; the owner of the site (or the ELC holder) has to bear the tax burden. In order to achieve the intended effects, the tax rate should not be too low. However, with the launch of the new property tax, which came into force in January 2011, the RGC missed an opportunity to encourage higher efficiency in the use of land, since the tax rate was set at only 0.1%. The tax base comprises the value of the land including any improvements that may have been made to it (compound tax base). Among other things, tax exemptions are made for agricultural land, which also includes ELCs [66].

Often, a low leasing fee, low tax rates or tax exemptions particularly of agricultural sites (e.g. Cambodia) are justified with positive external effects of agriculture. If there were indeed any positive external effects, open subsidies would be preferable in order to get a transparent fiscal system and a good land use policy.

A reliable decapitalization of land would cause land rents of approximately zero. However, it is clear that “decapitalization” is difficult to enforce in countries where political decision makers are closely connected to owners of large estates and developers.

4.2. Formalization, Planning and Governance

Formalization (titling) is not exclusively linked with capitalized and individualized land titles. Instead, formalization should go hand in hand with planning and provide space for a variety of forms, particularly beyond the logic of efficiency and profitability. Generally, economic efficiency of land use cannot be the only criterion of social significance for land use policy. It is the task of a trustee of the common good to protect this variety and the resilience of the social and ecological system.

This includes not only public spaces (as for example the former Boeung Kak lake in Phnom Penh), but also indigenous groups, smallholders and others. Despite their lack of economic performance, such groups are important for a working social system [67] and ecological functionality. This holds particularly true for the conservation of biodiversity, because agribusiness companies are frequently interested only in a single crop. In contrast, indigenous groups or small farmers usually have permanent multi-cropping systems and must take the sustainability of these into account when assessing the value of contract farming. A diversity of lifestyles and economic models might be supported, for instance, by allocating collective land titles to communities where customary rights are in place [68]. Any legal relationships to outsiders to such communities, however, should be based on formalized law. The goal is to enhance a coexistence of formalized law and customary rights.

If good planning provides space for the manifold functions of land (spiritual, ecological etc.) and particularly also for “inefficient” use of land, the value of such land differs from land which should be used according to the efficiency criterion. Thus, taxation or public lease requirements should also take these differences into account (maybe a zero charge is the adequate solution for some forms). Under these conditions, a decapitalization framework may provide an important contribution to protect the diversity of economic, ecological and cultural forms, which are moving beyond the logics of profit and efficiency.

However, neutral planning and space for forms with a lower ability to pay needs an emancipation of the authorities from powerful economic interest groups. This emancipation is not compatible with any vouchers for rent seeking of powerful pressure groups, such as capitalized land titles. Hence, decapitalization of land titles contributes to strengthening the state in order to be a reliable trustee of the common good; this is to guarantee neutral planning with a variety of forms. Fighting corruption, as development agencies are doing today, is certainly a step in the right direction. However, additional action is necessary. Regardless of central state, province or municipality: The actions of authorities

should be decoupled from impacts of powerful pressure groups [69]. The authorities should know about the interests of the stakeholders (e.g. within hearing procedures), but law making and decision making should not be influenced by such groups. The collusion of private special interests with governmental institutions should be criminalized – something that is not always the case even with the western development "blueprints." It is clear that this requirement is even more difficult to enforce in countries where political decision makers are closely connected to owners of large estates and developers.

In addition, state policymaking should reflect the principles of subsidiarity, decentralization and transparency. Lower administrative levels (e.g. within the land allocation process) should be granted greater powers. Of course, the decentralization of power is the opposite of what influential political decision makers generally want.

Hence, a new development agenda will need to sail against the wind. It is time to adjust the compass.

Conflict of Interest

The authors declare no conflict of interest.

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