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Phnom Penh – Property and Planning in a Contested City

Fabian Thiel



- 1 Diamond Island
- 2 Riverside Area
- 3 Boeung Kak Lake
- 4 Central Market
- 5 Tonle Sap River
- 6 Mekong River

Fig. 1: Map of Phnom Penh (detail).

An occurrence at Diamond Gate Bridge

On Monday, 22 November 2010, at the end of the legendary Water Festival, a deadly stampede tragedy on the Diamond Gate Bridge with more than 353 victims hit the capital of Cambodia, Phnom Penh. Questions were immediately raised about the government's handling of the affair, with critics arguing poor planning and a lack of effective crowd control, which led to the country's worst peacetime losses of human lives.¹ The bridge is part of a 300 million USD real estate project called Diamond Island. Diamond Island will eventually connect downtown Phnom Penh with an area called Tonle Bassac. The event mirrors the situation of development, planning, and a lack of infrastructure in Cambodia, not only in view of handling the influx of people attending the Water Festival. Doubtless, planners have to rethink the contested space of Phnom Penh municipality.

Difficult livelihoods of local stakeholders in contested spaces of Phnom Penh

The major ecology constraints of the Kingdom of Cambodia's capital – Phnom Penh – are flooding, water drainage and geological movement. The city is characterized by a chaotic, unplanned mix of residential, commercial, and industrial land use. Droughts and floods are two aspects of the problem which a well-organized urban planning could avert. Nearly all “preks” (canals) and “bengs” (ponds or small lakes) are filled in with sand, garbage, and dredged silt deposits, consequently ignoring the important hydraulic function of these basins for protection from heavy flooding. However, comprehensive urban planning is mostly absent. One can ask with good reason: Is the ruling urban elite – who always know the access codes to valuable and scarce plots – willing and knowledgeable enough to take up the land planning issue? The major social constraints in Phnom Penh are migration,



street micro-vendors and hawkers, survival circulation, and dual residency, combined with the political marginality of groups like Vietnamese fishermen and farmers. The main reason for migration from rural areas is to look for work.² Migrants hope to find employment in aquaculture, textile industries, construction work, and in the hostess bars and beer gardens as part of the booming “entertainment industry”.³

Phnom Penh after the Khmer Rouge domination: Wild privatization, corruption, and buying power

The events of the past during the Khmer Rouge period from 1975–1979 are beginning to fade; the quest for living and for employment is dominant in Cambodia. But the problems resulting from the abandonment of private property under the Khmer Rouge and the following attempts to implement a market economy based

Fig. 2: Central Market Hall, surrounded by traditional Khmer architecture. (Foto: Fabian Thiel)

Khmer feudal	Protectorate, monarchy, republic	Radical maoist	Socialist	Market system, representative democracy	
Usufruct	French private property	Communal property	Collective property (krom samaki)	1992 Land Law	2001 Land Law
Possession through use		No private possession	Possession through use	Prior possession required for ownership	
No formal registration required	Formal registration started			Formal registration required Titling program started	
Taxes on crops	Taxes on land			Taxes on land – partially implemented (transfer tax, unused land tax, property tax)	

Tab. 1: Land property regimes and taxation in Cambodia since the pre-protectorate time.

Fig. 3: "The Building": Apartment block in prime location, built in the 1960s for civil servants by the Khmer architect Vann Molyvann, allowing the residents to acquire ownership through payments corresponding to their salaries.

(Photo: Johannes Hoerber)



Fig. 4: Real estate development in the suburbs.

(Foto: Fabian Thiel)



Fig. 5: Money and ambition: High-rise condominium units in central Phnom Penh, waiting to be sold to foreign investors.

(Photo: Johannes Hoerber)



on private property (Tab. 1) are still visible. After 1979, the former inhabitants began to slowly move back to Phnom Penh from the rural areas where they were forced to live. Some residents returned to their originally registered properties, while many others squatted on unoccupied and thus "available" plots. Even today, disputes arise constantly. Many houses were sold multiple times to multiple buyers. The land titling program was and is plagued by corruption and bribery, military land grabbing, patronage, and incompetence.⁴ Many Cambodians, like the rural migrants who make their livelihoods with waste re-use aquaculture and the reprocessing of goods, are still excluded from titling, from land markets or just secure land use rights (e.g., leaseholds). Instead, the people in adjudication areas that are cut out of the systematic registration program have to live on land and water over which they lack secure (common) ownership.

Growing land market in Phnom Penh...

In 2008, sites in prime location in Phnom Penh were worth 3000 USD per square metre (sqm), with a price peak at the capital's riverfront area with 5000 USD per sqm, compared with 250 USD/sqm in 2004. This development underlines sky-rocketing land prices for prime areas by as much as 1000 % from 2005 to 2008. Concerning international real estate investor's interests, the prices per sqm seem to be reasonable. If the recent economic development and real estate infrastructure of Phnom Penh are taken into account – particularly for the emerging retail market (malls, market halls, shopping centers, and entertainment facilities) – the price level is anything other than moderate. Developers will

either have to hope that prices come down in the city center some day or look for more decentralized areas. However, such real estate development would certainly foster urban sprawl and suburbanisation tendencies.

... but without comprehensive urban planning and social distribution of wealth

A comprehensive spatial planning system, in particular for land, soil, and water, is missing in Cambodia at present as well as a land policy that brings the private rights and the State rights for these resources into equilibrium. The Land Law of Cambodia from 2001 was expected to be implemented to ensure an equitable and proper system of land management, a just land distribution, tenure security, and the eradication of illegal settlements or anarchic encroachment. At present, it seems to be highly questionable if the Land Law 2001 will be able to fulfil these (political) expectations. The uncertainties for penetrating of these regulations for the land poor and the yet “untitled” residents are relatively high.

A special form of living at the “waterfront” for the rich – including evictions of the poor

In legal theory, according to Article 58 of the Cambodian Constitution from 1993, “State property comprises land, [...] rivers, canals, streams, lakes [...]”. Article 59 of the Cambodian Constitution stipulates that the State “shall [...] establish a precise plan for the management of land, water [...] resources”. In practice, agricultural land is lost in favor of high-priced settlement and commercial areas, which can be shown as land consumption or privately organized “land making” by legally converting public plots into private property, particularly in Phnom Penh and Siem Reap, which is located near the Angkor Wat temples. An illustrative example for the 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 a central location in Phnom Penh. On August 26, 2008, the controversial filling of the 90-hectare Boeung Kak Lake began by permanently pumping sand through a drainage system from the Tonle Sap River into the lake (Fig. 6). The project is being carried out as a joint venture between the municipality of Phnom Penh



Fig. 6: Artificial land making: Partly filling-in of the Boeung Kak Lake. (Photo: Fabian Thiel)



Fig. 7: Boeung Kak Lake, partly filled in with sand. (Photo: Johannes Hoerber)



Fig. 8: Former backpacker guest-houses at Boeung Kak Lake, now flooded and abandoned. (Photo: Johannes Hoerber)



Fig. 9: Living at the waterfront: Canal in Phnom Penh. (Photo: Johannes Hoerber)



Fig. 10: “Walk the line”: Recent real estate development. (Photo: Johannes Hoerber)

(10%) and a private developer (90%), based on a 99-year-leasing agreement. It poses a serious threat to the livelihoods and economic existence of the lake residents, totalling approximately 4200 families. They are going to be resettled far from the city center and sometimes compensated below the market value of the land – if they get paid at all. The surroundings of the lake are part of the 133 hectares urban restructuring area. Environmental impact assessments or consultations with affected people have never been implemented adequately.

The rapid real estate development of the Boeung Kak Lake follows the Phnom Penh Development Master Plan (2005), which includes



Fig. 11: “Stairway to heaven”: Steps of privatization from State public land to private land.

the conversion of areas of artificial new land belonging to the State as public property to State private property. Conversion areas are rented or sold by private developers for urban and industrial purposes. Leasing of State public land and other entities still serving public purposes is only possible for a maximum of 15 years. *De facto*, the public purpose of the lake had already been politically abandoned in order to transform it into private property for the 99-years-leasing contract. Governmental sub-decrees serve as legal vehicles in the shadow of the Land Law as a precondition for these kind of leasing contracts. Figure 11 illustrates the legal steps from State public property to private property.

Conclusion and recommendations for action

Having a sound planning system for land, soils and water in the future, the Phnom Penh authorities are able to guide and restrict the use of properties and resources in order to protect and promote the public interest. Social housing and open space for recreation should generally be defined as a public purpose. The public purpose should include clear regulations for relocation and expropriation only as *ultima ratio* instruments, combined with fair and just compensation following the rule of law. Different institutions and regulations for land management and land distribution have to be built up, not only in Phnom Penh municipality, but for the entire territory of Cambodia. Such strategies could consist of⁵:

- the rule of law and legally binding planning determinations (zoning ordinances);
- different common and communal property rights and tenure securities for urban lands beyond the 100% private property rights solution;
- State Land Management with non-transferable public communal property and a State inventory of plots and assets;
- leasehold tenure models including cooperatives and associations (*économie sociale*) for the urban poor and for landless people on State public property, and
- the land market, based on land and business valuation methods to identify land rental values and to revise legal sub-decrees setting concession fee rates for businesses and usage charges for natural resources, e.g., fishing in the Mekong River.

My review of the property and planning implications of Phnom Penh allows a number of



Fig. 12: Brave new world?
Real estate development on
the Mekong riverside.
(Photo: Johannes Hoerber)

conclusions. First, the problems occurring in today's Phnom Penh that seem at first glance to be a problem of land dispute resolution, legal enforcement, and insufficiently compensated evictions and expropriations have mainly to do with the creation of private property rights. 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 nearly all lands in favor of the elite coalitions. Third, urban land redistribution as reparation had a difficult start from the beginning of the land reform process after the Khmer Rouge regime. A serious lack of commitment of the government bodies to respect existing land legislation is obvious. 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. Property and land value taxation will eventually become an important source of the municipality's revenue. Taxation must be flanked by a modern land inventory and transparent leasehold agreements for the sake of the inhabitants.⁶ Hopefully, relevant thinking is continuously evolving amongst the capital's planning and land distribution authorities.

Notes

- 1 CHEANG, S. (2010): Death toll surges in island disaster, *Phnom Penh Post* from 24 November 2010, p. 1; BARTA, P. (2010): Stampede death toll rises in Cambodia, *The Wall Street Journal* from 24 November 2010, p. 12.
- 2 Urban migration is a problem nearly all developing countries have to cope with. See the example of Addis Ababa/Ethiopia reported by ANGÉLIL, M.; STRESS, C. (2010): Addis Through the Looking-Glass. In *disP – The Planning Review* 182, 3/2010, pp. 8–13.
- 3 MARKS, S.; THUL, P.C. (2009): Hostesses' Hard Choices. *The Cambodia Daily*, weekend edition from 11/12 July 2009, pp. 12–13.
- 4 GOTTESMAN, E. (2002): *Cambodia After the Khmer Rouge. Inside the Politics of Nation Building*. New Haven/London: Yale University Press, pp. 272–276, p. 320.
- 5 See further THIEL, F. (2010): Land Law and Planning Law in Cambodia: Problems and Perspectives. In *Cambodian Society of Comparative Law*; KUONG, T. (ed.): *Cambodian Yearbook of Comparative Legal Studies*, Volume 1. Hong Kong: Virtue Unions Publisher, pp. 71–85.
- 6 THIEL, F. (2010): Donor-driven land reform in Cambodia – Property rights, planning, and land value taxation. In *ERDKUNDE*, Vol. 64, No. 3, pp. 227–239.

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