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**Efficiency by capitalization and
formalization of land – debunking a myth**

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Summary (deutsch)

Die meisten Landreformen, die in Entwicklungsländern in den letzten Dekaden durchgeführt wurden, folgten einem Konzept, das durch die "evolutionary theory of property rights on land" (ETLR) geprägt wurde. Auf diese Vorlage stützten sich westliche Regierungsorganisationen der Entwicklungszusammenarbeit wie auch die Weltbank. Die ETLR möchte eine Kapitalisierung der Eigentumsrechte an Grund und Boden via Formalisierung und Individualisierung erreichen. Ihre Befürworter erwarten ein höheres Maß an Effizienz und eine Reduktion der Armut.

Der vorliegende Artikel richtet sich weniger gegen die Formalisierung selbst, sondern gegen die Verbindung von Formalisierung, Individualisierung und Kapitalisierung von Landtiteln in einem "one size fits all"-Ansatz. Im Gegensatz zu den Vertretern der ETLR wird die Auffassung vertreten, dass diese Verbindung keiner historischen Gesetzmäßigkeit folgt und alles andere als selbstverständlich ist. Zudem wird gezeigt, dass die Umsetzung dieses Ansatzes zu einer Entkopplung von Nutzen und Kosten der Landnutzung führt. Die erzeugten externen Kosten geben einen Anreiz zum Rent-Seeking und schwächen den Staat. Die zentrale These der ETLR, dass die betreffende Agenda die Effizienz der Bodenmärkte stützt, wird zurückgewiesen. Tatsächlich ist der ETLR-Ansatz ein Wegbereiter für die Verfolgung der Interessen von zahlungskräftigen und gut organisierten Akteuren. Die Durchsetzung der Interessen geschieht auf Kosten anderer Gruppen und der Vielfalt von Lebensformen.

Vieles spricht dafür, dass über die Umsetzung des ETLR-Ansatzes die sozialen Schieflagen in Entwicklungsländern noch verschärft werden. Der vorliegende Beitrag stellt dar, warum die westlichen bodenpolitischen Blaupausen für Entwicklungsländer untauglich sind. Belege werden anhand des Beispiels Deutschland (das des Öfteren als eine solche Blaupause dient) und Kambodscha (ein Land im Reformprozess) gegeben. Es wird dafür plädiert, Nutzen und Kosten der Bodennutzung zu koppeln und externe Effekte zu vermeiden. Dies kann über eine Entkapitalisierung der Nutzungsrechte an Land geschehen. Zudem sollte bei der Vergabe von Landtiteln Platz für alternative Lebensweisen gelassen werden (z.B. über die Vergabe kollektiver oder kommunaler Titel).

Summary (english)

Most of the land reforms in developing countries in recent decades follow a blueprint, drawn by the “evolutionary theory of property rights on land” (ETLR). This blueprint was supported by Western government-backed development aid institutions and the World Bank. The ETLR intends to achieve a capitalization of property rights on land by formalization and individualization. Its supporters expect higher efficiency of the land markets and a reduction of poverty. The focus of the article is not so much on the formalization efforts themselves, but on the connection of formalization with individualization and privatization into a “one size fits all” approach. In contrast to the opinions of the ETLR supporters, it is argued that this connection does not follow historical laws and is anything but self-evident. Moreover, it shows that this approach leads to a decoupling of benefits and costs of land use, which causes external costs, encourages rent-seeking behaviour and weakens the state. The central statement of ETLR, namely that this strategy supports the efficiency of land markets, is rejected. Instead, the ETLR approach gives way for economically efficient and powerful interests at the expense of other groups and a diversity of living forms. Probably this approach even boosts the social bias in developing countries. The article argues that the Western blueprint of land use policy is not suitable per se for developing countries. Some evidence is provided using the examples of Germany (as a Western “blueprint”) and Cambodia (as a land in reform process). The plea is to couple the benefits and costs of land use and thus to eliminate external effects. This coupling can be achieved by a “decapitalization” of the use right on land.

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I. Introduction: The evolutionary theory of land rights

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 an approach called according to Platteau (1996) the “evolutionary theory of land rights” (ETLR). The ETLR postulates that once, due to land scarcity and an increase in land values, the marginal benefits of internalization of external effects by private ownership might outweigh its marginal costs (Demsetz, 1967, 347). Hence, landholders demand improved tenure security, which might be provided via a state-orchestrated process of adjudication and title registration (Platteau 1996), both of which tend to privatize land into individual parcels (Platteau, 1996; Barnes and Griffith-Charles, 2007). This theory is a variation of the property rights theory, which emanated from research work carried out by Coase (1960), Demsetz (1967), Posner (1986) and others. According to the property rights theory, the efficiency of markets can be increased by means of an unambiguous allocation and specification of property rights. Popularization within the stressing of formalization has been done particularly by de Soto (2000). Not only the World Bank, but also many Western government-backed development assistance organizations act according to the ETLR blueprint (cf. USAID, 2007). Thus, Western institutions are transferred into developing countries. Empirical evidence for the ETLR was given particularly from analyses of land titling projects in Thailand. Feder et al. developed a set of evidence that showed property formalization did produce the asserted benefits (Feder and Noronha, 1987; Feder et al. 1988; Feder and Nishio, 1998). However, several studies criticized the ETLR (Coles, 1989; Carter and Olinto, 1996; Jansen and Roquas, 1998; Deininger et al., 2003; Gould et al., 2006, Barnes and Charles 2007). Our argument rejects particularly the connection of formalization with capitalization and individualization of use rights (e.g. Feder and Feeny 1991, Feder and Nishio 1999). We show that this connection is anything but self-evident (in terms of historical development), efficient (welfare), effective (in terms of planning) and socially acceptable (distribution of land and access to land). Moreover, the agenda as an institutional standard may destroy social diversity and provoke a clash of norms, which may end up in a de facto open access situation. We present an alternative conceptual framework for land use policy, particularly in the development context. Evidence is provided particularly for Cambodia (as a country in a current reform process) and Germany. Cambodian land law provides for land registration in the land book along the lines of the Australian Torrens system. Some of the major changes in the 2001 Land Law included extending private ownership rights to residential as well as agricultural land, establishing a system for the systematic titling of land. The land law re-confirmed that any regime of ownership of immovable property prior to 1979 (end of the Khmer Rouge regime) shall not be recognized. In order to push through the agenda, the Royal Government of Cambodia (RGC) requested financial support from

the World Bank to extend the registration activities. The design of a Land Management and Administration Project (LMAP) was elaborated with the World Bank, Germany and Finland as development partners (2001). In this article, we compare the Cambodian situation with Germany, which is considered in many developing countries to be a functioning Western “blueprint”. Due to a lack of reliable data, evidence for Cambodia is difficult to obtain so far. Gaps are filled with some results of own field studies, carried out from 2009 to 2011 for the Cambodian case. In general some of the evidence provided is only anecdotal; hence, more systematic research is necessary.

II. Theory

1. Land rents and land value

The ETLR asserts historical progress towards more formalization and individualization (privatization) of property rights in response to higher land values, caused by rising scarcity of land (Feder / Feeny 1991, p. 138). Table 1 illustrates property rights from an economic viewpoint. Basically the property rights might be allocated in a bundle or separated. A completely privatized ownership title may be interpreted as encompassing all four sets of rights mentioned below (Pejovich, 1990; the following economic classification is abstract and derived from Roman law). The ETLR agenda leads to a specification of the elements of the bundle of property rights in private hands. This makes a unique assignment of benefits and costs to the acting persons possible and thus avoids (negative) external effects. Hence, the efficiency of land markets will rise.

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: <i>abusus</i>	Right to sell the asset and to participate in its value (disposal). Latin: <i>ius abutendi</i>	
Utility (flow)	Right to use the asset. Latin: <i>usus</i>	Right to appropriate any returns on the asset, here: the land rent (!). Latin: <i>usus fructus</i>	
		Income f. Improve.	Different. rent

Table 1: Property rights (from an economic point of view)

A distinction concerning the *usus fructus* right in table 1 is crucial for the subsequent analysis:

- We understand the "land rent" as a "differential rent", which is a function of location (von Thünen, 1826), the quality of the land (Ricardo, 2004) and differences in the intensity of cultivation or use. A share of the differential rent may turn out to be an absolute rent if land gets so scarce that even marginal land can earn a rent (Damaschke, 1916). 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. Differential rents derive or rise mainly by incident or by public activities (e.g. a location advantage might be influenced by infrastructure projects such as streets or railway tracks). The public also bears opportunity costs, caused by abdication of land use alternatives. In order to

anticipate some of the subsequent results: If differential rents are reaped privately, the beneficiary (private) and the originator (the public bears the costs) fall apart. Hence, in contrast to the statements of the ETLR proponents, the full property title (which includes the right to reap the land rent) must cause external effects (Löhr, 2010), which may provoke aberrations in land use policy and land markets. 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 therefore have a semi-monopolistic character (Damaschke, 1916).

- Our statements do not refer to income from improvement of the sites (e.g. setting up a building or tilling a field). Here, beneficiaries and originators of this income are the same. Because benefits and costs are coupled, no negative externalities appear from this. Such improvements also might be done by any land owners; hence, the competition mechanism of a market economy may work in this regard.

Income from land	Income from improvement	Differential rent
Benefits	Private (user)	Private (owner)
Costs	Private (user)	Often public
Allocation effects	No external effects	So far: External costs
Character of usus fructus	Income out of the improvements, based on own efforts and secure use rights!	Differential rent out of unimproved land, based on other people's efforts and scarcity
Market / Competition	... can be tackled by market competition	... can basically not be tackled by market competition, semi-monopolistic!

Table 2: Land rents and income from improvement

Feder and Nishio (1999) discuss income from land, but in fact focus on income from improvements (which indeed cause the positive effects asserted). However, in our view this is an undue reduction of the issue. The scarcity value, which serves as the driving force for the genesis of full property rights in the view of the ETLR proponents (Platteau 1996, p. 32), is based (at least in the long run) on the semi-monopolistic feature of the first type of rents mentioned above. On the background of this understanding of the "usus fructus" right, we can indicate the value of unimproved land "V" on the basis of Ricardo's "capitalization formula" by the discounted differential rent: $V = R/i$, where "R" is the annual differential rent (or absolute rent) and "i" is the discount rate (deflated). Income and value out of improvements has to be considered apart from the scarcity of land: First, due to the time limitation of the income of improvements, another formula has to be used for the capitalization of yields. Second, the only reason why the competition mechanism also does not work well with improvements is that they are connected with land. Because land has a low elasticity of production and of substitution (cf. Keynes 1997, pp. 230), the scarcity rent of land

cannot be contested by competition. In contrast to land, improvements basically have a higher elasticity of production and substitution. If, nevertheless, improvements also have scarcity rents, these rents emerge due to the scarcity of land. Besides, scarcity rents of land and income out of improvement (as distinguished in table 2) are also treated separately in the traditional German discounted yield method, as codified in the German Valuation Ordinance (WertV 88 and ImmoWertV 2010 respectively).

2. The eschatological view of development of property rights

According to the opinion of the supporters of ETLR, the rising scarcity of land causes endemic land disputes. Formalization, individualization and privatization is the response to the need for more protection and tenure security. In this regard, the supporters of the ETLR assert a historical development to individualization and privatization. This idea might be considered as being closely connected with the “optimistic theory” of the development of property rights. This theory is ascribed to the adherents of Demsetz (1967). Demsetz himself said that he had not claimed to view changes in property rights “as an evolutionary process”. Instead he merely designed a positive theory that property rights develop in response to costs and benefits (Demsetz, 2008, 127-129). Also other proponents of the neoinstitutional theory (cf. Sugden 1989, North 1988) do not share an eschatological view of the development of property rights. Nonetheless, such a view exists and is often suggested in an undifferentiated manner. One example is figure 1, published by FIG et al., 2010, where a continuum of the design of property rights related to land is suggested (p. 9):

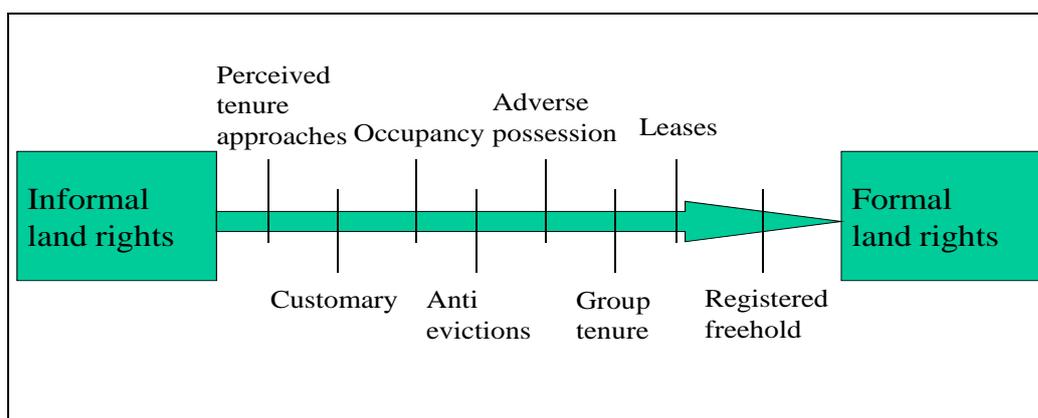


Figure 1: Progress in the development of property rights for land?

Figure 1 suggests that informal property rights on land are the initial point, while registered freehold is the end of the development. The apogee of the development is private property on land, which is supposed to guarantee the most efficient form of land use (by avoiding negative external effects). This view aspires also to a final state of “one size fits all” – without regard for the cultural differences (the concept of land

as a commodity is deeply alien for some cultures, Platteau 1996, p. 70) and also without regard for different features of various assets (land has different features compared with other goods, Thiel, 2010, p. 9). All the other forms of property rights are regarded as inferior pre-stages on the way to the final state.

For a start, this view might be objected to from a philosophical point of view: Popper’s criticism of Marxism also holds true for ETLR – as far as historical progress is claimed: According to this criticism, the doctrine of historical determinism is nothing but superstition (Popper, 1987). Moreover, the “is-ought problem” as discussed by David Hume (2008) also holds true: Even if we agree with the historical patterns, there is a big difference between descriptive statements (what is: trend to formalization and individualization) and prescriptive statements (what ought to be, Schurz, 1997).

3. Rent seeking and its impact on formalization

According to the ETLR, formalization is an answer to the demand for new institutions, due to a changed benefit-cost structure. We do not deny that there is a pressure to formalize and to individualize property rights on land, which results from rising scarcity and appreciation of land. However, it must be allowed to ask the question: Which groups in society demand such institutions, and which groups are sticking with the customary rights? Figure 2 illustrates the basis for an answer to this question:

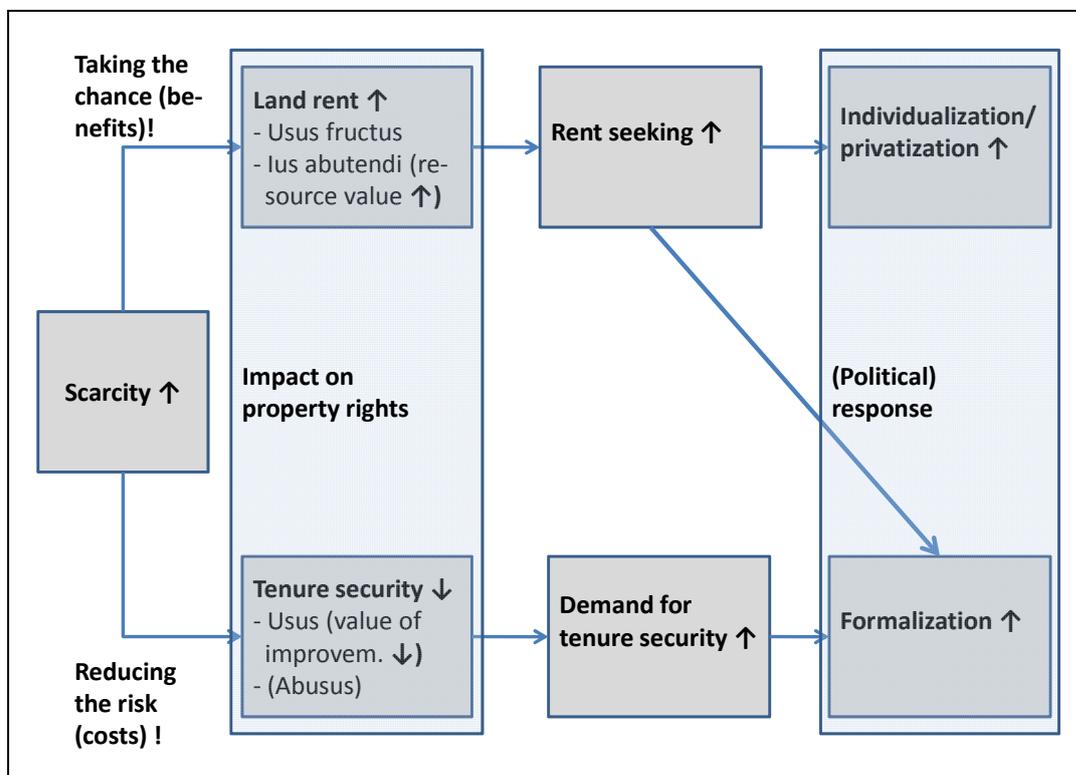


Figure 2: Scarcity as the driving force of privatization and individualization – an alternative view

Figure 2 shows that the impacts of rising scarcity on land are quite different on the various property rights elements. A rising scarcity of land

- appreciates the property rights based on differential rent and value (*usus fructus, ius abutendi*). This will also happen without formalization or with weak formalization. For example during the price hike (2004 – 2008) in Cambodia many plots were sold without being registered in a formal cadastre in the “grey market” (information from development assistance consultants interviewed). However, like the ETLR supporters, we also assume that the land value is probably higher in case of proper deeds.
- weakens particularly the use right if, as a consequence of rising scarcity and an appreciation of land values, land conflicts (such as by encroachment) become endemic (Platteau, 1996, p. 34; Fitzpatrick, 2006, 1018). In Cambodia, private holders of large estates were equally as affected by land disputes as small farmers, whose claims often have not been officially recognized. The formalization of rights (land law 2001) was also a response of the RGC in order to fight against land disputes by making rights clear.
- However, the arrow crossing between “rent seeking” and formalization in figure 2 indicates that in developing countries formalization is also “abused” as a tool for a special form of rent seeking: Land grabbing (Bugalski and Pred, 2009). Powerful actors used land titles to reap the increased differential rents and risen land values, while vulnerable groups and households have apparently sometimes been arbitrarily excluded from the titling system (Platteau, 1996, p. 43; Grimsditch and Henderson 2009, p. 71). According to the empirical investigation of the World Bank, a lower recognition of customary land rights increases a country’s attractiveness for land acquisition (The World Bank, 2010, p 38). Human Rights organizations (e.g. LICADHO, 2009) notice that land grabbing and forced evictions have escalated significantly over the last ten years in Cambodia. Actually, Feder and Nishio (1999, p. 38) 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.”

In light of this fact, NGOs criticize that the attempt of solving the land disputes within the ETLR agenda seems to be like putting the fox in charge of guarding the chickens.

4. Rent seeking and the “tragedy of anticommons”

However, in our view the central problem is not the formalization per se, but the formalization of individual full property titles, which allows the individual and exclusive reaping of semi-monopolistic rents (“capitalization”). 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 ETLR approach is still guiding their land use policy. 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; cf. Virnich, 2007). Resistance against exclusion from access to land by law (feudal society) or by price (bourgeois society) was put up in legal and illegal forms. An example of a legal form was the German land reform movement, which contributed to the codification of ground leases (German: "Erbbaurecht"). Ground lease arrangements separate the use right from other rights. In Germany the ground lease regime was developed – in contrast to the theory of ETLR – as a response to a rising scarcity and rising land values, in order to hamper speculation and ease access to land for needy people (von Oefele and Winkler, 2008, p. 15). Huge parts of some cities (in Germany e.g. Kaiserslautern, Wolfsburg, outside Germany e.g. Amsterdam) are still based on ground lease contracts with the state or municipalities (Dransfeld, 2010, p. 19). In many Third World countries, resistance moved beyond legality. Besides open violence, this mainly involved ignoring formal law and the reference to manifold forms of customary law. In Cambodia, the latter appears in two forms:

The first 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 includes also forms of open access, RGC, 2010, p. 14; Fitzpatrick, 2006, p. 1025). 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.

The second form is maybe an even more urgent matter in Cambodia: Particularly the peripheral area of the country is being filled with Economic Land Concessions (ELCs). Within ELCs, large areas are leased out under long-term contracts (70 – 99 years). Because the lease fee is low and a transfer is possible (although the government has to agree), such ELCs also allow a private appropriation of the land rent and land value. In this respect they have similar characteristics as full private property titles. They are even more advantageous, because the holder does not have to pay a purchase price and fees are low (currently, fees are between 0 US \$ and 10 US \$ per year and hectare; RGC 2000; Üllenberg 2009, p. 15). Since 2006, 300 000 ha of ELCs have been granted (RGC / MAFF, 2010, own calculations and information, provided by a development agency). At the same time there is huge migration pressure from the central area, where the land is scarce and more concentrated, into these areas (RGC / National Institute of Statistics, 2009). Owners of large estates consider their property and their investments to be threatened, particularly by en-

croachment. 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.

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 first form, most of the people affected are not even integrated in the market and have a low income. The second 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.

With the exception of the latter group, particularly the numerous potential losers of the ETLR agenda and those who simply fight for access to land as their livelihood adhere to customary law. 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 very foundations of the ETLR approach are shaken: "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 ..." (Platteau, 1996, p. 46). However, the beneficiaries of the ETLR agenda refer to the enforcement of formal law and insist to override the customary law, if necessary with police power. Nonetheless, due to a weak government in many countries of the Third World, the enforcement of the ETLR agenda is also 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 (Fitzpatrick, 2006, 1002, 1013). 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 a de facto open access contributes to accelerating inter alia the overuse of resources (e.g. deforestation; Fitzpatrick, 2006, p. 1043). In such cases, the failure of the ETLR approach happens because exclusionary attempts fail ("tragedy of anticommons", Fitzpatrick, 2006, p. 1045), although again in theory the conditions are favourable (rising scarcity and increasing value of land). Incidentally, the clash of norms accompanied by a cutting of the access to land (privatization of the commons) is not a new phenomenon in economic history (see also the history of the German peasants' revolt).

III. Results and discussion: ETLR and the everlasting external costs

1. De Soto: Exporting the Western blueprint to developing countries

In particular de Soto (2000) has popularized the idea that property formalization is fundamental to economic development and is the primary difference between rich and poor nations. This is in brief the basic statement of de Soto: The poor people in developing and threshold countries own a huge volume of capital. Due to a lack of formalization this capital cannot be put into value and cannot be mobilized. In brief, the program of de Soto could be called “capitalization by formalization”, which we use synonymously to ETLR. At the same time, de Soto and other supporters take the link between formalization and privatization for granted, according to the Western blueprint. Subsequently we argue why the transfer of the Western blueprint in developing and threshold countries is a quite misleading idea.

2. Effectiveness: The captured state

2.1 Planning as a common good

Planning is necessary to break up a possible Nash equilibrium (Nash, 1950): If, in the absence of any planning, only the willingness to pay decides about land use patterns, a spatial disaster results and people run into a rationality trap. If, for example, German people were allowed to realize the favoured model of the detached one-family house in green surroundings, urban sprawl would happen, with negative ecological, economic and social impacts. If no plan provided public spaces e.g. for kindergartens and schools, such forms would have to compete with actors with a high willingness to pay (e.g. banks). Hence, they could not be realized. However, without such facilities, the value of the area would be lower than with them. Good planning should consider the variety of functions of land (e.g. ecological, spiritual). The efficient economic use is only a special case. 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 (cf. Bossel, 1998).

However, from an economic view, spatial planning causes opportunity costs, because the unsuccessful stakeholders cannot realize intended projects. The opportunity costs are particularly high when space is provided for important but “inefficient” land use. Because spatial planning has to manage a multidimensional system, valuation of costs and benefits in economic terms is difficult, if not impossible. Nonetheless, planning has to balance the competing demands of various stakeholders, in-

cluding vulnerable groups with a low budget. 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. This affords a strong and independent state, which is a trustee of the common good. In general, Germany is considered to have a planning system that works well. In contrast, the planning system in Cambodia is still in its infancy.

2.2 Legislation: Flaws of laws

However, a closer look at the legislation already raises doubts on the proper blueprint. Germany is characterized by a planning law which is formed by and at the same time stimulates rent-seeking activities (as defined by Tullock, 2005, p. 9). In any case, the German political landscape is characterized by neo-corporatist tendencies. Policy and law-making is basically strongly influenced by well-organized lobbying groups on all state levels (Adamek and Otto, 2009). Lobbyism is often considered to be a legitimate activity. Hence, the state is vulnerable for capture by powerful interest groups. In such cases, the role of the state as a trustee of the common good “planning” is weakened. The rent-seeking activities find expression for instance in planning laws, which make the state liable for any decrease of land value caused by planning decisions. If, in contrast, changed plans result in higher values, these wind-fall profits are not skimmed off (exception: §§ 143 ff. building code – BauGB). In Cambodia, due to a lack of planning also compensation rules are not yet in place. Furthermore, the way of attenuating private property rights on land by public law (planning law) is an interesting issue. Such attenuation is indispensable in order to control the behaviour of the private actors and to make planning work (Dieterich, 2001). However, the way of attenuating the property rights in Germany scarcely affects the *usus fructus* right, in particular the scarcity of rent (right file in table 1). Hence, no working economic disincentives have been put in place so far to support planning and to sanction antisocial behaviour of land owners such as (development) blockades. For instance, land taxation in Germany is very moderate, not much land rent is skimmed off. The long-time discussion about a land tax reform is without a result at the present. Instead (because the legal processes are very tedious and the result is insecure), wrongdoers are compensated if they renounce damage the community. If, for instance, owners of sites are blocking necessary restructuring of villages or cities, they get often an overly high price for their estates, which is in fact a payment for giving up the blockade voluntarily. Such a practise follows the victim-pays principle (instead of the causer-pays principle), encourages further extortions and contradicts principles of sustainability (Cotula, 2010, p. 55). The Cambodian situation is basically no different. With the new property tax which entered into force in January 2011, the RGC missed an opportunity to encourage higher efficiency in the use of land. The tax rate is only 0.1%. The tax base comprises the value of land including improvements. Amongst others, tax exemptions are made for agricultural land including ELCs (Laysim 2010). Also, the existing tax on

unused land is not levied in a comprehensive way (IMF 2009, interviews with informants from development agencies). Furthermore, the tax rate of 2% on the land value as it is assessed by the “Land Committees” is not enough in order to avoid aberrations if price hikes of 10 to 60% occur (as has happened from 2004-2008), to hamper speculation or to urge the ELC-holders to put the land to use.

In Germany, as shown above, the rights on land based on rents and value are basically kept untouched. Instead, the state tries at least to get some control over the behaviour of land owners by orders (examples for Germany: building orders – Baugebot, § 176 BauGB, modernization order – Modernisierungs- und Instandhaltungsgebot, etc.). Doing this, the state dilutes the rights based on control and use (left file in table 1) by introducing a great deal of red tape. However, for many reasons such orders are often difficult to enforce.

All this leads to a constellation where basically land use plans can only be executed if and where the private owners agree: If they are blocking the plans (e.g. leaving building lots empty, cf. section 3.2.2), the state is more or less powerless (Dransfeld, 2010, p. 38). Because such and other shortcomings cause the undesirable outcomes such as urban sprawl, rising land consumption etc., expensive research projects such as REFINA (Federal Ministry of Education and Research, Germany, 2011) have been put in place in order to explore new instruments for a better land use policy. However, to date the outcome of this program could not turn around the trend of a lack of sustainability. 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 efficiency of land use policy (Federal Environmental Office, 2010). Considering all these problems, the German planning system is widely overestimated in developing countries.

2.3 Executive: Non-neutrality of planning and lack of enforcement

Like in other Western countries, individual property titles allow the land owners also in Germany to reap the differential rent and to capture the value of unimproved land, as table 2 shows. Although these differential rents emerge mainly due to incidence or to public activities, the (opportunity) costs of land use planning are usually shifted onto poorly organized groups or onto society as a whole (externalization, table 2; cf. Olson, 1971). If, due to rent-seeking activities, the planning authorities are captured, planning (see the cost benefit structure in table 2) loses its “neutrality” (Dransfeld, 2010, p. 21) in favour of economically powerful private actors. Social and economical forms, which are moving beyond the profit logics, have to give way for the economic and political powerful actors. Examples of such rent-seeking activities are manifold:

- Although the rule of law works satisfactorily in Germany, plans are often changed in favour of economically and politically powerful pressure groups. Within § 1 (6) BauGB, different interests should be weighed up. Indeed, often commercial or industrial projects are preferred, e.g. against 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 Frucht-

folge”). Or, to provide one more example, due to a lack of financial capacity of the state, development in Western countries is based more and more on Public Private Partnerships (PPP). In many cases, the plans (that should consider the common good) are adapted to the wishes of the developers, with consequences such as a lack of public space or too much density (Bretschneider, 2008, pp. 1). There are many other examples.

- A concrete example is representative for 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 provides a livelihood for many families (Kathri and Sithan, 2007, pp. 1; personal interviews with members of LICADHO and Star Kampuchea). According to human rights groups more than 4,000 families have been displaced. The households affected were denied land titles shortly before the lake area was leased out (Sithi.org, 2010, pp. 1).

A “captured” (local) government is no longer a neutral trustee of the common good. The error in the system is basically the same in Germany and in Cambodia. Of course the grievances in Germany are far less extreme, but this is no reason to transfer and cement such institutions uncritically.

Assisted by international advisers, the RGC developed a lot of good laws. However, enforcement is often poor. This holds true especially for the protection of natural resources (particularly forests). Poor enforcement of laws is sometimes caused by a lack of capacity, but sometimes also by a lack of willingness (“capture” of the state). Due to the lack of enforcement, the “abusus” right (table 1) is often in fact shifted into private hands. In many cases, land use changes take place in an uncontrolled manner. For instance, some of the most wealthy and powerful Cambodians made a fortune with illegal logging of primary forest on their estates (Global Witness, 1997).

2.4 Constitutional state and rule of law

Despite the shortcomings of the German planning and property rights system on land, at least important mechanisms of check and balance of power such as a working constitutional state, a more or less independent judiciary (Klingst, 2000) and a more or less free press (reporters sans frontières, 2010) often inhibit abnormalities. In the absence of such political and legal control mechanisms, the rent-seeking licence of full property titles may fuel corruption in developing countries and contradict the efforts of developing organizations to make rule of law work and promote good gov-

ernance. In Cambodia, the press is still working with an astonishingly high degree of freedom (see the critical reports of the Cambodia Daily or in particular of the Phnom Penh Post). Nonetheless, the rule of law does not work and courts cannot be considered to be independent. As in comparable cases of the ETLR agenda (cf. Platteau 1996, p. 49), particularly poor people have poor access as well as poor prospects of success within the litigation mechanism. The transfer of the ETLR agenda into a country without a constitutional state opens the door for land grabbing at the expense of vulnerable groups.

3. Efficiency and individual property on land: Even if ...

3.1 Facilitation of the land markets by full property titles?

Feder and Nishio (1999, pp. 27) assert that formalization of individual property rights facilitates the land market, because information costs against the background of asymmetric information can be saved. A buyer of an estate does not have to investigate whether the seller is indeed the owner of the rights sold (Feder / Feeny 1991, p. 140-141). Hence, the most efficient use of the scarce resource land can be achieved. Moreover, a cadastre may also contribute to saving transaction costs. So far, we agree with certain reservations (see the problem of clash of laws discussed in section 2.4). As far as the statement refers to individualization of titles, we strongly disagree. Table 2 identified one important reason in the decoupling of benefits and costs of differential rents, which is a consequence of individual private land titles and encourages rent seeking. However, even if rent-seeking activities did not exist and even if the planning were neutral, capitalized individual property rights would cause welfare losses and spill-overs. We want to illustrate the rationale by using the example of unimproved land (the argument for improved land is more complex).

3.2 An extended view of capitalized differential rents and transaction costs

Under competition, an efficient investor is able to earn the differential rent out of the land. If the investor has a concrete investment plan to realize as soon as possible, the value of the land might be calculated on the basis of Ricardo's "capitalization formula" ($V = R / i$, which – in market equilibrium – theoretically brings the same result as a residual value calculation).

However, for the seller of the land or for an investor without an urgent improvement project, the calculation might be different. For them, land not only includes the possibility of earning future land rents R (which have to be discounted). Moreover, land contains some flexibility advantage, because unimproved land is the key for a sequential investment strategy: It provides the possibility, but not the obligation to carry

out a follow-up investment. A follow-up investment will only be realized if the situation fits well and the business conditions are fine. In contrast to an investment in improved land, the investment in unimproved land may avoid an early commitment and binding of capital (upstanding building). Nevertheless, the investor has the key for a follow-up investment in his hands. Hence, the investor may reduce his risk because the maximum loss is a share of the initial investment in land, if there is price decline.

The same holds true also for investments in agricultural land. For both types, price fluctuations provide not only risks, but also chances, which cannot be considered within the net present value approach (Turvey, 2002, pp. 24). Hence, regardless of whether farmland or settlement area is sold, the seller of land will not only give up the net present value, but also his flexibility advantage “F”. Hence, the compensation requirements for unimproved land are based on an “extended net present value”: $V = R/i + F$. If the rights based on value and rents are defined well, this flexibility advantage is exclusive. A good way to deal with the extended net present value is to use a real-option approach (Holland et al., 2000; see also the collection of conference papers in <http://www.realoptions.org>). There is a lot of evidence for the existence of the flexibility advantage of unimproved sites. Some examples:

- The improvement of a site is often an irreversible investment, which kills the flexibility advantage. Thus, in the past (before introduction of the new German Valuation Ordinance in 2010 - ImmoWertV), many valuers in Germany reduced the value of improved sites by 10% to 20% (Sommer / Kröll 2005, pp. 209).
- The structure of the “interest rates for land use” (“Liegenschaftszinssätze”) of settlement or commercial estates gives more interesting insights. These interest rates for land use are roughly calculated as the sustainable yields divided by the price of the estates. The rates for old buildings which will be torn down in the near future are significantly lower than those of sites with new buildings. Obviously, a site with an old building is comparatively more expensive than a site with new building, because the flexibility advantage will be available soon.
- Also the value of agricultural sites obviously cannot be explained only by using the net present value criterion. Obviously, a compensation for the opportunity costs associated with future capital gains (price volatility) has to be paid additionally (cf. Holland 2000; Turvey 2002).
- Even land without any actual economic value (e.g. due to a lack of fertility, German: “Unland”) is traded at a positive price – obviously other development options in the future are paid.

However, although the flexibility feature provides an individual advantage, for the market as a whole it ends in inefficiency: If a prospective investor wants to improve the land immediately (e.g. by setting up a building), he does not intend a sequential investment strategy. Thus, the “wait-and-see” flexibility advantage is without use for him. Nonetheless, he has to pay for it or he does not get the land. When setting up the building, the value of flexibility of the plot is lost (hence, the value of improved

land consists of the value of unimproved land plus the value of improvements minus the value of lost flexibility caused by improvements).

For the investor, the mark-up is only additional costs and an additional hurdle for the profitability of his follow-up investment. Either the firm refrains from making the investment or it has to “squeeze it out”, e.g. by lowering wages, the quality of the building etc. The required mark-up has similar effects as transaction costs, which are shifted onto the buyer. Meanwhile, this phenomenon has also been detected by land experts:

- For instance, an expertise of the Federal Environmental Office in Germany complains about a lack of mobility of the real estate markets (residential, commerce) and the propensity of private owners to hoarding sites. They also assess “unrealistic” price demands by the owners of sites as a major reason (Schiller et al., 2009, pp. 193). Furthermore, the first comprehensive assessment in a German state about unused reserve sites has been finished recently. This assessment, done on behalf of the state of Rhineland Palatinate, identified unused reserve sites for approximately 16% of the population of the state (Elgendy and Michels, 2011, p. 2-3). Exaggerated price requirements of the owners are discussed as playing an important role in the lack of mobility (discussion of the results of the assessment in the State Chancellery of Rhineland Palatinate, Mainz, Germany, on the 10th of February). By the way, the degree of inefficiency of land use would be even higher if unused or underused buildings were considered (which have not been assessed in the study).
- As mentioned above, ELCs in Cambodia have similar economic features as full property titles. Many agricultural sites are held by non agriculturists that never had the intention to put them into use – either due to a lack of know-how or access to capital. The rationale for the land taking (or: land grabbing) was obviously illegal logging and/ or speculation. Besides encroachment, this is one of the most important reasons why – according to the findings of the World Bank – only about 10% of the areas granted by ELCs are in use (cf. Sothath and Sophal, 2010, pp. 6; Üllenberg, 2009, p. 33). However, inefficient use of agricultural land is not only a problem of ELCs. By the way, in many cases and for many reasons, also the target recipients of Social Land Concession programmes (SLC programmes) often do not use their plots efficiently (information given by an advisor from a development aid agency).

The flexibility advantage makes it possible to wait with putting a site into use. It has similar effects as transaction costs. The required mark-up for flexibility hampers the efficiency of the land markets, causes a decrease of the total effective supply of land, impedes market access and makes changes property in land into a de facto privilege. The flexibility advantage is private, whereas the costs of blockades are burdened on other groups. Thus, in contrast to the idea of the ETLR proponents (which consider full property titles as a means of avoiding spill-over effects, cf. Fitzpatrick, 2006, p. 1006), full property titles produce external costs. The supporters of the ETLR approach have not discussed these arguments so far.

3.3 Full private property titles as collateral?

De Soto (2000, pp. 56) as well as Feder and Feeny (1991, pp. 141) stress that private land titles are important as collateral for loans. In our view, this statement is too undifferentiated:

- In developed as well as in developing countries, particularly small loans and working capital loans are particularly granted after an assessment of the ability of the borrower to repay the loan (Gilbert 2002, pp. 11; interview with representatives from the German Farmer's Union – Deutscher Bauernverband – and Deutsche Kreditbank). In developing countries, few poor families (which often are independent workers without a fixed employer) are able to demonstrate regular income and their ability to repay the loan. In Cambodia, access of smallholders to markets is often limited, and the possibility to generate money income is poor. Formalized collateral is apparently more often required by commercial banks than by micro finance institutes (which are of particular importance for working capital loans for smallholders), if they are required at all (information provided by an informant from the financial sector). Therefore the creation of a sound value chain (as promoted e.g. by GTZ/GIZ) seems to be a much more important contribution for smallholder's access to loans than introducing a regime of formalized individual property.
- Nevertheless, particularly for long-term loans, collateral is in fact important. However, German banks also accept the ground lease right as collateral (ground lease has the same quality as a right in rem) even if it is completely "decapitalized" (this means the economic value of the land is completely transferred from the lessee to the owner of the site, see also section 4.2 and table 4). Hence, if a building is set up on a ground lease, basically only the value of building itself plus the decapitalized use right serves as collateral, but not the economic value of the land! Hence, capitalization of land is no precedent to collateral, but the long term use right (in rem) for the improvements. Also Platteau (1996, p. 63) reports on collateral other than land in developing countries, e.g. pledging of standing crops (an improvement).
- Nevertheless, there is no doubt that banks prefer capitalized full property titles as collateral. With the economic value of the land as collateral, credit checks might be released, information costs will be saved and thus information asymmetry can be accepted. However, these advantages only hold true in a single actor's view. For the whole economy, the capitalized collateral may cause misleading incentives and misallocation, which may lead to a rationality trap and is anything but efficient. Mainly due to a more sustainable finance culture, the German real estate market is a bad example of this because it is extremely "boring", without high volatility. However, Fürstenwerth (2007, p. 311) shows that also in Germany more and more money is diverted away from production and into unproductive trading with capitalized assets. A better example than Germany is certainly the USA, where Greenspan's low interest rate policy caused a hike in the value of land as collateral. This encouraged banks to lend money without assessing the economic

performance of the borrowers accurately. When the bubble was bursting, the economic value of the collateral also turned out to be an illusion. Capitalized collateral also caused misallocation in the Cambodian land sector. Cambodia is a highly dollarized economy. More than 90% of all deposits were in foreign currencies (mainly US dollars). The foreign deposits (mainly US \$) grew at high rates particularly between 2005 and 2007 and are (in contrast to the growth of GDP) highly correlated to the hike in real estate prices (not so much with the GDP). For investors, the real interest rate (12-month US \$ deposits) was very low before and even negative at the very peak of the price hike (-2.2% in 2007; cf. Economic Institute of Cambodia, 2008, own calculations). Hence, the real estate price bubble (see below) until 2008 can also be interpreted as a spin-off of the US real estate bubble, which was pushed to a high degree by monetary policy:

Increase in ...	12/2005	12/2006	12/2007	12/2008
Foreign deposits	17%	45%	79%	1%
Real estate prices in urban areas	15%	20%	60%	25%
GDP	18%	16%	18%	6%

Sources: Federal Reserve Bank, 2006; The World Bank, 2009, table 11; Williams, 2010; IMF, 2009, statistical appendix; own interviews at real estate company and financial institutes, own calculations.

Table 3: Price hikes as a spin-off of the US real estate bubble

Like in the USA, a speculative mentality also emerged in Cambodia to go hand in hand with the bubble. This led to a careless granting of loans in order to buy land (with this land as collateral) with low credit check standards by Cambodian commercial banks. According to an informant from the financial sector, at the top of the price hike the liquidation of land as collateral was often more profitable for banks than a proper debt service. Also giving loans for land speculation was generally more profitable than loans for productive investments. Hence, even big Khmer agriculturists with large, formally entitled estates had little chance to get access to loans for productive agriculture investments (interview with Mong Reththy and advisors from development assistance). In the USA as well as in Cambodia, the aberrations of the capital markets have been systematically connected with the capitalization of the collateral. The outcome can be hardly called “efficient”.

3.4 Does tenure security require full property titles?

Tenure security is important in order to harvest the fruits from improvements (see table 2). However, the empirical proof of a higher farm output as a consequence of titling (Feder and Nishio, 1999) is subject to controversial discussion (Platteau, 1996, p. 65) and, more importantly, it says nothing about the necessity of titling individual

full property. We suppose that a decapitalized use right in the hands of private-sector actors is enough to achieve the intended positive effects (indeed, ETLR supporters lack evidence that an unbundling of rights itself necessarily has negative impacts on tenure security):

- If, as mentioned above, German banks also accept the decapitalized ground lease right as collateral, they are (in case of a loan failure) obviously interested in the economic exploitation of the improvement on the basis of a secure use right (in rem). The right based on rent and value is not indispensable for the land to serve as collateral.
- The highly productive agriculture of Germany, Belgium and France is based to more than 2/3 on leased agricultural sites, mostly from private landlords (n.a., 2007; Statistical Federal Office Germany, 2010, p. 340). In Germany and France, since the Second World War the share of leased agricultural sites grew over the time (the initial state is described by Abel, 1951, p. 187). However, such an unbundling of use rights needs formalization and a sound enforcement of the law.

Indeed, Feder and Feeny (1991, p. 137) admit that if unbundled “use rights are transferable with few limitations, and if the contract is sufficiently long-term (for example, ninety-nine years), then for most of the contract’s duration there is little difference between possession of use rights and full property rights.” For instance, within German ground lease arrangements it is also possible to agree upon prolongation of the contracts in favour of the actual lessee or his heirs (“Vorpachtrecht”). Depending on the cultural background, heritable use rights may be of greater importance for investments than other aspects (Fitzpatrick, 2006, p. 1034).

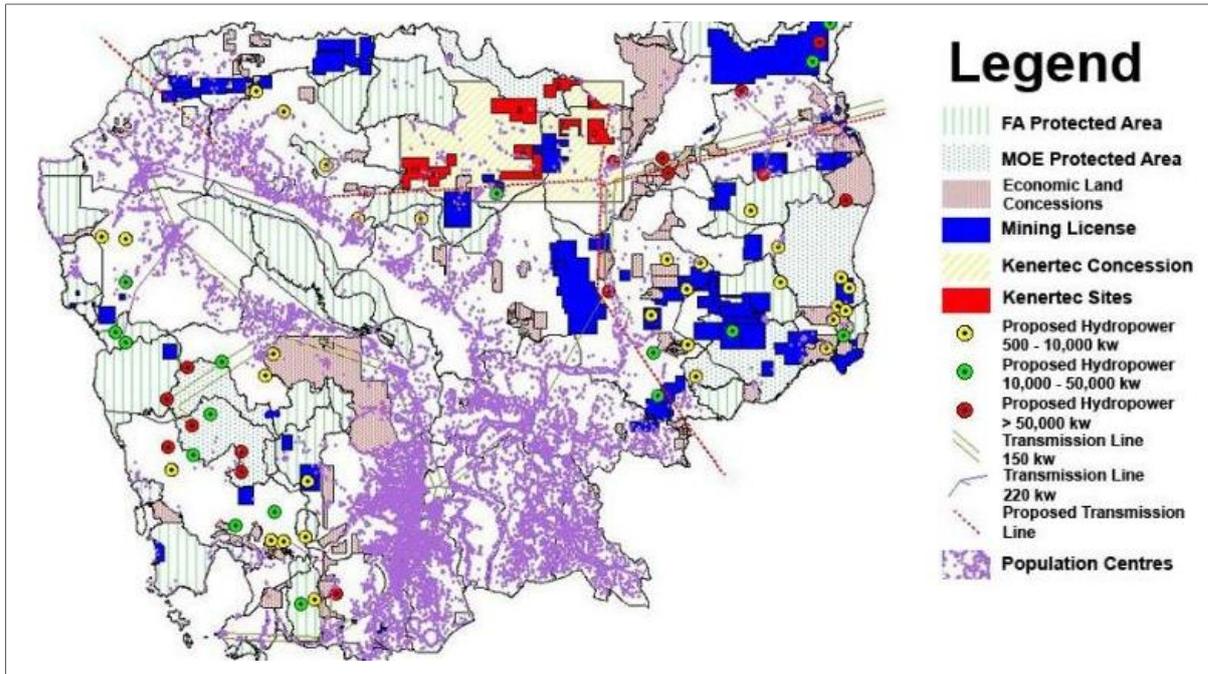
4. Social view: The externalization story goes on ...

The protagonists of ETLR admit “that distribution of land will become more unequal, but this is considered to be a natural accompaniment to specialization and growth from which everybody will benefit.” (Platteau, 1996, p. 37). Theoretically, according to the second welfare theorem, distribution and efficiency aspects might be considered separately. However, the assumptions of the second theorem only hold if there are no external effects, no transaction costs and no information asymmetries. Formalization indeed seems to be a proper means to reduce information asymmetries. However, as argued in the chapters above, the problems of external effects and semi-transaction costs (the mark-up, discussed in section 3.2.2) are obvious.

However, land disputes do not play as big a role in Western blueprint countries as in developing countries. But does this mean that Western countries provide a suitable blueprint? In Germany, the value chain is developed, the primary sector (agriculture, resource exploitation) has lost importance. Jobs are mainly created in the secondary and the tertiary sector. Furthermore, a developed social system also helps to cut the direct dependence on land. The land question is so far out of the scope of the public

awareness of the German population that (apparently due to a lack of demand) no sound statistics about land ownership and land concentration are even available. However, Germany is an industrialized land with low resources. Basically, global trade and global production cause a decoupling of resource consumption of countries such as Germany and its local availability of land (Erb, 2002). Imports total almost 28% of German GDP (2009). An estimated share of more than 50% of the raw materials and natural resources is imported from threshold and developing countries (such as ASEAN or BRIC states or others, Federal Statistical Office of Germany, 2010, p. 476, own calculations). Hence, the German economy depends on the “virtual import of land” from threshold and developing countries (Wuppertal Institute, 2005, pp. 60). The ecological footprint may serve as a further indicator: In 2007, the ecological footprint per person in Germany was 4.7 global hectares (gha) / capita (world: 2.7 gha / capita), the biocapacity was 1.9 gha / person (world: 1.8 gha/capita). The ratio (ecological footprint to biocapacity) is some 2.5 (world: 1.5) and may illustrate the pressure on land in other countries (Global Footprint Network, 2010, p. 58). Insofar as land conflicts are connected with the exterritorial use of land needed for the export into Western countries, land disputes are also caused by Western countries’ demand for resources and might be considered as externalized costs so far (the same holds true for virtual land imports of other countries, e.g. China). Hence, in contrast to the people’s general view (that land questions are a minor issue), the perspective needs to also include threshold and developing countries, which serve as trade partners for developed countries such as Germany.

Concerning Cambodia, a great deal of the ELCs, the mining concessions and the Kenertec concessions (mining of copper, zinc, iron, manganese – Kenertec, 2007) shown in Figure 3 are export-oriented.



Source: AltMapCambodia (2009)
 MOE: Ministry of Environment; FA: Forest Administration

Figure 3: Protected areas and concessions

Although Cambodia is of little economic significance for Germany, it is economically connected with other more developed Asian countries such as Thailand (north-east of Cambodia), Vietnam (south-west of Cambodia), Korea and China. Cambodia serves as a supplier of raw materials and natural resources for these countries. Besides mining concessions, forest concessions and private property in agricultural land, only ELCs meanwhile account for some 1.4 million ha of the agricultural land, which is some 5.4 million ha in total (Mekong Network Project, 2010). Those ELCs, granted to foreign agribusiness companies, have a share of roughly one third of all ELCs (RGC/MAFF, 2010, own calculations). ELCs are criticized for contributing to the increasing inequality of land distribution and to land conflicts. Although agribusiness may have positive effects (access to capital, jobs, private participation in infrastructure and contributing to the development of the value chain), the RGC exaggerated their support. Particularly due to their inefficient use, the intended positive effects of ELCs have not been realized so far. A better approach would be to stress a plurality of forms (with a stronger role for smallholders and cooperatives) and to support the weaker elements of the agricultural system.

Generally, the inequality of land has risen in Cambodia continuously within the ETLR agenda since 1989. Whereas at the start of the reform the land distribution was almost equal, current inequality is very high – also in comparison with other Southeast Asian countries (Gini coefficient of land distribution: 0.65, cf. The World Bank 2007, p. x). As of 2004, it was estimated that 20-30% of land owners already hold 70% of the country's land, while the poorest 40% occupy only 10% (The World Bank, 2004,

p. 60). An Oxfam GB survey (2007) also gave an insight into the consistency of land ownership: The main land owners are businessmen (31%), high-ranked 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-ranked military officers (generals, 15%) and members of the National Assembly (8%). Also for Cambodia it turned out that formalizing of individual land titles "supplies a mechanism for transfer of wealth for the educational, economic and political elite" (Platteau 1996, p. 45).

Hence, in contrast to Germany, land disputes and a lack of access to land are still considered the most severe problems in Cambodia. The dependence of the Cambodian people on land is immense. The value chain is poorly developed, and a working social security system does not exist. More than 80% of the people of Cambodia are living in rural areas. About 21% of rural households are landless, a further 45% are land-poor (owning no more than 1 ha per household; Sophal, 2008, p. 2). The RGC has recognized the problem. Within SLC-programmes the titling should help to give poor people better access to land. However, huge parts of the good land is already distributed (and often poorly used), and the identification of suitable land (often in competition with ELCs) is difficult. Moreover, the complex provision process and the prohibitive public investment costs make the process of providing SLCs sluggish. Some progress can be seen in respect of SLCs for demobilized soldiers (supported by national level) and in the context of GTZ/GIZ/LASED projects (LASED: Land Allocation for Economic and Social Development). Although these projects are excellently managed, aspects such as the distinction between the needy and the greedy are challenges. Other provision of SLCs (beyond the responsibility of development assistance) is subject to controversy, particularly in the context of (agro-) industrial projects (such as Boeung Kak lake, mentioned above). NGOs complain about SLCs being abused for dislocating people (e.g. Bora Keila or Dey Krahorm) in order to pave the way for the development of areas (LICADHO, 2009, pp. 11).

IV. Conclusions: Changing the paradigm

1. The market for institutions

The ETLR provides also a market-oriented view of the political process which is creating institutions. Private-sector actors will demand individual private property titles when the marginal benefits of the formalization and capitalization schemes exceed the marginal costs. The state may deliver the institutions demanded. The market price is the cost of introducing the new institutions such as registration, titling etc. (Platteau 1996, p. 66). In this view, an invisible hand also coordinates the actors efficiently in the political field.

The opposing opinion claims that only particular, powerful actors (the winners of the ETLR agenda) demand new institutions (cf. Platteau 1996, p. 39). Furthermore, as pointed out above, the demand is also driven by individual rent-seeking strategies which cause external effects. As the proponents of the market view concede, external effects cause market failure and may lead to a prisoner's dilemma; the invisible hand mechanism does not work anymore. Against this background, it is extremely unlikely that rent-seeking activities of powerful groups (at the expense of weakly organized groups) cause optimal decisions concerning the market for the provision of new institutions. It is important to develop an independent state which is not captured. Hence, the very task of the state should be to provide leadership and to break up the abovementioned prisoners dilemma! „The state is not simply an agent responding passively to the demands expressed by its (supposedly rational) citizens, acting as principals, voicing their needs through the political arena or via the abstract signal of rising litigation costs” (Platteau 1996, p. 70).

To stay with the market analogy: It is also necessary that international development assistance widens its supply of institutions: In the Cambodian case, a government of a developing country asked for assistance (from the World Bank and developing agencies) after a phase of historical upheaval. However, the only tool available in the shops of development assistance organization was the ETLR approach. The “buyer” of the tool therefore had no choice. However, there are conceptual alternatives. The alternative derived out of the analysis above is based on three pillars: Fighting rent seeking and strengthening the state as a trustee of the common good, decapitalizing the use rights and encouraging a variety of forms within the titling and planning processes. Of course it is not realistic that such an alternative blueprint will be implemented in its pure form. The purpose of the draft is to show a direction to which development assistance might move forward step by step.

2. Fighting rent seeking and strengthening the state

Good governance is not compatible with any licences for rent seeking of powerful pressure groups. The state has to be strengthened 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 whether central state, province or municipality: Any licence for rent seeking has to be abrogated; the actions of authorities should be decoupled from impacts of powerful pressure groups (cf. Eucken, 1960, p. 268). 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.

3. Decapitalization of the use rights in favour of the public

As shown above, the privatization strategies on land intend to bundle all property rights in the hands of private-sector actors. Strong private use rights are important for an efficient land use (in order to take the fruits from improvements), unlike private reaping of the differential rents. The differential rent is determined by coincidence or by public activities (location), whereas at present the (opportunity) costs of planning are borne by the community. Furthermore, a market competition mechanism cannot decapitalize land by tackling the differential rent. Hence, the transfer of high shares of the differential rent into the hands of the community is easy to justify. However, this proposal is only feasible within working governance. It does not make sense if the state or the communities are captured by elites. Thus, land reform and government reform strategies have to go hand in hand.

Basically two methods are available to achieve such a decapitalization (Thiel, 2010):

- Lease arrangements may refer to an agricultural lease or a 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. If an arrangement is found to skim off the land rent by the leasehold fee in a reliable way, the land might be completely decapitalized. Of course, at least two challenges occur: The leasehold fee has to be currently adjusted to the land rent, and the differential rent has to be separated from the income from improvement (cf. table 2). The first could be done by monitoring the market for such rights by public real estate assessment boards according to the German blueprint (“Gutachterausschüsse”, § 192 building code), which are public land assessment service agencies. If lease rights capitalize (this is, they get a positive value), which are dealt among private-sector actors, the lease fee is less than the land rent. The second challenge could be tackled by certain forms of auctioning of the rights. However, not all leasehold arrangements are suited to skimming off the land rent. Leasehold in legal terms may differ from the economic

view. In many developing countries, land is given by long-term lease for low leasehold fees or even for free (e.g. Cambodia). In China, leasehold fees are paid in advance and the rights are transferrable (Hong Kong blueprint). Although the formal rights are split between the state and private users, the private leaseholder has not only the use right, but also the allowance to reap the land rent and its uprating as well as the chance to capture the value. If, as in China, the right is also transferrable, the lessee basically has the same economic chances and risks as a freeholder. Within such leasehold contracts, the economic value is indeed not separated from the other rights.

- 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 (1879); before him, David Ricardo (2004) 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 reasons (e.g. Art. 14 of the German constitution), 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. The same holds for practical reasons: The formula for the after-tax value on land “V” in private hands is: $V = \frac{R}{i+t}$, as “t” is the tax rate on V (Lemmer; 2004, p. 170). Solving the equation for the proper tax rate in order to decapitalize the land ($V = 0$), $t = \frac{R}{V} - i$. The term is not defined, if the after-tax value $V = 0$. Hence, a site value tax is able 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 comprehensively put in place, a site value tax could be introduced with marginal effort (Dietrich, 2004). For instance, the German real estate assessment boards collect data of all land transactions and set out annual guiding values for unimproved land (“Bodenrichtwerte”) for zones of plots with similar characteristics. A more crude and simple but comparable approach was already used in Qingdao (China) in 1898 (Warner, 1999). The system was set up during the colonial era by a German administration officer named Schrameier, who between 1924 and 1925 was also an advisor to Sun Yatsen. If such a system could be introduced before 1900, developing and threshold countries such as China and Cambodia should also be able to do the same today. However, in many threshold and developing countries (such as China and Cambodia) there is no operational legal cadastre and assessment regime yet. It is necessary to build the capacities and institutions as well as to achieve proper land assessment. Such a tax cannot be introduced from one day to the next. Nevertheless, even in the absence of a legal cadastre, local authorities could install a fiscal cadastre in order to identify and value a plot of land and post a public notice that

this particular piece of land owed a given amount of tax. If no-one steps forward to pay the tax, the government could seize it (Perkins, 2009).

In order to avoid a misunderstanding, it should be noted that the differential rent cannot and should not be abolished. The differential rent is an important allocation force that regulates the use of the land (Pfannschmidt, 1990, p. 35). Although no regime is capable of abolishing the land rent, a decapitalization framework might allocate it to the public.

The table below tries to illustrate the mechanism of decapitalization within a simplified present value calculation (there would be hardly any difference from the real option calculation if the differential rent is skimmed off effectively). In the example, the differential rent "R" per square metre and year is 10 \$. The capitalization rate "i" is 5%. Hence, without calculating a flexibility advantage, the value of the land "V" ($= R/i$) is 200 \$.

Leasehold fee or tax	0 \$ = 0% of R	2 \$ = 20% of R	4 \$ = 40% of R	6 \$ = 60% of R	8 \$ = 80% of R	10 \$ = 100% of R
Value V for user	200 \$	160 \$	120 \$	80 \$	40 \$	0 \$
Value V for owner	0 \$	40 \$	80 \$	120 \$	160 \$	200 \$
Total value V	200 \$					

Table 4: Decapitalization for the user of land by tax or leasehold fee

Table 4 shows that the more accurate the land rent is skimmed off by the leasehold fee, the more the economic value is transferred into the hands of the land owner (commune or state). The use right is completely decapitalized if the land rent is completely skimmed off.

Table 5 (modification of table 2) shows the effects of the decapitalization: If benefits as well as costs are tied to the trustee (commune, state), external effects (e.g. caused by land blockades) and incentives for rent seeking can be avoided.

Land conversion and land improvement	Land rent	Income from improvement
Benefits	Public (trustee)	Private (user)
Costs	Public (trustee)	Private (user)
Allocation effects	No external effects	No external effects

Table 5: Land rents and income from improvement after the decapitalization of land

Without the expectations of rising differential rents and land value, rent-seeking efforts will decrease significantly. A non-captured state can be a better trustee of the common good planning and titling. Moreover, private-sector actors get an economic incentive to comply with the plans. If the actors do not use the land according to the plans, they face either the risk of making a wrong investment (e.g. demolition order) or of not being able to earn the lease fee or tax. Because underused or unused land costs money, land is claimed only in so far as it is really needed. Land speculation does not make sense within the decapitalization scheme. Furthermore, the land rent cannot be earned with shabby buildings. Thus the owners get an incentive to care for current modernizing and maintenance. This is also a new stimulus for the construction industry. Also subsequent land use and circular economy solutions on land use might be facilitated. Access to land is easier, particularly for start-up enterprises or low-budget households, because the land prices are low or even zero. The list could be continued.

Of course, not only the individualization and privatization, but also the decapitalization scheme also has disadvantages in terms of efficiency. Taxation causes administration costs; lease arrangements cause agency problems. However, there is evidence that in former regimes the advantages of such decapitalization schemes done by land tax arrangements (as in Denmark or in the Netherlands) outweighed the disadvantages (Dietrich, 2004, p. 58).

4. Encouraging a variety of forms within the planning and titling processes

Formalization (titling) is not exclusively linked to 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. This relates not only to public spaces (e.g. the former Boeung Kak lake in Phnom Penh), but also for example to collective titles for indigenous communities and other populations living under customary arrangements (Burns, 2007, pp. 110). Despite their lack of economic performance, such and other forms are important for a working social system (Bossel, 1998). Generally, economic efficiency of land use cannot be the only criterion of social significance. It is the task of a trustee of the common good to protect this variety and the resilience of the social and ecological system. However, this neutrality needs an emancipation of the authorities from powerful economic interest groups, and this emancipation cannot take rent seeking and capture of the state. 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 that should be used according to the efficiency criterion. Thus, also taxation or public lease requirements should 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 protecting the

diversity of economic, ecological and cultural forms that moves beyond the logics of profit and efficiency.

Creating spaces for alternative forms of land use and cultivating a variety of use rights also affords legal protection to these forms. A plurality of legal norms (formal and informal) in Third World countries is a matter of fact which should be accepted at least for a transition period, sometimes also permanently. As far as minorities and indigenous groups are concerned, the state could accept the customary law of such groups as taking precedence over formal law (subsidiarity of formal law; Platteau, 1996, p. 76). This could last at least as long as community members submit voluntarily under customary law, and as long as customary law is in accordance with the constitution and no relations with members outside the group are affected. A legal recognition of co-existence is possible and serves as protection for vulnerable groups (Burns, 2007).

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