Accountability Beyond the State
Extraterritorial obligations in the case of the Koh Kong Sugar Industry Concession, Cambodia

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Why Koh Kong?
- Forced evictions
- Land grabbing
- Displacement of indigenous
- Impact of environmental degradation
- Arbitrary arrest and detention of activists
- Destruction of possessions
- Destruction of means of livelihood (work, adequate SOH)
- Impact on basic survival – access to food, water
- Healthcare & unsafe work conditions
- Child labour
- Forced labour
- Debt bondage
- Governmental corruption and complicity

Matrix of Actors Implicated in Koh Kong

Extraterritorial obligations = ETOs recognise that the acts and omissions of states have an impact on the enjoyment of human rights beyond their territorial confines.

Landmark Case: Exercise of Extraterritorial Dutyship by the National Human Rights Commission of Thailand

“The powers and duties of the NHRC do not limit the types of stakeholder involved (whether public or private) or site of violations (whether inside or outside of Thailand). As long as the relevant stakeholder is bound by Thailand’s law and human rights obligations, the NHRC is committed to serving the interest of justice through human rights promotion and protection”
(Pitakwatchara 2012)
Koh Kong as a Precedent on the Exercise of Extraterritorial Dutyship

- Was this possible? - Identifying the key drivers for the NHRCT’s action in Koh Kong
- What has it achieved?
- What are the lessons we can draw from the NHRCT’s investigation into Koh Kong?

Through the Lens of Harold Koh’s Transnational Legal Process

1. Non-traditional - breaks down the dichotomy between domestic and international, private and public
2. Not state centric - recognises the role that non-state actors play in the articulation of norms
3. Dynamic - recognises different fora (domestic, international, public and private) can be both the influencer and object of influence
4. Recognises the normative nature of the process

Paving the Path to a Precedent

- Identifying the key drivers for the NHRCT’s action in Koh Kong
  - NGOs, Civil Society and Grassroots Strategies
  - Establish narrative and causation
  - Individual Action
  - Legal advisors, interlocutors, activist commissioner
  - Mandate and powers of the NHRCT
  - International Human Rights Obligations
  - Network of actors

Network of Actors

- Keck and Sikkink’s work on transnational networks, they note that “by building new links among actors in civil society, states and international organizations, they multiply the opportunities for dialogue and exchange” (1999 at pp 89).
- Key advances in the Koh Kong case were made through existing ties and relationships within organisations, sharing of information, strategic division of labour and being enmeshed in discourse on the problem
- Identify possible pressure points and uncover strategies for advocacy and remedial action

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<th>Organization</th>
<th>Region</th>
<th>Action</th>
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<tr>
<td>Earth Rights International</td>
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NHRCT’s Findings
- KSL liable
- Thailand’s human rights obligations have transboundary implications
- Recommendations for KSL, Ministry of Foreign Affairs and Ministry of Commerce

What has it Achieved?
- Still no remedy for the affected community
- Evidentiary role – contributed to subsequent developments
- Allowed for other ETO investigations in Xayaburi
- Follow up and internalisation of extraterritorial dutyship are weak points
- Systemic problem with NHRIs

ETOs: The Silent Normative Revolution?
- Advance of ETOs under international law has been likened to a “silent revolution that has taken place in recent years, as human right doctrine has sought to adapt to the challenges posed by the ‘transnationalization’ of economic activities, and the resulting increased interdependence of States” (ESCR-Net, 2014).
- Articulation of ETOs represents “a fundamental transformation of the role of human rights, and of their relationship to notions such as national territory or jurisdiction” (DeSchutter 2014).
- Koh Kong alludes to the potential for NHRIs to play a game changing role in the articulation and internalization of extraterritorial norms because of their capacity to exert influence in multiple fora.
- Koh Kong – and the analogy of the good doctor
  - Transnational legal process is a theory that can be used by activists and policy makers, by triggering interactions to seek interpretations and foster compliance.