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# Large-Scale Land Acquisitions in Cambodia: Where Do (Human Rights) Law and Practice Meet?

## 1. Introduction

- 1 Unlike past rushes for land, the wave of large-scale land acquisitions and long-term leases (LSLAs) of the last two decades in Africa, Asia, and parts of Eastern Europe is embedded in a liberalised world economy and involves new actors, new labour processes, and new legal instruments (White et al., 2012; Peluso and Lund, 2011). This recent expansion of LSLAs has triggered debates on whether the phenomenon represents an opportunity for investment and development or corresponds to an exclusionary process that specifically marginalises vulnerable individuals and societal groups (Arezki et al., 2012; Borras Jr. et al., 2011; Cotula et al., 2009; Kachika, 2010; Moyo and Chambati, 2013). This antagonism is best reflected in the two terms most often used to describe the phenomenon: 'land investment' and 'land grab.' Beyond the symbolism that these terms encapsulate, it becomes clear that LSLAs are intertwined at the junction of development economics, land use and land governance, colonial memory, and post-colonial practice, against the background of states' obligations under international human rights law (Gironde et al., 2011; de Schutter, 2013).
- 2 These complex intersections are certainly present in the case of LSLAs in Cambodia. As one of the fastest growing economies in South-East Asia, Cambodia has experienced, over the past two decades, a rapid increase in foreign investment, often taking the form of economic land concessions (ELCs).<sup>1</sup> In parallel to the economic phenomenon, and as a consequence of land becoming scarcer, disputes over land have become more intense, frequent, and often violent, involving state authorities and company representatives, stakeholders from rural communities, urban dwellers, politicians, human rights activists, and journalists (ADHOC, 2013; Special Rapporteur on Cambodia, 2013). In this landscape of contestation, do human rights have any relevance? Put differently, our aim here is to examine whether and to what extent human rights standards inform the acts and actions of the government in relation to LSLAs, and the strategies employed by affected communities.
- 3 This chapter is premised on the understanding that '[h]uman rights are not just abstract', they acquire value through their application in practice (Marks and Clapham, 2005, 388). As such, the chapter is anchored in the broader policy debate on the effectiveness of international human rights standards on the ground. To explain and strengthen state compliance with international human rights norms, scholars have focused on the national and international mechanisms monitoring or adjudicating the obligations of states<sup>2</sup> and the internalisation/domestication of human rights (Golay, 2011), the reputational damage that would result from non-compliance (Chayes and Chayes, 1995), on processes such as material inducement, persuasion, and acculturation (Goodman and Jinks, 2013), and the legitimacy of international instruments and modalities for enhancing ownership thereof in various (cultural) contexts (Franck, 1995; An-Na'im, 1990). While drawing on some of these descriptive and proscriptive approaches to verify where human rights law and practice meet in the case of LSLAs in Cambodia, our particular interest lies with the process of appropriation and adaptation of human rights by affected local communities, known as 'vernacularization' (Merry, 2006), and the impact of rural-urban spatiality thereon.
- 4 Structurally the chapter has three parts. The first part lays out the human rights framework relevant to LSLAs as it can be distilled from the UN treaty bodies' process of review of Cambodia's implementation of its international obligations. Second, relevant domestic legislation and governmental actions are contrasted with the previously identified human rights framework. The third part addresses the practices of affected communities in an urban and a

rural area of Cambodia and inquires whether and how these actors utilise human rights law to prevent LSLAs or challenge the effects thereof. The conclusion appraises our findings.

- 5 Methodologically, the chapter relies on legal analysis, including Cambodia's history of ratification of human rights instruments and their transposition into domestic law, and on analysis of data obtained through desk research and fieldwork. It presents case studies from a rural area (the village of Sein Serrey in Kampong Thom province) and an urban one (the Boeung Kak lake, Phnom Penh). In selecting these cases we sought to ensure that processes of land commercialisation were pronounced, that different land transfer and livelihood scenarios could be identified, and that there was at least some evidence of awareness of human rights.<sup>3</sup>
- 6 The information for the rural case was collected through semi-structured qualitative interviews with 30 evicted families and local authorities, conducted from January to April 2013. The urban case study is examined through the prism of the academic literature, NGO reports, videos of interviews, and interviews with non-residents involved in social activism. These cases allow us to illustrate the Cambodian version of the rural-urban 'dichotomy' and the connotations and meanings attached to it, and to ultimately deconstruct this dichotomy and examine how it informs debates on the dissemination of human rights and claim-making in Cambodia.

## 2. Mapping Cambodia's Human Rights Obligations Relevant to LSLAs' Contexts

- 7 In the legal positivist tradition a state's consent to be bound by international norms is central to determining the sources of its human rights obligations. Cambodia's obligations stem from international human rights instruments to which it has become party, notably the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights (ICESCR); and sectoral treaties on the elimination of racial discrimination, on the elimination of discrimination against women, on the rights of the child, and the rights of people with disabilities.<sup>4</sup> Whilst these instruments are silent as to the permissibility of LSLAs as such, the concluding observations of bodies monitoring their implementation reveal that the treaties have created a human rights map, or framework, which entails substantive and procedural obligations of relevance to land transactions in Cambodia and beyond (Cismas, 2013; Golay and Biglino, 2013; Golay et al., 2014).<sup>5</sup>
- 8 As to the substantive features, Cambodia has a triadic obligation to respect (refrain from interfering with the exercise of an existing right), protect (ensure against abuse by third parties, including powerful individuals and companies), and fulfil human rights (take positive action to ensure enjoyment of rights). In addition, it has a general obligation not to discriminate against individuals or groups, inter alia, on grounds of ethnicity, gender, social origin, or their rural-urban residence. In their concluding observations on Cambodia, treaty bodies have emphasised the negative consequences of LSLAs and flagged possible non-compliance with the respect and protect obligations in relation to a number of rights. These include the prohibition of forced evictions, the right to livelihood, the rights to food and housing, and the rights of indigenous people to dispose of their lands and natural resources (CESCR, 2009; CEDAW, 2006). In the Cambodian context forced evictions and internal displacement without adequate resettlement and compensation have triggered a wider range of abuses perpetrated by or with the involvement of third parties, including violations of the rights to freedom of expression and assembly, violence against land rights defenders, and the criminalisation of the latter (Amnesty International, 2012; ADHOC, 2011).
- 9 Treaty bodies have consistently emphasised the disproportionately negative effect, in human rights terms, that land transactions in Cambodia have on populations that are vulnerable to discrimination, or are marginalised or disadvantaged, such as indigenous people, rural communities, the urban poor, women, and children (Golay et al., 2014). The situation is in profound contrast with the state's obligation to fulfil human rights specifically through the identification and implementation of measures for the benefit of vulnerable groups. Therefore, the government has been urged to pursue the demarcation of state public land and state private land,<sup>6</sup> the implementation of titling of the communal land of indigenous people (CESCR,

2009), and—importantly—the establishment of a ‘national moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed’ (CESCR, 2009; CRC, 2011). It is clear that the fulfil dimension under the ICESCR entails a strong social justice component: ‘the granting of economic concessions [should] take into account the need for sustainable development and for all Cambodians to share in the benefits of progress rather than for private gain alone’ (CESCR, 2009).

- 10 The substantive rights stipulated by human rights conventions are underpinned by a number of procedural safeguards of paramount relevance in the context of LSLAs in Cambodia. These can be grouped for analytical purposes under two headings: transparency and participation, whereby an obligation to obtain prior free and informed consent is linked to the holding of effective consultations and to the participation of stakeholders, in particular vulnerable groups; accountability and redress, which includes holding perpetrators of human rights violations responsible and affordable access of victims to courts and other administrative mechanisms for seeking an effective remedy including adequate relocation and compensation. The Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, a recent addition to the flurry of soft-law instruments applicable to land transactions (see Annex), hold great potential for guiding Cambodia’s actions in particular in relation to procedural safeguards. The effective performance of these safeguards may not be sufficient for land transactions to be human rights friendly or even neutral. However, it is clear from Cambodia’s process of review by human rights mechanisms that a failure to uphold these guarantees would, with great likelihood, result in violations of human rights and the country’s non-compliance with its international obligations.

### 3. Governmental Performance with Regards to Human Rights Obligations

- 11 ‘Context matters’ has long been one of the mantras of the social sciences. As an agriculture-based society, Cambodia has witnessed, through the centuries, massive changes to its land tenure system. It is important to recall that the genocidal evictions and the collectivisation campaign implemented by the Khmer Rouge in which over 1.7 million individuals lost their lives represented a process of ‘population geography: a discipline of bodies through a control of space’ (Tyner, 2009, 134). As such, not only was private property abolished but most of the land tenure and cadastral records were obliterated (Sar, 2010), which led to the current situation where an estimated two-thirds of Cambodians do not possess proper deeds to the land they inhabit (IRIN, 2013).
- 12 To take this context seriously means to recognise that land reform in Cambodia, including land titling, will be a strenuous and lengthy process. At the same time, it is the context of past violations and land-related conflict that recommends the integration of the human rights framework ensuing from Cambodia’s ratification of international treaties as a necessary and particularly auspicious step in the country’s efforts to undertake land reform and pursue economic development.<sup>7</sup> Along these lines, our analysis agrees that, at a formal level, land legislation in Cambodia is ‘relatively well developed’ (Special Rapporteur on Cambodia, 2012). Nonetheless, important human rights concerns derive from tensions between processes set in motion by the same and/or different bodies of legislation, and by major shortcomings in the implementation of domestic legislation.

#### 3.1. Processual Tensions

- 13 The 2001 Land Law recognises the possession of rights by those people who enjoyed land prior to 2001, in a manner that is ‘unambiguous, non-violent, notorious [sic] to the public, continuous and in good faith’, even if those people have not yet been formally recognised as owners of the land<sup>8</sup> (RGC, 2001, chapter 4; Special Rapporteur on Cambodia, 2012). The law also distinguishes between state public land and state private land, whereas the 2005 Sub-Decree on State Land Management provides the framework for the identification, registration and classification of state land, and the process of re-classifying state land from one category into another. (Special Rapporteur on Cambodia, 2012; RGC, 2005b). But the 2001 Land Law

also provides for the possibility of granting ELCs. The latter are ‘a legal right established by a legal document issued under the discretion of the competent authority, given to any natural person or legal entity or group of persons to occupy a land and to exercise thereon the rights set forth by this law’ (RGC, 2001). Article 4 of Sub-Decree 146 on ELCs (RGC, 2005a) lists among the criteria that need to be cumulatively respected for land to be eligible for concessions, the following:

- 14 The land has been registered and classified as state private land in accordance with the Sub decree on State Land Management and the Sub decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub decree on Sporadic Registration.

- 15 As can be gauged from the above, there is a processual tension that arises as a result of the provisions of the 2001 Land Law, the 2005 Sub-Decree on State Land Management, and Sub-Decree 146 on ELCs. The effective implementation of the latter sub-decree relies on the output of the processes established by the former acts. As such, as long as the titling programme and the identification, registration, and classification of state land are ongoing, the mere opportunity to request and grant ELCs (as provided by Sub-Decree 146) will invariably skew the latter processes and open the door to abuse in relation to what land receives title and what land is classified as state public land. Unsurprisingly, UN mechanisms and land activists have requested a moratorium on ELCs until such time as titling and other land programmes are finalised. On 7 May 2012, Prime Minister Hun Sen announced a moratorium on new ELCs. Direct causality of the compliance of the Cambodian government with the request made by human rights mechanisms cannot be established; however, it is interesting to note that the moratorium was announced during the UN Special Rapporteur’s mission to Cambodia, which was undertaken with the aim of examining the country’s human rights situation.

### 3.2. Major Shortcomings in Implementation

- 16 Beyond the above-mentioned tensions set in motion by legislative acts with regards to land, the implementation of such legislation raises major concerns. Evidence suggests a striking failure to adequately implement existing domestic legislation, and to respect international obligations, in three areas: transparency and participation, accountability and redress, and identification of vulnerable groups.
- 17 ‘The granting and management of economic and other land concessions in Cambodia suffer from a lack of transparency and adherence to existing laws’—this was the bleak assessment on transparency and participation provided by the UN Special Rapporteur on Cambodia (2012). NGO reports confirm that the majority of people living in concession areas have not had the opportunity to participate in decision-making processes, have not been consulted, and have not given their consent to ELCs. Amnesty International (2009) found that ‘evictions are routinely carried out without any court order or verification of the claim of ownership’ of the land. Other sources suggest that, at the most basic level, villagers have not been informed about the land transactions taking place, including the exact location of a concession, its dimensions, companies involved, intended use of the land, and other similar aspects (FIDH, 2012). Research points to relevant links between lack of access to information and lack of access to redress, and conversely suggests a positive correlation between information and compensation (Golay et al., 2014).
- 18 Turning to accountability and redress, it may be observed that in principle, there are several options for settlement of land disputes in Cambodia, largely depending on whether the disputed land is officially registered or not (BABC, 2010; LICADHO, 2009; Sithan, 2012). When the land is registered, disputes will be settled in national courts. When land is not registered, complaints over land issues are to be submitted to the Administrative Commission and the Cadastral Commission (CC). Despite these existing avenues, institutional, structural, and social factors often serve as barriers to accessing justice in LSLA-related disputes (Golay et al., 2014; Special Rapporteur on extreme poverty, 2012).
- 19 The CC, for instance, is portrayed as institutionally weak due to limited budgetary resources and monitoring capacities (BABC, 2010). Physical inaccessibility (affecting rural

communities in Cambodia since these courts are clustered in urban areas) and economic inaccessibility (due to fees for lodging a complaint, costs related to transportation, lost wages, and legal counsel) represent structural barriers that deprive individuals of their right to access a remedy (Golay et al., 2014).

20 The corruption-retaliation-mistrust triad presents another obstacle in the path of accountability and access to remedies. The bias of dispute mechanisms towards, those who could generally be termed, the rich, and against poorer communities and land rights activists is an aspect that plagues the implementation of ELC legislation (ADHOC, 2011; LICADHO, 2012). A recent communication addressed to the Cambodian government by the Special Rapporteur on Cambodia (OHCHR, 2014) notes that

21 Too often, court cases submitted by families contesting ownership of land with wealthy business owners are denied their day in court, whereas those filed by the company against the villagers have been diligently processed and resulted in numerous convictions.

22 It has been reported that, because of corruption or due to fear of retaliation, judges side with companies, dismiss cases on jurisdictional grounds, or use legal tactics to delay proceedings indefinitely (Golay et al., 2014). That retaliation in LSLA contexts is a serious concern is evidenced by the high number of land rights activists and journalists who have been prosecuted (ADHOC, 2011), and the repercussions, including ‘raw remarks descending to the personal level’, which the Special Rapporteur on Cambodia (2013) was faced with in the aftermath of his reports. The consequence of such practice is that corruption and fear of retaliation has led to a generalised mistrust of the justice system among the population (Golay et al., 2014). It becomes evident that effective and accessible remedies and affordable and prompt enforcement—as stipulated by the Voluntary Guidelines on Land Tenure, for instance—remain elements that exist solely on paper for a high number of Cambodians.

23 Lastly, it should be noted that the obligation to identify vulnerable groups and the promotion and implementation of policies targeting the realisation of their rights is echoed by Article 61 of the Constitution of Cambodia (Kingdom of Cambodia, 2010), which stipulates that

24 The State shall promote economic development in all fields, especially in agriculture, handicraft, industry, to begin with the remotest areas, with concern for water policy, electricity, roads and means of transportation, modern techniques and credit system.

25 A report of the then Special Representative of the Secretary-General for human rights in Cambodia (2007) states that ‘a large number of economic land concessions have been granted in favor of foreign business interests and prominent Cambodian political and business figures’. Importantly, the report underlined that the benefits for rural communities were not evident and that not even the purported positive effects on state revenue stemming from these concessions were apparent (Special Representative on Cambodia, 2007). In a similar vein, the current UN Special Rapporteur on Cambodia (2012) noted more recently: ‘[T]hroughout my analysis, I struggled to fully comprehend the benefits of many land concessions that the Government has granted. In general, it is not clear to what extent the people of Cambodia have actually benefited from land concessions’. Here again, the gap between law and practice remains glaringly wide.

#### **4. LSLA-Affected Communities and Human Rights Vernacularization: Two Case Studies from Rural and Urban Cambodia**

26 National and international NGOs including the Cambodian Human Rights and Development Association (ADHOC), the Cambodian Human Rights Portal, the Community Legal Education Center (CLEC), the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), the Cambodian NGO Forum, Amnesty International, Bridges Across Borders Cambodia (BABC), and the Centre on Housing Rights and Evictions (COHRE) have put forward a human rights framework in their advocacy efforts and strategic litigation campaigns against ‘land grabbing’ in Cambodia. Against such a background, the authors’ engagement with communities affected by LSLA-related forced evictions in one urban and one rural area in Cambodia was concerned with how these communities made sense

of their experiences, which—according to international law—may be classified as human rights violations. Did ‘human rights’ become their language in enunciating their situation? In what ways did they rely on human rights ideas and law, if at all? How did particular cultural, historical, and social contexts and spatiality play out in the use of human rights ideas and law?

#### 4.1. The Relevance of the Cambodian Rural-Urban Divide in Human Rights Vernacularization

- 27 Our analysis of social mobilisation in LSLA contexts in rural and urban settings draws on scholarship on cultural circulation and translation. Numerous authors have become preoccupied with the dissemination of human rights ideas; among them Margaret Keck and Kathryn Sikkink (1998), and Sanjeev Khagram et al. (2002), who scrutinise the role of transnational advocacy networks and the process of institutionalisation. In their works, Sally Merry and Peggy Levitt introduce the term ‘vernacularization’ to describe the process of appropriation and local adaptation of human rights ideas (Merry, 2006; Merry et al., 2010; Merry and Levitt, 2011). They contribute to the classic rights-culture and universalism-relativism debates by looking at these as a continuum, instead of a binary opposition. In their account, universal ideas and cultures are negotiated and adapted by the ‘brokers’<sup>9</sup> in a certain cultural setting.
- 28 Other scholars, while noting that social behaviour is context specific, have studied the mutual incubation processes between space and society (Leitner et al., 2008). Their argument is that an analysis of social processes needs to include an examination of multiple spatialities. John Allen suggests that space and spatiality are essential to our understanding of power (Allen, 2003). At the same time, places and spaces are deemed to be products of political contestations over access, control, and participation (Tonkiss, 2005). As such, actors including local communities and brokers are embedded in spaces; spaces are constructed by a power constellation that is socially and historically specific; and spaces constrain as well as enable certain types of social activism and behaviours, including the vernacularization of human rights ideas and claims based on such ideas.
- 29 Our working hypothesis is that, in the case of Cambodia, victims of LSLA-related human rights violations in rural areas articulate their grievances differently than those in urban areas, despite what might appear to be a shared cultural and historical background. We postulate that it is these different spaces that shape, in a distinct way, the rural and urban communities’ narratives and strategies of response to LSLAs, including their vernacularization of human rights.
- 30 Before proceeding to the case studies, it is important to provide an insight into the construction of the rural-urban divide in Cambodia. In our interviews, we could grasp that the division between rural and urban is always present especially in the way our interviewees labelled themselves as either *neak chamkar* (‘farmland people’) or *neak krong* (‘city people’). This sense of division has been engrained in Cambodian society at least since the beginning of French colonialism. During that period, cities located in the strategic areas around the Mekong River, and in particular Phnom Penh, were given priority in terms of development and ‘modernisation’; beyond geographic rationality, at stake was the stigmatisation of farmers from rural areas as ‘poor’, ‘lazy’, and ‘easily contented’ (Derks, 2008, 31). During the Vietnam War, the United States military expanded their air campaigns to the rural areas of Cambodia to target Vietnamese communist troops installed there, destroying multiple villages and creating further rural impoverishment (Osborne, 2008). During the Khmer Rouge regime, inhabitants of cities were forcibly displaced to rural areas in order to boost agricultural production—millions died in the collectivisation processes in rural areas (McIntyre, 1996). After this series of wars, the rural-urban dichotomy continued to exist and exert its effects, not least as a consequence of the massive socio-economic reconstruction of Phnom Penh. In addition to the income gap between city and farmland people, discrepancies can be found in relation to access to information and public facilities, including electricity, infrastructure, education, housing and health care. For instance, the main channel for accessing news in rural areas is battery-driven radio, for which broadcast content remains very much controlled by the government; main roads in rural areas are mostly gravel and can only be used during dry weather.

31 This socio-historical lens allows us to understand that a number of constructed factors are at stake, which may contribute to different types of social mobilisation in rural and urban areas. That the two worlds are a construction is further evidenced by the fact that many of those who had been forcibly moved during the Khmer Rouge period, subsequently moved once again in order to start a new life (Heuveline, 1998). At that time, rural-urban conceptions were hardly a matter for consideration. Today, larger cities like Phnom Penh are expanding with the birth of peri-urban areas, whereby national roads are built to connect cities to remote areas—development that ultimately provides more avenues for rural-urban interaction (Derks, 2008). Despite the porous boundary, and duly acknowledging that the divide between rural and urban Cambodia is constructed, one cannot neglect that there are indeed discrepancies between the two types of areas when it comes to resources and access to information, in particular.

## 4.2. Bontey Rongang, SeinSerrey Village

32 In 2008, Tan Bien, one of the main Vietnamese rubber companies, was granted an ELC comprising 8,100 ha in the area covering the Bontey Rongang settlements. Information provided to the affected community concerning the ELC was limited to the setting up of wooden noticeboards (although authorities would have been aware that the literacy rate is generally low in rural areas) and the reading, on several occasions by district officers, of official letters (individuals who lived far from the village would have been unable to attend). Our data clarify that there were no consultation campaigns, nor was any express consent for the relocation and the ELC itself sought. Based on the interviews undertaken with individuals from the affected community, we can conclude that the type of information and means of dissemination were inadequate; authorities did not provide the villagers with an accurate understanding of how their livelihoods would be impacted upon by the ELC, or inform them about available avenues to contest the project. In our view, the lack of adequate information partially explains why the community did not seek to organise in order to oppose the ELC.

33 Later that year, several villagers' houses were bulldozed and the land was turned over to the company. The villagers' first organised efforts came in response to the evictions and the destruction of their houses, and took the form of setting ablaze bulldozers and heavy equipment owned by the company. Seven villagers were subsequently arrested by the local authorities (Sarat,<sup>10</sup> personal communication, 2013).

34 ADHOC was reportedly the only NGO involved in the advocacy efforts related to this case. Its involvement changed the dynamic of the social activism to a certain extent: it provided the community with direct assistance and consultation, as well as with a channel for conveying the villagers' concerns by the initiation of a three-party negotiation process. As a result, the aforementioned nebulous actions conducted by dispersed villagers and some of their representatives were replaced by coordinated mediation between the villagers, Tan Bien, and local authorities. The subsequent negotiations resulted in the release of the arrested individuals and a commitment from the central government to grant compensation in the form of residential land (40x20m) and cultivatable land (1-2 ha) for all evicted households. Nevertheless, most of the villagers refused to relocate from Bontey Rongang as they had invested a comparatively large amount of capital in growing their crops.

35 In late 2009, the Government of Cambodia mobilised a military battalion to evict individuals—the military, reportedly, exhibited a very aggressive and threatening attitude towards the villagers. One interviewee recalled that 'No one dared to refuse [to leave], they were holding electric tasers. They would electrocute anyone who stood up [to their instructions]'. As a consequence, 673 families were forcibly relocated to a new village, Phum Thmay,<sup>11</sup> carrying with them whatever belongings they could gather and leaving most of their possessions behind. Whilst they were granted the 40x20m of residential land per household, contrary to the negotiated agreement, compensation in cultivatable land was never provided. Living conditions upon arrival in their new village further illustrate the inadequacy of the compensation package. Although roads around and inside the village had been built, no housing was available for the newly arrived villagers. Upon reaching their respective residential plots, they had to clear the area in order to build their houses. No assistance was



provided by the authorities; during the first months of their relocation, the villagers were forced to live in tents.

36 When asked about their response to the breached compensation agreement, most interviewees said that they did not know who was responsible for overseeing the process. They also concluded that their lack of legal know-how and the absence of a recognised ombudsperson presented a serious constraint to their ability to formulate and make their grievances known, specifically in the case of filing legal complaints with the authorities. A former representative of the community, belonging to the opposition party, explained that he independently prepared a petition demanding that the cultivatable land promised be provided—more than six hundred villagers from Phum Thmay had signed it. At the time of the interview, he had not submitted the petition and expressed uncertainty as to the appropriate addressee. The interviewees expressed their view that without advocacy and legal assistance from NGOs (they specifically mentioned ADHOC) their petition would remain largely ineffective.

37 It appears that the villagers interviewed felt a strong sense of disappointment towards the injustice they were experiencing. Yet this was rarely articulated in terms of injustice per se, rather they used the language of failed economic development. For example, they emphasised that their landlessness that resulted from their eviction due to the ELC had further impoverished them instead of providing them with more economic opportunities. It must be noted that the terms ‘human rights’ and ‘human rights violations’ were not used to describe either their eviction, or the general situation they experienced as a result of the ELC.

38 Some preliminary conclusion can be drawn. First, the failure of the authorities to provide villagers with adequate information relating to the ELC (including what the concession entailed and how it could be contested) increased the vulnerability of the Bontey Rongang community; it prevented them from organising and considering alternatives. Once confronted with the evictions, forward-looking planning was not at the heart of their actions; rather, their activism took a spontaneous and reactionary form. In our view, the burning of the company’s heavy machines was fuelled by shock, anger, and a desire to maintain their homes and possessions ‘on the day’—the outburst was not part of a strategy intended to lead to a long-term resolution of the dispute through violence. Similarly, the petition that they started remains, so far, unused due the lack of a concrete plan about what to do with it. Although there is a sense among the community that an injustice has been done, this has not been articulated in human rights terms, nor has recourse to courts been envisaged as a possibility of securing domestic rights. Vernacularization of rights is limited in this case, yet not inexistent as is reflected by the collaboration with a human rights NGO (ADHOC) and the shared opinion that the latter’s ongoing support would be essential for the resolution of the villagers’ dispute. Second, the relevance of space should be noted. The movement was concentrated and isolated in the sense that the actors involved are local authorities and villagers, and their concerns were rarely heard outside the disputed area.

### 4.3. BoeungKakLake, Phnom Penh

39 In 2007, the Municipality of Phnom Penh announced that it had entered a 99-year lease agreement with a private developer, Shukaku Ltd<sup>12</sup> covering a 133 ha area including the Boeng Kak Lake. The lake, once well known as an affordable touristic destination, is one of the largest urban wetlands in Phnom Penh, and a source of the city’s aquatic life (Cultivate Understanding Multimedia, 2012). The plan of the municipality envisages the transformation of the area into ‘pleasant, trade, and service places for domestic and international tourist [sic]’ (Phnom Penh Government, 2011). According to the UN Special Rapporteur on Cambodia (2012), the project has affected over 4,000 families, ‘most of whom were forcibly evicted, relocated involuntarily, or who accepted sub-standard compensation under duress’.

40 In an effort to challenge the evictions and the ELC itself, the residents of Boeung Kak organised themselves and pursued multiple strategies. Shortly after the company started developing the project, the residents sought legal counsel and submitted complaints to Cambodian courts demanding the discontinuation of the development (Channyda, 2008). As their legal motions were rejected, in February 2011 they petitioned a number of relevant governmental authorities

and presented an alternative proposal for in situ resettlement and onsite housing on 12 per cent of the leased area (BABC, 2010). With the support of a coalition of NGOs—The Housing Task Force—they requested the concessioner company to endorse their alternative proposal as part of the company’s corporate social responsibility (CSR) policy. While these efforts were unsuccessful, it is notable that the community shifted its strategy from litigation to advocacy, including by attempting to capitalise on business practices such as CSR.

41 The Boeung Kak residents further diversified their advocacy through protests timed to coincide with the visits of UN and foreign dignitaries, by expressly articulating their grievances as human rights violations, by drawing on cooperation and support from local and international NGOs, and by petitioning international complaint mechanisms.

42 The urban dwellers’ protests organised on the occasion of the UN Secretary General’s visit to Cambodia in 2010 were met with violent attacks by police forces, and by arrests—a number of press releases from local and international NGOs served to further internationalise the grievances of the Boeung Kak community (House and Billo, 2011; BABC, 2010; LICADHO, 2009). In 2012, during the visit to Cambodia, for the East Asia Summit, of US President Barack Obama and Secretary of State Hillary Clinton, dwellers of Boeung Kak organised an ‘Obama Save Our Souls (SOS)’ march through the city of Phnom Penh, particularly taking in eviction sites. They demanded that the US dignitaries increase political pressure on the Government of Cambodia to respect human rights and stop forced evictions. It should be noted that women representatives of the Boeung Kak Lake community have been at the forefront of these and other demonstrations. Reportedly, there was an assumption that protests led by women were less likely to be targeted by police forces—however, violence against women and arbitrary arrests have multiplied. (UN Special Rapporteur on Cambodia, 2012). In March 2012, women ‘bared their breasts publicly, ostensibly to avoid apprehension by the police, demonstrating unprecedented desperation.’ (UN Special Rapporteur on Cambodia, 2012).

43 In comparative perspective, we recognise that it would be difficult for rural communities, such as Bontey Rongang village, to organise protests that target specific international actors during their visits to Cambodia. The city dwellers were undeniably ‘advantaged’ by physical proximity to different locations where international meetings and visits took place and to the offices of national and international NGOs, and by better access to information in general. The ease, due to such proximity, of collaborating with human rights advocates should also be emphasised.

44 The level of sophistication of the toolbox of strategies that the Boeung Kak community employed is attested by their petitioning of the World Bank Inspection Panel.<sup>13</sup> Represented by the Geneva-based NGO the Centre on Housing Rights and Evictions (COHRE), the former residents of Boeung Kak Lake requested that the Inspection Panel review the land management and administration project (LMAP), alleging that the design and the implementation of the project ‘denied urban poor and other vulnerable households protection against widespread tenure insecurity’ and increased forced evictions in Cambodia (COHRE, 2009). The World Bank and other donors financed the LMAP with the aim of assisting Cambodia in the issuance and registration of land titles and the implementation of a land administration system (Inspection Panel, 2010). When the Boeung Kak Lake area was adjudicated in the LMAP scheme in January 2007, despite their legitimate claims under the 2001 Land Law residents were denied titles (COHRE, 2009). The Inspection Panel found evidence in favour of the petitioners’ claim that the World Bank’s failure to properly design and supervise the LMAP had ultimately led to their forced eviction and involuntary resettlement. (Inspection Panel, 2010; Special Rapporteur on Cambodia, 2012). It ceased the related loans to Cambodia after December 2010.

45 Another recipient of petitions from the former residents of Boeung Kak is the Special Rapporteur on Cambodia. The Rapporteur submitted to the Cambodian government a number of communications concerning the case, visited the area while on mission to Cambodia, and reported regularly on the human rights violations that these individuals had experienced, thereby maintaining international pressure and demanding a resolution of the dispute (OHCHR, 2012; Special Rapporteur on Cambodia, 2012; 2013). The dispute found a partial

resolution when, in August 2011, a sub-decree was issued to adjust the size of the Boeung Kak Lake Development, providing title to communities living on a 12.44 hectare stretch of land. In the words of the Special Rapporteur (2012) ‘a positive development in this long-standing dispute. Nevertheless, this was not as inclusive as it should have been, and some families were subsequently evicted and continue to protest the eviction and relocation.’

46 Two aspects should be noted at this stage. First, the aim of the Boeung Kak Lake movement goes beyond maintaining the status quo (defending dwellers’ houses at the time the eviction took place). The intention appears to be to effect long-term social change by generating social awareness and political pressure on the government. Second, spatiality played a central role in the case of the urban dwellers. Unlike the movement in Sein Serrey, the efforts of the urban dwellers are not limited by and localised in the commune or municipality. They are supported by national and transnational networks and target an international audience. A wide array of actors were supportive of the movement—local attorneys and NGOs that joined forces under the banner of The Housing Task Force, international NGOs, and other types of non-resident human rights activists—exposing the Boeung Kak Lake story (including via media outlets) to a worldwide audience. As they had access to factual and legal information relevant to their cause, the urban dwellers were able to use their advocacy efforts to strategically target foreign governments, financial institutions, and high-level UN officials. The language of human rights in which they chose to express most of their grievances and the appeals to courts and international human rights mechanisms may have ‘come easier’ to the Boeung Kak community (compared to the villagers) for reasons of space (proximity to and support from human rights groups, physical proximity to courts). Beyond the adoption of human rights ideas and the utilisation of specific mechanisms, a process of adaptation is at stake: a vernacularization, in so far as the successful appeal to the World Bank’s Inspection Panel (a non-traditional human rights mechanism) is concerned.

## 5. Conclusion

47 This chapter has established that a human rights framework entailing substantive aspects (the requirement to respect, protect, and fulfil human rights), and procedural safeguards (transparency and participation, accountability and redress) carries legally binding force for Cambodia. Not least in situations regarding land transactions. Notably, much of the domestic legislation regarding land, and even the decree on ELCs, mirror these human rights standards. It is the implementation of these laws, the actual practice, that gives rise to what one close observer calls ‘chronic disputes’ in LSLA contexts (Special Rapporteur on Cambodia, 2012). Our findings suggest that this deficient governmental practice, in particular in the areas of information, consultation, and access to justice, to a certain extent incapacitated the vernacularization of human rights ideas in the studied rural setting; it did, in a sense, and without aiming at extrapolation, reinforce the (constructed) division between the rural and the urban space. Contrary to the affected community in SeinSerrey village, the urban dwellers of BoeungKakLake have made extensive use of human rights language and mechanisms to challenge their forced evictions and have achieved a certain success. In joining a small category of other communities from elsewhere in the world they have pursued non-traditional avenues for adjudication of human rights—as such their contribution may have a wider significance for human rights compliance and for mechanisms that are able to induce such compliance. Spatiality, it should be recognised, played a major role: the proximity to information and a network of ‘brokers’, including national and international NGOs, have enabled Boeung Kak Lake dwellers to advocate and claim their rights.

48 Appraising the findings of our research, we can conclude that in Cambodia, in the context of LSLAs, human rights law and practice meet halfway. On the one hand, we have solid domestic legislation, backed by a moratorium on ELCs. And while our two case studies do not permit generalisation, they do speak for a certain activism of affected communities and the solidarity of civil society organisations. On the other hand, however, we have major shortcomings in the implementation of the said legislation and the reality of a moratorium, which by definition is temporary and reversible.

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## Notes

1 Estimates of the number of, and area covered by, ELCs vary. In this volume, Messerli et al. estimate that Cambodia has 486 land deals comprising 4.5 million hectares.

2 An illustrative example for this strand of the literature is Christophe Golay's contribution in this volume.

3 Phnom Penh, the capital city, was selected because it has witnessed both a significant change of land use and urban forced evictions, and it is 'home' to many non-governmental organisations (NGO) that have articulated LSLA-related demands in human rights terms. Sein Serrey, meanwhile, is a newly established village surrounded by forest and plantations, and is a place where residents who were forcibly evicted to make space for LSLAs had little contact with and received little support from NGOs.

4 A comprehensive ratification history of Cambodia can be consulted at <http://indicators.ohchr.org> (accessed on 16 March 2015).

5 See also Golay's contribution in this volume.

6 The 2001 Land Law divides state land into state public land and state private land – together these account for approximately 75-80% of Cambodia's total land area. (USAID, 2012). State public land refers to land of a natural origin (such as rivers, lakes, or forests) which has general public use, and to archaeological and cultural heritage sites. State private land is state land that does not provide a public service and which does not come under any of the other categories of state public land. The 2001 Land Law and Sub-Decree No.146 stipulate that ELCs can be granted only for state private land. (RGC, 2001; RGC, 2005a).

7 Importantly, Cambodia's Constitution recognises, in Article 31, that international instruments supersede domestic legislation.

8 The Law stipulates that a title for this land can be requested, which then converts possession into full ownership rights.

9 'Brokers' move between local, national, regional, and global contexts and meaning systems; they take, negotiate, translate, and adapt ideas that apply in a certain locality to be transplanted into another (Merry, 2006).

10 ADHOC Coordinator for Kampong Thom.

11 The literal translation of this name is 'the new village'. Phum Thmay was considered too large to accommodate a population of more than 700 families and, in 2011, was divided into two villages, Serrey Monkul and Sein Serrey.

12 In 2010, Erdos Hong Jun Investment Co., Ltd, a Chinese firm, formed a joint venture company with Shukaku, and the Boeng Kak Lake lease agreement was re-registered under the name of the joint venture, Shukaku Erdos Hong Jun Property Development Co., Ltd (BABC, 2012).

13 The Inspection Panel is an independent complaints mechanism that is open to petitions from individuals and communities that have been adversely affected by a World Bank-funded project.

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## Abstracts

Being anchored in the broader policy debate on the effectiveness of international human rights standards on the ground, this chapter inquires whether human rights carry any relevance in the Cambodian landscape of contestation of large-scale land acquisitions (LSLAs) and long-term leases. The chapter first establishes that substantive and procedural obligations relevant to LSLAs result from Cambodia's ratification of human rights treaties. It then examines whether and to what extent this normative framework informs the acts and actions of the government in relation to land transactions, and the strategies employed by affected communities. The study relies on legal analysis to unearth tensions between processes set in motion by land laws and shortcomings in their implementation in terms of transparency and participation, accountability and redress, and identification of vulnerable groups. It also draws on desk and field research in a rural and an urban area of Cambodia to examine the mobilisation strategies employed by the two communities affected by LSLA-related forced evictions; the focus is on processes of appropriation and adaptation of human rights by affected local communities, known as 'vernacularization'. The chapter shows that the rural-urban spatiality, a constructed element, is of relevance in explaining the different configurations of social activism occurring in each setting and these configurations' use of human rights. It finds that, contrary to similarly LSLA-affected rural citizens, urban dwellers made extensive use of human rights language and human rights mechanisms to challenge their forced evictions and also achieved a certain success. Furthermore, the chapter shows that deficient governmental practice, in particular in the area of information and access to justice may play a role in entertaining this divided spatiality, especially by incapacitating the vernacularization of human rights in rural settings.

Ancré dans le débat politique plus large sur l'efficacité des normes internationales des droits de l'homme sur le terrain, cet article cherche à déterminer la pertinence des droits de l'homme dans le paysage cambodgien de contestation autour des acquisitions de terres à grande échelle (ATGE) et des locations à long terme. Etablissant que des obligations de fond et de procédure touchant aux ATGE découlent de la ratification par le Cambodge des traités relatifs aux droits



de l'homme, l'article examine si, et dans quelle mesure, ce cadre normatif façonne les actes et actions du gouvernement liés aux transactions foncières et les stratégies employées par les collectivités touchées. L'étude s'appuie sur l'analyse juridique pour dénicher les tensions entre les processus mis en marche par les lois foncières et les lacunes dans leur mise en œuvre en termes de transparence, d'information, de responsabilité, de réparation et d'identification des groupes vulnérables. Elle s'inspire également de la recherche théorique et sur le terrain dans les régions rurales et urbaines du Cambodge pour examiner les stratégies de mobilisation utilisées par les deux communautés touchées par les expulsions forcées liées aux ATGE, en s'attachant particulièrement aux processus d'appropriation et d'adaptation des droits de l'homme par les communautés locales affectées, connu sous le nom de « vernacularisation ». L'article montre que la spatialité rurale-urbaine, un élément construit, est pertinente pour expliquer les différentes configurations de l'activisme social à l'œuvre dans chaque contexte, de même que l'utilisation que font ces configurations des droits de l'homme : contrairement aux citoyens des régions rurales semblablement touchés par des ATGE, les citadins ont abondamment recouru au langage et aux mécanismes des droits de l'homme pour contester leurs expulsions forcées, avec un certain succès. En outre, l'article montre qu'une pratique gouvernementale déficiente, surtout dans le domaine de l'information et de l'accès à la justice, peut jouer un rôle dans l'entretien de cette spatialité divisée, notamment en neutralisant la vernacularisation des droits de l'homme en milieu rural.

### ***Index terms***

***Thematic keywords*** : accountability, civil society, empowerment, food security, human rights, hunger, inequalities, land rights, large-scale land acquisitions, livelihood security, poverty, property rights, right to food, titling, transformation of livelihoods, vernacularisation

***Geographic keywords*** : Asia South-East, Cambodia

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