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# Recognising rights and wrongs in practice and politics: Human rights organisations and Cambodia's "Law Against the Non-Recognition of Khmer Rouge Crimes"<sup>1</sup>

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## **Abstract**

Human rights organisations (HROs) are the principal arbiters of the social problems or conflicts that are documented and decried *as* human rights issues. They do so, however, within specific socio-political milieus and histories, and through globally and locally enmeshed lenses that render some social and political problems more visible and amenable to human rights advocacy than others. This article examines the case of a controversial atrocity denial law passed in Cambodia in 2013 in order to reflect on how rights-based organisations 'think' through, navigate and intervene in the social and political worlds that they inhabit. A month before closely fought national elections in Cambodia in 2013, the government passed an anti-genocide denial law. The law was a response to statements from an opposition leader that questioned the authenticity of a key site of atrocities perpetrated under the Khmer Rouge (1975-1979), suggesting that it had been 'staged' by the Vietnamese. The denial law circumscribed the opposition's ability to exploit popular strands of anti-Vietnamese feeling, an undercurrent that had led to a series of violent attacks against the Vietnamese minority during the electoral cycle. Rights groups, in theory, were confronted with one of the classical dilemmas of liberal human rights: curtailment of free expression versus the potential harm of hate speech. Drawing on a series of interviews conducted with staff in domestic and international HROs in Cambodia, I situate the responses of HROs in context, showing how internationally and locally enmeshed rights discourses shape their work. I explore three questions about the world-views of HROs that have implications for rights-based work more broadly: the politicisation of human rights techniques and interventions; the (in)visibility of forms of structural violence in relief of abuses by the state; and the solubility of rights-based advocacy within prevailing socio-political discourses and populisms.

**KEYWORDS:** Cambodia; Khmer Rouge; denial; human rights; civil society

## **1. Introduction**

In May 2013, two months before a national election in Cambodia that would see the first serious challenge to the ruling Cambodian People's Party (CPP) for over fifteen years, Kem Sokha, the then Deputy President of the opposition alliance 'Cambodian National Rescue Party' (CNRP), was recorded at a rally appearing to question the authenticity of a major prison and extermination centre established by the former Khmer Rouge regime. The Khmer Rouge (KR) 'Democratic Kampuchea' government

had ruled Cambodia from 1975 to 1979, during which 1.7 million people died of starvation, disease or were executed;<sup>2</sup> the KR were only removed from power following a military intervention by Vietnamese troops and Cambodian rebel forces, which included leading figures of the successor government and present ruling party. The brutality of the Khmer Rouge regime, ensuing ten year Vietnamese occupation of Cambodia, and further decade of civil war that ended in 1999, continue to define key cleavages in Cambodian politics and public life. Sokha's comments were inextricably bound to the popular imagination, grievances, and continuing political currency of Cambodia's experiences of mass atrocity, conflict and occupation. They also implicate historically persistent anti-Vietnamese and nationalist sentiments that remain present in Cambodia. Sokha's comments and the government response to them, principally enacted through an anti-atrocity denial law, would spark a chain of events implicating immediate debates about free expression and atrocity denial, but also compelling questions about the role of human rights organisations (HRO) as advocates, arbiters and animators of different social issues *as* human rights problems. The aim of this paper is to reflect on the way HRO staff navigate, 'see' and respond to these dilemmas in their socio-political and institutional contexts.

The paper has four subsequent sections. In section two, I develop a background that tracks and explains the story of the denial law, from Kem Sokha's remarks, the CPP passing of the denial law, through to the varying public responses that followed from international and Cambodian HROs. I trace this story principally through news coverage and officially sanctioned reports or press releases related to these events, in part because the public statements and proclamations on the issues at hand both diverge from and converge with the perspectives and themes generated from interview data in important respects. In section three, I offer a brief theorisation of the work of HROs. I draw upon key literature that shows how human rights problems are registered through specific epistemic frameworks that decontextualise and de-historicise social problems, exactly at the same time as institutional and social contexts exert pressures on and condition HRO advocacy. In section four, I offer a brief methodological statement on the interviews conducted. The fifth section organises a substantive analysis of interview data around three thematic sub-sections: the politics of human rights interventions both for and against the anti-denial law; the visibility of some social problems as human rights issues but not others; and the dilemmas and deliberations of HROs in 'picking battles'. I conclude with a final set of reflections on the foreclosure of serious engagement with the 'causes' rather than 'symptoms' of various human rights problems in Cambodia.

## **2. Background**

Kem Sokha's comments were made in reference to the S-21 interrogation and extermination centre in Phnom Penh. During the Khmer Rouge years some 14,000 people are thought to have been interred at the site and subsequently executed.<sup>3</sup> After the fall of the regime, the Vietnamese backed 'People's

Republic of Kampuchea' (PRK) curated S-21 as the 'Tuol Sleng Museum of Genocide Crimes' as a key evidentiary site of Khmer Rouge (KR) atrocities to legitimate the Vietnamese intervention internationally and domestically.<sup>4</sup> Indeed, from 1979, the PRK publicly defined itself against the 'genocidal' intent of the Pol Pot 'clique'.<sup>5</sup> Today, their successor regime, the CPP, still politically trades on its role as 'saviours' from the KR, using S-21 and mass graves across the country for commemorative days. S-21 today also serves wider functions, having been powerfully inserted into the nascent international tourist economy.<sup>6</sup>

Regarding the authenticity of the site Sokha specifically said:

"The Vietnamese created this place with pictures [of the victims]. If this place is truly [KR] they would have knocked it down before they left. You should know that if the [KR] killed people, would they keep it to show to everyone? If they knew they killed many people, why would they keep this place?"<sup>7</sup>

Separately he was recorded questioning:

"Why would the [KR] be so stupid as to keep Tuol Sleng after killing many people, and keep it as a museum to show tourists? This is just staged. I believe it is staged, isn't it?"<sup>8</sup>

Sokha was tapping a vein of potential popular electoral sentiment. Nationalist and anti-Vietnamese feeling offers particular currency because the ruling CPP enjoys historical connections to Vietnam traceable to the 1979 intervention. Moreover, nationalist claims often invoke a historical colonial legacy of territorial disputes over borders and perceived threats to national security and integrity. In recent years, Cambodia has seen anti-Vietnamese sentiment flare up around several violent flashpoints, with Vietnamese residents beaten, businesses attacked and, in 2014, a Vietnamese national was killed by a mob after a traffic accident.<sup>9</sup> During the 2013 election campaign specifically, the CNRP fed on (and fed) such attitudes with the frequent use of the word '*yuon*', a potentially derogatory Khmer term for the Vietnamese, while campaigning on themes of national integrity, border encroachment and the threat Vietnam poses to Cambodia. During the election campaign, the UN Special Rapporteur for Cambodia of the Office for the High Commissioner for Human Rights, Surya Subedi, diplomatically urged "...all sides concerned to refrain completely from exploiting racial sentiments to garner support for their electoral campaign".<sup>10</sup> Later in 2013, Ou Virak, of the Cambodian Centre for Human Rights (CCHR), received death threats having criticised the CNRPs frequent invocation of the term *yuon* and their suggestions that the Vietnamese are intent on 'killing the Khmer people'.<sup>11</sup>

The CPP, keen to foreclose the CNRPs ability to exploit such currents – and rarely shy of an opportunity to 'shame' an opponent – responded quickly to Sokha's comments about S-21. In June 2013, six weeks before the election, the CPP rushed legislation through the National Assembly – without scrutiny from

opposition members who the CPP dominated National Assembly committee had stripped of their seats days before – criminalising the ‘non-recognition, downplaying or denial’ of Khmer Rouge crimes (hereafter, denial law). A breach of the law is punishable by up to two years prison sentence or a fine.<sup>12</sup> Prime Minister Hun Sen sought to situate the proposed legislation in relief of European laws that criminalise denial of the Holocaust: “In Europe, whoever says Hitler did not kill people must be guilty”.<sup>13</sup> In doing so, Hun Sen sought to locate the law as indigenous within an international landscape of existing legislation that is intended to counter denial – in the name of human rights – as an incitement to violence and a breach of the dignity of victims. According to this vision, denial laws work as an instrument that prioritise specific human rights protections over necessary constraints to individual freedoms.<sup>14</sup> Indeed, the role of denial laws as mechanisms for nurturing cultures of memory was a point of contention for several of my informants because they can be put to overtly political uses, animating questions over how denial laws appear appropriate as human rights techniques in some contexts but not others.

The CPP were not alone in objecting to Sokha’s remarks. Sokha himself had suggested his remarks about S-21 had been edited, taken out of context and refused to apologise. But several survivors of S-21 condemned the suggested ‘fabrication’ and threatened to sue.<sup>15</sup> Chum Mey, an S-21 survivor and president of the ‘Association of Victims of the Khmer Rouge Regime’ group, further helped to organise a protest in Phnom Penh on 9<sup>th</sup> June against Sokha, attracting some 10,000 demonstrators.<sup>16</sup> HROs and the CNRP pointed out, in turn, that the protests had enjoyed support from the local government authorities, and a CNRP spokesman accused the CPP of stoking outrage and ‘orchestrating’ the protests.<sup>17</sup>

The denial law quickly became the focus of international HRO attention. Denunciations of the motivation, drafting, scope, and implications of the law were fierce. Article 19, a UK HRO devoted to issues of free expression, condemned the legislative process and impingements of rights to free speech, situating the denial law within a ‘...deteriorating human rights situation, particularly in regard to freedom of expression’.<sup>18</sup> Amnesty International (AI), noting circumstances in which denial could *legally* be curtailed, argued that the denial law breached Cambodia’s obligations under international law. In an open letter to the National Assembly, AI argued the denial law could inhibit post-conflict processes of reconciliation and accountability, jeopardise future scholarly research, and, with reference to anti-denial legislation in Rwanda:<sup>19</sup>

Cumulatively, the potential negative consequences of the proposed Khmer Rouge Crimes Denial Law could exert a chilling effect on numerous aspects of daily life, causing people to fear exercising their rights to freedom of expression and engaging in public debate and contributing their views around the development of Cambodia.<sup>20</sup>

Responses among Cambodian HROs were more cautious. In the longer electoral cycle, from 2012, Cambodian HROs had expressed alarm about increasing CPP authoritarianism, intimidation, harassment, the curtailment of rights to free assembly and expression,<sup>21</sup> manifest in legislation that restricted funding and HRO activity, as well as personalised and arbitrary legal proceedings directed against opposition figures and their associates. Youk Chhang, Executive Director of the Documentation Centre of Cambodia (DC-Cam) – a leading research and advocacy group on Khmer Rouge atrocities – appeared surprised at Sokha’s claims, noting that Sokha was a survivor of the regime: “Kem Sokha himself was a victim of the Khmer Rouge. I don’t understand. What was he thinking?”<sup>22</sup> Chhang went on to express concerns about the implications the denial law would pose in terms of “dictating history”, suggesting that “truth does not need the law for protection”, appealing for an environment of free expression but pointing out that it is “...ridiculous for people to deny, revise, or trivialize the genocide in Cambodia”.<sup>23</sup> DC-Cam constructively attempted to reframe the problem less as an issue of denial and more a reminder of the need for effective genocide education in Cambodia, a longstanding area of advocacy and work for the group. Ou Virak of CCHR pointed more directly to the immediate benefits of the denial law for the CPP as it would “...basically target one person - and that is Kem Sokha. And it's very, very political. It has nothing to do with denial of atrocities and the crimes that took place under the Khmer Rouge. It has everything to do with politics before the election.”<sup>24</sup>

The passing of the denial law presented a complex situation for Cambodian and international HROs. In the first instance, the problem of criminalising denial provoked one of the ‘classic’ dilemmas of liberal human rights. On the one hand, criminalising denial breaches Cambodia’s obligations to the International Covenant on Civil and Political Rights (ICCPR) as it is thought to limit free speech. In the liberal world-view enshrined in the ICCPR, such rights can only be restricted on the basis of ‘reputational’ damage, incitement to violence, and national security.<sup>25</sup> For the advocate of ICCPR rights, such curtailments are even less desirable in contexts of relative authoritarianism, which the Cambodian governments’ routine use of defamation laws against political opposition seems to embody. On the other hand, within the liberal calculus of curtailing free expression versus ‘harm’, denial remains a human rights problem obliging appropriate management. In the first instance, as Gregory Stanton observes, genocide denial is precipitant to further violence.<sup>26</sup> Secondly, the denial of atrocities can be argued as a secondary violence against victims, as it elides their experiences and dignity. Indeed, as Hun Sen attempted to present the issue, denial laws – with precedent parallels in Europe – are just one way to manage and promote appropriate practices and cultures of memory in the wake of atrocities.

The problem here is twofold. Partly, this seems an issue of ‘connecting the dots’: a basic recognition that Sokha’s comments might have been harmful, to be taken seriously, is understated in the context of the evidently abusive record of the Cambodian government. But the implementation of the anti-denial law was also janus faced. Ideally, denial laws are a technique for managing histories of atrocity that

follow from human rights thinking, forward looking as a preventative measure against the incitement to violence and retrospectively protecting the integrity of victims' memories and dignity. Yet it seems clear that this law was mobilised in order to curtail or 'shame' the CNRP, presenting an example of a technique indigenous to human rights that was implemented principally for political gain, with little interest in the beneficial protections it purports to deliver.<sup>27</sup> Conversely, in the public responses to this episode, less attention has been paid to the undercurrents at work that make Sokha's comments, as an apparent expression of free speech, both politically viable and dangerous in the way they license xenophobia.

HROs cannot advocate around *all* social problems as human rights issues. This is a practical limitation as much a consequence of the conflicts between the different categories and genres of rights. The situation does, however, raise urgent questions about the way HROs navigate socio-political milieus, *see* social problems as human rights issues, and pick their attendant battles. The next section reflects on recent scholarship on how HROs work through specific sets of epistemic lenses and under specific institutional pressures.

### 3. Rights based approaches

This article responds to the wider call made by Miller & Redhead, that there is a need to think about approaches that fall 'outside'/'beyond' "rights-based approaches".<sup>28</sup> Rights-based approaches are increasingly prominent within a range of cognate fields such as development,<sup>29</sup> aid,<sup>30</sup> public health,<sup>31</sup> and poverty.<sup>32</sup> Indeed, Distinguishing rights-based approaches from other justice projects that might, for example, foreground 'needs' over rights, material inequalities or redistributive justice,<sup>33</sup> raises several sensitising questions and contradictions that resonate throughout my following discussion. One powerful attraction of rights based approaches has been the promise of 're-politicising' fields that have become 'unaccountable' or technocratic.<sup>34</sup> Yet rights-based approaches draw their normative authority from a corpus of international human rights laws, treaties and covenants that are legitimated precisely because of their purported universalism, objectivity and legal insulation from *politics* as such. This ambivalence haunts and characterises the field of rights-based advocacy, defined principally against the state, and committed to –yet apparently free from – the partialities of public political life.

Occupying centre stage of this discursive terrain is the HRO. A liberal account of HROs would locate them, at the domestic or transnational levels, as anchors of 'civil society' or 'global civil society'. The scope of this paper mean I cannot trouble such terms with the scrutiny that they deserve, though several points are worth bearing in mind that relate to what HROs do, are meant to do, are *thought* to do and *think* they do according to this vision. As key features of a 'civil society', HROs are thought to act as



counter-weights to the power of sovereign states. As autonomous groups, HROs are thought to be ‘watchdogs’ and checks to state power, advocating for the vulnerable, and emblematic of the possibility of alternative political visions and approaches. HROs are therefore thought to contribute to both the ‘rule of law’ and processes of democratisation.<sup>35</sup> As a necessarily thumbnail sketch, there are many problems here. The proliferating range of issues and contexts that HROs have directed their work to in recent years complicates any uniform account of their place vis-à-vis state and society. Yet such a stylised picture of HROs remains useful in two ways. It is important because it is reflective of thinking within HROs and therefore reflexively constitutes their world view and work. It therefore obliges further critical reflections on the contingency of thinking within HROs – reflective of specific visions of rights, and conditioned within specific institutional and social contexts.

If we agree that there is some coherence to the ‘human rights regime’, in thought and practice, we are obliged to identify its key features. Human rights attract criticism for reflecting a specific Western world view; the Universal Declaration of Human Rights, for example, can be read as both echoing a liberal, individualist reading of rights and as a contingent product of unequal international relationships unfolding in its drafting.<sup>36</sup> Fundamentally, the human rights project has been defined *against* states,<sup>37</sup> notwithstanding important critiques arguing that human rights are also implicated in moral orders that enable forms of domination *in the name of rights*.<sup>38</sup> Wendy Brown has suggested that the liberal markings of the human rights regime are visible as it is presented as an “anti-politics”; a contingent moral project that must deny that it has *a* politics at all.<sup>39</sup> On this basis, the prevailing liberal conceptualisation of human rights points to the way HROs occupy the role of – *and specifically self-identify as* – the key ‘neutral’ and ‘objective’ arbiters between states and societies on this basis. Importantly, HROs are not neutral in this process. Alex de Waal shows, HROs, operating on a transnational and proximate basis, have broadly erred toward advocacy around ICCPR rather than social or economic rights.<sup>40</sup> Brown’s point, in turn, is that to advocate against the coercive abuses of the state through a minimalist vision of liberal rights does not void questions of power; the ‘free’ subject purportedly empowered by liberal rights converges with the doctrine of the market, capitalism, and attendant violences therein.<sup>41</sup>

If the principle rationale underpinning the work of HROs is to document abuses perpetrated by states, it is imperative that we examine the ‘styles of thought’ through which they do so.<sup>42</sup> As Moon argues, predicated on the assumption that ‘knowing’ about and amplifying awareness of human rights problems leads to ‘action’ on them, HROs rely on a set of ‘discursive codes’ for registering and presenting knowledge about human rights violations. These are, namely, legal, statistical, and testimonial. These codes have become ‘naturalized’ and stabilised within the *human rights report* as a form of advocacy genre in its own right. The institutional configurations of HROs, through research, presentation and campaigning are now configured around these epistemic lenses and they have powerful consequences



for the way human rights problems are known as ‘objective’ and ‘factual’, and the proximate and compelling ‘truth of suffering’.<sup>43</sup> Crucially, for my purposes here, international law represents “...the first and final point of human rights mandates and reports...” because it provides the classification and categorisation of social problems as human rights issues.<sup>44</sup> Law simultaneously furnishes the denunciation of human rights problems *as illegal*, obviating what must be ‘done’ about them. These registers authorise the power of human rights reports, and other advocacy forms. Yet as contingent lenses for recognising social problems as human rights issues, they also foreclose other ways of *knowing* social problems. Firstly, as Moon notes, they are powerfully decontextualising, severing human rights problems from their wider social environments, suppressing histories, and ‘concealing’ real conflicts or antagonisms within social orders.<sup>45</sup> For my purposes here, *legalism*, as a mode of communication, therefore allows “...some ideas, histories and politics to travel whilst curtailing others.”<sup>46</sup> The second problem Moon identifies is paramount. Legalism, as a lens for knowing and acting on social problems, can only ever address the ‘*symptoms*’ rather than ‘*causes*’ of human rights issues, which may be deeply embedded and historically rooted forms of inequality or injustice that law is poorly disposed to register or engage.<sup>47</sup>

As a final set of cautionary reflections, we might consider how the human rights project organisationally predisposes HROs to advocate around some social problems as human rights issues but not others. Moon notes that the dominance of legalism, testimonial, and statistical registers for human rights advocacy does not work in a uniform way across *all* HROs.<sup>48</sup> Krause’s recent work on *The Good Project*<sup>49</sup> – unpacking how humanitarian relief NGOs conduct advocacy through a common, instrumental and calculative logic aimed at delivering successful *projects* as products for donors – carefully qualifies that it is easy to overstate the coherence of the political order within which they operate and reproduce.<sup>50</sup> Krause shows that there is potential for competition, divergence and conformism between different NGOs working shared contexts. Moreover, we should remain cautious about the way that human rights principles, ideas, and practices circulate globally. A neat separation of ‘international’ or ‘transnational’ and ‘local’ HROs is not a clean or entirely helpful series of distinctions. HROs appropriate human rights ideas and can adapt, enunciate and act on them through proximate ‘local’ lenses, depending on the case at hand, even while subject to strong external pressures, such as donor funding.<sup>51</sup> Indeed, the question of organisational survival is subject to the vagaries of varying donor priorities, which have changed greatly over recent decades in Cambodia, adding additional layers of complexity to the forms of advocacy that HROs are willing to undertake.<sup>52</sup>

#### 4. Interviews

In the following sections, I discuss data generated from eleven interviews with HRO leaders and staff who were working in Cambodia at the time of the passing of the denial law, as well as one interview

with a journalist of a national newspaper that has been included to help develop and illustrate context rather than as a ‘rights based’ voice or activist. A first round of interviews with five informants took place in December 2014 and January 2015, with one further interview held later in April. A second round of interviews with a further five informants took place in March 2016, though this period of fieldwork did not run smoothly; a bag containing my laptop and dictaphone with one audio recorded interview was stolen early in the trip, and that interview has been reconstructed from notes taken. (The enduring lesson for researchers using qualitative interviews is clear: I should have backed up my interview immediately so that in case the motorbike thieves lost my dictaphone, they would have had a version on my laptop to fall back on.) All interviews were semi-structured around loose prompts and question themes. Nine of the interviewees were current or former staff in Cambodian led HROs, while two worked for larger transnational groups. As such, these interviews are not treated as exhaustive or definitive accounts of HRO responses to the problems the denial law presented. Rather, as members of an already relatively small population of HRO staff, I analyse them as presenting valuable illustrative data of *tendencias* and *dilemmas* in the way HROs think about and navigate their work, especially in relief of the public comments considered in section two. The human rights situation in Cambodia has deteriorated in recent years, with staff at HROs particularly exposed, and I have maintained individual and organisational anonymity for all involved accordingly.

### **5.1 Human rights interventions**

The CPP justified the denial law on the basis of several themes that are indigenous to human rights thinking. Firstly, the CPP argued that the denial law would prevent further harm to victims of the KR arising from comments such as Kem Sokha’s. Secondly, the CPP argued that equivalent laws existed in Europe and other countries that criminalised revisionism of the Holocaust, and therefore the CPP were simply adopting similar protections with precedents in Western contexts. Against these claims, as outlined, public condemnation of the law was robust, especially among international HROs, arguing that the law was politically designed to harm the opposition and had implications for free expression and the human rights situation more broadly. Three years on from the passing of the denial law, nobody had been charged under the legislation. The situation presents a puzzle beyond a straightforward contradiction of liberal human rights obligations to protect free speech and a more assertive need to prevent denial and dignify victims.

The public proclamations at the time of the passing of the denial law, for or against, elided the possibility that the furore, condemnation, and protests were being made to stand for meanings that they did not necessarily reflect or embody. As one international HRO staff member explained to me, while suggesting the law was fairly singularly an attack on the CNRP:

The law was obviously a response to Sokha's comments. Looking back, it was about the election. It was political point scoring. But I also don't see this going anywhere. Sokha's remarks were just opportunistic so I wouldn't read too much into them. And the law also wasn't going to be used against anyone but the CNRP. It's fairly standard stuff on the political scene here.<sup>53</sup>

A political journalist working at an English language national newspaper during the election cycle elaborated on similar themes:

Of course, without a doubt the law was linked to Sokha's comments. That came at a time when the CPP was doing a lot of things to discredit the CNRP, particularly Kem Sokha... Sokha put his foot in his mouth and the CPP jumped with this law as a way to publicly shame him without even having to get too much flak. After all, who would publicly take Kem Sokha's side on this issue? ... Truthfully, I don't think there is much consequence. I think this was always meant to be a political tool and would never be used for anything else... It was sort of a silly way to shame Kem Sokha on a public stage, particularly in front of the international community that had been so supportive of the CNRP all along... I guess I'd say both the law and the criticisms of it were somewhat disingenuous. The law didn't have much to do with helping the populace but nor did it have to do with curtailing free speech... Of course people should be free to question things, but in my experience most rarely discuss the [KR], let alone trade conspiracy theories on a regular basis.<sup>54</sup>

If the denial law was a principally 'political' tool, deployed less for protecting the dignity of survivors, while at the same time perceived as posing little threat to civic life and free speech, should the law simply be read as a 'red herring' without consequences? The corollary problem, here, is that the public condemnation that followed from across international and domestic HROs around the denial law is rendered, in a similar light, perfunctory. This is not to trivialise the problems of free expression in Cambodia, which are serious and ongoing. The quandary points analytically, however, to several possibilities for the sociology of human rights. Sara Ahmed's concept of "non-performativity" is potentially fruitful here.<sup>55</sup> While a 'performative' speech act brings into existence, affirms and constitutes what it names, Ahmed's work on claims of anti-racism identifies forms of speech act – specifically, declarations of anti-racism – which effect their appearance, but actually foreclose discussions of racism and inequality. In regard to Cambodia's denial law, Ahmed's concept works both ways. As the CPP proclaims the need to outlaw denial, in the name of protecting the memories of victims and deterring hate speech – imperatives themselves indigenous to human rights protections – they work to effect a foreclosure of precisely those topics as settled and indisputable. In this sense, we might analyse the denial law less as a case of contradictions between rights to free expression and rights to protection from hate speech, and more as the "anti-performance" of human rights by the state: an intervention said to generate specific human rights outcomes – in this case protecting a historical record – actually shuts down engagements with that past. The corollary problem, in turn, is that as HROs are

drawn into responses denouncing the implications the law poses for free speech, invariably and *necessarily* against the state, they risk foreclosing the question of whether ‘denial’ or ‘hate’ *are* problems at all. We will return to these outstanding questions shortly.

My interview informants broadly shared the sense that the legislation was dislocated from questions of either ‘denial’ or ‘free speech’, pointing to the denial law as a political tactic motivated to discredit the opposition running counter to basic rights protections, but with little substantive consequence. While my informants expressed surprise at Sokha’s initial comments and some questioned how anyone could ‘take his side’, one former Cambodian NGO staff member explained

It seems to me the CPP wanted to discredit Kem Sokha and it is useful to keep in mind that elections were just around the corners at that time. But it produced the opposite. As many have suggested, the public demonstrations against Kem Sokha had elevated him from an obscure politician to a nationally known figure. In retrospect, it’s hard to believe the demonstrations hurt him. In this case, the law was a means to a political end. In Cambodia, sometimes laws are passed to punish a particular individual. e.g the adultery law passed in 2006 and the same is true for the anti-denial law. It’s politics as usual.<sup>56</sup>

Why would the CPP passing of the denial law and protests over Sokha’s S-21 comments elevate Sokha in the public mind, or leave him politically undamaged? After all, one argument advanced by both international and Cambodian HRO interviewees was that *all* Cambodians remained touched by the legacy of the KR years and it would, accordingly, be difficult to see how comments disputing the record of Cambodia’s experiences of atrocities would, in themselves, gain electoral popularity. Sokha’s popularity following the events at hand may very well follow simply from his defiance of the CPP. It is, however, equally plausible that anti-Vietnamese sentiment in Cambodia today carries enough political currency to distract from and envelope the kind of revisionism Sokha promoted. I asked the director of one leading Cambodian HRO if this was connected to anti-Vietnamese feeling and received a short response:

You are asking me if this was to do with anti-Vietnamese feelings? I don’t need to answer that, it’s obvious. It’s not an academic question. Everyone in the country knows this.<sup>57</sup>

## **5.2 ‘Seeing’ human rights issues**

International HROs condemned the passing of the denial law on the basis that it was passed without debate, too broadly defined, and would cause both immediate and wider negative impacts on free speech in Cambodian society. These denunciations were registered specifically through and against

Cambodia's ICCPR obligations as the optic for seeing, speaking about and acting on human rights issues implicated in the case at hand. While Amnesty's open letter to the National Assembly made brief reference to the dilemmas of balancing 'hate speech' regulation in Cambodia,<sup>58</sup> implying links to wider socio-political issues, the UK based HRO, Article 19, rendered a narrow analysis against breaches of human rights obligations. Article 19's *legal* analysis of the denial law is just that; it should not be critiqued on the basis that it fails to offer more context, background or history than it does, as it should not be expected to. As a document embodying human rights *legalism* it is fulfilled precisely as a decontextualized evaluation of a single piece of legislation against ICCPR articles that are themselves decontextualized and de-historicising. Both the AI open letter and Article 19 accounts note that the ICCPR procedurally allows for instances in which free speech is restricted – specifically on the basis of 'reputational' damage, incitement to violence, and national security<sup>59</sup> - but they do not substantively engage with questions of revisionism or denial in the Cambodian context that might justify such measures. This raises the question of whether or when HROs working in Cambodia see denial as a problem, and on what terms. I asked several interviewees about the issue of denial and revisionism of the historical record of the KR atrocities. A journalist working at an English language national newspaper during the election cycle, who had also covered the ongoing KR prosecutions, suggested that

I definitely didn't consider KR denial or revisionism to be a major problem or encounter it much, if at all, in my reporting. In fact, I am pretty sure the Kem Sokha comments were the first time I heard that and it was only after he made those comments that I learned it is not a completely uncommon theory. Obviously, the big exception to this is what Nuon Chea et al (but particularly Nuon Chea) said on the stand at the trials. I don't think I've ever encountered anyone who accepted those theories save for former [KR] in Anlong Veng and the likes.<sup>60</sup>

The journalist's comments are telling in the way that they seem to animate a distinction between 'spectacular' or high profile (visible) forms of denial and the possibility of more politically continuous views that might reflect revisionism. On the one hand, the repertoires of denial employed during defence testimony at war crimes trials, contesting the historical record of atrocities, are a product of exercises that are presented and legitimated as a deliberative reconstruction of 'historical truth'.<sup>61</sup> On the other hand, the journalist's comments on the former KR in Anlong Veng (a stronghold of the movement until 1999) – lower level perpetrators of atrocity who now reside in Cambodia's northern and western border areas – raises questions about the way discourses of nation and 'race' can reframe history in the present. As I have argued elsewhere, former members of the KR will often celebrate their former leaders, assert their apparent benevolent as patriots who sought to defend their country *exactly* at the same time as they acknowledge the history of atrocities in Cambodia and endorse a tribunal to account for their crimes.<sup>62</sup> Moreover, in Anlong Veng, I encountered younger Cambodians visiting the town and former houses

and heritage sites of KR leaders specifically because they were attracted to sites marking the lives of Cambodians who *fought the outsiders* i.e. Thailand and Vietnam.<sup>63</sup> My intention here is not to present these examples as evidence of pervasive revisionism as such – neither endorsing the current law nor prescribing the regulation of denial – but would suggest the possibility that denial and revisionism in Cambodia are contextually more complicated than international HROs seemed to register in their public proclamations around the passing of the law.

One senior figure in an international HRO again downplayed denial as singular problem. While noting links between Sokha's comments on S-21, the potential for electoral gain, he also identified important factors beyond, involving pressures and grievances arising from migration, integration and 'race'.

Revisionism of [KR] crimes is not common [in Cambodia]. Khem Sokha's comments on Tuol Sleng are perhaps the only high profile example of such denial in recent years...It is hard to tell whether Sokha actually meant what he said. He has since blamed Vietnam for the 'stampede' in Phnom Penh in 2010 that killed over 350 people.<sup>64</sup> The timing of Sokha's KR denial is important as the comments were made in the run up to an election... While [KR] denial is rare, anti-Vietnamese sentiment is very common in Cambodia. The sentiments are connected to historical grievances exacerbated by Vietnam's ten year 'occupation' of Cambodia following the overthrow of the [KR]. The opposition did not create these sentiments but they regularly play on them due to the fact that the ruling party was put in power by the Vietnamese and maintains close ties to Hanoi. The use of the term 'yuon' is widespread at opposition rallies and opposition figures routinely claim that the ruling party is ceding Cambodian territory to Vietnam and allowing Vietnamese nationals to come to the country illegally and take jobs that should be for Khmer people.<sup>65</sup>

This response seems to situate questions of denial or revisionism aside from an account of the racialised inflections of the CNRPs campaigning, as well as the presence of strong anti-Vietnamese sentiments in Cambodia. Moreover, questioning whether Sokha 'meant what he said' is important to note; it would be a potentially generous interpretation of Sokha's comments, unless read as reducing them purely to xenophobic opportunism, and therefore dislocated from *any* claim over the historical record. The problem, of course, is that Sokha's audience, immediately and more broadly, would not necessarily treat the remarks this way. It is telling that Cambodian HRO staff I interviewed were quicker to point to pre-existing patterns of atrocity denial or revisionism than their counterparts in international HROs. This is not to animate a clear cleavage between the 'international' and 'local', institutionally or ideologically. While important divergences in world view and approach exist, a firm separation of 'international' and 'local' HROs is not empirically or analytically sustainable given the levels of mutual inter-dependence and interpenetration of domestic and transnational HROs, especially in regard to local access, on the one hand, and funding sources and agenda priorities on the other. I would simply point out here that for some working in HROs, *seeing* denial and situating Sokha's remarks about S-21 in

wider context was an uneven process, which some Cambodian staff were broadly quicker to identify and qualify. For example, one leader of a Cambodian HRO pointed out that

Yes, since the collapse of the [KR], I have heard some people those who had experience with Khmer Rouge regime. They did not deny KR [happened] but said among KR cadre included the ones who were pro Vietnamese communists.<sup>66</sup>

Another former HRO staffer, when asked about the presence of denial in Cambodia, elaborated

I heard people saying Vietnam was to blame for the KR often enough and it often comes from people who are 40s or over. There are many books in Khmer which accused Vietnam of creating the KR and then used it to kill the Cambodians to swallow Cambodia. The authors of those books are just as biased as they are careless. And I suspect that they are primarily driven by their hatred of Vietnam rather than any careful analysis. There are many Cambodians from the older generation who read those kind of books and unfortunately...<sup>67</sup>

Here we encounter a very different picture. A pre-existing – if not mainstream – reservoir of claims that locate blame for the atrocities perpetrated under the KR is highlighted, in both Khmer literature and politics. It corresponds to Sokha’s remarks about the authenticity of S-21 in the way that attempts to externalise questions of responsibility from within the Cambodian polity, invoking a history of suffering to articulate a xenophobic anti-Vietnamese politics. What is crucial for our purposes, here, is that xenophobia, as discursive undercurrents and potential sources of political capital, prefigure and generate the forms of denial that are identified above. Denial is therefore a symptom of wider and systemic patterns of xenophobia and division. As another Cambodian HRO leader suggested, when asked why people might blame the Vietnamese for atrocities perpetrated:

It seemed people referred to “Cambodian members of KR who were Pro-Vietnamese communists” and maybe “Vietnamese members of the KR” as well. Such comments were made not because they do not like the CPP as a few said this right after the collapse of the KR; nor because they were KR themselves and wanted to blame someone else. Such statements truly reflect on-going present day problems of extreme nationalism.<sup>68</sup>

The connection here is that wider formations of atrocity denial can emerge from contemporary or continuing xenophobia, as much as Kem Sokha’s comments were bound to any opportunistic electoral currency they may have had. While there is an implication that the problem of denial exists beyond partisan politics, other interviewees pointed to the way that the histories of atrocities in Cambodia are heavily implicated in the political cleavages that emerged after the KR years. These either portray the Vietnamese intervention in 1979 as a ‘salvation’, which inaugurated the continued dominance of the



ruling party today and afforded them a key legitimating trope, or refutes the legitimacy of the Vietnamese intervention as ‘occupation’ and aggression, furnishing the political space through which competing claims about KR atrocities are mobilised because they are *defined against* a state narrative of rescue from genocide. As one longstanding Cambodian HRO leader qualified

...there are people like the former [KR], they always accuse Vietnamese responsible of the mass murder during the Khmer Rouge time, some other ordinary people still believe the atrocity of the [KR] was manipulated by foreigners like Vietnamese... There are also a big difference between CPP and opposition supporters on the event of 7th January [the anniversary of the liberation of Phnom Penh from the KR], the CPP side always said that 7th January is the day of liberation of Khmer people from killing, the second birth day of Khmer people. But for the opposition side, they always said that the 7th January is the invasion of the Vietnamese troops to Cambodia; the reason for Kem Sokha's comments came from this difference.<sup>69</sup>

It might be easy at this juncture to say that the Cambodian HRO staff recognised denial while international HROs seemed less attuned to the problem; of course the epistemic lenses, registers, and institutional pressures outlined in section three are contextually embedded and realised. But not all Cambodian HRO staff I interviewed identified denial on the same terms. As one HRO leader stated, “Denial is less of a problem here... Maybe some of the Khmer Rouge might try to say things didn’t happen. But everyone knows what happened. It’s not like Europe where there were clear sides and denial is a problem.”<sup>70</sup> Three vexed issues are presented here. Firstly, the question of denial is read as a problem specifically in relief of other international contexts, gesturing to European Holocaust denial laws, where “victims” and “perpetrators” are presented as clearly and cleanly delineated. In Cambodia, the issue of remembering the atrocities of the KR years within the national biography is complicated by the question of how Khmers could commit violence against other Khmers, posed as a crisis of patriotic and racial solidarity that offends the apparent cohesion of nationalist currents in the present.<sup>71</sup> Secondly, attendant to this point, the informant registers denial as a clear cut phenomenon defined by whether or not people acknowledge something happened. As Cohen argues, repertoires of denial can operate through ‘literal’ registers of veridiction like this, but also more complex ‘interpretive’ and ‘implicatory’ forms, re-inscribing the meaning of events, or questioning their moral implications and traction.<sup>72</sup> In this sense, for my informant, reappraising Sokha’s comments through the lens of his motivation becomes substantial: opportunistic electioneering elides the moral implications of revisionism. Such a narrow qualification of what does and does not constitute denial is notable because it seems to correspond to and follow from a cautious legalism that operates at the surface of what is said, rather than implied or concealed.

Other informants shared a view of denial as defined by the acceptance of a historical record of violence, even as they suggested that anti-Vietnamese feelings were productive of politicised accounts of blame for atrocities; (such readings were notably labelled as denial by other informants). As one Cambodian human rights advocate suggested

Actually there were older people who went through the regime. When they tell their story about the regime to their children, the children don't believe. There isn't really anyone who bravely stands up and says 'it didn't happen'. And for the public figures who say it was the Vietnamese, or Vietnamese policy, it was opposition politics and politicians who say this based on their analysis, you know *yuon*, they created the Khmer Rouge... For Kem Sokha himself, he didn't author these kinds of sentences... the anti-Vietnamese sentiment was the core thing, for picking up votes<sup>73</sup>

Here, disbelief within the generational reproduction of memories is deemed a problem, whereas the politicisation of the historical record is not. Recognising denial, in light of these comments, is an uneven and contingent process. Two tendencies seem apparent. The Cambodian HRO staff I interviewed connected both Kem Sokha's comments to broader currents of xenophobia, notwithstanding those above that did situate his remarks within wider patterns of denial and revisionism, historical and present. Moreover, Cambodian HRO staff were well attuned to fact that if a government trades off a specific political history to nurture its legitimacy as the CPP have, its opponents are necessarily invited to contest that history thereupon. It is notable also that the Cambodian HRO staff, broadly, while surprised about Sokha's remarks, fell into line in expressing condemnation of the CPP law on the grounds of violations of ICCPR rights. There is of course no contradiction between recognising patterns of xenophobia, or denial too, while denouncing the CPP law; recognising that denial or hate speech is a problem does not obviate, self-evidently, either the need to regulate them, let alone endorse the denial law in the form presented. Yet the relative public quiet over issues of xenophobia and denial and failure to publicly connect them – especially in relief of interview statements that recognise them as problems – leads us back to urgent questions about how HRO pick their battles and navigate the social contexts in which they inhabit.

### **5.3 Picking battles, following projects and the problem of populism**

The CPP has an appalling record according to international human rights standards, historically and today. The state closely regulates political protest, and violence against protestors has increased, recently including the use of live rounds against demonstrators leading to several deaths.<sup>74</sup> In July 2016, a prominent government critic, Kem Ley, was murdered in a suspected political assassination.<sup>75</sup> HROs in Cambodia operate subject to formal, informal and immanent threats of constraint as they navigate a

political landscape in which human rights abuses perpetrated by the state and state backed agents are pervasive. Domestic Cambodian HROs, in particular, who are already more vulnerable to the vagaries of changing donor priorities, are also more exposed to the Cambodian government. The continuous work of HROs in documenting and calling to account the abuses of the CPP is remarkable in its own right.

The liberal vision of civil society, conceptualised as a neutral counterweight and check to authoritarian government, elides the complexity of the institutional pressures and dilemmas confronting HROs. In Cambodia, domestic HRO were supported in their critiques of the denial law partly because larger international HROs had spoken out in this process, staking out the terrain of the ICCPR rights that were purportedly under threat. Indeed, as one senior Cambodian HRO staff pointed out, “It was easier for the bigger foreign organisations to say something... They don’t need to be sensitive to local public views.”

<sup>76</sup> It would, however, be wrong to suggest that domestic HROs automatically followed the lead of the larger groups, or that they required the ‘cover’ afforded by the larger organisations’ work to advance their case as a necessity. As I have shown, there appears to be several significant discordances between public proclamations about the human rights problems presented by the denial law and the more nuanced perspectives of HRO staff and leaders in assessing the complexities of issues at hand, especially in linking Sokha’s comments to xenophobia and wider questions about the presence of atrocity denial in Cambodia.

In singling out the denial law for condemnation, stripped of context, HROs were picking battles according to a specific world view. This shows domestic HROs in Cambodia have – rightly or wrongly – broadly acceded to prioritising ‘liberal’ ICCPR rights. This is understandable in the context of – and arguably shaped by – the CPP record on freedoms of expression. At the same time, we are reminded of Moon’s argument that legalism within HRO advocacy severs rights problems from their contexts;<sup>77</sup> the denial law was treated in isolation, stripped down to a minimal issue of ICCPR rights trade-offs. The HRO staff I spoke to also saw the denial law for what it was: a largely empty gesture of political point scoring, and “anti-performative” of the CPP claim to be protecting the historical record. Krause shows how NGOs have to make decisions about the relative importance of some causes over others.<sup>78</sup> HROs, and especially domestic ones in the Cambodian context, tend to devote their energies to a narrow range of single issue themes or problems, though these are principally framed in opposition to the state. In the case at hand, considered this way, international and domestic HRO would have been remiss in failing to denounce the denial law: it was one further single, ‘high profile’ abuse of a continuously abusive state; denouncing the denial law represented a short-term and ‘easy hit’ in allowing HROs to *do what they are meant to do*. The problem here is that the denunciation of the denial law seemed to foreclose

further questions about historical revisionism, which the responses of Cambodian HROs above illuminate as problems that *could* be taken seriously in their own right.

There is a final layer to this story that is perhaps most troubling. As Cambodian HROs pick their battles and navigate the political landscape, their apparent role as counterweights to the state distracts from their relationship to the popular currents and attitudes of the communities that they work within. During the 2013 election campaign, Ou Virak, then president of the Cambodian Centre for Human Rights, publicly criticised the opposition use of the term *yuon*, and other racially inflammatory rhetoric about the Vietnamese minority. He subsequently received a range of death threats. If we set aside the arguments above – that HROs legal registers and focuses elide socio-political context, and that HROs institutional pressures entail a focus on short term ‘single’ issues – there remain other reasons to be concerned about the unwillingness of both international and Cambodian HROs to connect Kem Sokha’s comments to a broader debate about denial, and specifically denial as a symptom of xenophobia. As one Cambodian HRO leader explained

It's really a difficult situation for Human Rights organizations to deal with this issue of xenophobia, especially against the Vietnamese minority. As Human Rights activists, we have to protect the rights of those people when their rights were violated by the majority people. But Human Rights activist faces another attack from Cambodian ultra-nationalists that he or she is accused as the spy or puppet of Vietnamese, or another word used frequently is Vietnamese head and Cambodian body for the people in the Government who dare to protect the rights of the minority Vietnamese. The main problem here after the Vietnamese troops left Cambodia, is the weak application of the immigration law for Vietnamese immigrants and make many Cambodian worry that they will become minority in their own country if we let the situation like this be continued... As human rights activists, we try to push our Government to strengthen the control of immigrants in order to reduce the xenophobia sentiment of our people. It's a legitimate concern of Cambodian people who see this situation of no control of immigrants... especially from Vietnam, because we have bad memory in the past centuries of losing our territory by the occupation of Vietnamese civilians and troops. Many Cambodians, they don't like to see this happen again in the near future.<sup>79</sup>

According to this picture, the role of the HRO in Cambodia is doubly fraught. They are under pressure from the state though also operate in a context that is pregnant with wider tensions around issues of nationalism, difference, and ‘race’. On this basis we might revisit the question of who HROs are meant to work for. As a Cambodian HRO acquiescing to and advocating for *national* border controls, a tension seems to emerge between the silo of national concerns that shapes organisational priorities, constraining them from advocating some causes, and the enshrinement of universalising human rights principles that is the rationale for their work and existence. HROs will always adapt human rights principles to fit local

contexts, and work according to contextually driven priorities. But even here, as a seemingly palliative measure against patterns of xenophobia, *symptoms* of human rights problem are not simply prioritised over their causes; they render causes invisible.

The risk presented, starkly, is that HROs that conceptualise their own role as organisational counterweights to an abusive state can slip into positions that, by virtue of their commitments and opposition to the centralised power of authoritarian government, can appease wider political undercurrents that can themselves be generative of human rights problems. These world views seem detached from the normative, cosmopolitan ideals of the human rights project that are thought to underpin their work. Here, the “anti-politics” of human rights, defined against the state, conceals the way that HROs cannot conduct advocacy free from social context, divorced from wider populist currents, and in the apolitical void implied by human rights legalism.

## 6 Conclusion

The Cambodian denial law passed in 2013 generated a series of condemnatory responses among HROs, flagging the denial law as one further episode in a continuing pattern of human rights abuse by the Cambodian government, and a straightforward bid to constrain the opposition CNRP in the build up to the national election. These condemnations can be read through the world view of international and domestic HROs working in Cambodia, which prioritise liberal ICCPR issues, and tend to register human rights problems through the lens of a *legalism* that is itself decontextualising and de-historicising. I have pointed out that the public furore over the denial law foreclosed attention toward prevailing currents of xenophobia, specifically as they can generate forms of atrocity denial that could also be taken seriously as human rights problems in their own right. As several interviews suggested, these problems are persistent and present, but are at odds with both a wider popular hostility toward minority issues and the institutional burdens on HROs to *do* what HROs are *meant to do* in the short term.

That HROs became preoccupied, in the Cambodian case, with the symptoms of human rights problems rather than their possible causes – to the point that causes are obscured – has wider international implications and resonances that are timely, opening up important questions for further research. As I write this in the UK, we might reflect, for example, on the way that Amnesty International or Human Rights Watch have condemned the presence of detention centres such as Yarl's Wood within the UK immigration system, and the attendant degrading and dehumanising treatment of Asylum and refugee applicants in accordance with basic ICCPR principles. On such registers, Amnesty and Human Rights Watch can condemn the (wilful) failings of the state but are incapable of condemning a political environment and reservoir of popular hostility toward migrants that make such centres *politically feasible* – politically expedient even – in the first place. Rights-based advocacy, here, displaces and

obviates the need for the ‘mainstreaming’ of more comprehensive, socio-politically committed forms of justice project.

Wendy Brown’s critique of the modern human rights regime is powerful in the way it asks a simple question (2004): is this the most we can hope for? As a minimalist vision of human rights enables HROs to advocate *against* governmental abuses, Brown invites us to think through the implications of the apparently ‘pure’ and ‘free’ human rights subject who escapes the coercive force of the idealised authoritarian state.<sup>80</sup> Brown’s point is that power is never absent, but an ambivalent force; HROs only ask to substitute one relation of subjectification for another. What is at stake in the case at hand is simpler in its analytical, empirical and normative implications. What if the CPP had not confronted Sokha’s claim that a site of mass atrocity was fabricated by an apparently eliminatory racial enemy? What if no one had spoken out? This is not an endorsement of the denial law, or the prescription for regulating speech about atrocities in Cambodia. It is simply a provocation to HROs to further consider their role as the apparent arbiters of basic principles of equity, dignity and human protection.

## Notes

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<sup>2</sup> Kiernan, B. *The Pol Pot regime: Race, power, and genocide in Cambodia under the Khmer Rouge, 1975-79*. (New Haven: Yale University Press, 2001).

<sup>3</sup> Chandler, D. P. *Voices from S-21: terror and history in Pol Pot's secret prison*. (Berkeley: University of California Press, 1999).

<sup>4</sup> Hughes, R. “Nationalism and memory at the Tuol Sleng Museum of genocide crimes, Phnom Penh, Cambodia” In *Contested pasts: The politics of memory*. Radstone, S and Hodgkin, K. (Eds). (London: Routledge, 2003). 175–192.

<sup>5</sup> Gottesman, E. R.. *Cambodia after the Khmer Rouge : inside the politics of nation building*. (New Haven: Yale University Press, 2002), 44

<sup>6</sup> Hughes, R. ‘Dutiful tourism: Encountering the Cambodian genocide.’ *Asia Pacific Viewpoint*, 49 no. 3 (2008): 318-330.

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<sup>7</sup> Eang, M and Zsombor, P. 'Kem Sokha Says S-21 Was Vietnamese Conspiracy', Cambodia Daily, May 27<sup>th</sup> 2013.

<sup>8</sup> Ibid.

<sup>9</sup> Eang, M. 'Vietnamese Man Killed in Racist Mob Attack'. Cambodia Daily, February 14<sup>th</sup> 2014

<sup>10</sup> 'Statement by UN Special Rapporteur on the Situation for Human Rights in Cambodia' 27<sup>th</sup> May, 2013.

Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13359&LangID=E> last accessed 29<sup>th</sup> August 2016.

<sup>11</sup> Fawthrop, T. 'Cambodia: Human Rights Defender Threatened For Opposing Hate Speech'. Index. on Censorship, 20<sup>th</sup> January 2014

<sup>12</sup> [Draft] Law Against Non-Recognition of the Crimes Committed During the Democratic Kampuchea Period, 12<sup>th</sup> June 2013.

<sup>13</sup> Seiff, A. 'The Denial Law Dilemma'. Phnom Penh Post, 7<sup>th</sup> June 2013

<sup>14</sup> Fournet, C. 'Remembrance and Anti-Denial Legislation'. *Policy Paper, European Centre for International Affairs*, (2013).

<sup>15</sup> Vong, S. and Boyle, D. 'Kem Sokha's Remarks Questioned', Phnom Penh Post, 27<sup>th</sup> May 2013

<sup>16</sup> Kuch, N, 'S-21 Survivor Sues Sokha for Defamation', Cambodia Daily. June 15<sup>th</sup> 2013

<sup>17</sup> Al Jazeera 'Cambodians Protest Over Khmer Rouge Denial', 9<sup>th</sup> June 2013. Available at <http://www.aljazeera.com/news/asia-pacific/2013/06/201369171925861642.html>. Last accessed 30<sup>th</sup> August 2016.

<sup>18</sup> Article 19. 'Cambodia: Law Against Non-Recognition of the Crimes Committed During Democratic Kampuchea.' (2013), 7. Available at <https://www.article19.org/data/files/medialibrary/37127/13-06-27-cambodia-LA.pdf>. Last accessed 30<sup>th</sup> August 2016

<sup>19</sup> The last decade has seen the ruling Rwandan Patriotic Front push through several pieces of legislation that are intended to prevent genocide denial, 'minimisation' and combat "genocide ideology" pertaining to the 1994 genocide. Nearly 2000 prosecutions have followed, and the laws have been critically appraised as vaguely worded political instruments that curtail dissent. See Jansen, N. "Denying Genocide or Denying Free Speech? A Case Study of the Application of Rwanda's Genocide Denial Laws." *Northwestern University Journal of International Human Rights* 12, no. 2 (2014). It is beyond the scope of this article to offer a substantial comparison of these cases, and further research is needed.



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<sup>20</sup> Amnesty International, 'Open Letter: Freedom of Expression and the Proposed Law to Criminalize Denial of the Crimes Committed by the Khmer Rouge' International Secretariat to H.E. Heng Samrin, President of the National Assembly, 2013. Available at <https://www.amnesty.org/en/documents/ASA23/003/2013/en/> Last accessed 29<sup>th</sup> August 2016. 4

<sup>21</sup> Cambodian Centre for Human Rights. 'Defending the Defenders: Security for Cambodian Human Rights Defenders', Country Report, (2013). Available at <https://www.article19.org/data/files/medialibrary/37113/Cambodia-Defending-the-Defenders-2013-ENG.pdf>. Last accessed 30<sup>th</sup> August 2016.

<sup>22</sup> 'Kem Sokha's Remarks Questioned', Phnom Penh Post, 27<sup>th</sup> May 2013

<sup>23</sup> Ibid.

<sup>24</sup> ABC Radio Australia, 'Cambodia outlaws denial of atrocities committed by brutal Khmer Rouge regime', June 11<sup>th</sup> 2013. Available at <http://www.abc.net.au/news/2013-06-07/cambodia-outlaws-denial-of-khmer-rouge-atrocities/4741136> . Last accessed 30<sup>th</sup> August 2016.

<sup>25</sup> International Covenant on Civil and Political Rights (ICCPR), Articles 19 and 20. Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Last accessed 29<sup>th</sup> August 2016.

<sup>26</sup> See Stanton, G. 'Ten Stages of Genocide: Classification Symbolization Discrimination Dehumanization Organization Polarization Preparation Persecution Extermination Denial' (2013). Available at <http://www.genocidewatch.org/genocide/tenstagesofgenocide.html>. Last accessed 29<sup>th</sup> August 2016

<sup>27</sup> Specifically in relation to transitional justice mechanisms, see Loyle, C. E and C. Davenport. 'Transitional Injustice: Subverting Justice in Transition and Postconflict Societies.' *Journal of Human Rights*, 15, no. 1 (2016): 126-149

<sup>28</sup> Miller, Hannah & Redhead, Robin (2017) 'Beyond Rights-based approaches', *International Journal of Human Rights*, this issue

<sup>29</sup> Gready, P. 'Rights-based approaches to development: what is the value-added?', *Development in practice*, 18, no. 6 (2008): 735-747.

<sup>30</sup> Piron, L.H. 'Rights-based approaches and bilateral aid agencies: More than a metaphor?'. *IDS bulletin*, 36, no. 1 (2005): 19-30.

<sup>31</sup> Gruskin, S., Bogecho, D. and Ferguson, L.. 'Rights-based approaches' to health policies and programs: Articulations, ambiguities, and assessment. *Journal of public health policy*, 31, no. 2 (2010): 129-145.

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- <sup>32</sup> Fortman, B. 'Poverty as a failure of entitlement: do rights-based approaches make sense?' In Williams, L. (Ed) *International Poverty Law: An Emerging Discourse*, (London, Zed, 2006).
- <sup>33</sup> See, for example, Cornwall, A. and Nyamu-Musembi, C. 'Putting the 'rights-based approach' to development into perspective'. *Third world quarterly*, 25, no. 8 (2004): 1415-1437.
- <sup>34</sup> Gready, 'Rights-based approaches to development: what is the value-added?'
- <sup>35</sup> Mercer, C. 'NGOs, civil society and democratization: a critical review of the literature.' *Progress in development studies*, 2, no. 1 (2002): 5-22; see pp. 7-9 in particular.
- <sup>36</sup> See Engle, K.. 'From Skepticism to Embrace: Human Rights and the American Anthropological Association from 1947-1999.' *Human Rights Quarterly*, 23, no. 3 (2001): 536-559 for a discussion of the American Anthropological Association's instructive but fraught engagements with conceptions of rights.
- <sup>37</sup> Moyn, S. *The last utopia*. (Cambridge: Harvard University Press, 2010).
- <sup>38</sup> Douzinas, C.. 'Postmodern just wars and the new world order.' *Journal of Human Rights*, 5, no. 3 (2006): 355-375.
- <sup>39</sup> Brown, W. "The Most We Can Hope For...": Human Rights and the Politics of Fatalism' *The South Atlantic Quarterly*, 103, no. 2 (2004): 451-463.
- <sup>40</sup> de Waal, A. "Human Rights, Institutional Wrongs" In Dijkzeul, D. and Beigbeder, Y. *Rethinking international organizations: pathology and promise*. (New York: Berghahn Books, 2003).
- <sup>41</sup> Brown "The Most We Can Hope For...": Human Rights and the Politics of Fatalism', 461
- <sup>42</sup> Moon, C. 'What One Sees and How One Files Seeing: Human Rights Reporting, Representation and Action' *Sociology*, 46, no. 5 (2012): 876-890.
- <sup>43</sup> Ibid, 5-9
- <sup>44</sup> Ibid, 5
- <sup>45</sup> Ibid, 10-11
- <sup>46</sup> Ibid, 9
- <sup>47</sup> Ibid, 10
- <sup>48</sup> Ibid, 12
- <sup>49</sup> Krause, M. *The good project: humanitarian relief NGOs and the fragmentation of reason*. (Chicago: University of Chicago Press, 2014).
- <sup>50</sup> Ibid, 5

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- <sup>51</sup> Merry, S. E. "Transnational human rights and local activism: Mapping the middle." *American anthropologist*, 108, no. 1 (2006): 38-51.
- <sup>52</sup> Parks, T. 'The rise and fall of donor funding for advocacy NGOs: Understanding the impact.' *Development in Practice*, 18, no. 2 (2008): 213-222.
- <sup>53</sup> Personal interview, International HRO staff, January 2015
- <sup>54</sup> Personal interview, Journalist at English language newspaper, January 2015
- <sup>55</sup> Ahmed, S. 'Declarations of whiteness: The non-performativity of anti-racism'. *Borderlands*, 3, no. 2 (2004)
- <sup>56</sup> Personal interview, Cambodian former HRO staff, January 2015.
- <sup>57</sup> Personal interview, Director, Human Rights Advocacy Organisation, March 2016.
- <sup>58</sup> Amnesty International, Open letter
- <sup>59</sup> ICCPR articles 19 and 20.
- <sup>60</sup> Personal interview, Journalist at English language newspaper, January 2015
- <sup>61</sup> Koskeniemi, M. "Between impunity and show trials." *Max Planck Yearbook of United Nations Law Online*, 6, no. 1 (2002): 1-32.
- <sup>62</sup> Manning, P. "Reconciliation and Perpetrator Memories in Cambodia." *International Journal of Transitional Justice*, 9, no. 3 (2015): 386-406.
- <sup>63</sup> Ibid, 16
- <sup>64</sup> In November 2010, during the annual water festival *Om Tuk*, 347 people were killed after panic broke out on a small bridge connecting an island to central Phnom Penh.
- <sup>65</sup> Personal interview, International HRO senior staff, April 2015
- <sup>66</sup> Personal interview, Cambodian HRO staff, January 2015.
- <sup>67</sup> Personal interview, Cambodian former HRO staff, January 2015.
- <sup>68</sup> Personal interview, Cambodian HRO leader, January 2015.
- <sup>69</sup> Personal interview, Cambodian HRO staff, January 2015
- <sup>70</sup> Personal interview, Director, Human Rights Advocacy Organisation, March 2016.
- <sup>71</sup> Manning, P. "Governing memory: Justice, reconciliation and outreach at the Extraordinary Chambers in the Courts of Cambodia." *Memory Studies*, 5, no. 2 (2012): 165-181, 8
- <sup>72</sup> Cohen, S. *States of denial: Knowing about atrocities and suffering*. (Cambridge: Polity Press, 2001).
- <sup>73</sup> Personal interview, Cambodian HRO field worker, March 2016

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<sup>74</sup> Subedi, S. 'Report of the Special Rapporteur on the situation of human rights in Cambodia.' Office for the High Commissioner for Human Rights. 2014.

<sup>75</sup> AUTHOR "Longtime Rights Champion Gunned Down in Broad Daylight". Phnom Penh Post. 10<sup>th</sup> July 2016

<sup>76</sup> Personal interview, Senior Cambodian HRO staff, March 2016.

<sup>77</sup> Moon, 'What One Sees and How One Files Seeing: Human Rights Reporting, Representation and Action'

<sup>78</sup> Krause, *The Good Project*

<sup>79</sup> Personal interview, President HRO, February 2015.

<sup>80</sup> Brown, "The Most We Can Hope For..." Human Rights and the Politics of Fatalism', 453