

Decolonizing Human Trafficking in Cambodia

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INTRODUCTION

The 2000 U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”) is a prosecution-driven solution to human trafficking.[1] However, under a decolonized analysis, the Protocol ignores victims’ and survivors’ agency, thus perpetuating ill-fitted solutions. This case study is about Cambodia. In 2008, Cambodia passed national counter-trafficking legislation entitled the Law of Suppression of Human Trafficking and Sexual Exploitation (LHTSE).[2] Although these were celebratory moments, statistics on prosecuted cases and convictions are lacking. The U.S. Department of State, which monitors the Cambodian government’s remedial measures, ranked Cambodia’s weak efforts in the annual U.S. Trafficking in Persons Report (TIP Report).[3] The Cambodian Phnom Penh Post, an English-newspaper established since 1992, reported government spokesman Phay Siphon speaking against Cambodia’s 2019 Tier 2 Watchlist status.[4] He said, “[w]e have failed to satisfy the U.S. but, in line with the code of ethics and culture of Cambodia, we are committed to combatting trafficking.”[5] There is a pertinent human trafficking crisis in Cambodia, but implementation is an issue. Since the current criminal justice approach is not procuring favorable results, scrutinizing the current model through a decolonized lens might suggest a more pertinent approach.

A decolonized perspective critiques the Eurocentric and Western bias in international human rights norms and regimes. Makua Mutua best explains this perspective using the savage-victim-savior (SVS) imagery.[6] The savage represents the State or cultural foundations that “choke or oust civil society” or cause the culture to deviate from human rights.[7] Individuals whose dignity and human rights are violated by savage state practices and cultures are perceived as victims. The

victim is inherently innocence, helpless, and powerless in the face of the primitive savage. The savior acts as a shield against the savage’s tyranny and “protects, vindicates, civilizes restrains, and safeguards.”[8]

Embodied in the SVS critique is an understanding that cultural differences and race relations influence and construe who is the savage, victim, or savior. As we assess Cambodia’s counter-trafficking efforts, SVS highlights two flaws in Cambodia’s LHTSE and enforcement mechanisms. Firstly, Cambodia’s internalization of the U.N. Protocol ignored the victim-stakeholder’s priorities, and, consequently, Cambodia’s relationship with Western influences color the problematic realities of implementing LHTSE.

The influence of SVS on Cambodia’s counter-human trafficking measures taken during Cambodia’s late 20th-century sociopolitical history. Under the Marxist Khmer Rouge leadership, Cambodia experienced gruesome civil war and the genocide of Cambodia’s intellectual class and political dissidents.[9] The United Nations sent the U.N. Transitional Authority in Cambodia (UNTAC) to help re-establish Cambodia in 1992. UNTAC’s arrival coincided with an increase in local sex work and the explosion of mostly Western NGOs.[10] Reportedly, when Cambodian Prime Minister Hun Sen was asked what the UNTAC’s legacy would be, he replied, “AIDS.”[11] The human rights savior created the savagery of sex trafficking within Cambodia that perpetuated Cambodia’s victimhood. Certain international NGOs framed the trafficking issue to significant donors by claiming the newly developing Cambodian government was too weak to address the problem.

This western influence and demand on Cambodia continue with the TIP Report. Countries on the Tier 2 Watchlist have not complied with the minimum

standards listed in the U.S. Victims of Trafficking and Violence Protections Act of 2000 and have not demonstrated significant progress.[12] The TIP Report incentivizes the re-structuring of human rights violating states by threatening economic sanctions on totally non-compliant countries.[13]

LEGAL BACKGROUND

The U.N. Protocol's definition of "trafficking in persons" includes many crucial, but non-legal, terms, like: "exploitation" and "abuse of power" that have muddied an otherwise operational definition to detect victims and perpetrators. Cambodia, like many other countries, has adopted the Protocol's definition word for word. In adopting and modeling LHTSE after the Protocol's definitions and priorities, Cambodia misses the opportunity to prioritize the trafficking victim/survivor's priorities. LHTSE features only four articles concerning the victim's welfare: right of nullified and voided exploitative contracts (Article 45), right to damages and restitution (Articles 46-7), right to concealed identity from being published or broadcasted (Article 49). In Cambodia's 2010 Criminal Code to LHTSE, Article 287 criminalizes any prevention of a public agency or "competent private organization" that assists victims or at-risk persons.[14]

Cambodia does have a minimum standards of protection policy, which presents itself as victims-first legislation.[15] The 2009 policy strives to fill in a human rights gap but within a prosecution framework. It includes progressive measures, such as Article 6(10), a victim's right to a reasonable reflection period before making a decision.[16] This recovery time allows a victim to access services and begin recovery without undue pressure to cooperate with law enforcement or make an immediate decision.[17] Unfortunately, these minimum standards fall short of full judicial adherence and implementation.[18]

ANALYSIS

A. Critiquing the Development and Application of Counter-Trafficking Law

Cambodia's 2008 LHTSE amended the 1996 Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human Beings. Under pressure from multiple anti-trafficking NGOs and programs that

were looking for significant donor funding, Cambodia "hastily enacted" its 1996 statute without much understanding of trafficking; for instance, the undefined "accomplice" could criminalize law enforcement, protecting the brothels.[19] The statute also criminalized commercial sex work only (disregarding forced labor) and indiscriminately labeled the "victim" as a person who voluntarily consented to engage in commercial sex work.

In the early 2000s, the Bush Administration—who considered all sex work as forced and exploitative—supported Cambodia and other countries with \$50 million to pass new anti-trafficking bills.[20] Cambodia, with the consultation of an international group, passed the 2008 LHTSE. However, the 2008 LHTSE did not address the 1996 LHTSE's inconsistencies or leave the emphasis on sex trafficking; neither did it interpret what "exploitation" meant (Keo 2014).[21] According to the Cambodia Center for Human Rights (CCHR) 2010 report, the application of LHTSE has been "inconsistent at best and incorrect at worst." [22] One of CCHR's recommendations regarding victim protection was that the Cambodian government should ensure Cambodia's judiciary recognizes that victim protection is crucial to prosecution, and should implement and adhere to a common minimum standard of care for victims of human trafficking.

B. Benefits of a Decolonized Approach

Cambodia's economic and governance dependency makes it suspectable to the good intentions of foreign organizations and stakeholders.[23] Human trafficking is a horrific violation that should be eradicated. However, the SVS critique prompts an awareness that not all good intentions thoughtfully produce objectives or laws sensitive to power imbalances, colonial influences, and the complexities of contributory factors to human trafficking within the context of the individual's daily world. Legal practitioners, advocates, and policymakers must be aware that the various stakeholders in the counter-trafficking sector may have conflicting interests and/or different priorities (Gallagher and Surtees 2011).[24] Cambodia's anti-trafficking framework cannot be separated from its history of the West's influence. The international community's desire to rescue and redeem Cambodia from its horrific Khmer Rouge is dangerously paternalistic. This paternalism overshadows the deeply imbedded ethnic stereotypes,

ethnic preferences, migrant workers, and misogyny of victimhood.[25] These biases may determine which victims get rescued by law enforcement and their cases prosecuted. Clear demarcations between who is/is not a victim do not provide justice for the diverse perspectives and experiences of Southeast Asian sex workers. Justice calls for making the worker's voice the dominant and influential narrative.

A decolonized approach also recognizes the SVS critique in Cambodia's legislation. Cambodia's legislation was passed with the substantial help and influence of international voices. Cambodia inherited the ideals of the savior without coming into its own voice. The Western condemned Cambodia's governance ideals as savage while simultaneously recasting Cambodia's new democracy as an unblemished project, free and separated from the legacies of its colonial past. As a result, Cambodia's legislative focus on sex trafficking perpetuates a feminization of victimhood, excluding the thousands of trafficked Cambodian men working in Thai fishing vessels.[26] A decolonized perspective encourages identifying which actors and systems support trafficking schemes. Let the survivors and advocates lead the data collection by setting metrics based on their insight into the industry. Cambodia, not a Eurocentric entity, should identify which stakeholders' voices could best navigate through and whose priorities best address anti-trafficking.

CONCLUSION

Some may argue that a victim-centered approach is only as good as the enforcement. They may propose that, since corruption has made cooperation between the Cambodian police and judicial systems weak, perhaps Western intervention would be more helpful than leaving Cambodia's government alone. A Western powers-backed prosecutorial crackdown of senior Cambodian government officials may be best practice to change the culture of corruption from top-down. It may show that counter-trafficking efforts must be taken seriously. Nevertheless, prosecution should not be the only approach. Corruption is a symptom of a cultural norm. In order to tackle a pervasive practice, SVS critique forces human rights practitioners to consider the victims/survivors themselves. Relying on the survivors and advocates and listening to their priorities is how well-meaning interventions can avoid harmful implications.

1 G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (Nov. 15, 2000).

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3 U.S. Dep't of State, Trafficking in Persons Report, (June 2019).

4 Id.

5 Long Kimmarita, US human trafficking report 'biased', THE PHNOM PENH POST (June 24, 2019) <https://www.phnompenhpost.com/national-politics/us-human-trafficking-report-%E2%80%98biased%E2%80%99>.

6 Makau Mutua, Savages, Victims, and Saviors: The Metaphor of Human Rights, 42 Harv. L.J. 204, 204-209 (2001)

7 Id. at 202.

8 Id. at 204.

9 Editors, Khmer Rouge, HISTORY (Aug. 21, 2018), <https://www.history.com/topics/cold-war/the-khmer-rouge>.

10 Chenda Keo, Thierry Bouhours, Roderic Broadhurst, & Brigitte Bouhours, Human Trafficking and Moral Panic in Cambodia, 653 American Academy of Political and Social Science 202-224 (2014).

11 Susan Rosas, Sex Trafficking in Cambodia as a Complex Humanitarian Emergency, University of Chicago (2011), <https://www.ssa.uchicago.edu/sex-trafficking-cambodia-complex-humanitarian-emergency>.

12 U.S. Dep't of State, *supra* note 3; 28 U.S.C. § 7106 (2020).

13 U.S. Dep't of State, *supra* note 3.

14 Cambodia Criminal Law, Book 1, tit. 1.

15 Government of Cambodia, Policy on the Protection of the Rights of Victims of Human Trafficking, (Aug. 31, 2009).

16 Id.

17 Virtual Knowledge Centre to End Violence against Women and Girls, Reflection Period, UN WOMEN (Jan. 25, 2011), <http://www.endvawnow.org/en/articles/563-reflection-period.html>.

18 Cambodian Center for Human Rights, Human Trafficking Trials in Cambodia, THE ASIA FOUNDATION (July 2010).

19 Keo, *supra* note 10, at 206.

20 Human Trafficking – A New Form of Slavery, The White House, <https://georgewbush-whitehouse.archives.gov/infocus/traffic/>

21 Keo, *supra* note 10, at 207.

22 Cambodian Center for Human Rights, *supra* note 18, at 40.

23 Selim Jahan et. al, Human Development Indices and Indicators, U.N.D.P (2018).

24 Anne Gallagher and Rebecca Surtees, Assessing the Impact and Effectiveness of Anti-Trafficking Interventions in the Criminal Justice Sector: A Discussion Paper on Issues, Obstacles and Opportunities, <http://un-act.org/wp-content/uploads/2017/08/assessing-impact-and-effectiveness-of-at-interventions-in-cj-sector-gallagher-surtees-2011.pdf>

25 <https://www.jstor.org/stable/j.ctt6wr0mn.8>

26 Ian Urbina, 'Sea Slaves': The Human Misery that Feeds Pets and Livestock, N.Y. TIMES (July 27, 2015), <https://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html>.