

Queering Kampuchea

LGBT Rights Discourse and Postcolonial Queer Subject- Formation in Cambodian Queer Politics

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This dissertation is submitted in partial fulfilment of the requirements for the degree of LL.M. Human Rights, Conflict and Justice at SOAS, University of London.

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Date of Submission: 8 September 2019

Word Count: 11,987

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Abstract

Despite its context-specific emergence in the medical and legal discourses of 19th century Euro-America, LGBT rights discourse has taken on a hegemonic status as the world's *lingua franca* for the expression of queer political claims. In the postcolonial world, LGBT rights discourse's universalism threatens to erase queer subjectivities which do not conform to the LGBT episteme and pushes queer politics towards liberal rights-seeking legal activism of limited emancipatory potential. In Cambodia, LGBT rights have shot to prominence in recent years, as a nascent queer movement has grown in strength despite facing significant obstacles, including deeply rooted societal homophobia and oppression emanating from the neoliberal authoritarian Cambodian state. Activists navigate a fraught terrain for progressive activism, with donors and the development industry playing an ambivalent and sometimes regressive role. In this dissertation, I critically analyse the ongoing encounter between globalised LGBT rights discourse and Cambodian queer politics and subjectivities. I centre the voices of Cambodian queer activists in order to argue that, although LGBT rights discourse's universalism threatens aspects of Cambodian queer activism, the critical consciousness which lies at the heart of Cambodian queer politics leads to the formation of *sui generis* queer subjectivities and ensures that rights discourse neither consumes the movement nor forecloses other forms of progressive activism.

Acknowledgments

I would like to dedicate this dissertation to the many inspirational activists in Cambodia whom I am deeply privileged to know and who made this research possible. Their bravery, solidarity, and determination are an eternal source of hope and inspiration. I wish to thank my partner, TK, for his unwavering love and support throughout a challenging year apart. Finally, I wish to thank my supervisor, Dr. Vanja Hamzić, whose generosity and patience have been indispensable to my personal and academic growth during an often-difficult year.

Introduction

Lesbian, Gay, Bisexual, and Transgender (LGBT) rights have taken on an increasingly prominent role in Cambodia in recent years, as epitomised by the Cambodian government's commitment to introduce a same-sex marriage law, among other LGBT-inclusive legal reforms, at its Universal Periodic Review at the UN Human Rights Council in July 2019.¹ This occurred despite the fact that LGBT rights discourse is a relatively recent apparition in Cambodia, instigated by the public health interventions of HIV/AIDS NGOs in the late 1990s and early 2000s. It was in the context of, and in relation to, these early public health interventions that queer activism began to emerge in Cambodia from the late 2000s onwards. In this short time, a nascent queer movement has made significant gains in terms of visibility, recognition, and social acceptance. Despite the evidence of recent progress in respect of LGBT rights in Cambodia, social attitudes remain mostly negative, and a large portion of the Cambodian population believes that people 'become LGBT' because of 'foreign influence'.² Such attitudes prevail despite the fact that accounts of non-heteronormative and gender-nonconforming subjectivities in Cambodia date back to the 13th century, and persist throughout Cambodian history.³

Until very recently, the only modern accounts of queer lives in Cambodia had come from public health and human rights NGOs, with academic perspectives remaining sparse. Exceptionally, Heidi Hoefinger and Srun Sorn have made a welcome intervention by pushing back against dominant tropes in Cambodian society which label queer Cambodians as either 'at-risk' vectors

¹ UNGA (2019).

² RoCK (2015) 48.

³ Zhou (1296) 55.

for disease or ‘socially deviant’ criminals, and by centring the agency and activism of grassroots organisations and activists.⁴ Their account, however, remains inadequate insofar as it fails to interrogate the widespread belief that ‘LGBT sexualities’ are ‘Western imports’ in Cambodia, instead tacitly treating the prevalence of this perspective as evidence of homophobic attitudes and/or misinformed understandings in Cambodian society at large.⁵ In doing so, they risk assuming the universal applicability of LGBT identities and discourse. Conversely, a foundational tenet of queer theory is a recognition of the context-specific emergence of homosexual (and heterosexual) identity in the medical and legal discourses of late 19th century Euro-America.⁶ Moreover, in the context of the non-Euro-American world, postcolonial critiques emphasise how LGBT rights discourse’s claim to universality is implicated in the epistemological erasure of non-Euro-American queer subjectivities.⁷ In tension with rights discourse’s liberatory claims, Boaventura de Sousa Santos notes:

The adoption of Eurocentric legal and political models, and claims of their allegedly universal validity [...] often rest upon forms of domination based on class, ethnic, territorial, racial, or sexual difference and on the denial of collective identities and rights deemed incompatible with Eurocentric definitions of the model social order.⁸

Elsewhere, David Kennedy laments ‘how narrowly the human rights tradition views human emancipation – focusing on what governments do to individuals, on participatory rather than economic or distributive issues, on legal, rather than social, religious, or other remedies’.⁹

Recognising the limitations of human rights discourse due to its Eurocentricity, De Sousa

⁴ Hoefinger and Srun (2017).

⁵ *ibid.*

⁶ See, for example: Foucault (1978); Somerville (1997); Katz (1990); D’Emilio (1983).

⁷ See, for example: Massad (2002).

⁸ De Sousa Santos (2008) xlvi.

⁹ Kennedy (2012) 24.

Santos encourages a recuperation and centring of ‘epistemologies of the South’. He argues that only such an exercise can enable the ‘oppressed social groups to represent the world as their own and in their own terms, for only thus will they be able to change it according to their own aspirations’.¹⁰ At this critical moment for Cambodian queer politics - with LGBT rights discourse gaining in prominence, increasing numbers of Cambodians identifying as LGBT, and legal claims beginning to receive state recognition - I seek to critically interrogate the ongoing encounter between Cambodian queer activism and LGBT rights discourse. This interrogation seeks to answer three interrelated questions, namely: If universal LGBT rights discourse does not accurately describe an already-existing Cambodian queer subject, can it *create* such a subject? What does LGBT rights discourse *do* in relation to Cambodian queer subjectivity and politics? And, finally, in what ways do Cambodian queer activists *navigate* and *resist* the ‘dark sides’ of LGBT rights discourse in the service of progressive struggle?

In order to seek the answers to the questions, I engaged in a critical socio-legal analysis of three major sources which I have sought to bring into dialogue with one another. Firstly, I drew upon theoretical perspectives which I have taken from a range of disciplines, particularly critical theories of human subjectivity-formation, critical legal theory, queer theory, postcolonial studies, and Cambodia studies literature. A combination of these perspectives led me to the theoretical proposition (which is elaborated above and throughout this paper) that although LGBT categories are neither natural nor universal, the globalisation of LGBT rights discourse subjectivates LGBT rights-holder identities globally and pushes queer politics toward rights-seeking legal activisms, with a range of potentially regressive and unpredictable consequences. Largely because Cambodia is still in recovery from its turbulent recent history of conflict, my theoretical lens was impoverished by the shortage of published academic theory by

¹⁰ De Sousa Santos (2018) 1.

Cambodians on Cambodia. I have attempted to mitigate this by centring Cambodian (academic and activist) voices as much as possible, by supplementing this understanding with critical and postcolonial ‘theory from the south’, and crucially, by understanding and analysing my interlocutors as the *makers* and *doers* of theory through their activism.¹¹ Secondly, I undertook a theoretically-informed analysis of Cambodian laws and policies impacting queer lives in addition to all available NGO and UN reports on LGBT rights and non-heteronormative subjectivities in Cambodia (15 in total). I selected these reports for analysis because NGOs and UN bodies tend to deploy LGBT rights terminology universally, and as such these reports can be understood as ‘sites of definition creation’, in Kosofsky Sedgwick’s framing.¹² Thirdly, I conducted primary research in the form of semi-structured interviews with eight Cambodian queer activists and three non-Cambodians with links to Cambodian queer activism because: a) there is a dearth of published academic material on queer politics and subjectivities in Cambodia, which meant the materials available to me were inadequate to answer my research questions; and b) it was necessary to include first-person activist accounts to give substance to my exploration of subjectivity-formation. My interviews were structured in three parts: a) history of involvement with activism; b) perspectives on queering (in) Cambodia; and c) understandings of gender and sexuality. Interviews were conducted primarily in English and interspersed with Khmer. Each lasted 60-90 minutes and was conducted in person or via Skype. All were recorded, transcribed, and then analysed according to my theoretical frame. My Cambodian interlocutors were selected because, as movement leaders and urban activists based in Phnom Penh, they occupy the frontline of the encounter between globalised LGBT rights discourse and Cambodian queer politics. Almost all were previously known to me from the three years I spent working in Phnom Penh as a human rights researcher operating in and

¹¹ See: Comaroff and Comaroff (2012).

¹² Kosofsky Sedgwick (1990) 3.

around the sexual orientation and gender identity (SOGI) space. I chose this as my site of inquiry due to my familiarity with Cambodia's socio-legal terrain and queer activism, in addition to my understanding of Phnom Penh as a space in which human rights discourses have particular purchase. This is a field which is intimately known to me and I am, by definition, deeply implicated in the postcolonial dynamics which I analyse in this research. As a queer *barang* (westerner) who has worked to support queer activism in Cambodia in a variety of capacities, I occupy the 'space between' the insider/outsider divide, which brings both perils and opportunities.¹³ Because of my existing relationships of trust and friendship with many of my interlocutors, I was provided a depth of personal reflection and candour which may not have otherwise been the case. On the other hand, my personal investment and involvement in the cause I am researching accentuates my inherent biases. Throughout this paper, I use the term 'queer' to refer to the diverse range of subjectivities which can be characterised as either non-heteronormative or non-cis-normative in Cambodia. I deliberately use the terms 'queer' and 'queer politics' despite the fact that they are rarely used in Cambodia for two reasons. Firstly, it is evident that 'LGBT' is a wholly inaccurate characterisation of Cambodian queer subjectivities; these categories have no equivalents in the Khmer language and the elasticity of queer is a much better representation of the fluidity with which gender and sexuality are understood in Cambodia (as discussed in Chapter 2). Secondly, I wish to emphasise the critical, anti-heteronormative *and anti-homonormative* connotations of 'queer' to differentiate Cambodian queer politics, as a critically informed grassroots social movement, from the often donor-driven LGBT rights 'projects' of the HIV/AIDS (and to a somewhat lesser extent, human rights) NGOs.

¹³ Dwyer and Buckle (2009).

This paper is structured in three chapters: In Chapter I, I provide necessary context by analysing some of the historical, social, political, and economic conditions in which Cambodian queer politics and subjectivities are navigated. I begin by offering an analysis of the *chbab srey*, a 19th century piece of Khmer literature, in order to demonstrate the colonial continuities which dominate Cambodian gender dynamics. I then analyse the emergence and development of queer politics in the context of Cambodia's development industry and the neoliberal authoritarian Cambodian state. In Chapter II, I analyse the manner in which LGBT 'rights-holder' subjectivities are formed in Cambodia based on an application of critical theories of human subjectivity-formation. I then argue that the specific conditions surrounding Cambodian queer politics leads to unique forms of epistemic resistance which are engendered in relation to the encounter with universalist LGBT rights discourse. In Chapter III, I analyse claims that LGBT rights discourse pushes queer activism towards rights-seeking law reform projects as a strategy for emancipation in the context of Cambodian queer politics. I examine Cambodian activists' recent engagement with the UPR alongside other *quasi-legal* and *alegal* strategies which they have employed in order to argue that the critical consciousness at the heart of Cambodian queer politics enables activists to navigate the potentially regressive trappings of law reform projects, and LGBT rights discourse in general, in innovative and resistive ways.

Chapter I

Queering Cambodia's Colonial Gender Norms

As the modern inheritor of the erstwhile dominant political power in mainland Southeast Asia – the Angkor Empire (6th – 15th century A.D.) – Cambodia's fortunes as a political entity have nosedived in the centuries that have followed. Today, Cambodia is still in recovery from the horrors of its 28-year period of modern conflict (1965 – 1993), which included periods of foreign occupation, civil war, American carpet bombing, and genocidal totalitarian rule in the form of the Democratic Kampuchea (DK or *Khmer Rouge*) regime from 1975 to 1979. During this period, referred to as '*The Tragedy of Cambodian History*' by historian David Chandler, Cambodia was subject to some of the most brutal examples of Cold War *realpolitik* in the world.¹⁴ Up to two million Cambodians are estimated to have died under the dystopian conditions of the DK regime, which abolished all traces of pre-revolutionary culture and cleansed the new revolutionary society of anybody seen to embody these counter-revolutionary tendencies, including monks, teachers, musicians, artists, and the formally-educated.¹⁵ The legacies of Cambodia's multiple conflicts continue to cast a long shadow over virtually all aspects of Cambodian social, cultural, political, and economic life, including its gender dynamics and conditions for activism. Today Cambodia is ruled by one of the world's longest-serving Prime Ministers, Hun Sen, and his Cambodian People's Party (CPP). Both Hun Sen and the CPP have their roots in the Khmer Rouge, but now preside over the administration of a recently re-built state apparatus which is nominally democratic but authoritarian in most respects, providing a unique and challenging terrain for progressive queer activism.¹⁶

¹⁴ Chandler (1993).

¹⁵ *ibid.*

¹⁶ Strangio (2014); Brickell and Springer (2016).

Gender Regulation in (Post-)Colonial Cambodia

As for the ‘enemy wife’, she is [...] not afraid of her husband; if he gives her an order, she does nothing [...] Those who follow these ways and do not wish to reform when their lives are ended, they fall into the four hells, where they will endure misery and suffering. Delivered from there, they will be reincarnated as *kathoey* [male to female transgender]. They will suffer this ill luck until they are persuaded to lead good lives.¹⁷

Passed down orally since the 14th century, the *chbab srey*, or women’s code, outlines a strict code of conduct for Cambodian women. According to its prescriptions, women are obliged not to question their unfaithful husbands nor speak out in the face of domestic violence, in addition to being subject to a highly conservative code of dress, gait, and general behaviour.¹⁸ Part of the extraordinary enduring influence of the *chbab srey* is attributed to a widespread cultural nostalgia for a period of Cambodian ascendance during the Angkor Empire period.¹⁹ Although there is a common perception that the *chbab srey* represents ‘true’ pre-colonial Khmer society, its history is less straightforward. According to historian Trude Jacobsen, the French colonial administration (1863–1954) ‘incorrectly understood the Dhammayut-influenced literary tradition of the elite to be representative of prevailing social attitudes of the 19th century’ and therefore incorporated a particularly misogynistic written version of the *chbab srey* from 1800 into the colonial education system.²⁰ It was henceforth taught as the true gender relations of pre-colonial society, which the French venerated as a period of lost glory (that could be resuscitated only under appropriate French supervision). In contradiction of this

¹⁷ *Chbab Srey* (1800) verses 168 – 186, translated in Jacobsen (forthcoming) 21.

¹⁸ *ibid.*

¹⁹ *ibid.* 23.

²⁰ *ibid.* 25.

worldview which was propagated by the colonial administration, Penny Edwards notes that earlier in 19th century Cambodia, the hairstyles and clothing of women and men were almost identical, and this convergence ‘troubled colonial efforts to define a national style that was also gendered’.²¹ By the 1940s, a clear binary in male/female clothing and hairstyle emerged under French colonial rule as the authentic Khmer style. Following Cambodia’s independence in 1953, the post-independence government’s pre-occupation with the renaissance of ‘true’ Khmer culture was based largely on this construction of ‘authentic’ Khmerness which had been forged in the colonial gaze.²² Indeed, Sivori and Wieringa note that across the Global South, ‘[p]ost-colonial transitions have invariably featured a construction of sexual dissidence as a threat to national integrity, as the negative counterpart to the ideal subject of the nation-state’.²³ Thus, the *chbab srey* maintained its place in the school curriculum, and its rigid gender norms took on an ever-more prominent role in Khmer nationalism.²⁴ Despite the major conflicts and upheaval which dominated Cambodian society in the decades following its independence, the *chbab srey* would remain a near-constant feature of Cambodian pedagogy. With the exception of the DK era (1975-1979), Cambodian students were forced to memorise the *chbab srey* in its entirety until 2007, when the Ministry of Education reduced the number of verses but retained its place in the curriculum.²⁵ As such, it can be seen that the strict gender binary which persists in modern Cambodia, widely understood as a representation of pre-colonial gender relations, is in fact deeply rooted in the colonial encounter. Despite the major influence which the colonial era had on many aspects of modern Cambodia, Edwards notes that ‘all regimes have promoted the view of the colonial era as a chapter outside the passage of Cambodian time.

²¹ Edwards (2007) 246.

²² *ibid.*

²³ Sivori and Wieringa (2013) 28.

²⁴ Edwards (2007) 9.

²⁵ Anderson and Kelly (2018) 216.

Riding on the wings of postcolonial guilt, this version of history gained a mysterious credibility among Western audiences'.²⁶

Although the *chbab srey*'s role in hindering progressive feminist causes in Cambodia is widely lamented, its influence on queer Cambodians has hardly been acknowledged.²⁷ However, the excerpt at the beginning of this chapter suggests that the Cambodian queer subject has a long history as the 'other' of Cambodia's strict gender binary. French anxieties regarding Cambodian gender roles combined with orientalist impulses to resurrect a perceived 'authentic' (heteronormative and patriarchal) Khmer culture left little room for subjectivities that transgressed the dominant sex/gender norms which were entrenched during the colonial era in Cambodia. In the context of the *chbab srey*, in which the prescribed punishment for failing to adhere to the standards of a properly subservient Khmer wife is to be reincarnated as a *khteuy*, the phantasmic queer is evoked as a disciplinary mechanism to ensure adherence to these rigid and oppressive gender norms. This negative invocation of the *khteuy* as the ultimate 'bad Khmer woman' - though it may not necessarily have represented a majority societal perspective - was fixed in time by the colonial gaze and formalised by colonial education policy. Thus, the *khteuy* has long been essential to the construction of the properly gendered Khmer citizen, and even the *idea* of Cambodia itself.²⁸

Many of my interlocutors highlighted the legacy of the *chbab srey*, in addition to the *chbab pros* (men's code), as being central to the marginalisation faced by queer Cambodians today. One 2015 survey found that 53% of 'straight' Cambodians believe (bad) karma from a previous

²⁶ Edwards (2007) 9.

²⁷ The sole exception to this generalisation can be found in Hoefinger and Srun, n4.

²⁸ Interestingly, in the context of 19th century colonial America, Jonathan Ned Katz analyses how the emergence of notions of a 'true man' and 'true woman' came to define not only western heterosexuality, but were also essential to the discursive creation of 'the homosexual' Katz (1990) 29.

life is responsible for people ‘becoming LGBT’, in line with the suggestion in the *chbab srey* highlighted above.²⁹ A Cambodian UNAIDS staff member suggested to me that because the *chbab* conflate biological sex and gender, they imply strict heteronormative and cisnormative standards, even without ever explicitly recognising the existence of queer lives. The implications of Cambodia’s strict gender norms manifest in various oppressive ways for queer Cambodians to this day. Beginning from a young age, those who are seen to transgress these gender norms face a high prevalence of bullying and harassment in school, by both students and teachers, and must conform to cisnormative uniform policies (which, incidentally, also have their roots in the colonial encounter).³⁰ Most of the difficulties faced by queer Cambodians, however, emanate from their families of origin. A pervasive pressure to enter into heterosexual marriage leaves many with the stark choice of either conforming and marrying, or rebelling and risking being cast out by family.³¹ Transgender men and lesbian women who do marry often endure marital rape.³² The alternative option, family rejection, leads many queer Cambodians into precarious existences, where a general lack of social protection in the neoliberal Cambodian state leaves them highly vulnerable to poverty, violence, and exploitation. Many trans women, in particular, engage in sex work for these reasons, which significantly heightens their vulnerability to state and police abuses, including sexual violence, torture, and extortion.³³ Many of my interlocutors pointed to the impact of misogyny on the differentiated experiences faced by male- and female-sexed queer people in Cambodia. The greater freedom accorded to Cambodian boys and men enables them to pursue same-sex encounters with relative ease as teenagers and even after (heterosexual) marriage, whereas unmarried girls are traditionally denied such independence and may be even be prevented from

²⁹ RoCK (2015) 48.

³⁰ CCHR (2015) 22.

³¹ CCHR (2010) 5.

³² RoCK (2019) 7.

³³ CCHR (2016).

leaving the family home unaccompanied.³⁴ In terms of contemporary public opinion towards queer Cambodians, the dominance of Theravada Buddhism is often credited with the relative tolerance accorded to queer people outside the immediate family, in comparison with countries dominated by more explicitly homophobic religious traditions.³⁵

Queer Politics, Development, and Authoritarian Neoliberalism

From the early 1990s onwards, Cambodia opened its doors (and markets) to the world as part of an envisaged ‘triple transition’ – war to peace, socialist command economy to capitalist market economy, and one-party authoritarianism to multi-party democracy.³⁶ The United Nations Transitional Authority for Cambodia (UNTAC) administration, which governed Cambodia from 1992-93, in particular, triggered an influx of billions of dollars in development aid, and with it, the arrival of an array of international non-governmental organisations (INGOs) and the establishment of thousands of local NGOs, making Cambodia one of the most NGO-dense states in the world.³⁷ The transition to democracy promised by the UN-backed election of 1993 dissipated almost as quickly as it appeared, however, as UN peacekeepers withdrew and left Hun Sen to consolidate his power. One transition which undoubtedly did occur, though, was the transition of the Cambodian state from command to free market economy from 1989 onwards.³⁸ The period of neoliberalisation of the Cambodian state which followed would further contribute to entrenching Hun Sen’s authoritarian rule, according to Simon Springer.³⁹ Springer notes that Cambodian neoliberalism is distinctive insofar as ‘local

³⁴ According to Sivori and Wieringa, ‘women in same-sex relations are more often (kept) invisible and locked in marriages where they are violated and imprisoned’ across the Global South (2013) 31.

³⁵ KHANA (2003); CCHR (2010).

³⁶ Hughes (2003).

³⁷ Hughes (2009).

³⁸ Hughes (2003).

³⁹ Springer (2010).

elites co-opted, transformed, and rearticulated neoliberal reforms [...] through a framework which “asset stripped” foreign resources brought in to support the building of the liberal peace’.⁴⁰ Moreover, part of the distinctiveness of Cambodian neoliberalism is the central role played by NGOs. As Tim Frewer notes, ‘NGOs in Cambodia play a crucial role in constructing consent to new forms of neoliberal governance [...] while also pushing for agendas in line with the post-Washington consensus [including] human rights [and] gender mainstreaming’.⁴¹ This influx of development funds and NGOs would eventually provide both the material and discursive conditions for the emergence of queer politics in Cambodia. As NGOs filled the gaps left by the rollback of state services associated with Cambodia’s neoliberalisation, discourses of development and human rights became central to Cambodia’s new governmentality.⁴²

The heteronormative legacies entrenched through Cambodia’s colonial encounter may have provided the *raison d’être* for the formation of a queer activist movement in Cambodia, but a political and communal queer self-consciousness did not visibly emerge until the late 2000s, instigated via the medical gaze of public health and HIV NGOs responding to Cambodia’s HIV/AIDS epidemic at the time. Vicente Salas is a Phnom-Penh based Filipino doctor and HIV specialist who led the first-ever study of ‘men who have sex with men’ (MSM) in Cambodia.⁴³ He reflected to me on the positive impact of those early interventions: ‘if we have something to thank HIV for, it is the expanded public discourse around sexuality, men who have sex with men, and sex’. Hoefinger and Srun highlight some of the negative consequences which emanated from the public health sector’s HIV/AIDS interventions, which served to construct ‘non-heteronormative people (namely MSM or men who have sex with men) as both

⁴⁰ Springer (2010) 4.

⁴¹ Frewer (2013) 103.

⁴² Springer (2010; 2015).

⁴³ KHANA (2003).

vulnerable victims and disease vectors of HIV [...] In this framing, individual agency is ignored, sexual behavior is decontextualized, and competency undervalued.⁴⁴ Ly Pisey, the coordinator of Cambodia's foremost queer organisation, Rainbow Community Kampuchea (RoCK), is ambivalent about the formative impact of HIV NGOs on Cambodia's queer community. On one hand, she recognises that they delivered an essential service to people who were in dire need of support at a critical time, but on the other hand:

It led to lots of local NGOs springing up to be local partners who didn't understand SOGI at all, and just saw these trans women as 'beneficiaries'. But they are more than carriers of HIV. They are people and they can be leaders of their own lives. For World AIDS Day, etc., they used to receive *per diem* [from HIV NGOs]. Then they became addicted to it. Then when we try to organise a movement, to create a self-sustaining struggle with real community ownership, it becomes really difficult. Money corrupts our movement. We found that many trans men and lesbians were not so corrupted [because they had not interacted with HIV NGOs], so we could organise more organically with them.

From 2003 onwards, HIV NGOs in Cambodia set up networks among 'key populations' of 'at-risk' MSM and transgender women and began to organise events and trainings on sexual health.⁴⁵ The initial interactions between HIV NGOs and their 'beneficiaries' provided the basis for the first Pride celebration to be held in Cambodia in 2003, in the form of a small private party.⁴⁶ As the 2000s wore on, HIV NGOs in Cambodia began to adopt a more holistic approach to HIV prevention. Whereas their initial studies focused on sexual behaviour,⁴⁷ this

⁴⁴ Hoefinger and Srun (2017) 2.

⁴⁵ Interview with Vicente Salas, July 2019.

⁴⁶ *ibid.*

⁴⁷ See, for example: KHANA (2003).

evolution involved the embrace of an LGBT rights-based approach as a key strategy to combat HIV infection.⁴⁸ These developments led Barbara Earth to note in 2006 that in Cambodia, ‘concern with labels and identities is a very new development; a direct result of discussions about sexualities in relation to HIV’.⁴⁹

It was in this context that in 2009, Cambodia’s queer community began to organise as a social movement when a group of Cambodian NGO staff and foreign development volunteers came together with the aim of organising an inclusive Pride celebration which explicitly spoke in terms of equality, rights, and freedom, in contrast to the earlier Prides’ focus on HIV prevention and parties catering to gay men. After Pride 2009, the ad-hoc Pride committee decided to build upon its success by forming a community group with the aim of building solidarity and fighting discrimination. And thus, RoCK, Cambodia’s leading queer community organisation to this day, was born. After much internal debate, in June 2009 RoCK decided not to register as an NGO due to a recognition of the pitfalls of formalisation in the Cambodian context, and a desire to maintain its grassroots nature. According to Springer, ‘Cambodian civil society suffers from being highly professionalized, legalistic, technocratic, and extremely hierarchical with authoritarian-style internal governance, where the top often represents an international patron’.⁵⁰ From its earliest beginnings, RoCK organisers took a critical approach not only to Cambodia’s authoritarian government and cultural heteronormativity, but also the NGO industry and the patron-client donor relations which dominated it. Tim Frewer notes that ‘[o]n the side of donors, think tanks, local scholars and public opinion, the overwhelming attitude towards the role of NGOs in the development process is [...] overwhelmingly confident’ in Cambodia.⁵¹ As such, in the context of Cambodia’s heavily institutionalised and donor-driven

⁴⁸ Interview with Vicente Salas, July 2019.

⁴⁹ Earth (2006) 269.

⁵⁰ Springer (2010) 38.

⁵¹ Frewer (2013) 99.

NGO industry, where understandings of ‘civil society’ and ‘NGO’ are generally conflated, the decision not to formalise as an NGO was a radical act.⁵²

It was in the context of Pride 2009 and the foundation of RoCK that LGBT rights discourses rose to prominence in Cambodia, though as will be explored in the following chapters, this did not entail a straightforward implantation of universal values and identity constructs. Coinciding with the increasing prominence of LGBT rights discourse in Cambodia, in 2009 the Cambodian Center for Human Rights (CCHR) established its SOGI Project, receiving funding from Swedish Development Agency (SIDA)-funded RFSU, and began to produce human rights reports on the situation facing Cambodia’s LGBT population.⁵³ According to Christine Klapeer, LGBT rights has ‘moved from being on the complete margin, or even absent, to the center of international development politics’ in the last decade, specifically noting SIDA’s adoption of SOGI as ‘an important human rights issue’ in 2005.⁵⁴ Aside from the SIDA-funded RFSU, there was very little interest in LGBT rights in Cambodia on the part of international donors until 2017, when changes in the domestic political context and the aforementioned trends in international development politics combined to reshape the landscape for queer politics in Cambodia. In November 2017, Cambodia’s Supreme Court dissolved the country’s only viable opposition party, the Cambodia National Rescue Party (CNRP). The CNRP’s dissolution was the culmination of a major crackdown on independent and opposition voices in Cambodia, which included the closure or takeover of the country’s main independent media outlets, the expulsion and shutdown of several outspoken NGOs, and the arrest and exile of many prominent politicians and human rights activists. Triggered by ruling party fears of a CNRP victory at the national election in 2018, the events condemned as the ‘death of

⁵² Hughes (2003). Note: RoCK later formalised as an NGO in 2014 as the Cambodian government advanced its Law on Associations and NGOs which made non-registration of any association illegal.

⁵³ CCHR (2010).

⁵⁴ Klapeer (2018) 3.

democracy' in Cambodia would counterintuitively provide the context for a newfound prominence for LGBT rights discourse in the country.⁵⁵

All of the activists I spoke to highlighted the recent surge in attention being paid to LGBT rights issues in Cambodia by donors and INGOs, and many felt that this was in response to the crackdown which occurred in the preceding year, which encompassed significant restrictions upon human rights organisations working in sensitive areas such as land rights and freedom of expression. Donors and western states seeking to remain engaged in Cambodia and maintain relations with the government have instead looked to less sensitive human rights issues to support. Although a few of my informants portrayed this newfound attention to LGBT issues in a positive light, several activists (particularly those affiliated with RoCK) highlighted it as one of their main fears for the future of the movement. As warned by Klapeer, '[g]rowing attention to sexual and gender dissidents in the field of development politics and development cooperation therefore provokes critical question about what [...] "side effects" and risks may arise when LGBTIQ rights enter the field of development'.⁵⁶ Leaphy, a RoCK activist, voiced some of her concerns related to what she termed the 'funding flood':

LGBT is becoming a hot topic. More UN agencies and NGOs are organising research, meetings, and trainings, and they all want to grab at the community for their different purposes. Practically, [the community] are getting fed up, they feel like objects being dragged around. This could break our community.

⁵⁵ Holmes (2017). For an overview of the crackdown, see: Human Rights Watch (2018).

⁵⁶ Klapeer (2018) 6.

Thida Kuy, a trans man and activist who coordinates a queer community page on Facebook, explained the constant need to maintain good relations with the authoritarian government in order for activists to be able to continue their work. He is concerned that as more donors and NGOs focus on LGBT rights, the movement's narrative becomes more difficult to control: 'LGBT issues could become *hot*', i.e. politically sensitive in the eyes of the government and thus vulnerable to backlash and state repression. Such a backlash could be triggered by NGOs with little understanding of queer issues suddenly engaging in LGBT rights programming. Collette, a RoCK co-founder and board member, explained:

We know the level of discrimination that exists in Cambodian society, including among NGOs and the government. It doesn't take much to provoke a [homophobic] backlash, and with more actors getting involved who are just chasing funds without understanding the issues, there are serious risks to the progress that has been made. The winds can easily turn.

Cambodia's queer activists have managed to maintain progress in respect of societal acceptance by carefully navigating a highly fraught landscape for progressive activism. Leahy explained some of the strategies which RoCK has undertaken in order to open up space for their activism:

We have to be creative to do our work. We try to stay rooted in the communities through our membership, understand local concerns in the provinces, and build trust with local authorities. We try to maintain independence from all the political parties and say that SOGI is a cultural or a social issue, not a political issue.

Leaphy's explanation that 'SOGI is not a sensitive issue for the government because it doesn't impact the profits and personal benefit of the people in power' adds Cambodian credence to Nancy Fraser's assertion that oppression of queers is a form of misrecognition, rather than maldistribution.⁵⁷ While the non-redistributive nature (or possibly, strategic messaging) of Cambodian queer politics has ensured that queer activism has so far escaped any significant authoritarian state repression compared with issues deemed more sensitive, it also leaves queer politics vulnerable to co-option by political elites. Indeed, several of my interlocutors expressed fears of *pinkwashing* following recent government positivity in relation to LGBT rights. Underlining the precarity of the progress made by Cambodia's queer activists in the past decades in the context of the authoritarian Cambodian state, Sokha Khem, the owner of *Blue Chilli*, Cambodia's first gay bar, recalled an incident from 2010:

One night, 30 or 40 police arrived to the bar. They arrested me and all my staff and took us to the police station. The local police chief told me that they were going to shut the bar down because it's against Cambodian culture and said that I wanted to turn men into women. I was kept there for three hours, but I knew they just wanted my money, and they eventually asked for a percentage of my income. I argued and told them it was my right to run a gay bar. I threatened to tell the *Phnom Penh Post* and the *Cambodia Daily* [newspapers] about their corruption, and eventually they backed down.

Progressive queer politics in Cambodia advances in a state of constant precarity. Activists walk a tightrope towards queer liberation, with homophobic backlash and authoritarian repression providing constant dangers below. The winds of development, promising to take the cause forward, threaten to destabilise progress at every step. In this chapter I have sought to centre

⁵⁷ Fraser (1997).

the accounts of my interlocutors to analyse the social, political, and economic context for the emergence of queer politics and LGBT rights discourse in Cambodia. In the following chapter, I turn towards a critical analysis of the manner in which LGBT rights discourse interacts with Cambodian queer subjectivity-formation, and present the manner in which Cambodia's queer activists navigate and resist the universalising tropes and epistemically violent tendencies of globalised LGBT rights discourse.

Chapter II

LGBT Subject-Formation and Epistemic Resilience

Based on faith in universal human rights, [LGBT rights] advocacy culminates in the globalization of a ‘global gay’ identity: ‘[a] claim to “gay and lesbian rights” as human rights depends on an understanding that the identities “gay” and “lesbian” are universal in the sense that they are present in all cultures, not just in the west.’⁵⁸

(Trans)Forming the Cambodian LGBT Subject

The only surviving first-person account of daily life in the Angkor Empire, written by Chinese envoy Zhou Daguan, noted the high prevalence of non-heteronormative people he encountered in 1296. He observed, ‘there are a lot of effeminate men in this country who go around the markets in groups of a dozen or so. They frequently solicit the attentions of Chinese [men] in return for generous gifts’.⁵⁹ As noted in the previous chapter, references to *khteuy* have also appeared in Cambodian literature as far back as 1800, at least. These accounts of queer subjectivities throughout Cambodian history appear to contradict the view held by over one-third of Cambodians that people ‘become LGBT’ because of ‘foreign influence’,⁶⁰ yet, as Pisey told me: ‘Frankly, LGBT categories *don’t fit* in Cambodia. They are a copy and paste from the international space. In my opinion, these categories just encourage that people are judged from the outside, not from the inside’. Pisey’s statement hints at an epistemological incongruence between LGBT rights discourse and Cambodian understandings of gender and sexuality, and

⁵⁸ Kapur (2018) 60.

⁵⁹ Zhou (1296) 55.

⁶⁰ RoCK (2015) 48.

suggest that the perceived *foreignness* of ‘LGBT’ may be more than just a homophobic trope. Phong Tan’s ‘Ethnography of Male to Male Sexuality in Cambodia’, the only such ethnographic study of its kind, also highlights the fact that ‘[f]or Khmers, the sexual identity of a man is not based on his sexual behavior but rather on his *charek* "character, personality", traits that are believed to be innate and fundamental’.⁶¹

The globalisation of LG(BTQ) identities is a subject which generates significant controversy in activism and academia. Many (especially Euro-American) LGBT rights advocates take the ‘coming out’ of increasing numbers of LGBT people in the non-Euro-American world as evidence of the expanding liberation and visibility of an *always-already* existing global LGBT population.⁶² Such perspectives, however, overlook the highly context-specific roots of LG(BT) identity in the medical and legal discourses of 19th century Euro-America.⁶³ Moreover, these perspectives ignore the severe violence associated with the enforced expansion of Euro-American regimes of knowledge/power during the colonial era. In addition to the literal violence associated with, for example, the criminalisation of sodomy in many colonies, colonialism’s regimes of gender binarism and compulsory heterosexuality were also a form of *epistemic violence*.⁶⁴ As such, colonialism served to marginalise subjectivities and life-worlds which transgressed not only the heteronormative juridical regimes spread through colonialism, but also the LGBT rights discourse which later emerged in response to it in the Euro-American metropolitan centres.⁶⁵ Joseph Massad has specifically critiqued the role played by international LGBT NGOs, which he collectively refers to as ‘The Gay International’, in the discursive expansion of LGBT identities in non-Euro-American contexts:

⁶¹ UNESCO & Tan (2005) 24.

⁶² Rao (2014; 2015).

⁶³ See n6.

⁶⁴ See: Spivak (1988).

⁶⁵ See, for example: Hamzić (2015).

[I]t is the discourse of the Gay International that both produces homosexuals, as well as gays and lesbians, where they do not exist, and represses same-sex desires and practices that refuse to be assimilated into its sexual epistemology [...] The very ontology of gayness is instituted in a discourse that could have only two reactions to the claims of universal gayness: support them or oppose them without ever questioning their epistemological underpinnings.⁶⁶

Others have emphasised the existence and endurance of indigenous subjectivities which transgress the homonormativity, binarism, and fixity of the LG(BT) paradigm in contexts as diverse as North America, Pakistan, and Indonesia; such accounts serve to disrupt the Eurocentric universalism of LGBT rights discourse while working toward alternative forms of transnational queer solidarity built on more genuinely multi-cultural foundations.⁶⁷ Cruz-Malavé and Manalansan point out the double-bind of globalised LGBT rights discourse for activists in the Global South:

While globalization is seen to liberate and promote local sexual differences, the emergence, visibility, and legibility of these differences are often predicated in globalizing discourses on a developmental narrative in which a premodern, pre-political, non-Euro-American queerness must consciously assume the burdens of representing itself and others as “gay” in order to attain political consciousness, subjectivity, and global modernity.⁶⁸

⁶⁶ Massad (2002) 363.

⁶⁷ Hamzić (2015); Morgensen (2011).

⁶⁸ Cruz-Malavé and Manalansan (2002) 5.

Bearing these perspectives in mind, I now turn towards an examination of queer subjectivity-formation in relation to LGBT rights discourse in Cambodia, an analysis which benefits from an understanding of Michel Foucault's idea of subjectivation. According to Foucault, people are *subjectivated* through discourse, meaning they are simultaneously formed as subjects and subjected to power relations through the effects of discourse. He explains:

This form of power applies itself to immediate everyday life which *categorizes* the individual, marks him by his own individuality, *attaches him to his own identity*, imposes *a law of truth* on him which he must recognize and which others have to recognize in him. It is a form of power which makes individuals subjects.⁶⁹

As such, the globalisation of LGBT rights discourse can be conceptualised as subjectivating already-existing non-heteronormative and gender transgressive subjectivities in the non-Euro-American world *as* LGBT rights-holding subjects. And although this process of subjectivation may carry the promise of rights and equality for the LGBT subject, it also ensures their subjection to a restrictive and colonial form of knowledge/power. Furthermore, although discourse may be material in its effects, it does not have agency *per se*, and as such it is perpetuated through the actions of its agents, as suggested by Massad. The manner in which these agents of universal LGBT rights discourse (re)produce LGBT identities benefits from an analysis of Judith Butler's theory of performativity.⁷⁰ Butler's initial deployment of performativity was concerned with describing the reproduction of heteronormativity; however, the logics of performativity can equally be applied to the reproduction of the Euro-American *homonormativity* embedded in LGBT rights discourse.⁷¹ According to Butler, gender is

⁶⁹ Foucault (1982) 212 (emphasis added).

⁷⁰ Butler (1990; 1997a). For an excellent discussion on the relationship between subjectivation and performativity, see: Youdell (2006).

⁷¹ See: Duggan (2002).

produced and reproduced through the repetition of certain speech acts. In respect of the globalisation of LGBT rights discourse and universal LGBT identifications, I will suggest that such speech acts can be found in sites including human rights reports, LGBT rights trainings, and workshops. Indeed, my informants' retelling of the early days of Cambodian queer activism are replete with just such performative moments. One of my informants, Collette, is an Irish lesbian woman who was intimately involved in the organisation of Pride 2009 and the subsequent formation of RoCK. She recalls co-organising a first-ever workshop for 100 rural LGBT Cambodians following Pride, in an effort to seek a legitimate mandate for RoCK. At the workshop, organisers asked the participants go to different rooms based on their identities, e.g. gay men would go to Room A, trans men to Room B, etc. The organisers were confounded when the people they perceived to be trans men categorised themselves as lesbians. Pisey, a co-organiser of the event, pointed out to Collette that these participants referred to each other using masculine familial terms such as *bong / p'oun pros* (older / younger brother), *pou* (uncle) and *taa* (grandfather). Based on this observation, Pisey paused the workshop in order to ask the participants to think through and articulate their gender, and they ultimately defined themselves as men. Collette describes this moment as a 'major learning curve' for the organisers regarding the epistemological incongruences between LGBT rights discourse and (rural) Cambodian understandings of gender and sexuality, and reflected, 'those of us who organised that Pride must confess to being the ones who brought that [LGBT] terminology into the discussion'. According to Collette:

They were calling themselves lesbians because they had learned that word from Pride, and they thought, *that's what we must be*. They had never heard of the term trans man; they thought trans meant trans women only [because the HIV NGOs had only worked with trans women]. Our workshop plan and the questions we asked had plenty of

assumptions built into them. We then realised these were terrible assumptions to have made. These ‘lesbians’ weren’t lesbians.

In respect of terms such as ‘lesbian’ and their uses in the postcolonial world, Kate King writes that ‘[n]o uses are neutral and purely descriptive, although users intend them to be and long for such possible categories’.⁷² In this Cambodian postcolonial context, the unequal power relations inherent in the contact between foreign development workers and educated, urban Cambodian activists on one hand, and rural Cambodians who have had little or no exposure to LGBT discourse, on the other, can be seen to have a particularly powerful performative effect.

Similarly, the first ever report on LGBT rights in Cambodia, published by the Cambodian Center for Human Rights in 2010, was titled, ‘*Coming Out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia*’.⁷³ The report title uncritically adopts the Euro-American idea of ‘coming out’ and specifically assumes the universality and applicability of LGBT identities in Cambodia. Eve Kosofsky Sedgwick’s analysis of the ‘performative aspects of texts’ encourages deeper reflection of the implications of human rights reports such as these; rather than passive descriptions and translations of pre-existing facts, they can also be understood as ‘sites of definition creation, violence and rupture in relation to particular readers’.⁷⁴ In respect of ‘coming out’, Ratna Kapur notes:

The influential framework of ‘coming out’ narratives tends to repudiate the varied genealogies and modalities of queer subjectivity, instead locating the issue of sexuality within the narrow dialectic of visibility and invisibility. It captures neither the very real

⁷² King (2002) 34.

⁷³ CCHR (2010).

⁷⁴ Kosofsky Sedgwick (1990) 3.

and particular ambivalences, dangers, dilemmas and crises of homoerotic experience, nor the local imperatives and complexities negotiated by queers in postcolonial contexts.⁷⁵

In addition to the report, another key component of the toolkit of LGBT rights interventions is the human rights training or workshop, which also emerges as a key site for the performative subjectivation of universal LGBT subjects. In respect of identification as transgender, Pisey reflected that ‘the older generation just says, ‘I am a man’, not a ‘trans man’, except for a couple of activists who have been around SOGI trainings for years’.

In the postcolonial Cambodian context of authoritarian neoliberal development, rights discourse and its attendant promises of justice and equality are particularly attractive. Moreover, as the global *lingua franca* for articulating queer claims, the embrace of LGBT rights discourse brings important material benefits for resource-constrained movements. As such, the subjectivating effects of LGBT rights discourse are amplified in Cambodia. The country’s turbulent recent history, involving the near total destruction of pre-totalitarian cultural memory,⁷⁶ further contributes to constructing this unique arena for postcolonial LGBT subjectivation *par excellence*. This often occurs despite the culturally sensitive and generally benign intentions of the agents of discourse; indeed, as explained by Butler, ‘juridical power *inevitably* produces what it claims merely to represent.’⁷⁷ As will be demonstrated in the section that follows, however, the globalisation of LGBT identities and the ascendance of LGBT rights discourse in Cambodia has not taken the form of a straightforward replacement of the ‘local’

⁷⁵ Kapur (2018) 67.

⁷⁶ Penny Edwards notes that under the Khmer Rouge, ‘the past was banned in many ways. Nostalgia was renamed memory sickness (*cheu satearum*), a counterrevolutionary condition treatable by execution [...] Pre-DK songs were forbidden, as was money.’ (2007) 2.

⁷⁷ Butler (1990) 5 (emphasis added).

by the ‘global’; rather, the encounter with universalist discourse has opened up spaces for epistemic resistance and the formation of radical queer consciousness.

Resilient Subjectivities and Epistemic Resistance

Different forms of oppression or domination generate equally distinct forms of collective resistance, mobilization, subjectivity, and identity, which invoke differentiated notions of justice and dignity. In these types of resistance and their local/global articulation through procedures of intercultural translation resides the impulse towards counter-hegemonic globalization [...] The collective identities associated with these different forms of struggle are the emerging result of the struggles themselves, even when based on pre-existing conditions or collectives.⁷⁸

Boaventura de Sousa Santos’ account of counter-hegemonic globalisation speaks to the heterogeneity of subjectivities and forms of resistance which are navigated throughout the postcolonial world in relation to always context-specific conditions. It serves as a powerful rebuttal to the universalist tropes of both human rights discourse, on one hand, and the equally problematic erasures perpetrated by certain cultural critics such as Joseph Massad, on the other. Massad’s account of the ‘Gay International’, by framing the expansion of LGBT rights discourse as a one-way imposition by the ‘global’ on to the ‘local’, problematically denies the agency of queer activists and activism in the non-Euro-American world. In contrast to Massad’s view, Sivori and Wieringa remind us in the context of queer subjectivities in the Global South:

⁷⁸ De Sousa Santos (2008) xlvi.

The study of sexualities transnationally demands an effort to look at global South locations not merely as places where metropolitan sexual politics have been applied, and sexual subjects have been colonized, but as contexts where the sexual realm has been invented and reinvented with specific meanings.⁷⁹

Bearing this in mind, this section seeks to analyse the unique ways in which Cambodian queer activists resist not only heteronormative attitudes in Cambodian society, but also the ‘dark sides’ of the LGBT rights and development discourses which they must navigate. In these precarious conditions, uniquely Cambodian queer spaces for resistance open up, and activists’ navigations of these spaces result in the formation of *sui generis* subjectivities and communal critical consciousness. Butler argues that although hegemonic discourses of gender are reproduced through performative speech acts, they are inherently vulnerable to reinscription, and ‘the rehearsal of the conventional formulae in non-conventional ways’ carries ‘insurrectionary potential’.⁸⁰ According to Butler, insurrectionary moments are essential to the ‘subversive territorialization and resignification of dominant social orders’.⁸¹ In the context of Cambodian queer politics, these insurrectionary moments can be found in the resistance to hegemonic LGBT identity constructs, among other manifestations.

There is widespread agreement among Cambodian queer activists that LGBT terminology and identity constructs neither accurately describe Cambodian queer subjectivities nor have any equivalent translations in the Khmer language. This assertion is supported by a 2015 survey commissioned by RoCK, which suggested an overwhelming rejection of restrictive identity categories on the part of its queer respondents: ‘the majority of [queer respondents] state that

⁷⁹ Sivori and Wieringa (2013) 34.

⁸⁰ Butler (1997a) 145.

⁸¹ *ibid* 154.

they want to be called by name, implying that they *do not want to be labelled*.⁸² Most respondents stated that they would prefer to be referred to by their (generally gendered) Khmer-language familial terms, such as *chae* (sister), *bong* (older sibling), *pa* (father), etc. Outside of these familial terms, the most popular choice of terminology was *khtuey*, the ancient Khmer term which has endured through the centuries. *Khtuey* is translated as ‘male to female transgender’ in Trude Jacobsen’s work (cited earlier in this paper), although the term has a far more ambivalent meaning and cultural understanding in Cambodia. Phong Tan’s 2008 ethnography analysed the multiple understandings and meanings of the term *khtuey*. She explains:

Although everyone has a certain way of defining *khtuey*, it is noteworthy that the perception is diverse and that people do not know precisely what it is. It is also noted that although people speak about the *khtuey* personality or sexual attributes, no one uses the term to make any allusion to sexual behavior. [...] The word *khtuey* is viewed as very derogatory by those who identify themselves as such and who take this term as an insult when it is uttered by a non-*khtuey*. On the other hand, it is used by themselves unhesitatingly in a restricted circle or when the audience is made up of *khtueys* or their associates.⁸³

The diverse, non-categorical understandings of *khtuey*, in addition to its contrasting connotations based on the subjectivity of the speaker, bears a resemblance to the ‘elasticity’ of the English term *queer*.⁸⁴ Its potentially derogatory connotation depending on the subject-position of the speaker has made NGOs shy away from its usage. For example, the first major

⁸² RoCK (2015) 37 (emphasis added).

⁸³ UNESCO and Tan (2005) 23.

⁸⁴ See: Kapur (2012).

report on 'MSM' in Cambodia in 2003 states: 'Owing to the derogatory content of the word *kteuy* from the point of view of transgender, they call themselves by different names, the most common of which is *sray sros*'.⁸⁵ Phong Tan's ethnography challenges this assertion, however, and suggests that *sray sros* was in fact largely a construction of the NGO industry. Her research noted:

[T]he expression *srei sros* that means "pretty girl" emerged as an expedient for organizations focusing on AIDS epidemic prevention and who work in the transvestite *khteuy* circles in Phnom Penh. The social workers lacked an appropriate vocabulary to refer to *khteuy*s in general, as the word *khteuy* itself is deprecatory when used by a non-*khteuy*. [...] Although this word suits the professionals, it is known only by a very small segment of the population, that targeted by the organizations. Even in that group, the expression does not really suit everyone.⁸⁶

The ongoing reluctance of a large proportion of Cambodia's queer population to adopt globalised identity constructs and submit to the epistemic colonisation of their life-worlds, in spite of the subjectivating force of hegemonic rights and development discourses in the Cambodian postcolonial context, speaks to the resilience of pre-colonial queer subjectivities.⁸⁷ *Khteuy*, due to its derogatory connotation when uttered by an outsider, is a term which carries *inherently radical potential*, enabling the preservation of a space, identity, and life-world which refuses assimilation and co-option. None of my urban interlocutors identified as *khteuy*, preferring the more recent Khmer-language innovations which emerged in the 2000s. Many of the terms which emerged from this period also defy and challenge the all-encompassing

⁸⁵ KHANA (2003) 12.

⁸⁶ UNESCO and Tan (2005) 36.

⁸⁷ For an excellent overview of the unique queer subjectivities which have emerged in modern Thailand, see: Jackson (2000).

identity constructs offered by the LGBT paradigm. For example, the popular *sray sralanh sray / pros sralanh pros* (women who love women / men who love men), when spoken is always a *doing*, rather than a *being*; as a descriptor, it becomes *koat sralanh pros* (s/he loves men). In contrast to the LGBT episteme ('he is gay'), these linguistic constructions leave more space for non-uniformity in queer lives, and tend away from the pathological, inherent, biological tropes that haunt LGBT discourse. These terms not only provide a vocabulary upon which communal existence and political claims can be framed (as LGBT rights discourse does), they simultaneously preserve additional radical potential in that they can more readily serve as a challenge to societal heteronormativity more broadly through their linguistic suggestion of (everybody) *doing* sexuality/gender, rather than merely *being* a minority in need of state protection.

In this chapter I have analysed the epistemic resilience and resistance which have manifested among Cambodian queer subjects through the ongoing encounter with universalist LGBT rights discourse, despite its hegemonic status and ability to subjectivate LGBT *rights-holder* subjectivities. In the next chapter, I examine LGBT rights discourse's tendency toward *rights-seeking* activism in the form of legal reform projects undertaken by Cambodian queer activists, and foreground the innovative forms of subversive *alegal* resistance grounded in critical local knowledge which have emerged in response to Cambodia's specific socio-legal conditions.

Chapter III

Law, Rights and Resistance in Cambodian Queer Politics

Domestic law is mostly silent in relation to LGBT people in Cambodia. Same-sex behaviour and relations have never been criminalised, nor are there any legislative anti-discrimination measures in place.⁸⁸ Article 31 of the Constitution of the Kingdom of Cambodia (1993) guarantees equality and non-discrimination ‘regardless of race, color, sex, language, religious belief, political tendency, national origin, social status, wealth or other status’, without specifically mentioning SOGI. Legal recognition of same-sex marriage is precluded by the wording of Article 45, which states, ‘Marriage shall be conducted according to conditions determined by law based on the principle of mutual consent between one husband and one wife’. Just as Cambodian gender norms have been shaped through Cambodia’s colonial encounter, its legal system, including the legal regulation of gender, have been shaped through what might be termed its *postcolonial encounter*. The existing Cambodian legal system is a product of the post-conflict era of the early 1990s, which saw the United Nations taking over the entire machinery of the Cambodian state under the guise of UNTAC. Under UNTAC, a new constitution, criminal code, and civil code were introduced with significant amounts of foreign ‘technical assistance’ from Cambodia’s former colonial ‘protector’, France, and its erstwhile war-time occupier, Japan.⁸⁹ The 1993 constitution reads as a paragon of liberal virtue, promising respect for human rights, democracy, the separation of powers and the rule of law, and even adopting a monist system for the adoption of international human rights treaties.⁹⁰

⁸⁸ CCHR (2010; 2012). As the French Protectorate in Cambodia commenced after the French Revolution of 1791 and the adoption of the 1810 French Penal Code which removed the crime of sodomy, same-sex relations were never by criminalised by the French colonial administration in Cambodia. See: Hepple (2012) 54.

⁸⁹ See: Peng et al (2003).

⁹⁰ Article 31. Confirmed by Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

The liberal, rights-respecting, multi-party democracy envisioned by Cambodia's constitution is a distant cry from the daily realities of law and legality in Cambodia, however. Historians and contemporary scholars of Cambodia tend to agree that Cambodia has never in its history had a government ruled by law.⁹¹ And although the UNTAC era involved the transformation of Cambodia's written laws, 'the authoritarian state apparatus [...] remained intact' and the promised liberal democracy never materialised.⁹² Sophal Ear argues that during the UNTAC era, donor belief in 'rule of law orthodoxy' was based on a 'fatally flawed' set of assumptions in Cambodia.⁹³ Un Kheang further explains that 'the Cambodian state is built not on rational institutions but on patronage, a political pattern in which a leader's power comes from his ability to capture and maintain loyalty of key sections of political elite by fulfilling their material aspirations'.⁹⁴ According to Kheang, 'the absence of institutional constraint coupled with a wider socio-political environment dominated by patronage and corruption blurs even judges' perceptions of what constitutes legality and illegality'.⁹⁵ Despite the dissonance between Cambodia's post-conflict constitutional arrangement and the authoritarian continuities of governance, law, and legality in Cambodia, the 1993 constitution nevertheless became a key reference point through which activists of all stripes could articulate and legitimise their political claims. In the eyes of some Cambodians, the liberal nature of the constitution became a marker of modernity and cosmopolitanism which demanded a certain form of social progress, even if it didn't reflect an existing reality. This was reflected in the words of the revered former King Norodom Sihanouk in 2004, when, responding to having seen same-sex marriages celebrated in San Francisco on television, framed his support for

⁹¹ Chandler (1993; 2009); Öjendal and Lilja (2009).

⁹² Ear (2012) 24.

⁹³ Ear (2012) 43.

⁹⁴ Kheang (2009) 81.

⁹⁵ Kheang (2009) 82.

marriage equality in Cambodia through the demands of its new constitution: ‘Since the second Kingdom of Cambodia has chosen since 1993 to be a ‘liberal democracy’, I believe that the second Kingdom must allow, if they so choose, marriages between man and man or woman and woman’.⁹⁶

LGBT Rights Discourse and Legality in Cambodian Queer Politics

It is not self-evident that sexual recognition/legitimacy through rights acquisition ensures greater freedom for the entitled sexual subject. Instead, this understanding fails to take the discursive operations of human rights into account – how human rights are implicated in power, operating as technologies of governance that produce and inscribe the very subject to be governed, and the choices available to her.⁹⁷

On July 5th 2019, queer activists in Cambodia celebrated in response to news that the Cambodian government had accepted all nine SOGI-related recommendations made to it in the course of its second Universal Periodic Review (UPR) at the Human Rights Council (HRC) in Geneva.⁹⁸ Under the UPR, states are subject to a peer review by other states on the basis of their human rights record, and receive recommendations to implement human rights and legal reforms. Following a campaign of sustained advocacy on the part of Cambodian civil society groups, SOGI-related recommendations were received by Cambodia for the first time, made by nine states including Sweden, Canada, and the Netherlands. The recommendations included the adoption of a same-sex marriage law, a gender recognition law, and an anti-discrimination law. Leading Cambodian and international NGOs jointly welcomed the government’s decision

⁹⁶ Vachon and Doyle (2004).

⁹⁷ Kapur (2018) 69.

⁹⁸ ILGA (2019).

at the HRC.⁹⁹ The basis for these recommendations was a joint UPR submission made by a coalition of NGOs led by RoCK and CCHR, giving an overview of the situation of LGBT rights in Cambodia and making a series of recommendations.¹⁰⁰ Although this joint submission included an analysis of both ‘legal’ and ‘social’ discrimination, the overwhelming focus was on the legal situation and the vast majority of the NGOs’ recommendations were for legal reforms, including same-sex marriage.¹⁰¹ Several of my informants pointed to the acceptance of these recommendations as a key reason for their hopeful perspectives on the future, in addition to highlighting it as a marker of the progress which Cambodia has already made in respect of LGBT rights.¹⁰² This moment in the history of Cambodian queer politics was significant on multiple levels. As an articulation of queer demands for liveable lives uttered through the hegemonic discourses of human rights and liberal legalism, in an arena representing both imperial power and liberal utopianism, this moment appeared to simultaneously promise both queer liberation and LGBT subjection.

According to certain queer critiques, legal reform projects which seek inclusion in hegemonic institutions (such as marriage) and which ask for state recognition through the granting of rights serve to maintain and even entrench, rather than contest, oppressive forces and institutions in society. As such, LGBT rights legal activism can be said to fall within the paradigm of *homonormativity*, which ‘does not contest dominant heteronormative assumptions and institutions but upholds and sustains them’.¹⁰³ According to Aeyal Gross, this entails ‘formal access to a number of institutions of a preservative nature and a conception of ‘liberty’ that, in

⁹⁹ *ibid.*

¹⁰⁰ CCHR, RoCK and Destination Justice (2018).

¹⁰¹ *ibid.*

¹⁰² Note: These responses were likely influenced by the fact that my interviews took place very soon after the UPR recommendations were accepted.

¹⁰³ Duggan (2002) 179.

essence, permits the maintenance of prejudices and broad inequality'.¹⁰⁴ A foundational aspect of queer critique – particularly relevant to any analysis of LGBT rights activism in non-Euro-American contexts – is an understanding of the discursive 'invention' of homosexuality and heterosexuality in 19th century Euro-America; such an understanding serves to destabilise and denaturalise the categories of lesbian, straight, etc. It follows from such an analysis that rights claims based on such identity constructs – i.e. LGBT rights legal activisms – reinforce an arbitrary gender / sexuality regime based on false and oppressive binaries. Ratna Kapur notes that legal recognition 'produces a celebratory moment – and, no doubt, one to which postcolonial queers or those denied subjectivity or recognition as legible subjects or as having 'real' relationships also aspire – it is partly secured through an alignment with normative social arrangements'.¹⁰⁵ While LGBT rights legal reform projects are often pursued based on a belief in their subjectivating potential, i.e. a belief that legal reform can productively transform the queer subject beyond the direct regulatory effect of a given law, Mayur Suresh argues that we 'overstate the power of the law in constituting subjectivity', and highlights 'a world that is beyond the law and the psyche is not totally colonised by the law'.¹⁰⁶ Elsewhere, Kapur concedes that LGBT rights legal reform projects remain a 'compelling and important aspect of the queer political project', but argues that they have 'largely failed to challenge the normative framework within which sexuality is addressed'.¹⁰⁷ Vanja Hamzić, alternatively, argues that 'it is difficult to perceive or recuperate any law and law-making activity – either on national or supranational levels as not *always already* neoliberal'.¹⁰⁸ Katherine Franke suggests that although legal projects can be emancipatory in effect *before* they are taken up by the state,

¹⁰⁴ Gross (2015) 87.

¹⁰⁵ Kapur (2018) 70.

¹⁰⁶ Suresh (2011) 467.

¹⁰⁷ Kapur (2017) 2. Note: Kapur's inclusion of Cambodia in a list of countries in which successful LGBT legal reform campaigns have been undertaken appears to be mistaken. She claims 'the struggle for rights claims has challenged the pathologising and criminalising of homosexuality, resulting in legal recognition in countries such as Nepal, *Cambodia*, Chile, South Africa, several European countries and the US'(2017) 3.

¹⁰⁸ Hamzić (2017) 190.

formal recognition of LGBT rights should trigger ‘a deliberate effort to counteract, if not sabotage, the pull of the state to enlist rights-based movements into its larger governance projects’.¹⁰⁹

While each of these critiques are relevant to Cambodian activists’ engagement with the UPR process in certain respects, they fail to capture some of the most striking dissonances which exist between LGBT rights advocacy and the particularities of law and society in Cambodia. Ultimately, LGBT rights legal advocacy assumes that laws are implemented and statutory rights are respected, though as discussed in the previous section, this is far from being the Cambodian reality. And considering legal reform projects are deemed inadequate to achieve queer liberation by many queer critics even when they are properly implemented, what are the implications for Cambodia, where existing rights guarantees are often ignored? Given the potentially regressive side-effects associated with winning legal inclusion even in states where rule-of-law is generally adhered to, the Cambodian context demands an even more thorough critical analysis. Further demanding of such scrutiny is the fact that many western donors and funding agencies specifically prioritise funding legal reform advocacy over other types of activism; indeed, this approach is a logical extension the adoption of the ‘human rights-based approach’ by development agencies. For example, RFSU’s international programme strategy 2015-2020 places ‘legal, policy and rights frameworks’ among its top three priorities in its *theory of change*.¹¹⁰

¹⁰⁹ Franke (2012) 42.

¹¹⁰ RFSU (2015) 6.

Subversive (A)legality in the Cambodian Province

Cambodian queer activists' engagement with the UPR serves as an example of the turn towards state-centric legal reform activism which is inherent in the embrace of rights discourses. As I have argued, such a turn has now also become intrinsic to the development paradigm in respect of LGBT activism in the Global South. I now wish to argue, however, that the embrace of rights discourses neither necessarily *consumes* a movement nor *forecloses* other non-legalistic forms of progressive activism. I examine examples of the innovative quasi-legal and *alegal* strategies utilised by Cambodian queer activists which reflect the particularities of Cambodia's socio-legal environment, and which subvert LGBT rights discourse's tendency towards neoliberal legality through radical community-building beyond the impoverished limitations of the liberal legal imaginary. In order to frame this analysis, I draw upon Vanja Hamzić's deployment of the concept of *alegality*, defined as 'a capacity to be neither legal nor illegal, an ability to exist and act in the interstices, or perhaps beyond and outside, the dominant (capitalist) modes of legal production'.¹¹¹ Hamzić goes on:

Alegality, in a Marxist sense, could be construed as a potentially emancipatory space in which law's subject, whether individual or collective, resists the domination of a capitalist society by the sheer force of that subject's *otherness*, or *outsideness*, to the (spatial and otherwise) legal regulation that is enabled by the legal-illegal distinction and other modes of legal production prevalent in that society.¹¹²

¹¹¹ Hamzić (2012) 191.

¹¹² *ibid* 197.

RoCK activists explained to me that their engagement with the UPR and its associated push for marriage equality law reform was the first major legal advocacy-type project they had undertaken. Although RoCK's leadership maintains a scepticism towards such projects (particularly due to the general lack of enforcement of existing rights guarantees in Cambodia), their commitment to internal democracy meant that the expressed wish of their membership – to seek a same-sex marriage law – was to be prioritised. Indeed, the community's desire for same-sex marriage despite the lack of enthusiasm for prioritising such a campaign among movement leaders seems to support Rahul Rao's claim that LGBT rights discourse 'derives its power not simply from the material wherewithal of its proponents, but from its ability to shape desire by making itself synonymous with modernity, giving it mass appeal or, in a word, hegemony'.¹¹³ Based on their own analysis of Cambodia's socio-legal terrain, queer activists undertake innovative *alegal* and *quasi-legal* initiatives aimed at improving queer lives which eschew a reliance on formal law and state recognition. For example, since Pride 2012 RoCK has organised Buddhist blessing ceremonies, in which large numbers of the queer community gather in a pagoda along with their partners and families. At the ceremonies, senior monks bless queer partnerships in the presence of their families of origin and the national media, generally accompanying the blessings with sermons on Theravada Buddhism's queer-friendliness.¹¹⁴ Conceived of as a space of *alegality*, or a space which 'harbours and is governed by normativities that surpass or escape the logic of the law', the familial and community solidarity upon which these ceremonies are premised resists not only the formal law (in the sense of the law's refusal to recognise or protect queer lives) but also the neoliberal, individualistic and state-centric nature of liberal rights-based activism. As Hamzić notes, such

¹¹³ Rao (2015) 42.

¹¹⁴ UNDP and USAID (2014) 21.

alegal spaces ‘create opportunities to conceive alternative forms of (normative, insurrectionary, etc.) social relations’.¹¹⁵

Among Cambodia’s overwhelmingly rural population, the formality of law is felt far less even than in its urban centres. At the village level in *the province*, law is mediated through local village chiefs who hold significant autonomy in terms of how they apply and interpret the law. This leads to major disparities in terms of socio-legal relations between provinces, and also opens up space for queer Cambodians to mediate a social status in their community which is not defined purely by the (lack of) rights inscribed in formal law. My interlocutors emphasised the paramount importance of their activism being rooted in the village level and maintaining dialogues with local leaders.¹¹⁶ Reflecting this situation, field research conducted by CCHR in 2017 revealed:

Despite the lack of an enabling legal framework, many currently co-habiting rainbow couples across Cambodia already live as spouses, some conduct unofficial wedding ceremonies, and many (21.50%) have received important legal recognition in the form of family books issued by commune authorities.¹¹⁷

The inconsistent interpretation of laws can work to the advantage of queer Cambodians. In September 2015, a government spokesman stated, ‘[n]o Cambodian laws discriminate against [LGBT Cambodians], and nothing is banning them from loving each other or getting

¹¹⁵ Hamzić (2012) 203.

¹¹⁶ Lynette Chua’s work reveals that such local-level mediations are also essential to queer activism in Myanmar: ‘Dealing with the arbitrariness, corruption, and entrenched practices of local officials is commonplace [...] informants consistently emphasise the importance of knowing how to handle local authorities’. Chua (2015) 312.

¹¹⁷ CCHR (2017) vi.

married'.¹¹⁸ As such, although the arbitrary and inconsistent interpretation and application of formal law is often (rightly) associated with abuses of power and state repression, it also opens up spaces for queer Cambodians to negotiate improvements to their lives beyond the narrow formalism of legal equality. Indeed, it is worth exploring further whether the *weakness* of formal law at the village level plays a role in the high levels of community acceptance reported by co-habiting queer couples; CCHR reports that 'almost half feel that their community is 'very accepting' (48.60%), and just under a third feel that they are 'somewhat accepting' of them (29.91%).¹¹⁹

In response to community concerns regarding the legal exclusions emanating from the denial of marriage equality (such as benefits related to inheritance, tax, and childcare, etc.), RoCK has also undertaken a *quasi-legal* innovation known as the 'Declaration of Family Relationship' (DoFR), described as 'a civil contract for LGBT couples who wish to give their relationship some legal protection, as marriage does for heterosexual couples'.¹²⁰ The DoFR has been presided over by queer-friendly village chiefs and organised by RoCK, further building legitimacy of queer love in the eyes of rural populations in a manner which does not rely on the recognition of the Phnom Penh government. RoCK's approach to marriage equality, in combining legal activism with critical reflection and accompanying it with decidedly *alegal* and *quasi-legal* activist innovations is reflective of Butler's call to:

[...] maintain a double-edge in relation to this difficult terrain, for neither the violence of foreclosure that stabilizes the field of activism nor the path of critical paralysis that is entrenched at the level of fundamental reflection will suffice [...] On the topic of gay

¹¹⁸ *ibid.*

¹¹⁹ *ibid.* vii.

¹²⁰ RoCK (2018).

marriage, it becomes increasingly important to keep the tension alive between maintaining a critical perspective and making a politically legible claim.¹²¹

Resisting the impulse towards liberal legality inherent in LGBT rights discourse, RoCK has utilised the resources available to it through the embrace of rights discourse and via international donors to support the creation of communal, *alegal* solidarity and the development of critical consciousness among its members. Pisey explained:

Changing the law can be important and it's sexy for attracting funding. But what really matters is the human desire we all have for community. I never thought of our success that way [in terms of legal reforms]. When I see the younger and the older LGBT generations coming together, this interaction is so beautiful. That motivates me. The reality is that we have already been successful because we have built our community and empowered and mobilised thousands of people. Now our community can come together, connect, laugh, and feel more human as they try to survive in this society. Even as we struggle against the enormous neo-colonial forces of power and money, there is always hope in our community.

¹²¹ Butler (2004) 108.

Conclusion

Due to a complex interaction of factors, including its bloody recent history and the prominent service-provision role of its development industry in the neoliberal authoritarian Cambodian state, critical perspectives on human rights and development are rarely heard in Cambodian civil society circles. The dichotomous view that human rights advocates and their international patrons always occupy the role of the ‘good guys’ (because the repressive Cambodian government is *always* the ‘bad guy’) is an oversimplification which serves to foreclose critical reflection on the ‘dark sides’ of such universal projects.¹²² In respect of LGBT rights in Cambodia, the risks associated with these ‘dark sides’, including the epistemic violence associated with the erasure of non-LGBT queer subjectivities and the expansion of liberal legal activism which take inadequate account of local socio-legal conditions and fail to adequately challenge oppressive knowledge/power, are accentuated due to trends in international development politics in combination with authoritarian entrenchment within Cambodia. In this context, the embrace of criticality is a radical act of resistance. Butler’s claim that ‘without the critical perspective, politics relies fundamentally on an unknowingness - and depoliticization - of the very relations of force by which its own field of operation is instituted’ resonates deeply with the approach taken by many queer activists in Cambodia, who, since the formative days of Cambodian queer politics, have resisted not only the heteronormative mores embedded in Cambodian society, but *also* the dark sides of development and human rights discourses. This approach has contributed to the formation of uniquely Cambodian queer subjectivities, subjectivated through the encounter between universalist discourse and local resistance. It has further ensured that precarious advances in the liveability of queer lives could be maintained through an ongoing critical analysis of both local and global political, economic, and legal

¹²² Mutua (2003).

conditions, and the employment of innovative alegal and quasi-legal political strategies which foster community and solidarity that exceed and transcend the impoverished neoliberal core of LGBT rights discourse.

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