TRANSITIONAL JUSTICE IN CAMBODIA

-and comparison with two histories-

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TWO TIMEFRAMES (REVISED)

1. Post-Dictatorship Transition
   - After the civil war to 2000
   - Why Hun Sen did not changed his way of governing?
   - Why International Community did not work?

2. Post-Conflict Transition
   - After the 21st Century
   - What happened in the justice court and the truth commission?
   - How did International Community commit?
**POST-DICTATORSHIP TRANSITION**

- Background: Pol Pot Administration (China) vs. Vietnam (Soviet)
- After collapse of Pol Pot Administration: Trinity Confliction
  - Vietnam-Friendly Admin
  - Pol Pot-Friendly Actors
  - King Sihanouk-Friendly Actors
- Hun Sen gained the initiative in the government
  - Made the most of this complex disorder
  - International Society didn’t pay attention too much to this fact
POST-DICTATORSHIP TRANSITION

- In 1990’s…
  - Vietnam-Friendly Admin → collapse (Vietnam Leader dead)
  - Pol Pot-Friendly Actors → oppressed (International Conferences)
  - King Sihanouk-Friendly Actors → Won (with Hun Sen)

- International Action
  - Four Conferences:
    - In Paris (2 times)
    - In Japan
    - In United Nations
  - UNTAC (United Nations Transitional Authority in Cambodia)
    - Constitution
    - Election with Freedom
    - With PKO (Peace Keeping Operation)
POST-DICTATORSHIP TRANSITION

- In 1998...
  - Hun Sen did a Coup d‘état against King Sihanouk
  - Won the position of the top in Cambodia
  - Originally when he gained the power?: in the confusion around 1985

- Conclusion:
  - International Community: worked. They did their best.
    - Rule-Based Election
    - Constitution
    - Constitutional democracy
  - But they cannot reach Hun Sen
    - He climbed at the top long before international intervention
    - After Coup d‘état, intervention = against International Law
POST-CONFLICT TRANSITION

- ECCC: the Extraordinary Chambers in the Courts of Cambodia
  - Set in 2006
  - Hybrid with two departments:
    - Truth Commission
    - International Criminal Court

- Harsh Processes
  - Phase 1: Main actor is UN or Cambodia itself?
  - Phase 2: Basic rule is International Law or Domestic Law?
POST-CONFLICT TRANSITION

- Terrible Delay
  - About 1 year delay
  - Visible and Invisible Reason:
    - Conflict between international and domestic lawyers
    - Several Ministers of Hun Sen Administration will be affected by this
    - China has a risk to be accused (Back support of Pol Pot Administration)

- Bearing Fruits
  - First and Second Cases: criminals received “enough” punishment
    - According to the questionnaire to citizens
    - Third and Fourth Cases: still investigating
  - Civil Parties Systems: more accurate judge
Is my research question correct?
- Both types of transitional justice are carried out correctly, to some extent
- Nothing too bad caused by Hun Sen
- But this consequence is against my feeling in Cambodia
  - I felt it’s not “finished”. Never.
  - However I do not know how I can set reasons to this

How things going on in Germany and South Africa?
- →to be continued
CASE IN GERMANY AFTER WW2

- Nuremberg trials
  - From 1945~1946, as “International Military Trial”
  - Umpire: the United States, United Kingdom, Soviet Union, France
  - Judges on criminals responsible for the mass killing against Jewish
  - Positive: 12 serious offender were sentenced to capital punishment
  - Negative:
    - Most serious offenders did not appear in trials (all death before judge)
    - Criminals who had indirect responsibility were sentenced to light punishment or even not guilty
  - Lacking of “public opinion” and “self-determination”
CASE IN GERMANY AFTER WW2

- Truth and Reconciliation Commission

- From 1992 to 1994 and 1995 to 1998 for “Truly unifying Germany”
- Umpire: the German government
- Idea: Human Rights Watch (international NGO)
- Investigating infringement of rights in East Germany
- Consequences:
  - Building a new foundation that helps victims under SED dictatorship and sufficient education about this tragedy
  - Memorial was built in Berlin
  - Reparation is supplied to wide-range people in concern
  - Hearing public opinion and Self Determination
CASE IN SOUTH AFRICA AFTER APARTHEID

- Negotiation about Human Rights was hidden and stuck
  - Comparing with economy or policy, things of human rights gave difficulties for negotiators
  - Difficult point: the range of reparation, the right of white people that were engaged in discrimination
  - No winners right after Apartheid (NP / ANC)
    - Confusing and violence

- Provisional Constitution (1993)
  - Section “National Unity and Reconciliation”
CASE IN SOUTH AFRICA AFTER APARTHEID

- Truth and Reconciliation Commission
  - With hearing and investigating, get it clear what was going on
  - Criminals who help to seek truth, their legal responsibility will be vanished
  - Suggest the reparation for victims

- “Public Hearing” system
  - Anyone can join Public Hearing, to share their experience or opinion
  - Open to public via TV, internet and Newspaper
  - Citizens decided “truth”
    - But this includes another harm
CASE IN SOUTH AFRICA AFTER APARTHEID

- Political problems
  - NP, who supports Apartheid, thought Truth Commission supports Black People unfairly
  - ANC, who against Apartheid, thought Truth Commission compromises with White People (they decided pardon)
  - TRC should be isolated from Political battles, but it’s difficult

- Using Pardon
  - Criminals thought it’s better for us to use Truth Commission and get pardon than to be against Truth Commission
  - Open to public via TV, internet and Newspaper, so they easily prove that they do the right thing
  - In other words, these are not from their bottom of their heart, just “benefit”
TRANSITIONAL JUSTICE

- Criminal Court
  - By UN or other countries

- Truth Commission
  - With Public opinion, for Self Determination
  - Pardon for criminals

- Reparation for victims
  - The range of victims is important

- Education for Next Generation
  - Memorials, Curriculums
  - How will they keep their memories?
I remember my complicated feelings
- The uncomfortableness among each people in concern or their descendants still remain

But my previous research prove that:
- Both types of transitional justice are carried out correctly, to some extent
- Nothing too bad caused by Hun Sen

Why did this happen?
- From political point of view, things went well
- From Psychological (education, memorial) point of view, their problems will not be solved (deep rooted)

Is it possible for others to relieve this sorrow?
- How should people memorize these terrible histories?
- How should the government behave on this histories?