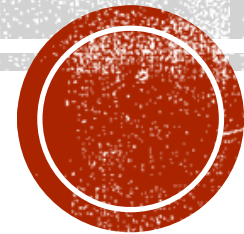


# TRANSITIONAL JUSTICE IN CAMBODIA

-and comparison with two histories-



Kentaro Matsumura

# 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 21th 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 Conflict
  - 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



# REMAINING QUESTION

- 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?



# IN CAMBODIA,

- 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?

