

[Working Paper Series: Transitional Justice and Reconciliation in Asia – Part 1]

## Transitional Justice in South Korea

Hun Joon Kim (Korea University)

### Introduction

Transitional justice in South Korea resolved the anguish of the unjustly victimized and their families, and moreover, raised the social awareness for human rights and the level of expectation for the responsibility the state should hold in protecting human rights. This was achieved through official apologies made by the government, the amendment of history textbooks and government documents, the restoration of the honor and reparation through retrials, the excavation projects for the remains of the victims and the commemoration of them, the establishment of memorial foundations, the financial and social support for the victims and their families, and the designation incidents as days for national commemoration.

This report is as follows: First, a summary of incidents of human rights violations since South Korea's liberation, followed by a summary of transitional justice measures carried out to resolve the related issues will be given. Second, an analysis will be made on the fulfillment, challenges, and prospect of transitional justice centering on the work of transitional justice mechanisms.

### Human Rights Violations and Transitional Justice in South Korea

The modern history of South Korea follows the periods of liberation from Japanese colonialism (1910-1945), rule of the US Army Military Government in Korea (1945-1948), the Korean War (1950-1953), Rhee Syngman regime (1948-1960), the Second Republic after the April 19 Revolution (1960-1961), the May 16 Military Coup and dictatorial government of Park Chung-hee (1961-1979), the assassination of President Park Chung-hee by his subordinates and Seoul Spring (1979), December 12 Military Coup of Chun Doo-hwan and Roh Tae-woo, May 18 Gwangju Democratic Uprising and Authoritarian regime (1980-1988), June Democratic Struggle in 1987 and finally, democratization. Throughout this period, innumerable cases of human rights violations such as torture, disappearance, arbitrary detention, and extrajudicial killing took place through the Jeju 4.3 Incident, mass killings of civilians during the Korean War, brutal suppression of the May 18 Gwangju Democratic Uprising, and dictatorial and authoritarian rules.

The families of and the victims of all these atrocities have continuously demanded an investigation to attain the truth, punish the responsible, provide reparations, and restore honor from the government. However, their

demands were totally repressed by the anti-communist and dictatorial regimes which claimed that the participants and the leaders of the uprising were communists. Furthermore, secondary victimization was committed to victims and their family members in search of truth and the restoration of honor.

As a result, proper investigation could only be started after institutional democratization took place in 1987, and more specifically after the civilian government was established in 1993. Some argue that a proper and meaningful process for the investigation of truth began only after 1998 when President Kim Dae-jung took office. This argument is based on the fact that the first civilian government of Kim Young-sam was a vestige of the military dictatorship and authoritarian rule and that the government was established with the cooperation of the Democratic Justice Party, which was a ruling party during the authoritarian and anti-communist regimes between 1980 and 1988. Nonetheless, even with the limitations, some progress, including the criminal trials of Chun Doo-hwan and Roh Tae-woo, was accomplished. The investigation process included many mechanisms such as criminal trials, reparation, and truth commissions as the most frequently practiced.

## **1. Human Rights Violations under the Japanese Colonial Rule**

Japanese colonial rule, marked by political repression and economic exploitation, ended in 1945. Korean suffering was exacerbated during and after World War I and II. In 1919 a nationwide independence movement led to 7,500 Koreans killed, 16,000 wounded, and 47,000 arrested. The Japanese forces brutally killed innocent civilians and burned down their houses and churches. Japanese vigilante groups, under the auspices of the government, accused Koreans of terror and arson which led to the killing of 6,000 to 20,000 civilians.

The period that Koreans suffered the most was between the beginning of the second Sino-Japanese War (1937) and Korea's liberation in 1945 when the country became a reservoir of manpower and resources for the Japanese military and industry. Thousands of Korean women were forced to work as sex slaves, known as "comfort women," for the Japanese military and some 140,000 men and women were victims of forced labor.

Shortly after the Republic of Korea was established in 1948, Special Act 3/1948 created the Special Committee and Court to investigate and punish collaborators with the Japanese colonial rule. Sang-Deok Kim, a respected leader of the independence movement, headed the ten-member Committee, which had its own enforcement unit and ten regional offices. The Special Court was composed of sixteen judges with the authority to sentence collaborators to death for crimes of treason or murder. Within four months, the Committee arrested 305 suspects and named 1,000 others it planned to investigate.

However, the Committee and Court were doomed to fail because they lacked the support of President Rhee Syngman's government, which included colonial-era elites. Rhee was the Committee's most vocal opponent, refusing to remove identified collaborators such as Roh Deok-sul from his administration. With his protection, collaborators vehemently accused the committee and court members of being communists who threatened national security by evaluating the past. The members were constantly under the threat of assassination, and in 1949 the police raided their offices. The activities of the Committee and Court withered due to strong resistance from powerful collaborators and a lack of support from Rhee. By the time the Special Act was annulled in 1951, the Committee investigated 688 collaborators and prosecuted 293, while the Court considered 79 cases and convicted

only 10 collaborators.

Because of this first institution's failure, the issue of collaborators consistently reemerged. At the request of civil society groups, this Special Committee for the Investigation of Pro-Japanese Collaborators was established by Special Act 7203 in 2004. The eleven-member committee, headed by a history professor named Seong Daegyong, had a mandate limited to investigating and identifying collaborators. In 2010, the Committee published its twenty-five volume report, consisting of 21,000 pages in total and naming 1,005 collaborators. Many of the former collaborators were already deceased by the time the report was published.

The Investigative Commission on Pro-Japanese Collaborators' Property was created by the Special Act 7769 in 2005. The nine-member commission was headed by Kim Chang-kuk, a prominent human rights lawyer. The Commission had a four-year term and was mandated to investigate the properties acquired by collaborators and revert them to the state. The Commission investigated 168 collaborators and ordered them to return 1,114 square meters of property worth 211 billion KRW.

The Committee to Support the Victims of Overseas Forces Mobilization and Investigation of Forced Labor under the Japanese Rule was set up by Special Act 10143 in 2010 by amalgamating the Special Committee for the Investigation of Forced Labor under the Japanese Rule (created by Special Act 7174/2004) and the Support Committee for the Victims of Overseas Forced Mobilization during the Pacific War (set up by Act 8669/2008). The Committee finished its mandate in December 2015 and confirmed a list of 585,937 victims, including soldiers and civilian employees in the military, sex slaves, miners, and other industry workers. The Committee provided compensation to victims and support for their medical expenses.

## 2. Human Rights Violations during the U.S. Army Military Government in Korea

Jeju 4.3 Incident and Yeosu-Suncheon Incident are the most representative cases of human rights violation that occurred after liberation and during the U.S. Army Military Government in Korea. Countless civilians suffered innocent deaths during the repression process of the uprising. It is found that the victims of the Jeju 4.3 Incident are as many as 25,000 to 30,000 people (4.3 Committee 2003, 381).

As of 2021, the number of victims confirmed by the committee is 15,483, of which about 10,890 were killed, 4,046 missing, 245 suffering from some form of stress disorder, and 302 imprisoned (Ministry of Interior and Safety Department of Support for Historical Affairs, 2020). The 4.3 Committee also identified 61,030 people who lost their family members. However, the committee estimated that the actual number of casualties ranges from 25,000 to 30,000, as the figure 15,483 is solely based on the review of petitions filed by a surviving family member. More than 80 percent of the human rights violations were committed by the military, police, or right-wing organizations such as the *Seobuk Cheongnyeondan* (Northwest Youth League) (4.3 Committee 2003, 388).

The Yeosu-Suncheon Incident also resulted in about 2,000 civilian casualties during the repression process (Truth and Reconciliation Commission 2010, 93). The Commission confirmed that 1,340 suffered unjust deaths caused by the state. However, as in the Jeju 4.3 Incident, this figure only represents the approved cases of filed applications, and as a result, families without a survivor were not included. The commission estimates there to be about 2,000 killed in the Yeosu-Suncheon Incident (Truth and Reconciliation Commission 2010, 93-94).

Regrettably, a proper investigation was carried out by neither the dictatorial nor authoritarian governments which continued to claim that they were justly fighting against the communist revolt against the government. Rather, the government stigmatized the victims and the bereaved as '*ppalgaeng*'i (the Reds)' or '*pokdo* (mobs)' and socially discriminated against them. Both the Jeju 4.3 Incident (1948~1954) and the Yeosu-Suncheon Incident (1948) were investigated by the Special Investigation Committee for Civilian Massacres for the National Assembly after the April 19 Revolution in 1960 but there were no meaningful outcomes due to the outbreak of the May 16 Military Coup in 1961.

The field investigation for the Jeju 4.3 Incident took place over the course of merely two days and even during this absurdly short period, a proper investigation did not take place due to a claim about the statute of limitations. While the Park and Chun governments did not make any efforts in uncovering the truth, victims and activists continuously tried to find the truth. After democratization, social movements led by students, journalists, and local communities demanded an investigation, and this led to the movement of regional assemblies after 1993. The investigations at the national level only started after the 4.3 Committee was established under the Special Law for Investigation of the Jeju 4.3 Incident and the Honoring of Victims (Act No. 6117, 2000) during the Kim Dae-jung administration. Another ten-year period had to pass before the Truth and Reconciliation Commission was established during Roh Moo-hyun's term in 2005.

### 3. Human Rights Violations during the Korean War

The Korean War (1950~1953) has left a deep scar in Korean history, not only with the 640,000 fallen and wounded soldiers but also with countless innocent civilian deaths. Massacres of civilians were committed on both sides of the 38<sup>th</sup> Parallel, by the North Korean, South Korean, and American armies. Significant cases include the Geochang Massacre in which about 700 were killed by the South Korean army, the Nogeun-ri Incident during which about 400 refugees were killed by the US army, the Bodo League Massacre in which at least 300,000 were killed nationally, the trials and punishments at People's Courts (*inmin jaepan*) which took place in areas occupied by North Korea, the indiscriminate bombing by the US army, the slaughter of inmates at Daejeon Prison, the slaughter of collaborators after the reclaim of Seoul by South Korea, and the National Defense Corps (*gukmin bangwigun*) Incident, among others.

Of all the incidents, the Geochang Massacre was the only case in which a joint investigation committee was formed by the National Assembly, Ministry of Home Security, the Ministry of Justice, and the Ministry of National Defense, immediately after the incident to reveal the truth and punish those responsible for the atrocity. This even led to the formation of a general court-martial five months after the incident, which sentenced Oh Ik-gyeong, Han Dong-seok, and Kim Jong-won on the charges of participating in the massacre of civilians and concealment of the truth. However, the three convicted were pardoned by President Rhee Syngman (Geochang Massacre Memorial Park, 2020). The way in which this investigation process unfolded had an enormous influence on the bereaved families of other civilian victims. These people were completely dissuaded to pursue and demand any kind of investigation, punishment of the responsible, and restoration of honor during the Rhee administration (Kim, 2014).

A struggle to take the overdue measures fully began immediately after the April 19 Revolution (1960). The Rhee regime, which was primarily responsible for many previous massacres, was overturned by student-led democracy demonstrations which were directly caused by corruption that occurred during the election for the prime minister. An association of the bereaved families across the country formed and demanded the revelation of the truth and the restoration of honor as a group. The association excavated the site of the slaughter, which was located based on the testimonies of the military and police personnel at the time, and collected the remains of the dead.

As a result of the continuous effort, the Special Investigation Committee for Civilian Massacres was established at the 4<sup>th</sup> National Assembly. The Special Committee was formed with nine members of the National Assembly, including Choi Cheon, a congressman whose goal was to collect evidence of the massacre of innocent civilians through investigations and ultimately legislate new policies based on the findings. However, the bereaved suffered disappointment as the Special Committee carried out poor investigations and disbanded without any accomplishments. The disappointing outcome can be said to be due to the fact that the 4<sup>th</sup> National Assembly's term was coming to an end when the committee was first established. Moreover, committee members either had a military or police background or a close relationship with the aforementioned two groups.

Furthermore, the efforts of the association of the bereaved faced the backlash of the May 16 Military Coup (1961). Military authorities extensively oppressed victims and activists, and the leaders of the association were sentenced to capital punishment or life imprisonment. The military police cold-heartedly destroyed memorial monuments and parks across the country (Truth and Reconciliation Commission 2010, 77-82). Instead of transferring power to civilians, the military leader retired, ran for president, and was elected. This dictatorship of Park Chung-hee lasted for eighteen long years, and, under this anti-communist regime, any discussions about the mass killings of civilians by the Korean army and police during the Korean War were completely forbidden.

It was after the commencement of the civilian government of Kim Young-sam in 1993 that issues regarding the massacre of civilians were openly but cautiously discussed again. During his presidential campaign, Kim pledged for an investigation to provide truth and the restoration of honor for the Geochang Massacre, and a Deliberation Committee for the Restoration of Honor of the Persons Involved in the Geochang Incident and Other Similar Incidents was established according to the Act on Special Measures for the Restoration of Honor of the Persons Involved in the Geochang Incident and Other Similar Incidents (Act No. 5148, 1996). The committee concluded its research on who was responsible for the massacre on the military and acknowledged 548 victims and 785 bereaved. As evidently found in its name, the Act was enacted to inclusively investigate not only Geochang Massacre but other incidents as well. Unfortunately, however, the bereaved of other incidents were hesitant to push forward their agenda during Kim Young-sam administration because the military, police, and anti-communist forces were still strong under his regime.

Only after the year 2000 were bereaved families able to form a National Bereaved Family Association for Civilian Victims of the Korean War. Through their effort, the Truth and Reconciliation Commission was established in 2005. However, the significance and role of the commission's existence were unclear and faded as the Truth and Reconciliation Commission was assigned to investigate unusual and odd matters such as 'the deaths of overseas Koreans who heightened national power' and terrorism, infringement of human rights, violence, slaughter, and deaths under suspicious circumstances committed by hostile forces, in addition to the investigation into the massacre of civilians, through a compromised negotiation made between the ruling and opposing parties.

#### 4. Human Rights Violations by the Dictatorial and Authoritarian Regime

The dictatorial and authoritarian states, which was started during Park Chung-hee's rule in 1961 and were followed by the Chun Doo-hwan administration, also committed various violations against human rights. Even though they were no large-scale massacres such as those found in the Jeju 4.3 Incident, the Yeosu-Suncheon Incident, and the Korean War, innumerable innocent citizens were killed over a long period of time. The most symbolic case is the 1980 May 18 Gwangju Democratic Uprising which left 223 killed, 140 killed from injury, 448 missing, 5,928 wounded, and 2,146 taken into custody and detained (May 18 Memorial Foundation 2020). After democratization in 1987, the National Assembly formed the Special Investigation Committee for May 18 Gwangju Uprising and held a hearing for which sixty-seven witnesses, including the former President Chun Doo-hwan, were summoned. The hearing held significance in that it was the first time that a former President was investigated publicly by the National Assembly. However, this hearing was met with many limitations.

The operation of the commission occurred during Roh Tae-woo's administration, an accomplice of Chun's crimes. Therefore, nothing could be done to collect the testimonies of those called to participate. As a result, unfortunately, the hearing did not lead to any form of legal prosecution. It ended with a public apology from Chun and his promise to live a secluded life, as well as President Roh's special public statement.

Regardless of the unhelpful circumstance, there was a continued demand for the revelation of truth and the punishment of the responsible. This led to the human rights attorneys to initiate a criminal lawsuit against Chun and Roh immediately after Roh finished his term in 1992. In 1995, Seoul District Public Prosecutors' Office admitted that a massacre had been committed in Gwangju. Sadly, however, it did not indict anyone on the grounds that the incident was merely the result of a coup, a highly political action.

Not only did citizens fiercely resist this outcome but Roh's secret slush fund was also revealed, resulting in the legislation of the Special Act on the May 18 Democratization Movement (Act No. 5029, 1995). In the end, Chun and Roh were prosecuted and convicted to life imprisonment and seventeen years of imprisonment, respectively, on charges of rebellion, attempted murder of a senior officer, and bribery, according to the additional punishment law on specific crimes.

During the dictatorial and authoritarian regimes, besides the May 18 Gwangju Democratic Uprising, various violations of human rights, such as deaths under suspicious circumstances, disappearance, torture, collective detention, and extrajudicial killing were committed. During Park Chung-hee's dictatorial regime (1961~1979), after his Yushin (revitalizing reform) constitution in 1972, students, professors, and other dissidents who participated in the Yushin opposition movement were arrested, tortured, and were killed or went missing.

The abduction of Kim Dae-jung, the suspicious deaths of Professor Jang Jun-ha and Professor Choi Jong-gil, and the National Democratic Association of Youth and Students Incident were only just some of the brutal acts committed by the Park dictatorship. During Chun's administration since 1980, which followed Park's ruling, there were continued cases of human rights violations such as the Samcheong Re-education Camp, forced conscription of student activists, suspicious deaths in the military, fabricated spy incidents, and the death of a university student, Park Jong-cheol, due to torture.

After assuming office in 1998, President Kim Dae-jung enacted the Special Act to Find the Truth on Suspicious Deaths (Act No. 6170, 2000) pursuing the revelation of the truth and the restoration of honor. As a result of this, the Commission on Suspicious Deaths was formed in 2000 and performed investigations for two terms until it was dissolved in 2004. This commission investigated cases of suspicious deaths in which the government was closely involved, and aimed to find the cause of deaths that had been presumed to be a suicide or an accident.

When the first term of the Commission on Suspicious Deaths came to an end in 2002, there were still many unsolved cases. This resulted in the initiation of a second term in 2003. In addition, between 2004 and 2005, the National Police Agency, the Ministry of National Defense, and the National Intelligence Service formed individual commissions to investigate human rights violation cases committed by their own organization. In addition, the Truth and Reconciliation Commission, which was created in 2005 investigated unsolved suspicious deaths and disappearance cases, and the Commission on Suspicious Death in the Military was formed to inspect suspicious deaths in the military in 2006. ■



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- **Hun Joon Kim** is a professor of Political Science and International Relations at Korea University. His publications relevant to this field include *The Massacres at Mt. Halla: Sixty Years of Truth-Seeking in South Korea* (2014), *Transitional Justice in the Asia Pacific* (ed. 2014), “Are UN Investigations into Human Rights Violations a Viable Solution? An Assessment of UN Commissions of Inquiry” (2019), and “The Prospect of Human Rights in US-China Relations: A Constructive Understanding (2020).”

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For inquiries:

Ha Eun Yoon, Research Associate

Tel. 82 2 2277 1683 (ext. 208)

hyoon@eai.or.kr

The East Asia Institute  
#909 Sampoong B/D, Eulji-ro 158, Jung-gu,  
Seoul 04548, South Korea  
Phone 82 2 2277 1683 Fax 82 2 2277 1697  
Email eai@eai.or.kr Website www.eai.or.kr