

**Joint NGO Submission to the Committee against Torture for the
Consideration of the Republic of Korea's 6th Periodic Report**

**NGO Thematic Alternative Report on
The Right to Redress of the Victims of Past State
Violences and Institutionalizations**

Republic of Korea

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Participating South Korean Human Rights Organizations

- The April 9 Unification & Peace Foundation
- MINBYUN– Lawyers for a Democratic Society
- The Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan
- FootAct-Disability and Human Rights in Action
- Catholic Human Rights Committee
- Korean Disability Forum

Contact Details

- Chaewan Suh(chaewan.s@minbyun.or.kr) / MINBYUN– Lawyers for a Democratic Society
- Hanbyol Cho(hnchoi@thekdf.org) / Korean Disability Forum

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I. Introduction

1. As emphasized in general comment no. 3 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, truth, justice, reparation and guarantees of non-recurrence are not only the right of victims of torture and ill-treatment to remedy, but also the obligation of State parties.¹ The ‘past state violences’ and ‘institutionalization’ that has occurred in ROK are typical acts of torture and ill-treatment, consisting of physical and psychological violence, arbitrary detention, and other inhumane treatment. The truth about the suffering of victims of past state violences and institutionalization remains unclear, and perpetrators have not been sanctioned. No measures have been taken to redress the victims, including reparation and rehabilitation. Most importantly, most victims have not received an official and public apology from the State party.
2. The co-authors of this report are organizations that support victims of past state violences and institutionalization. In advance of the Committee against Torture’s consideration of the sixth periodic report of the ROK, the organizations seek to convey the current status of rights violations of victims of past state violences and institutionalization and report on the State party’s breach of its obligation. The organizations also propose recommendations to the Committee to restore the dignity of victims of past state violences and institutionalization.

II. Background

3. During the twentieth century, the ROK experienced Japanese imperial occupation, the Korean War, and military dictatorship and authoritarian rule, during which serious violations of human rights and international humanitarian law were committed, often on a large scale or over a long period of time.
4. The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence visited the ROK in June 2022, and received and investigated reports of prolonged severe human rights abuses and violations of humanitarian law. The investigations included sexual enslavement and forced mobilization of Koreans during the Japanese

¹ Committee against Torture, General comment no. 3: Implementation of article 14 by State parties, CAT/C/GC/3, 13 December 2012, para. 2.

imperialist rule, massacres of civilians during the Korean War, and forged spy cases during dictatorships and authoritarian regimes. It also covered emergency measures imposed by President Park Chung-hee, various tortures and abuses that occurred in interment institutions or camps, such as, Hyungje Bokjiwon (Brothers' Home), Seosan Gaechokdan Camp (Pioneer Group), Samcheong Concentration Camp, and Seongam Academy, and government-led intercountry adoptions, etc. On July 6, 2023, the Special Rapporteur issued a report on the visit, confirming that the above issues constitute human rights violations, and provided numerous recommendations to safeguard the rights of the victims.²

5. Among the aforementioned issues of past state violences, it has been confirmed both internationally³ and domestically⁴ that institutionalization such as at Seongam Education Institute, Brothers Home, and Yeounghwasook/Jaesangwon is a gross human rights violation. However, the policy of institutionalization continues to this day because the State party is maintaining its system despite recognizing that institutionalization is a hotbed of torture and ill-treatment. This shows that the State party itself is not only perpetrating the acts of torture and ill-treatment, but is also in violation of the Convention by failing to fulfill its duty to prevent recurrence.

6. Approximately 130,000 people,⁵ most of whom are victims of enforced or involuntary detention,⁶ are held in various types of institutions, including homeless facilities formerly classified as 'vagrants' facilities,' residential facilities for persons with disabilities, and care centers for people with mental disabilities. The State party is obliged to provide reparation and compensation under the Convention, as among those currently institutionalized are victims of institutionalization in the past as well as those suffering from human rights violations such as enforced or involuntary detention, social exclusion, violence and trauma.

² The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Visit to the Republic of Korea : Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, A/HRC/54/24/Add.1, 6 July 2023, para. 6-10.

³ Ibid, para. 9.

⁴ Hankyoreh."S. Korean panel recognizes state's culpability in past abuses at Brothers Home facility", 25 Augst 2022., https://english.hani.co.kr/arti/english_edition/e_national/1056196.

⁵ About 6,400 people are living in 'homeless rehabilitation facilited' and homeless nursing homes'(as of 2021), 28,565 persons in disability residential institutions, 15,250 persons in psychosocial disability nursing homes, and about 75,000 perons in mental helath hospitals(as of 2022)

⁶ According to the 2017 survey on 'residential institutions for persons with severe disabilities' by the Human Rights Commission of ROK, 67.9% of the persons in institutions were involuntarily admitted to the institutions. Also, according to the 2020 comprehensive survey on disability residential institutions by the Ministry of Health and Welfare of ROK, four out of ten persons in institutions are not fit for institutionalization criterion by the government, meaning that they are officially not the subject of institutionalization. These studies show that the institutionalization in the State party is forced/arbitrary rather than voluntary/necessary.

Fundamentally, unless the State party transforms the policy paradigm of labeling certain people as 'less valuable to society' and herding them into one place, the human rights abuses of institutionalization will continue.

7. Meanwhile, the problem of child abuse and death remains a contemporary challenge for the South Korean society. As highlighted in the general comment, it is the State's duty to prevent the abuse of vulnerable groups, including children.⁷ As with institutionalization, child abuse is both a problem of the past state violences as well as the present. Several serious cases of child abuse and deaths have occurred, but no thorough investigations or measures have been taken to prevent recurrence.

III. Legal Framework

8. The problem of past state violences involves direct and indirect physical or psychological torture by state agents, and detention in institutions or camps, which constitutes torture and ill-treatment under the Convention against Torture. It also falls under 'gross violations of human rights' as stipulated by the 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'⁸ adopted by the Committee.⁹ Thus, for issues regarding past state violences, restitution, reparation, rehabilitation, satisfaction, and guarantees of non-recurrence in accordance with the aforementioned convention and guidelines should be ensured as the State party's obligation.

9. Among the issues of past state violences, forced mobilization and sexual slavery by Japanese military are acts of torture and ill-treatment committed by the Japanese government and corporations. As per its obligation under the Convention against Torture, the State party is also duty-bound to ensure remedies for victims of torture and ill-treatment by other states

⁷ Committee against Torture, General Comment No. 2: Implementation of Article 2 by States parties CAT/C/GC/2, 24 January 2009, para. 20-24.; Committee against Torture, General comment no. 3: Implementation of article 14 by State parties, CAT/C/GC/3, 13 December 2012, para. 36.

⁸ General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 15 December 2005.

⁹ Committee against Torture, General comment no. 3: Implementation of article 14 by State parties, CAT/C/GC/3, 13 December 2012, para. 6.

or private actors,¹⁰ and to make diplomatic efforts to hold perpetrators accountable.¹¹

10. The problem of institutionalization, which continues to this day, has been consistently highlighted by the Committee on the Rights of Persons with Disabilities¹² and the Special Rapporteur on Torture.¹³ Institutionalization on the grounds of disability can be defined as a form of violence, as it denies the legal capacity of the institutionalized.

11. The State party is obligated under the Convention to prevent torture and ill-treatment, particularly against vulnerable groups,¹⁴ and failure to do so may constitute a violation of the Convention. Children are among the most vulnerable groups in the ROK that do not receive sufficient protection in accordance with the Convention.

IV. Key Issues of Past State Violences¹⁵

A. Forced mobilization

12. Japan came up with a ‘labor mobilization plan’ for a wide range of areas including Korea, Taiwan, Sakhalin, and the South Pacific as it invaded Manchuria in 1931 and launched a subsequent war of aggression against China in 1937. Accordingly, more than six million Koreans per year were forcefully mobilized as laborers, soldiers and military personnel, and ‘comfort women’ of the imperial Japanese army.

¹⁰ Committee against Torture, General Comment No. 2: Implementation of Article 2 by States parties CAT/C/GC/2, 24 January 2009, para. 15.

¹¹ The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Visit to the Republic of Korea : Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, A/HRC/54/24/Add.1, 6 July 2023, para. 84.

¹² See e.g. CRPD/C/KOR/CO/1, paras 26 and 38; CRPD/C/GC/1, paras 40, 41 and 46; CRPD/C/GC/5; CRPD/C/5 para 7.

¹³ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum. Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention”, A/HRC/13/39/Add.5, 5 February 2010.

¹⁴ Committee against Torture, General Comment No. 2: Implementation of Article 2 by States parties CAT/C/GC/2, 24 January 2009, para. 20-24

¹⁵ More details of past state violences are available in NGO Report(South Korean NGOs Coalition for the Official Visit of the UN Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence, NGO Report on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence in the Republic of Korea, 6 June 2022, available at:<https://drive.google.com/file/d/1M0F6JmeUivUVzqDIAaOROheaEGAfGxve/view?usp=sharing>)

13. The issue of forced labor and forced mobilization of Koreans by Japan has been brought before the International Labor Organization (ILO) along with the issue of Japanese military ‘comfort women.’ Since 1996, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly recommended that the Japanese government address the issue.

14. The victims of forced labor at Nippon Steel and Mitsubishi Heavy Industries filed a lawsuit against these companies. On May 24, 2012, the Supreme Court ruled that ‘Japanese colonial rule was illegal and forced labor was a crime against humanity.’ This case was remanded to the Supreme Court on October 30 and November 29, 2018, and was finally decided by the Supreme Court.

15. However, even after the ruling of the Supreme Court, neither of the defendants Nippon Steel and Mitsubishi Heavy Industries responded to the victims' requests for negotiations, and the victims of forced mobilization initiated compulsory execution proceedings in accordance with the court's ruling. The defendants filed an appeal against the victims' compulsory execution, and the Supreme Court has yet to rule on the appeal. The ROK's Ministry of Foreign Affairs submitted an amicus curiae brief to the Supreme Court during the victims' compulsory execution proceedings, asking the court to withhold its final judgment, stating that it was ‘continuing diplomatic consultations to find a reasonable solution,’ for which it was criticized for unduly intervening in the trial.

16. In July 2022, the State party launched a public-private council to discuss the issue of reparation for victims of forced mobilization during the Japanese colonial rule, which seemed to be seeking a solution to forced labor, but the council was disbanded and was unable to proceed with concrete discussions. The State party made no effort to consult with the victims after the disbandment of the public-private council, and it was not until March 6, 2023, that it unilaterally announced the settlement resolution regarding forced mobilization, stating that ‘a foundation under the Ministry of the Interior and Safety will compensate the victims and bereaved families on behalf of the Japanese corporate perpetrators.’ However, the victims of forced mobilization explicitly stated that they ‘will not accept reimbursement,’ and opposed the government’s resolution. The government attempted to unilaterally deposit the money to

the court over the victims' objections, but the court rejected it, ruling that 'it could not be deposited against the victims' will.'¹⁶

17. The Japanese government acknowledged more than 21,000 Korean victims who were forcefully mobilized as soldiers or military personnel as deceased, and enshrined them at the Yasukuni Shrine without informing or obtaining consent from their bereaved families or the South Korean government. Koreans who were forcefully mobilized as soldiers or military personnel were treated as gods and worshipped alongside class-A war criminals regardless of the wishes of their bereaved families, and the families' requests to cancel the enshrinement were all rejected. There were even cases where those who survived the war were treated as dead because they were unilaterally enshrined. The Japanese government one-sidedly enshrined the Korean victims, saying that they were Japanese at the time; however, while the Japanese government pays pensions to the bereaved families of the Japanese who are listed at the Yasukuni Shrine, it denies compensation to the Korean victims, saying that they are foreigners.

18. In 2015, the 'Sites of Japan's Meiji Industrial Revolution: Iron and Steel, Shipbuilding and Coal Mining' was inscribed on UNESCO's World Heritage List. The World Heritage Committee called on the Japanese government to 'reveal the full history of these sites,' following criticism that they were sites where Koreans, Chinese, Allied prisoners of war, etc., were forced to labor. However, the Industrial Heritage Information Center, which opened in Tokyo in June 2020, is not complying with the Committee's recommendations and is denying the historical fact of forced labor. In response, the 44th session of the World Heritage Committee in 2021 expressed a 'strong regret' to the Japanese government for not fulfilling its commitments and adopted a decision that calls on it to develop an interpretation strategy for the 'entire history' of the site, including that of forced labor.

19. Recently, the Japanese government has denied the existence of forced mobilization in its history textbooks by stating that 'forced mobilization was carried out legally and in accordance with the law' and calling the ROK's complaints about forced labor 'unfounded and anti-Japanese.'¹⁷

¹⁶ The Korea Herald, "Courts again reject gov't bids to deposit compensation for forced labor victims", 6 July, 2023

¹⁷ The Korea Times, "Revised Japanese textbooks downplay wartime forced labor, catching Korea off guard", 28 March 2023, https://www.koreatimes.co.kr/www/nation/2024/06/113_348001.html

Suggested Recommendations

- The State party should rescind the third-party compensation measures that deny victims of forced mobilization the right to reparations
- The State party should make diplomatic efforts based on a victim-centered approach to urge the Japanese government to issue a formal apology for victims of forced mobilization
- The State party should provide effective remedies for victims of forced mobilization to restore their dignity and honor

B. Japanese Military Sexual Slavery

20. The Japanese Imperial Army sexually enslaved numerous women and girls in the Asia-Pacific region from the 1930s until the end of the Second World War in 1945. Victims were subject to repeated beating, torture, sexual violence, and forced abortions. When Japan lost the war, victims were abandoned on the battlefields or killed by the Japanese military to conceal war crimes. Those who managed to survive had to endure lasting physical pain and psychological trauma. In November 1990, The Korean Council for the Women Drafted for Military Sexual Slavery by Japan (the Korean Council) was established. On August 14, 1991, a Korean survivor, Kim Hak-sun came forward as the first Japanese military “Comfort woman” to publicly testify about her experience. Since the 1990s, victims and civil society have continued to raise the issue of Japanese military sexual slavery with the international community through the UN human rights treaty body and Special Procedures.¹⁸ However, the Japanese government still denies its war crimes.

21. On December 28, 2015, the foreign ministers of the Republic of Korea and Japan announced at a press conference (“2015 Korea-Japan Comfort Women Agreement”) that the issues of Japanese military sexual slavery had been “finally and irreversibly resolved.”¹⁹

¹⁸ Notable Reports from the United Nations during the 1990s; United Nations Commission on Human Rights, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 1995/85, E/CN.4/1996/53/Add.1, February 5, 1996.; United Nations Sub-Commission on the Promotion and Protection of Human Rights, Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict: Final Report Submitted by Ms. Gay J. McDougall, Special Rapporteur, E/CN.4/1998/13, June 22, 1998.

¹⁹ Announcement by Foreign Ministers of Japan and Republic of Korea at the Joint Press Occasion, Ministry of Foreign Affairs of Japan, https://www.mofa.go.jp/a_o/na/kr/page4e_000364.html, December 28, 2015.

Victims and citizens strongly opposed the agreement, which was announced without the participation or consent of the victims.²⁰ Numerous UN human rights mechanisms, including the Committee Against Torture, expressed concerns that the agreement ‘could not be the fundamental solution’ and recommended that the agreement should be revised to comply with international human rights standards.²¹ However, the State party has officially implemented the agreement and has not taken any effective measures to restore the honor of victims, including an official apology and legal reparation from the Japanese government.²²

22. On November 23, 2023, the 33rd Civil Division of the Seoul High Court in the Republic of Korea ruled in favor of the victim’s claim for damages against the Japanese government, acknowledging the Japanese state’s liability for its wrongdoings.²³ The court rejected Japan’s claim of state immunity, clearly stating that “the international legal system related to State Immunity is being shifted in the direction of protecting the individual’s right to seek trial,” and State Immunity may be excluded for torts against humanity whether the act is evaluated as a sovereign act or not. It is a historical ruling redefining the theory of customary international law²⁴ and a victory for victims and civil society who have long sought justice.

23. However, after the ruling, the State party did not make any diplomatic effort to enforce the ruling. The Japanese government never responded during the trial and has refused

²⁰ “Meeting with the Victims of ‘Comfort Women’... Explaining the Agreement Process”, YTN, <https://www.youtube.com/watch?v=GhJZO4AYPnw>, December 29, 2015.

²¹ - Committee on the Elimination of Discrimination against Women, CEDAW/C/JPN/CO/7-8/para 28.-29, 2016.
- Committee against Torture, CAT/C/KOR/CO/3-5/para. 47, 2017.
- Committee on the Elimination of Racial Discrimination, CERD/C/JPN/CO/10-11/para. 27, 2018.
- Committee on the Elimination of Discrimination against Women, CEDAW/C/KOR/Q/9/para. 10, 2023.
- Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli, A/HRC/54/24/Add.1/para. 84, 2023.
- International Labour Organization, Application of International Labour Standards 2024, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 112th Session, p.395 2024.

²² - The Fourth Universal Periodic Review Cycle of the Republic of Korea, UN Web TV, <https://webtv.un.org/en/asset/k1b/k1b7mk3j0q>, January 26, 2023.
- Comments by the State, Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabian Salvioli, on his visit to the Republic of Korea, A/HRC/54/24/Add3. Rev.1/para. 46, 2023.

²³ To read the full ruling, note the link below.
Seoul High Court The 33rd Civil Chamber Judgement, Case No. 2021 Na 2017165 Compensation for Damage (Others), https://www.scourt.go.kr/portal/dcboard/DcNewsViewAction.work;jsessionid=CUsrTumGvfq0WO3eOjPRKzRb3RApAaRnLoyDwPsfAWaOcMDJ1n1vvQ0yFlsh2tPo.BJEUWS04_servlet_SCWWW?gubun=44&searchOption=&searchWord=&seqnum=25497

²⁴ The recent CEDAW concluding observations on ROK also confirmed the implications of the ruling. Committee on the Elimination of Discrimination against Women, Concluding Observations on the Ninth Periodic Report of the Republic of Korea, CEDAW/C/KOR/CO/9/para.30, June 3, 2024.

to enforce the ruling, insisting that the State party has violated international law.²⁵ Still, the State party has not officially commented on the ruling. Despite the strong complaint of the Japanese Foreign Minister, Kamikawa Yoko, the ROK Foreign Minister, Park Jin, only reiterated that the State party “respects the 2015 agreement that confirmed a ‘final and irreversible’ resolution of the ‘comfort women’ issue between Japan and ROK as an official agreement.”²⁶

24. As of 2024, only nine of the 240 victims registered with the ROK government are alive.²⁷ Due to the victims’ age, it is imperative to urgently ensure their right to reparation.²⁸

Suggested Recommendations

- The State party should make every effort to ensure the victims’ right to reparation, in accordance with the ruling of the Seoul High Court on November 23, 2023.
- The State party should make diplomatic efforts and take all necessary measures to ensure that comprehensive and effective redress and compensation, including an official apology, legal compensation, and restoration of the victims’ honor by the Japanese government, are provided to the victims, respecting the ruling of the Seoul High Court on November 23, 2023.

C. Jeju April 3rd Uprising and Massacre

25. Jeju 4·3 Incident began on March 1, 1947, when a crowd on Jeju Island who had just

²⁵ For instance, on the day of the ruling, the Japanese government released the foreign affairs statement that the ruling is “denying the application of the principle of State immunity under international law” and “is clearly contrary to international law and agreements between two countries” such as “Agreement on the Settlement of Problem Concerning Property and Claims and on the Economic Co-operation between Japan and the Republic of Korea” in 1965 and the “2015 Kore-Japan Comfort Women Agreement.” It stated that the ruling is “extremely regrettable and absolutely unacceptable.” Therefore, it “strongly urges the ROK to immediately take appropriate measures to remedy the status of its breaches of international law on its own responsibility as a country.”

Regarding the Judgment of the Seoul High Court of the Republic of Korea in the Lawsuit Filed by Former Comfort Women and Others, Statement by Foreign Minister Kamikawa Yoko, Ministry of Foreign Affairs of Japan, https://www.mofa.go.jp/press/release/press1e_000489.html, November 23, 2023.

²⁶ On November 26, 2023, during the Foreign Minister summit of ROK and Japan, the Japanese Foreign Minister Kamikawa Yoko told ROK Foreign Minister Park Jin that the Seoul High Court ruling was “extremely regrettable.” And she urged the ROK “to take appropriate measures.”

Jesse Johnson, “Kamikawa Conveys ‘Comfort Women’ Stance to South Korean Envoy”, *The Japan Times*, <https://www.japantimes.co.jp/news/2023/11/26/japan/politics/japan-south-korea-china-foreign-ministers-bilateral-talks/>, November 26, 2023.

²⁷ Ko Byung-chan, “Another Death Leaves Only Nine Surviving Korean ‘Comfort Women’”, *Hankyoreh*, https://english.hani.co.kr/arti/english_edition/e_national/1090418, May 3, 2023.

²⁸ Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli, A/HRC/54/24/Add.1/para. 85, 2023.

commemorated the 28th anniversary of Independence Movement Day subsequently held a street demonstration against the U.S. Military Government's misrule. In that process, a child got struck and killed by a police horse during the process, and when a group of citizens gathered to protest against it, the police opened fire, killing six and severely injuring eight. From then until September 21, 1954, more than 95% of villages in the mountainous areas were burnt to the ground, and more than 30,000 people, or one-tenth of Jeju's population, were massacred.

26. Afterward, the Jeju 4·3 Incident was concealed and distorted for a long time, but through the efforts of the bereaved families and citizens of Jeju to find the truth, on January 12, 2000, President Kim Dae-jung administration enacted the 'Special Act on Discovering the Truth of the Jeju 4·3 Incident and the Restoration of Honor of Victims,' and started investigating for the truth. On October 15, 2003, the Government's official report, 'The Jeju 4·3 Incident Investigation Report,' was confirmed. Then, on October 13, 2003, President Roh Moo-hyun officially apologized to the bereaved families and populace of Jeju based on the contents of the report, which stipulated the Jeju 4·3 Incident as a 'human rights violation by state authorities.'

27. Under the Special Act on Jeju 4·3 Incident, the Jeju April 3rd victims were acquitted through a retrial process, which paved the way for them to restore their honor, and they received compensation of up to 90 million KRW (90,000USD) per person. In addition, the act allowed those who did not have a family register or had an incorrect one due to the Jeju 4·3 Incident to obtain or correct the family relations register through a certain procedure.

28. Despite the presidential apology and the enactment of the Special Act on Jeju 4·3 Incident, which acknowledges state violence, the perpetrators have not been prosecuted and the honors they received for the repression during the Jeju 4·3 Incident remain in place. While the Jeju 4·3 Incident Investigation Report recognizes the direct and indirect involvement of the U.S. Military in the suppression of Jeju April 3rd, there has still been no response from the U.S. government, and the South Korean government has also remained silent on the matter.

Suggested Recommendations

- The State party should take legislative and administrative measures to prosecute the perpetrators of the Jeju 4·3 Incident and revoke the honors they received.
- The State party should take necessary diplomatic action to hold the U.S. government and others accountable for their role in the Jeju 4·3 Incident and demand an apology for their actions.

D. State violence

29. There had been various incidents of past state violences in South Korean society. Representative cases identified by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence during the visit to the ROK in 2022 include that of Hyungje Bokjiwon (Brothers' Home),²⁹ Seongam Academy,³⁰ Samcheong Concentration Camp,³¹ Seosan Gaechokdan Camp (Pioneer Group),³² massacres of civilians during the Korean War,³³ forced conscription, greening projects/purification operations,³⁴ forged spy,³⁵

²⁹ Brothers' Home is a case in which people with disabilities and orphans found on the street in the 1970s and 1980s in the name of leading the tramp were quarantined, assaulted, threatened, imprisoned, forced labor, and abused. A total of 38,000 people were detained in the Brothers' Home from around 1975 to 1985, and the number of deaths during the above period reached 657..

³⁰ Seongam Academy was established in 1942 in Seongam-do, Bucheon-gun, Gyeonggi-do, during the Japanese imperial occupation. Children detained at Seongam Academy were assaulted, threatened, imprisoned, forced to labor, or even died, lost, injured, and mentally disabled due to these offences. It is estimated that about 5,759 children were detained at Seongam Academy and hundreds of related deaths were reported

³¹ Samcheong Concentration Camp was a South Korean concentration camp set up 1980s under the rule of military dictator Chun Doo-hwan. More than 40,000 people were forced to go to the camp. 60,000 people were arrested without warrants, and about 40,000 people were sent to the camp.

³² In the process of reclaiming abandoned salt farms through mass relocation of vagrants and orphans from Seosan as part of the "Social Prosperity Project" in the early 1960s, human rights violations were committed, and included forced detention, forced labor, forced marriages, beatings, and confinement.

³³ During the Korean War, there were massacres of suspected communists and those suspected of cooperating with the People's Army. Before and after the Korean War, at least hundreds of thousands of civilians were massacred by the Korean government, the U.S. military, and the People's Army without due process.

³⁴ Forced conscription was made for college students whose academic records were forcibly changed due to expulsion, suspension, and supervised leave for participating in the student movements from September 1980 to November 1984. Students were forcibly conscripted regardless of their will. The greening project was a project to investigate student movements and organizations, and to 'purify' the subjects' thoughts and ideologies, conducted from September 1982 to December 1984 under the name of "prevention of left-leaning pollution." It was a project that forced soldiers (students) who were considered to be 'purified' to espionage and collect student movement information from their alma mater. The exact number of victims of forced conscription, greening project and purification operation are still unknown, but is estimated at more than 2,500 persons.

³⁵ The "abducted and returned fishermen from North Korea" refers to those who were kidnapped by North Korean patrol boats while fishing in the East Sea and the West Sea, or who lost direction due to fog and went to North Korea, stayed there for several days to years and then came back to South Korea. It is known that from 1954 to 1987, 459 ships, around 3,600 fishermen were abducted to North Korea. The returned fishermen were investigated by investigative agencies after receiving joint interrogation, and most of them were prosecuted and punished for violating the Fisheries Act and the Anti-Communist Act.

emergency measures imposed by President Park Chung-hee,³⁶ and etc.

30. The Second Truth Commission(hereinafter ‘the second TRC’) have been conducting a partial investigation on above past state violences. However, there is a problem that the decision of the second TRC does not apply to the victims who did not file the petitions. Since the Second TRC closed the procedures of petitions on 9 December 2022, many victims could not file the petitions. More than 9,899 cases are under investigation by the second TRC, and it is unclear whether all cases can be investigated within the remaining 1-year period.

31. The victims of past state violences and institutionalizations go through an individual litigation process even though they received decisions of ‘truth-confirmed’ by the second TRC. The victims who did not file petitions cannot try the litigations due to the second TRC due to the application of statute of limitations and burden of proof placed upon victims. The State Party does not provide any alternative procedures for redress to the victims who did not file petitions to the Second TRC. In this situation, the victims have been urging the enactment of special laws or to revise existing laws.

32. The second TRC recommends a formal apology from the State party to the victims of the past state violences, but the State party has not abided by its recommendation. As a result, despite being recognized as a case of gross human rights violation by the second TRC, some victims of the past state violences are still subject to hatred and stigmatization.

Suggested Recommendations

- The State party should present official public apologies to the victims of past state violences in full consultation with them, and publicly record apologies in order to restore the victims’ honor.
- The State party should extend the period and tenure of the second Truth Commission with an open-ended mandate to allow it to address the full scale of human rights violations under its purview
- The State party should establish a comprehensive legal and administrative

³⁶ President Park Chung-hee exercised the right to execute emergency measures nine times during his presidency to oppress the student movements for democracy and the general public. During this process, countless college students, intellectuals, journalists, opposition politicians, and ordinary citizens were arrested, illegally detained, beaten, harassed, and prosecuted.

framework to ensure the truth-seeking process at any time even if the activities of the second TRC ends, and to provide full, prompt, and effective reparation.

- The State party should take legislative and administrative measures to promote remembrance and memorialization, and in particular, to address stigma and hatred toward victims.
- The State party should impose appropriate sanctions to hold the perpetrators criminally responsible and accountable, and implement and publicize procedures such as revoking honors awarded to the perpetrators of past state violences.

E. Illegal Intercountry Adoptions

33. Systematic illegal intercountry adoptions during dictatorship and authoritarian rule in ROK are not different from child trafficking, and the victims' rights to truth, justice, reparation and non-recurrence under the Convention should be guaranteed at the national level.³⁷

34. ROK has continued intercountry adoption since the government introduced intercountry immediately after the Korean War in 1953. 170,000 children have been sent abroad for adoptions to 14 countries, such as the United States and Canada. The intercountry adoptions took place in the 1970s and 1980s, and were promoted under dictatorship and authoritarian government. The intercountry adoptions took place in a form of a 'proxy adoption' by private adoption agencies, which allowed adoptive parents to adopt children without ever visiting the country of adoption. The efficient screening of adoptive parents was not conducted and some agencies fabricated the records of children and have sent the children to other countries.³⁸

35. As a result, lots of adopted children were killed by inappropriate adoptive parents, or suffered physical and mental abuse and violences. There have also been cases of adoption disruption and deportation without citizenship³⁹. About 20,000 Korean-American adoptees

³⁷ the Special Rapporteur on the sale of children, child prostitution and child pornography, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography,A/HRC/34/5, 27 December 2016

³⁸ The Korea Times, "'Proxy adoption,' the IR-4 visa and US citizenship for adoptees from Korea", 24 July 2021, https://www.koreatimes.co.kr/www/nation/2024/05/715_312627.html

³⁹ CNN, "Americans adopted him; now he's facing deportation", 7 November 2016, <https://edition.cnn.com/2016/11/04/us/adam-crapser-deportation/index.html>

did not acquire US citizenship for the reference. However, there have been no cases of punishing the accountable perpetrators of the government or adoption agencies for illegal adoptions, and the State Party has not provided truth-seeking procedures, recognize the accountability, and public apology yet. The adoptees face difficulties accessing information on illegal adoptions and biological parents due to the absence of a system.

Suggested Recommendations

- The State party should investigate the illegal intercountry adoptions that took place under dictatorship and authoritarian government, punish perpetrators of the government and adoption agencies, and implement adequate compensation and memorialization processes.
- The State party should provide public apologies with the acknowledgement of the accountability, and take measures to guarantee non-recurrence.
- The State party should implement programs for the restoration of identity, rehabilitation, and dignity to the victims of illegal intercountry adoptions
- The State party should take legislative or administrative measures to ensure the right to know and preserve ons' identity of the adoptees, including providing the measures to find their biological parents.
- The State party should make diplomatic efforts to acquire citizenship for the adoptees who have not acquired citizenship.

F. Child Abuses

36. Child abuse caused by reasons such as domestic violence is a representative offence of torture and ill-treatment according to the Convention.⁴⁰ The State party should ensure full, prompt and effective reparation, including compensation, rehabilitation, restitution and satisfaction.⁴¹

37. The number of child abuse cases,⁴² officially confirmed, in ROK is 24,604 in 2018,

⁴⁰ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Domestic violence and the prohibition of torture and ill-treatment, A/74/148, 12 July 2019.

⁴¹ Committee against Torture, General comment no. 3: Implementation of article 14 by State parties, CAT/C/GC/3, 13 December 2012, para. 20-25.

⁴² Including Physical abuse, emotional abuse, sexual abuse, additional types of child abuse and neglect

30,905 in 2020, 37,605 in 2021, and 27,971 in 2022. The number of death is 28 in 2018,⁴² 42 in 2019,⁴³ 43 in 2020, 40 in 2021, and 50 in 2022.⁴³ These statistics are only the number of cases confirmed by the government, and it is estimated that there will also be hidden abuses and deaths.

38. Prevention of torture and ill treatment, including child abuse, is a duty of The State party. The truth-seeking investigation process is a vital safeguard against the recurrence of violations,⁴⁴ and it is also needed to achieve more complete memorialization processes.⁴⁵ However, the mechanism of truth-seeking process, such as Child Death Review system⁴⁶ in United States and the United Kingdom, respond to serious child abuse cases is absent in ROK. There are only reports written by private sectors when the serious child abuse cases occurred.

39. The National Assembly of the ROK proposed the act to establish a truth-seeking council on child abuse cases as a temporary organization under the President after an adopted child died despite of three reports of child abuse. However, the proposed bill was abolished at the end of the session.⁴⁷

Suggested Recommendations

- The State party should take legislative and administrative measures to eradicate child abuses and improve the child protection system to prevent child death from abuses.
- The State party should implement an independent, fair and effective truth-seeking process to investigate the cases of child abuses and child deaths and a public system to promote punishment, reparation, and institutional reform accordingly.

⁴³ Ministry of Health and Welfare, 2022 Statistics of child abuses

⁴⁴ Economic and Social Council, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add., 18 February 2005, principle 2.

⁴⁵ The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli : International legal standards underpinning the pillars of transitional justice, A/HRC/54/24, 10 July 2023, para. 17.

⁴⁶National Assembly Research Service, Introduction of a Child Death Review System for Prevention of Child Death, 2021.

⁴⁷ Propose Bill of the Special Act on Truth Seeking of Child Abuses Cases, such as Yangcheon Child Abuse Deaths, and Preparation of measures to prevent child abuses

V. The Right to Redress for Victims of Institutionalization

40. Yeounghwasook/Jaesangwon were two of the biggest institutions in the 50s-60s in Busan city. They housed 1,200 persons at a time in the late 1960s. In the institutions run by the same corporate, numerous people from children to older people suffered from torture and even the deaths of the residents were veiled. Only a few people insist that they are the victims of those institutions and it is assumed that most of the residents had been dead and/or in other institutions so that they cannot access information on the truth-finding process. This case is considered as one of the state violences, such as the Brothers' home and the Seongam School-but only it has not received much attention until recently.

41. This case has led to an expanding awareness of the problem of institutionalisation. In 2023, the National Assembly introduced the "Compensation Act for Survivors of Institutionalization" which was based on United Nations human rights standards. However, the bill was discarded without any substantial discussion. To date, there has been no clear determination of accountability or comprehensive discussion regarding restitution and compensation for incidents within institutional settings.

42. The absence of accountability has led to the ongoing perpetuation of institutionalization in modern South Korea. Although institutionalization is considered a form of torture or ill-treatment under various UN human rights standards, including this Convention, approximately 130,000 individuals with mental/psychosocial disabilities, as well as the homeless, remain institutionalized in South Korea⁴⁸. This indicates that the South Korean government is both the author of torture and ill-treatment through the practice of institutionalization and is neglecting its duty to prevent such abuse.

43. Due to the government's breach of its obligations, individuals currently institutionalized continue to suffer from torture and abuse. Institutionalization still constitutes forced or arbitrary detention. According to a 2017 investigation by the National Human Rights Commission of Korea, 67.9% of residents in institution for persons with disabilities

⁴⁸ Approximately 6,400 individuals were housed in rehabilitation and care institutions for the homeless (as of 2021), 28,565 in residential institutions for persons with disabilities, 15,250 in institutions for persons with mental disabilities, and about 75,000 in psychiatric hospitals (as of 2022).

reported that they were involuntarily admitted, and 72% stated they could not leave the institution of their own free will⁴⁹.

44. Furthermore, victims of institutionalization suffer from various physical or mental injuries, emotional distress, economic losses, and significant infringements on their basic rights. Among residents in institution for persons with disabilities, 46% reported taking medications without knowing what they were, and only 0.97% managed their own bank accounts⁵⁰. A recent study in South Korea revealed that the experience of institutionalization for persons with disabilities negatively impacts their social capital and increases feelings of personal isolation after leaving these institutions⁵¹.

Case

45. Park Kyung-in, the representative of the "Deinstitutionalization Alliance for Persons with Disabilities," an organization formed by survivors of institutionalization, released the following letter, urging the government to apologize for its institutionalization policies⁵².

"I am a person with developmental disabilities who has deinstitutionalized. I was born in an institution for single mothers and lived in institutions for 23 years before becoming independent five years ago. (...) People with disabilities are often forced to live in institutions, psychiatric hospitals, or nursing homes, regardless of their own wishes. This is especially true for those with mental disabilities or who have difficulty expressing their desires. Before gaining independence, I moved through seven different institutions. No one ever asked me what I wanted. (...)

I seek an apology for being moved from one institution to another without my consent. I want sincere solace for being made to live a lonely life. That's why I believe the 'Compensation Act for Survivors of Institutionalization' is necessary. (...) I think this law will show people

⁴⁹ The National Human Rights Commission of Korea. 2017. Survey of people living in institutions with severe mental disabilities.

⁵⁰ The National Human Rights Commission of Korea. 2022.2.10. Recommendations for legislative and institutional reforms following the inspection of residential institutions for persons with intellectual disabilities.

⁵¹ Jeon Geun-bae. 2024. Structural Equation Model of Body Function, Experience of Institutionalization, Sensory Level of Public Support, Social Capital, and Isolation of the Disabled People. Daegu University.

⁵² Testimony hearing urging an apology for institutionalization policies. 2023.11.3.

that 'everyone can live together as equal citizens.' I hope Korean society will apologize for not recognizing people with disabilities as citizens and for hindering their free lives, and I hope that no person with disabilities ever has to live in loneliness again."

Suggested Recommendations

- The State party should recognize the series of incidents caused by institutionalization policies as state violence and responsibility and develop effective and comprehensive measures and budgets for the full social integration and rehabilitation of all victims of institutionalization, regardless of their time of admission.
- The State party should establish a permanent independent body to investigate the truth and provide compensation for victims of institutionalization and accelerate policies aimed at deinstitutionalization to prevent future occurrences of such harm.

VI. Brief of the Legislation and Policy on the Victims of Past State Violences and Institutionalization in Republic of Korea

A. Right to Redress and Duty of the State Party

46. The Constitution of the Republic of Korea does not specify the right to redress, including the right to truth, justice and reparation. The right to redress could be derived from Article 10 or Article 37 (1) of the Constitution, but the court is passive in recognizing the right through interpretation. For example, the Constitutional Court of Korea form case-laws that the right to redress of the victims of past state violences cannot be derived from the International Human Rights Treaties itself.⁵³

47. Individual Acts related to past state violences and institutionalizations not only defines the scope of victims differently, but also stipulates the scope of victims that does not meet International Standards. For example, the Act on Honor Restoration of and Compensation to the Victim of Samcheong Concentration Camp, the Special Act on Discovering the Truth on the Jeju 4·3 Incident and the Restoration of Honor of Victims, the

⁵³ Supreme Court, 96 DA 55877, 26 March 1999; Constitutional Court, 2016 Hun-ma1034, 30 September 2021.

Special Act on Examination and Honor Restoration of Victims Involved In the Nogeun-ri Incident, Act on the Honor Restoration of And Compensation to Persons related to democratization Movements exclude the victims of unjust arrest, imprisonment and abuses from the scope of victims by stipulating the scope of victims as a dead or missing person, a person injured. The Act on Special Measures for the Restoration of Honor of the Persons Involved In the Geochang Incident stipulating the scope of victims as a dead person.⁵⁴ All of the above Acts do not include witnesses and witnesses who were forced to confess unfairly by investigative agencies to convict the victim of the allegations within the scope of the victim.

48. The State party exercises the right of diplomatic protection passively. For example, The Government does not exercise the right of diplomatic protection on the issues of the Japanese Military Sexual Slavery and forced mobilization. Furthermore, the right of diplomatic protection to investigate the identities of victims who are forced to work in the Battleship Island and Sakhalin and human rights violations in those places are not being exercised.

Suggested Recommendation

- The State party should take legal measures to recognize the victims of past state violences and institutionalizations
- The State party should amend or enact laws to make the scope of the victims of past state violences and institutionalizations and the contents of redress of Individual laws meet International Standards.
- The State party should exercise the right of diplomatic protection to restore the dignity and honor of the victims of past state violence and truth-seeking of human rights violations.

B. Public Apologies, Remembrance and Memorialization

⁵⁴ **Act On Special Measures For The Restoration Of Honor Of The Persons Involved In The Geochang Incident** Article 2 (Definitions) he term "bereaved family member" means a spouse and lineal ascents and descendants of a person who died during the Geochang Incident, etc. (hereinafter referred to as the "deceased"): Provided, That where no spouse and lineal ascents nor descendants remain, a bereaved family member means brothers and sisters of the deceased.

49. There is a fact that the heads of agencies such as the prosecution and the National Intelligence Service had apologized for some of the past state violence cases. However, it is hard to say that they were the apologies that meet International Standards, given that it is limited to only a few cases, that the people in charge of the cases at that time have not apologized directly, and that the contents of apologies were insufficient. In some cases, judges apologize in individual reopening cases in criminal procedures. However, judges' apologies are not public apologies of the judiciary itself because it is a personal apology that is not recorded in the judgments or the records.

50. The laws on public records or archives do not specifically classify records on serious human rights violations. Records on serious human rights violations are managed, and utilized at the same level as other public records. There is no legislation that stipulates the State's obligation to actively disclose records of serious human rights violations to the public, and a significant number of public records(including presidential records) related to serious human rights violations are classified as confidential records or information. Furthermore, there are no Acts that comprehensively and specifically stipulate the contents of state measures necessary for remembrance and memorialization of serious human rights violations.

Suggested Recommendations

- The State should apologize for the truth-confirmed past state violences through official procedures without omission, and put them on public records.
- The State should actively manage and utilize records of serious human rights violations.
- The State should take legislative and administrative measures to specify the rights of victims to access records related to human rights violations in the acts and actively disclose records of serious human rights violations that are classified as confidential.
- The State should take legislative and administrative measures that specifically define state measures necessary for remembrance and Memorialization.

C. Effective mechanisms for complaints and investigations

Truth Commission

51. The first Truth and Reconciliation Commission(hereinafter ‘The first TRC’) was established and did truth-seeking activities in short-term for about 4 years-from December 2005 to 2010 as the Framework Act on Settling the Past History for Truth and Reconciliation was enacted in December 2005. The first TRC received only 11,175 applications for truth-seeking and made only 8,450 truth-confirmed decisions due to the vastness of the investigation scale and the limitation of the period of activities.

52. After the first TRC ended the activities, the Framework Act on Settling the Past History for Truth and Reconciliation was revised due to continuous demands from victims of past state violence and civil society organizations in 2020 and the second Truth and Reconciliation Commission(hereinafter ‘The second TRC’) has been relaunched in December 2020. However, the Act stipulates the second TRC as a short-term investigative body which exists for 5 years, including 1 year extension.

National Human Rights Institutions

53. National Human Rights Commission of Korea(hereinafter ‘NHRCK’) was established in 2001, and it performs as a national human rights institution. The Victims of human right violations can file a petition to the Commission, and the past state violence and institutionalization are ‘human right violations’ under the National Human Rights Commission of Korea Act. However, the past state violence and institutionalization cases can’t be redresseed by NHRCK because NHRCK rejects the petition if it is filed one or more years have elapsed since the fact causing the petition occurred.⁵⁵

Reopening and Retrial Process in Criminal and Civil Procedures

54. The Criminal Procedure Act and the Civil Procedure Act limit the reasons for reopening and retrial. The Courts reduced the meaning of the discovery of new evidence, which is stipulated as a ground for reopening in the criminal procedures, to the discovery of

⁵⁵ Article 32 (Rejection of Petition, etc.) (1) The Commission shall reject a petition which falls under any of the following subparagraphs:

4.In case said petition is filed after one or more years have elapsed since the facts causing the petition happened: *Provided*, That this shall not apply to any case in which the prosecution or civil prescription with respect to such facts is not completed and which the Commission determines to investigate;

evidence that could not be submitted at the time,⁵⁶ and did not view the reversal of statements or testimonies as new evidence. The Civil Procedure Act does not set the discovery of new evidence as a ground for retrial. In addition, the Views of the Treaty Bodies on Individual Complaints are not recognized as a ground for reopening and retrial. In particular, the Civil Procedure Act sets the period of filing a retrial to 30 days from the date of knowing the reason for the retrial, which makes it difficult to request a retrial in the civil and administrative judgements.

55. It is problematic that the trial of criminal reopening cases do not proceed quickly. According to the investigation result of the National Human Rights Commission of Korea, it took up to 7 years and 12 days for the Court to decide to commence reopening of procedures. Because the prosecutors can make an immediate appeal and re-appeal on a ruling of commencing reopening of procedures, the final ruling of commencing reopening of procedures can be further delayed. For reference, the final ruling to dismiss the immediate appeal against the ruling of commencing reopening of procedures took up to 9 years and 32 days, and the final ruling to dismiss re-appeal took up to 3 years and 182 days.⁵⁷ Meanwhile, Article 424 of the Criminal Procedure Act stipulates that a public prosecutor may request reopening of procedures. However, the prosecutors are reluctant to request reopening of procedures on the cases of past state violence.

56. Meanwhile, there are no specific procedures to protect the victims of past state violence in the criminal reopening procedures. Furthermore, the courts tend not to admit facts of tortures on the grounds that there is no physical evidence left despite specific testimonies by victims or witnesses in most reopening cases of past state violence

The Constitutional complaint on unlawful-unjust judgements

57. Article 68 (1) of the Constitutional Court Act⁵⁸ excludes judgment of the courts from the subject to adjudication. But the Constitutional Court of the Republic of Korea states that a

⁵⁶ Supreme Court, 2010 MO 363, 18 April 2013

⁵⁷ National Human Rights Commission of Korea, 17 JINJUNG 0744400 etc, 5 November 2018.

⁵⁸ **Constitutional Court Act** Article 68 (Grounds for Request) (1) Any person whose fundamental rights guaranteed by the Constitution are infringed due to exercise or non-exercise of the governmental power, excluding judgment of the courts, may request adjudication on a constitutional complaint with the Constitutional Court: Provided, That if any remedial process is provided by other statutes, no one may request adjudication on a constitutional complaint without having exhausted all such processes.

judgment of the courts that violates the basic rights of the people by applying a statute determined by the Constitutional Court as unconstitutional is subject to adjudication. However, the Constitutional Court of the Republic of Korea unlawful-unjust-judgements not applying a statute determined by the Constitutional Court as unconstitutional cannot be revoked.

Suggested Recommendations

- The State party should extend the period and tenure of the second Truth Commission with an open-ended mandate to allow it to address the full scale of human rights violations under its purview
- The State party should take legislative measures, such as amending the National Human Rights Commission of Korea Act, to allow it to investigate human right violation cases, one or more years have elapsed since the violations occurred.
- The State party should take legislative measures to make the reopening process speedy, and repeal the prosecutors' right to make an immediate appeal and re-appeal on the ruling of commencing reopening of procedures.
- The State party should ensure active request of the reopening of procedures on the cases of victims related to past state violence which are 'truth-confirmed' by TRC's investigations, etc at least.
- The State party should implement a victim-centered approach to the process of courts to take in past state violence and institutionalization cases.
- The State party should ensure that the judgments that deny the State's accountability of torts are the subject to adjudication of the Constitutional Court.

D. Obstacles to the right to redress

Statute of limitations

58. The Court states that the statutes of limitations under the Civil Act acts are applied to 손 cases of past state violences. the Constitutional Court of the Republic of Korea has decided that applying the statute of limitation of '5years has elapsed from the time when the unlawful act was committed' is unconstitutional on 30 August 2018.⁵⁹ However, the tort

⁵⁹ Constitutional Court, 2014 Hun-ba148 etc, 30 August 2018.

claims against the government by many victims of past state violence are still being dismissed by the Courts because they do not meet the statute of limitation of '3 years commencing from the date on which the injured party or his/her legal representative becomes aware of such damage and of the identity of the person who caused it.

59. The Criminal Procedure Act excluded the application of prescription for public prosecution to a crime of killing a person by the revision in 2015.⁶⁰ However, the exclusion of the application of prescription for public prosecution does not apply to the crimes of killing a person that public prosecution has expired before the revision of the Act.⁶¹ On the other hand, the Criminal Procedure Act and other related laws do not exclude the application of prescription for public prosecution on the crimes of serious human rights violations

Amnesty

60. The Amnesty Act broadly allows special pardons from the president.⁶² As a result, there are cases where special pardons were granted by the president despite being the perpetrators of crimes of torture and abuse. Representatively, former President Chun Doo-hwan, who violated the human rights of numerous victims of Past State Violences including the Samcheong Concentration Camp and the massacre of 18 May 1980 in Gwangju, was pardoned in the name of integration of the nation.⁶³

Legal and litigation Aid

61. The Legal Aid Act stipulates a legal aid system that provides legal support, such as civil, domestic, administrative, constitutional complaint cases or criminal cases. However, since the above criminal cases do not include reopening cases, victims of past state violence

⁶⁰ **Criminal Procedure Act** Article 253-2(Exclusion from Application of Prescription for Public Prosecution) The prescription for public prosecution prescribed in Articles 249 through 253 shall not apply to a crime of killing a person (excluding accessories) which is punishable with death penalty. [This Article Newly Inserted by Act No. 13454, Jul. 31, 2015]

⁶¹ **Criminal Procedure Act ADDENDA <Act No. 13454, Jul. 31, 2015>** Article 2 (Transitional Measures concerning Exclusion from Application of Prescription for Public Prosecution) The amended provisions of Article 253-2 shall also apply to crimes committed before this Act enters into force and the prescription for public prosecution for which has yet to expire.

⁶² **Article 9 (Enforcement of Special Amnesty, etc.)** Special amnesty, reduction of punishment and rehabilitation for a specific person shall be determined by the President.

⁶³ CNN, "Former South Korean leaders freed from jail", 22 December 1997,
<http://edition.cnn.com/WORLD/9712/22/korea.presidents/>

have not received a legal aid for reopening. Furthermore, there is a problem that the families of the direct victims of past state violence are not exempted from litigation costs even though they are also the victims according to International Standards.

Restitution and Rehabilitation

62. The Act on Establishment and Operation of the National State Violence Trauma Treatment Center was enacted on 7 December 2021, and the Act shall enter into force on 8 June 2022. It is positive that the legal basis for the center for rehabilitation of the victims of past state violence. However there is a limitation that the Act defines 'state violence' as exercise of unlawful governmental power from 15 August 1945, so that the victims of the past state violence before that can be excluded from the support under the Act.

63. The Act allows the establishment, designation and operation of branch centers, but only two centers in Gwangju and Jeju Island are operating at the moment, limiting the accessibility of victims who exist all over the State. It seems that there are not enough staff or officials to carry out the center's tasks of support. According to the Act, the main task of the center is healing and rehabilitation of trauma and related psychological and physical symptoms and supporting social adaptation. It can be pointed out that the support for self-support of victims, such as employment support, is not specified in the Act. Recently, the government has reduced the budget and manpower.⁶⁴

Reparation

64. The comprehensive reparation mechanism for the past state violences are not implemented. Therefore most victims of past state violences and institutionalizations go through an individual litigation process, which are often rejected by courts in application of statute of limitations or due to the high standard of proof placed upon victims.

⁶⁴ The Voice of Jeju, "The National Trauma Healing Center, 1/3 of the national expenditure, is a stray bullet, and the 'fire on the foot' of the Jeju branch", 3 September 2023, <https://www.jejusori.net/news/articleView.html?idxno=418847>; Hankyoreh, ""May 18 in words only"...The government drastically cuts the budget and manpower of Gwangju National Trauma Center", 31 March 2024, <https://www.hani.co.kr/arti/area/honam/1134571.html>

65. Analyzing the judgments related to the state compensation on victims of past state violence, the court's criteria for calculating consolation money are ambiguous. The court deducts criminal compensation from consolation money claimed by the victims. The court calculates the lost income of victims of past state violence who died or were detained on the basis of the actual minimum wage based on the urban daily wage income until 60 or 65 years of age. In addition, the court does not recognize delayed damage compensations arising from the time of unlawful activities due to equity. In addition, there are cases in which consolation money for victims with short detention periods and their families is recognized as significantly low.

Suggested Recommendations

- The State party should take legal measures to ensure that no serious human right violations are subject to statutes of limitations, and implement procedures to provide remedies to victims whose claims have been dismissed on such grounds
- The State party should take legal measures such as amending the Amnesty Act, to ensure serious human right violations are not subject to amnesty.
- The State party should take legislative and administrative measures so that victims of past state violences and institutionalizations, including their families, can receive legal and litigation aids on the facts that they are the victims.
- The State party should take legislative and administrative measures to include all victims of serious human rights violations under International Standards in the scope of the support by the Center and the support of self-support should be included in the tasks of the center.
- The State party should allocate sufficient resources for the establishment of branch centers and supplementation of staff and officials.
- The State party should take legislative and administrative measures to implement a comprehensive reparations process that ensures full reparation, including restitution, compensation, satisfaction and rehabilitation.,
- The State party should ensure adequate compensations to the victims to restore the dignity and honor of the victims of past state violence.

E. Accountability

66. Accountability has not been achieved in most cases of State violence, including the suspicious death cases, the forged spy cases against returned fishers from the Democratic People's Republic of Korea, the cases of emergency measures under President Park, the forced conscription and greening projects and purification operations, the Seosan Gaechokdan Camp (Pioneer Group) case and the intercountry child adoption cases.

67. No judicial and administrative sanctions necessary have been taken against the perpetrators, such as prosecutors, police, NIS investigators, and soldiers, revealed through criminal reopening procedures and tort claims against the government. There have often been cases in which the perpetrators' ordinances are revoked. However the government has kept the reasons for the revocation of the ordinances confidential and it results in the infringement of victims' satisfaction.

68. Meanwhile, the Courts does not recognize the judge's accountability for torts resulting from the wrong judgment in tort claim cases. The court excludes judges from responsibility for misjudgment that made victims of past state violence a criminal, saying that they can only admit the responsibility when there are special circumstances, such as the trial for unlawful or unfair purposes..

Suggested Recommendations

- The State should establish an accountability process or prosecutorial strategy to ensure the criminal investigation, prosecution and sanctioning of perpetrators of past state violences and institutionalizations.

F. Institutionalization Policies

Maintained legal system that supports institutions

69. The mass institutions for the persons with disabilities, children, women, and "vagrants" have been in the State party since the 1940s, even without much relevant legislation. After the 1950 Korean War, institutions have proliferated with the support from

domestic and international private enterprises. In the 1970s, the State party enacted a law⁶⁵ to systematize government support for institutions, establishing a system in which private enterprises run institutions on behalf of the State party. Since the 2000s, the struggles of the victims from detention facilities such as Seongam Academy(1946-1982) and Brothers Home (1975-1987) have led to national and international authorities concluding that the actions of the State party and the facilities are forced confinement and severe human rights violations.⁶⁶ Even though the State party recognizes its acts of torture and ill-treatment within the detention facilities, it still has kept the legal system that supports detention facilities until now, maintaining it through enactments and amendments.

Lack of accountability

70. In 2005, ‘Framework Act on Settling The Past For Truth And Reconciliation’ was enacted as a result of the struggle of victims of institutionalization, but it did not include provisions for the punishment of those responsible, including the State party. In particular, the State party removed the provision for redress, for reasons such as the lack of budget, and it only temporarily operated the ‘Truth and Reconciliation Commission’, making the Act ineffective at providing redress or means for rehabilitation to the victims. To this day, many victims of institutionalization remain neglected and deprived of the right to be informed of their rights. Legal or other forms of opportunities for redress are not accessible to all victims. Only a small number of the victims who are deinstitutionalized continue to struggle and litigate against the State party and ‘the Truth and Reconciliation Commission’, asking for the truth and redress.⁶⁷

The absence of official apology, active and effective prosecution measures for human rights violation within institutions from the State party

⁶⁵ **Act On Welfare Of Persons With Disabilities**, Article 58 (Welfare Facilities for Persons with Disabilities, enacted on June 5th 1981), **Social Welfare Services Act**. Article 34 (Establishment of Social Welfare Facilities, enacted on April 2nd 1970)

⁶⁶ ROK TRC’s decision to investigate child abuse case in the Seongam Education Institute. 2020.

https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_00000000710&nttId=316577, ROK TRC’s decision to investigate human rights violation in the Brothers’ Home. 2022.

https://jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_00000000716&nttId=317929

UN Special Rapporteur on Truth, Justice, and Reparation visited the Seongam Education Intitute memorial center. June 2022. <https://www.kgmaeil.net/news/articleView.html?idxno=295181>

⁶⁷ Hankyoreh., “A Survivor of the Brothers’ Home protested on the Gwang-an Bridge for 12 hours: ‘The Government ignores us’”. May 14th 2023. https://www.hani.co.kr/arti/society/society_general/1091729.html.

71. ROK's legal system for institutionalization has resulted in more than 130,000 persons in institutions. Victims of institutionalization have called for an official apology from the State party and have proposed 'the Act on the Support for Deinstitutionalization', which includes provisions about the prosecution for human rights violations in institutions, and 'the Act on Redress for Victims of Institutionalization'. The National Human Rights Commission of Korea and the Truth and Reconciliation Commission have also called for an apology from the State party and recommended the enactment of legislation to end the policies that support institutions.⁶⁸ However, none of the enactment took place due to the active opposition from the institutions. There are no preventive or effective measures to stop institutionalization, and the victims, who are transferred to other institutions by legal guardians and/or directors of institutions, continue to be institutionalized and detained.⁶⁹ Hence, even with the closure of a criminal institution, the victims are still subjected to abusive conditions.

Suggested Recommendations

- The State Party should officially apologise for the abuses and harm caused by its mass institutionalization policy as state violence and responsibility, and develop legislation, including a budget and system for full recovery support and reparations in a victim-centred manner.
- The State party should abolish legal systems that pose inequalities among victims, including statutes of limitations, and develop comprehensive legislative measures to provide adequate reparation to all victims, including those with limited access to information, inadequate compensation, and victims who have been denied justice.
- Measures should be put in place to clarify the responsibility of the State Party for institutionalization, including the establishment of a permanent independent agency for truth-finding and reparation, and mechanisms for disclosing specific information on the status of victims and the social harms caused by the state's policy of institutionalization.
- The State party should accelerate deinstitutionalization policy including abolishing related legal provisions on institutionalization and introduce measures to eliminate

⁶⁸ TRC, "Gyeonggi province should plan a just compensation for the Seongam survivors". March 27th 2024.

https://www.hani.co.kr/arti/society/society_general/1133998.html. Hankyoreh

⁶⁹ Ministry of Health and Welfare. 2022. Status Survey on Disability Abuse.

negative social perception on the victims of institutionalization including hate and stigma.