

NGO Report on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence in the Republic of Korea

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South Korean NGOs Coalition for the Official Visit of the UN Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence

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Background Brief on the Legislation and Policy of the Republic of Korea from the Perspective of the Right to Truth, Justice, Reparation and Guarantees of Non-recurrence

1. Obligation to respect, ensure and implement international human rights law and international humanitarian law

1. The Republic of Korea has ratified nearly all core United Nations human rights treaties except the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention for the Protection of all Persons from Enforced Disappearance. Regarding transitional justice and victims' right to an effective remedy, the Republic of Korea (hereinafter "the State") should at least ratify the Convention for the Protection of all Persons from Enforced Disappearance.
2. Article 6 (1) of the Constitution of the Republic of Korea states that "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws."¹ However, domestic courts consider international human rights law only as a reference material, and thus it is hard to say that international human rights law enjoys the status of a judicial norm with substantive effect. The General comments and Views of the UN treaty bodies are also not respected on the grounds that they do not have legally binding effect in the procedures of the Constitutional Court as well as ordinary courts.² Besides the international human rights treaties, international standards of the mandate of the Special Rapporteur on truth, justice, reparation, and guarantees of non-recurrence, such as 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, are also not used as legally binding norms. The State should recognize the international standards of the mandate of the Special Rapporteur as legally binding in legislative, administrative, and judicial bodies.
3. Constitution of the Republic of Korea recognizes right to personal liberty, right to freedom from torture, detainee's right to claim just compensation, and right to claim state reparation as fundamental rights. But there is no law that provides the definition of torture and other cruel, inhuman or degrading treatment or punishment which is one of the prime examples of serious human right violations in international human rights norms. Criminal laws only covers the physical aspect of torture or subjects only certain specific individuals.³ The State should revise relevant legislations to ensure the act of serious violation of human rights, such as torture and other cruel, inhuman or degrading treatment or punishment are stipulated as crimes.

¹ **Constitution of the Republic of Korea** Article 6 (1) Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.

² The Constitutional Court, 2011Hun-ma 306, 26 July 2018

³ Concluding observations on the combined third to fifth periodic reports of the Republic of Korea, CAT/C/KOR/CO/3-5, 30 May 2017, para. 7-8.

4. The Constitution of the Republic of Korea does not specify the right to an effective remedy, including the right to truth, justice and reparation, of victims of gross human rights violations. The right to an effective remedy could be derived from Article 10 or Article 37(1) of the Constitution, but the court is passive in recognizing the right through interpretation of law. For example, the Supreme Court and the Constitutional Court of Korea have ruled that the right to an effective remedy of victims of past state violence cannot be derived from the international human rights treaties itself, forming a case-law.⁴ The State should recognize victims' right to an effective remedy derived from international standards. The specific legislation that realizes the right to an effective remedy is also necessary.

2. Statutes of limitations

5. The Supreme Court stated that the statutes of limitations under the Civil Act shall also be applied to the so-called 'past state violence cases'. Currently, the statute of limitations prescribed in the Civil Act and other laws apply to the victims of past state violence in accordance with the Article 8 of the State Compensation Act.⁵ In principle, the statutes of limitations of the victims' right to compensation for past state violence are "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" or "5 years have elapsed from the time when the unlawful act was committed." Courts dismissed a number of tort claims of the victims of past state violence citing expiration of the statute of limitations.
6. Meanwhile, the Constitutional Court of Korea decided on August 30, 2018, that applying the statute of limitation of "5 years has elapsed from the time when the unlawful act was committed" is unconstitutional in cases such as mass killings of civilians according to the Framework Act on Settling the Past History for Truth and Reconciliation.⁶ However, the tort claims against the government by many victims of past state violence are still being dismissed by the Supreme Court 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." Furthermore, there is no relief for the victims whose litigation cases were dismissed due to the statute of limitations. The State should completely exclude the application of statute of limitations on the cases of serious human rights violations, and implement the procedures to remedy victims whose tort claims against the government were dismissed due to the statutes of limitations.

⁴ Supreme Court, 96 DA 55877, 26 March 1999; Constitutional Court, 2016 Hun-ma1034, 30 September 2021.

⁵ Article 8 (Relationship with Other Acts) Liability of the State or a local government to redress damage shall be governed by the provisions of the Civil Act, except as otherwise prescribed in this Act: Provided, That if there are different provisions in any Acts other than the Civil Act, such provisions shall prevail.

⁶ Constitutional Court, 2014 Hun-ba148 etc, 30 August 2018.

7. The revised Criminal Procedure Act of 2015 excludes the application of prescription for public prosecution to a crime of killing a person.⁷ However, the exclusion of the application of prescription for public prosecution does not apply to the crimes of killing a person that the prescription for public prosecution expired before the revision of the Act.⁸ Meanwhile, the Criminal Procedure Act and other related laws do not exclude the application of prescription for public prosecution on the crimes of other serious human rights violations. The State should take legislative measures to exclude the application of prescription for public prosecution on the crimes of serious human rights violations.

3. Victims of gross human rights violations

8. Individual laws related to past state violence define the scope of victims differently, and they also are problematic in that such scope is not in line with the 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 Special Act on Examination and Honor Restoration of Victims Involved in the Nogeun-ri Incident*, and *the Act on the Honor Restoration of And Compensation to Persons related to Democratization Movements* exclude the victims of unjust arrest, imprisonment and abuses by stipulating the scope of victims to be a dead or missing person or a person injured. *The Act on Special Measures for the Restoration of Honor of the Persons Involved In the Geochang Incident* stipulates the scope of victims to be a dead person only.⁹ 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. The State should take legislative measures for individual laws to be in line with the relevant international standards including the scope of victims and the content of remedies.

4. Right to truth

9. The *Public Records Management Act* and the *Official Information Disclosure Act* do not specifically protect the right to access records related to human rights violations held by victims and their representatives. There is no legislation that stipulates the State's obligation to actively disclose records of serious human rights violations to the

⁷ **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]

⁸ **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.

⁹ **Act On Special Measures For The Restoration Of Honor Of The Persons Involved In The Geochang Incident** Article 2 (Definitions) the term "bereaved family member" means a spouse and lineal ascendants 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 ascendants nor descendants remain, a bereaved family member means brothers and sisters of the deceased.

public, and a significant number of public records(including presidential records) related to serious human rights violations are classified as confidential records or information. The State should take legislative and administrative measures to specify the victims' rights to access records related to human rights violations by law and actively disclose records of serious human rights violations that are classified as confidential.

10. It is difficult for victims of serious human rights violations to access their records for the purpose of remedy without assistance. Since the records of serious human rights violations are not specifically classified and managed by law, the victims do not know which institutions to go to access their own records. Furthermore, the victims must pay a fee when they wish to view or copy their records in the Prosecutor's Office or the National Archives, etc. Prosecutors and others sometimes refuse the victims' application for inspection or copying the records, saying that the investigation secrets and techniques could be leaked. The State should take legislative and administrative measures necessary to implement procedures for victims to access their records completely, easily and free of charge.

5. Right to Justice

A. Truth and Reconciliation Commission

11. The first Truth and Reconciliation Commission(hereinafter 'The first TRC') was established and conducted its truth-seeking activities temporarily for about 4 years, from December 2005 to 2010, following the enactment of the Framework Act on Settling the Past History for Truth and Reconciliation in December 2005. The first TRC received 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, etc.
12. After the first TRC ended the activities, victims of past state violence and civil society organizations continuously demanded the revision of the Framework Act on Settling the Past History for Truth and Reconciliation and the Act was finally revised in 2020 and the second Truth and Reconciliation Commission (hereinafter "the second TRC") was relaunched in December 2020. However, the Act stipulates the second TRC as a short-term investigative body which exists for 4 years. The State should take legislative measures to ensure that the second TRC can operate as a permanent institution to do the tasks of truth-seeking and research on past state violence continuously considering the vast scale of past state violence.
13. Meanwhile, there is a problem that the second TRC cannot investigate cases of victims who received final judgment by the court unless the judgment has any reason for reopening the case. The State should take legislative measures to allow victims whose human rights were violated by unjust judgments by the court, such as the judgements that applied laws suspected to be unconstitutional, to have access to be investigated by the second TRC.

B. Reopening and retrial process in criminal and civil procedures

14. The Criminal Procedure Act and the Civil Procedure Act limit the reasons for reopening and retrial. The Supreme Court narrowly interpret the meaning of the discovery of new evidence, which is stipulated as a ground for reopening in the criminal procedures, to the discovery of evidence that could not be submitted at the time,¹⁰ 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 UN 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 almost impossible to request a retrial on the civil and administrative judgments.
15. The criminal retrial is problematic in that the trial does not proceed quickly. According to the survey by the National Human Rights Commission of Korea, it took up to 7 years and 12 days for the Court to decide whether to commence reopening of procedures. Even when the court decides for retrial, actual reopening of a case can further be delayed because the prosecutors can make an immediate appeal and re-appeal on a ruling of commencing reopening of procedures. 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. The State should take legislative measures to insert the time limit of period for prompt ruling for the criminal retrial procedures, and repeal the prosecutors' right to make an immediate appeal and re-appeal on the decision to commence retrial.
16. Article 424 of the Criminal Procedure Act stipulates that a public prosecutor may directly request reopening of procedures. However, the prosecutors are reluctant to request reopening of procedures on the cases of past state violence. The prosecutors should actively request the reopening of procedures on the cases of victims related to past state violence which are, at least, 'truth-confirmed' by the TRC, etc.
17. There are no specific procedures to protect the victims of past state violence in the criminal retrial procedures. Furthermore, the courts tend not to admit facts of torture on the grounds that there is no physical evidence left despite specific testimonies by victims or witnesses in most retrial cases of past state violence. Courts should adopt a victim-centered approach in operating the criminal reopening procedures. Considering the specificity of the past state violence, where physical evidence is difficult to remain nowadays, it is necessary for the courts to confirm the facts based on the statements and testimonies of the victims and witnesses.

¹⁰ Supreme Court, 2010 MO 363, 18 April 2013

C. Jurisdictional Immunities of States

18. In the Republic of Korea, there are no legal provisions that stipulate exception to state immunity. Some courts have denied the victim's right to justice by denying the domestic court's jurisdiction over serious human rights violations under the international law caused by other States. The State should ratify the United Nations Convention on Jurisdictional Immunities of States and Their Property, and take legislative measures to limit the scope of jurisdictional immunities of States in case of gross human rights violations.

D. Right to diplomatic protection

19. The Republic of Korea passively exercises its right to diplomatic protection. For example, The Government of the Republic of Korea (hereinafter “the Government”) does not exercise the right to diplomatic protection on the issues of the Japanese Military Sexual Slavery and forced mobilization. Furthermore, the right to diplomatic protection to investigate the identities of victims who were forced to work on Battleship Island (“Hashima Island”) and Sakhalin and human rights violations in those places are not being exercised. The State should exercise the right to diplomatic protection to restore the dignity and honor of the victims of past state violence and truth-seeking of human rights violations.

E. Revocation of judgment

20. Article 68 (1) of the Constitutional Court Act¹¹ excludes judgment of the courts from the subject of adjudication. Yet, the Constitutional Court of Korea ruled that a judgment of the courts that violates the basic rights of people by applying a statute determined by the Constitutional Court as unconstitutional is subject to adjudication. However, the Constitutional Court of Korea still rules that unlawful or unjust judgements in which an unconstitutional provision, determined by the Constitutional Court, was not applied, cannot be revoked. The unjust judgments that deny the State's accountability even when the State committed an overall illegal act and “intentionally and actively” infringed freedom and rights of the victims shall be subject to constitutional adjudication.

F. Legal and litigation aid

21. The Legal Aid Act stipulates a legal aid system that provides legal support for cases such as civil, domestic, administrative, criminal cases or constitutional complaints. However, since the above criminal cases do not include retrial cases, victims of past state violence cannot receive legal aid for retrial. 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 fall in the scope of victims according to the

¹¹ **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.

international standards. The State should take legislative and administrative measures so that victims of past state violence, including their families, can receive legal and litigation aids based on the fact that they are the victims.

6. Right to reparation and guarantees of non-recurrence

A. Compensation

22. Based on the analysis of the judgments related to the state compensation of victims of past state violence, it seems that the court's criteria for calculating solatium are ambiguous. The court deducts criminal compensation from solatium claimed by the victim. The court calculates the daily income(potential income) of victims who died or were detained due to past state violence based uniformly on the urban daily wage income of 60 or 65 years of age, which practically is the minimum wage. In addition, the court does not recognize delayed damages arising from the time of illegal activities for the sake of equity. In addition, there are cases in which solatium for victims with short detention periods and their families is recognized significantly lower. The court shall calculate the appropriate amount of compensation to restore the dignity and honor of victims of past state violence, such as their daily income and solatium.
23. Courts require the victims of past state violence to prove the scope of unlawful acts and damages in the tort cases like other ordinary civil cases. It is very difficult for the victims of past state violence to prove their loss of employment opportunities, loss of income, mental damage, and expenses incurred in treatment after a long period of time passed since the state violence. Therefore presumption of damages is necessary. In this respect, the State should consider taking legislative measures to implement a shift of burden of proof in the cases of past state violence.

B. Recognition of accountability

24. Courts do not recognize the judges' accountability for torts resulting from their 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 a trial conducted with unlawful or unfair purposes. Courts should be able to recognize the accountability of the judges who made wrong and unjust judgments on the victims of past state violence.
25. No judicial or administrative sanctions have been taken against the perpetrators, such as prosecutors, police, national intelligence agency investigators, and soldiers, whose illegal acts were confirmed by criminal retrials and tort claims against the government. There have often been cases in which the perpetrators' ordinances were revoked. However, the government has kept the reasons for the revocation of the ordinances confidential and it results in the infringement of victims' satisfaction. The State should take legislative and administrative measures to disclose officials involved in serious human rights violations and take judicial and administrative sanction against the perpetrators.

C. Remembrance and Memorialization

26. The laws on records in the Republic of Korea do not specifically classify records on serious human rights violations. Records on serious human rights violations are handled, managed, and utilized at the same level as other public records. Furthermore, there is no law that comprehensively and specifically stipulates the contents of state measures necessary for remembrance and memorialization of serious human rights violations. The Government and the National Assembly should actively manage and utilize records of serious human rights violations and take legislative and administrative measures that specifically define governmental measures necessary for remembrance and memorialization. For example, establishing a record repository related to the past state violence and enacting a separate past state violence record-related law stipulating the management and use of related records could be considered.

D. Public Apology

27. There were few instances when the heads of institutions including the Prosecutors' Office and the National Intelligence Service made public apologies for certain past state violence cases. However, those apologies hardly met the international standards given that they were limited to only a few cases, that the people in charge of the cases at that time did not apologize directly, and that the contents of apologies were insufficient. In some cases, judges apologized to the defendants during hearings in individual criminal retrial cases. However, judges' apologies were not public apologies of the judiciary itself because they are personal apologies that are not recorded in the judgments or the records. The State should apologize for the truth-confirmed past state violence cases through official procedures without exception, and put them on public records.

E. Restitution and rehabilitation

28. The Act on Establishment and Operation of the National State Violence Trauma Treatment Center was enacted on December 7, 2021, and the Act shall enter into force on June 8, 2022. It is positive that the legal basis for the center for rehabilitation of the victims of past state violence was enacted. However, there is a limitation that the Act defines 'state violence' as exercise of unlawful governmental power from August 15, 1945, meaning that the victims of the past state violence before that period would be excluded from the support under the Act. The Act allows the establishment, designation and operation of branch centers, but only one center in Gwangju seems to be operating at the moment, limiting the accessibility of victims who reside in all parts of the Republic of Korea. It also seems that there are not enough staff or officials to carry out the center's tasks of support.
29. 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 of the victims. It shall be pointed out that the support for rehabilitation of victims, such as employment support, is not specified in the Act. The State should

take legislative and administrative measures to include all victims of serious human rights violations as defined in the international human rights standards within the scope of subject for support by the Center and the support for rehabilitation should be included in the tasks of the Center. Furthermore, the State should allocate sufficient resources for the establishment of branch centers and supplementation of staff and officials.

F. Guarantees of Non-recurrence

30. Laws that caused serious human rights abuses have not been properly revised or repealed. The National Security Act, which was continuously recommended to be abolished by the UN treaty bodies, is still applied nowadays. The Social Protection Act, which allowed illegal detention without a warrant, was abolished, but the detainees who were detained by the Social Protection Act are still in detention due to its supplementary provisions. The State should take legislative and administrative measures including abolition of the National Security Act and the supplementary provisions of the Social Protection Act and provide adequate reparations to related victims.
31. The military courts, which caused many problems in judgements that lacked independence from the military and could not guarantee fairness and objectivity, have not yet been reformed. With continuous demand from the civil society, here were some positive changes such as the abolition of Military High Court and the transfer of the jurisdiction to civil courts on some crimes including sexual violence. However, the civil society's calling for the total abolishment of the military courts in peacetime has not been accepted. The State should take the necessary legislative and administrative measures to abolish military courts in peacetime.
32. In February 2017, it was revealed and confirmed by leaked documents that the former Supreme Court Chief Justice, Yang Seung-tae, and judges of the National Court Administration abused their judicial administrative power to inspect individual judges, intervened in individual court cases, and traded trials with the administration. Five past state violence cases, including tort claims against the government on emergency measures, were included in the list of cases that the judiciary "cooperated" with the government, written in a document of the National Court Administration. The Supreme Court dismissed the claims of those five cases on the grounds of statutes of limitations. However, no sanctions or punishment have been imposed on the judges involved. This incident, so-called the 'judiciary power abuse scandal', shows the reality of the judiciary of the Republic of Korea that judicial independence for guarantees of non-recurrence of serious human rights violations has not been firmly established. The State should take legislative and administrative measures to sanction the judges involved in the judiciary power abuse scandal and to remedy the victims of those traded trials.
33. The National Policy Tasks announced by the new administration, which began on May 10, 2022, did not include past state violence as one of its tasks. It is concerned that the new administration may not adequately support efforts to truth-seeking of past state violence in that it did not include issues related to past state violence in its

National Policy Tasks even when the 2nd Truth and Reconciliation Commission is still in operation. The State should include clarifying the truth of past state violence and ensuring the rights of the victims as a major national policy agenda.

The Japanese Military Sexual Slavery Issue: Standing against efforts to reinstate the 2015 Korea-Japan agreement

1. Background

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. The Japanese military systematically planned, established, and operated comfort stations to 1) reduce the number of rape against civilians in occupied regions, 2) prevent sexually transmitted diseases among soldiers, and 3) boost morale of soldiers. In addition, the Japanese military was directly involved in the mobilization and transportation of women.

In her 1996 report on the Japanese military sexual slavery issue, UN Special Rapporteur on violence against women Radhika Coomaraswamy indicated that the Japanese military “comfort women” system “should be considered a clear case of sexual slavery and a slavery-like practice in accordance with the approach adopted by relevant international human rights bodies and mechanisms.”¹² Gay McDougall’s 1998 report submitted to the UN Sub-Commission on the Promotion and Protection of Human Rights¹³ also identified Japanese military comfort stations as “rape camps.”¹⁴

Women in comfort stations were subjected to repeated beatings, torture, sexual violence, and forced abortions. When the war ended, numerous victims were abandoned on the battlefields or killed by the Japanese military to hide the war crimes. Those who managed to survive had to endure lasting physical pain and psychological trauma.

Victim-survivors suffered under intersecting systems of oppression such as colonialism, patriarchy, racism, and sexism. They were silenced for nearly five decades after the war under the Japanese government’s denial of responsibility and social stigma against survivors of sexual violence.

2. Truth Seeking Initiatives

Professor Yun Chung-ok, who had narrowly escaped conscription herself, kept questioning what happened to the women who were taken away but never returned. Professor Lee Hyo-jae, Yun’s peer and founding figure in Korean Women’s Studies, and Korean women’s movement organizations including Korean Church Women United, which led in activism against sex tourism by Japanese men during the 1970-80s, started investigating the truth of the Japanese military “comfort women” issue.

¹² 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, 4, E/CN.4/1996/53/Add.1 (February 5, 1996), available from <https://undocs.org/E/CN.4/1996/53/Add.1>

¹³ Despite the Japanese Government’s rejection of the appendix that addresses Japan’s legal responsibilities on the issue, a resolution welcoming the Special Rapporteur’s entire report was adopted on August 21, 1998 with overwhelming support from members of the UN Sub-Commission on the Promotion and Protection of Human Rights and governments of other countries.

¹⁴ 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, 54, E/CN.4/1998/13 (June 22, 1998), available from <https://undocs.org/E/CN.4/Sub.2/1998/13>

In 1990, The Korean Council for the Women Drafted for Military Sexual Slavery by Japan (hereinafter the “Korean Council”) was established, and on August 14, 1991, a Korean survivor Kim Hak-soon came forward as the first Japanese military “comfort woman” to publicly testify her experiences. Kim’s courageous testimony led to worldwide #MeToo of victims from South Korea, North Korea, China, Taiwan, Japan, the Philippines, Indonesia, etc. In South Korea, 240 victim-survivors have been officially registered with the Government to date.

However, the Japanese government ignored and denied the testimonies of numerous victims who came forward. Korean civil society organizations have documented and published victims’ testimonies since the early 1990s. The testimonials have also been translated and published in other parts of the world. Survivors traveled to the UN and around the world to raise awareness of the truth of the Japanese military sexual slavery system. Japanese military documents discovered by researchers including Yoshimi Yoshiaki revealed the truth and accountability of the Japanese military. Eventually, in 1993, the Japanese government announced the Kono statement which “admitted” the Japanese military’s “involvement” in “the establishment and management of the comfort stations and the transfer of comfort women” and promised to research and teach the history of Japanese military sexual slavery.

3. Criminal Justice and Accountability Processes

However, shortly after the 1993 Kono statement, the Japanese government launched the 1995 Asian Women’s Fund to evade legal responsibility, claiming that the “compensation for the Japanese Military Sexual Slavery issue” was “completely and finally resolved” by the 1965 Korea-Japan Claims Agreement. The Asian Women’s Fund paid consolation money raised through the Japanese private sector to individual victims, causing division between victims and leaving great damage to citizens of Korea and Japan. After the Asian Women’s Fund, historical denialism spread extensively throughout Japanese society.

In 2015, the agreement between the Foreign Ministers of Korea and Japan (so-called the 2015 Korea-Japan agreement) was announced, which once again neglected historical justice and ignored UN recommendations. The 2015 Korea-Japan agreement, which excluded victims and civil society organizations that have advocated justice for around 30 years, included humiliating non-disclosed elements of 1) confirm final and irreversible resolution, 2) make efforts to appropriately address concerns regarding the Statue of Peace in front of the Japanese Embassy in Seoul, 3) refrain from reprobation and criticism in international forums. UN human rights bodies expressed concerns about the 2015 Korea-Japan agreement and urged guarantees of victims’ rights to truth, justice, and reparations.¹⁵

¹⁵ Concluding Observations issued by UN Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/7-8) and UN Committee Against Torture (CAT/C/KOR/CO/3-5), among many others, calls for state parties to revise the 2015 agreement to provide full redress to victims that ensures their rights to truth, reparation and assurances of non-repetition. For a list of UN human rights bodies’ recommendations on the Japanese military sexual slavery issue, see: Women’s Active Museum on War and Peace, “Japan / Alternative Report on the Issue of Japanese Military Sexual Slavery Appendix No. 1. Compilation of Recommendations by the UN Human Rights Bodies,” May 2014, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CCPR_CSS_JPN_17435_E.pdf; The Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan,

Victim-survivors and civil society have filed several lawsuits since the 1990s to hold the Japanese government legally responsible. However, the Japanese courts neglected justice for survivors citing expiration of statute of limitations, and U.S. courts dismissed the case, accepting Japan's motion for sovereign immunity and protection of diplomatic rights. In the end, Korean survivors chose the Korean court as the last resort of remedy for their rights and sought to hold Japan legally responsible. In 2016, Korean victims and the bereaved families filed two compensation lawsuits against Japan in Korean courts. However, justice was delayed as the lawsuits were targeted by the judicial branch under the Park Geun-hye administration, which announced the 2015 Korea-Japan agreement, in its exertion of pressure to deliver verdicts in Park's favor. The court hearings were not held for over three years. A confidential document from the Planning and Coordination Office of the National Court Administration demanding that the district court reject or dismiss the cases filed by Japanese military "comfort women" was revealed in media reports in 2018.

After the candlelight revolution of Korean citizens that brought a new administration to office, the Constitutional Court of Korea ruled on December 27, 2019, that the agreement between Foreign Ministers of South Korea and Japan announced on December 28, 2015, was "not a legally binding treaty but a mere political agreement in light of its procedures, form, and content."¹⁶ As such, the Court ruled that the agreement cannot "dispose of individual rights of Japanese military 'comfort women' victims and the rights of diplomatic protection by the Government have not been extinguished."

After the two lawsuits were finally able to proceed, the Seoul Central District Court (presiding judge Kim Jeong-gon) ruled on January 8, 2021, that the Japanese government should make reparations to the Japanese military "comfort women" victims.¹⁷ However, in the second case filed by different victims ruled on April 21 of that year, Seoul Central District Court (presiding judge Min Seong-cheol) proactively supported the 2015 Korea-Japan agreement and rejected the case citing state immunity. Justice was served differently among victims who suffered under Japanese military sexual slavery because they were ruled by different presiding judges.

The Japanese government has not accepted the ruling on January 8, 2021, claiming that "Korea has violated international law." An appeal is underway against the Seoul Central District Court's ruling on April 21, 2021. As of today, only two plaintiffs in the appellate trial remain alive. The appellate court should hold the government of the perpetrating state responsible and should not ignore the obligation towards redress for victims.

4. Reparations

"Concluding observations and remarks from 2016 to 2020 regarding the Japanese military sexual slavery issue," https://drive.google.com/file/d/1MEG548TilRhaPrAZECDWwCmMn5S5-m_t/view?usp=sharing

¹⁶ Constitutional Court of Korea, 2016Hun-Ma253, December 27, 2019, http://search.ccourt.go.kr/xmlFile/0/010400/2019/pdf/e2016m253_1.pdf

¹⁷ Full text of the judgment: The Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan, "2016 Ga-Hap 505092," Feb 23, 2021, https://womenandwar.net/kr/wp-content/uploads/2021/02/ENG-2016_Ga_Hap_505092_23Feb2021.pdf?ckattempt=2

On January 8, 1992, Korean women's rights organizations held the first Wednesday Demonstration in front of the Japanese Embassy in Seoul in light of the Japanese Prime Minister's impending visit to Korea. Since then, the Wednesday Demonstration has continued over 1,500 times throughout 30 years. Victims have demanded comprehensive redress at the demonstration in the form of seven demands: 1) Admit the Japanese military sexual slavery system as a war crime, 2) Disclose official documents, 3) Deliver an official apology, 4) Make reparations to the victims, 5) Punish those responsible, 6) Record the sexual slavery system in history textbooks, 7) Erect a memorial monument and build an official archive. These seven demands were also persistently raised at the Asian Solidarity Conference, held by victims and activists from across the Asia-Pacific since 1992. However, Japan did not make legal reparations even after the Kono statement. In the face of delayed justice, victims and civil society held the 2000 International Women's War Crimes Tribunal on Japan's Military Sexual Slavery to clarify the Japanese government's legal responsibilities for war crimes and crimes against humanity. Although it was a people's tribunal with no legal jurisdiction over Japan, the tribunal specified the need for punishment of perpetrators including the Japanese King, and the responsibilities of the Japanese Government. Despite the UN recommendations and resolutions from congresses in various countries, such as the 2007 US Congress resolution (HR121) urging the Japanese government to admit its responsibilities, the Japanese Government continues to ignore calls for legal reparations.

In Korea, the Act on Livelihood Stability For Sexual Slavery Victims for the Japanese Imperial Army was enacted in 1993 and revised multiple times to the current Act on Protection, Support and Commemorative Projects for Sexual Slavery Victims for the Japanese Imperial Army through the efforts of the Korean Council and other women's rights organizations. Under this Act, the Ministry of Gender and Family Affairs was charged with providing support for the victims. However, the Government has not taken adequate measures to comprehensively investigate the truth, demand the Japanese government's responsibility for reparations, and proactively respond to defamation against victims.

5. Memorialization

As survivors are passing away one by one, citizens are recording the historical truth and remembering and inheriting victims' voices through various activities. On May 5, 2012, the War and Women's Human Rights Museum was established in Seoul to remember and educate the courage of victims who broke their long silence and came forward. The museum works to raise awareness of the history of Japanese military sexual slavery, record activities for human rights and peace, and open a world without war and violence against women with future generations. The Wednesday Demonstration, which has been held for 30 years, has become a space of solidarity with citizens around the world and space of human rights, peace, and history education for future generations.

On December 14, 2011, in celebration of the 1000th Wednesday Demonstration, the Statue of Peace, which memorializes victim-survivors' courageous voices and their hopes for peace, was established in front of the Japanese Embassy in Seoul. The Statue of Peace is being established not only in Korea but also around the world through the grassroots activism of numerous citizens. However, the Japanese government publicly pressures the removal of and systematically interferes with the establishment of the Statues of Peace,

attempting to erase the history of Japanese military sexual slavery.¹⁸ Nevertheless, the Statue of Peace has created public memory of the Japanese military sexual slavery issue, raised awareness of ongoing violence against women, and promoted education and solidarity for peace and women's human rights.

Activists who participated in the 11th Asian Solidarity Conference in 2012 designated August 14 as the International Memorial Day for Japanese Military "Comfort Women" in honor of the first public testimony date by Kim Hak-soon. The memorial day prompted numerous citizens to remember victims' courage that awakened the world, raised sexual violence as a universal human rights issue, and established international legal principles on sexual violence in armed conflict based on victim-centered approaches to truth, justice, reparation, and non-recurrence. The 1087th Wednesday Demonstration held on August 14, 2013, was held as an International Solidarity Demonstration on International Solidarity Action Day for the 1st International Memorial Day for Japanese Military "Comfort Women." The Government designated Memorial Day as a national memorial day in December 2017 and has held government ceremonies since 2018. However, the current Yoon Suk-yeol administration, which pledged to abolish the Ministry of Gender and Family Affairs, has not offered any alternative measures to ensure support and protection for Japanese military "comfort women" victims and commemoration projects for future generations once the Ministry is disbanded.

6. Guarantees of non-recurrence

The victims are yet again subject to human rights violations and retraumatized amid the Japanese government's denials, the Government's irresponsibility, and far-right historical denialists' attacks.

In March 2007, the Abe administration of Japan declared through a Cabinet decision that it "did not come across any [documents] that directly show the military or authorities so-called forcibly led away" of the women, practically denying the Kono statement.¹⁹ In 2021, the Suga administration of Japan deleted mentions of the coercive mobilization of Japanese military "comfort women" in Japan's history textbooks. This followed a decision reached by the Japanese Cabinet that the expression "comfort women" should be used in place of "comfort women for the Japanese military," which was deemed to create a "false impression" that these women were forcibly recruited by the military.²⁰

Despite its promises to uphold the Kono statement, the Japanese government continues to deny forced mobilization and sexual slavery and insists that the issue is "finally and irreversibly resolved" based on the 1965 Claims Agreement and the 2015 Korea-Japan agreement. "Japan's Efforts on the Issue of Comfort Women," a document distributed by the

¹⁸ For more information on Japanese Government's attempts to remove Statues of Peace around the world, see: The Korean Council, "[Statement] The Japanese Government should stop demanding removal of Statues of Peace abroad!," Oct 8, 2020, <https://womenandwar.net/kr/statement-the-japanese-government-should-stop-demanding-removal-of-statues-of-peace-abroad/>

¹⁹ Norimitsu Onishi, "Japan Stands by Declaration on 'Comfort Women'," The New York Times, March 16, 2007, <https://www.nytimes.com/2007/03/16/world/asia/16cnd-japan.html>

²⁰ So-young Kim and Je-hun Lee, "Japan deletes military's role in 'comfort women' system from textbooks, reneging on Kono Statement," March 30, 2022, https://english.hani.co.kr/arti/english_edition/e_international/1036864.html

Japanese Ministry of Foreign Affairs, officially denies the sexual slavery system and its coercion.²¹

In April 2022, Japanese Prime Minister Kishida requested the removal of the Statue of Peace in Berlin to German chancellor Scholz in person.²² The Japanese far-right has organized email and phone attacks on relevant government offices to remove the Berlin Statue of Peace, held exhibitions that include sexual offenses against the Statue of Peace, and led hate attacks against relevant events. The “firm determination never to repeat the same mistake by forever engraving such issues in our memories” stated in the Kono statement has not been met truthfully. On May 16, 2022, a victim-survivor Lee Yong-soo demanded that the Japanese government install a Statue of Peace in the center of Tokyo as a history lesson rather than shamelessly calling for the removal of Statues of Peace built in other countries.

Since late 2019, Korean historical denialists who are connected to Japanese historical denialists have been defaming victims and threatening activists and participants in counter-protests to the Wednesday Demonstrations. Amid denialists’ misogynist insults and distortions of victims’ testimonies, a victim-survivor Lee Ok-seon attended the Wednesday Demonstration despite difficulties due to her old age (March 24, 2021, 1484th Wednesday Demonstration). She criticized the Japanese government’s denial of forced mobilization and said that receiving an apology is not just a monetary issue. The National Human Rights Commission of Korea issued an urgent relief decision in January 2022 expressing concern with the continuous violation of human rights committed by interferences to the Wednesday Demonstration. The Commission recommended that the police take proactive measures regarding counter-protest groups that interfere with the Wednesday Demonstration. Regardless, the Government and police are taking no further action while the insults and defamation against victims continue.

Meanwhile, South Korea’s new president, Yoon Suk-yeol, ran on a presidential campaign that pledged “grand bargain” and “comprehensive approach” to historical issues. Even before taking office, he sent a policy consultation delegation to Japan that included officials who played leading roles in the making of the 2015 Korea-Japan agreement. Yoon has actively expressed his intent to improve Korea-Japan relations and aims to reinstate the 2015 Korea-Japan agreement. Park Jin, Korean Minister of Foreign Affairs, said on April 20 even before he assumed office that the 2015 Korea-Japan agreement was an “official one.” Japanese Chief Cabinet Secretary Matsuno responded by saying that the agreement reached a “final and irreversible” resolution. On May 2, Park reiterated the importance of the “spirit of the 2015 agreement” in a Congressional hearing. In the 2017 presidential election, even the candidate for the Liberal Korea Party, the predecessor of the current ruling People Power Party,²³ had pointed out problems with the 2015 Korea-Japan agreement and argued that a “renegotiation” is necessary. The Moon Jae-in administration maintained that the 2015

²¹ Ministry of Foreign Affairs of Japan, “Japan's Efforts on the Issue of Comfort Women,” https://www.mofa.go.jp/policy/postwar/page22e_000883.html

²² The Mainichi, “Japan PM asked German leader to help remove 'comfort women' statue in Berlin,” May 11, 2022 <https://mainichi.jp/english/articles/20220511/p2g/00m/0in/055000c>

²³ The People Power Party is the current ruling party of South Korea controlling the South Korean presidency, held by Yoon Seok-yeol who took office on May 10, 2022. He was preceded by Moon Jae-in, who was elected president between 2017-2022 after the candlelight revolution of Korean citizens led to the impeachment of former president Park Geun-hye, who held office from 2013 to 2017.

Korea-Japan agreement, while a bilateral agreement, had not fully resolved the Japanese military sexual slavery issue and was reached through give-and-take negotiations that violated victim-centered principles.²⁴

The 2015 Korea-Japan agreement, which is now being reinstated under the pretense of improving Korea-Japan relations for diplomatic alliances and economic cooperation, erases principles of truth, justice, reparation, and non-recurrence for victims of gross human rights violations. Victim-survivor Lee Yong-soo recently said that the 2015 agreement is invalid and the 1 billion yen from Japan must be returned immediately, emphasizing that improvement in Korea-Japan relations is impossible without changes to the Japanese government's attitude.²⁵

7. Suggested Recommendations

- 1) The State should stop attempts to reinstate the 2015 Korea-Japan agreement, which was a political agreement that violated victim-centered principles, and transparently disclose the negotiation process, procedures, and relevant documents;
- 2) The State should take appropriate measures on counter-protestors who interfere with the Wednesday Demonstration and prepare measures to address insults and defamations against victims;
- 3) The State should stop political agreements that ignore historical truth and regress justice under pretenses of security alliances and economic cooperation, and take proactive action towards truth, justice, reparation, and non-recurrence of the Japanese military sexual slavery issue.

²⁴ Republic of Korea Ministry of Foreign Affairs, "Report on the Review of the Korea-Japan Agreement on "Comfort Women" Victims," January 1, 2018, https://www.mofa.go.kr/eng/brd/m_5674/view.do?seq=319637&srchFr=&srchTo=&srchWord=victim&srchTp=0&multiitm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=1&titleNm

²⁵ Article in English: Yonhap News Agency, "Elderly victim calls for prompt, principled resolution of sexual slavery dispute with Japan," May 17, 2022, <https://en.yna.co.kr/view/AEN20220517010200315>; Article in Korean: Yonhap News Agency, "[일문일답] "도쿄 한복판에 소녀상 세우는 게 꿈. [[Q&A] I dream of installing a Statue of Peace in the center of Tokyo]", May 17, 2022, <https://www.yna.co.kr/view/AKR20220517064000004?section=search>, MBC News. "이용수 "한일관계 개선 앞서 위안부 풀어야... 日 사죄 없으면 유엔으로 [Lee Yong-soo "Comfort Women issue must be resolved before Korea-Japan relations, must go to the UN if Japn does not apologize"]," May 17, 2022, https://imnews.imbc.com/news/2022/society/article/6369554_35673.html; Article in Japanese: Kyodo News, "関係改善へ首相公式謝罪を 韓国元慰安婦が訴え," May 17, 2022, <https://nordot.app/899199437460652032>

Forced Mobilization under the Japanese Occupation: Current Situation and Challenges

1. Background

Following the invasion of Manchuria in 1931, Japan waged a total war of aggression against China in 1937. Japan established 'labor mobilization plans' covering a wide range of areas including Japan, Korea, Taiwan, Sakhalin, and the South Sea Islands in the Pacific. In colonial Korea, Japan strengthened the system for the mobilization of human and material resources, while pursuing the policy of 'making subjects of the emperor', assimilation of Koreans into Japanese.

Over 800,000 Koreans had been mobilized and deported to Japan as workers. Young girls were mobilized as the Korean Women's Volunteer Labour Corps and worked as factory workers. More than 360,000 people were mobilized to serve the Japanese army as soldiers and civilian workers in the military. Some women had been forced to turn into 'comfort women' for the Japanese army. Within Korea itself, more than 6 million Koreans were also forcibly mobilized to work.

The issue of forced mobilization/forced labor under Japanese imperialism was raised before the International Labour Organisation (ILO) together with the 'comfort women' issue. Since 1996, the ILO Committee of Experts on the Application of Conventions has made recommendations to the Japanese government several times.

On 24 May 2012, when the South Korean Supreme Court quashed the lower courts' judgements and remanded them, it held that 'the Japanese colonial rule was illegal and the forced mobilization as a tort against humanity', opening the path for reparation, in a lawsuit filed by victims forced to work at the Nippon Steel and Mitsubishi Heavy Industries in the 1940s.

While Park Geun-hye was still in office as President of South Korea (Feb 2013 - Mar 2017), the Supreme Court, upon request from the Ministry of Foreign Affairs (MOFA), deliberately postponed ruling on the case, and remained in close consultation with the MOFA, defendant's lawyers and the presidential office, on ensuring that the case would end in the Park administration's favor. Park administration and the Supreme Court's engagement in such judicial transactions grossly violated the constitutional right of victims of forced labor to a fair trial, and also denied the victims of a gross historical injustice a right to an effective judicial remedy.

On 24 May 2012, however, the Supreme Court quashed the earlier court ruling and remanded it to the Seoul High Court in favor of citing the plaintiffs' claim to damages. The Seoul High Court, accordingly, changed its decision on 10 July 2013, to the effect that the defendant pay 100 million KRW (USD 100,000) to each of the plaintiffs in compensation. The defendant decided to challenge this decision and raised an appeal. After five years of delay in deciding on this appeal, the Supreme Court finally ruled in favor of the plaintiffs once again on 30 October, and 29 November 2018.

It took the plaintiffs 13 years(Nippon Steel) and 18 years(Mitsubishi Heavy Industries) since they first filed their lawsuit. Although there were four plaintiffs that raised the original suit, they passed away one by one while the Supreme Court deliberately postponed the ruling on this case in an effort to use it to the institution's advantage. The judgment was legally recognized by a South Korean court, 73 years after the victims were freed from forced mobilization due to liberation in 1945. By affirming the responsibility of the relevant Japanese corporation complicit in its implementation, the judgements in effect may be regarded as establishing the State responsibility of Japan in an indirect manner.

Having invaded China in 1937, Japan launched a voluntary enlistment program in 1938 and a conscription program in 1944, mobilizing over 400,000 young men of colonial Joseon (Korea) as soldiers and troops for the Asian-Pacific War. Of these young Koreans who were forcibly taken to war, 21,000 whose death was officially confirmed by the Japanese government are enshrined as "gods" along with their colonizers and oppressors at Yasukuni shrine. In other words, the victims are placed upon the invader's shrine, alongside Class-A war criminals that oppressed and killed them and their fellow citizens.

World War II ended in 1945 when Japan surrendered and Korea was liberated from colonial rule. Fourteen years later in 1959, however, the Japanese government decided to enshrine Korean victims at Yasukuni, without even bothering to seek consent from the bereaved families and the Government. In doing so, the Japanese government relayed information on the Korean victims of war to the Yasukuni Shrine. The two institutions sought to justify their action by claiming that these Koreans died "as Japanese" in battles, and ought, therefore, to remain "as Japanese" after their death. Absurdly, some of the Koreans who were enshrined at Yasukuni were actually alive. This shows that Japan did not even conduct due checks on whether the persons they were about to enshrine were dead or alive.

Also, it is an infuriating fact that the Koreans enshrined at Yasukuni remain there with the Japanese names they were forced to bear during the colonization, although seven decades have elapsed since the Japanese occupation of Korea ended. This leads the bereaved families of victims to believe that their beloved have yet to be freed from colonial rule. Not only have they lost their beloved unjustly to the brutal war efforts of their colonial oppressors, but they have to endure the cruel irony of history that their beloved is trapped, with names forced upon them, alongside war criminals at the invader's shrine.

The Japanese government has enacted and enforced a law on the collection of remains of Asian and Pacific war dead since 2016, which has been strongly criticized by the Korean-Japanese civil society by excluding Korean victims. While the Japanese and Korean governments are making no efforts to return the remains of the victims mobilized as laborers, efforts are being made to return the remains at the level of civil society between Korea and Japan.

2. Truth Seeking Initiatives

With respect to the issue of forced mobilization, the work of all the Commissions established under the legislation has been terminated now. Instead, the Past-Related Work Support Group under the Ministry of the Interior and Safety, and the two government-sponsored

institutions: the Foundation for Support for Victims of Forced Mobilization and the National Memorial Museum of Forced Mobilization under Japanese Forced Occupation remain. The prospect for the additional legislation of special laws is dim, and the official effort to deal with the past with Japan is arguably in the state of near death.

In order to find the truth relating to what Japan did during its colonial rule, it is critical to secure the archival materials produced by the Japanese Imperialism and companies and to gather the testimonies from surviving victims. The Japanese government handed over to the Government only part of the public records relating to its colonial rule. As a matter of state succession under international law, in the event of the separation of states and a newly independent state, or when an old state restored sovereignty, the predecessor state is obliged to settle rights and duties or legal relations with a new state. The issues here include not only the matters of territory and the people, which are part of the elements of the state Constitution but also the matters relating to the government such as state property and debts. The archives relating to the administration of the relevant region should be passed to the successor state. The problem of the return of the colonial government-related materials is not the only question of historical archives but the requirement of human rights.

Civil society's efforts to find out the truth about the victims of forced labor are still being carried out through Korea-Japan civil solidarity. These activities included campaigns for legislation, lawsuits against the Japanese government, the Government, and Japanese corporations, data collection, on-site investigation and research, preservation of testimony and records of victims, press conferences, international conferences, exhibitions, etc.

3. Criminal Justice and Accountability Processes

The so-called 'post-war compensation lawsuits' have begun to be filed before the Japanese courts of law with the Son Jin-du case of 1972. Since the 1990s, multiple lawsuits against the Japanese government and corporations, such as Mitsubishi, Nippon Steel, and Fujikoshi have been raised. Among others, these civil lawsuits clearly show that the issue of the past is not merely the question of national feelings and of historical interests or textbooks, but also a legal matter concerning the remedies for victims. In addition to the victims of the Japanese military sexual slavery and the forced mobilization, these court cases involved young girls mobilized as "Volunteer Labour Corps" in their teens who were forced to work for Japanese corporations, atomic bomb victims, Koreans who were conscripted as soldiers and employees into the Japanese military, B- and C-class Korean war criminals, Sakhalin detainees, people who were quarantined for leprosy, families of victims of massacres at Jeam-ri and Sakhalin, families of victims of the Ukishima-Maru that was exploded and sunk in the sea, and families of Korean independent fighters.

All these lawsuits, however, have ended in the plaintiffs' defeat without exception. The judgements and decisions resulted in the immunity of the state and corporation from responsibility, based on such grounds as the principle that the State of Japan bore no liability for the acts in question at the relevant time, the passage of the period required for the instigation of an action (statutory limitations or extinction period) and the theory that the victims' rights have been settled with 1965 Claims Agreement between Korea and Japan. In effect, it is equivalent to saying that there is no law for the victims. While the interpretation of the 1965 Agreement became a subject of controversy, parts of the documents relating to the

Korea-Japan talks were made public with the lawsuits demanding their disclosure since 2006. The case for the revocation of the enshrinement of the Korean victims in the Yasukuni Shrine in Japan is now pending.

Post-war compensation lawsuits took place in earnest only in the 1990s, when the Japanese government began providing the Government with a list of victims of forced labor. The Constitutional Court dealt with the petition cases seeking the finding of unconstitutionality over such issues as the failure to legislate involving the claims related acts, the termination of compensation payment, and non-implementation of the request for arbitration under the 1965 Agreement. In particular, entering the year 2000, the plaintiffs who lost their cases in Japanese courts, went on bringing lawsuits against the Japanese corporations before the South Korean courts. There were also lawsuits against the Korean corporations that had benefited from the “claims asset” under the 1965 Agreement, and the proceedings for the disclosure of records of the Korea-Japan talks leading to the Agreement. In 2011, the Constitutional Court ruled that the omission of the Government make efforts to protect the rights of both ‘comfort women’ and atomic bombing victims. This landmark case led to the eventual diplomatic negotiations, culminating in the still controverted 2015 agreement between the two governments. Further, on 24 May 2012, when the Korean Supreme Court quashed the lower courts’ judgements and remanded them, it held that the Japanese colonial rule was illegal and the forced mobilization was a tort against humanity, opening the path for reparation. Thereafter followed a series of lawsuits by other victims of the forced mobilization, including women victims mobilized to Fujikoshi.

In relation to “gross violations of human rights and serious violations of international humanitarian law”, there has been no prosecution of acts committed under the Japanese rule for war crimes and crimes against humanity under international law. In this respect, the Ministry of Justice has not undertaken either investigatory or inquiry measures. In contrast to the civil compensation matter, the Government is far too negative in the application of both international criminal and human rights law and the punishment of perpetrators.

The Korean and Japanese governments have not even conducted a preliminary fact-finding investigation on the massacre of more than 6,000 Koreans in Tokyo during the Great Kanto Earthquake in 1923. The incident, in which Zainichi(Korean residents in Japan), Korea and Japanese civil society have been working to find out the truth and commemorate the victims, will mark its 100th anniversary next year.

4. Reparations

The Japanese government has publicly pressured the defendant company not to comply with the judgment, criticizing the 2018 Supreme Court judgment as a violation of international law and demanding the Government cancel the judgment. Defendant company does not respond to Plaintiff's request for consultation for the implementation of the judgment and continues to be irresponsible to consult with the Japanese government on the implementation of the civil suit judgment.

Plaintiff is proceeding with the procedure for the compulsory execution of the judgment, and the Japanese government intentionally delayed the delivery of the decision to enforce the compulsory execution and refused to serve it without even stating the reason for return. The

Japanese government is blocking the implementation of the ruling by delaying and rejecting the service in a distinctly different manner than before the 2018 Supreme Court judgment. This is a clear violation of the Hague Convention on the Service Abroad of Judicial and Extraordinary Documents in Civil or Commercial Matters, which both South Korea and Japan joined. In addition, even in additional lawsuits filed by victims of forced mobilization after the 2018 judgment, the Japanese government intentionally delayed the delivery and filed cases in April 2019 only began in the second half of 2020, more than a year after public service.

Three and a half years have passed since the Supreme Court's judgment in October 2018, but the Japanese government and defendant companies have not fulfilled any responsibility, and victims of forced labor who have been fighting for their human rights have not received any rights relief, including apologies and reparation. As the implementation of the judgment is delayed, victims of the elderly forced labor are dying. Of the four plaintiffs in the Japan Steel lawsuit, only one survived, and only two survived among the five plaintiffs in the Mitsubishi Heavy Industries lawsuit.

The Japanese government provides a survivor's pension to the bereaved families of the Japanese who joined the Yasukuni Shrine. However, in the case of Korean victims who joined Yasukuni Shrine citing the logic that they were "Japanese at the time," compensation for the bereaved family is denied because they are "foreigners." Moreover, the Japanese government even refused to pay the amount of money that belongs to the bereaved family, such as wages or compulsory military mail deposits and consolation money, which were clearly deposited and existing, to the bereaved families, saying, "The claim was extinguished due to legal measures under the 1965 Korea-Japan Agreement."

The Japanese government and the Government must come up with a plan to remedy rights, including apologies and compensation for all victims of forced mobilization, including soldiers and employees in the Japanese military.

5. Memorialization

In 2015, the "Sites of the Meiji Industrial Revolution in Japan: Iron, Steel, Shipbuilding, and Coal Mining" was registered on the UNESCO World Heritage List. The World Heritage Committee called on the Japanese government to allow "an understanding of the full history of each site" following criticism that these facilities were sites where Koreans, Chinese and Allied prisoners of war suffered from forced labor.

However, the Industrial Heritage Information Center, which was opened in Tokyo in June 2020, does not follow the recommendation of the World Heritage Committee and denies the historical facts of forced labor. In response, the 44th UNESCO World Heritage Committee in 2021 expressed "strong regret" to the Japanese government, which has not fulfilled its promise, and adopted a decision to come up with an interpretation strategy for 'the full history', including the history of forced labor.

The Japanese government has recently attempted to cover up the history of forced mobilization through political intervention in history education, including banning the use of terms such as "military force Japanese Military Sexual Slavery" and "forced detention" in history textbooks. We are seriously concerned that the trend of historical injustice, which

denies the truth of forced mobilization in sympathy with the Japanese government's continued attempts to distort the historical truth, is growing in power on a global level as well as in Japan and Korea.

6. Guarantees of non-recurrence

Japan colonized Korea and forced the ordinary people of Korea and Japan to serve as tools for the war of aggression, resulting in enormous sacrifices. While clarifying the truth of past atrocities has yet to be made, Japan is attempting to revise the Peace Constitution that could push them back to war. East Asian citizens have fought in solidarity to ensure that the tragedy of Japan's colonial rule and aggression war is never repeated. Efforts to reveal the truth of forced mobilization and restore the human rights of victims are a legitimate fight for all citizens of East Asia to live together peacefully here and just fight in line with the global historical trend of overcoming colonialism.

7. Suggested Recommendations

- 1) The Japanese government should apologize and make reparation for the victims of forced mobilization, who are victims of colonial rule and aggression wars, and properly educate the history of forced mobilization. The Japanese government should make constant efforts to liquidate the past and immediately stop trying to revise the Peace Constitution;
- 2) The State should make diplomatic efforts to the Japanese government based on a victim-centered approach to restore the human rights of victims of forced labor and come up with comprehensive rights relief measures for victims of forced labor;
- 3) The State and the Japanese government should actively support civil society's efforts to overcome colonialism and realize peace in East Asia.

Forced Mobilization and Massacres of Sakhalin Koreans

1. Background

From 1905 to 1945, Imperial Japan ruled the Sakhalin region lying to the south of 50 degrees north latitude in Russia. Imperial Japan drafted over 150,000 Koreans by forced mobilization and forced them to develop Sakhalin Island and to forced labour to produce war supplies. Later on, the Soviet Union invaded the Japanese portion of Sakhalin Island and sealed off the Island. As a result, many Koreans were unable to return to Korea and had to suffer the separation of families. 'Sakhalin Koreans' refer to Koreans and their descendants who were forcibly mobilized to Sakhalin. Sakhalin Koreans were not free to return to the Republic of Korea until 1990, and many first-generation Sakhalin Koreans died before that time.

When the Soviet Union invaded the Japanese portion of Sakhalin Island in August 1945, there were several massacres of Sakhalin Koreans by Japanese police and civilians. Two well-known massacres among several massacres are the massacres in Kamishisuka (now Leonidov) and Mizuho (or Porzaskoye) Village. In Kamishisuka, the Japanese police arrested 19 Sakhalin Koreans and 18 of them were found shot the next day. In Mizuho Village, a Japanese civilian who had served in the military in the past organized a vigilante group and killed 27 Sakhalin Koreans, including women and young children. The Sakhalin Koreans have testified that there were more massacres but the accurate truth-seeking is not sufficiently made.

The National Assembly of the Republic of Korea enacted the Special Act on Assistance to Sakhalin Koreans to support Sakhalin Koreans' permanent return and settlement. However, many Sakhalin Koreans cannot receive the support because the Act limits the scope of those eligible for the support to the first generation Sakhalin Korean and some of their family members - the first generation Sakhalin Korea's spouse and one lineal descendant. And if a first-generation Sakhalin Korean dies, the family members cannot receive the support.

2. Truth Seeking Initiatives

About 1,500 Sakhalin Koreans moved to Japan after Japan and the Soviet Union established diplomatic ties and some of them organized the Association of Sakhalin Returned Korean Residents in Japan. The Association did activities, such as preparing a list of Sakhalin Koreans who wish to return, exchanging letters between Sakhalin Koreans and their families in South Korea, and holding the reunion of separated families through the invitation to Japan.

Civil society organizations such as the Korea International Network('KIN') have informed the reality of Sakhalin Koreans and their history through various activities, such as workshops, fact-finding surveys, and cemetery investigation and recording their history by collecting the Sakhalin Koreans' oral records. KIN launched the still on-going campaign to enact the Special Act on Support for Sakhalin Koreans in 2005.

The Truth Commission on Forced Mobilization under Japanese Imperialism was established in 2004 under the Special Act on Verification and Support for the Victims of Forced Mobilization under Japanese Imperialism in Korea. Tasks of the Commission included truth-seeking, determination of damages, providing consolation payments and so on. The truth-seeking task of the Commission was inevitably insufficient because the scale of forced mobilization was so extensive and there were limitations of period and human resources. The Commission ended its activities in 2015.

Massacres officially confirmed by the Commission are the massacres in Kamishisuka and Mizuho Village. No proper and official truth-seeking of additional massacres had been made, and there are arguably more victims. For example, the press reported that the number of victims of the massacre in Mizuho Village is 35, not 27, according to the records. In addition, secret records that have not been accessed are still in Russia, and tasks to be researched and analyzed remain, but there is no public institution to carry out the tasks continuously and regularly.

3. Criminal Justice and Accountability Processes

The perpetrators of forced mobilization and the massacre of Sakhalin Koreans were not criminally punished. Participants in the Mizuho village massacre were sentenced to death and imprisonment during the Soviet Union's military trial. But the perpetrators returned to Japan after Japan and the Soviet Union established diplomatic ties.

4. Reparations

Article 3 of the Special Act on Assistance to Sakhalin Koreans stipulates that the State shall make every diplomatic effort for the remedy of damage suffered by Sakhalin Koreans and the recovery of return of Sakhalin Koreans' remains. However, like other victims of forced mobilization, the right of diplomatic protection to realize the right to demand compensation of Sakhalin Koreans has not been actively exercised by the Government. In addition, the Constitutional Court decided that the law excluding the bereaved families of Sakhalin Koreans who did not have Korean nationality from the list of consolation money is constitutional in 2015. Another problem is that there are many Sakhalin Koreans excluded from the support under the Special Act, as mentioned above.

5. Memorialization

Memorial towers and memorial monuments are built in Sakhalin and memorial ceremonies are held every year. In the private sectors, there are activities to memorialize Sakhalin Koreans by publishing photo books, producing videos, and performances in song plays or the plays related to Sakhalin Koreans.

However, public remembrance and memorialization measures for Sakhalin Koreans are insufficient. The promotion of tasks for public remembrance and memorialization such as the construction of a history museum is unclear.

6. Guarantees of non-recurrence

As mentioned above, the National Assembly of the Republic of Korea enacted the Special Act on Assistance to Sakhalin Koreans. However, the problem is that the Special Act mainly focuses on the project of permanent returns, so the truth-seeking and the research on Sakhalin Koreans are insufficiently guaranteed

7. Suggested Recommendations

- 1) The State should amend the Special Act on Assistance to Sakhalin Koreans so that all Sakhalin Koreans can receive the support stipulated by the Act;
- 2) The State should actively exercise the right of diplomatic protection to realize the right to demand compensation of Sakhalin Koreans;
- 3) The State should take all legislative and administrative measures to ensure the additional truth-seeking on the massacres of Sakhalin Koreans and to restore the honor of the victims of massacres;
- 4) The State should actively disclose obtained confidential archives related to Sakhalin Koreans. Furthermore, the State should make diplomatic efforts to secure archives related to Sakhalin Koreans in Japan and Russia and should support related research and investigations in civil society.

The Korean War and the One Million Massacred

1. Background

The massacre at the heart of this paper refers to the summary of killings of over at least hundreds of thousand civilians on the Korean peninsula, without any justice or due process, at the hands of the Korean government (including the military, the police, and the state-sanctioned extreme rightwing vigilante groups, such as the Seobuk Youth Association), the U.S. troops, the North Korean People's Army, and the extreme leftwing factions.

Prewar massacres

Prewar massacres of civilians included the "small wars," mostly waged by the military-police punitive expeditions, against civilians in the October Uprising in Daegu, the April 3 Uprising in Jeju, and the Yeosu-Suncheon Uprising, all in the 1940s.

Massacres during the Korean War

- 1) Massacres of inmates in preventive detention and incarceration
These were mass executions of persons kept in preventive detention, such as members of the National Bodo League, and inmates in incarceration without due process in the immediate aftermath of the Korean War.
- 2) Deaths by friendly fires
These refer to the mass killings of civilians and refugees by air raids, naval bombardments, and machine-gunning by the US troops after the United Nations (UN) troops (95 percent of whom were American soldiers) were deployed to the Korean War.
- 3) Murders on suspicions of sympathizing with communists
These were murders committed, shortly after the South Koreans reclaimed Seoul on 28 September 1950, and during the retreat of the UN forces on 4 January, the following year, by the South Korean military, police and rightwing vigilante groups against civilians who inhabited the regions occupied by the North Korean People's Army.
- 4) Massacres by the North Korean People's Army and local communist groups
These involved the execution-style deaths of former colonial collaborators, rightwing personages, and family members of military and police officers, at the hands of the North Korean People's Army and local leftwing groups, shortly after the occupation of the South by the People's Army and shortly before the army's retreat.
- 5) Massacres of civilians by punitive expeditions
These were mass killings of civilians by the South Korean military and police punitive forces along the Sobaek and Noryeong Mountain Ranges, and Jiri Mountain where the second frontline was created after the UN forces succeeded in driving the North Korean Army northward.

2. Truth Seeking Initiatives

Under the extreme right-wing and anti-communist regime that has raged in South Korea over much of the past seven decades, the vast majority of civilians who were massacred before,

during and after the Korean War were labeled as “commies,” and their surviving family members as “commie families.” People who mentioned these massacres were branded as “rebellious elements” who did not deserve to lead a stable life on this land.

In the immediate aftermath of the April Revolution of 1960, a movement arose demanding an investigation into the truth of the massacre. The National Assembly responded to this demand by ordering a detailed investigation into losses suffered by civilians and drawing up an official report. The military coup against the democratically elected government in South Korea on 16 May 1961, however, resulted in the arrest of 100 executives of the national association of victims’ families. Of these, 54 were sentenced to death or imprisonment of at least 10 years, destroying the bereaved families’ association and making it taboo even to mention “civilian massacres.”

The June Democracy Movement of 1987 opened up a growing sphere of democratic public discourse, with an increasing number of participants now openly discussing civilian massacres, beginning with the Jeju April 3rd Uprising and the Geochang Massacre and the Nogeun-ri massacre became known via the foreign press (Associated Press). Afterwards, victims’ families, academics and civil society waged a campaign for an investigation into the truth and restoration of honor for victims. A national organization was begotten in the process, with the self-given mission of uncovering the truth of massacres.

The South Korean legislators responded to this growing movement by legislating, first, the Act on Special Measures for the Restoration of Honor of Persons Involved in the Geochang Incident, Etc. in 1996, and next, the Special Act on Discovering the Truth of the Jeju April 3rd Incident and the Restoration of Honor of Victims in 2000. The lawmakers also proceeded to prepare and draft a special law with a comprehensive scope on uncovering the truth of civilian massacres perpetrated nationwide before, during and after the Korean War. Thanks to active lobbying for legislation, press briefings, protests and strikes, the Framework Act on Settling the Past History for Truth and Reconciliation was finally enacted in May 2005 which opened the first Truth and Reconciliation Commission of Korea (TRC). Around 10,000 people made applications to the TRC and among those, around 8,000 cases (killings by soldiers and police 6,724 people, killings by hostile forces 1,445 people) confirmed the truth, and in 2010, the TRC was closed.

Even after the TRC closed, the bereaved families and civil society continued their activities to find out the truth and restore the honor of the victims, as well as conducted their own excavation of remains. Also, they continued to put effort to amend the Special Act on Discovering the Truth of the Jeju April 3rd Incident and the Restoration of Honor of Victims to reopen the TRC. As a result, the amendment of the law passed the National Assembly on 20 May 2020, and the TRC reopened on 10 December 2020. In addition, on 29 June 2021, the Special Act on the Truth Finding and Restore Honor of Victims of Yeosu and Suncheon October 19 incident passed and the Commission for the investigation opened on 21 January 2021.

However, the period of activities of the 2nd TRC is three years (can be extended one more year) which is shorter than the period of the first TRC, and there was no discussion on providing compensation to the victims.

3. Criminal Justice and Accountability Processes

Until now, most activities demanding punishment and legal responsibility for the perpetrators of the massacre of civilians during the Korean War have not been carried out properly.

After the April 19 Revolution in 1960, the Bereaved Families' Association of the Korean War actively called for the 'punishment of the perpetrators', but these calls were cracked down after the Park Chung-hee administration took office in 1961 by coup d'etat.

In the case of the massacre of civilians in Geochang, Sancheong, and Hamyang, perpetrators were sentenced to prison which was an exception, but later, the sentence was invalidated or eased.

As South Korea became democratized through military dictatorships, finding justice for the Korean War became more difficult since the actual killing happened too long ago. Nevertheless, the Bereaved Families' Association of the Jeju April 3rd and other bereaved families of the victims of U.S. bombing during the Korean War, including Nogeun-ri, Gokgyegul, Gyeongju, Ganghwa, Erie, and Pohang, demanded the U.S. responsibility on these killings.

In recent decades, the Government made a few attempts to shatter this silence. Former President Roh Moo-hyun, for example, attended the memorial service for victims of the Ulsan Bodo League massacre in 2008 to make an official apology to victims' families. In the case of the Jeju April 3rd Uprising and Massacre, President Moon Jae-in also attended the memorial service for victims of the Jeju April 3rd Uprising and Massacre in 2018, apologizing to the bereaved families as well as all those who suffered state violence, following President Roh's footstep in 2003. Yet the punishment of the offenders remains a distant ideal.

4. Reparations

Although the truth of the civilian massacres has surfaced, the Government has not yet made an effort for reparation. It has merely undertaken some recommended actions, such as making official apologies, taking off "traitor" and "criminal" labels on the family register records of victims, and subsidizing memorial projects. The few official apologies issued took the form of commemoration addresses read at public memorial services by either the Minister of National Defense or the Commissioner of the National Police Agency when they represented the very institutions that led such massacres.

With bloody struggles by bereaved families and civil society, relevant laws were enacted and some truth was found on the massacres by the state authorities during the Korean War. However, since there were no provisions on compensation and reparation mentioned in the law, the bereaved families had to file separate lawsuits for compensation individually.

Starting with claims for damages in the Ulsan Bodo League massacre, victims' families began to press lawsuits against the state. Lawsuits have been raised over a total of 6,591 victims cleared by the TRC so far, and families of 5,665 of these victims have won their cases.

The reason why the number of bereaved families who won the lawsuit is less than the number of those who started the lawsuit is because the court did not follow the principle of exclusion of statute of limitation like in the case of state crime. Instead, the court set the statute of limitation of the compensation suit 3 years from the day of truth-finding or even calculated it as 3 years from the death of the victim. It did not take into consideration the speciality of state violence.

The TRC, for its part, advised the enactment of a special reparation law for the families of victims, public memorial projects for victims of all civilian massacres, and the establishment of a foundation tasked with historical rectification. It also advised that the statutory limits on claims to state reparation be lifted for victims of state violence, in line with international human rights law.

The monetary amount of reparation has also ranged widely from KRW 80 million(around 80,000USD) to KRW 200 million(around 200,000USD) and it has led to escalating animosity and resentment between families. Families' associations have thus demanded the enactment of a special law, akin to Act on the Compensation, Etc. for Persons Associated with the May 18 Democratization Movement, laying down a consistent standard of reparation for all victims' families.

5. Memorialization

Through the persistent demands of the bereaved families and civil society, a number of local governments and metropolitan governments enacted ordinances supporting memorial ceremonies of civilian victims during the Korean War. Based on this ordinance, they build memorial facilities, collect relevant cases and testimonies, make publications, and support memorial services. In particular, in Dong-gu, Daejeon, the Ministry of Public Administration and Security and the Dong-gu Office will build the first memorial space for the killing of civilians during the Korean War, named "Forest of Truth and Reconciliation."

The construction of memorial facilities and the publication of books related to the massacre at the time are positive signs that it can educate generations who have not experienced war about the past state violence. However, there are clear limitations that these measures are not consistent and not many people are aware that such things exist. Measures are needed to make more people visit those sites related to the massacre of civilians during the Korean War, including memorial facilities around the country.

In addition, civil society organizations, in cooperation with local governments, carried out the excavation project of the remains, and it received attention from people as the project was reported to the media. In particular, in the case of excavation of remains conducted in Golryeonggol, Daejeon, more than 1,000 remains were excavated, raising calls for the truth of the incident at the time to be properly identified and remembered.

6. Guarantees of Non-Recurrence

Statutory and institutional measures are urgently needed to prevent state violence and the tragedies it engenders. We need to educate public officers, students, and the general public

on peace and human rights by setting up spaces of memorials and human rights education, organizing memorial services as well as peace-themed artistic, cultural and academic events, making human rights part of educational curricula, and stating the objective facts in history textbooks. In order to prevent the recurrence of similar tragedies, it is essential to introduce venues and occasions that inform citizens of the tragic consequences of state violence, emphasize the importance of human rights and peace, and encourage citizens to reflect upon the meaning of peace and civil coexistence. Associations of victims' families, NGOs, and academia have been so preoccupied with the investigation of massacres and restoration of honor to victims that they have rather neglected the importance of these measures necessary to prevent similar atrocities.

7. Suggested Recommendations

- 1) The State should officially apologize as the main responsible for the massacre during the Korean War and hold a state-level memorial ceremony;
- 2) As a follow up to the 2nd TRC, the Truth and Reconciliation Foundation should be established so that excavation of remains, truth-finding, trauma healing, and education could be continued and bases of reconciliation should be established;
- 3) A comprehensive law to provide reparation including compensation for the victims of massacres should be enacted so that victims do not have to go through individual lawsuits.

Jeju April 3rd Uprising and Massacre - Current Situation and Challenges

1. Background

Koreans escaped from the 35-year oppression of Japanese imperialism following the end of World War II when Japan surrendered on 15 August 1945. However, the US Military Government occupied and governed the Korean peninsula below the 38th parallel including Jeju Island for 3 years. (Above the 38th parallel was occupied by the Soviet Union)

The so-called “Jeju April 3rd” began on 1 March 1947, the day when people commemorated the 28th anniversary of Independence Movement Day, which was followed by a protest against the US Military Government’s misrule. That day, reinforcement police from another region fired at the crowd, killing six and wounding eight people. This shooting incident threw Jeju into chaos in a blink of an eye. A massive general strike took place and the police of the US Military Government suddenly labelled Jeju “an Island of Reds” and arrested people in masses. From this moment on, the police and Northwest Youth Association, a far-right group consisting of youth who came down from the North, randomly apprehended and tortured around 2,500 young people in a year’s time. The jail cells were so full that the US Military police at the time reported, “The small jail held 365 prisoners. A 10-foot-by-12-foot cell prisoned 35 people.” In March 1948, a month before the uprising, three young men who were taken and tortured by the police ended up dead. Jeju island was under ‘severe crackdown’.

As a result, the uprising began. At approximately 2:00 AM on April 3, 1948, an armed resistance group of about 350 people attacked 12 police stations concurrently. In addition, the armed resistance group also raided the houses of key figures in the Northwest Youth Association and United Young Men’s Party and killed them. “Resistance against the police and right-wing youth groups, opposition to a separate election and government, and independence of a united Korea” was the slogan the armed resistance group put forth. The armed resistance group sent residents up to the mountains to boycott the May 10 General Election. In the end, the two of the three constituencies, Gap-gu and Eul-gu in North Jeju-gun, did not vote. From the 200 constituencies nationwide, only the votes of these two constituencies in Jeju were nullified.

Soon after, the South Korean government was established below the 38th parallel on 15 August 1948, and a horrendous massacre followed. With a decree to “impose a quarantine on the area further inland than 5km from the coastline of Jeju Island”, Martial Law was illegally declared and the military and police forces burnt down all the villages in the mountainous areas and carried out a random massacre. In particular, the sacrifice made by the villagers of mountainous areas under the Scorched Earth Operation, which lasted about 4 months from the middle of November 1948, was simply indescribable. The soldiers who surrounded the villages set fire to every house and slaughtered all the people who came out running surprised by the fire. These people included breastfeeding babies and elderlies in their seventies and eighties.

The residents who were forced to evacuate to seaside villages sacrificed immensely as well. The government forces often killed any families missing a member, calling them “families of

fugitives". The situation became so terrible that people said, "It's better to get shot since the pain doesn't last." The military and police forces continued to shoot people with suspicion of supporting the armed resistance group. As they spiraled out of control, the sufferings women had to go through were unmentionable. The responsibility for these horrific acts lay with the US Military, who still held the operational control of the Korean Constabulary after the establishment of the South Korean government with President Rhee Syngman as the commander-in-chief.

When the Korean War broke out in 1950, the slaughter started all over again. The supposed "preventive detention" killed around 1,000 lives and the Rhee Syngman administration chased by the North Korean People's Army massacred about 2,500 Jeju islanders who were imprisoned in prisons throughout the country through unlawful military trials. These events of "crackdown", "uprising", and "massacre", that overshadow the two aforementioned words, unfolded over the period of 7 years and 7 months.

Although the number of armed resistance forces was only 350 at the time of the April 3rd Uprising, the number of people sacrificed amounted to a whopping 30,000. Property damages were appalling with most of the villages in the mountainous areas burnt to the ground, and the aftermath of the wretched history still traumatizes people mentally and physically today.

2. Truth Seeking Initiatives

Despite the devastating damage of one-tenth of Jeju Island's population, the April 3rd Uprising and Massacre was something no one could mention for a very long time. The fact-finding movement, which began only after the April 19 Revolution in 1960, received a huge blow with the May 16 coup carried out the next year. Those at the forefront of the Jeju April 3rd fact-finding movement had to serve time in jail. The April 3rd Uprising and Massacre was covered up, distorted and made taboo by the military dictatorship. The bereaved families had nowhere to turn to appeal to this injustice and, instead, were despised for being the "children of rioters" because their parents had been shot by the government forces. They could not dream of a future due to the so-called "involvement system" that chained them down.

Notwithstanding, the bereaved families and Jeju islanders struggled to investigate and reveal the truth, and the fact-finding movement proceeded gradually along with the democratization of Korean politics. Moreover, the democratic movement in Jeju affected the April 3rd investigation, and vice versa, which caused the movement for democratization to spread faster than any other part of the country.

In particular, the June Democratic Uprising in 1987 served as a momentum for not only a direct presidential election system but also the investigation on the April 3rd Uprising and Massacre. On 12 January 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 the administration started investigating for the truth. On 15 October 2003, the Government's official report, *The Jeju 4·3 Incident Investigation Report*, was confirmed. On 31 October 2003, 15 days later, President Roh Moo-hyun bowed his head and officially apologized to the bereaved families and populace of Jeju based on the human rights

violation by the government authority stated in the report. The Jeju April 3rd was the first to launch a state-level investigation to find the truth about what happened in the past and also the first to receive an official apology.

Nevertheless, in order to find out the complete truth of Jeju April 3, we have to hold the U.S. responsible. On 7 September 1945, the U.S. military declared Proclamation No. 1²⁶ and No. 2²⁷ in the name of MacArthur, Commander of the Pacific Alliance, and the next day, it occupied the south of the 38th parallel of the Korean Peninsula and launched a U.S. military government. The U.S. military government also issued Ordinance 19²⁸ on 30 October 1945. During the U.S. military administration, political prisoners were mostly charged under Proclamation 2 or Ordinance 19, and civilians were punished in the military court.

After the end of the U.S. military government on 15 August 1948, President Syngman Rhee declared martial law on 17 November 1948 to carry out a hard-line crackdown. Article 64 of the Constitution of the Republic of Korea stipulates that "the President declares martial law as prescribed by law." However, martial law was enacted on 24 November 1949, a year after martial law was declared on Jeju Island. Therefore, President Rhee Syng-man declared martial law unconstitutional and illegal in the absence of martial law, committing indiscriminate killings of civilians or referring civilians to military trials. In addition, after the martial law was lifted, Article 32 (Benefit the enemy) and Article 33 (Espionage) of the Defense Security Act were applied to hand over civilians to military trials for tough punishment. However, the Defense Security Act has not been enacted or promulgated by the Government, so there is no legal base. Even if martial law was declared legally and the Defense Security Act was an official law that followed the legislative process, military trials were not held normally and civilians were sent to prisons across the country and slaughtered immediately after the outbreak of the Korean War in 1950. In this regard, the official Jeju 4·3 Incident Investigation Report stipulated that the court-martial "cannot be regarded as a trial that has taken the normal procedure set by the law." As a result, a series of acquittal cases have recently been made in the case of requesting a retrial of the court-martial.

The U.S. military government officially ended its administration on 15 August 1948, but on 24 August, President Rhee Syng-man and Lieutenant General John R. Hodge signed an "Executive Agreement between the President of the Republic of Korea and the Commanding General, United States Army Forces in Korea, concerning Interim Military and Security Matters during the Transitional Period" and the U.S. Provisional Military Advisory Group still had operational control over the South Korean military and police. However, Brigadier General W. L. Roberts, the head of the Military Advisory Group, sent a public letter to President Rhee Syng-man and the Minister of National Defense on 18 December 1948, when the indiscriminate massacre took place on Jeju Island, encouraging the massacre by complementing the 9th Regiment Commander and saying "this should be widely known by newspapers, broadcasting and presidential statements." Around this time, the United

²⁶ "the victorious military forces of my command will today occupy the territory of Korea south of 38 degrees north latitude."

²⁷ "Any person who violates the provisions of the instrument of surrender, or any proclamation, order or directive given under the authority of the Commander-in-Chief, US Army Forces, Pacific..... or willfully does any act hostile to the Allied Forces, shall, upon conviction by a Military Occupation Court, suffer death or such other punishment as the Court may determine"

²⁸ Controlling publication or economic affairs under the justification of maintaining orders during the emergency situation

Nations held a General Assembly on 9 December 1948 and adopted the Convention on the Prevention and Punishment of Crime of Genocide, but the Convention was overshadowed by the massacres of civilians on Jeju Island.

The fact that the U.S. military, which had the command and control of the military and police in South Korea at that time, promoted the massacre was revealed by Jemin Ilbo journalists who published “April 3rd Talks” in a series from 1990 to 1999, and it was also confirmed in *The Jeju 4·3 Incident Investigation Report*, an official report by the Government published on 15 October 2003. However, there is no U.S. apology for this yet.

3. Criminal Justice and Accountability Processes

Although the President officially apologized to Jeju residents, no one has been criminally punished in relation to Jeju April 3. The memorial statue of Regiment Commander Park Jin-kyung, who ordered the massacre, was built on Jeju Island, and other responsible generals such as Song Yo-chan were considered heroes during the Korean War. Until recently, Gangbuk-gu Office of Seoul City planned to build a memorial bust of the Chief of the police Cho Byung-ok, another person in charge of the massacre, but it was canceled due to heavy opposition from the Bereaved Families’ Association of the Jeju April 3rd.

Fortunately, the recently revised Special Act on Jeju April 3rd opened the way to restore honor to those who received illegal military trials at the time of the Jeju April 3rd. The prosecution's request for ex officio retrial began, and a court in charge of the Jeju April 3rd cases was established in the Jeju District Court. This is the first time that a prosecutor has requested a retrial of past state violence cases, and a total of 3,000 people are expected to be able to recover their honor.

Regarding the U.S. responsibility for the Jeju April 3rd, civil society organizations, including the Bereaved Families’ Association of the Jeju April 3rd, launched a 100,000 petition campaign to hold the U.S. responsible while commemorating the 70th anniversary of the Jeju April 3rd Jeju in 2018, and submitted the collected petitions to the U.S. Embassy in South Korea. In 2019, at the 42nd UN Human Rights Council, the civil society held side events and delivered an oral statement regarding the U.S. responsibility for the Jeju April 3, and raised awareness of the international community on the Jeju April 3. In addition, they also visited Washington DC and lobbied the US Congress and local civil society organizations, but there is still no apology or answer from the U.S. government.

4. Reparations

The Special Act on the Investigation of the Truth of the Jeju April 3 Incident and the Restoration of the Victim's Honor was enacted on 12 January 2000. The Special Act was enacted during the Kim Dae-jung administration, which achieved the first peaceful regime change since the establishment of the South Korean government. The Special Act has been amended and has been in effect since 12 April 2022. In accordance with the amendment, compensation and trauma healing projects for victims and bereaved families are underway. According to the amendment to the Special Act, the Jeju April 3rd victims (dead, disappeared) received compensation equivalent to 90 million KRW(90,000USD) per person. Victims of aftereffects or prisoners are required to be paid the amount determined by the

Committee within the range of 90 million KRW(90,000USD) or less, and compensation is paid at 90 million KRW, 75 million KRW(75,000USD), and 50 million KRW(50,000USD) depending on the disability level.

In addition, the amended Special Act paved the way for restoring victims' honor by saying that if there is no family register or is wrong due to Jeju April 3rd, the Family Relations Register can be prepared or the records can be corrected according to the Supreme Court rules by the decision of the Committee. However, according to the Enforcement Decree (Presidential Decree) and the Supreme Court Regulations that implement the said law, the subject of this change is limited to the victim him/herself and the bereaved families who really need to correct their family register cannot benefit from this amendment. The Enforcement decree and the Supreme Court Regulations should be urgently revised and the bereaved families should be officially recognized as the victim's family and get compensation.

5. Memorialization

In 2008, Jeju April 3rd Peace Park was established and the museum explains the cause and development of the Jeju April 3rd. Every year, around 300,000 people visit the museum. In addition, those who experienced Jeju April 3rd have been selected as April 3rd Honorary Teachers to share their experience with students so that future generations can learn about the incident.

6. Guarantees of Non-Recurrence

In order to implement the Rome Statute of the International Criminal Court, which was adopted on 17 July 1998, and took effect on 1 July 2002, the Republic of Korea enacted the Act On Punishment Of Crimes Under Jurisdiction Of The International Criminal Court on 21 December 2007 and eliminate statute of limitation on the crime of genocide, crime against humanity and war crime.

7. Suggested Recommendations

- 1) When the indiscriminate massacre of Jeju civilians occurred during the Jeju April 3rd, the U.S. military had operational control over the South Korean military and police. Rather than preventing the massacre, the U.S. military encouraged the massacre of civilians by praising the person responsible for the massacre. The U.S. must apologize for this;
- 2) The Rome Statute of the International Criminal Court eliminated the statute of limitations on massacre, but Article 24 (Prohibition of Submergence) stipulated that "No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute." Retroactive prohibition can be said to be a general legal principle for legal stability. However, even if the soldiers and police who killed civilians cannot be punished, they deserve to be deprived of the conferment they received for their crackdown on Jeju Island.

Torture and State Violence under the Military Dictatorship

1. Background

Torture and violence at the hands of state authorities were part of daily lives in South Korea under the military dictatorships in the 1970s and the 1980s. “Anti-communism” had reigned as the sole dominant ideology in the south of the 38th Parallel since the Korean War. By the 1970s, it had turned into the best weapon at the dictators’ disposal. The National Security Act (NSA) was initially enacted for temporary purposes in 1948. Coupled with anti-communism over time, however, it became the magic wand the dictators wielded to get everything they wanted. Since its enactment and to this day, the NSA has been criticized for encouraging the violation of citizens’ physical security and freedom by permitting or condoning arrests, detention, torturous investigation, execution and killing, and long-term custody without warrants. Human rights violations regularly occurred in the arrest and detention of individuals under the NSA.

State authorities and apparatuses eagerly obeyed the military dictators’ orders in the name of fighting communism. Prosecutors, the police, the Security Planning Board (now the National Intelligence Agency or NIA), the Security Command (now the Defense Security Command or DSC),²⁹ anti-communist investigation departments and the like quickly expanded their structures and resources, actively encouraging performance-oriented anti-communist investigations with medals, promotions, and other rewards. Anti-communist investigatory authorities indeed exercised extralegal powers. The judiciary, including courts, admitted the false convictions obtained through torture and other such illegal means as evidence into trials, rendering decisions conforming to the political power and investigatory authorities.

The NSA raised issues and claims of human rights violations throughout the entire process of its application, from arrest and investigation to trials and imprisonment. Individuals accused of violating the NSA were much more likely than other criminally accused persons to face the death or life imprisonment sentence. Under the NSA, the number of political prisoners multiplied.

(1) Torture-Made “Spies”

The NSA provided a handy tool with which the dictatorial administrations could concoct any charges and cases they saw fit. Students, workers, and other individuals who did so much as associate with democratization groups were given the most bloated charges and accusations possible, caricatured as grave threats to national security. Having family members that went missing during the Korean War, having family members in North Korea or the pro-North Korea league of Korean residents in Japan (“Jochongnyeon”), being Korean descendants in Japan who came to Korea to study or find employment, having studied abroad in Japan or the United States, having traveled abroad or attempted to find employment overseas, and even having been fishers abducted by North Korea all became

²⁹ The Security Command under the Ministry of Defense, which had a legal jurisdiction only to the military, expanded its investigations to the civilians without limitation.

major grounds upon which innocent civilians were accused of breaching national security. Anyone could turn into a “spy” when the state decided so.

The accused persons, arrested, detained and framed as spies, were forced to change into military uniforms upon their arrival at investigatory authorities and subjected to horrible beatings that signified the start of tortures.³⁰ They beat my sickening body naked and waterboarding was followed. My knees were constantly bruised with pus and I was not able to take my pants off due to the swollen feet. The two months of consistent torture as a living hell didn’t give me anything but a wish to die.” (Park Kyung-jun, a victim of the fabricated case of espionage in Jindo, from his appellate brief in 1981)

Victims were locked away in closed chambers and kept incommunicado from the outside world for dozens of days on average (and up to 90 days in the longest instance) and went through the grueling routine of torture, false confessions, reversal of confessions, and torture. This repeated process made victims give up on everything in the end and surrender to writing the confessions as dictated by investigators.

Thus made “spies” and announced in the media as such, victims were given heavy sentences in summary and unfair trials, and left to suffer in isolation, while their families were tormented with agony outside prisons. These victims were tailed and monitored under the Security Surveillance Act (SSA) even after release from prison. In a country where anti-communism reigned as the supreme yardstick of values, being “accused spies” and “families of accused spies” had a lifelong stigmatizing effect.

(2) Suspicious Deaths

The suspicious deaths that occurred during these dark decades speak to the anti-humanitarianism and brutality of authoritarian rule. It was not surprising for Koreans at the time that individuals would get caught and dragged to torture chambers for whatever reasons, while their families were agonizingly kept in the dark about the whereabouts of their loved ones. It was thus easy for investigators to conceal the torture-caused death of victims. These suspicious deaths were disguised as suicides or results of accidents. These deaths were especially common under the Park Chung-hee and Chun Doo-whan administrations. They befell anti-administration activists, democratization activists, university students and young conscripts with ties to democratization movements, and labor rights activists—all of who had nothing to be guilty of except for opposing dictatorship.

According to the Presidential Truth Commission on Suspicious Deaths (PTCSD)’ report, there were multiple factors prompting the Committee’s investigation into suspected deaths. These included allegations of the violation of the right to, attempts at concealing and doctoring the facts of death, negligence of duties and responsibilities, and distrust of the State. The illegal surveillance and investigation activities of intelligence and investigatory

³⁰ “With the fear of confusing day or night, torture was beyond the capability that any human can bear. There were countless death threats saying “no one would know even if you are killed as we can set it up as a consequential killing after your escape or a car accident. To dump your dead body to your family is a mere thing we need to do”. They beat my sickening body naked and waterboarding was followed. My knees were constantly bruised with pus and I was not able to take my pants off due to the swollen feet. The two months of consistent torture as a living hell didn’t give me anything but a wish to die.” (Park Kyung-jun, a victim of the fabricated case of espionage in Jindo, from his appellate brief in 1981)

authorities, the closed nature of the military, and pervasive violations of human rights in correctional facilities led countless many to untimely death. The Commission officially investigated 83 suspicious deaths and confirmed the State's involvement in 52 of them. The 1st Truth and Reconciliation Commission (TRC) which operated from 2005 to 2010 also investigated 56 suspicious deaths, including those that occurred in the military.

2. Truth Seeking Initiatives

Truth-finding is the first and foremost step toward overcoming the legacies of state violence and suspicious deaths. Truth is crucial not only to the entire process of settling past wrongs but also to the rehabilitation of victims and their families. There is no other way for victims and families of gross human rights violations to overcome their traumatic experiences. Victims struggled against the tardiness of social changes and indifference from the rest of the public, and the State neglected their demand for truth for too long.

(1) Victims' Efforts

① During investigations and trials

Victims sought to testify to the torture they went through during the investigation process (including interrogations by prosecutors) and in trials through in-court testimonies and written statements of grounds for appeal. They demanded an investigation into these torture claims. They also petitioned for the preservation of evidence of torture still remaining on their bodies. Victims' families organized assemblies and demonstrations in front of investigatory authorities, courts, and prisons, and demanded that victims be granted their right to family visits. Families also released statements before the press and exposed the gruesome conditions of victims (physical and mental disabilities due to extended torture and confinement) that they observed during visits.

② Solidarity among victims

Victims and families' own struggles to expose the truth of the military dictatorships formed the core of human rights movements in Korea. Victims and families maintained their solidarity in a continuous and organized manner. The Council of Families for Democratization Movements ("Minkahyup") was established in December 1985, led by In Jae-gun (wife of the late Kim Geun-tae and currently a member of the National Assembly) and other family members of victims either arrested or on the wanted list. Minkahyup organized campaigns petitioning for the release of conscientious prisoners, the abolition of the NSA, the end of oppression on democratization activists, and the cessation of torture. The organization also gathered statistical data on victims of state violence (including those in custody, on the wanted list, and the number and conditions of those incarcerated), and staged strikes demanding humanitarian treatment for these victims. Families of victims of suspicious deaths formed their own association, named the the Korea Association of Bereaved Families for Democracy ("Yugahyeob") in August 1987. Yugahyeob went on to organize a joint action committee and a broader council of families of victims of suspicious deaths in order to uncover the truth of suspicious deaths in the military. The organized movements of victims and families paved the ground for greater solidarity with other democratization activist groups and human rights and advocacy organizations.

(2) Efforts of the Civil Society

Protestant, Catholic and other religious groups crystallized the greater public support for exposing the truth of violence under authoritarian regimes. The Korean National Council of Churches (KNCC) publicized violations of human rights, illegal arrests, and lists of conscientious prisoners by prison, organizing press conferences and campaigns for investigation. The Catholic Priests' Association for Justice (CPAJ) waged anti-dictatorship and anti-torture struggles and loudly voiced religious opinions at every decisive moment in the current of violence waged by the state security apparatus. Anti-dictatorship activists and politicians formed the Joint Action Committee Against Torture and Anti-Communist Framing (JAC) in October 1985. The JAC responded to each and every torture incident with immediate public statements and organized campaigns for investigation. Human rights advocates also participated in the societal movement by aiding victims in their legal struggles.

(3) Establishment of the PTCSD and the TRC

The election of Kim Dae-jung, a long-time anti-dictatorship activist and politician, to the presidency signified the arrival of the long-awaited moment of truth for victims, families, and civil society that have been fighting on their behalf. Campaigns began for the enactment of the Special Act on the Investigation of the Truth and Restoration of Honor to Victims of Suspicious Deaths late in 1997. Participants continued to organize activities aimed at the greater public, such as their Friday Assemblies. Having met the President in person and heard his promise to discuss the enactment of the statute with the National Assembly, victims and their families organized a sit-in before the National Assembly building that went on for 422 days. The sit-in and the publicity it drew provided the decisive impetus for the legislation.

(4) Retrials

It may seem ironic that victims who were found guilty against their innocence in the courts of law would seek to undergo retrials. Retrials and acquittal were crucial to these victims and families, however, because the guilty verdicts they received decades ago were so damaging. Victims gathered as much evidence as possible on their own. The courts, however, dismissed their petitions for retrials, citing that there was "little manifest evidence for acquittal" or that "no final court decisions had been made before torture and confinement took place" (i.e., that there were no court verdicts to overturn).

Victims and families dedicated themselves to determining the truth outside the courtroom, by publishing reports of the evidence they gathered, organizing public hearings, and holding testimonial conferences. The establishment of the TRC and other related truth commissions under and after the Kim Dae-jung administration finally brought light to details of torture and violence. Starting with Mr. Hahm Ju-myeong's case, victims began to win an acquittal in retrials.

(5) Limitations

The limited powers and duration of the truth commissions functioned as fatal limitations on their ability to serve truth and justice. As the offending parties, the state investigatory and administrative agencies were reluctant to share records and cooperate with the investigation. Retrials also took place as individual cases. This meant that individual victims were left to bear much or all of the time, financial, and psychological burdens involved in preparing for retrials. Under the Park Geun-hye administration, the prosecutors even appealed the

acquittal reached in these retrials. Retrials were not only occasions for excavating the truth, but also pivotal opportunities for the state to rectify itself. The 1st TRC alone received applications for investigation on 564 cases involving trumped-up espionage charges and human rights violations. This number reflects applications that victims and families could file within only a very limited scope of time. The Government now needs to make active efforts to uncover and investigate all past incidences in need of investigation and retrials.

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3. Criminal Justice and Accountability Processes

Victims and families have been demanding an investigation into torture and the punishment of responsible parties.

“I was subjected to horrendous torture in the Anti-Communist Chamber at the national security headquarters in Namyong-dong, Seoul, for an entire month in one September. (Prosecutor objects.) My month-long experience involved the beastly humiliation and threats to human dignity and life I suffered at the hands of investigators unabashedly meting out non-humane and illegal measures of torture in Namyong-dong. In order for the truth to come out, justice to be achieved, and human dignity restored, I believe the details of the unbearable and unforgivable torture I suffered must be investigated and exposed. Therefore, I request this court of law to launch an investigation into the context and details of the torture inflicted on me.”³¹

(1) Struggles Against Impunity

With the election of Kim Young-sam as President in 1993, 66 torture victims, including Park Dong-un, filed charges before the Seoul District Prosecutor’s Office against the investigators that tortured them on the grounds of violence and abuse forbidden by the criminal law as well as violation of the Act on the Aggravated Punishment of Specific Crimes. The victims submitted a petition signed by 1,214 leading figures of the Korean society alongside their charges. The prosecutor’s office, however, decided not to indict the investigators, citing the elapse of the statute of limitations as the reason.

Individual lawsuits followed against a particularly notorious torturer. The torturers were strictly kept anonymous, so it was impossible for a long time to identify them. Then a breakthrough report in the press in 1988 revealed Lee Geun-ahn, who is one of the notorious perpetrators at the Anti-Communist Chamber at the national security headquarters, to be one. This set the man on the run for 11 years. The investigatory

³¹ From Kim Geun-tae’s court statement from the 1st hearing, Seoul District Court, 1985.12.19.

authorities did not care to search for and arrest him, but NGOs like Minkahyup organized massive public search campaigns, even putting a bounty on him, as part of their struggles against impunity. Through these efforts, victims tortured by Lee emerged and began to file suits. Lee eventually turned himself in and was sentenced to a seven-year term in prison.

(2) Limitations

Lee Geun-ahn was a rather exceptional case to be punished. The vast majority of torturing investigators remained anonymous. The statute of limitations was the biggest obstacle to achieving justice for victims. The statute of limitations would not have elapsed had the prosecutors and the courts launched investigations upon discoveries of torture without delay. In most cases, however, victims' exposure of torture went ignored.

One exception was the torture and death of Park Jong-cheol, which went on to catalyze the massive Democratization Uprising of June 1987. Criminal proceedings on the torturers began promptly in this case. However, only a few investigators were found guilty of waterboarding and sentenced to prison terms. By contrast, the high-ranking executives who ordered torture and the concealment of torture-caused death were afforded the luxury of standing trials without arrest, and all were eventually given prison sentences with stays of execution. Even in this much publicized case of unjust death, due punishment of offenders remained elusive.

One of the most recent instances of a torturing investigator being punished was in 2012. A victim identified him while the offender was running for a local electoral office, and publicized the offender's past through a press conference. The offender sued the victim for libel, and the victim responded by accusing the offender of defamation through the spread of false rumors. The court found the offender guilty of the defamation charge and sentenced him to a year and three months in prison. Although the sentence was not based on the offender's past acts as a torturer, it set a precedent for the delayed punishment.

Impunity is perhaps the most significant block standing in the way of unsettling past wrongs in Korea. Those who actively participated in state violence have accumulated much clout that they still wield unabashedly. Many of these torturers went on to win medals and honors. It is critical to abolish the statute of limitations on the crimes of those who seriously violate human rights with state sanction. Privileges that have been given them, including medals and honors, ought to be traced and revoked.

4. Reparations

The UN Convention against Torture, Question of the Impunity of Perpetrators of Human Rights Violations(Civil and Political),³² and other such features of international documents emphasize the necessity of complete and effective reparation for victims of gross human rights violations. It was only after several years into the new millennium that victims, now acquitted through retrials, waged and won lawsuits for damages against the illegal past acts of the Government. Prior to these legal victories, the Government had been paying these victims only nominal sums of money to support their livelihood under the statutes on the

³² Louis Joinet, "The Administration of Justice and the Human Rights of Detainees: Questions of the Impunity of Perpetrators of Human Rights Violations" submitted to ECOSOC on 26 June 1997.

restoration of honor and compensation for democratization participants, without bothering to estimate monetary compensations owed to individual victims.

Victims suffered a great setback with their lawsuits under the Lee Myung-bak and Park Geun-hye administrations, with courts suspected of deliberately delaying the proceedings, prosecutors frequently appealing verdicts favoring victims, and the sums of damages drastically cut.

Under these two presidential administrations, the courts especially took issues with the statute of limitations on the period of time for filing for damages, going out of their ways to cut the periods even shorter. A decision ruled that victims should raise lawsuits within six months following the final verdict on their acquittal.³³ Victims who had waged lawsuits for criminal compensation during the six-month period should also raise lawsuits for civilian damages within six months following the final verdicts on criminal compensation. The decision led to the dismissal of multiple damages lawsuits and even forced the victims who received damages in advance to return the damages they received, plus the court-fixed interest (five per cent per annum) with their cases overturned on prosecutorial appeal. This major setback to satisfy the whims of the political powers of the day re-traumatized victims further.

In February 2015, victims sought to challenge the constitutionality of the decision by filing a petition to the Constitutional Court. The Constitutional Court, which had refused to rule on this petition for three years, finally turned around and handed down a ruling in August 2018. In it, the court decided that it was unconstitutional to apply the statute of limitations of the civil law to cases of gross human rights violations.³⁴

The Constitutional Court's decision has led victims to prepare for retrials on their damages claims. It was recently discovered that the statute of limitations was cut drastically shorter on these victims' damages cases under the collusion between the Park Geun-hye administration and former Supreme Court Chief Justice Yang Seung-tae.

5. Memorialization

Nothing to mention.

6. Guarantees of non-recurrence

(1) Efforts of Victims and the Civil Society

Thanks to the solidarity and struggles of victims and the civil society that have outlived the history of the dictatorships, Korean society has come a long way toward discovering the truth and restoring honor to the extent it has so far. Victims of past incidents of state violence have partnered up with victims of ongoing state violence in and outside Korea to broaden the human rights movements toward a world free of torture and violence. The Korean state violence victims' experiences with struggles can provide support and strategic help for others engaged in similar struggles.

³³ The Supreme Court, 2013DA201844, 12 December 2013

³⁴ 2014HONBA148, 162, 219, 466, 2015HONBA50, 440(merged)

(2) Efforts and Limitations of the Government

“Settling past wrongs” has been one of the top-priority issues on the policy agenda of the Moon Jae-in administration. Committees have been created in the prosecutorial organization and the police to that effect. These committees have issued official advice on re-investigating past incidents of state violence. The Ministry of Justice and Procuracy Reform Committee has recommended that the Ministry of Justice relinquish the statute of limitations on state reparation for the gross human rights violations perpetrated with state sanction. These recommendations, however, have yet to be implemented.

7. Recommendations

- 1) In order to prevent gross violations of human rights through torture and state-sanctioned murders from happening ever again, it is crucial to subject the Government, including its legislative, judicial, and administrative branches, to extensive reform.
- 2) The NSA remains effective in Korea despite its history of aiding the extralegal violence of authoritarian rule. The NSA is more than a mere statute in Korea. It has entrenched itself as the bedrock of self-censorship in the Korean psyche. It has made the Korean public accept the violation of rights to conscience, thoughts, and expression as necessary and natural. The abolition of the NSA is the foremost step toward restoring “human rights” that have always been sacrificed for the sake of national security and toward preventing the occurrence of future tragedies.
- 3) A consensus needs to be established on the application of the statute of limitations to legal cases involving gross human rights violations. The German courts, for example, do not apply the statute of limitations to former Nazis accused of war crimes. The statute of limitations protecting torturers needs to be repealed, even if partially, in order to support the struggle against impunity.
- 4) It is also necessary to gather and publish records on the efforts to settle past injustices in Korea and educate the young generation on the inviolability of human rights. Only when the truth has been found, justice restored, and reparation made in full, will we be able to protect our society against torture.

The Inhyukdang Reconstruction Committee case

The Reconstruction Committee for the People's Revolutionary Party (hereinafter the "Inhyukdang Reconstruction Committee") case occurred in 1974. On April 9, 1975, 8 people were executed and 17 people were sentenced to life imprisonment, and a total of 25 people were implicated. Immediately after the execution of death penalty, the World Association of Judicial Scholars named April 9, 1975, the Darkest Day of Judicial History.

As time went by, the Inhyukdang Reconstruction Committee case seemed to be forgotten by the public for a while, but with the development of democracy in the Republic of Korea, especially after the June Democratic Struggle in 1987, a movement to restore the honor and clarify the facts of those involved in the Inhyukdang Reconstruction Committee case began. Ten years later, in 1997, a civil society task-force committee (Chairman Lee Don-myeong, Moon Jeong-hyeon). And, a decade later, in 2007, the Seoul Central District Court decided acquittal in retrial for the victims. Indeed, after 32 years, the truth was rectified.

In 2002, the Presidential Clarification Commission for Suspicious Deaths recommended that the State should apologize and an appropriate compensation should be made to the victims of the Inhyukdang Reconstruction Committee case. However, the Government did not implement the recommendation and it was only after the bereaved families filed tort claims and the court decided in favor of the bereaved families that the Government finally made compensations. However, unlike the bereaved families of those executed, the lawsuits raised by victim-survivors under the conservative government resulted differently. In 2008, the district court acquitted 17 victim-survivors in their retrial, but the Government appealed; in 2011, the Supreme Court of Korea decided that, partially accepting the Government's claims, the damages for delay should be calculated from the date of the retrial decision. Due to this decision by the Supreme Court, 17 victim-survivors had to return about half of the amount of compensation paid by the Government in 2009 from the appeals decision.

In 2019, the National Human Rights Commission of Korea appealed to the Government that "[t]he State should take active measures for effective remedies for the the victims of the Inhyukdang Reconstruction Committee case and, to do so, make sufficient efforts to clarify the damages, review the issue of recovery and compensation for damages, and enact relevant legislative measures," referring to the Article 14(6) of the International Covenant on Civil and Political Rights which stipulates victim's right to legitimate compensation for miscarriage of justice and 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, unanimously adopted by the UN General Assembly on December 16, 2005, which emphasizes that remedies for the damages shall be "adequate, effective and prompt" and there should be "full and effective reparation."

However, the Government did not accept the NHRCK's opinion, nor a recent court decision that recommended reconciliation between the State and the victims of the Inhyukdang Reconstruction Committee case.

The damage to those involved in the Inhyukdang Reconstruction Committee case continues to the victims' children and grandchildren. The child had to be deprived of the only house her

father had left, and a college student who lost her mother had to be deprived of a college scholarship for not paying her mother's debt due to the Supreme Court's decision to return the already paid compensation amount.

In the case of the Inhyukdang Reconstruction Committee, whether due process had been met for the tort claims is not appropriate; the Inhyukdang Reconstruction Committee case was a serious human rights violation case fabricated by the state intelligence agency, and even after that, the State ignored the fact-finding (retrial) request by the bereaved families and victim-survivors. While neglecting, the State committed or abetted further direct and indirect disadvantages toward the victims and their (bereaved) families. Nevertheless, the State is inflicting economic pain to the victims yet again by compulsory execution of the Supreme Court judgment against the victim-survivors. The State's ignorance for the remedies of victims while inflicting economic suffering to the victims gives nothing more than a doubt to the State's declaration that it will reflect upon its wrongdoings confirmed in retrial. The reason for the existence of the State shall be to establish justice and fairness beyond the legal limitations.

Abducted and Returned Fishermen from North Korea in forged spy case

1. Background

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 Government initially regarded the abduction of a fishing boat as an inhumane provocation by North Korea, and treated it as a form of leniency toward the abductees. In fact, until the early 1960s, the court declared the abductees innocent despite the prosecution's indictment.

However, as North Korea began to engage in aggressive anti-South operations, the Government decided that data obtained through abductees (geographical features, major public facilities, security conditions, etc.) was used by North Korea. Accordingly, from the end of 1968, the Government started to use a policy to punish fishermen who have been to North Korea. Upon arrival, 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.

2. Truth Seeking Initiatives

During its first operation period, the Truth and Reconciliation Commission (TRC) obtained 4,085 pages of the judgment on 1,327 anti-communist and fisheries violators preserved in the National Archives from April 2006 to December 2010, and conducted a basic study on 1,024 people in 2009. In December 2020, the TRC was re-launched, and on 23 February 2022, an ex-officio investigation was decided on 982 victims of abducted and returned fishermen, and an investigation is currently underway.

On 10 December 2021, the "Citizens' Association to Find Out the Truth of Returned Fishermen on the East Coast" was established, and the victims and their bereaved families directly began to find out the truth. However, the Government, which monopolizes and stores the information necessary for truth-finding, does not properly guarantee access to related records of the victims and bereaved families.

Local governments are also supporting peoples' efforts to find out the truth, including the "Ordinance on the Restoration and Support of National Violence Victims of Abducted and Returned Fishermen" in Gangwon Province on 4 March 2022 and the "Ordinance on Supporting National Violence Victims of Abducted and Returned Fishermen" in Sokcho-si on 27 April 2022.

3. Criminal Justice and Accountability Processes

Criminal justice and responsibility are the most vulnerable parts of South Korea's past liquidation process. Illegal detention and inhumane treatment by investigative agencies in the process of punishing abducted and returned fishermen have been confirmed. However, no movement has been found to hold criminal justice and responsibility for the perpetrators. On 8 February 2022, the TRC made a conclusion on the truth of returned fishermen and confirmed illegal detention without a warrant and the high possibility of inhumane treatment, but criminal justice and responsibility for the perpetrators were not included in the recommendation.

The civic group, founded on 10 December 2021, confirmed that one of the two prosecutors responsible for indicting abducted and returned fishermen from North Korea and forged them as spies in 1972, later served as Attorney General and Minister of Justice, and that both received high-grade honors(conferment) from the Government. The civil group called for revocation of their conferment but the Government has not commented on this.

4. Reparations

For North Korean abductees, the Evaluation Commission for Compensation and Support for North Korean Abduction Victims was established under the Act on Compensation and Support for Abductees after the conclusion of the Military Armistice Agreement and compensation has been made. However, since the above law only targets "returned abductees abducted by North Korea for more than three years," and excludes those who were punished for violating the National Security Act, most victims of the abducted and returned fishermen are not paid compensation for damages under the above law.

There is no other way except that the victims file criminal compensation lawsuits in proportion to the period of detention after receiving a verdict of not guilty from retrials or file a state compensation lawsuit against the State to receive compensation. In addition, there is no legal rescue program prepared by the Government for victims of state violence, such as the abducted and returned fishermen. Instead, civil society organizations, including the lawyers' group, are providing legal aid for the victims.

5. Memorialization

Until now, no clear projects have been carried out by the central government, local governments, and civil society organizations to remember the cases of abducted and returned fishermen. The recent ordinances enacted by local governments such as Gangwon Province and Sokcho-si included "support projects for increasing social awareness," and education and publicity are expected to be carried out in earnest to form a consensus among people and enhance social understanding of this abduction case.

6. Guarantees of non-recurrence

Nothing to mention

7. Suggested Recommendations

- 1) The State should implement procedures (such as criminal punishment and cancellation of conferment) to hold criminal justice and responsibility for the perpetrators of the abducted and returned fishermen;
- 2) The State should inform the victims and their bereaved families of all documents kept by the Government in connection with the national violence of the abducted and returned fishermen and disclose them;
- 3) The State should enact a bill to compensate victims and bereaved families of abducted and returned fishermen from North Korea for damages and restore their honor, and provide legal aid programs in relation to compensation procedures.

Forced Conscription, Greening Project, and Purification Operations: Current status and remaining tasks

1. Background

After the collapse of the Yushin regime of Park Chung-hee in 1979 and as the anti-government students-led movements spread since the beginning of the new military junta and the 5th Republic administration, the State mobilized an emergency measure called “forced conscription” to isolate students related to student movements from academic institutions in the name of stabilizing the academy.

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, without going through the due procedures prescribed by the Military Service Act, as government ministries, including the Ministry of National Defense and the Ministry of Education, shared their roles.

A full-fledged forced conscription was implemented in the wake of the mass enlistment of 64 violators of the martial law decree on September 4, 1980. On December 1, 1981, it was institutionalized by arresting protest students and handing over students taken to the police station directly to the military unit in accordance with the Special Measures Policy on College Students Related to Disturbance. Those students enlisted in the military unit were incorporated into the subjects of the “greening project,” following the establishment of the Security Command’s “Guidelines for Public Activities(Espionage Plan)” on May 17, 1982. Student activists were also included in the normal enlistees.

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.

Forced conscription and the greening project were committed by violating human rights such as torture and violence, ignoring the Military Service Act. In the process, an accident occurred in which six soldiers (students) were killed and social criticism had risen including the political and religious circles. Then, in December 1984, the Government disbanded the screening division of the Security Command which was in charge of forced conscription and the greening project.

However, as there were many forcibly enlisted soldiers and student activists who had not finished their military service, the regime decided to continue to monitor and manage their whereabouts. To this end, such work was transferred to the Security Command’s Information Office and it was renamed as purification operation, screening and purifying those students and soldiers. It continued until around 1988.

Forced conscription, greening project and purification operation were a means of forcibly detaining and suppressing student activists by exploiting the "duty of military service" for the stability of the regime. In this compulsory enforcement process, human rights were violated not only by violating the Military Service Act, but also by torturing and assaulting, forcing students to be "purified" and espionage others against their freedom of thoughts and conscience, violating their constitutional rights, and directly or indirectly depriving them of even their right to life.

Even after they were discharged from the military, victims were continuously forced to engage in espionage activities. Victims who were used for civilian surveillance and crackdown of academic institutions still suffer from torture violence and psychological trauma from infringement of conscience in the process of screening and purification decades ago.

In 2006, the Committee to Identifying Truth of the Past of the Ministry of National Defense revealed that 1,152 people were forcibly drafted and a total of 1,192 people were subjected to the greening project including 921 people among people forcibly drafted, 247 people normally drafted and 24 civilians. However, according to another data by the Ministry of National Defense obtained through a request by a National Assembly representative, the number was around 2,500 people. The exact number of victims of forced conscription, greening project and purification operation are still unknown, nor the substantial truth about purification operations.

2. Truth-seeking mechanisms, Criminal Justice and Accountability Processes

As students who had been forced to serve in the military since September 1980 were discharged from the military, the Korea Catholic University Student Council, the Korea Christian Youth Council, the Myeongdong Catholic Youth Association, and the Democratic Youth Association prepared and announced a joint investigation report on the issue of forced conscription in March 1984, calling for the investigation of the suspicious deaths of six students.

This condemnation became a political issue through the National Assembly's interpellation, demanding "the legal basis for forced conscription, the truth of the greening project, and the fact of the death of six of the soldiers conscripted in relation to student movements."

Academics, religious groups, and civil society also condemned the issue. However, the Ministry of National Defense consistently concealed the truth by responding that "[t]here was no forced conscription, we do not know anything about the greening project, and five of the six deaths were related to the disturbance, and their cause of death was a safety accident."

Since then, the bereaved families of the suspicious death and the memorial organizations have continued to hold a sit-in protest and various rallies and demonstrations calling for the truth to be found about the suspicious death in 1989. As the Presidential Truth Commission on Suspicious Deaths was launched in 2000, they submitted a petition for a fact-finding on the deaths of six people and the investigation on forced conscription, greening project and purification operation began. However, the truth could not be found due to the continued attempts to conceal the data, including non-cooperation, of the Ministry of National Defense, Security Command and intelligence agencies.

In 2005, the Ministry of National Defense launched a Committee to Identifying Truth of the Past and initiated its investigation on the forced conscription and greening project. It announced the investigation results in June 2007, which could not fully identify the causes and truth of the six suspicious deaths. It did not conduct a full investigation on victims of forced conscription and/or the greening project, and did not even start the investigation on the purification operations.

Furthermore, the Ministry of National Defense simply announced the results of the investigation, while no apology, compensation or any measures to regain the victims' honor was made for victims of human rights violations of forced conscription, greening project and purification operation.

The Chun Doo-hwan military junta's monitoring individuals' privacy and collecting personal information in the name of "gathering information", forcibly isolating people from society for a certain period of time in the form of 'serving military duty' was an act infringing the freedom of conscience that constitutes state violence or state crime. It is an act in which the new military junta had violated individual freedom and rights, such as freedom of self-determination, freedom of movement, and right to liberty. In addition, it violated individuals' freedom of privacy and infringed freedom of thoughts and conscience by forcing people to write an apology and make an oath against their conscience and even using them for espionage operations. It also forced people to conduct "unobligated work", and the public officials including military, security agents, and prosecutors, abused their power.

The victims established the Truth-seeking Committee on the Forced Conscription, Greening Project and Purification Operations in 2019. Meanwhile, they also accused the perpetrators, including former President Chun Doo-hwan and Security Commander Park Joon-byung, of "murder, etc."

Currently, they have requested the Truth and Reconciliation Commission, newly launched in 2021, to find out the truth about the forced conscription, greening project and purification operation, and have held various conferences to hold the perpetrators accountable and restore the honor of the victims.

3. Reparations

No apology, compensation, or reparations were made from the Government, including the Ministry of National Defense, regarding forced conscription, greening project and purification operation. Only some partial compensation for the deceased was made for their democratic movement in accordance with the Act on the Honor Restoration and Compensation to Persons Related to Democratization Movements.

The bereaved families of the deceased, as well as the victims, still suffer from serious physical pain caused by actual violence and psychological trauma from having betrayed and conducted espionage due to state violence, and mental sequelae to loss of dignity. Nonetheless, the State is turning a blind eye to apologies, reflections, and compensation.

4. Memorialization

Victims, colleagues, and bereaved families have been producing and installing memorial stones on university campuses to remember the suspicious deaths of the forced conscription, greening project and purification operations and holding memorial ceremonies every year.

In addition, the victims themselves have been participating in various conferences and projects to record testimonies of the violence and damages. Yet, such works are faced with limitations due to personal information and identification of the people involved as they are conducted in the private sector.

There are no state-level policies concerning archiving and/or education for future generations as a means to restore honor against state violence. Furthermore, the entire data from intelligence agencies such as the Ministry of National Defense and the Security Command, which are working-level agencies of state violence, have not been disclosed.

5. Guarantees of non-recurrence

Due to the military issue of being a divided country, the Republic of Korea still sets the 'duty of national defense' by law. However, this obligation to serve in the military is causing many problems due to its forced nature. Forced conscription, greening project and purification operation were the worst state crimes that utilized the mandatory military service policy for forced isolation, infringement of thoughts and conscience, and (in)direct killings.

To guarantee non-recurrence, firstly, the disclosure of the entire relevant intelligence data of the Ministry of National Defense and the Security Command (former Defense Security Command, current Defense Security Support Command) illegally conducted by civilian surveillance and the revelation of the truth shall be preceded. Second, it is necessary to restructure the Military Service Act to convert the conscription system into a recruitment system, and revise the Coroner's Act. Third, the Defense Security Support Command, the hotbed of state crimes, must be dissolved and punishment for the persons in charge should be made. Fourth, compensation, recognition of those related to the democratization movement, and rehabilitation projects for trauma should be carried out as a means to restore honor to the bereaved families and victims.

6. Suggested Recommendations

- 1) The State should disclose all data that have been illegally and unfairly conducted outside the scope of state security, together with sincere reflection and apology to the victims;
- 2) The State should not only console the victims, but also clarify the truth about the case, and be responsible for proper compensation and healing for the victims regardless of the statute of limitations;
- 3) Since changing its name from the Security Command to Defense Security Command and then to the Defense Security Support Command, it has continued to abuse its public power for illegal civilian surveillance on the bereaved families of the Sewol Ferry disaster and members of the Ssangyong Motor labour union in 2015, to plan preliminary simulation of martial law against the people's candlelight vigil in 2017. Thus, the Defense Security Support Command should be dismantled.

Current Status and Challenges of Investigating the Truth of Suspicious Deaths

1. Background

Suspicious deaths in Korea refer to deaths suspected of the cause of death being manipulated or concealed due to dictatorships and authoritarian regimes. This distinguishes them from general mysterious deaths. The Korean word 'Ui-mun-sa (meaning suspicious deaths)' is a word coined in the process of a campaign to explain human rights abuses that took place under an oppressive political situation and to collectively resolve them. Each case of death caused by direct intervention of state violence was grouped into one category. Korea suppressed student movements, labor movements, and political and social movements during the military junta dictatorship and authoritarian regimes, and in this process, public security agencies followed, arrested, tortured, conscripted troops, forced espionage, and controlled activities. In this process, when a person dies, the agency would conceal, manipulate, and deny such death or even make the person a missing person.

Suspicious deaths can specify the perpetrator by focusing on which public security organization intervened just before death. The perpetrators include the military, police, and national intelligence agencies, and there are missing people in which the perpetrating agency cannot be identified because their bodies could not be found for decades. Types of causes of suspicious deaths include deaths occurred while cracking down student movements that led democracy movements in Korea by national intelligence service, or by police, or by military intelligence agencies, with school authorities also intervening at times. The history of suspicious deaths of students could be classified as: suspicious deaths occurred in the process of arresting student activists during the rise of the pro-democracy movement, suspicious deaths presumed to have occurred in the process of forcing students to engage in espionage while students were refusing it, and suspicious deaths occurred in the process of the intelligence agencies' intervening student movements to weaken them. Furthermore, military intelligence agencies such as the Security Command had led people to death while using the former student activists as spies.³⁵

The workers' suspicious deaths were caused by police and national intelligence agencies. In dictatorship and authoritarian regimes, workers' human rights have been violated in the form of restraint and physical violence without due legal protection. As Korean society transitioned to a democratic society, the organization of workers progressed rapidly, and as workers formed a democratic labor union, dictatorship and authoritarian regimes routinely monitored and controlled activists as well as union leaders to suppress them. As the State tried to prevent legitimate trade union activities and neutralize workers' groups, suspicious deaths of workers had occurred.

Suspicious deaths that occurred during the suppression of social movements were caused by the police and national intelligence agencies. In the 1970s, intellectuals such as politicians and professors who were cooperating with the opposition parties in opposition to the dictatorship passed away by suspicious deaths. In prison, suspicious deaths occurred in

³⁵ The Clarification Commission For Suspicious Death, 2004, "Harsh Journey to the Truth 1: The Clarification Commission For Suspicious Death Report 2nd"

the process of ideological conversion operations. In the 1980s, suspicious deaths occurred during torture process.

The Korean military is operated under the system of conscription. The conscripted soldiers had served in the military under a closed military command system stemming from the military junta era. In this context, suspicious deaths in the military occurred under the rule of the military regime and in which the cause and circumstance of death are unknown.

2. Truth Seeking Initiatives

The fact-finding of the suspicious deaths began when people started to demand clarification of the truth of student activists who mysteriously died in the military after being drafted by compulsory conscription. However, full-fledged investigation began in 1988 when the Chun Doo-hwan military junta regime was ousted by elections and the soft military regime, Roh Tae-woo regime, took office. The bereaved families of the suspicious deaths held a 135-day sit-in at the Christian Center in Seoul in October 1988, collectively calling for the clarification of the truth of the suspicious deaths which they previously demanded individually. At that time, the bereaved families of the suspicious deaths from across the country participated in the sit-in, secretly gathering at the Christian Center in Seoul to avoid the eyes of the police and other government officers as if they were conducting secret operations. During the sit-in protest, the bereaved families were beaten, arrested, and detained, but the truth was not found.³⁶

In order to find out the truth of the suspicious death, the bereaved families and memorial groups staged a sit-in for 422 days in front of the National Assembly from 1998 to 1999, and with this effort, the Special Act on Finding Truth on Suspicious Deaths was enacted and enforced in 2000. From October 2000 to October 30, 2002, the 1st Clarification Commission for Suspicious Deaths was established and conducted investigation activities,³⁷ and from July 2003 to June 30, 2004, the 2nd Clarification Commission for Suspicious Deaths was established and also conducted investigations to find the truth.³⁸ The Clarification Commission for Suspicious Deaths had limitations due to limited investigation period, limited investigation authority, budget and activities, and above all, it was difficult to investigate the

³⁶ In November 1988, the bereaved families who raised objections to the court while attending a hearing for a state violence case were arrested on site and two of them were sentenced two-year in prison. Despite efforts such as sit-ins and appeals to the political community, no clarification of truth was made and the frustrated bereaved families suffered considerable physical and psychological aftereffects. On November 12, 1990, father of Lee Yi-dong, who died in the military, committed suicide by taking poison, leaving a suicide note demanding clarification of truth of the suspicious deaths to the bereaved families of suspicious deaths, the president, and the chair of the National Assembly, respectively. On March 6, 1991, mother of Choi Woo-hyuk, who was drafted and died in the military, died after jumping into the Han River after suffering from aphasia.

³⁷ The Special Act on Finding Truth on Suspicious Deaths stipulated a narrow scope of investigation for the investigation to be focused on suspicious deaths related to the democratization movements, not to the human rights violations. As a result, the Clarification Commission for Suspicious Deaths could only investigate whether the cause of death was related to the democratization movement. Of the 83 cases investigated, the 1st Clarification Commission for Suspicious Deaths decided 19 cases to be "recognized" as deaths due to illegal activities of public power related to the democratization movement, 33 cases to be "dismissed" and 30 cases as "impossible to find the truth." (The Clarification Commission For Suspicious Death, 2002, First Report of the Clarification Commission For Suspicious Death)

³⁸ The 2nd Clarification Commission on Suspicious Death received 44 applications, recognized 11 cases of deaths were due to illegal direct or indirect acts of public power related to the democratization movement, dismissed 7 cases, and decided 24 cases as impossible to find the truth. (The Clarification Commission For Suspicious Death, 2004, "Harsh Journey to the Truth 1: Second Report of the Clarification Commission For Suspicious Death")

truth due to non-cooperation of related agencies (the perpetrator agencies). The clarification of truth was not made and became impossible. In particular, non-cooperation in submitting data and investigation by the perpetrator agencies such as the National Intelligence Service and military intelligence agencies prevented investigating and clarifying the truth of suspicious deaths.³⁹

The efforts to find out the truth about suspicious deaths was, coupled with the democratically elected government's efforts to find truth and bring justice for comprehensive transitional justice, expanded to truth-finding activities of general human rights violations throughout the Korean War, dictatorships, and authoritarian regimes. As part of comprehensive rectification of past state violence, the Framework Act on Settling the Past History for Truth and Reconciliation was enacted in May 2005. Cases of suspicious deaths were submitted again to the 1st Truth and Reconciliation Commission for investigation. However, the Truth and Reconciliation Commission could not even launch an investigation into some of the suspicious deaths. The bereaved families and others collectively withdrew the cases from the TRC in 2009 in order to build a foundation for future clarification, citing the limitations and calling for a thorough clarification for truth.

Since then, efforts for clarification of the truth of suspicious deaths have been expanded to social movements calling for reorganization of state violence organizations such as national intelligence agencies and military that block the investigation and clarification of the truth, and for systemic improvements such as abolishment of anti-democratic National Security Law which altogether prevent truth-seeking for past state crimes. In this context, the Framework Act on Settling the Past History for Truth and Reconciliation was revised in 2020, and currently 23 cases of suspicious deaths were submitted to the 2nd Truth and Reconciliation Commission for investigation and clarification of truth.

3. Criminal Justice and Accountability Processes

In the realization of the transitional justice for suspicious deaths, the issue of criminal justice and accountability falls to "impunity" due to Korea's political situation, institutional limitations, lack of social movement capabilities, and the general public sentiment. These reasons can be examined in several ways below.

First, Korea's justice and truth-seeking activities were carried out on the premise of impunity due to political circumstances. The Special Act on Finding Truth on Suspicious Deaths, enacted in 2000, was legislated when the democratic party for the first time became a ruling party (with former president Kim Dae-jung being the first president from democratic party). However, the Government at the time was a coalition government with the former military forces that launched the May 16 military coup in 1961. For this reason, the establishment of a state organization for truth investigation was prioritized over punishment. In addition, as the later established Truth and Reconciliation Commission also focused on national unity and reconciliation, the truth investigation was conducted on the premise of impunity.

³⁹ The Clarification Commission For Suspicious Death included in the report the status of non-cooperation of the National Intelligence Service, the Defense Security Command, the Ministry of Justice and the Prosecution Service, and the National Police Agency. (Hard Journey to Truth 1: Report 2 of the The Clarification Commission For Suspicious Death)

Second, there were institutional limitations. When the Clarification Commission for Suspicious Death started to launch fact-finding investigations in 2000, it was 20 to 30 years after most of the suspicious deaths. It was difficult to apply the issue of criminal justice and responsibility to those cases under Korea's legal system because the statute of limitations for prosecution had already expired for most of the cases.⁴⁰ Some of the representative cases of state power intervention in suspicious cases that could not be prosecuted due to the statute of limitations include Professor Choi Jong-gil's death from torture and concealment afterwards by the Korea Central Intelligence Agency,⁴¹ Park Young-doo's death and concealment by the Cheongsong prison guards.⁴² These cases could not be legally punished due to the statute of limitations.

Third, the perpetrators who retired from public security agencies form groups such as the Korea Retired Generals and Admirals Association, Veterans' Associations, and Retired Police Association due to the perpetrators' "collective occupationalism".⁴³ As a result, a political structure has been created in which it is difficult to make the issue of punishment for perpetrators a social agenda. They blocked the investigation of the truth by collectively not cooperating in the investigation activities of the Clarification Commission for Suspicious Death and the Truth and Reconciliation Committee. The Korea Retired Generals and Admirals Association tells its members that it should monitor and check the efforts to clarify truth and bring justice of past state violence, saying that it should prevent "the dichotomy of good and evil, excessive moral superiority and self-righteousness, misleading politically and ideologically in ideological bias."⁴⁴

Fourth, as investigations seemed to show rapid progress with reportings or testimonies, issues regarding the perpetrators' human rights being violated started to rise on surface as a means of obstructing the efforts to clarify the truth, even though all revelations were actually true.⁴⁵

As a result, no criminal responsibility or apology has been made for the perpetrators of the suspicious deaths.⁴⁶

⁴⁰ Cho Kuk, 2002, "Principles of Suspension and Exclusion of the Prescription of Public Offences and Prohibition of Retroactive Effect of Anti-Human Rights National Crimes," Criminal Justice Research, 17, Korean Criminal Justice Association.

⁴¹ Choi Jong-gil, who was a law professor at Seoul National University(SNU), supported the students' pro-democracy movement, by saying at the Professors' Meeting that, "we [professors], as teachers, should not be ignorant of students" when SNU students were arrested for demonstrating against the Yushin regime and said that professors should resist unjust public power. On October 19, 1973, he was killed by the KCIA's torture while being investigated for being accused of his involvement in the European spy case.

⁴² Park Young-doo was taken to Samcheong Education Unit by martial law forces during the 5th Republic. He protested against cruel treatment and then transferred to Cheongsong Prison. After the transfer, he died in October 1984 after being assaulted and abused by prison guards while demanding improvement in the treatment of prisoners.

⁴³ Lee Hyung-sook, 2020, "A Study on the Denial of Truth in the History of Doubt in Korean Armed Forces", Ph.D. thesis at Sungkonghoe University.

⁴⁴ Korea Retired General and Admirals Association, 2006, "Response to the Implementation of Distortion of the Framework Act on Settling the Past History for Truth and Reconciliation", <Research on Security Issues to Protect the Liberal Democratic System>, www.starflag.or.kr (last visited on December 6, 2019).

⁴⁵ For the case of Park Young-doo's suspicious death, the Clarification Commission For Suspicious Death publicly disclosed names of the prison guards who assaulted and abused prisoners at the Cheongsong Prison.

⁴⁶ The case of Nam Hyun-jin's suspicious death, who died in the military, may be considered as the only example of an apology, but it cannot be regarded as a state apology since it was from his colleagues who served in the military at the time.

4. Reparations

In the case of suspicious deaths, compensation or reparations provided to the victims was not collectively made. Depending on the degree of fact-finding, compensation is made in various types. The first method of compensation is selective compensation through a separate examination in accordance with the Act on the Honor Restoration of and Compensation to Persons Related to Democratization Movements. After completing its activities in 2002 and 2004, the Clarification Commission for Suspicious Death recommended the Government to transfer the cases to the Commission for Democratization Movement Activists' Honor Restoration and Compensation ("the Commission for Compensation") and to conduct follow up procedures so that the Government can compensate for cases that were recognized as suspicious deaths caused by state violence. However, the Commission for Compensation individually reviewed each case citing the difference in the Commission's purposes, deciding to compensate some cases while dismissing the other cases that were recognized as related to state violence by the Clarification Commission for Suspicious Death. The second method of compensation is made through individual litigations against the State for damages. The victims have spent years and years suing against the State while being burdened with the time taking and legal costs. The court often dismisses compensation claims citing expiration of the statute of limitations for deaths caused by state violence. The third method of compensation is compensation under the Military Personnel Management Act for cases of suspicious deaths in the military. Death would be recognized as death in the line of duty and, with the application of the military veterans system, victims and their bereaved families would be recognized as "persons entitled to veterans benefits." However, it is problematic in that, in order to be recognized for death in the line of duty, the bereaved families have to admit the victim is a "person who died of self-harm" to receive compensation.

In the absence of the State's comprehensive reparations for suspicious deaths, victims have spent decades trying to find out the truth. In the process, secondary or collateral damages occurred to the bereaved families but no programs have been conducted for their physical and mental rehabilitation.

5. Memorialization

Activities for the memory of suspicious deaths and the victims are carried out by colleagues of the victims and the bereaved families for future generations. They hold memorial ceremonies every year to remember the suspicious deaths. In addition, they would install monuments in a place related to the victim for remembrance. Currently, there is an ongoing project of creating a joint memorial sculpture for the memory of the collective struggle for truth-seeking of the suspicious deaths. However, there is no state-level policy for national memory to remember the suspicious deaths and the victims' experiences and convey them to future generations in order to guarantee non-recurrence of such state violence.

6. Guarantees of non-recurrence

In order to prevent the recurrence of suspicious deaths, a system should be established to improve the state system and the practices of perpetrator agencies so that they can function as democratic state organizations.

First, a verification system for the cause of death needs to be improved. South Korea still does not have a state system for the establishment and operation of a cause of death verification agency with expertise and independence. Since 2004, the bereaved families of suspicious deaths and others have demanded the enactment of an Act on the Qualification and Duties of Forensic Officers for Examination but no legislation has been enacted. It is necessary to prepare an independent and objective cause of death confirmation system.

Second, some improvements have been made to the system for the perpetrators, that is, the public security state agencies. The national intelligence agency (the National Intelligence Service) will abolish its investigative functions. The police have also partially improved including the abolishment of information and public affairs division and suspension of activities that used torture and illegal surveillance as a practice. But countermeasures still need to be raised to prevent a recurrence.

In 2016, the Framework Act on Military Status and Service was enacted and the basics of soldier rights and barracks life were legally prepared. Yet, there are still many questions about the cause of death in the military. It is necessary to improve the system, such as establishing an ombudsman system for military reform. Above all, in the case of Korea, due to the division system of the Korean peninsula, a risk always lingers of public security agencies going back to the past system and practices for reasons of national security. The demand for truth finding on suspicious deaths has an important aspect to prevent the recurrence of state violence by such public security agencies.

7. Suggested Recommendations

- 1) First, the investigation period and investigation authority of the Truth and Reconciliation Commission should be strengthened. The truth of suspicious deaths has not been clarified for decades. Sufficient period and authority for investigation is needed including compulsory apprehension authority.
- 2) Second, the legal system should be improved so that the statute of limitations and extinctive prescriptions can be considered to have been suspended from the time of the occurrence of suspicious deaths.
- 3) Third, a state-level cause of death verification system should be established to prevent mysterious deaths. To this end, it is necessary to enact an Act on the Qualification and Duties of Forensic Officers for Examination, which has been proposed to the National Assembly for 20 years.

Imprisonment and Exclusion by the State: Internment camps/institutions

1. Background

- 'Human Trash' - Collective camps/institutions run by the State

In 1975, the Park Chung-hee regime announced the Ministry of Interior (MOI) Decree No. 410 ("Guidelines on Official Tasks Concerning the Reporting, Control, Accommodation, Custody, Repatriation, and Follow-Up Management of Vagabonds"). The decree provided the legal ground upon which police officers and civil servants were organized into teams hunting down and carrying individuals to the so-called vagabond institutions (or concentration camps), for sleeping on the streets, selling gum, shining shoes, begging, or even forgetting to carry their Resident Registration Cards with them. Dozens of these concentration camps for the incarceration of vagabonds were set up across the nation. It was a clear state-led policy.

Such policy dates back to the compulsory Japanese occupation of Korea, and the most well-known example is the "Seongam Academy". Seongam Academy was a juvenile concentration camp established in 1942 in Seongam-dong, Ansan-si, Gyeonggi Province. Children who were simply labeled as vagrants suffered forced expropriation, violence, forced labor and hunger. Without any chance of education, they faded away namelessly. Having been put under the charge of the Gyeonggi Provincial Government after the Liberation from Japan, Seongam Academy continued to operate in the same way as it had been during the Japanese occupation until 1982.

The most famous example of the collective concentration camps/institutions in the era of the authoritarian regime is the "Brothers Home("Hyeongje Bokjiwon")." Of the 3,976 inmates imprisoned at the Brothers Home in 1986, 3,117 had been brought there by the police, and another 253 were by civil servants. In other words, 84.7 percent of the institutionalized population had been locked up there by the State. From 1975 to 1986, over 12 years, 513 inmates are known to have died while detained in the institution, yet the death certificate of one of the inmates who died from beating in 1986, and whose death brought the Brothers Home case to the Korean public's attention, stated that he died of a "heart failure."

The evil of vagabond concentration camps caught public attention for the first time in January 1987, when the above-mentioned inmate died from beating and 35 others escaped the camp as a group shortly afterwards. Despite the public rage over the incident, Park In-geun, the head of the Brothers Home, ended up receiving a prison sentence of 2.5 years only. He was indicted on the charge of embezzlement of government subsidies, and not on other more serious charges, such as "felonious imprisonment." Although Park was put to seven trials—an unusual exception to the judicial practice in Korea—the court eventually sided with the Government, deciding MOI Decree No. 410, legal ground for such concentration camps, as a legitimate part of the national policy.

2. Truth Seeking Initiatives

The movement to uncover the full extent of the Brothers Home incident began with the solo protest of a victim-survivor Han Jong-seon and the publication of the book, *A Kid Who Survived*, in 2012 and the subsequent launch of the assembly of civil society organizations, the Committee for the Truth Finding of the Brothers Home Incident (“the Committee”), in 2013.

A few members of the National Assembly, led by a National Assembly member Jin Seon-mi, tabled a bill in July 2014 for launching the investigation into the Brothers Home case. The bill, however, could not go further beyond a public hearing before the Standing Committee and was automatically discarded in 2016. The ruling party at the time felt burdened about exposing an incident that dated back to former president Park Chung-hee, father of the then-incumbent president Park Geun-hye, and cited various reasons—including budget constraints and “separability” from other similar incidents—for postponing a vote on its enactment.

The Committee and the victims’ group, for their part, have also been making diverse efforts that they could handle, such as organizing petition drives through networking with other organizations, lobbying legislators, continuing the relay solo protests, organizing press conferences, waging strikes with head-shaving and fasting, completing walks of pain from Busan to Seoul, holding debates and public hearings, and organizing academic conferences and exhibitions.

Through such struggles, the amendment to the Framework Act on Settling the Past History for Truth and Reconciliation was passed by the 20th National Assembly in 2020. Based on this law, the Truth and Reconciliation Commission (TRC) was established and the TRC published the Report of Human Rights Inquiry on Collective Institutions in December 2021. The inquiry covered five institutions in Seoul, three in Incheon and Gyeonggi province, and three in Gangwon province. The report concluded that the users were forcibly entered and experienced human rights abuses in all of the public-running institutions. Though the inquiry for the report covered only the northern part of South Korea, the report stated that collective institutions for vagabonds were built or existing institutions were transformed to be institutions for vagabonds in major cities of the country including Gwangju, Masan and Busan, based on the former Ministry of Interior’s Decree No. 410, promulgated in 1975.

3. Criminal Justice and Accountability Processes

The Committee for the Truth Finding of the Brothers Home Incident exhorted the Advisory Committee on the Reform of the Ministry of Justice and the Prosecutors’ Office, which was launched during the Moon Jae-in administration, to select the Brothers Home incident as one of the cases of the prosecutors’ wrongdoings and conduct re-investigation of the case. The Advisory Committee accepted the request, and the Special Committee on Past Wrongdoings by the Prosecution, launched by the Prosecutors’ Office, selected the Brothers Home case for reinvestigation in March 2018.

With documented evidence and testimonies from victim-survivors, the Special Committee on Past Wrongdoings by the Prosecution revealed the collusion among the Blue House (the Presidential office), the Ministry of Justice, and the high ranks of the Prosecutors’ Office to cover up and minimize investigation into the Brothers Home incident in the 1980s. Based on

this finding, while publishing its report in October 2017, the Special Committee acknowledged that the core of this incident was the national policy and advised the Prosecutor General to give an apology to the victim-survivors.

Furthermore, the Special Committee recommended the Prosecutor General to file an extraordinary appeal to the Supreme Court's decision that found the MOI Decree No. 401 as legitimate legal ground for forced arbitrary detention. The then-Prosecutor General, Moon Moo-il, accepted the Special Committee's advice and lodged an extraordinary appeal for the Brothers Home case, and made a tearful apology to the victims. However, on March 11, 2021, the Supreme Court dismissed the extraordinary appeal.⁴⁷

4. Reparations

The amendment to the Framework Act on Settling the Past History for Truth and Reconciliation was passed by the 20th National Assembly after twists and turns, but in the process, contents related to compensation and reparation for victims of forced institutionalization were excluded. The victims are concerned that, even if they are recognized as victims through the investigation by the 2nd TRC, it would be a mere restoration of social honor and there are no guarantees or prospects on how long it will take for practical compensation and reparations for the victims.

5. Guarantees of non-recurrence

- End the 'institutionalization' paradigm

The Brothers Home case is not just a case of the past; it is very much alive in the victims and families who have to live with its legacy. Unless the state transforms its institution-centered welfare system to deinstitutionalization policy, gross violations of human rights such as those witnessed at the Brothers Home are bound to repeat themselves. Many of the victim-survivors who were detained in vagabond institutions are still locked away in facilities for the disabled, homeless shelters, and mental care centers and hospitals.

According to the survey conducted by the Ministry of Health and Welfare, as of 2021, there are about 6,400 people currently in "homeless shelters," which were "vagabonds shelters" in the past. It means that many of those captured as 'vagabonds' in the past are still in the institutions. Furthermore, those with psychosocial disabilities were often transferred to "mental health care institutions" from "homeless shelters," but such process and reason for their shift from one institution to another are not known. Nonetheless, it is widely known that usually the same institution operates both homeless shelters and psychiatric institutions and it would circulate the inmates.

What is worse is that the institutions built in the past are still operating with new names but also with the same people working inside. Those who were detained in the institutions in the past are still remaining in institutions, while some owners of institutions are known to have illegally established different types of additional institutions to circulate the detainees so that they can prolong their detention period.

⁴⁷ Top court dismisses appeal against not-guilty verdict for owner of abusive facility for vagrants from '80s, Yonhap, March 11, 2021, <https://en.yna.co.kr/view/AEN20210311005951315>

<Case - Yeongbo Ja-ae Won>

Yeongbo Ja-ae Won(hereinafter “Ja-ae Won”) is a homeless shelter run by the Seoul Metropolitan City. Most of the current users in the Ja-ae Won were forcibly institutionalized in the era of "Vagrants crackdown" like the victims of the Brothers Home. In 2017, Seoul City conducted a "Periodical Human Rights Inquiry on the Homeless Shelters," including the Ja-ae Won, in accordance with the Ministry of Health and Welfare's guidance. After conducting 2-day interviews with the inmates and the staff at the Ja-ae Won, Seoul City concluded that there is 'nothing to mention.' in Ja-ae Won. However, the civil researcher who participated in this inquiry testified to a disability organization a completely different story. It was that only 12% of the inmates at Ja-ae Won came to the institution voluntarily and the rest were forcibly institutionalized by the police and other public authorities.

Although the civil researcher pointed out this fact in the report, the Seoul City did not take any further measures and reported to the MoHW that there was "nothing to mention." Below are some of the inmates at Ja-ae Won said to the civil researcher during interviews:

"In the 1980s, I was dragged by the police and firstly I lived in a tent-like accommodation. And then, as Ja-ae Won was newly built in 1985, I was transferred here."

"I was caught in Seoul station and taken here while I was wandering around to navigate myself; I had just arrived from Busan to visit my sister's home in Seoul."

The civil researcher reported this issue to a disability organization, and the activists organized a task-force team. The TF team requested Seoul City for official documents and to make this issue public. Seo Youn-ki, a Seoul Metropolitan Council member, publicly raised a question regarding forced admission of the Ja-ae Won and the Seoul City's concealment case to the mayor of Seoul, Oh Se-hoon. The TF team reported the issue to the press in order to find the victims and, as a result, found two victims(former detainees who experienced forced institutionalization) and one bereaved family member.

One of the victims, X, went missing in July 1983 and was admitted to a psychiatric hospital in 1983. X was admitted to the Ja-ae Won in March 1986 and lived there for over 20 years, until May 2007. Son of X, who could not find her, reported X's death to the local authority. Many years later, one day in 2007, he received a letter from Ja-ae Won saying that X is in Ja-ae Won and finally, X was reunited with her family. When they reunited, X was a completely different person than 20 years ago; she could not even communicate with others, and all of her internal organs were malfunctioning. For the next three years, X suffered severe illness and passed away in 2010. X's son requested her living and medical records to the Ja-ae Won but the institution did not provide such documents. Later on, Ja-ae Won only sent him a one-page admission card of 1986. X's case is filed to the 2nd Truth and Reconciliation Commission(TRC).

The fact that the Government took part in implementing forced institutionalization is a clear issue of transitional justice. The camps/institutions installed at that time are still operating, and those who were forcibly detained at that time are still remaining in those institutions. The Government prepared a "Deinstitutionalisation Roadmap" for residential institutions for

persons with disabilities in 2021, but it does not include homeless shelters and mental care institutions related to the past state violence.

Fundamentally, the Brothers Home, the Seongam Academy or the Ja-ae Won cases can never be solved unless the Government's policy paradigm changes; the paradigm that classifies someone as 'less valuable people' and locks them into institutions.

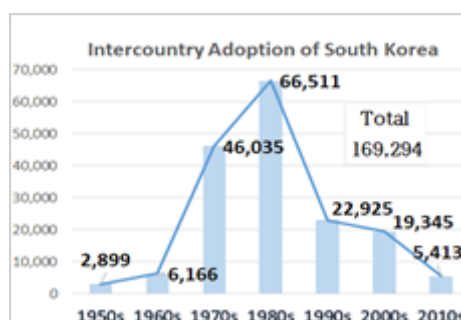
6. Suggested Recommendations

- No one should be 'cleared away'
- 1) The State should recognize the past history of forced institutionalization, conduct a fact-finding survey on the forced admission and human rights violations to the victims. And it should enact a law that stipulates compensation procedures for the victim-survivors.
- 2) As there has been systematic forced institutionalisation by the State, the State should establish proper 'deinstitutionalisation' policy. This is also essential to prevent a recurrence. The deinstitutionalisation policy should follow the international standards, especially the United Nations Convention on the Rights of Persons with Disabilities and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights:
 - a) Close all institutions as soon as possible
 - b) Transfer the people in the institutions to the community and establish a support system in the community so that they do not have to return to the institutions (care homes, psychiatric hospitals, and mental care institutions, etc.)
 - c) The Government's 2021 'Deinstitutionalisation Roadmap' for persons with disabilities should include homeless facilities and mental care facilities.

Current Status and Challenges of Human Rights of Adoptees in Intercountry Adoption Process in Korea

1. Background

Korea first introduced intercountry adoption as an emergency measure for war orphans and biracial children after the Korean War in 1953. However, even 70 years after the Korean War, Korea has continued intercountry adoptions to this day. An underdeveloped country torn by war and absolute poverty became the world's 10th largest economy today, and yet, 170,000 children have been sent abroad for adoption to 14 Western countries, including the United States, Canada, Europe, and Australia. Korea's intercountry adoption scale and history are unprecedented in any other countries. Korea has the world's lowest Total Fertility Rate (0.84 children/year as of 2020), yet the number of children sent abroad has even increased during the severe COVID-19 pandemic, marking Korea the world's 3rd largest sending country (1st Colombia, 2nd Ukraine).



Intercountry adoption occurred the most in the 1970s and 1980s in Korea. During this period, Korea achieved rapid economic growth, and politically, there was intense oppression of social welfare and human rights under the military dictatorship. Also, the state recommended or forced intercountry adoptions for poor families, single-parent families, especially women giving birth out of marriage. In fact, during the 70 years of intercountry adoption history, 1985 was when the intercountry adoption rate peaked highest, at 8,837 children (1.5 percent of the number of children born that year).

Korea had the most intercountry adoptions over a long period, paradoxically because Korean society did not view this matter negatively and was unaware that human rights violations could happen during the adoption process. As a result, since the late 2010s, Korean society has started to raise questions about the system and laws established under the past social situations and recognized that adoptees' human rights were violated by the private intercountry adoption agencies in charge of the adoption process. The main agenda for the issues raised with the past intercountry adoption process and human rights violations around 2020 are ① Adoption process, ② Adoptee's records, ③ Private adoption agency, ④ Support for overseas adoptees, ⑤ Acquisition of citizenship and Deportation.

Meanwhile, regarding intercountry adoption, which first started in the mid-20th century, international conventions and human rights norms including the United Nations Convention on the Rights of the Child and the Hague Convention on Protection of Children and

Co-operation in Respect of Intercountry Adoption ("Hague Convention on Adoption") stipulate state's responsibility for the entire adoption process for the protection of adopted children's rights. Among the sending countries for intercountry adoption, Romania (2001), Russia (2013), Kenya (2014), India (2018), and Ethiopia (2018) each declared a suspension of intercountry adoptions. And among the receiving countries, Switzerland (2020), the Netherlands (2021), and Belgium (2021) formed a national investigation committee on human rights violations of intercountry adoptees and carried out investigations of human rights violations.

As such, the perspective on intercountry adoption is gradually shifting from children's welfare or rescue plan to adopted children's human rights. Also, based on the Hague Convention on Adoption, state-led related systems are being prepared. However, a limitation⁴⁸ exists in dealing with human rights violation cases during the intercountry adoption process before the Convention was signed in 1993.

2. Truth Seeking Initiatives

As seen from the number of children Korea decided to send abroad, a positive perception of intercountry adoption is firmly rooted in Korean society. Therefore, it has long been taboo to raise questions about whether or not any human rights violations of adopted children and their birth families have occurred during the adoption process. In particular, the children sent overseas in the 1970s and 1980s (the period with the most significant number of child adoption) became grown-ups and began to visit Korea from the mid-1990s to find their birth families. They shared the stories and experiences that they went through as interracial adoptees and their efforts to overcome identity issues.

Korean society finally began to recognize the human rights violations after the adoption and the problems in the adoption process through cases of deported adoptees in the mid-2010s. For the first time in 2011, the news⁴⁹ reported in the media about a deported adoptee becoming homeless shocked many Koreans. And after that, in 2017, Philip Clay, an overseas adoptee, committed suicide by jumping from an apartment.⁵⁰ The Government and society started to notice that many Korean adoptees sent to the United States have failed to acquire citizenship, and there could be possible human rights violations of overseas adoptees.

Later, Adam Crapser's case, once again, raised national awareness of deported adoptees' situation. At three years old, Crapser was adopted to the United States with his older sister but deported to Korea 38 years later in 2016, without acquiring US citizenship. He experienced three adoption dissolutions in the US, suffered from abuse and violence from his adoptive parents, and became a homeless person at sixteen. He filed a suit in 2019 for damages against the Government and Holt Children's Service, the adoption agency, and the case is still under process.

⁴⁸ Korea signed the Hague Convention on Adoption in 2013 but has not ratified.

⁴⁹ Jane Jeong Trenka (2011.10.06) "The story of an adopted child sent to the United States found homeless in Itaewon after 34 years", a contributed article, Pressian

⁵⁰ Philip Clay was adopted to the United States in the 1970s but deported to Korea in 2011 without obtaining US citizenship. He could not speak Korean and had nobody in Korea. He spent five years in a homeless shelter, prison, and psychiatric hospital before committing suicide

A “Report on Human Rights Violations in the Past Intercountry Adoption Process: An In-depth Interview⁵¹ (KoRoot & NHRC joint report)” is the first investigative report in Korea on human rights violations of overseas adoptees. KoRoot conducted a joint project in 2021 and worked with the National Human Rights Commission of Korea (NHRC). KoRoot & NHRC joint report investigated human rights violations during the intercountry adoption process in the past through in-depth interviews with ten overseas adoptees and five officials related to intercountry adoption. This report has a significant meaning in revealing the issues in the adoption process and how the nation played its role in it through the voice of adoptees. According to the KoRoot & NHRC joint report, the categories of human rights violations in the intercountry adoption process were as follows: ① Issues of adoption⁵²: being registered as an orphan, status change, record fabrication, unclear adoption process, ② Issues of adoptee’s records: restriction of access to personal information, right to know the root, ③ Responsibilities of adoption agency: adoption industry, corruption of adoption agency, raising issues with the procedures, absence of post-adoption care, ④ Support for adoptees: providing services(interpretation and translation) when visiting the home country, searching for families, and recovering nationality, ⑤ Issues of Status: acquisition of nationality and setting agenda for deported adoptees.

Based on a report of the National Human Rights Commission of Korea (NHRC) in 2021, NHRC commissioned a “Research to guarantee human rights of overseas adoptees through an investigation of current situations” in 2022 to examine more specifically the human rights situation of overseas adoptees on a larger scale.

3. Criminal Justice and Accountability Processes

Crapser revealed the issue of deported adoptees for the first time by filing an official lawsuit before the Seoul Central District Court for damages against the Government and Holt Children's Service (Holt), the adoption agency, in 2019. Crapser pointed out three faults that Holt committed: first, Holt, the defendant, knew that Crapser was not an orphan and was even aware of his mother's existence, but reported and registered him as an orphan and sent him abroad. Second, Crapser's failure to acquire citizenship after the adoption was due to Holt not fulfilling the legal obligations as an adoption agency. Third, Holt was the legal guardian of the plaintiff at the time of adoption but did not provide any post-adoption care nor intervene when the plaintiff suffered from adoption dissolutions, physical or mental abuses, and violence from his adoptive parents.

Crapser also pointed out the wrongs committed by the Government: First, regarding the acquisition of citizenship, the State did not fulfill its responsibility of overwatching and managing the matter; therefore, the Government was jointly responsible for the failure to acquire citizenship. Second, in the intercountry adoption process, a proxy adoption was institutionally permitted, which allowed adoptive parents to adopt children without ever

⁵¹ KoRoot (2021) "Report on Human Rights Violations in the Past Intercountry Adoption Process: In-depth Interview-Voices of Overseas Adoptees," a joint project with the National Human Rights Commission of Korea in 2021.

⁵² The American couple visited a child welfare facility in Korea in 1966 to adopt a girl they sponsored named 'Cha Jung-hee.' However, she was already taken home by her biological parents. But the facility proceeded with the adoption of another girl as if she were Cha Jung-hee. Except for the picture, the adoption papers had Cha Jung-hee's name, date of birth, and family information. Deann Borshay Liem (Korean name: Kang Ok-jin) grew up as Cha Jung-hee and filmed the documentary "First Person Plural" (2000) based on her experience.

visiting the country of adoption. Third, despite the strict international prohibition on pursuing profit through intercountry adoption, the Government allowed adoption agencies to receive substantial adoption fees. The estimated number⁵³ of Korean-American overseas adoptees with no US citizenship, such as Crapser, reached around 20,000. In addition, a comprehensive investigation is required into human rights violations for the intercountry adoption cases in 1993 before the Hague Convention on Intercountry Adoption was adopted.

Many adoption cases had no follow-ups and protection from the Government and adoption agencies. Byeon Hae-ja (Lisa)⁵⁴ was adopted in the 1960s and diagnosed with intellectual disabilities, then left untreated in a psychiatric hospital; Jung Mi-hwa was sent overseas in the 1970s even though she knew her parents' names and home addresses; and Hyun-su⁵⁵ was adopted to the United States in the 2010s but killed by his adoptive father. Also, in some cases, adoptees experienced an illegal and unethical adoption process.⁵⁶ Therefore, it is necessary to investigate unidentified cases of many adoptees exposed to human rights violations before and after intercountry adoption, and then litigation for damages may proceed.

4. Reparations

Adam Crapser's lawsuit against the Government and adoption agency is still in process and is waiting for a final judgment as of May 2022. There has been no reported case where an overseas adoptee has been officially recognized for any harm in the intercountry adoption process or received indemnity, a physical or mental rehabilitation program, an official apology, or compensation.

President Kim Dae-jung invited 29 overseas adoptees from eight countries to the Blue House (the former Presidential Office) on October 23, 1998, and apologized, saying, "Korea made a huge mistake because of economic difficulties in the past and Korea's foolish customs." Then, in 1999, he initiated a project to support overseas adoptees visiting Korea to find families and established a quasi-governmental center for adoption information. Since then, there have been no government-level investigations into human rights violations, apologies, follow-up measures, or indemnity for physical or mental rehabilitation.

⁵³ As the US Congress passed the Child Citizen Act in 2000, as of 2022, approximately 49,000 to 50,000 adoptees or children adopted after the Act have no citizenship. And about 20,000 people among them are Korean overseas adoptees.

⁵⁴ A report from the Kyunghyang Daily News on September 10, 1977, said Byeon, Hae-ja was adopted into a wealthy family in Kentucky in the early 1960s and diagnosed with intellectual disability (developmental disability) two years after her adoption. Then she was sent back to the New York Catholic Relief Service. Without legal status and proper treatment for ten years, she was hospitalized in a psychiatric hospital in Washington DC due to schizophrenia. The hospital sued Catholic Relief Service for not taking responsibility as a guardian.

⁵⁵ Hyun-Su was adopted to the United States and died in February 2014, beaten by his adoptive father. And the adoptive father received legal punishment. A Catholic Charity stopped adoption from Korea after the tragedy. The Korean government investigated the Holt Children's Service for arranging the adoption of Hyun-Su, uncovered the illegality of the cases, issued a warning to the institutions, and reinforced the penalty clause for the recurrence of the illegal act.

⁵⁶ On May 16, 1979, Dong-A Ilbo reported that 9-year-old Jeong Mi-Hwa from Gyeongsan, Gyeongsangbuk-do, was abducted by a man in the village and then left behind in downtown Busan in 1978. Later, she was adopted to the United States through an intercountry adoption agency from Busan City. Her parents visited the adoption agency and found out that she shared information such as the names of her parents and siblings and home addresses. However, rather than sending her home, she was sent abroad.

5. Memorialization

The stories of overseas adoptees have been introduced many times in Korea. As artists and researchers, some of them reflected their experiences in their artworks and research papers. As of May 2022, an exhibition⁵⁷ by Sara van der Heide (Korean name: Jang Se-jin), a Korean-Dutch adoptee, is being held at the Arko Art Museum in Daehangno, Seoul.

Overseas Korean adoptees organized groups around the world to engage in activities. Some of those groups are to question Korean society about past wrongs and restore their human rights. The most well-known groups are Adoptee Solidarity Korea (ASK, established in 2004, currently closed) and the Truth and Reconciliation for the Adoption Community of Korea (TRACK, established in 2007, currently halted). Recently, newly formed groups are conducting investigations into human rights violation cases with various activities to improve human rights of overseas adoptees; Ibyang International Network (IbyangIN) inherited the spirit of ASK, the Danish Korean Rights Group organized by the Korean adoptees in Denmark. Also, although it is not an organization established by overseas adoptees, KoRoot (founded in 2003) aims to recover and promote the human rights of overseas adoptees.

6. Guarantees of non-recurrence

Changing the private agency-centered adoption process was the main focus of solving problems in the adoption process. There has been a consistent movement in preparing legal acts to build an official system under the government bodies (Ministry of Health and Welfare, local governments) by decreasing the roles of private adoption agencies in such areas as determining the adoption eligibility of adopted children, interim protection, selection of adoptive parents, the final decision on adoption, and follow-up care.

These efforts were partially reflected in the revision of the Act on Special Cases for Adoption in 2011. And as of 2022, the complete revision of the Act on Special Cases for Adoption and enactment of the Intercountry Adoption Act covering only intercountry adoptions are in the process. However, the Government's responsibilities for the human rights violations of overseas adoptees in the adoption process before the 1990s have not been included.

7. Suggested Recommendations

- 1) The State should express concerns about the human rights violated situation of overseas Korean adoptees;
- 2) The State should conduct a full-scale national investigation as a follow up action to the ongoing studies on human rights violations of overseas adoptees;
- 3) The State should implement a national program that indemnifies, compensates, recovers the damages, and offers apologies to the victimized adoptees after identifying their cases.

⁵⁷ Writer Jang Se-Jin reveals the imperial customs behind intercountry adoptions between different races and tells the story of two mothers who had to send their children abroad unwillingly. While posing the question, "Why the country could not prevent children from being separated from their mothers and ignored by their country," she tries to heal her heart from the wounds during the adoption process.

The Park Emergency Measures

1. Background

On the evening of October 17, 1972, President Park Chung-hee (“President Park”) declared martial law under the pretext of “establishing democracy with Korean characteristics.” President Park also issued a four-pronged “Special Decree” that i) dissolved the National Assembly, suspended all political activity, and suspended parts of the Constitution; ii) replaced the suspended constitutional functions with the Emergency State Council; iii) scheduled a referendum to establish a revised Constitution that aims for a peaceful reunification of the Korean peninsula; and iv) promised restoration of the Constitutional legal order by the end of the year once a revised Constitution is finalized.

Per this unconstitutional emergency decree, the Emergency Cabinet Meeting issued a revised draft of the Constitution on October 27, followed by a referendum on November 21 that passed the new Constitution (the 8th Constitution, also known as the “Yushin Constitution,” or “Constitution for Revitalizing Reform”). Subsequently, President Park formed the National Assembly for Unification on December 15, which elected him as the eighth President on December 23, and officially assumed the role on December 27 – thereby launching the “Era of the Yushin/Emergency Measures” (or the “Fourth Republic”), which is characterized by the oppression of human rights and rule of terror.

President Park exercised the right to execute emergency measures nine times during his presidency to oppress the student movements for democracy and the general public (“the Park Emergency Measures”). During this process, countless college students, intellectuals, journalists, opposition politicians, and ordinary citizens were arrested, illegally detained, beaten, harassed, and prosecuted. The 1st Truth and Reconciliation Commission (hereinafter the “TRC”) alone found at least 1,412 violations of emergency measures between the issuance of Emergency Measure No. 1 on January 8, 1974 to the lifting of Emergency Measure No. 9 on December 8, 1979. And in the four-and-a-half-year period from the issuance of Emergency Measure No. 9 until October 1979, around 1,400 people were arrested for violating emergency measures; about a thousand of them were convicted in court.

2. Truth Seeking Initiatives

a) Decision of the TRC to Investigate the Park Emergency Measures

The Park Emergency Measures were first enforced against an individual in the case of Oh Jong-Sang in May 1974. Given the serious nature of civil rights and human rights violations involved, in November 2007, the 1st TRC decided to investigate the Park Emergency Measures as efforts to restrict or violate constitutional rights and freedoms including the freedom of speech, publication, assembly, and association; right to bodily integrity; academic and artistic freedoms; and freedom of conscience and thought, as well as principles of criminal justice including the right to a criminal trial, the requirement for warrants, and limits on the period of detention. Permitting criminal sanctions for mere criticisms of the emergency

measures was an unacceptable exercise of public authority that is fundamentally at odds with a constitutional democracy that exists to protect basic civil rights.

b) Judicial Remedy

Victims of prosecution under the Park Emergency Measures individually requested retrial of their convictions and sought damages against the Government. Under prosecutorial discretion, on or around October 19, 2017, the Government further moved for retrial of 145 individuals who had been convicted for violation of Emergency Measure No. 9. While admittedly delayed, the Government's progress towards relief for victims and restoration of justice merits welcome.

c) Legislative Efforts

The individual pursuit of judicial remedy is time-consuming, expensive, and poses challenges in presenting evidence. Consequently, there has been a persistent demand for a special law that provides for comprehensive compensation for all victims of emergency measures and procedures for restoring their honor.

3. Criminal Justice and Accountability Processes

All victims of emergency measures should be able to seek judicial remedies in accordance with the Constitutional Court's finding of unconstitutionality of the Park Emergency Measures. Judicial remedy includes not only acquittal through a criminal retrial, but also the award of damages for unlawful acts of the state through a civil suit.

However, the Supreme Court handed down a decision to the effect that the Government is not liable to individuals who received reparations under the Democratization Reparations Act. The Court further imposed monetary limits more generally on the Government's liability for compensation in civil suits against the Government and denied the unlawfulness of the President's exercise of the right to declare emergency measures. The Supreme Court's decision seemed to have been motivated in part by the desire to obtain buy-in of the then-administration (under President Park Geun-hye, the daughter of President Park Chung-hee) for a new appellate court that specializes in second-instance appeals.

4. Reparations

Victims who have been acquitted in a criminal trial should be able to seek damages through a claim for state reparations, apart from and in addition to compensation for detention and award of litigation costs. Given the gravity of harm, victims of the Park Emergency Measures are entitled to the former as a proportionate remedy for the injury. The barriers imposed by the judiciary described above have made the pursuit of such reparations incredibly difficult.

Yet, the Supreme Court had ruled that the legislative enactment of Emergency Measures was unconstitutional even under the Constitution in effect at the time. Aside from unlawful acts of the investigative agencies (i.e., the police and the prosecutorial service), the Court recognized that the Government, despite its obligation to protect its citizens, engaged in and facilitated illegal acts through the tool of legislation. The Supreme Court further found that

the Park Emergency Measures were not “law” in a formal sense, thereby acknowledging that the Measures were unconstitutional, unlawful legislative acts that had the purpose of extending President Park’s term indefinitely.

Nevertheless, the Court increased the burden of proof in Park Emergency Measure victims’ claims of damages against the state by requiring a showing of the investigative agency’s unlawful conduct. It further created challenges to individual victims who cannot show this by ruling that “the execution of emergency measures under the Yushin Constitution was an act of the state, which cannot be said to constitute a civil tort vis-à-vis individual citizens.”

5. Memorialization and Guarantees of non-recurrence

Despite the grave harm suffered under unconstitutional, unlawful acts, victims of the Park Emergency Measures face a finding of no state misconduct where they cannot prove misconduct in the investigative process such as beatings or cruel treatment. In effect, the perpetrator – the State – made the decision that there was no aggressor and engraved in the public record this unfair finding. To correct this wrong, we call for a state-sanctioned apology that acknowledges the facts and accepts state responsibility, manifested in the form of commemorative or remembrance projects.

In addition, it is necessary to conduct appropriate education and awareness-raising campaigns for all public officials in the legislative, judicial, and administrative branches to prevent the recurrence of unlawful acts facilitated by state emergency powers of legislative authority. There should be clear messaging in legislative, judicial, and administrative areas that those who follow clearly unconstitutional orders are also not free from responsibility. Furthermore, the State should disclose the history of individuals recognized and awarded for having arrested and investigated victims of the Park Emergency Measures and cancel all such awards.

6. Recommendations

- 1) The State should enact a special law for the collective relief for victims whose claims were either denied or have yet to be considered by the courts, including comprehensive compensation and restoration of honor;
- 2) The State should eliminate the requirement for a showing of the intentional or negligent conduct of state in the State Tort Liability Act to guarantee state compensation for victims who may choose to pursue individual judicial remedy in the event of a recurrence of similar state misconduct;
- 3) The State should implement appropriate education and awareness-raising activities for all public officials in the legislative, judicial, and administrative branches to prevent the recurrence of illegal acts facilitated by state emergency powers of legislative authority;
- 4) The State should disclose the history of individuals recognized and awarded for having arrested and investigated victims of the Park Emergency Measures and cancel all such awards;
- 5) When seeking a retrial ex officio/under prosecutorial discretion of a Park Emergency Measure victim who had also been convicted of related charges of violating the Anti-Communism Act or Assembly and Demonstrations Act, the State should conduct

a thorough analysis of the facts and consider retrial of those charges to ensure completeness of relief;

- 6) Given that the Supreme Court's decision has again jeopardized the dignity, honor, and rights of victims and those closely related, the State should take official measures for their restoration; and
- 7) The State should implement a state-sanctioned apology in the form of commemorative or remembrance projects.

Human Rights Violations in Samcheong Concentration Camp

1. Background

Chun Doo-hwan's new military junta, which came to power through a military coup, established the Emergency Committee for National Security on May 31, 1980 for the purpose of justifying the coup as legally and administratively legitimate. The Emergency Committee drafted a plan called a "Samcheong Plan" to legalize the Chun Doo-hwan administration. As part of the Samcheong Plan, the Emergency Committee launched the Samcheong Plan No. 5 on July 29, 1980, which included a plan to eradicate gangsters from society under the name of purification of society.

On August 4, 1980, the Martial Law Administration proclaimed the Martial Law Decree No. 13 to implement the Samcheong Plan No. 5. According to the Decree No. 13, persons suspected of blackmail, violence, fraud, disturbance, and other crimes could be arrested and detained without a warrant. Under the command of the martial law administration, army and police officers arrested 60,755 innocent persons without a warrant by January 25, 1981. Among those arrested without a warrant, some had criminal records, but mostly for minor crimes, and most of them were ordinary citizens including teenagers and labor union activists.

The arrested victims were categorized into four groups - A, B, C and D. The A group, 3,252 out of 60,755 victims, were put on trial and imprisoned. The D group, 17,761 out of 60,755 victims, were dismissed with a caution or classified as patients.

The B group and C group, 39,742 out of 60,755 victims, were sent to a military unit called Samcheong Concentration Camp for 4 weeks of "corrective training." The corrective training was not an education or ordinary training, but an organized torture and inhuman or degrading treatment. In the name of "corrective training," victims suffered various human rights abuses such as group beating, corporal punishment and physical abuses by soldiers. As a result, the training resulted in a number of deaths and injuries.

After the corrective training period, about 10,016 out of 39,742 victims of B and C groups were classified as "not corrected" and they were sent to other military units. In those units, they were put to forced labor, such as constructing roads and digging trenches, for several months, in the name of 'Labor Volunteer Service.' They were also exposed to various human rights abuses, such as military corporal punishments, in their daily lives during the 'Labor Volunteer Service'

Among those put to the Labor Volunteer Service, 7,478 out of 10,016 victims were sentenced retroactively to additional 2 to 5 years of imprisonment by the Social Protection Committee, not by a Court, according to the Social Protection Law because they were deemed to commit crimes again. Victims were then sent to the military camps or to the newly constructed concentration camps, such as Cheongsong, Gimcheon, and Chuncheon Concentration Camps or other military units, and imprisoned. As a result, these victims were forcibly imprisoned for 3 to 5 years after being arrested.

The victims released from the Samcheong Concentration Camp were treated as 'social ill' and suffered from social stigmatization and were disadvantaged in their daily lives including employment. Some victims suffered from mental illness and some committed suicide.

2. Truth Seeking Initiatives

The victims and the civil society organizations supporting them held a number of assemblies in the 1990s and continuously demanded truth-seeking and compensation for the victims. They also criminally accused and filed tort claims against the perpetrators, including Chun Doo-hwan and the members of the Emergency Committee for National Security, many times to clarify the truth through investigative agencies and the judiciary. They also published a white paper describing the details of violence cases at the concentration camps and their collective activities.

Following such continuous efforts, in the 2000s, some truth were found about human rights violations in Samcheong concentration camp by temporary governmental organizations including the Clarification Commission for Suspicious Deaths in 2002, the Committee to Identifying Truth of the Past of the Ministry of National Defense in 2006, and the first Truth and Reconciliation Commission in 2010. The findings of the Clarification Commission for Suspicious Deaths and the first TRC were limited in that they only clarified a few individual cases, not the entire facts of the Samcheong Concentration Camp. The findings of the Committee to Identifying Truth of the Past of the Ministry of National Defense were also limited in that it failed to adequately estimate the scale of damages.

Most of the reports and records related to the human rights violations in Samcheong Concentration Camp are not disclosed to the general public. Some documents are archived in the National Archives, but the victims are not even aware of the fact that they can access their own records.

3. Criminal Justice and Accountability Processes

Criminal accountability of Chun Doo-hwan and other perpetrators of the Emergency Committee for National Security has not been recognized. Prosecutors have continuously issued 'No authority to institute prosecution' or acquittal to the victims' complaints for murder, forced imprisonment, and others, citing prescription for prosecution, etc. The prosecutors even said that the Samcheong Concentration Camp is not a subject of judicial review. The prosecutors did not indict any personnel related to the Samcheong Concentration Camp stating that the unlawful acts done during the corrective training at the Camp were illegal acts of individual soldiers and police officers. Furthermore, the prosecutors did not prosecute nor investigate individual soldiers and/or police officers who illegally arrested and abused the victims of their human rights. So far, the soldiers and police officers have not been judicially or administratively sanctioned.

4. Reparations

The Supreme Court of Korea dismissed the tort claims filed by the victims of the Samcheong Concentration Camp against the Government in 1992 and in 1996 on the grounds that the statute of limitations. Furthermore, in 2005, the Supreme Court dismissed another tort claim

by the victims in which the victims argued that the Government's refusal to implement the compensation that former president Roh Tae-woo promised constitutes tort by the Government. The Supreme Court also cited the expiration of the statute of limitations for the case.

Meanwhile, the Act on Honor Restoration of and Compensation to the Victim of Samcheong Concentration Camp was enacted in 2004 with continuous efforts and requests by the victims and civil society. But there was no content in the Act that ensured truth-seeking and the scope of the victims was limited to those whose death or injuries could be proven. The amount of compensation was also low at about several million won, and only 3,650 victims, including family members, were able to receive compensation under the law. Even though the name of the Act includes 'honor restoration,' the Act did not stipulate any specific measures for honor restoration. The application period for compensation was also very short, from September 2004 to July 2005, and the related committee also ended its operation in June 2015.

Chun Doo-hwan and other perpetrators did not apologize to the victims of Samcheong Concentration Camp. The Government did not make any official apology either. Chun Doo-hwan died in November 2021, without making an apology to the victims.

5. Memorialization

There are no facilities or memorial centers for commemoration and tribute to the victims of the Samcheong Concentration Camp. The victims still suffer from social stigma and hatred.

6. Guarantees of non-recurrence

No legislative or administrative measures to protect the victims' right to remedy and to restore the honor of victims have been made after the enactment of the Act on Honor Restoration of and Compensation to the Victim of Samcheong Concentration Camp. As mentioned above, the Act excluded most victims' right to remedy, and no measures of honor restoration and compensations can be taken under the Act because the period of application for compensation ended in 2005 and the related committee ended its operation in 2015.

7. Recommendations

- 1) The State should make an official apology to the victims of the Samcheong Concentration Camp and acknowledge the criminal accountability of the perpetrators;
- 2) The State should take legislative and administrative measures to provide adequate compensations for the victims, including those who received insufficient amount of compensation and those who were dismissed their claims by the court;
- 3) The statute of limitations should not be applied to tort claims of victims of crimes against humanity against the Government, such as the Samcheong Concentration Camp; and
- 4) The State should take legislative and administrative measures to restore the honor of the victims and to provide commemorations and tributes to the victims. In particular, measures should be taken to address stigma and hatred toward victims.

Vietnamese Civilian Massacres by Korean Troops during the Vietnam War-era

1. Background

The Government of the Republic of Korea dispatched 325,000 Korean soldiers to Vietnam during the Vietnam War from September 1964 until its withdrawal in March 1973. It was the second largest deployment following the United States, which is regarded as unprecedented in Korean history. For about 8 years of the deployment, approximately 5,000 Korean soldiers were killed and an innumerable soldiers were injured. Approximately 12,000 soldiers are still suffering from diseases caused by long-term exposure to chemical defoliants.

However one of the most serious unresolved issues that has been forgotten or excluded from the official record of the Vietnam War is the civilian massacre by Korean troops. It has been reported that massive civilian killings took place where Korean troops were present, especially in five provinces, central Vietnam. According to the investigation by private researchers in 2000, approximately 9,000 Vietnamese civilians including elderly, women and children were killed by Korean troops in 80 villages.

On the issue of the Vietnamese civilian massacres, the Ministry of Defense argued that there were no organized and systematic massacres and the National Intelligence Service has declined requests to publicize their 1969 investigation into the massacres. A massacre survivor submitted tort claims against the Government in April 2020. This case is pending at the Seoul Central District Court.

2. Truth Seeking Initiatives

The Vietnamese civilian massacres had not been issued until 2000. However, the massacres became a focus of public attention through the “We’re Sorry, Vietnam” campaign, which began around 2000.

Since then, exchanges and related activities have begun between the civil society in the Republic of Korea and victims of the Vietnamese civilian massacres. As a result, there was the victims’ first visit in 2015. The victims held press conferences in the National Assembly of the Republic of Korea during the visit, and called for a truth-seeking and an apology to the Government. But the Government did not take any measures, so that the 103 victims submitted the petition that requested a truth-seeking, accepting facts and an apology to Moon jae-in, the president of the Republic of Korea at that time, in April 2019.

The Ministry of National Defense gave a one page response to the petition in September 2019. The Ministry of National Defense claimed that no information regarding civilian massacres by Korean troops had been found in any of its archives of war and said that to confirm the historical facts, a joint investigation with Vietnamese authorities would have to come ahead of an independent investigation by the Republic of Korea. This response means that the Government would not take any action under the pretext of a joint investigation with Vietnamese authorities.

Meanwhile, the Government is refusing to disclose obtained archives. As of 2000, the Government collected information through its embassy in Vietnam on the scale of civilian massacre at different sites. But the Government did not disclose the information. The National Intelligence Service is even refusing to provide them through the court procedures in the lawsuits. Lawyers of MINBYUN-Lawyers for a Democratic Society filed the information disclosure lawsuit in August 2017, and received information from the National Intelligence Service in March 2021 by winning the case. However, the only information disclosed by the National Intelligence Service was the list of the three platoon leaders' names.

3. Criminal Justice and Accountability Processes

One victim filed a tort claim against the Republic of Korea to the Court in April 2020, because the Government did not take any effective measures for victims. This case has been pending for more than 2 years. Following the testimony of the veterans, the experts, the testimony of the victim is scheduled for August 2022. The victim also made an individual complaint through the special procedures. In the process of the case, the legal representative of the Republic of Korea denied the accountability by claiming that there were no massacres and the damage of civilians was inevitable because the Vietnam War was a guerrilla war.

Some perpetrators of the massacres were sanctioned during the Vietnam War, but most of the perpetrators of the massacre are not known and are not sanctioned until now.

4. Reparations

In the 2001 summit with Vietnamese president Trần Đức Lương, President Kim Dae-jung expressed his condolences for the pain that the Republic of Korea have inflicted on the Vietnamese people during the Vietnam War, although unintentionally. In 2004, President Roh Moo-hyun expressed that Korea has "debt" towards the Vietnamese people. In 2018, President Moon Jae-in expressed that he regretted the unfortunate history between the Republic of Korea and Vietnam.

However, these remarks are in reference to the Vietnamese War in general, but not to specific crimes committed against Vietnamese civilians. They are not an acknowledgment of state responsibility nor expression of regret for the state's role. As such, they cannot be considered adequate apologies for the Vietnamese crimes.

Since the Government has not accepted responsibility for the massacres there have been no reparative measures for the victims. In the early 2000, the Government has, however, provided funds for building about 40 schools in Quang Nam Province and other nearby provinces where the Korean Marine Corps forces were active during the Vietnam War. This project is supposedly promoted as a way to pay off the debts of previous damages done by the Korean troops during the Vietnam Wars.

But the project cannot be considered as a form of reparation for it is unclear whether such a development project is in fact a form of reparation as to human rights violations. In addition, there has been neither efforts ever made to identify specific victims of the massacres nor

efforts to take legislative or administrative measures to provide individual reparation to the victims.

5. Memorialization

Even when the victims were civilians discharged after completing their military service, the Government continued to force fracking activities. Victims of human rights abuses used in civilian inspections and the suppression of academies have suffered from mental suffering from torture, violence, and infringement of conscience in the process of screening and purification.

There is no legal basis or support for public remembrance and memorialization of the victims of the massacres. Therefore commemorations and tributes to the victims of the massacres are mostly being left to the task of the civil society.

6. Guarantees of non-recurrence

Nothing to mention

7. Suggested Recommendations

- 1) The State should conduct an appropriate investigations into the Vietnamese civilian massacres and to disclose any and all information in possession of the Government including the results of the investigations;
- 2) The State should apply judicial and administrative sanctions against persons liable for the Vietnamese civilian massacres;
- 3) The State should provide adequate reparations to the victims, including but not limited to monetary and non-monetary reparations as well as a public apology;
- 4) The State should take legislative and administrative measures for commemorations and tributes to the victims;
- 5) The State should conduct appropriate education and awareness-raising programs targeted to the general public and the military personnel regarding the crimes and the accountability of the State.

Korea's Comprehensive Restoration of Honor: Enactment of the Act on Persons of Democratic Merit

1. Background

In the process of realizing transitional justice, 'recovery of honor' implies the specificity of Korean society and is being reorganized. This measure of honor recovery has been expanded to a social movement, reflecting the traditional characteristics of Korea, which valued the honor of the family rather than the satisfaction and guarantee of non-recurrence as prescribed in the international bill of victims' rights. Beyond the traditional concept of victims, victims of state violence in Korea who died, injured, arrested, tortured, dismissed, and disciplined for democracy need to be honored for their service by exercising their civil resistance rights. To this end, the enactment of the "Act on Persons of Democratic Merit" is being promoted. In particular, this law has a strong characteristic of restoring the social identity and honor of victims who were branded as offenders.

The enactment of the Act on Persons of Democratic Merit is meaningful in three aspects. First, the enactment of the Act on Persons of Democratic Merit is meaningful in that the achievements of those who resisted the dictatorship and authoritarian regimes will be historically evaluated and recognized and respected at the national level. Second, the courtesy of democratic merit is meaningful in that it will systematize the remembrance of the spirit of those who have contributed to the promotion of democracy, peace, and human rights through the promotion of memorial and commemorative projects at the national level.

Currently, the Act on Persons of Democratic Merit is under political attack in Korea as the opposition argues that the parties to the pro-democracy movement are pushing for the law for their own good. Such attacks are being encouraged by some political groups believed to be perpetrators as well as the media advocating them. Despite these attacks, the Act on Persons of Democratic Merit must be prepared as a measure for the ultimate recovery of social honor for transitional justice in Korea.

2. Efforts to enact the legislation

In October 1998, the Korea Association of Bereaved Families for Democracy and memorial organizations filed a petition for legislation of the Act on the Honor Restoration of and Compensation to Persons Related to Democratization Movements at the National Assembly with 100,000 citizens' signatures. In April 1998, a nationwide public campaign had started to get citizens' signatures for this petition across the country including the Seoul Station Square.⁵⁸ The bill was finally tabled at the National Assembly. After the bill was proposed and tabled at the National Assembly, a tent sit-in began in front of the National Assembly on November 4, 1998. The sit-in lasted 422 days until December 28, 1999, but the content on honoring the people of democratic merit was not included. Attempts to enact the Act on Persons of Democratic Merit began in 2000. On December 5, 2000, 14 lawmakers, including representative Lee Hoon-pyeong, proposed the Act on Persons of Democratic Merit with

⁵⁸ Representative Lee Gil-jae and 58 other representatives, National Assembly members introducing the petition, and 52,898 general public, including Lee Chang-bok, petitioners, submitted the petition to the National Assembly.

lobbying from some civil society organizations. The bill proposed by Rep. Lee Hoon-pyeong was reviewed by the National Policy Committee, together with the draft bill of the Act on the Honorable Treatment of Persons of Distinguished Service to the May 18 Democratization Movement (hereinafter the “May 18 Merit Act”), and it was promulgated on January 26, 2002, after the draft bill was revised to narrowly limit the scope of the subject of the law to persons related to the Gwangju Democratic Movements only. In this process, the courtesy law of the 5.18 Democratic Movement-related democratic merit and the general democratic movement merit was separated.

On September 20, 2004, the Act on Persons of Democratic Merit was proposed by 103 lawmakers, including representative Lee Ho-woong. And on September 24, 23 lawmakers, including representative Chung Bong-ju, proposed a bill expanding the scope of the proposed Act on persons of democratic merit to those related to democratic movements. Both bills were automatically discarded when the 17th National Assembly’s term of office ended. On August 4, 2008, representative Yoo Seon-ho and 69 other representatives proposed the Act on Persons of Democratic Merit again, but it was also automatically discarded. On September 27, 2012, representative Moon Byung-ho and 96 other representatives proposed the Act on Persons of Democratic Merit, similar to the bill of Yoo Seon-ho. The bill was once again automatically discarded at the expiration of its term. On November 13, 2017, 123 representatives, including representative Kim Byung-kwan, proposed the Act on Persons of Democratic Merit that included victims of the democratic movement. The bill was also discarded at the expiration of the National Assembly’s term. In 2019, representative Woo Won-sik proposed a bill targeting the dead, missing, and injured, excluding those involved in the democratization movement. However, this bill was also discarded automatically due to the expiration of the term. Representative Woo Won-sik and 20 other representatives proposed the Act on Persons of Democratic Merit on September 23, 2020, to the 21st National Assembly and it is currently pending for review.⁵⁹

The Korean Council for Democratic Martyr and the Korea Association of Bereaved Families for Democracy came to a conclusion that, beyond a political situation in which an Act on Persons of Democratic Merit can hardly be enacted, the spirit of democratic martyrs are being defamed. So, on June 7, 2021, on the 34th anniversary of the June Democratic Struggle, the Korean Council for Democratic Martyr and the Korea Association of Bereaved Families for Democracy held a press conference in front of the National Assembly calling for the enactment of an Act on Persons of Democratic Merit. And, on June 21, a relay of one-person protests started in front of the National Assembly calling for the enactment of the Act on Persons of Democratic Merit.⁶⁰ As the two organizations considered that legislation seemed not easy despite such press conferences and one-person protests, they began a tent sit-in in front of the National Assembly on October 7, 2021. The sit-in in front of the National Assembly still continues, and protests are held every Thursday, demanding that the two major political parties in South Korea initiate the process for legislation. The protest site is operated by the bereaved families and commemorative organizations. legal agricultural growth is being carried out by bereaved families and memorial organizations. At the protest tent site, a one-person protest is held every morning and lunchtime, and cultural events are being held every Thursday.

⁵⁹ <https://likms.assembly.go.kr/bill/main.do> (Last visited on May 18, 2022)

⁶⁰ One-person protests in front of the National Assembly are still on-going every morning from 7:30 a.m. to 9:00 a.m. and from 12:00 p.m. to 1:00 p.m.

3. Reparations

The Act on Persons of Democratic Merit has the nature of compensation for victims. First of all, the Act stipulates providing education expenses and education support and employment support. There is also medical support, loan support, nursing and care support. As a symbolic courtesy measure, transportation fees are supported, and they are subject to preferential support in housing supply policies.

4. Memorialization

The Act on Persons of Democratic Merit includes the establishment of facilities to remember and commemorate victims. The bill includes the contents of the state and local governments to develop and efficiently promote systematic policies on commemorative and memorial projects in order to honor and inherit and develop the democratic ideology of those of democratic merit. It also stipulates that it is the state's duty to establish a national cemetery to take measures for the state's remembrance of the victims.

5. Suggested Recommendations

- 1) The State should enact an Act on Persons of Democratic Merit to uphold the spirit of those who contributed to the democratic movement and the development of human rights and to support the lives and guarantee a living standard of victims and their families who sacrificed and contributed for democracy and human rights.