

2019
**GWANGJU ASIA
FORUM**

**Genocide and Refugee:
State Violence
and State Responsibility
to Protect Its People**

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The May 18 Memorial Foundation



The May 18
Memorial Foundation
5·18 기념재단

The May 18 Memorial Foundation is a non-profit organization established on August 30th, 1994 by the surviving victims of the May 18 Democratic Movement, the victims' families, and the citizens of Gwangju.

The Foundation aims to commemorate as well as continue the spirit of struggle and solidarity of the May 18 Democratic Movement; to contribute to the peaceful reunification of Korea ; and to work towards peace and human rights throughout the world. Thus, the spirit of the May 18 Democratic Movement is inherited and passed on, significantly influencing the progress of democracy in Korea.

Since its establishment, the Foundation has carried out numerous projects in various fields, including organizing memorial events, awarding scholarships, fostering research, disseminating information to the public, publishing relevant materials, providing small grants, building international solidarity, and awarding The Gwangju Prize for Human Rights. (www.518.org/eng)

Programs

Gwangju Prize for Human Rights Since 2000



The Gwangju Prize for Human Rights was established to celebrate the spirit of the May 18 Democratic Movement by recognizing individuals, groups and institutions in Korea and abroad that have contributed in promoting and advancing human rights, democracy and peace in their work.

The prize is awarded by the citizens of Gwangju in the spirit of solidarity and gratitude to those who have helped them in their struggle for democratization and their search for truth. It is hoped that through this award, the spirit and message of May 18 will be immortalized in the hearts and minds of humankind.

Gwangju Asia Forum Since 2010



The Gwangju Asia Forum aims to strengthen international solidarity between the Foundation and foreign activists working for democracy, human rights and peace. It is a platform for discussing and sharing alternative ideas of making a better future. The Forum would like to contribute itself to inform Gwangju as a city of human rights, democracy and peace. This year, the main slogan is “ Genocide and Refugee; State Violence and State Responsibility to Protect Its People.

2019 Gwangju Prize for Human Rights Award Ceremony / 2019 Gwangju Asia Forum Schedule



Theme: Genocide and Refugees: State Violence and State Responsibility to Protect Its People

	17th(Fri)		18th(Sat)	19th(Sun)			20th(Mon)
	518 Memorial Center	Chonnam National University		Daedong Hall	Minjoo Hall	Sarang Room	
09:00	Arrival & Registration (Reception Hall)		Attending May 18 National Memorial Services (The May 18 National Cemetery)	Session II State Responsibility - Laws, Perception and Practice: Overcoming Discrimination and Hatred	Unfinished Mission -Righting Past Injustice: Outcomes and Prospects (I)	Asia Democracy Network	Session of Overseas Korean Organizations for the May 18 Uprising Memorial Service
09:30							
10:00							
10:30							
11:00			Welcoming Lunch & Registration (Reception Hall)	Session III Responsibility for the May 18 Massacre and Truth-finding - The Incomplete Process	Unfinished Mission -Righting Past Injustice: Outcomes and Prospects (II)	Asia Democracy Network	Session of Overseas Korean Organizations for the May 18 Uprising Memorial Service
11:30							
12:00							
12:30							
13:00	Gwangju Asia Forum Opening Ceremony & GPHR Award Ceremony (Minjoo Hall)	Break	Session I Opening Plenary (Daedong Hall)	Dinner	SessionIV Closing Roundtable Session What is to be done? (Daedong Hall)		
13:30							
14:00							
14:30							
15:00	Preparatory Meetings/ (Organizers/ Volunteers/ Moderators)	East Asia Network Annual Meeting	The May 18 Uprising 39 th Anniversary Media Seminar	Coffee Break			
15:30							
15:45	Dinner & May 18 Eve Celebration (Geumnam Avenue)			SessionIV Closing Roundtable Session What is to be done? (Daedong Hall)			
16:00							
16:30							
17:00	Dinner & May 18 Eve Celebration (Geumnam Avenue)		Welcoming Dinner (Reception Hall)	Dinner			
17:30							
18:00							
18:30							
Side Events	● Refugee: APRRN East Asia Working Group Meeting / APRRN Legal Assistance WG Meeting / Strategy Meeting for Legal Applicability / Strategic Meeting for Counter Discrimination and Hatred / Signature Collecting Booth / Refugee-made Goods Booth ● The May 18: Confession Recording Booth / Documentary Exhibition						

2019 Gwangju Prize for Human Rights & Gwangju Asia Forum Official Ceremony Opening Speech

Good afternoon.

First and foremost, please accept my sincere gratitude for your presence at the 2019 Gwangju Prize for Human Rights Official Ceremony and 2019 Gwangju Asia Forum Opening Ceremony despite your hectic schedule.

We, the May 18 memorial Foundation annually awards the Gwangju Prize for Human Rights for individuals or organizations that resist against dictatorial regime and work for marginalized people suffering under repression.

The 2019 Gwangju Prize for Human Rights Jury Committee has decided this year's laureates. The laureate of the main prize is Ms. Joanna K. Carino of the Philippines who has struggled for democracy and human rights in the Philippines. She became an activist when she was a student and continued to fight for democracy and peace even after she became a professor at university. Furthermore, she abandoned her professorship in academia and started her field activist path. She has struggled for over 30 years to enhance indigenous peoples' rights and protect their rights as well as for democracy and people's liberation.

We, the May 18 Memorial Foundation awards the Special Prize every two years. The jury members have selected the Dialita Choir Group as the Special Prize laureate of the 2019 Gwangju Prize for Human Rights. The choir was established in 2011 by the survivors of the Indonesian Massacre between 1965 and 1966 and their family members.

Dialita uses its singing not just for self-healing but also to help their fellow survivors. Its songs convey a message of peace and solidarity, in hopes that it will educate the country, particularly the younger generation, of its forgotten past.

From today, the 2019 Gwangju Asia Forum starts under the theme of "Genocide and Refugees: State Violence and State Responsibility to Protect Its People". During the



forum, the truth findings of May 18th, refugee issues, and historical reckoning will be discussed in each session. Around 50 presenters and discussants from 15 countries will gather and talk about how to solve and respond to such problems.

The May 18 Memorial Foundation will keep working for sharing the experience and value of Gwangju, development of democracy, and promoting human rights. I have so much respect and gratitude for human rights activists struggling for human dignity. We don't want to forget the helping hands and warm hearted people who supported Gwangju when it was isolated under military dictatorship in 1980. I hope we can take each other's hands for solidarity and the spirit of Gwangju.

Here again, please accept my heartiest congratulations to our glorious laureates, Ms. Joanna K. Carino and the Dialita Choir Group. Also, I really appreciate the jury members and evaluation committee members for their tireless efforts to make this possible. The May 18 Memorial Foundation will actively support the laureates' activities.

18, May, 2019

Chairperson of the May 18 Memorial Foundation

Lee Cheolwoo

Acceptance Speech of the 2019 Gwangju Prize for Human Rights

JOANNA K. CARIÑO

I am deeply honored to have been chosen as the awardee for the 2019 Gwangju Prize for Human Rights. This is a vindication of my lifelong vocation to defend and promote democracy and human rights. It is ironic that while the repressive Philippine Duterte regime labels human rights activists such as myself as terrorists, prestigious foreign institutions such as the May 18 Memorial Foundation recognizes my human rights activism as honorable.

I truly identify with the spirit of the Gwangju Democratic Uprising of 1980, and take note of the parallelisms between South Korea and the Philippines as we struggled against dictatorships.

Today, as we remember the 4369 victims of martial law's brutality when the 1980 Gwangju Democratic Uprising was militarily suppressed, let us also remember the 70,000 people imprisoned, 34,000 tortured, and 3,240 killed during the martial law period in the Philippines under the dictator Marcos from 1972 to 1986. I am counted among those victims of martial law. My human rights were violated, having been tortured and illegally detained from 1974 to 1976.

Human rights make us human. With every violation of human rights, our humanity is diminished. The human spirit can take only so much oppression, however, before resistance develops. Repression breeds resistance. To stand up for human rights, to resist tyranny, and to rebel against an oppressive system is justified. But we have to prepare ourselves for sacrifice and even death in the struggle against tyrants for people's democracy and a better world. It is honorable to stand up for democracy and to defend human rights, especially for the less fortunate and downtrodden.

At the start, when military rule temporarily silences dissent, activist human rights defenders show the way. They persist in education and organizing for people's empowerment. They inspire people with their courage and sacrifice. They motivate others to assert their democratic rights and to defy a repressive order. More and more



people get involved in the struggle until a broad united front against military rule and dictatorship expands to reach critical mass that is able to make history.

The 1980 Gwangju Democratic Uprising ultimately resulted in the democratization movement which toppled a dictator and led to the return of civilian rule in South Korea. The 1986 People Power uprising in the Philippines likewise demolished a dictator and put an end to martial law. It would seem that these are clear judgments of history from the people's point of view.

From my study of the program for the 2019 Gwangju Asia Forum which follows this awarding ceremony, it appears that the May 18 Memorial Foundation would still like to pursue full accountability for the Gwangju Massacre. Which brings us to the issue of historical revisionism.

The Philippines today is a repressive authoritarian State ruled by a despotic president who has declared martial law in Mindanao and filled up numerous civilian positions with retired generals so as to make the situation in the whole country de facto martial law. He has sought to silence all criticism and democratic dissent. He has jailed an opposition senator and threatened to jail another. He has caused the removal of the chief justice of the Supreme Court. He has filed trumped up charges against activists (myself among them), imprisoned many, and caused the political killings of human rights defenders, environmentalists and progressives. His military and police have extra-judicially killed thousands of defenseless poor people with impunity in their war against drugs. His vulgar misogyny and verbal attacks against the Church have disgusted so many women and Christians.

In addition, in total disregard for the historical judgment of the 1986 People Power Uprising, the present dictator has now collaborated with the former dictator's family to rehabilitate the Marcoses in the public view, especially for the younger generations that have had no concrete experience of the horrors of martial law. They have employed hundreds of trolls and used social media to portray the dictator positively. Their super-majority in Congress has allowed the burial of the dictator in the Cemetery for Heroes

(Libingan ng mga Bayani). Worse, the former dictator's family have been allowed to use their stolen wealth from the Filipino people's resources to buy their way back into power, with a view to returning to Malacañang, the presidential palace. The former Defense Minister of Marcos, later turned Senate President, even had the nerve to say that there were no political prisoners and no one was tortured or killed under martial law!

This present-day historical revisionism of Duterte and the Marcoses tries to re-write history from their point of view, the rulers' point of view, as opposed to the people's point of view. This is in total contradiction to the judgment of a Court in Hawaii that ruled favorably for the victims of martial law in the class suit filed by my organization, SELDA, against the Marcos estate. This is in total contradiction, in fact, to the Human Rights Victims Recognition and Reparation Act of 2014, which recognized the victims of Marcos martial law, and further recognized that since it was the State that had violated our rights, we should be indemnified by the State.

In the face of historical revisionism, and the resurgence of tyranny and dictatorship, let us hold on to the lessons of the Gwangju Democratic Uprising and the 1986 People Power in the Philippines. We should always remember, we should never forget. The people, united, shall never be defeated! Never again to martial law!

I would like to share this prestigious award with my organizations, the Cordillera People's Alliance, SELDA the organization of former political prisoners, and SANDUGO the national Alliance of Moro and Indigenous Peoples for Self-Determination.

In closing, allow me to extend my deepest gratitude to the May 18 Memorial Foundation for this unique honor. Maraming salamat po. Mabuhay!



Acceptance Speech of the 2019 Gwangju Prize for Human Rights Special Prize

Dialita Choir

Dear ladies and gentlemen,

I have a mixed feeling when I heard Dialita Choir received the 2019 Gwangju Human Rights Special Prize from The May 18 Memorial Foundation. I am touched and proud. I am happy to stand before you today to represent Dialita Choir to receive the prize. For Dialita, this award is a recognition of the struggle of humanity in seeking redress for cases of human rights violations by using the media of music and singing.

I really would like to congratulate everyone who does work for humanity, especially those who uses music for healing and promoting truth and peace. I also would like to dedicate this award to fellow members of 'Keluarga dalam Sejarah' or 'Families by History' (a large communities we defined to address those who shared similar impact from the 1965 tragedy) who always find ways to thrive and send messages to prevent this extraordinary crime from happening again. This award goes to you as well.

Almost 54 years ago, one event took place in our country. A political turmoil happened and resulted in many people losing their life, killed and imprisoned without legal process, tortured, sexually assaulted, sent out to far away camps, and for those who lived abroad they were stripped off their nationality so they could not come home. During that horrible years, children are forced to be separated from their moms and dads. Some did not even know where they are and or where their bodies and graves.

As one of the children, I remember how we grew up in fear and pressures. Our mother and father were in prisons and we suddenly have to survived in the community that was encourage to condemned our existence. All of that hurt us, especially women and children.

I understand that in every war or conflicts between different groups or in the terrorist acts in each country will bring the impact of the all short of damages, including damaging the life of children and preventing them to grow and achieve their dreams.

Women and children are the most vulnerable group as victims. We therefore would like to invite my brothers and sisters and friends workers who work for humanity caused around the world to strengthen solidarity and mutual cooperation to work against any form of violence against women and children and continue to fight together so that the right to truth and justice can be claimed by any victims of human rights violations. We believed that all those efforts would prevent the violations from reoccurring and reparations from the damages can be accepted and felt by all the victims.

We also would like to use this opportunity to condemn the acts of terror in Sri Lanka that has took hundreds of innocent lives. The grieves are not only belong to the Sri Lankan's citizen. We feel that grieves too.

Ladies and gentlemen,

Some of the Dialita Choir used to be the "children of victims of the tragedy 1965" and some of them experienced directly to be imprisoned. We are human beings who have a name and life and that means more than "numbers" of victims or categories of damages.

We have a deep concerned for the world peace as well because we share the difficult experience that women and children become victims and to face. We wish to continue our fights with the hope to contribute to the world peace and thus we wish to voice solidarity and peace through songs, especially those that were composed during imprisonment period. The songs shall remind us, makes people know and remember, that rights violations existed in that time and it shall not happen again in the future.

With singing we gather, with singing we try to understand ourselves and problems we are facing, with singing we try to cultivate and maintain hope for ourselves and for others. And lastly, we wish to continue on singing to persuade peace in our heart and in this world.

Thank you once again for this acknowledgement and we are truly appreciating this.



Congratulatory Message to the 2019 Gwangju Asia Forum

Anzai Ikuro

General Coordinator, International Network of Museums for Peace

I am now at the opening ceremony of the 2019 Gwangju Asia Forum as a member of a Japanese tour group to visit the Colonial History Museum in Seoul and Gwangju. First of all, I would like to express my sincere respect, gratitude and congratulations to the May 18 Memorial Foundation and co-sponsoring organizations.

I am currently the honorary director of the Kyoto Museum for World Peace at Ritsumeikan University in Kyoto, which was established in 1992 as the first university-based peace museum in the world. I am also serving as the general coordinator of the International Network of Museums for Peace, which was organized to link the peace museums around the world.

The network already has a history of more than a quarter century, and is now striving to bridge diverse peace museums across borders.

In modern peace studies, as is well known, peace is redefined not as an "absence of war" but as an "absence of violence," where violence is understood as "social causes that prevent the full potential of human ability". In that sense, violence does not only mean direct violence like war and murder, but it also implies structural and cultural violence such as

hunger, poverty, social injustice, discrimination, the repression of human rights, environmental destruction, underdeveloped medical care and education, etc. I was impressed to know that the various issues to be discussed in this forum are understood comprehensively as peace issues in a broad sense.

The fundamental principle of the exhibition at Kyoto Museum for World Peace is nothing less than "being honest with the past," or "facing the past faithfully". We have made great efforts to display not only the damage that Japanese people experienced in past war, but also the brutal violence that the Japanese invading army inflicted in Asia-Pacific countries, including human experiments carried out by the notorious Unit 731, the Nanjing massacre in 1937, the comfort women issue, victims of forced labor, etc.

During wartime, Ritsumeikan University sent about 3,000 students to the battlefield under the national war policy and drove some 1000 students to death. One of the display panels of our peace museum explains that "Ritsumeikan in wartime was a university inclined to militarism". Ritsumeikan never tries to conceal its inconvenient past but endeavors to face the past sincerely. At the time of war, Ritsumeikan University took anti-human rights measures against students from Korea and Taiwan who had been under Japanese colonial rule by expelling students who did not volunteer for war. After the war Ritsumeikan made a serious reflection on this historical fact and reached out to Korean and Taiwanese students who were forced to experience such inhumanity. In 1995 which was the 50 th anniversary of the end of World War 2, the university invited these students to our peace museum to express an official apology and took measures to present a "Special Graduation Certificate". Impressions of the former students were mixed with confusion and appreciation, but this small effort was also apart of our policy to face the past in good faith.

When I looked at the themes of the first and the third session of this Asia Forum, which are "Truth-finding for the May 18 Democratic Uprising" and "Unfinished Mission: Righting Past Injustice", I was convinced that the Forum is really trying to face the past in good faith, even after 39 years.

Then, when I looked at the theme of the second session which is "Refugees: Beyond Discrimination and Hatred", I was deeply moved to know that this forum is trying to face, not only the past, but also the present in good faith by paying close attention to the current issues such as Syrian refugees and the Rohingya issue.

In the field of peace studies, the words "Think Globally, Act Locally" or "Think Locally, Act Globally" are often cited. I am glad to know that this 2019 Gwangju Asia Forum is putting these sayings into practice.

Finally, I would like to express my thanks again to the organizers of the Forum for giving me the opportunity to express my gratitude and congratulations and I look forward to the great success of the Forum.

Thank you.

Asian Declaration on the Rights to Justice, the Right to Peace, and the Right to Culture

The Asian Human Rights Commission (Hong Kong) and the May 18 Memorial Foundation (Gwangju, South Korea) are presenting herewith the Asian Declaration on the Right to Justice, the Right to Peace and the Right to Culture with a view to encouraging a wide discussion of the issues raised in this Declaration.

These documents are prepared on the occasion of the 20th Anniversary of the Asian Human Rights Charter that was launched in Gwangju, South Korea on May 17 1998. The AHRC and the May 18 Memorial Foundation draw inspiration for this work from the boundless attempts made by the people in Asia to have their rights improved.

**Asian Declaration
on the Right to Justice
the Right to Peace
and the Right to Culture**
*– the Right to an Effective Remedy for Violations of Human Rights in Terms of
Article 2 of the ICCPR*

May 18, 2019

Preamble

The Asian Human Rights Commission (Hong Kong) and the May 18 Memorial Foundation (Gwangju, South Korea) are presenting herewith **the Asian Declaration on the Right to Justice, the Right to Peace and the Right to Culture** with a view to encouraging a wide discussion of the issues raised in this Declaration.

These documents are prepared on the occasion of the 20th Anniversary of the Asian Human Rights Charter that was launched in Gwangju, South Korea on May 17 1998. The AHRC and the May 18 Memorial Foundation draw inspiration for this work from the boundless attempts made by the people in Asia to have their rights improved.

Victims of violations of human rights are constantly struggling to find genuine solutions to their problems. We are also inspired by the great struggles for freedom that have taken place in Asia among which the struggle by the citizens of Gwangju in 1980 stands out as one of the great inspirations. The realisation of the Gwangju Spirit requires that all people should be able to enjoy their rights through protective mechanisms provided by their justice systems.

Everywhere in Asia and in other corners of the world, violence, internal and inter-state conflicts as well as human rights violations are rampant. For the right to peace to be fully realized, state and civil society organizations and other organs of the society have obligations to promote peace education, and education for peace.

While reiterating the various principles enshrined in existing international human rights documents, this Declaration addresses major issues relating to the right to culture in Asia. This Declaration recognizes the diversities that exist in and among societies and that promoting the right to cultural diversity has to be reviewed and adjusted to reflect changing realities.

Cultural diversity is best protected when all other human rights are respected. Culture should not be used as a tool to infringe on the human rights of certain individuals, especially that of women. Cultural identity is important for the well-being and dignity of individuals and communities. No one should be denied rights on the grounds of cultural differences.

In many Asian countries, as in many less developed countries around the world, the ratification of UN Conventions has not been followed by steps to ensure that the rights enshrined therein can be practically realised within those jurisdictions. The absence of an effective remedy for the violation of a right makes that right virtually insignificant and lacking in any practical value. Article 2 of the ICCPR requires that all state parties who become signatories to the United Nations covenants should ensure that all those who suffer violations of such rights have access to an effective remedy. This document hereby reaffirms the rights enshrined in Article 2 of the ICCPR and declares ‘the Right to Justice.’ The Right to Justice is, we believe, a remedy to any violations of the Rights committed by state powers and should improve the rights for our common humanity.

I . The Right to Justice

I-1. The usual mechanisms through which rights are enforced are investigations into violations of rights through the policing system, the prosecutions of those responsible for the violation through the relevant justice department of the government, and the adjudication of the violation and granting of relief where the violation has been proven through the judicial branch. The denial of an effective remedy for human rights violations is largely a result of the defects of those three agencies: that is, the police as investigators, the prosecutors as those who file and pursue a prosecution in court, and the judicial system itself. The

defects in these systems with regards to investigations into violations of rights mean there are frequently improper investigations, or none at all and thereby denial of fair trial.

I-2. The non-investigation of human rights violations could occur due to the following factors: the refusal of police to register complaints and record evidence of relevant witnesses. This often takes place in periods where serious violations such as enforced disappearances, other forms of extra-judicial killings, or torture are widespread.

I-3. Illegal arrest and detention are fundamental violations of basic human rights. An arrest should only take place on reasonable grounds, which requires a thorough investigation and adequate evidence to require that a person appear before the relevant court pending trial.

I-4. It is also a violation of human rights to file false charges, something which is often done with the intention of detaining a person arbitrarily, and to deny bail for long periods of time. This practice amounts to false imprisonment. Fake charges are often filed against persons who are treated as politically unacceptable or when law enforcement agencies want to arbitrarily punish someone for various reasons.

I-5. The criminal justice process is severely undermined when charges are deliberately fabricated. The process of investigation and trial are used against individuals in order to settle personal or political grudges. The damage done by such actions affects not only the individuals concerned and their families but also society as a whole, as people lose confidence in the criminal justice process in the face of such serious corruption.

I-6. In many Asian countries, the power of the government to detain individuals is abused in various ways and for myriad reasons. Instances of such violations are as follows:

After illegal arrest (arrest without grounds), such arrestees are charged

under anti-terrorism laws, drug-related laws, national security laws, cyber laws, Sharia, or lèse-majesté, and other similar laws. The actual reason for the detention is often not criminal but is instead political or personal. Magistrates should be assigned the power to scrutinise the factual basis of such detentions and be allowed to exercise their independent oversight.

Probation act: Some states practice ‘preventive detention’, ordered on the basis of state allegations that a person is a threat to peace or social harmony. The reason for detention is often to prevent people from participating in peaceful protests or gatherings. When such demands for detention are made, the state should be strictly required to justify it. People’s rights to participate in peaceful protest should not be violated through such detentions. There should be quick access to a superior court in all instances where orders for preventive detention are granted.

Random questioning: It is also a practice in some countries to hold people incommunicado without any court order for the purposes of questioning. Such a practice violates the basic right of a person to be protected from illegal arrest and detention, and stands in opposition to the principle that a person can be arrested only as part of an investigation into an offence that the person has allegedly committed with the view to produce them before a court.

Long detention without warrant: Such practices violate the rights held by citizens to be protected from illegal arrest and detention. These practices are usually allowed during military rule.

I-7. Despite there being numerous signatories to the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, torture and ill treatment are widely used in almost all Asian countries. In terms of practical policy, certain states have sanctioned the use of torture and ill treatment, although they may have made public statements condemning such practices and even signed and ratified UN Conventions. All states should demonstrate positive efforts to ensure the implementation of this Convention (CAT).

I-8. Extrajudicial executions and enforced disappearances are constantly carried

out in many countries in Asia. The state must accept liability for such crimes and ensure immediate action be taken to investigate. Every officer who bears direct or indirect responsibility for such grave crimes should be brought before the courts as soon as possible.

The absence of specific domestic laws relating to extrajudicial executions and enforced disappearances should not be used as an excuse to stop the investigation and prosecution of such crimes. Where no proper laws exist the laws must be made and enforced with retrospective effect. Where such laws do not exist, they should be treated as though they do on the basis that such acts are crimes against humanity. In instances of extrajudicial executions and enforced disappearances, the state bears responsibility for compensating the families of the victims.

I-9. It is a common practice in many jurisdictions to deny the principle of non-self-incrimination by the suspect in the investigative process. This is to make the suspect the main source of information against him or herself. Often, false promises of quick release or lenient sentences are made to deceive the suspect to give such information. It is a right of the accused to be represented by a lawyer of his choice. However, there exists a lack of proper oversight over the investigation and cover ups that flout the basic principles against such manipulations of the criminal investigation process. Thus, a statement of confession by the accused should not be formally used during trial.

I-10. The Optional Protocol to the ICCPR under Article 5(2) obligates all states to prevent undue delay in the administration of justice. The UN Human Rights Committee, through several of its views on the communications it has examined, has dealt with the issue of undue delay and has declared it to be a human rights violation. However, in Asia criminal cases can take 15 years and civil cases can take up to 30 years. The result is that litigants and witnesses are discouraged from the pursuit of their rights through legal means. All this adds to public skepticism about the judicial process.

I-11. There should be a remedy in the criminal procedure law and practice

guidelines for when the criminal justice process is manipulated. Avenues must be available for such types of concerns to be brought to judicial notice as soon as possible. Subsequently, the judiciary should act promptly to remedy the manipulation of the criminal justice process itself.

I-12. Access to effective remedies for violations of human rights is blocked when the principle of the separation of powers is undermined. To ensure the effective implementation of human rights, it is essential to identify the rejection or undermining of the separation of powers as a central issue. Where the judiciary does not have the actual power and capacity to override the actions of the executive when the law is broken, the basic structure of that particular state does not allow the judiciary to protect basic human rights.

There must be provisions that articulate how the principle of separation of powers is entrenched and, in particular how the independent and impartial exercise of judicial power is protected from any kind of displacement.

I-13. In many Asian countries, there are institutions which bear the title of “courts” that are not really courts of justice as understood within the framework of the rule of law. In some countries, military tribunals or military courts have been set up and people are denied access to actual courts of law. The court should be a court of law bound only by principles of law.

I-14. It is the duty of the judges themselves to be the ultimate guardians for the protection of the independence of the judiciary in their respective countries. Where the judiciary does not have the power and ability to decide on questions of law, the ability of courts to make fair decisions relating to the liberties of the individual is highly questionable. There are also circumstances in which the entire judicial branch comes under the control of military dictatorships. The courts transform and become mere instruments for carrying out military objectives and military orders. In those circumstances, the tenets of rule of law and of human rights lose all validity and relevance.

I-15. The independence of the judiciary can only exist in a cultural context that

accepts the freedom of expression. The independence of judges and lawyers depends on the capacity of members of these professions to exercise their critical faculties and give expression to all the legal and philosophical notions within which legal rights have their foundation. Therefore, all restrictions on the use of the critical faculties of judges and lawyers cripple and gradually destroy the very existence of an independent legal and judicial system. These restrictions on the freedom of expression seriously hamper the functioning and development of the legal system as a whole, including the judicial process.

I-16. A serious problem is corruption in the judiciary itself. The result of this corruption is a loss of confidence in the judicial system which contributes to the spread of corruption and the undermining of judicial institutions.

I-17. A vibrant and independent legal profession is an essential precondition for the existence and preservation of the independence of the judiciary and the protection of individual liberties. However, in most countries in Asia an independent legal profession has not emerged. There have even been reports of extrajudicial executions, various forms of imprisonment, and other forms of reprisal, including the enforced disappearances of lawyers and their families. Allowing such forms of violence against lawyers endangers the existence of any independent legal profession. Every form of interference with the free and fair practice of law by lawyers directly affects the quality of the judicial officers, who are chosen from this pool of law practitioners.

I-18. In many countries in Asia, the policing systems were either created by military regimes and shaped to serve military requirements, or were created during colonial times to serve colonial interests, which were basically militaristic in nature. The abandonment of justice has occurred through the non-enforcement of laws that protect citizens as well as weakened procedural laws. The aim of all such laws is to curtail the liberties of the individual, often for the alleged purpose of national security. As a consequence of the use of anti-terrorism laws and emergency rule, serious damage is caused to the judiciary. The independence of the judiciary is suppressed in favour of measures undertaken in the name of security.

Throughout Asia, many people regard the police as the most corrupt state institution. Controlling the policing system within the framework of the rule of law requires a great deal of anti-corruption work carried out by truly independent institutions. For the protection of individual liberties, preservation of democracy, enforcement of the rule of law principle within countries, and the possibility of fair trial, there must be radical reforms of the policing systems that exist in most parts of Asia.

II. Right to Peace

II-1. Development, human rights, and peace and security are the underlining principles and purpose of the United Nations itself and peace has been set out as the preeminent goal of international law and international relations. Peace and security, development, and human rights are the three key pillars of the United Nations. Conflict has devastating effects on development and the fulfillment of human rights. Food insecurity undermines the capability of a society, affecting vulnerable populations disproportionately especially women and children. In conflict-affected countries, public services are severely constrained. Military spending has adverse effects on the enjoyment of all human rights and prevents states from realizing internationally recognized development goals.

States should reduce military spending in order to ensure that national resources are properly allocated for the promotion of economic and social rights of the people and remove disparity. We also call for states to address the issue of development and the reduction of poverty.

II-2. The basic concept of human rights is understood to be individual entitlement. The UDHR and many other international, regional or national human rights laws recognize rights of “everyone” and require states to fulfill their obligations to respect, protect and fulfill rights of individual citizen. The two categories of rights which refer to political and civil rights and economic, social and cultural rights have been legislated, therefore, most of them are justiciable. However, the third category of rights which is based on the concept of “solidarity rights” which belong to the group and collectivity have been facing challenges until now.

II-3. Article 1 of the 1984 UN Declaration of the Rights of Peoples to Peace “solemnly proclaims that the peoples of our planet have a sacred right to peace” and that “everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.” Article 2 declares that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each state.

On 19 December 2016 the UN General Assembly adopted the Declaration on the Right to Peace. It recognizes that respect for human rights and the realization of the right of all peoples is the key to the Right to Peace. The Declaration also reiterates the fact that development, peace, security and human rights are linked and mutually reinforcing. It emphasizes that the peaceful settlement and prevention of conflicts are enabling conditions for the right to peace. The Declaration further states that the positive role of women, the eradication of poverty and sustainable development, the importance of moderation, dialogue, cooperation, education, tolerance and cultural diversity, the protection of minorities and the fight against racism, racial discrimination, xenophobia and related intolerance are all related to the right to peace.

II-4. The 2030 Agenda for Sustainable Development sets 17 goals and reinforcing the right to peace by declaring that “we are determined to foster peaceful, just and inclusive societies which are free from fear and violence. There can be no sustainable development without peace and no peace without development”. This global agenda finds its place in the national agendas of all states in Asia.

II-5. States have a duty to maintain law and order which should be conducted with strict restraints on the use of force in accordance with standards established by the international community, including humanitarian law. Every individual and group is entitled to protection against all forms of violence committed by the state. The Asian Human Rights Charter maintained, in 1998, that Asian people have suffered many deaths, as well as the external or internal displacements of persons, and the break-up of families and denial of the prospect of peaceful existence. It stated that for the people to live in peace it is necessary for the political, economic or social activities of the state, the corporate sector and the civil society to respect the right to security and the personal integrity of all

people including the vulnerable groups. It further elaborated that all persons have the right to live in peace so that they can fully develop their capacities, physical, moral and spiritual, without being the target of any kind of violence.

II-6. Past experience demonstrates that foreign states and the entities have used Asian groups as surrogates to wage wars. The existence of armed groups in countries instigated the governments to engage in internal conflicts. By doing so, they have made huge profits out of the sale of armaments. Foreign military infrastructure and other establishments have threatened the social and physical security and property rights of the people who live in the area. To maintain peace in the region, all acts of terror and violence committed by state and non-state actors must be denounced. The use of all kinds of chemical and biological weapons, drones and nuclear technology used for military purpose must be denounced. The arms trade and arms race should be controlled as well.

II-7. In all conflict situations, women and children are always the first to become victims of war and violence. Women and children face the most of these attacks including mass rape, slaughter, and the destruction of property and disappearance of family members. This generates thousands of orphans. For the right to peace to be fulfilled and sustained, it has to address structural violence from which some particular groups especially women, and women belonging to ethnic, religious and linguistic minorities, suffer. The lack of gender equality always contributes to violence in both the public and private spheres. There is a real need for right to peace to properly address discrimination against women and to ensure that children are fully protected.

II-8. Since 9/11 when the war against terrorism began, the world has seen unprecedented levels of destruction through the use of modern technologies and war machineries. Suppression of independent thought processes and peoples' struggles, particularly the right to self-determination movements, Islamophobia and hatred against "other" communities who are different from the dominant communities, all of these have become the norm. War and occupation have become the methods of suppression. In many places in Asia, religious extremism and militarization has brought misery to the religious minorities and the people who fight for their right to self-determination. Many countries in Asia continue to apply extensively national security legislation to suppress peoples' rights and

they dictate only one kind of narrative of these states, which should be followed by all the people of those respective states. We deplore any states' use the discourse of peace and order to curtail rights and freedoms that people are exercising.

II-9. Conflicts, violence and discrimination in different forms are widespread and cause the displacement of millions of people in the region. A number of countries are facing the fastest growth of refugees in the 21st century. This poses challenges to peace building and to development. The adoption of the Global Compact on Refugees and the Global Compact on Migration, although reflecting the general political will of international community to deal with the rights of mass population movements may not contribute to stopping human rights and humanitarian crises unless the root causes are properly addressed. States and the regional and international community must acknowledge that forced migration is a regional problem which requires regional and collective responses and solutions. There is also a real need of paradigm shift from security and control mentality to a human rights based approach to migration.

III The Right to Culture

III-1. Globalization has led to better integration, adaptation and learnings from other cultures. But it has also led to the ascension of American culture as the global culture, while relegating all other cultures as local. In this context, states have a special responsibility to protect, preserve and promote music, films, dance and all other art forms. As many Asian states are multicultural in nature, states should treat all cultures equally. Fringe groups masquerading as guardians of culture should not be allowed to violate the individual rights of citizens in the name of protecting culture.

III-2. The right to education is vital to the realization of the right to culture. States should take steps to provide opportunities for affordable and quality education at the primary, secondary and university levels and to ensure academic

freedom for faculty members and students. Faculty should have the freedom to teach, to research and to express their views. Similarly, students have the right to choose courses in an atmosphere of freedom, especially that of freedom of expression. State intervention should be limited to ensuring quality and non-discrimination.

III-3. Language is a powerful medium of expression of culture. Imposition of a particular language or script on linguistic minorities should be avoided. Efforts should be made to make all official information available in all the languages spoken in the state. Every student has a right to receive education in a language of his choice. Efforts should be made to provide quality education in all the languages. States should not impose or prefer one language as the medium of instruction. States should take all measures to preserve, protect and promote languages.

III-4. Asia is home to many indigenous communities and states in the region have a duty to protect indigenous communities and their cultures. States should recognize the symbiotic relationship that indigenous communities have with nature. Attempts to conserve nature and its resources by these communities should be encouraged. Displacement for development destroys indigenous communities and their distinct cultures. Existing international legal principles, including the principle of 'prior informed consent', should be strictly adhered to in matters of land acquisition. Traditional knowledge is an important component of culture and Asia is rich both in biological diversity and traditional knowledge associated with it. National governments should protect traditional knowledge and combat 'bio-piracy'.

III-5 Religion can be only one component of culture; it should not be equated with culture. In the Asian context, many cultures transcend religion. Special care should be taken to protect cultural diversity existing within religions. Attempts by religious minorities to adapt to local cultures should not be discouraged or prevented. At the same time there should not be any coercion for the religious minorities to adapt to local cultures.

III-6. As culture has evolved in close and continuous interaction with nature, states should take special care in environmental protection and respect traditional

ways of doing this. The 2030 Agenda for Sustainable Development reflects realization that development has to be sustainable. Culture can inform and contribute to the realization of the 17 sustainable development goals enshrined in the document. States should focus special attention on the cultural dimensions of these goals.

III 7. The idea that migrants implicitly relinquish their cultural claims when they leave their country of origin must be emphatically rejected. There should be a policy of respect, non-discrimination and non-interference in the day to day cultural practices of the immigrants. Preference for the language of the country of origin, or in the case of second and third generation members of the immigrant families, language of their parents or grandparents, should not be interfered with.

III-8. Culture is often viewed as an impediment to the realization of women's human rights and cultural practices are often used to discriminate against women. This is mainly due to viewing culture as 'static' and certain values as 'intrinsic' to a given culture and therefore unchangeable. Women lack influence in decision making processes and have limited opportunities to further develop cultural life. Attempts at all levels must be made to ensure that women can fully realize their human rights, owning and belonging to their culture at the same time. In this context, states should honor their commitment to ensure the right of women to participate in recreational activities, sports and all aspects of cultural life.

III-9. Many of the states in Asia have gone through conflicts as well as colonialism with its associated violence. In building post-conflict societies culture can play an important role. The state should adopt an inclusive approach accommodating the ethno-cultural diversity of a society.

III-10. Media has a big role to play in the protection of the right to culture. In their reporting, media should be sensitive to cultural differences and diversity in society. Stereotyping of certain communities should be avoided. 'Fake news' can have serious implications for the enjoyment of this right. Media should consider the need for self-regulatory bodies acting independently either at the organization or national level.

III-11. Business, especially transnational corporations have a huge bearing in the realization of human rights in Asia. In the context of the right to culture, businesses should acknowledge cultural diversity and respect local culture in terms of recruitment, conditions of work, holidays etc. Business can also play a positive role in promoting culture. Corporate Social Responsibility (CSR) activities may be used for promoting different cultural forms.

Launching of the declaration on Rights to Justice, Peace and Culture

Basil Fernando(Asia Human Rights Committee)

Launching of Declarations on Rights to Justice, Peace, and Culture as a part of the Asian Human Rights Charter (A people's charter) in Gwangju, South Korea on 17 May, 1998

The search for the fulfillment of human rights remains one of the greatest goals of the Asian people. Liberty and prosperity obtained through sustained development, a culture fermented with genuine love for each other and peace among all, are various aspects of the golden dream that people in Asia share with the rest of the world.

However, this great dream is being severely trampled upon in most Asian countries, particularly in recent times. Various forms of authoritarianism and tyranny have been the actual reality in most parts of Asia. It is shocking to see how brutal extra-judicial killings, directly authorized by the Executive, have completely negated the right to a fair trial. It is painful to watch how the goal of sustainable development is being sacrificed. Instead, the careless destruction of natural resources has resulted in enormous environmental problems. It has devastated the lives of the poor in particular and the women. They are being offered up for the petty gains of a few people and a few companies in a culture that should be promoting personal creativity while enhancing love and appreciation for each other. We have the emergence of many divisive forces which has created a culture of violence. Instead of peace, we see war and threats of war, and internal conflicts at every level. It has separated nations and communities creating unimaginable forms of suffering. In the midst of all this, terrorism has raised its head and rejecting all standards and norms of decency, attacks communities and even religions. On the other hand, in the name of counter-terrorism we see: enforced disappearances, extrajudicial killings, torture, land-grabbings of the weak by the powerful, and the rejection of the law itself. This has become a common feature. The greatest cost of all these things is borne by the poor.

It was with the idea of enhancing the Asian Human Rights Charter with reflections on the present day realities in Asia that the three Declarations were proposed, discussed and adopted in May 2018 at Gwangju, South Korea.

For a majority of people in Asian countries the Gwangju Spirit was an inspiring event. It is the wish of many, especially the young that the people in individual countries will rise up to meet and engage the Spirit of Gwangju. However, the reality of their day-to-day experience is that the Spirit of Gwangju remains far removed.

The idea of the three Declarations mentioned above had a purpose. It was to create an Asian consensus on the primacy of the triumph of the Gwangju Spirit against the prevailing dark and malevolent forces active at the present moment. It was a modest venture. It pointed to the right direction. It strengthened the State apparatus to enhance democracy, the rule of law, and human rights. The view on these Declarations was to create conditions for sustainable development and for generating a culture of freedom and peace.

These Declarations should be treated as a beginning endeavor. Much more work has to be done to spread the Asian Human Rights Charter, together with these three Declarations.

The support of all civil society organizations, non-governmental organizations, and governments themselves is required; if Asia is to rise above the dark times it is facing in numerous countries. There is a great need to come to a common expression of hope for upholding the comprehensive sense of the dignity of each human person.

Today, with that hope, we launch the Declarations of Justice, Peace, and Culture. May these documents give rise to discussions and dialogue addressing the dire needs in Asia today.

Session 1: Opening Plenary Session

Keynote Speech the 2019 Gwangju Asia Forum

"Genocide and Refugees: State Violence
and State Responsibility to Protect"

- The Rohingya Situation and Discussion on Regional, Domestic,
and International Solutions

Prof. Yanghee Lee (Sungkyunkwan University)

- The Truth Finding of May 18th and the Development of
Korean Democracy

Prof. Ahn Byung-ook (President, the Academy of Korean Studies)

- The Present and Future of Historical Reckoning

Mr. Kim Han-gyun (The Institute of Criminology)

Opening Plenary Session

**"Genocide and Refugees:
State Violence and State Responsibility to Protect"**

**The Rohingya Situation and Discussion on Regional, Domestic,
and International Solutions**

Professor Yanghee Lee

I would like to first thank the May 18 Memorial Foundation for dedicating this year's forum on the topic of Genocide and Refugees in relation to State violence and State's Responsibility to Protect on this 39th year of remembrance of the May 18 massacre. Moreover, I would like to express my sincerest gratitude for inviting to speak about the Rohingya Situation and what the Regional, Domestic, and International Solutions might entail.

Thirty-nine years ago, on this day, hundreds of students were brutally gunned down and killed, thousands injured, and hundreds more their whereabouts still unknown. That day, the military government of the Republic of Korea, fired at innocent unarmed students who were speaking out for democracy – epitomizing the worst form of State Violence.

I will first start by speaking a little about Genocide and State Responsibility to Protect. And then I will proceed to speak about other situations of potential crimes against humanity, and finally about the atrocious situation that has unfolded in Myanmar against the Rohingya.

The world witnessed the worst human behavior during the two World Wars, but more so during World War II. Henceforth, the world leaders mobilized to build an international institution, such as the United Nations, and establish international standards, laws, and treaties that would prevent horrific crimes as those committed by Nazi Germany from occurring again in the future. The then British Prime Minister Winston Churchill described what was happening in Europe "a crime without a name." It was Raphael Lemkin, a Polish-Jewish lawyer, whose family of forty-nine members had been killed during the Holocaust, coined this phenomenon as "genocide". The word originates from ancient Greek word **genos**, meaning race or tribe; and the Latin word **cide**, meaning killing. Genocide means crimes, crimes against humanity, directed

against a racial, national, or religious group; and the individuals of these groups are targeted not because of what they individually committed, but because they belonged to that particular group. The Nuremberg Trials proved to disappoint Lemkin, and others in that it did not go far enough to include peacetime genocide, and more specifically did not envisage future “Hitlers” from ever appearing again. Through unrelenting efforts of Lemkin and others, the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide (better known as the Genocide Convention) on 9 December 1948, at last classifying genocide as a crime under international law.

Since the entry into force of the Genocide Convention in 12 January 1951, to date, it enjoys 150 Ratifications, and 41 Signatures. Of note, Myanmar became a party in 14 March 1956, and Republic of Korea in 14 October 1950. (DPRK has still not ratified this Convention)

The Convention defines Genocide under Article II as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group such as:

1. Killing members of the group
2. Causing serious bodily or mental harm to members of the group
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
4. Imposing measures intended to prevent births within the group
5. Forcibly transferring children of the group to another group

Article III goes on to list the following acts as punishable:

1. Genocide
2. Conspiracy to commit genocide
3. Direct and public incitement to commit genocide
4. Attempt to commit genocide
5. Complicity in genocide

Unfortunately, since before and after the adoption of the Genocide Convention, the world had witnessed many more genocides. The most notable genocide would be the Holocaust, then Bangladesh, followed by Cambodia’s “Killing fields”, Rwanda, Bosnia’s Genocide at Srebrenica, East Timor, Darfur, and Tamil

Genocide by Sri Lanka, and the current genocide occurring in Myanmar. Every time such atrocious crimes occurred, the international community vowed that “never again” will this be allowed. Unfortunately, these vows have only remained as rhetoric, rather than leading to concerted efforts to suppress and prevent genocide.

Under the leadership of the late UN Secretary General Kofi Annan in 2005, a World Summit was held in recognition of failure to adequately respond to the most heinous crimes known to humankind. The concept of the responsibility to protect populations from genocide war crimes, ethnic cleansing and crimes against humanity, which is has become to be known as “RtoP” was adopted in an effort to strengthen the UN in its work in development, security, and the protection of human right (A/60/1). It marked the first commitment for the following:

1. The State carries the **primary responsibility** for the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleansing.
2. The international community has a **responsibility to assist** States in fulfilling this responsibility.
3. The international community should use **appropriate diplomatic, humanitarian and other peaceful means** to protect populations from these crimes. If a State fails to protect its populations or is in fact the perpetrator of crimes, the international community must be prepared to take stronger measures, **including the collective use of force through the UN Security Council.**

Secretary General Ban Ki-Moon later took this commitment to another level by formally appointing a Special Adviser on the Prevention of Genocide and a Special Adviser to the SG with a focus pm the Responsibility to Protect. Moreover, Secretary General Ban started issuing reports from 2009 on implementing the responsibility to protect from genocide, war crimes, ethnic cleansing and crimes against humanity. Through the years, it became evident that crimes related to RtoP were often preceded by incitement to violence. All of what I have mentioned so far will later be discussed in relation to the context of Myanmar.

The 2013 Secretary General’s report to the UN General Assembly (A/67/929)

presents in detail the relationship between risk factors and the commission of atrocious crimes. He also warns that risk factors in of themselves directly cause atrocious crimes, however, rarely in the absence of the risk factors. The risk factors that are presented in the SG's report are as follows:

1. Countries at risk often have a history of discrimination or other human rights violations against members of a particular group, often on the basis of ethnicity, race, or religion. In other words, genocide is an extreme form of identity-based crime, whether it is real, or simply socially constructed.
2. Underlying motivation for targeting a particular community for political, economic, military, or religious reasons is an additional risk factor. This is often demonstrated through exclusionary ideologies or constructions of identities as shown in "us" versus "them". They are often emphasized through forms of hate speech or propaganda campaigns that illustrate the targeted community as being disloyal, or even portrayed as "enemy of the State".
3. The risk is often connected to the presence of armed groups or militia who are also capable of committing atrocity crimes. Often, militias are allied with the State and there is evidence of proliferation of arms which coupled with armed conflict, further increase the risk.
4. The risk may depend on particular circumstances that facilitate the perpetration of these crimes, such as development that suggest a path towards mass violence or a longer-term plan of policy to commit atrocity crimes. Often, among others, a sudden or gradual strengthening of the military and the introduction of legislation derogating rights and freedoms or the imposition of emergency or extraordinary security laws.
5. The risk can be increased by the Government's lack of capacity to prevent these crimes and the absence of structures designed to protect the population. Examples can be found in autocratic political regimes that deny the right to effective participation in public affairs and restricts civil society; weak legislative protection of human rights; and judiciary, national human rights institutions, coupled with impunity. Existence of impunity may also create conditions that enable for incitement of further violence.
6. Risks include the commission of acts that could be elements of genocide, war crimes, and crimes against humanity. Killings, enforced

disappearances, hostage-taking, torture or other inhumane treatment, rape and other forms of sexual violence, arbitrary displacement or forced deportations, attacks on civilian infrastructures or attacks against humanitarian personnel, child recruitment and other forced recruitments are added risk factors. It is also important to note that programmes aimed at preventing reproduction are elements of genocide or crimes against humanity.

There can be less obvious methods of destruction of a group, such as deliberate deprivation of resources needed for the group's survival that are accessible to the rest of the population. Again, I will later discuss these risks in relation to the situation of Myanmar.

For the prevention of atrocious crimes, such as genocide, war crimes, and crimes against humanity, a system of early warning is imperative. A crucial partner in the early warning mechanism is the Special Procedures Mechanism. To date, there are currently 44 thematic mandates and 12 country mandates that cover all human rights, including civil cultural, economic, political, and cultural. Each mandate holder conducts country visits, making the mechanism as the most accessible human rights mechanism to receive 'warnings' on a daily basis from people from all around the world. Mandate-holders can, and do, alert the international community to crises through the tools that have at their disposal: Thematic reports to the Human Rights Council; country visits; confidential communications with States and other entities; public statements; and collective action.

In addition, their capacity to assist States through the provision of expert advice on implementation of human rights obligations has an important preventative role. An example is the promotion by the Rabat Plan of Action as a means to defuse tension amongst religious communities by several Special Rapporteurs, including myself.

Given the fact that they do travel to numerous countries and meet with a wide range of stakeholders, they receive a full range of information on the situation of human rights worldwide and potential human rights crisis.

Special Procedures mandate holders have, and continue to provide timely, relevant and accurate information which, if acted upon, might have averted human rights violations. Here are some examples:

- The Special Rapporteur on extrajudicial, summary or arbitrary executions visited Rwanda in April 1993. His report, made public in August 1993, warned that the targeting of ethnic Tutsis solely because they belonged to a specific ethnic group might constitute genocide but it was not taken up by the Commission on Human Rights until the following March and the international community failed to take action.
- In October 2009, in a press release after his visit to the DRC, the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed the view that ‘alarm bells are ringing in the DRC’ and called on the international community to take immediate preventative measures to avert further killings.
- Special procedures were also among the first to raise alarm about the situation in Sri Lanka calling for appropriate action by the International Community. Ultimately the HRC took action and relevant special procedures have been part of the response, including through visits of the WG on enforced disappearances or the SR on truth, justice and reconciliation.
- Burundi is another example of consistent and coordinated action by special procedures. Several of them visited the country recently and expressed grave concerns about the situation in the country. Their findings were one of the basis for the HRC to take action. Relevant mandate holders have been tasked by the HRC to investigate further and have been recently declared *personae non grata* for doing so.
- Back in 2017, I had raised the alarm about the situation unfolding in the Rakhine State of Myanmar. I had indicated that the situation “bears the hallmarks of genocide”. Consequently, I too was *declared personae non grata*. I also issued a statement early August 2017 questioning why a full Military battalion was deployed to northern Rakhine. After the 25 August alleged attacks by ARSA, the military conducting “clearance operations”. These were the second such operations since 9 October 2016 attacks. Unfortunately, early warnings have not translated into early action within the UN system, including the Security Council.

Now, I would like to talk a little about the role of regional and sub-regional mechanisms in the implementation of the responsibility to protect. Economic Community of West African States (ECOWAS), the African Union, and the Organization for Security and Cooperation in Europe (OSCE) have long been active in championing the development of the principles of protection and the practical tools for implementing them.

The responsibility to protect should also be a universal principle. In this regard, operationalization of the principle within cultural context will enable ownership within different regions and sub-regions. I would strongly propose that the Association of Southeast Asian Nations (ASEAN) will proceed to incorporate it in a timely fashion. After all, the three pillars of the principle of Responsibility to Protect are: State responsibility to protect; international assistance and capacity building; and timely and decisive response. We must never forget that responsibility requires accountability.

Before discussing in more detail the situation of Myanmar and what can be done internationally, regionally, and domestically, I would like to briefly mention a couple of situations occurring in our neighboring countries that warrant our attention. The risk of atrocities in the Philippines remains very high. Although public support for President Duterte remains very high regarding his war on drugs, there are concerns regarding the high death toll. What is of concern is that the killings are carried out extra judicially and with no due process. Since 2016, the death toll has reached 5,176 as at the end of February 2019 according to the Asia-Pacific Center for the Responsibility to Protect. Mid-term elections of May 2019 have reported an increase in politically motivated killings and arrests. And finally, martial law remains in effect after it has been extended for another year until the end of 2019 in Mindanao. This area still may serve as fertile grounds for further recruitment of extremist groups in the region.

Some of you may have already been following the situation in China's Xinjiang Uighur Autonomous Region (XUAR). The international human rights community has been concerned over the possible increased risk of potential atrocity crimes in this region. Currently it is reported that approximately

one million Uighurs and other Turkic Muslim minorities are being detained in “re-education” or “de-extremification” facilities, allegedly for minor infractions without formal charges, due process, or access to legal representations. This “re-education training” is reported to last between 3 months to 2 years. Some human rights organizations report that about 3 million people are detained, including children, women, and the elderly. Some of my Special Procedures colleagues sent a letter to China expressing their concern that “the revised Regulation on De-extremification include provisions that are in contravention to China’s obligations under international law and pose a grave risk to fundamental human rights of people in Xinjiang.”

I will now move onto the situation of Myanmar and make links to the Genocide Convention and RtoP. Since the first report by the Special Rapporteur in 1993, various forms of human rights violations faced by the Rohingya community, have been regularly documented by successive Special Rapporteurs. These include enforced disappearances, torture, forced labour and forced displacements, as well as rape and other forms of sexual violence. Already in my first visit in July 2014, I received continuing allegations of violations against the Muslim community, including arbitrary arrests, torture and ill-treatment in detention, death in detention, the denial of due process and fair trial rights and rape and sexual violence. This community is considered as the “most persecuted”. The Rohingya people have faced decades of systematic discrimination, statelessness and targeted violence in Rakhine State of Myanmar. Violent attacks against them occurred in 1978, 1991-1992, 2012, again in 2016, and then in 2017. During these time, many fled to nearby Bangladesh, Cox’s Bazar. Currently, there are close to a million Rohingya refugees residing in Cox’s Bazar. Bangladesh has indeed shown the world what “humanity” means by hosting so many people, for so many years. After the 2016 “clearance operations” about 80,000 Rohingyas fled to Bangladesh. And after the 2017 “clearance operations”, more than 700,000 fled.

It is important to understand that the human rights situation of Myanmar extends far beyond the Rohingya. Many, if not all of the same tactics have, and are still being used in other ethnic states of Myanmar. Ethnic

and religious minorities, such as the Christians, Muslims, Kachins, Shans, and Kayins, and others, are continuously being discriminated against and targeted in various forms of human rights abuses and violations, constituting crimes against humanity. The situation in Kachin and Shan States also satisfy the war crime elements of murder, torture, cruel treatment, attacking civilians, attacking protected objects, rape, sexual violence, and others.

Allow me to make some links to the Genocide Convention and the RtoP. First of all, the intent has been demonstrated by the statements made by high level Government Officials, and the Commander-in-Chief of the Military (Tatmadaw). Statements such as “the Rohingyas are unfinished business” clearly points to the intent. The Fact Finding Mission for Myanmar in 2018 (AHRC/39/64) found four of the five defined prohibited acts: (a) killing; (b) causing serious bodily or mental harm; (c) inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part; and (d) imposing measures intending to prevent births. Births have been regulated for the Rohingyas for many years. No more than two children could be registered under the household lists, blacklisting more than 5,000 children. In 2014, the Government introduced a new law that may place birth spacing to 36 months to areas that are declared “special zones”. The 1982 Citizenship Law literally made the majority of the Rohingyas, who once were considered citizens, as stateless. There is no freedom of movement for Rohingyas living in northern Rakhine, IDP camps in central Rakhine, and other areas of the state. Access to education and health care is minimal. More surprising is the continuous denial of humanitarian aid to many parts of the state. The actual number of deaths recorded is not conclusive. MSF survey estimated at least 6,700 Rohingya were killed during the 2017 attacks. Myanmar has not allowed any international investigators into Rakhine State since 2017 August “clearance operation”, including myself.

In central Rakhine State, there are over 128,000 IDPS, of whom 53% are children. Conditions in the camps where they have been living since 2012 are dire. The only free quarter, Aung Mingalar in Sittwe, where about 5,000 Rohingyas live, also exhibit dire conditions. In Kyaukphyu, the booming area where a Special Economic Zone will be constructed,

thousands of Kaman Muslims, who are one of the 135 recognized ethnic minorities under 1982 Citizenship Law, still remain in IDP camps since 2012.

I would also like to highlight that the conflict in northern Myanmar, Kachin State, and south-eastern Myanmar, Kayin State remain very concerning. Thousands of people from these ethnic states remain displaced. Humanitarian access continues to be denied by the Military. There are over 106,000 IDPs in Kachin and Shan States alone, of whom 46% are children and the UN has not been able to deliver humanitarian aid to people who live in non-government controlled areas since 2016.

In relation to RtoP, all of the 3 elements have not been met. It is clear that Myanmar failed in its responsibility to protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing. International community did not succeed in its responsibility to assist Myanmar in fulfilling this responsibility. And finally, the Security Council failed to protect populations from these crimes.

What can be done? First, from a national/domestic perspective, when investing in Myanmar, the host country must enforce due diligence and the respect of the human rights and business principles. Inadvertently, investments may be carried out to support the Military and their affiliates, which will embolden their atrocious behaviours not only in Rakhine State, but also in Kachin, Shan, and Kayin States where conflict is still rife, driving many civilians away from home, with no possibility of returns or compensation. Much of what is being done in Rakhine had already occurred in the 1990s during the “scorched earth campaign.” There are about 121,000 refugees still residing in the Thai-Myanmar border for nearly 3 decades. In south-eastern Myanmar, there are approximately 162,000 IDPs, with few alternative sources of income and rates of malnutrition rates increasing.

Second, from a regional perspective, ASEAN must step up in protecting and promoting human rights for all people in the region. Impunity must not be permitted and accountability must be guaranteed. As I stated earlier, regional and sub-regional mechanisms must seek ownership of RtoP, and to

join hands together to eliminating atrocious crimes, including genocide, war crimes, and crimes against humanity. More should be done to fulfill international human rights obligations, including the Genocide Convention.

Finally, the international community should no longer just repeat “never again” but take concrete actions. The Security Council has proven to be ineffective in maintaining peace and security. Therefore, there should be thorough discussions on how to make the Security Council more effective. There should be complete overhaul or reform of the Security Council, if it is going to uphold the UN Charter, notably Article 1, paragraph 1 which states:

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

I sincerely hope that this forum will assist us in better understanding international norms and standards, State obligations and how national, regional, and international efforts and cooperation can all be channeled to make changes; so that we will not just repeat, like a broken record, “never again” in the future.

Thank you for your attention!



The Truth Finding of May 18th and the Development of Korean Democracy

Ahn Byung-ook(President, the Academy of Korean Studies)

1. Democratic Movement and May 18th

South Korea achieved democratization over long standing struggles such as The April Revolution in 1960, anti-Yushin movement in the 1970s, Bu-Ma Democratic Protests in 1979, Gwangju Uprising in 1980, and The June Struggle in 1987. They have been important milestones that lead to the development of Korean democracy.

Among these, the May 18th Democratic Movement played a key role. From 1980 to present day, it has been the central axis of all the pro-democracy movements.

Until recently, people's powers haven't been very strong per se. However, the Gwangju Uprising brought a historical moment which brought qualitative change in terms of Korean democracy.

The survivors, who struggled with the memories of May 18th, published materials called 「The Truth on the Gwangju Uprising」. It was aimed to prevent such massive political violence. The survivors continued their struggle for democracy.

2. Korea Modern History and Sacrifice of Gwangju

The assassination of Park Chunghee in 1979 and the military coup and massacre in Gwangju in 1980 are closely connected with each other. After Park Chunghee was assassinated, people began to call for democracy and change the society. Such movements were historically inevitable. However, despite the hope for democracy, 12.12 military coup happened. The New Military Government committed brutal violence against protesters who called for democracy. But such violence also happened numerous times in Korean history. During April 3rd, tens of thousands of people were killed because they could have been possible collaborators for the North Korean side. The Gwangju Massacre is similar with April 3rd. The US and Republic of Korea military planned the suppression beforehand. The final operation for suppressing the events that occurred on May

18th was authorized by the US. Accordingly, hundreds of people died in Gwangju. These relationships should be clearly revealed for the truth findings of what really occurred during May 18th. In addition, the New Military concealed what was really happening in Gwangju by censorship on media. Conservative newspapers described the Gwangju people's struggles as "a riot caused by impure people" and "armed rioters".

To overcome such distortion and to inherit the Gwangju spirit, the survivors' memory struggle was started. They required the truth finding of the May 18th and punishment of perpetrators. The May 18th Uprising occurred in Gwangju but the survivors' struggle for memory happened on a nationwide level.

3. The May Struggle After the May 18th

In December 1980, Jeong Sooncheol set fire to the US Culture Center in Gwangju. In March 1982, Mun Busik set fire to the US Culture Center in Busan to hold the US responsible for the massacre in Gwangju. After the general election in 1985, Gwangju massacre became an agenda in Korean society which remained as completely silent until then. People even occupied the US Culture Center in Seoul to express their angry voices. It was the "new struggles for May 18th."

The pro-democracy movements in Korea reached its new phase in 1985. People started to fight against the military authoritarian regime again. Pro-democracy activists formed solidarity with the opposition party for a strong struggle. So from the Gwangju Uprising in 1980 to the June Struggle in 1987, the period was literally revolutionary.

The anti-government movements became much stronger and well-organized than before. It was difficult for the military government to repeat another bloody suppression because it was obvious that if they did so, they would have certainly faced much more resistance. Accordingly, people were able to constantly demand for democracy. During the Gwangju Uprising in 1980, a lot of protesters were killed, but in the 1987's June Struggle, there was no massive violence.

It seemed that the 1987 June Struggle finally achieved South Korea's democratization. However, the rosy dream didn't come true so soon.

It would be valuable to mention the National Hearing of May 18th was made possible because of the achievements of the June Struggle, and the general election that was followed. The National Hearing was televised nationwide. Though the Hearing was not enough for the truth findings of May 18th, the high-

level perpetrators were finally brought to the National Assembly.

In 1993, Kim Yongsam came to power, and the civil society established the People's Committee for May 18th. The Committee was founded to require truth findings of May 18th and to inherit the spirit of resistance. They also required to enact the May 18th Special Law for historical reckoning and sued the two slaughterers, Chun Doo-hwan and Roh Taewoo.

The Committee's activities continued until 1997. Through their efforts, people were able to see Chun and Roh stand trial for the massacre in Gwangju. It was a great achievement for the May 18th struggle for memory.

However, it is impossible to fully achieve the goals of truth findings only by lawsuits. In the courts, historical truth is not a priority and historical contexts are rarely considered. Also, Chun's lawyers lodged an appeal by saying that the trial was not fair.

We should be aware that there's a clear limitation when trying such historical problems in courts. Approaches in history and law are different. Legal system is pro forma and conservative. They also require obvious evidence and their judgement is regarded as if it is truth itself. But we should bring the fact that the lawsuits against the high-level perpetrators, Chun and Roh, was a very important historical moment. Such cases are not often found even in world history.

4. May 18th and Korean Democracy

Unjustifiable power always tries to maintain their privilege by conspiracy and maneuvering. In order to maintain the privilege, a lot of people of power help and collaborate with each other. Unlike our history, in Germany and Eastern Europe, the regimes gave up using violence and decided that it was meaningless to suppress the protests because it was a historical flow. Also because they had a respectful attitude on revolution and people's uprising.

But at the same time, contrary things happened in Korean history. Authority in Korea ordered people to be killed so they can maintain their power.

Conservatives in Korea would lose their influence and power if democratization is completely achieved in Korea. They are pro-Japanese collaborators, a part of war-mongering groups, Chaebol, etc. They collaborated with unjust regimes and repressed development of democracy and progress of society.

Conservative power in Korea was under threat especially when the two progressive politicians, Kim Daejung and Roh Moohyun, were elected as Presidents. The conservatives labeled them as murderers and thus they tried

historical distortion against Gwangju by saying that it was a riot caused by North Korean secret agents. It only shows their stupidity.

A famous political scientist, Robert Dahl, once said, "The history of democratization gives us courage but also warning. Because the history of democratization is not just about success but also failure. It is a failure to overcome the past limitations, and failure that it was just a temporary success." His explanation can be applied in Korean history as well.

When we can share the truth about Gwangju, we can say that Korea is finally democratized. Historical reckoning is about learning from history and moving forward to reconciliation by going beyond judgement. If the May 18th Uprising becomes the center of such discourse, Korean democracy will evolve.



The Present and Future of Historical Reckoning

Kim Han-gyun (Korean Institute of Criminology)

Recently the law on historical reckoning¹ has been passed even though it is full of limitations ... The argument surrounding the past will become fierce and this war on history will continue for quite a while. We will feel the power of the past, and the power of history.²

History is usually dealt in a certain era and regarded as a temporal issue. If a society tries its best to face the past, it could be solved. If not, the past remains like a ghost for a long time.³

The power of history is like this: if we just accumulate the unliquidated pasts, we will get stuck in it. It is not just about an individual but a country. We can't achieve democracy or rule of law without facing the past.

The “past” and its “reckoning” are still issues that determine our present and future. Thus, it should be fiercely discussed and all the members of society should participate to solve the problems together.

I. The History of Historical Reckoning

Historical reckoning is about facing massive human rights violation in the past and restoring justice. The procedure is often called transitional justice.⁴

¹ It means the Basic Law for Truth and Reconciliation.

² Im Daesik, Before the History Battle, Historical Review 71, The Institute for History Research, 2005, 16p.

³ Presidential Advisory Council for Policymaking, Comprehensive Historical Reckoning, Policy Reports 1-05, 2008, 5p.

The laws on historical reckoning deal with institutional and individual reform. Such laws should include the actual practice. The goal of historical reckoning is punishment of perpetrators of state violence, truth finding, acknowledgement of damages and reparations, preventing violence in the future, and social conflict resolution. Historical reckoning also has a specific scope in terms of period and political context. Thus, it naturally has a limitation because the historical reckoning process depends on whether past perpetrators of state violence are still in power or requires it and so on. Sometimes historical reckoning contributes for national unity, and other times it can trigger social disruption.

Furthermore, Korean modern history is very complicated as it has experienced imperialism, civil war, division, and dictatorship. Accordingly, historical reckoning is a difficult and hard process.

Let's look into the Act for Punishing Anti-Nation Activities in 1948. It was the first law in Korean modern history which enabled historical reckoning. The law enabled people who harmed nations to be punished. Also, the Special Investigation Committee was established by this law. After the April Revolution, the Act for Punishing Anti-Democratic Activities was enacted in 1960. It had similar contents with the Act for Punishing Anti-Nation Activities. However, the goals of the law couldn't be achieved due to the military coup in 1961.

II. The Present of Historical Reckoning

Is Korean modern history just full of failures? It can be evaluated by future historians, but it is necessary to mention that the efforts for facing the past haven't stopped in Korea. That is the sign of hope.⁵ After the 1990s, the laws on historical reckoning can be divided largely into laws for dealing with individual cases and laws for taking comprehensive measurements. In reality, historical reckoning is done by law and institution. Therefore, creating laws and institutions is the most important start for historical reckoning. Of course,

⁴ Lee Jaeseung, *State Violence*, LP, 2010, 29p.

⁵ Suh Joongseok, *Historical Reckoning in Korean Society, Memory and Vision 4*, Korea Democracy Foundation, 2003, 67-68pp.

it is very hard and difficult. The laws should include (1) the level and scope of truth finding (2) specify perpetrator, its punishment, and apology (3) restoring honors of victims and reparation for them. Also, the historical reckoning is only successful when the brutal past is not repeated. To achieve these goals, first, the results of historical reckoning should be shared in a society. Second, the results of historical reckoning process should be recognized as a form of law and institution. Third, the results should be connected into development of democracy and human rights.

1. The Achievement and Limitation of Individual Historical Reckoning

In 2000, the Special Investigation Committee for Suspicious Deaths was established by the specially enacted law for it. They conducted investigations on suspicious deaths, but the committee was not able to compel investigations and related institutions were all uncooperative. However, they achieved many goals including fabricated spy charges, suspicious deaths in the army, illegal surveillance, censorship, torture, repression on students' movements, etc. They also recommended the abolishment of National Security Law and exemptions from application of statute of limitations for crimes against humanity.

The important change occurred in 2004 when establishing the Special Investigation Committee within a state agency to keep them reliable for the past. The National Intelligence Service, National Police Agency, and the Ministry of Defense were included.

In 2004, the Special Investigation on Suspicious Deaths was established at the National Police Agency. The Committee members were coming from both civilian sectors and officers at the Police Agency. They co-investigated on suspicious deaths that occurred in the past and are still under allegations.

In 2005, the Special Investigation on Suspicious Deaths consisted of civilian members and members from the Ministry of Defense, and they investigated human rights violation such as the May 18th Uprising, forced conscription, and Samcheong Re-education Center.

In 2004, the Special Investigation Committee for Development investigated on what the National Intelligence Service has illegally done. Particularly the Committee elicited the

truth about the People's Revolutionary Party Incident which was fabricated. A retrial on the incident was made possible because of the investigations.

The civil society criticized the government bureaus for being perpetrators of state violence; therefore, they should be investigated rather than investigating themselves. Furthermore, the prosecution and courts didn't set up a committee for special investigation because they are neutral judicial authorities.

2. Achievement and Limitation of Individual Honor Restoration and Reparation

The most important moment of historical reckoning in Korean modern history is enacting the Special Law on the May 18th Democratic Movement in 1995. It consequently led to the punishment of high level perpetrators, but unfortunately the truth findings of May 18th was not possible. However, in 1990, financial reparations for victims was enabled by enacting an act on the honor restoration of and compensation to pers related to Democratization Movement also known as Deliberation Committee for the Restoration of Honor and Compensation to Democratization Movement–Related Persons.

May 18th finally received an official title as “Gwangju Democratic Movement” by this law. The Deliberation Committee for the Restoration of Honor and Compensation to Democratization Movement–Related Persons was established by the law and the Committee implemented procedures for reparations for 155 deaths, 5,517 cases of death after injury, missing people, injured, and detention.

In 2000, the Committee for the Truth Finding and Victims' Honor Restoration of the Jeju April 3rd Incident was established based on the Special Law on the Truth Finding and Victims' Honor Restoration of the Jeju April 3rd Incident. The Committee deals with government formation and Korean War period. The committee worked to collect materials for research, victims' determination, and victim and bereaved family member's honor restoration, writing investigation reports, etc. The Committee finally led the President's apology on the Jeju April 3rd.

In 2013, then South Korean President apologized for the massacre in Jeju.

3. Achievement and Limitation of Individual Punishment of Perpetrator

The only example of law which enables punishment of perpetrator in modern Korean history is the Special Law on Statute of Limitation of Crimes Destroying Constitutional Order. However, no institution for punishing perpetrators has been established yet.

After the 2000s, the law on historical reckoning has improved into a much more comprehensive level. In 2000, the Deliberation Committee for the Restoration of Honor and Compensation to Democratization Movement–Related Persons started a comprehensive honor restoration and reparation process. In 2005, the Truth and Reconciliation Commission in Korea has dealt with a broad range of issues such as truth finding, honor restoration, amnesty, research on the past, social integration, etc. However, they faced criticism that their activity and the work of the other Special Investigation Committees overlap.

4. Achievement and Limitation of Comprehensive Honor Restoration and Reparation

In 2000, the law for the restoration of honor and compensation to democratization movement–related persons was enacted which created the Deliberation Committee for the Restoration of Honor and Compensation to Democratization Movement–Related Persons. The definition of “democratization movement–related persons” means is that of a person who passed away or is missing due to the democratic movement, a person who was injured during the democratic movement or is still ill because of an injury, a person who lost their job because the person participated in the democratic movement. The committee conducted activities including movement related people, determination on the amount of reparation and payment, honor restoration, management of financial resources for reparation, living allowance, determination on types of commemoration events, etc. The Committee recommended removing criminal records of democratization movement–related people and

reinstatement of people who lost their jobs for being involved with the democratic movement. This Committee conducted their activities for the longest time among the committees for historical reckoning. The Law on the Honor Restoration of and Compensation to Person Related to Democratization Movement has only recommendation ability in terms of retroactivity. Also, the committee members' professionalism should be secured.

5. Achievement and Limitation of Comprehensive Truth Finding and Honor Restoration

In 2005, the Basic Law for Truth and Reconciliation aims at investigating independence movement, human rights violation, violent·massacre·suspicious deaths, revealing truth, reconciliation of the past, and make contribution for national unity to move forward to the future. The law deals with the past from the Japanese colonial rule period, and makes a comprehensive approach to define human rights violation. The Truth and Reconciliation Commission handles various works including truth finding, honor restoration, amnesty, research of the past, and reconciliation. It is the first independent institution for historical reckoning. Particularly during the Roh Moohyun's administration, the Commission played a key role for truth findings of history. Also, their activity made victim's voices as a national truth. The Commission published regular investigation reports and investigation reports for individual cases. In addition, the Commission recommended to enact a law for reparation for victims of civilian massacre before and after the Korean War, excavation of remains, and to establish a research foundation on historical reckoning. The Commission added that human rights education is needed for government officers who work for a bureau which is responsible for past violence. Such recommendation shows that historical reckoning is not about the past but the future.

III. The Future of Historical Reckoning

“Historical reckoning is not only about reparation for pain and injury, but it should be an ongoing project to prepare democratization and a moment for critical reflection on the past.”⁶ This remark is written on the first volume of the Truth and Reconciliation Commission’s comprehensive report. Historical reckoning is preparation for democratization and a human rights society.

Of course, there are some people who constantly say that we need to focus on the future and the world. This attitude doesn’t just mean the difference of political stance. Some people say things of that sort because they are benefited by oblivion. However, we also should remember that historical reckoning shouldn’t only be about individual reckoning, but legal and institutional reform.

Here we have to take a look at the Special Law on the May 18th Democratic Movement and its principle for historical reckoning: truth finding, punishment of perpetrator, and honor restoration. This model suggest how historical reckoning processes should be done.

Particularly when we see the historical reckoning during the 1990s, several similar laws and commissions were made and their working areas overlapped. To face history and to do historical reckoning project, a holistic and comprehensive approach is needed. Thus we need to have some time for critical reflection on the limitation of existing historical reckoning and prepare a better future.

First, the laws for historical reckoning defines the scope and content in a very narrow and strict way. Therefore, the autonomy of investigation has been restricted.

Second, if the government bureau doesn’t cooperate for historical reckoning, truth findings will be very difficult because the investigation is done by basic materials and they belong to government authority.

Third, historical reckoning can be restricted by political interests or temporization. The existing historical reckoning institutions were all established as a form of “commission”. The committee members were nominated by the President, the National Assembly, and the Chief Justice of the Supreme Court. The commission is independent in principle, but it can be politicized.

⁶ Kang Changil, Historical Reckoning, To where, Memory and Vision, 19p.

Korean society has worked for historical reckoning for more than ten years and it seems the process will be a longstanding agenda. To complete historical reckoning, the related laws should be revised and overcome the limitation. At the National Assembly, there are nine revisions that should be on the table because the truth findings weren't done thoroughly enough due to the limitation of investigation authority, and the reparations for victims were also not enough. Another term of the Truth and Reconciliation Commission should be reopened on June 30th, 2021. ⁷

The history is not about the past. Also, our present is becoming the new past. In this regard, history is not fixed but rather is still being accumulated. That's why historical reckoning is about present and the future. Of course, historical reckoning can only be done by our will to achieve democratization and human rights. We can verify it by looking into Korean modern history.



⁷ Revision on the Basic Law for Truth and Reconciliation (Submission Number. 2005352)

Session 2: Refugee Session

State Responsibility – Laws, Perception and Practice; Overcoming Discrimination and Hatred

- Refugee Situation Overview in Asia

Korea - Ms. Yi Seul (NANCEN)

Japan – Mr. Mitsuru Nanba (Japan Lawyers Network for Refugee)

Hong Kong – Mr. Isaac Shaffer (Justice Center)

Taiwan – Ms. E-Ling Chiu (Taiwan Association for Human Rights)

Indonesia – Mr. Zico Pestalozzi (SUAKA)

Thailand – Ms. Waritsara Rungthong

(Coalition for the Rights of Refugees and Stateless)

- Problems and Improvement of Current Legal Framework for Refugee Protection

Ms. Sussi Prapakranant (APRRN)

- Present Conditions of Discrimination and Hatred of Refugees and How to Overcome It

Mr. Desale Abraha (Japan Assistance for Refugees)

Refugee Session

Refugee Situation Overview in Asia ²³

Yi Seul (Refugee Rights Center)

1. Application and Recognition of Refugee Status Each Year

[Chart 1] Application and Recognition of Refugee Status Each Year (from 1994 to December 2018)²⁴
(number of cases)

Year	Ap plic atio n	Recognition									Hu ma nita rian Stat us	Ref usa l	Wi th dr aw al	Can cell atio n of Ref uge e Stat us	Ca nce llati on of Hu ma nita rian Sta tus
		Tota l	Evaluation by the Ministry of Justice					Administrative Litigation							
			The First Eval uati on	App eal to the Min ister of Justi ce afte r Bein g Ref use d	Re set tle me nt	Fam ily Reu nio n	Total	R e c o g ni ti o n G ra nt e d	Fam ily Reu nio n	Tota l					
1994	5	-	-	-	-	-	-	-	-	-	-	50	39	-	-
1995	2	-	-	-	-	-	-	-	-	-	-				
1996	4	-	-	-	-	-	-	-	-	-	-				
1997	12	-	-	-	-	-	-	-	-	-	-				
1998	26	-	-	-	-	-	-	-	-	-	-				
1999	4	-	-	-	-	-	-	-	-	-	-				

²³ This chart was made on the 31st December, 2018.²⁴ For any changes on the cancellation of refugee status or humanitarian status, please see the very bottom of the chart.

2000	43	-	-	-	-	-	-	-	-	-	-				
2001	37	1	1	-	-	-	1	-	-	-	-				
2002	34	1	1	-	-	-	1	-	-	-	8				
2003	84	12	11	1	-	-	12	-	-	-	5				
2004	148	18	14	-	-	4	18	-	-	-	1	7	9		
2005	410	9	9	-	-	-	9	-	-	-	13	79	29		
2006	278	11	6	1	-	3	10	1	-	1	13	11 4	43		
2007	717	13	1	-	-	11	12	1	-	1	9	86	62		
2008	364	36	4	-	-	16	20	1 6	-	16	22 25	79	10 9		
2009	324	74 26	45	10	-	15	70	4	-	4	22	99 4	20 3		
2010	423	47 27	20	8	-	10	38	9	-	9	4 ²⁸	16 8	62		
2011	1,0 11	42	3	8	-	13	24	1 8	-	18	21 29	27 7	90	4	13
2012	1,1 43	60	25	-	-	20	45	1 5	-	15	31	55 8	18 7		4
2013	1,5 74	57	5	9	-	33	47	1 0	-	10	6	52 3	33 1		
2014	2,8 96	94	18	53	-	20	91	1	2	3	539	78 2	36 3		
2015	5,7 11	105	13	27	22	43	105	0	-	0	194	1,8 35	28 0		
2016	7,5 42 30	98	17	10	34	34	95	3	-	3	246	6,0 13	73 1	2	
2017	9,9 42	121	27	24	30	35	116	5	-	5	318	5,6 07	1, 20 0	1	
2018	16, 173	144 31	99	13	26		138	6	-	-	514	3,2 21	2, 02	0	

²⁵ 8 humanitarian status holders gained refugee status in 2011 after lawsuit.

²⁶ 4 cases have been cancelled in 2011.

²⁷ 6 cases have been cancelled in 2016.

²⁸ 3 humanitarian status holders gained refugee status in 2012 after lawsuit and 5 humanitarian status holders gained refugee status in 2011 after appealing objection.

²⁹ 1 humanitarian status holder gained refugee status in 2012 after lawsuit.

³⁰ The total number of refugee applications for the year of 2016 was 7,542 but there was duplicate registration on the system. So the actual number is 7,541.

³¹ Resettlement and family reunion are not counted with the first evaluation passers.

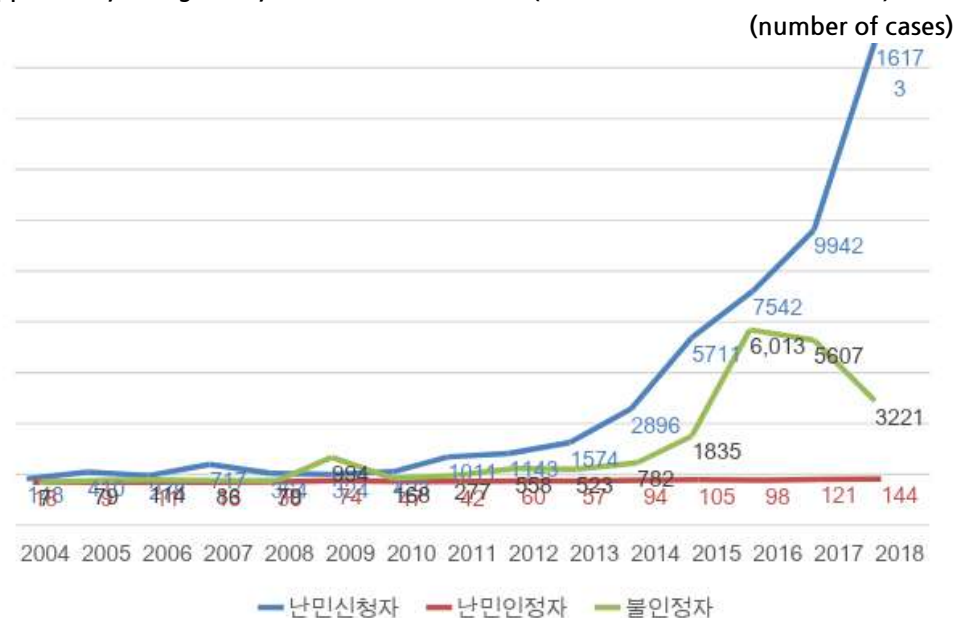
												9		
Total	48,907	943	220	164	112	257	852	89	-	-	2,005	20,393	5,767	7
Changes	48,906	936*10	-	-	-	-	-	-	-	-	1988 ³²	20,393	5,767	7 ³³

Request of information disclosure is under progress on how many family reunion cases have been accepted among the first evaluation passers. The total number doesn't include the data for the year of 2018.

South Korea started accepting refugees from 1994. The application and recognition procedures are done by the Ministry of Justice. The total number of refugee application cases from 1994 to 2018 is 48,906. In 2018, 16,173 people applied for refugee status. The number of refugee application has been increasing especially since 2013. In 2018, the number of applications jumped 62% from 2017. 1,347 people applied for refugee status every month in 2018.

1) Delays in Recognition and the Poor Recognition Rate

[Graph 1] Application, Recognition, and Refusal Each Year (from 2004 to December 2018)



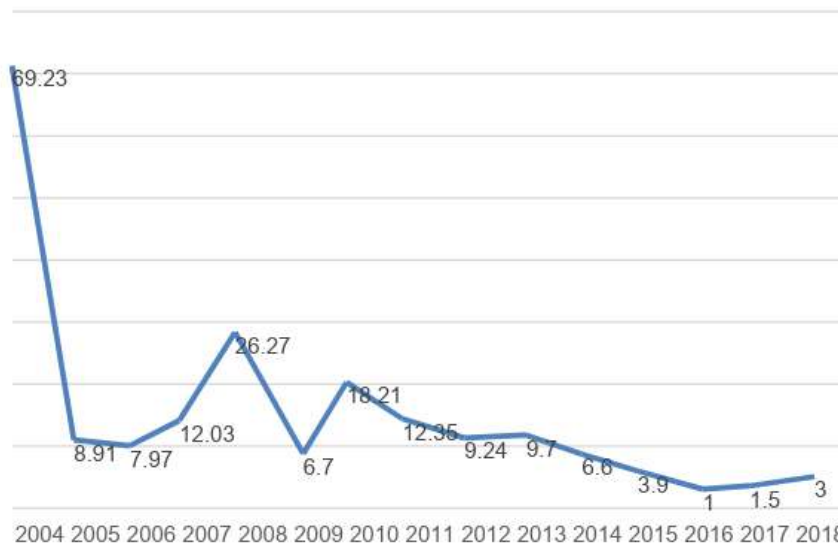
³² From 2008 to 2012, including 17 changes of status.

³³ From 2011 to 2017, including 7 cancellations.

Application Recognition Refusal

[Graph 2] Before and After the Refugee Law Implementation and Changes of Refugee Recognition Rate³⁴ (from 2014 to December 2018)

(Percent)



However, the acceptance rate was still very low in 2018 even though there were ten thousand applicants. The acceptance rate of Korea in 2018 is 3%. The acceptance rate is calculated based on the number of applications of the year and the number of accepted cases. It includes the first evaluation, objection appeal, family reunion, and administrative litigation, but resettlement.³⁵

The reasons of low acceptance rate is due to lack of government officers for its procedures, thus it results to poor evaluation, ignorance of personal and specific context of applicant, lack of introduction on procedure and rights for refugee application, and language barriers. Therefore, applicants should wait 10.6 months on average for the result of the first evaluation. According to the law, the result of the first evaluation should be announced within 6 months after the application has been received, but this problem is getting worse.

The acceptance rate had been decreasing since 2010, but it has been increasing again from 2018. However, the number of refugee applications are increasing and the acceptance rate is still too low.

³⁴ Refugee Acceptance Rate= Number of Recognition(except for resettlement) / Number of Evaluation Termination (Recognition + Humanitarian Status + Refusal except for Resettlement)%

³⁵ Resettlement is the transfer of refugees from an asylum country to another state that has agreed to admit them. UNHCR is mandated, the evaluation and recognition process are not done by the Ministry of Justice. Thus, the resettlement cases are not included when the acceptance rate is calculated.

Except for the year of 2013, the average acceptance rate during the past years has been just 3.2%. It is quite ironic that the acceptance rate before the refugee law was higher.

2. Categories of Refugee

1) Reasons of Application

The Ministry of Justice announced that the reasons of application can be defined as eight categories such as race, religion, nationality, political belief, specific social group, family reunion, civil war, and others. On the application form, the applicant should choose one reason amongst race, religion, nationality, political belief, and specific group.

The standard of this clarification is based on ① the reason of application chosen by applicant at the time of application ② if one applicant chooses more than two reasons, one reason is selected to be represented for statistic ③ sometimes the reason of application can be changed after an interview. The other reasons like civil war or family reunion are separately counted.

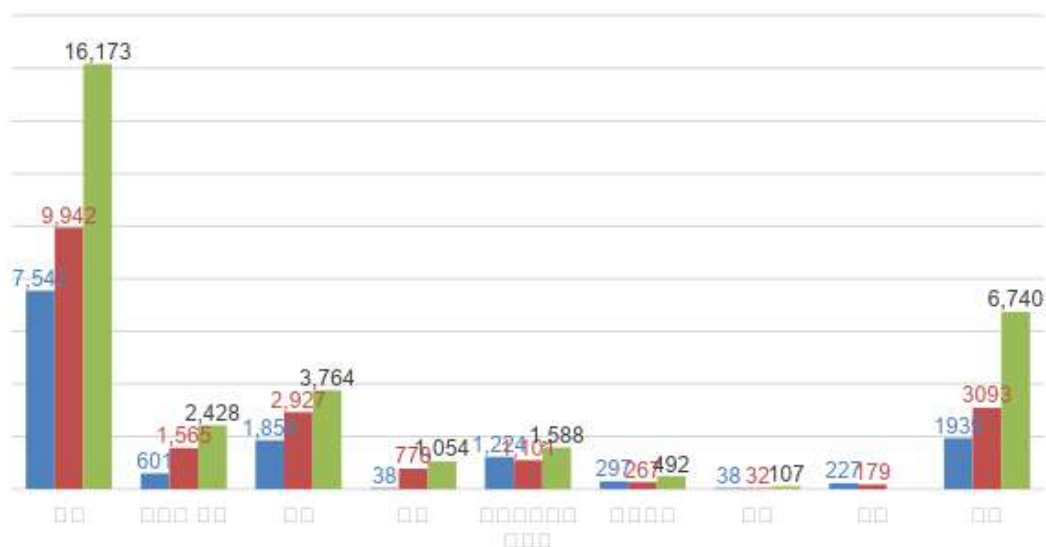
[Chart 2] Reasons of Application (from 2008 to December 2018)

(Number of cases)

Year	Total	Political Belief	Religion	Race	Certain Social Group	Family Reunion	Nationality	The Others
2008	364	126	67	66	29	-	0	76
2009	324	88	83	3	20	-	0	130
2010	423	79	57	86	7	-	0	194
2011	1,011	266	151	83	55	-	0	456
2012	1,143	348	291	35	52	29	3	385
2013	1,574	289	369	78	63	65	2	708
2014	2,896	595	903	106	169	114	7	1,002
2015	5,711	1,397	1,311	200	721	43	7	2,032 (Civil War 428)
2016	7,542	601	1,856	38	1,224	297	38	2,166(Civil War 227)
2017	9,942	1,565	2,927	778	1,101	267	32	3,272(Civil War 179)
2018	16,173	2,428	3,764	1,054	1,588	492	107	6,740

[Graph 3] Reasons of Application ('16~ '18)

(Number of cases)



Total, political belief, religion, race, specific group, family reunion, nationality, civil war, the others from the left.

■ 2016 ■ 2017 ■ 2018

[Chart 2] shows the reasons of refugee application. In 2018, the main reasons of application were religion and political belief. Also the number of application itself increased from the year before. Here we see the growing numbers of “the others”. In 2017, it increased from 3,272 cases to 6,740 cases.

2) Nationalities of Applicants

[Chart 3] Nationalities of Refugee Applicants (from 1994 to December 2018)³⁶

(Number of cases)

Nationality	Numbers of Application
Pakistan	5,388 (+1,120)

³⁶ The numbers in round bracket are about increase and decrease over the previous year.

China	4,839 (1,200)
Kazakhstan	4,306 (+2,496)
Egypt	4,114 (+870)
Russia	2,984 (have no data about previous year)
India	2,398 (have no data about previous year)
Nigeria	2,221 (+390)
The Others	22,656 (+7,496)
Total	48,906

[Chart 3] is about nationalities of refugee applicants. From 1994 to December 31st. The others, Pakistan, China, Kazakhstan, Egypt, Russia, India, and Nigeria are the majority. The largest number of cumulative application belongs to Pakistan. In 2018, refugee applications have been submitted by a lot of people from Kazakhstan and it has increased up to 137%. The whole statistics of all the nationalities are not open due to “diplomatic reasons and for fair treatment”.

[Graph 4] Refugee Acceptance in 2018 by Nationality (from January to December 2018)
(Number of cases)

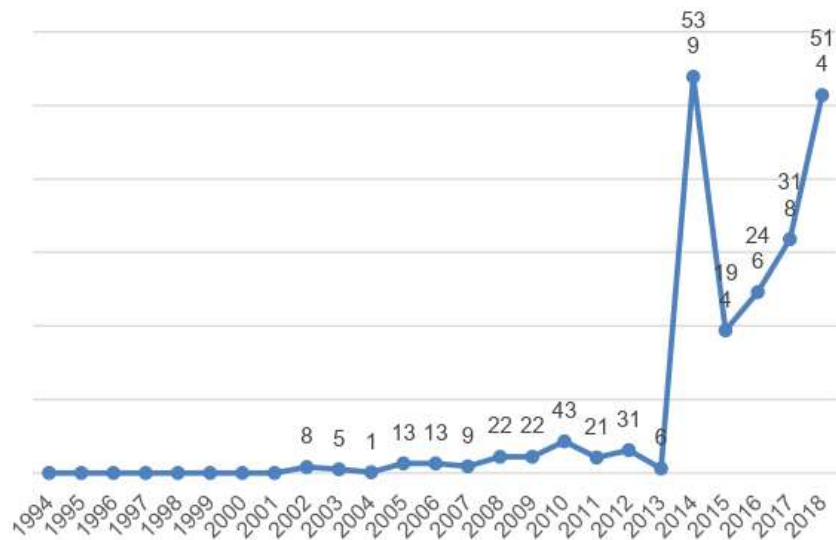


(Myanmar, Ethiopia, Yemen, Burundi, Pakistan, The Others from the left.)

3) Humanitarian Status Holders

[Graph 5] Humanitarian Status Holders (from 1994 to December 2018)³⁷
(Number of cases)

³⁷ Cancellation of humanitarian status cases are not included.



[Graph 6] Cumulative Numbers of Humanitarian Status Holders by its Nationality (from 1994 to December 2017)³⁸

(Number of cases)



(Pakistan, China, Egypt, Nigeria, Bangladesh, Syria, The Others from the left.)

South Korean government granted humanitarian status for refugee applicants from Syria in 2015 and Yemen in 2018. The majority of humanitarian status holders residing in South Korea was Syria

³⁸ Request on information disclosure for the year of 2018 is under progress.

until 2017 which occupies 75.9% of total. But since 2018, the largest portion of humanitarian status holders in South Korea are people from Yemen.

According to South Korea's refugee law, humanitarian status is a residual form of protection available to those not eligible for refugee status. But it's not about "analogous refugee" or "supplementary status". Humanitarian status is not applicable, it is only granted when refugee application is refused and its decision making depends on the Immigration Office.

Most of the humanitarian status holders have limited rights and thus they are not well-protected. Their status is not stable and they are not actually able to get a job. Also, they are just temporarily protected because they are "sort of refugees", but they are "not actually refugees". Accordingly, they can always be expelled. The Ministry of Justice granted humanitarian status for people who should be recognized as refugees and they announced that "we are protecting the majority of refugee applicants". South Korean government should stop the conventional practice granting just humanitarian status for people who should be granted refugee status.

3. Refugee Status Determination

1) First Evaluation, Objection, and Appeal

Refugees who arrive in South Korea will submit their refugee application to the Ministry of Justice for recognition. The evaluation procedure is divided into application, objection, and appeal. During this process, the applicants will be interviewed by the Ministry of Justice. If an applicant is objected to be recognized as a refugee, the person can appeal. And if the appeal is dismissed, the applicant can litigate requiring cancelation of the decision made by the Ministry of Justice.

[Chart 4] Number of Recognition by Evaluation Stage (from 2001 to December 2018)
(Number of recognitions)

Year	First Evaluation at the Ministry of Justice	Second Evaluation at the Ministry of Justice ³⁹	Administrative Litigation
2001	1	-	-
2002	1	-	-
2003	11	1	-
2004	14	-	-
2005	9	-	-
2006	6	1	1
2007	1	-	1

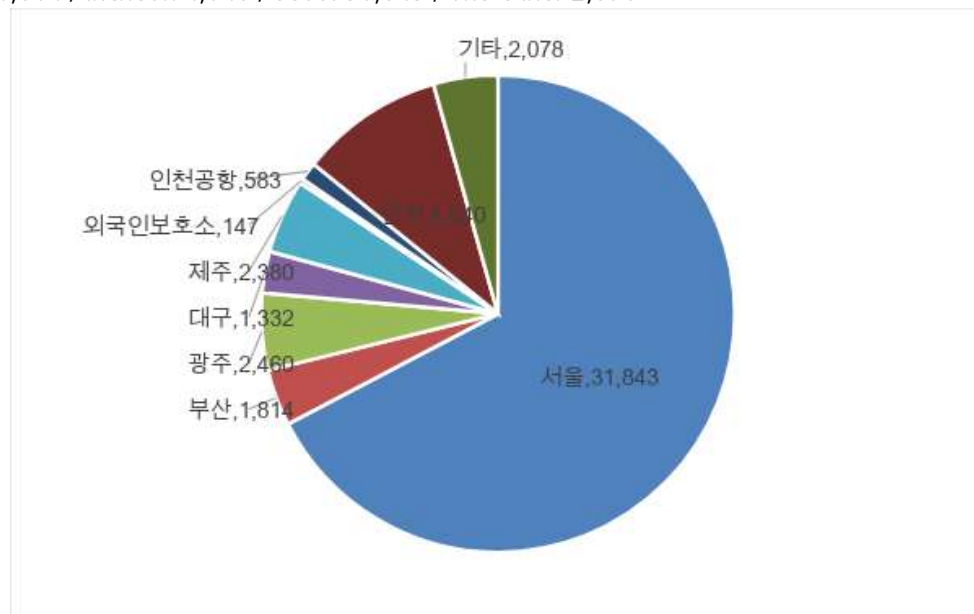
³⁹ The second evaluation means the appealing procedure.

2008	4	-	16
2009	45	10	4
2010	20	8	9
2011	3	8	18
2012	25	-	15
2013	5	9	10
2014	18	53	3
2015	13	27	0
2016	17	10	3
2017	27	24	5
2018	99 ⁴⁰	13	6

[Graph 7] Refugee Application by Determination Office (from 2008 to December 2018)

Incheon Airport 583 / Immigration Processing Center 147 / Jeju 2,380 / Daegu 1,332 / Gwangju 2,460

Busan 1,814 / Incheon 4,640 / Seoul 31,843 / The Other 2,078



Seoul is the hub where it receives the largest number of refugee applications. Around 62% of the whole application has been submitted to Seoul Office. The following chart is about how many government officers are working for refugee status determination at each office.

⁴⁰ Family reunion cases are also included here. Request of information disclosure is under progress on how many family reunions are accepted.

[Chart 5] Number of Government Officers at each Determination Office

(Number of officers)

Office	Seoul	Incheon Airport	Busan	Incheon	Gwangju	Daegu	Jeju	Hwaseong	Cheongju	Total
Number of Officers	22	4	1	4	2	1	2	1	1	38

In total, 38 government officers working for refugee status determination at each regional office. They receive 16,173 applications per year. That is to say, one officer handles 425 cases alone. Though the number of application is growing year by year, but the determination offices are not expanding.

[Chart 6] Refugee Recognition by Appeal (from 1994 to July 2018)

(Number of cases)

	Total	from 1994 to 2012	2013	2014	2015	2016	2017	2018
Decision on Appeal	12,631	1,939	324	968	1,995	4,341	3,064	2,613
Recognition	139	27	15	48	27	10	24	13

The acceptance rate of appeal is also below 1%. The first evaluation at the Ministry of Justice usually has poor reason for refusal and accordingly most of the applicants appeal to the judiciary. However, the judiciary branch doesn't issue any statement of reason when they make final decisions on appealing.

2) Refugee Application at Airport

Refugee application at the airport has become possible for six years. Before the implementation of the refugee law, we were not able to know how many people are repatriated after they apply for refugee recognition. But these days, we have statistics on how many people submit refugee application at the airport.

[Chart 7] Refugee Application at Airport in 2018

(Number of applicants)

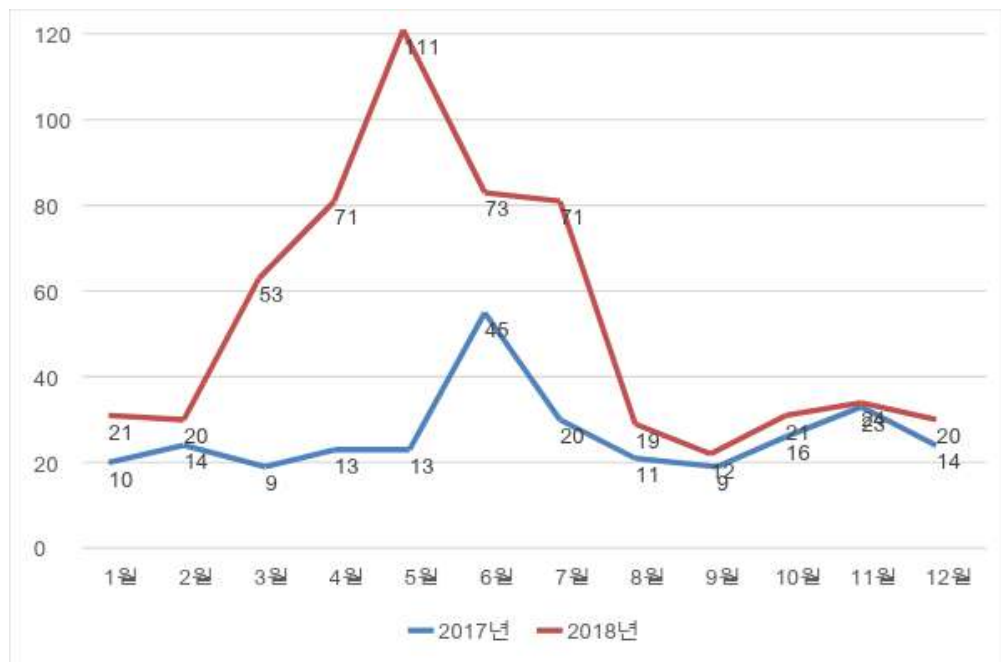
Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Number of Applicants	21	20	53	71	111	73	71	19	12	21	24	20	516

The total number of people who applied for refugee recognition at the airport is 516. It has increased up to 61%. In 2017, the total number was 197. However, refugee applications at the airport is not an official start of the evaluation procedure, but it is about whether the applicant will be able to enter South Korea and submit refugee application afterwards. If an applicant is admitted into South Korea and applies for refugee recognition, the person can enter the country. But if not, the person would be repatriated. Also, there is no procedure for appealing. Thus, if an applicant would protest against a decision, legal action is required.

Additionally, there have been a lot of arguments on inhumane treatments on refugee applicants and its problematic determination procedures. But it hasn't changed. The poor decision-making process, arbitrary determination, detention of applicants at the airport should be much more criticized.

[Graph 8] Refugee Application at Airport in 2017

(Number of applicants)



Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

[Graph 9] Acceptance Rate on Refugee Application at Airport (from 2013 to December 2017)⁴¹
(Percent)



Acceptance Rate on Refugee Application at Airport

The worst acceptance rate on refugee application at the airport was 2017. But in 2018, it was bit better and its acceptance rate was 46.7%. Despite the fatal risk that refugees can be repatriated, the reasons of refusal remains unrevealed on the logic that “such records are not currently archived”.

3) Determination at Judiciary

[Chart 8] Number of Recognition through Administrative Litigation
(From 2001 to December 2018)
(Number of recognized people)

Year	Administrative Litigation
2001	-
2002	-
2003	-

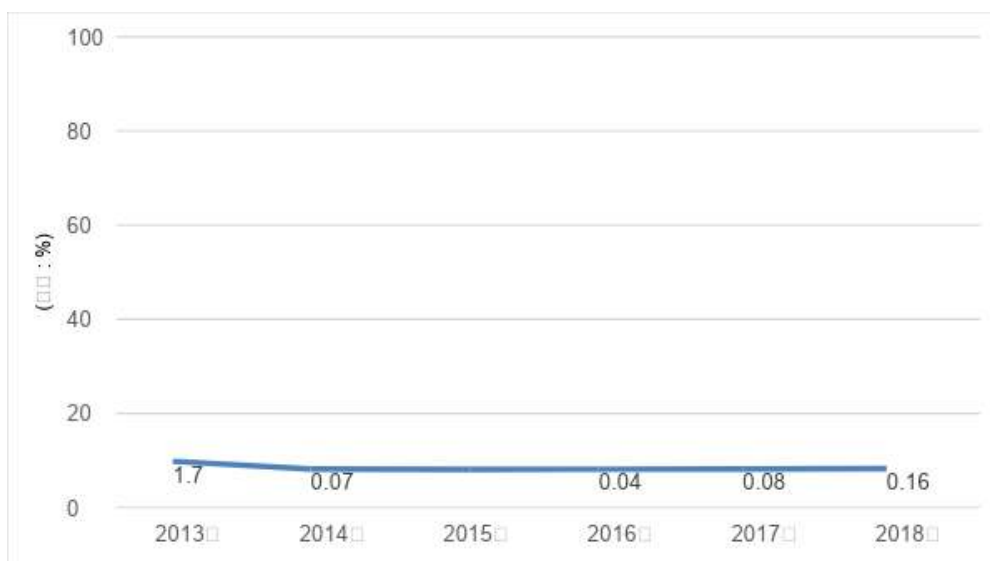
⁴¹ Request of information disclosure for the year of 2018 is under progress.

2004	-
2005	-
2006	1
2007	1
2008	16
2009	4
2010	9
2011	18
2012	15
2013	10
2014	3
2015	0
2016	3
2017	5
2018	6

[Chart 9] Rate on Recognition through Administrative Litigation (from 2013 to December 2018)
(%)

Year	Administrative Litigation
2013	1.7
2014	0.07
2015	0
2016	0.04
2017	0.08
2018	0.16

[Graph 10] Rate on Recognition through Administrative Litigation



People appeal to the judiciary after being disappointed by the Ministry of Justice. However, being accepted as a refugee at the judiciary is also extremely difficult, it's almost like a miracle. Considering their situation, they don't have "objective" evidence to explain their context enough, but judiciary requires so many and very high level of evidence to prove that their appeal is reasonable. More importantly, such lawsuit is costly. It is very difficult for refugees to have money and lawyers for taking legal actions. Only very few applicants are assisted by a lawyer. In most cases, trial is over while not having the opportunity to explain their situation and context enough. Therefore, the recognition rate through administrative litigation can never be high.

Some people arrange money and hire a lawyer for lawsuit but it is almost impossible in most cases. They have difficulties explaining their situation to judges and lawyers due to language barriers and also face ignorance of political contexts of their countries. Applicants are under a structure that refuses them. However, the rhetoric "the applicants are not real refugees" is still strong and pervasive, and it is a causes them for losing the lawsuit.

4) Increasing Reapplications

[Graph 10] Number of Reapplications

(number of cases)			
2016	2017	2018	Total
301	991	1,160	1,292

The number of reapplications in 2018 was 1,292. It is around 7% of the whole refugee applicants. In July 2016, the management policy on foreigners' stay has been tightened. In this regard, re-applicants' rights to stay and get a job in South Korea have become strictly limited. Also, the Ministry of Justice tries to shorten the time for determination for such reapplications.

However, such reapplications are the results of poor recognition rate. Though the refugees only have very limited rights, they reapply for recognition because they didn't have enough opportunity to explain themselves in terms of language barrier, ignorance, and lack of introduction on refugee recognition application procedure, etc.

Such re-applicants just receive a certificate which defers their departure and are not able to get alien registration certificate.

4. Treatment of Refugees

1) Treatment of Refugee Applicants

In most cases, refugees live their lives for around three or four years as just an applicant. However, such living conditions are not really known. They suffer from some wrong ideas such as they are "not yet refugees" and thus "we don't need to protect them", or they are just "fake refugees".

After applying for refugee recognition, applicants can get living allowance for maximum six months (around 430,000 KRW for person). But due to the lack of budget, only 3% of the whole refugee recognition applicants became its beneficiaries. The budget can only cover about 700 people. After applying for recognition, the applicants are prohibited to get a job. Thus, the 97% of people who failed to receive living allowance, they have to suffer under extreme difficult situations.

Also after applying for recognition, the applicants can visit and receive some help from the Foreigners Support Center in Yeongjong-do, but the center can only cover 164 people while refugee applicants per year are ten thousand.

2) Treatment of Humanitarian Status Holders

Since 2014, there are much more humanitarian status holders than recognized refugees. They are mostly from Syria and Yemen. South Korea only granted humanitarian status for people who applied for refugee recognition en bloc.

Humanitarian status is not about analogous refugee or supplementary protection. It only allows stay and getting a job within a year. And sometimes, the stay is only allowed for three months. So it is quite unstable and arbitrary. For those who are only allowed to stay for a few

months, it is almost impossible for them to get a job. Also, they are not allowed to have family reunions or access to the education system. Their working area is also very limited to simple labor. Among these lines, they can't continue their lives, and just have to survive to eat.

3) Treatment of Refugees

A person who is recognized as a refugee and stays in South Korea will be provided social security at the same level that of Korean nationals such as primary and secondary education for children, social education, acknowledgement of academic and professional capability, and staying in the country with spouse and children. In the case of family reunion, the family members can also be recognized as refugees and stay in South Korea.

According to a research from the Research Association for Refugee Rights in Korea,⁴² the refugee law which guarantees refugees' rights and treatment are not actually practiced in reality. Social services are not provided in many languages, and they are mostly designed for married immigrants, not refugees. Also, from birth registration to education, refugee children face many barriers and problems. Additionally, their academic ability and work experience are not fully acknowledged. Therefore, even if an applicant is recognized as a refugee, to be a member of South Korean society is extremely hard.

Though the refugee law describes refugees' rights and treatment, there is no actual policy. It can be said that there is no resource for supporting refugee applicants. Resettlement procedure is being done by the Ministry of Justice for thirty refugees from Myanmar every year. Refugees are not able to get any support after being recognized, and they are unaware of their "rights."



⁴² For more on it, please visit <http://www.nancen.org/1826>.

Refugee Situation Overview in Japan

Mitsuru Namba (Japan Lawyers Network for Refugees)

Introduction

Japan is far from mainstream countries in terms of accepting refugee, along with its restrictive immigration policy dubbed as ‘closed country’. Under this policy, Japan had not been a party of the Refugee Convention for decades after the end of WW II. As a response to the flow of Indochina refugee and the pressure from the US, it finally joined the Convention in 1981. However, the number of refugees accepted in Japan has been very few, just 750 in total from 1982 to 2018. This led to an unusual mention in the UNHCR Global Trends 2017, ‘Japan stands out as having a particularly low total protection rate’.

In the backdrop of this refugee situation in Japan, I would examine a few questions in my speech: (1) why has Japan admitted very few refugee over the years, (2) how does Japan respond to people who seek international protection from state violence and conflict countries, (3) to what extent this policy can be attributed to Japanese public sentiment towards refugees.

Reasons for low protection rate in Japan

In recent years, while the number of refugee recognised in Japan - mainly from Middle East and African countries (i.e. DRC, Afghanistan, Ethiopia, Syria, Yemen) - remains at only 20 to 40 per year, the number of applications for asylum have rapidly risen from around 2,000 in 2011 to nearly 20,000 in 2017. The reason for this sharp increase of refugee application is the increase of applicants from Southeast and South Asian countries (i.e. Philippines, Vietnam, Sri Lanka, Indonesia, Nepal). While not few of them are thought to be ‘economic migrants’, this sudden increase can be attributed to the labour shortage in Japan and the relaxation of visa requirement for citizens of these countries by Japanese government.

On the other hand, it is much less easier to explain the reasons for Japan to have admitted so few refugees. Commentators have given various explanations: (1) geographical barrier, lack of historic ties with refugee producer countries, and non-existence of refugee communities have set the bar high for asylum seekers to choose Japan as a host country, (2) very low protection rate has established image of

Japan as a harsh country for refugee and therefore asylums seekers tend to pass Japan when searching destination country, (3) the inadequacy of social infrastructure for receiving refugees, together with the difficulty of learning language and culture, has made Japan less popular among refugee groups.

While these multiple factors appear to have combined to create very few refugee acceptance record in Japan, the strict interpretation of the Refugee Convention by the Ministry of Justice epitomises the position of Japanese government towards the acceptance of refugee.

Japanese response to asylum seekers from state violence and conflict countries

The Ministry of Justice in Japan has interpreted the term of ‘fear of persecution’ - a core requirement under the Refugee Convention - as such that a person who applies for asylum should establish that one is singled out and individually targeted by the government of country of origin. This narrow interpretation of the Refugee Convention is reflected in the decisions on asylum seekers from state violence and conflict countries such as Rohingya in Myanmar and Syria. In case of Rohingya, among around 120 Rohingya people who applied for asylum by 2017, only 19 were recognised as refugee and 80 were granted temporary permission, but no protection was given to the rest 20 persons. Regarding asylum seekers from Syria, of 81 Syrians who applied for refugee status until the end of 2017, just 15 were granted refugee status, though the rest were permitted to stay temporarily.

Against this position held by the Ministry of Justice, refugee rights advocates in Japan have launched strategic litigations to advance legal standards and improve access to refugee rights and protection. However, except for a few cases, Japanese courts are largely restrictive and tend to follow the decisions by the government. In the case of a Syrian who fled there after participating in demonstration against the Syrian government in 2012, Tokyo District Court and Tokyo High Court rejected his refugee claim by saying that he was not individually targeted by the authorities, as he was not in the leadership position among activists.

This strict interpretation of the Convention in Japan reflects the conventional concept of asylum after the WW II, but it has been replaced by many countries to address the current refugee problems in the context of civil war and armed conflicts. However, Japan has maintained this stance long after the end of the Cold War, probably reflecting the geopolitics of East Asia and anti-communist legacy of its immigration policy. The fear of refugee flow from Korean Peninsula is clearly shown in a recent comment by Japanese Deputy Prime Minister. In 2017, asked about how authority would respond if North Korean refugees flee Korean contingency to Japan, he replied that ‘Can the police handle them? Will the military forces be dispatched and shoot them down? We had better think about it seriously’.

Public sentiment on refugees in Japan

In 2015, a manga cartoon posted at Facebook by a right-wing artist drew attention in Japan. Portraying a six-year-old Syrian girl in refugee camp, it says, ‘I want to live a safe and clean life, eat gourmet food, go out, wear pretty things, and live a luxurious life... all at the expense of someone else... I have an idea. I’ll become a refugee’. While this racist and insulting cartoon quickly caused outrage in Japan, Japanese public sentiment on refugees can be characterised by indifference and ignorance. In a survey conducted by Gallup in 2016, it was revealed that Japanese have very low awareness of refugees and the UNHCR among Asian countries.

However, at least now, it appears that hatred against refugee and asylum seekers has not necessarily been prevailed among the Japanese public. Rather, anti-Korean and anti- Chinese sentiment and hate speech against them have been escalating by right-wing groups, heightened by the political tension between Korea and Japan, and the rise of China as an economic and political superpower. Ironically, it might be said that Japanese government has been successful in curbing the rise of anti-sentiment against refugees by making them invisible in Japanese society.

Conclusion

These attitudes of Japanese public seem to be in correspondence with Japanese low refugee acceptance record, and the geopolitical perception of Japan in East Asia as well. In this sense, the way forward for refugee rights advocates to improving refugee situation in Japan should not be achieved only through law and practice, but through cooperation within the region in every field to overcome the nationalism, and to tackle the negative legacy of colonialism and the Cold War.

Refugee Situation in Hong Kong

Isaac Shaffer (Justice Center)

My name is Isaac Shaffer. I am Legal Services Manager at Justice Centre Hong Kong, an NGO that adopts an integrated approach in furthering the rights and protections available for individuals in need of international protection in Hong Kong. Our legal team provides legal information and support for those who are navigating the system; along with technical support and assistance to external public lawyers. Our legal work informs and is informed by our targeted policy, research and advocacy work.

In this presentation I will very briefly outline some of the relevant legal and political context in Hong Kong, and outline the challenges faced by both those seeking protection and those that would otherwise seek to realise and expand such rights.

It speaks volumes that the greater part of this presentation and any such discussions will be centred on the difficulties in just obtaining the (negative) right of non-refoulement protection; and so leave us little time for any more substantial discussion regarding consequent positive, broader rights.

As I understand it the primary purpose of these discussions is to review the interchange between ‘black letter law’ as it relates to refugees; the public’s perception of the refugee community; and the forms of discrimination faced by this community. As I will outline – in this respect, Hong Kong observes something of a negative feedback loop with widespread negative stereotypes and hostile public perception pervading all aspects of decision-making and leading to amongst the lowest recognition rates in the world; and with these low rates then used to legitimate the failing system, and of what I call “legislation by press release” – using draconian legislative proposals to feed and feed into discriminatory beliefs (and underlying racism and xenophobia).

This is typified by the oxymoronic term “fake refugees” - used routinely by both mainstream press and even Hong Kong Legislative body.

Overview of what I will address briefly today.

Firstly, a very brief illustration of the relevant context in HK – the background and origins of the present system. Secondly: a health check of the USM – to give indications of what I suggest the measureable outputs tell us about how/if it is working. Lastly – I will sketch a few reasons for the problems within the system; and by extension how such problems can be addressed/avoided.

I have included this very telling quote from Hong Kong's Immigration Department as I think it provides a clear insight into both the public and likely private perception: HK is wealthy and therefore any asylum system is a magnet for those who would abuse such systems to bypass other routes of migration.

However, despite this, as you will know, HK does have a refugee protection system, despite not being a signatory to the convention. I will briefly outline how this anomaly has arisen.

First – note that there are three international human rights instruments that form the foundation of the protection regime in Hong Kong: the UNCAT; ICCPR and to a lesser degree, the Refugee Convention.

The ICCPR was extended to Hong Kong in 1976 and continues to apply. It has been incorporated into our domestic law by virtue of the Hong Kong Bill of Rights Ordinance (BORO), which was enacted in 1991. However, note that s.11 of BORO seeks to exclude all those without lawful immigration status from its rights and protections.

The CAT was extended to Hong Kong in 1992, and continued to apply after the handover. Art 3 of CAT was ratified into domestic law by the amendment of the Immigration Ordinance in 2012 (Part VIIC introduced) and is directly enforceable.

Since 1997, the views of the HKSAR Government have to be sought before international agreements to which China is a party (or becomes a party) are extended to Hong Kong. Whilst China is a party to the Refugee Convention, Hong Kong is not. However, there is in place a policy to determine persecution claims with reference to the RC, as I will explain. So in the absence of the Convention, how did this part of the protection system arise?

In short: to a successive wave of judicial interventions in the higher courts over a 10 year period from 2004-2014. In effect, the Courts have imposed the protection system.

The successful arguments in the Courts were broadly the same, and very simple: (i) that the HK Govt. was not able to be willfully blind to its international obligations as arising from international treaties that he signed up to (mainly in respect to the risks individuals would face if returned to their countries); and, that it had a duty to evaluate and determine risks of such breaches fairly and itself and/or had to adhere to the

implementation of domestic policies that had sought to be in line with the same). The Courts were persuaded. Firstly, with Torture Claims (with reference to UNCAT); then CIDTP claims (under ICCPR), and then finally persecution claims (with reference to the Refugee Convention).

Being forced to yield on each ground one by one, with each of these challenges a new system had been tacked on. In practice this has meant that many, if not most refugee claimants have had to go back to be re-interviewed, re-determined, several times and often years apart. This has understandably led to a significant backlog in the system and many claimants have had to wait a decade or longer to secure protection/reach a final decision on their claim. It is clearly the case that a backlog was reasonably foreseeably going to be created. But official statistics conflate the number of “new” claims at the relevant periods, generating a narrative of a ‘flood’ of applications. At times it has appropriate the language of crisis, and frequently employed harsh rhetoric and regressive proposals including ill-conceived notions of expediting consideration.

This sense of volume and this self-created backlog has fed into natural prejudices regarding ethnic minorities. With refugees lacking visibility in HK this has further allowed prejudices to take hold – in part due to property prices and meagre state subsidies that mean if you claim asylum you are compelled quite literally to live on the fringes.

The consequence of a judicially imposed protection regime, the present ‘USM’ system has been in operation since 2014. Outside of HK the prospect of Refugee protection without the convention is naturally of considerable interest – as is the extent to which it might work/fail, and why.

I would suggest that key to understanding why the USM has failed lies precisely in its troubled origins. It was not a willingly undertaken enterprise in the spirit of humanitarianism, rather it arose without public or executive/legislative support (or even understanding). There appears to have been no cohesive thinking (or concern) given as to how this might impact decision-making or the fair administration of such a system. Legal system and administrative systems aren’t impervious to social attitudes, prejudices and ignorance.

In my view, the failures of HK’s system are informative. But they are also treatable. I will come back to both of these points briefly at the end.

Other regions who are not signatories may well hunger for such a system as more realistically achievable than acceding to the convention given global context. However - it is my contention that the system is an abject failure – and I’ll give you a few measureable outputs to try and persuade you of this. They clearly don’t tell the

whole story but I will suggest they are heavily indicative. I see them as a kind of smoke alarm.

Firstly, if we look at decision-making at first instance: i.e. the decision-making of the HK Govt., from the beginning of USM to now the overall acceptance rate remains significantly below 1%. By comparisons with when UNHCR was acting as the decision-maker it appears that acceptance rates were around 10-15% or even higher. Global averages are probably distinctly above even that, depending on how you cross compare. But, in any case the gulf from 10% to 1% must be cause for alarm, or otherwise demand explanation. This is clearly a crisis.

And this is despite known countries of concern being present amongst the population of those who are seeking asylum.

The alarming and growing number of individual withdrawals is also very instructive. I read this together with the falling numbers coming to HK (although there are other reasons for that too).

As explained this very low acceptance operates as a vicious form of circular logic. It is used to delegitimise any concerns about the system. Note that this low rate is present despite the allocation of free legal representation. I don't have time to address that point today, but just to say that lawyers are not set aside from societal attitudes either, which is a factor.

Once you have received a refusal decision from the Immigration Department, you may then appeal to a Quasi-judicial Board. But with this appellate process being *de novo* that means that there is little/no answer to poor decision-making no corrective influence exercised.

As is evident, the number of appeals submitted is going up in step with the faster pace and number of initial immigration decisions being churned out. And we can also see a corresponding increase in the number of appeals determined as the pace of the quickens. However, the acceptance rate again remains abysmally low – even lower than at first instance.

One key issue is that the decision to continue to legally represent is placed entirely at the discretion of relevant lawyers and is in effect financially disincentivised via the publicly funded scheme; and there is no appeal process for refugees denied legal representation as against that decision or means for review.

This means that most appellants are unrepresented despite the obvious complex and momentous significance of such proceedings. Whilst the Board's decisions are very poor – most decision contain basic errors of law and fact. These have included (in our experience): getting the country wrong; the use of Wikipedia as the primary source of COI; a pregnant appellant in labour being denied an adjournment; a gay client's

sexuality being determined on the basis that he “...wasn’t dressed gay”; frequently no reasoned and agreed approach to determining credibility assessments; little access to other forms of evidence and little weight given to testimony. Pervasive hostility, cynicism and disbelief evident and an operating factor in decision-making.

I would suggest that the key to understanding this is knowing that hearings are closed and judgements are not published. Where does the light get in?

And with such an appalling chance of success, how did the promise of the USM result in such failure?

It’s hard to ignore that features of the transition period, or the failure to have a properly considered one, continue to leave a mark. I’m this way the HK experience works well as a cautionary tale – and may offer guidance where other states are engaging in such transitions or in building systems from scratch. Failing to plan is planning to fail.

Understanding and ensuring public understanding and perception was clearly not considered. Perhaps in the belief that legal/administrative decision can be sterilised.

For these reasons, HK created a legacy of systemic problems which could have been avoided: a backlog with political costs, and additional public expenditure; and therefore a need for other narratives to be spun. For migrant and refugees across the world these are all too familiar paths.

So with all that said, where can HK go from here?

A few sketches of suggestions only, in the time remaining. As indicated on the slides, a few threads are required to be weaved together.

Firstly, the public perception of the USM and that of decision-makers and officials must be shaped to allow for a positive vision of HK’s protection regime. With that seen as playing an integral part in the ecosystem of the rule of law, of good governance and key to being a responsible (and reputable) international actor etc. Coordination including with the private sector in this is vital too.

Data led, empirical research will continue to play a part in unveiling myths and exposing systemic problems. As will the need to present practical and pragmatic policy alternatives. But the methods of communication and engagement may need to be broadened to better connect.

Whilst a much greater visibility of those claiming asylum and efforts to create spaces for their voices to be heard is a key part of this too. In this way, the courage and resilience of refugees will continue to speak more powerfully than anything else.

Finally, lawyers have a part to play too, in pushing for the cautious, gradual acculturation of decision-makers via litigation. Strategically brought cases to develop understanding of public law principles, of refugee law (and international standards). and the exposure of bad-decision making to the fresh air, and with it to help place the issue within in public consciousness.





Overview

JUSTICE CENTRE | HONG KONG
PROTECTING FORCED MIGRANTS' RIGHTS

1.	Origins of HK's Protection Regime (The 'USM')
2.	USM in Operation: A Few Measurable Outputs (4 years on).
3.	Diagnosis & Opportunities for Progress?

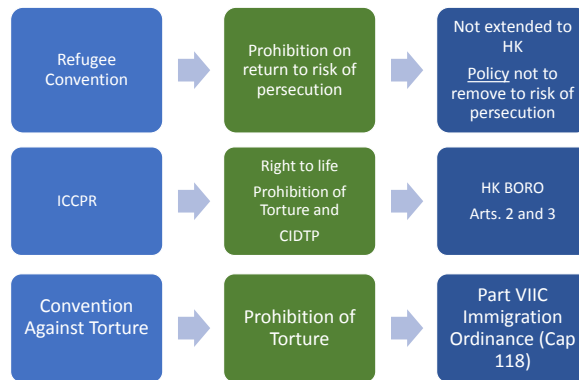
10

Development of Asylum Law in Hong Kong

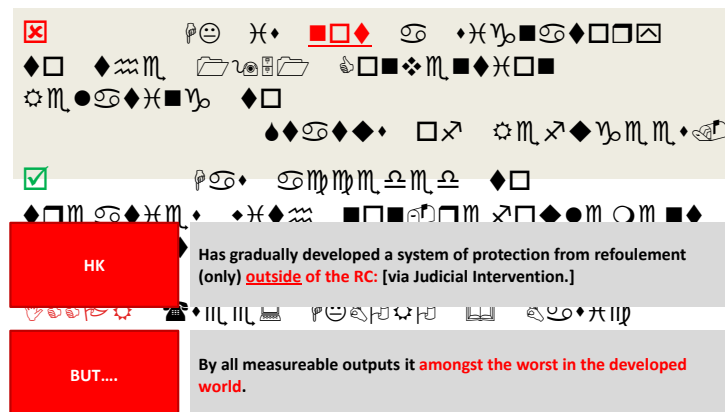
JUSTICE CENTRE | HONG KONG
PROTECTING FORCED MIGRANTS' RIGHTS

"Our unique situation, set against the backdrop of our relative economic prosperity in the region and liberal visa regime, makes us vulnerable to possible abuses if the Refugee Convention were to be extended to Hong Kong. We thus have a **firm and long-established policy of not granting asylum and we **do not admit individuals seeking refugee status.**" – HK Immigration Department**

Key International Protection Instruments in Hong Kong law



1. Origins: HK's Screening Mechanism



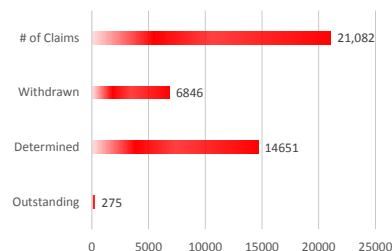
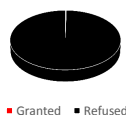
2. HK's Screening Mechanism

Claims made at First Instance:

[Cumulative from 2014 to present]



Claims Determined:



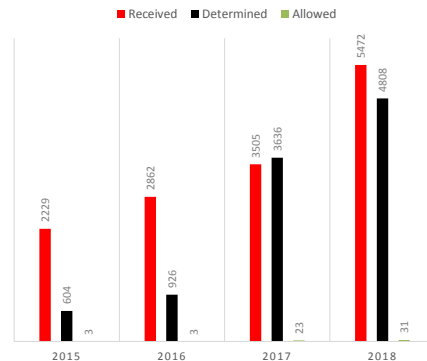
The acceptance rate: **0.8%**

- From 2018: new claims **exceeded** by withdrawals;
- New Claims **declining** each year (around 37 %).

2. HK's Screening Mechanism

Appeal: Before Appeal Board

[From 2014 to 2018]



- Acceptance rate is around **0.5%**
- **91%** unrepresented at appeal stage.
- Recruitment for Adjudicators: **lacks transparency**.
- Decision-making **not published**

7

3. HK: Problems in Transition

Failures in Transition



- No coherent *staged* transition plan following handover of RSD.
- No/very limited engagement between Govt./UNHCR, CSO and legal profession.
- Coordination *between* CSO's and legal profession weak – lack of collaboration (and experience).
- No public awareness of protection needs: hostile rhetoric pervasive. System lacks legitimacy in the eyes of public.
- Inexperienced policy makers/legislators: lack of technical expertise - proposals lack relevant specificity & detail required.

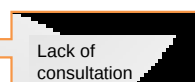
8

3. Structural Problems & Opportunities



Legal Representation

- Very minimal training given (CPD);
- No supervision or meaningful oversight/sanction/regulation.
- Wide discretion on continuing at appeal stage (no review/appeal process).
- Difficulty obtaining funding for JR (29 grants in whole of 2017) and no other provision.
- No-for-profit legal structures impermissible.
- Limited culture or experience of public law amongst profession.
- Limited access to lawyers (e.g. where detained).



Quality of Decision-making

- No review/publication of decisions.
- Lack of independence via review processes.
- Lack of any timelines for procedural steps.
- No detailed guidance/policy for complex process – law is inadequate;
- Minimal training given to decision-makers.
- Entrenched adversarial approach and lack of investment in quality rather than quantity of outcome.

9

E-Ling Chiu (Taiwan Association for Human Rights)

Taiwan : The long road to Refugee Law



E-Ling Chiu, eeling@tahr.org.tw

Taiwan Association for Human Rights



Taiwan

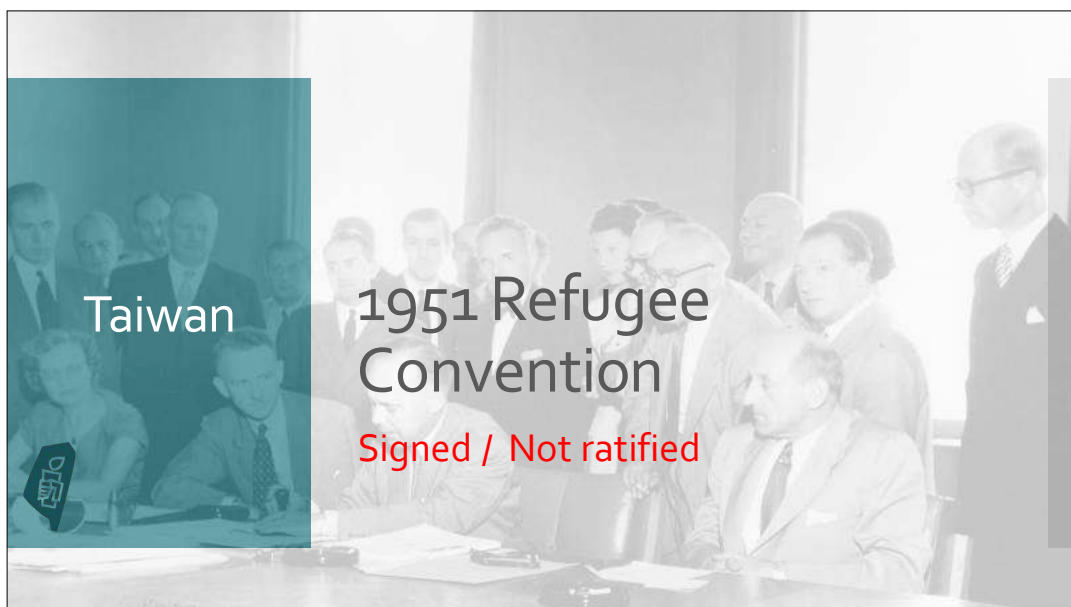


- Capital : Taipei
- Population: 23,000,000
- Ethic groups :
 - 70% Hoklo/Taiwanese
 - 14% Hakka
 - 14% 1949 KMT army and the Chinese immigrants
 - 3.1% New immigrants
 - 2.4% Aborigines
- Current ruling party: DPP
- President: Ms. Tsai Inn-wen

Taiwan



- 1895-1945 Japanese colonization
- 1949-1987: Martial Law period, ruling party: KMT
- 1996 the first President election
- 2000 the first political transition
- 2008 KMT regain the ruling power
- 2014 sunflower movement
- 2016 DPP won the Presidential election and become the majority of Parliament



Taiwan

1951 Refugee Convention

Signed / Not ratified



Taiwan

1971 withdraw from UN
under the pressure of
China



Taiwan

2009 passed the Implementation Act of
ICCPR and ICESCR

Conventions which have become
domestic law: CEDAW, CRC, CRPD,
ICCPR, ICESCR

2013: 1st ICCPR+ICESCR review
2017: 2nd ICCPR+ICESCR review



Review Meeting of the ROC's Second Report under the ICCPR and ICESCR

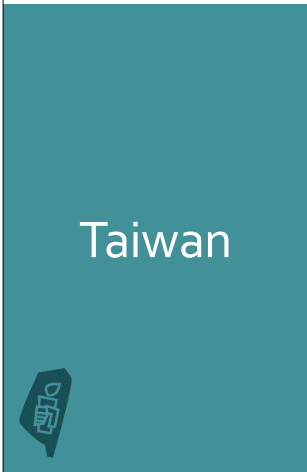
公民與政治權利國際公約
經濟社會文化權利國際公約

中華民國第二次國家報告國際審查會

Taiwan

- Review committee of ICCPR: lack of “non-refoulement” principle in Immigration Act

urge the Taiwanese government to pass the Refugee Law ASAP

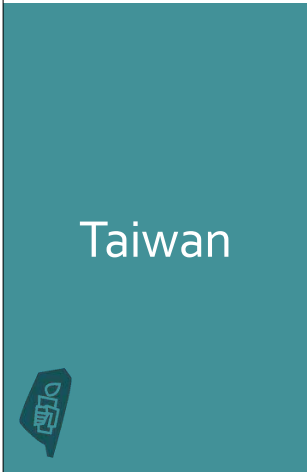


Taiwan

Domestic law related to refugee

Article 16 of Immigration Law

Stateless people from India or Nepal who have entered the Taiwan before 29st June 2016 and cannot be repatriated may be allowed to reside in the Taiwan by the NIA if their status has been identified by the review meeting which convened by the central authorities in charge of the Mongolian and Tibetan Affairs.



Taiwan

Domestic law related to refugee

Article 2 of Organization Act of the National Immigration Agency

The Agency shall be in charge of the following matters:

9. Determining the status of potential refugees, and handling matters relating to refugee asylum and sheltering.

Taiwan



Domestic law related to refugee

Article 51 of Employment Service Act

Where the employed foreign worker is amongst any of the following, the requirements as referred to in Paragraphs 1 and 3 of Article 46, Article 47, Article 52, Paragraphs 3 and 4 of Article 53, Subparagraph 5 of Article 57, Subparagraph 4 of Article 72 and Article 74 are exempted, and his/her employer is also exempted from paying the employment security fees as required under Article 55:

1. A refugee permitted to stay

Taiwan



Domestic law related to refugee

Article 18 of Laws and Regulations Regarding Hong Kong & Macao Affairs

Necessary assistance shall be provided to Hong Kong or Macau Residents whose safety and liberty are immediately threatened for political reasons.

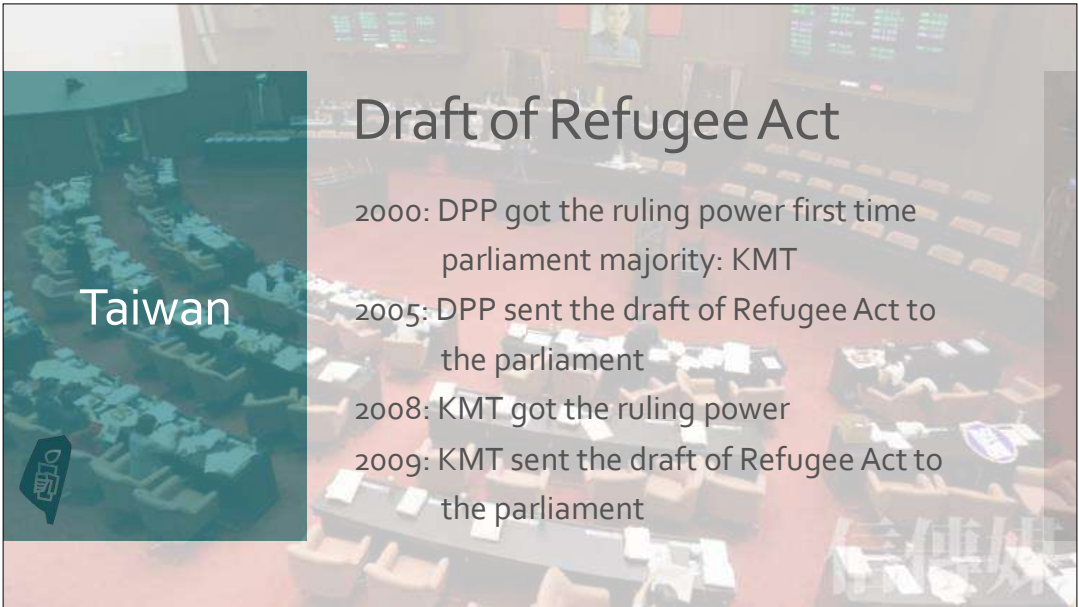
Taiwan



Domestic law related to refugee

Article 17 of Act Governing Relations between the People of the Taiwan and China

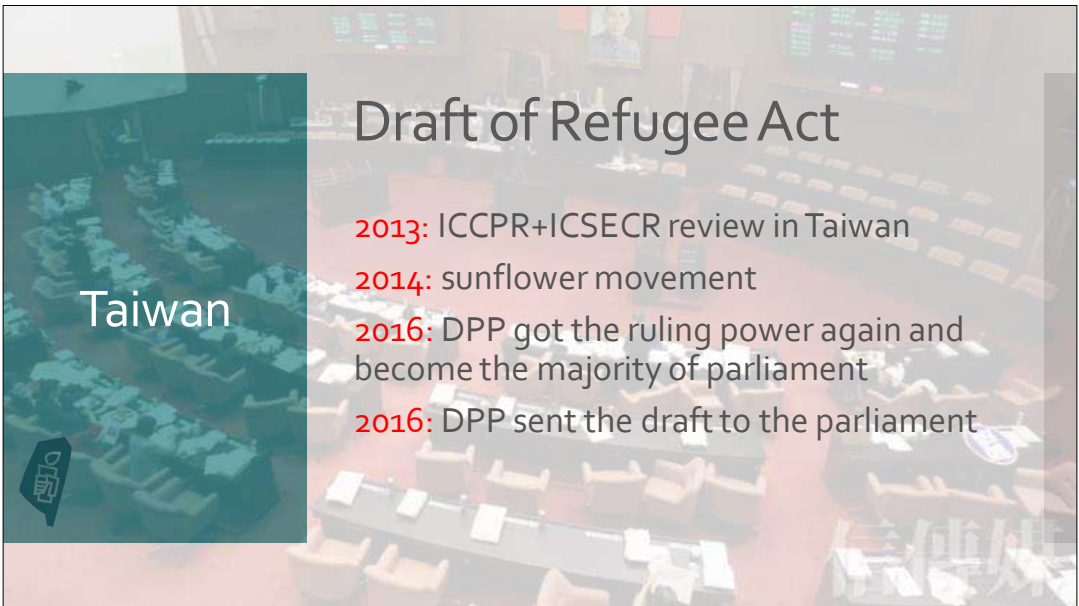
The Ministry of the Interior may permit specifically on a case-by-case basis any of the people of China to have a long-term residency in Taiwan out of political, economic, social, educational, science-tech or cultural consideration and may restrict the categories and quota for residency applications;



Draft of Refugee Act

Taiwan

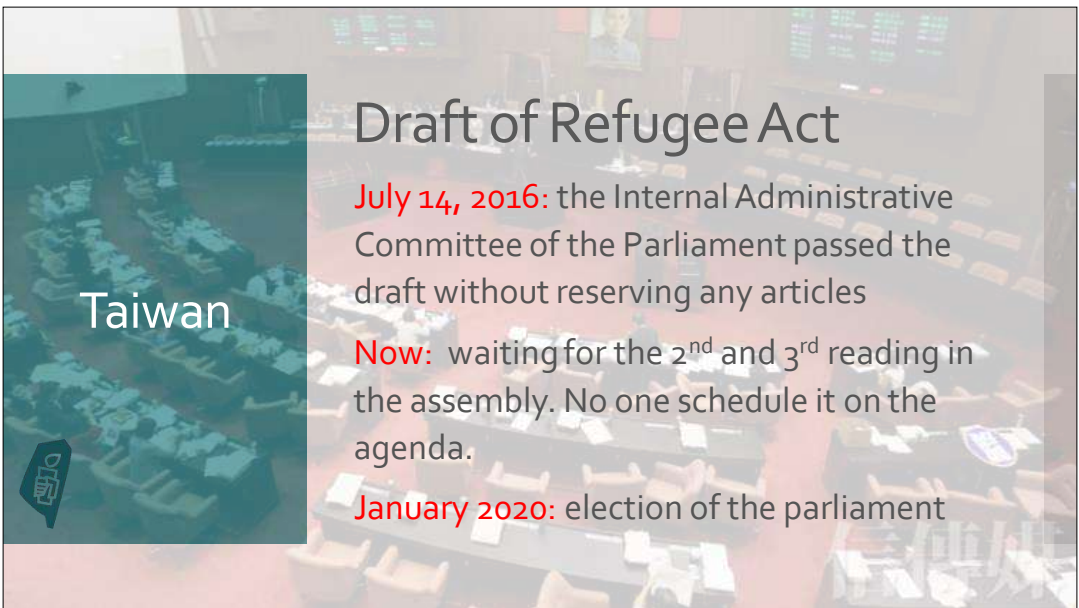
- 2000: DPP got the ruling power first time
parliament majority: KMT
- 2005: DPP sent the draft of Refugee Act to the parliament
- 2008: KMT got the ruling power
- 2009: KMT sent the draft of Refugee Act to the parliament



Draft of Refugee Act

Taiwan

- 2013: ICCPR+ICSECR review in Taiwan
- 2014: sunflower movement
- 2016: DPP got the ruling power again and become the majority of parliament
- 2016: DPP sent the draft to the parliament



Draft of Refugee Act

Taiwan

- July 14, 2016: the Internal Administrative Committee of the Parliament passed the draft without reserving any articles
- Now: waiting for the 2nd and 3rd reading in the assembly. No one schedule it on the agenda.
- January 2020: election of the parliament

Taiwan



NGOs' opinions on the Draft of Refugee Act

The draft is not prefect, TAHR and APRRN and NGOs made a Joint Statement on the draft.

Taiwan



2013 NGOs' opinions on the Draft of Refugee Act

- Preliminary Evaluation
- The composition of the Review Committee members, elements of review
- Due process of the application
- Exclusion provisions
- Third safe country

Taiwan



2019 NGOs' opinions on the Draft of Refugee Act

**Just pass the Law !
Please.**

Taiwan



Obstacles

- No votes for the election
- Asylum seekers from China :
 - KMT: pro-China
 - DPP: threat from China
- The right wing conservative force

Taiwan



- The draft won't be applied to asylum seekers from China
- There's another law regulate people from China
- Different from the law applied to the people from North Korea to South Korea

Taiwan



- DPP is worried about that more and more Chinese spy could use this reason to enter Taiwan
- TAHR: the identity check could be cooperated with national security agency
- TAHR: even the law doesn't pass, Chinese spy could use any way to come



Taiwan



More than 5 Turkish families facing passport issues in Taiwan



Taiwan



18 Stateless Tibetans from Nepal and India still wait for the prolonged review by National Immigration Agency and Ministry of Foreign Affairs.

Story telling



Handbook



Press conference 2017



East Asia Refugee Forum 2012, 2017



Training for immigration officers, judges, lawyers 2017



Training for lawyers and NGO workers 2018



Film screening



Child books



Overview of Refugee Rights Protection in Indonesia from CSO Perspective

Zico E. Pestalozzi (Indonesian Civil Society Network for Refugee Rights Protection)

Indonesia, as a transit country, is hosting asylum seeker and refugee to the amount of more than 14000 people from 49 countries of origin. Since SUAKA starts to advocate on this issue in 2010, the number of asylum based on UNHCR statistic always fluctuates around that number, with the highest condition happened during the Andaman Sea crisis.

Back in 2010, Indonesia did not have a specific legal framework on the refugee issue, nor Indonesia is a signatory party to the 1951 refugee convention, not likely in the near future. However, Indonesia includes the rights to seek asylum in the constitution, as well as have ratified or accessed most of the core international human rights treaties, therefore Indonesia is obliged to respect, to protect, and to fulfill the rights of everyone, including asylum seekers and refugees, under its jurisdiction.

In 2016, Indonesia finally issued a Presidential Regulation number 125/2016 on the Treatment of Refugees and Asylum Seekers in Indonesia. One momentum that helped to spurt the issue of this regulation is because of the massive influx of Rohingya during the Andaman Sea Crisis back in 2015, though the effort to formulate this regulation had begun since 2010. The regulation adopts the same definition of a refugee as the 1951 convention and does not differentiate between refugee and asylum seeker. Refugee no longer falls under the category of illegal migrant based on this regulation, thus the status and treatment are different.

Unfortunately, this regulation only provides provision in terms of finding (search and rescue), placement (shelter), safeguarding, and immigration supervision. It does not comprehensively regulate regarding the protection of refugee rights such as education, access to health, or rights to an adequate standard of living. The challenge, even after 2 years being issued, not every government official, understand or even put the regulation into practice. There are still much overlapping and finger pointing within the officials if there is an incident involving the refugee. That being said, this regulation is the only aspect of Indonesia legal framework that specifically administers the treatment of refugee. This regulation definitely needs to be improved to be more thorough and scaled up into law, in order to strengthen its position.

Currently, the situation in Indonesia for the refugee community is quite unpromising, with the global resettlement rate drop down significantly. The traditional pattern of arrival-register-RSD-refugee-resettlement could not be the standard anymore. RSD and resettlement still happening but on the slower pace and lower number. Australia as the primary country for resettlement of refugee from Indonesia lowers the quota drastically, the US under current administration also makes it more difficult to get a chance of resettlement, the only hope now the refugee heavily relies on are New Zealand and Canada whose private

sponsorship scheme is gaining interest for the community. Even the latter is now overwhelmed with the scheme, causing the processing time increased significantly up to 12 months, to which cause more stress to the community.

On the other hand, positive things also happened, at least going back to 2014 since Australia putting the Sovereign Border policy, which practically stopping the massive boat journey to the country. Refugee led initiatives or community-based organization are growing. Mainly the CBOs are intended to be a learning center or education purposes. In Bogor, West Java, who has a dense population of refugee, mainly Afghans, community learning centers are sprouting. As for now, there is at least 6 community learning center that provides classes for elementary level and adult classes. Students ranging from 20 people up to 100 people for the larger center.

As stipulated above, the Andaman sea crisis also brought big attention to refugee issues in Indonesia. Bear in mind, that Indonesia's population of refugee is significantly small compared to its nearest neighbor, Thailand's ~500.000 or Malaysia's ~250.000. The growing attention means that many organization, such as local NGO and CSO started to include programs or projects involving refugees. The program varies from education, vocational training to health or financial support.

Moving forward, refugees in Indonesia will need more than basic needs support, such as shelter, education or financial support. The reality as of right now, the refugees in Indonesia, will more likely to stay longer in sustained displacement. The effort that the stakeholders working in this issue, government, UN agencies, local NGO and CSO, is to make a priority based action plan. Action plan that accommodates the refugee community to be self-resilience in a way that is dignifying. Refugees are resilience and helping them to build their capacity, empowering them and protecting their rights are important things. That is the role where CSO can fill in. SUAKA, with its competencies in legal empowerment and advocacy, will do its part to advocate the needs of stronger legal protection and legal framework for refugee in Indonesia.



Refugee Situation Overview in Asia Thailand

Waritsara Rungthong (Coalition for the Rights of Refugees and Stateless)

Thailand is not a signatory to the 1951 Refugee Convention and its 1967 protocol, but Thailand has been providing assistance to refugees for many years based on moral and humanitarian reasons. As a non-state party, Thailand considers itself to not have international responsibility to provide full protection to refugees but there are still other human right treaties that we have to follow.

According to UNCHR, as of March 2019, there were 96,802 refugees living in 9 temporary shelters along Thai-Myanmar border. Most refugees staying there are ethnic minorities from Myanmar, mainly Karen and Karenni.¹ There are another 5,000 – 6,000 “persons of concern”, either refugees or asylum-seekers, who are primarily living in Bangkok. Most of them do not have legal status in Thailand. Besides these numbers, there are also many people who have had their refugee applications rejected by UNHCR, but are afraid to return to their home country for fear of persecution. They stay in the hope that their cases will be re-activated and re-assessed by UNHCR. UNHCR does not provide statistics on this group, but they number in the thousands. Most of the urban refugees in Thailand come from Pakistan, Vietnam, Cambodia, Syria, Palestine, and Iraq.

When we look back in history, there were some periods that Thailand denied accepting refugees fleeing from our neighboring countries, however, this did not stop the human flow and many people were still able to escape to Thailand. During and following the Indochina wars, many refugees from Myanmar, Laos, Cambodia and Vietnam fled to Thailand. It was necessary for the government at that time to have a proper way to manage these populations, and that led to the agreement between Thailand and UNCHR in 1975 when Thailand invited UNHCR to process refugees in the country where it still operates today.

Thailand has been careful not to use the word ‘refugee’ in domestic law and instead call people who fled from the conflict in Myanmar, who are the majority of refugee population in Thailand, as ‘displaced persons fleeing fighting’. As a result, these

¹ <https://www.unhcr.or.th/en>

individuals are under the Immigration Act which applies to any non-Thai person in Thailand. The “displaced persons fleeing fighting” are allowed to stay in 9 temporary shelters along the border. However, their status remains illegal under the Immigration Act and they cannot travel anywhere inside Thailand. If they do so, they will be charged under the Immigration Act. Using the word ‘refugee’ may lead to the government having international obligations.

When we look at protection for refugees, Thailand does not have any laws that apply directly to refugees, but there are some laws that can be applied to everyone including the refugees who are in the country illegally. For example, under the Child Protection Act, we have an ‘education for all’ policy that allows all children to be able to go school regardless their legal status in the country. In theory, everyone who works in Thailand is protected from exploitation under the Labor Protection Act. However, because most urban refugees in Thailand have no legal status, they risk being arrested if they bring a complaint against their employer. Here, it is very important to note that even if a person is recognized as a refugee by UNHCR, the government does not grant them any legal status and they are subject to arrest under the Immigration Act at any time.

Treaties are not automatically binding in Thailand even they are ratified. The courts will be bound only when the treaties are transformed into domestic law. Many courts consider that international customary law must be incorporated into the domestic law structure to become internally binding and enforceable. So, there are some international principles that cannot be referred to in the court. For example, the principle of non-refoulement is not brought up by the court when a refugee is in front of the judge for a case on their illegal status. The court also does not comment on the testimony of the refugee when they explain why they are afraid to return to their home country. This could be because the indictments prepared by the police and the public prosecutors usually only describe the charges from the Immigration Act and there is no part talking about the refugee’s story. So, the court cannot judge beyond the indictment. This is troublesome because the detention and deportation after the court process are administrative actions carried out by the immigration department. Once they are judged by the court for staying illegally in the country, immigration has the authority to deport them any time without going to the court again.

On a positive note, there was a cabinet resolution announced by the Thai government on January 10, 2017 to set up a refugee screening mechanism and there were several meetings between the government and NGOs about what the screening mechanism will

be like. The screening mechanism is likely to include some principles from the Refugee Convention and the definition of a refugee to be used under this mechanism may incorporate the definition from the Convention. The government is also studying the possibility of ratifying the Convention.

Earlier this year in January, the government signed a memorandum of understanding (MOU) on alternatives to detention for children and mothers in the Immigration Detention Center. This MOU makes some significant changes about child detention and we have seen an effort by the government to not detain children and look for alternatives. Even though the MOU is not fully implemented, we have seen a lot more cooperation between the government and the NGOs to prevent the detention of children. The refugee rights network is a policy-advocacy network and we plan to continue to work closely with the government on policy-advocacy and, at the same time, support the government's work. We are also willing to share our resources and experience on working with refugees in the field to provide the government a better understanding of the situation. There is a workshop this month about case management of the children and mothers who were released from the Immigration Detention Center. The workshop is open to NGOs and government officials to learn and share their experiences on case management for refugees in Thailand and to support the work under the signed MOU and for future work on refugee's issues in Thailand.



Refugee Session

Problems and Improvement of Current Legal Framework for Refugee Protection

Sussi Prapakranant (APRRN)

The Situation of Present Refugee Protection Law, Its Problems and Possible Improvement



Asia Pacific Refugee Rights Network
Advancing The Rights Of Refugees
In The Asia Pacific Region
aprrn.info

Asia Pacific Refugee Rights Network

The Situation of Present Refugee Protection Law, Its Problems and Possible Improvement
Gwangju, Korea 19 May 2019

Global forced displacement

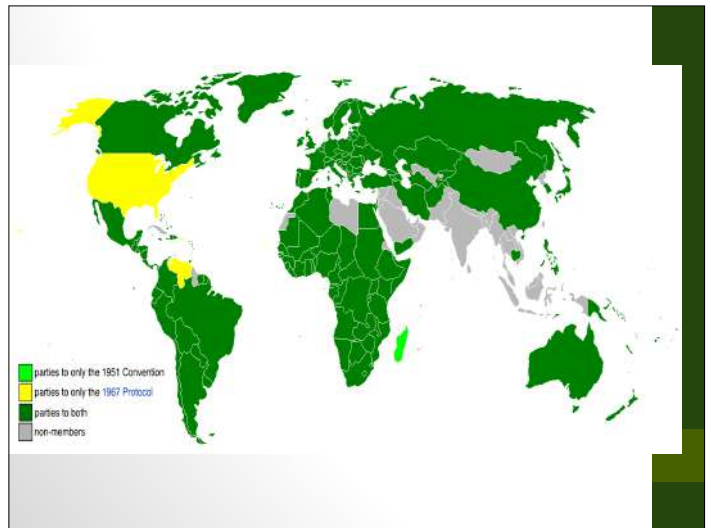
- Over 68.5 million displaced - highest level ever recorded.
- Majority are found in developing countries in the world (over 85%)
- 57 % from 3 countries
- Who are the Displaced?
 - Refugees
 - Asylum Seekers
 - Internally Displaced Persons
 - Returnees
 - Stateless Persons

*Numbers from UNHCR

In the Asia Pacific....

7.7 million Persons of Concern including:

- 3.5 million refugees
- 1.9 million IDPs
- 1.4 million stateless persons
- The majority of refugees come from Afghanistan and Myanmar
- Camp vs. urban based refugees
- Many asylum-seekers and refugees remain unregistered and are therefore 'invisible'



East Asia

- Economically well-developed region
- Strong role internationally
- Several countries have national laws (including immigration laws) that provide status and rights to refugees
- Korea and Japan: resettlement countries
- In line with international standards

Legislation in East Asia

- Korea: A Refugee Bill was passed in July 2013
- Taiwan: A draft refugee bill is currently being considered by Taiwan that largely mirrors the refugee convention and would legally recognise refugees
- Macau has already legislated and begun RSD procedures
- Hong Kong has the Unified Screening Mechanism (USM), conducting state-led RSD incl. for those seeking protection under CAT

Gaps and shortcomings in East Asia

- Recognition rates in the region are very low

Japan:

- RSD system does not live up to international standards. The standard of proof is unreasonably high and the interpretation is very narrow
- No comprehensive refugee law, Japan's RSD procedures are governed under the Immigration-Control and Refugee-Recognition Act
- Humanitarian Visas issued for a 5-year period used to keep recognition rates low
- Lack of transparency and detailed rejection decisions are not given

HK:

- No official government guidance on the process of application and claims
- Refugee acceptance rates in Hong Kong is one of the lowest in the world, sitting at 0.72 % (as per October 2017)
- Significant risk of refoulement, as individuals must overstay their visas (hence be illegal) before they are able to file an asylum claim

Gaps and shortcomings in East Asia

Taiwan:

- No RSD process and at present only the 'Tibetan – Mongolian Commission' can provide legal status (only to Tibetans).
- No provisions in the existing legal framework to protect refugees against refoulement, no government provided legal assistance
- Advocacy for parliament to pass Draft refugee bill has been ongoing for 10 years

Korea:

- Signatory to 1951 Convention and touts its refugee protection system as seemingly 'perfect', however, this is being used as an argument to reject high numbers of applicants
- Out of 25,510 applications since 1994, only 694 (3.9%) have been acknowledged as refugees (as of October 2017)
- Humanitarian Status Holder (HSH) category used to keep recognition rates low

Southeast Asia - a snapshot

- Few signatories (Philippines, East Timor, Cambodia)
- Major camp population in Thailand
- Large numbers of urban refugees (Indonesia, Thailand and Malaysia)
- Non-existent or inadequate legal frameworks leading to limited protection
- Lack of legal access to livelihood and educational opportunities, healthcare
- NGOs have limited capacities and face restrictions
- Funding constraints
- Detention as the key concern

Gaps and shortcomings in Southeast Asia

- No regional framework
- Ad-hoc policies and low recognition rates
- Lack of legal status
- Lack of durable solutions and legal alternatives
- Limited role of UNHCR (and other UN agencies)

Locating refugees in the ASEAN Community

ASEAN Socio-Cultural Pillar under which the vision is to be:

- *People-centred and people-oriented and participative*
- *Promote and protect human rights*
- *Mainstream human rights into policies and all spheres of life*

ASEAN mechanisms

ASEAN Intergovernmental Commission on Human Rights (AICHR)

- Numerous limitations but some opportunities with AICHR representatives

ASEAN Commission on the Protection of Women and Children (ACWC)

- Also has a number of limitations
- Some ACWC representatives have been engaged/supportive

Positive trends and developments

- Increasing dialogue with, and capacity-building for government stakeholders in Malaysia, Thailand, Indonesia on Alternatives to Detention (ATDs)
- Malaysia: new government pledges to ratify
- Indonesia: Presidential Decree
- ATD pilots in Malaysia, Thailand (e.g. case management, community housing)
- MoU signed in Thailand on ending immigration detention of refugee and migrant children
- Widespread adoption in the Asia Pacific region of the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR)

Obstacles and trends to protection within ASEAN

- *Principle of non-interference*
 - E.g. Rohingya, Vietnamese Montagnards
- Increasing focus on national security perspective and border control *instead of human rights*
- *Criminalization* of refugees, asylum seekers and stateless people
- Increasing use of harsh detention practices
- Pull factor argument
- Lack of political will
- Lack of focus on addressing root causes: conflict, persecution, discrimination

Common issues across East and Southeast Asia

- Adoption of restrictive laws aimed at reducing the number of asylum seekers reaching the border
- National security and border control focus instead of human rights
- Tendency to interpret the Convention refugee definition narrowly
- Convention recognition rates vary significantly
- Disparate interpretation and application of legal and procedural standards for refugees
- Tendency to adopt lower standards with restrictive concepts and practices
- Limitations on local integration
- Ad-hoc policies and framework

A way forward?

- Regional cooperation aims to address root causes effectively and also promotes protection in hosting countries while pursuing durable solutions
- In line with international standards and grounded in a regional framework
- Refugee protection starts at the national level → national laws, immigration laws, right to work, local integration etc.
- Engaging communities → starting the conversation → increased understanding and awareness?

Building a refugee rights movement

- Building and strengthening national civil society
- Creating ownership at the national level
- Combating negative perceptions against refugees
- Foster collaboration, information sharing, exchange of resources
- Building solidarity
 - In absence of legal frameworks, the role of national civil society becomes even more crucial
 - Only with vibrant national civil society movements will states be convinced that refugee protection is the desire of its citizenry
 - We need to act at multiple levels - national, regional, international

Thank you!



Refugee Session

Present Conditions of Discrimination and Hatred of Refugees and How To Overcome it

Desale Abraha (Japan Assistance for Refugees)

Refugee Rights, Conventions and Laws

Introductions: According to the 1951 Refugee Convention, Article 1A (2) stipulates a refugee as follows: a refugee is a person who, “...*owing to a well-founded fear of being persecuted...*” “*for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of his nationality...*”

The refugees are obliged to escape from such fear of abuses and persecutions, and to leave their own countries desperately, as they cannot obtain any sort of protection from their own country. It is owing to such fear that they are not capable of returning to their mother country and are willing to risk any kind of danger, and even finally to lose their own nationality.

Refugee Convention and Japan

- ❖ While Japan has acceded to the refugee Conventions and has been influenced by international law concerning refugee rights. However, its impact has been limited.
- ❖ There is no mechanism that provides why refugee recognition rate is too small in Japan.
- ❖ There are official statistics which include the number of refugees and asylum seekers , but they do not necessarily reflect the actual reasons why the application asylum seekers where not recognized . Since there has not been any attempt to measure the number of refugee and asylum cases

Definition and Determination

- ❖ Japanese laws do not define the refugee’s rights and its obligations according the international conventions and protocols
- ❖ There is not a determination mechanism for stateless persons which attempts to identify stateless persons in order to confirm their legal status in Japan.
- ❖ A lack of definition and a system for determinations is a cause of gaps between the 1954 Convention and Japanese laws.
- ❖ Some recent judicial precedents approach the definition and an understanding of stateless persons as found in the Convention. However, this does not mean that the recent judicial precedents fill the gaps between the Convention and Japanese laws.

Rights and Protections

- ❖ Most of the rights listed in the 1954 Convention can be protected by resident status. However, the rights are not protected for refugees as much as it is specially for whom the status of residence has not been granted.
- ❖ The subject of the Public Assistance Act is the Japanese people. Thus, even if asylum and refugee, persons with resident status are currently provided with assistance, they have no legal basis to sue the government for a violation of rights when assistance becomes unavailable in the future.

- ❖ Regardless of resident status, there are gaps between provisions of the 1954 Convention and Japanese laws. Concerning the facilitation of naturalization (Article 32 of the 1954 Convention), **Example; stateless persons born in Japan and other stateless persons face different criteria for naturalization under Japanese law. This is likely to be incompatible with a principle of non-discrimination (Article 3 of the 18 1954 Convention).** Furthermore, identity papers are not issued for all stateless persons (Article 27 of the 1954 Convention) under Japanese law.
- ❖ Since Japan does not have a **procedure to determine stateless persons**, there is not a concept such as “persons seeking the statelessness determination” or “applicants to the statelessness determination.” Thus, rights cannot be protected by being stateless. For such people, basic freedoms such as freedom of movement (Article 26 of the 1954 Convention) and a prohibition of expulsion (Article 31 of the 1954 Convention) are not guaranteed in Japan.

Prevention and Reduction

- ❖ Japanese laws do not guarantee to grant nationality to “a person born in its territory who would otherwise be stateless” (Article 1(1) of the 1961 Convention).
- ❖ There is not a Japanese law that completely adheres to the requirements concerning foundlings found in the territory (Article 2 of the 1961 Convention).
- ❖ **Japanese laws do not provide explicit rules in case of birth on a ship or in an aircraft (Article 3 of the 1961 Convention).**
- ❖ Although Article 5(1) of the 1961 Convention is interpreted such that nationality cannot be lost if the family relationship constituting the basis of a child’s acquisition of nationality was registered erroneously unless another nationality is possessed or acquired, Japanese law does not seem to comply with this interpretation of the 1961 Convention.

Refugees and Human Trafficking

- ❖ There are a limited number of precedents where both refugee status and statelessness are considered in Japan.
- ❖ Under the current Immigration Control and Refugee Recognition Act (ICRRA), the Minister of Justice can grant Special Permission to Stay in Japan to victims of human trafficking. If the victim of human trafficking is a stateless person, he or she can be legally protected by the special permission. However, its effect is limited because of the Minister of Justice’s room for discretion in granting resident status

Japan and Refugee Trend

- ❖ Despite being a **wealthy democracy** and **strong supporter** of the international system, Japan has consistently recognized very few refugees. Nevertheless, its compliance with international norms of refugee protection appears, at least at first glance, to be weak. ([Japan Ministry of Justice, 2015](#); [Arima, 2012](#))
- ❖ Despite the reported In 2014, out of 5,000 people sought asylum in Japan, and a total of 11 were granted refugee status, for a recognition rate of 0.2 percent ([Japan Ministry of Justice, 2015](#))
- ❖ Since Japan’s accession to the Refugee Convention, the vast majority of recognized refugees have come from South Asian and Southeast Asian countries, especially Myanmar ([Arima, 2012: 82.](#))

- ❖ As of March 2015, not a single Syrian national had been granted refugee status, with 61 Syrian applicants denied refugee status since 2011 ([The Economist, 2015](#)).
- ❖ Japan Rejected 99.9% of the Asylum Applications it considered in 2013 the number of refugees requesting protection was 3,260, a record high for the third year in a row. ([according to the MOJ, asylum was granted to only six people in 2013](#)).

Refugee and Japan Integration system

- ❖ To examine what works with regard to refugee integration and what does not, and indeed what the concept of integration means?
- ❖ Takes the approach that integration concerns both asylum seekers and refugees, and we are trying to do research looking at both, and does so comparatively.
- ❖ To contribute towards the study of the human rights of the refugee and children by **proposing a more holistic, humanitarian perspective**, and also towards the improvement and enhancement of the **victimized, dehumanized conditions** of the refugees in Japan.
- ❖ Developing recommendations for improving Japan's asylum procedures, or alternatively, suggestions as to how the international refugee Convention should be updated. (Is the 1950s definition of a 'refugee' still useful in today's global situation or not?)
- ❖ To strengthen local integration as a durable solution for refugees, by identifying how UNHCR and host countries works for the protection and preventions of the life of refugees and their roles for more effective refugees' life in a near future. That is the mutual adaptation of both integration refugees and Japanese society.
- ❖ Examine the norms and human right issue affecting refugees and looking better opportunities **to improve secure life, provide quality service's effectively and implemented in refugee hosting communities.**

"I do agree that refugees are treasures of excellent talent"

Japanese society & refugees themselves have yet to realize their potentials

- | | |
|--------------------------------|--------------------------|
| ❖ Quad-lingual | ❖ NGO staff |
| ❖ Programmer | ❖ IT Expert |
| ❖ Graduate student | ❖ Singer |
| ❖ Pharmacist | ❖ Hairdresser |
| ❖ Researchers | ❖ Nursery school teacher |
| ❖ Manager of a trading company | |

Value/Benefits of integrations in Refugee Context:

- Cultivating civic leadership that is essential to any durable solution
- Development of skills and confidence
- Fostering the ability to make strategic life choices
- Training a future cadre of highly qualified teachers for primary and secondary schools
- Promoting economic gains that are critical for post-conflict reconstruction and poverty reduction

UNHCR's and other IO's gap-filling role - Partnership or State Surrogacy?

- ❖ **State surrogacy:** where the state has little presence among the displaced; IOs act as simultaneously domestic and international actors; IOs take on state substitution roles, taking on responsibilities far beyond their mandates - Crisp & Slaughter (2008); Miller (2017); Kagan (2011).
- ❖ Responsibility shifting/marginalization of the state **vs** working in partnership with the state/private sector



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For the past five years I have been visiting many refugee camps and refugee hosting communities in Africa, Europe and Asia. I have also published some academic articles on refugee rights and protections.

My research involves studies on Refugee and Health relating issues, specifically the outbreak of human immunodeficiency virus (HIV) and communicable diseases in refugee camps or refugee hosting communities with a focus on saving the refugees' lives and protecting them from diverse infections, diseases and security threats.

DECLARATION OF INTEREST:

No potential conflict of interest to disclose

Role of refugee leading NPO's & NGO's Japan: Refugee Right Network Japan

Refugee Right Network starts for the network of all refugees in Japan by bringing them together at the same platform to encourage, empower and share their refugee life, with an attempt to self-present themselves to others.

The objectives of the refugee network association in Japan is:

- To serve as a liaison between different conventional refugees, Humanitarian refugees and all the asylum-seekers in Japan;
- To enhance the active involvements of refugees, in socio-economic activities of the country, regionally and internationally, especially as the voice for the voiceless refugees
- To mobilize refugees in Japan and abroad for a sustained, well-organized society.

We are going to seek the national, regional and international governors to disseminate accurate information to the refugees in Japan through various media outlets and to keep them informed of issues relevant to them. We also conduct farther researches to inform policy makers regarding the refugee issues and conditions in Japan.

To promote, coordinate and facilitate refugee needs, assuring their rights in the country. And rendering the following services:

- Provides necessary information required by refugee applicants, refugee lead organizations and others
- Disseminates information concerning the issues involved in this association to local participants, asylum seekers and refugees
- Legal representation in court
- One-on-one legal and refugee application consultation, advice or orientations for new comers
- Legal rights awareness-raising, especially on refugee rights (Know your Rights)
- Provides lawyers with advises and aftercare services with new comers

Our vision is:

“To create a society where everybody can believe in finding a bright future for themselves and others”

- Filling the gap:
 1. Moving beyond *WHY to HOW* to improve access to higher education for refugees;
 2. Looking beyond partnerships between *International actors & National Actors* → *International actors + Private actors*

Our Goal is:

- Ensure refugee rights in Japan
- Increase, create responses with great accountability and efficiency
- Empower refugees and enhance refugee status

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Session 3: May 18 Uprising Truth-finding

May 18 Uprising Truth-finding – the Incomplete Process

- **The Politics of the May 18 Uprising Distortions**

Prof. Kim Jae-yoon(Chonnam National University)

- **The Phase of the Media Reports by Korea Far-rights on the May 18
Democratic Uprising and Distortions**

Mr. Jeong Heesang (Senior Reporter at Sisa IN)

The Politics of the May 18 Uprising Distortions

Jae-yoon, Kim (Prof. Cheonnam National University Law School)

I . Prologue

The upcoming 5.18, 2020 will mark the 40th anniversary of the "5.18 Democratic Movement" in which the military coup forces led by Chun Doo-hwan fought desperately to resist authoritarian rule, restore and enhance the freedom and rights of the people and protect democracy, a key value of the Constitution of the Republic of Korea. 5.18 Democratic Movement did not end up as a "temporary and local" democratic movement, but led to the June 10 Movement in 1987 and the revision of the Constitution, and the candlelight revolution on monopoly of state affairs by Choi Soon-sil in November 2016, which was succeeded by the current constitutional spirit to form the spirit of democracy in the Republic of Korea.

Nevertheless, Kim Jin-tae, Lee Jong-myung and Kim Soon-rye, who are the legislators of the first opposition Liberty Korea Party held a public hearing for truth ascertainment of 5.18 Democratic Movement, Feb. 8, 2019. Lee Jong-myung, Kim Soon-rye and Ji Man-won again distorted the 5.18 th Movement by saying, "The 1980 Gwangju Movement was democratized by those who took political advantage of the incident 10 or 20 years later(Lee Jong-myung)", "We are reducing our taxes by creating a group of monsters called the 5.18 (Kim Soon-rye)" and "5.18 is a guerrilla war waged by 600 North Korean special forces(Ji Man-won)."¹ Why are things like this being done maliciously and repeatedly by some political circles and far-right forces? The fundamental reason is that, during Roh Tae-woo, a key accomplice that destroyed the constitutional order following Chun Doo-hwan's regime, took control of the regime, The Kim Young-sam government, which was born through the merger with the ruling New Korea Party, the Kim Dae-jung government born under the limit of the JP coalition, and in the time of Lee Myung-bak · Park Geun-hye(total 31 years), we have not clarified the truth about 5.18 . For this reason, even though 39 years have passed, there is still no investigation into who ordered the initial firing of the citizens and the mass firing at that time, a thorough investigation into violations of human rights, violence, genocide, sexual harassment, and sexual violence caused by the military coup forces of Chun Doo-hwan, and criminal punishment of key stakeholders.

¹ In February 2019, the main opposition Liberty Korea Party gave Lee Jong-myung the disposal of the expulsion (which only take effect if more than two-thirds of the lawmakers who attended the general meeting approve of the bill), but it held a central ethics committee on April 19, 2019 to impose public criticism on Kim Soon-rye and Kim Jin-tae, who were suspended from party membership for three months.

In particular, the '**Special Investigation Committee of the Ministry of National Defense on the Air Force**(This is called the "5.18 Special Committee," the chairman's attorney, Lee Gun-ri)' was officially launched on September 11, 2017, with the aim of investigating the suspicion of shooting helicopters for civilians by martial law soldiers during the 5.18 Democratic Movement. However, the 5.18 Special Committee limited the scope of investigation to whether the helicopter fired at civilians during the 5.18 Democratization Movement and whether air force fighters were waiting for the bombing.

For this reason, the truth still remains unknown about who was in charge of the military, ordered the first fire to the citizens and the mass firing at the time, the case of Ju-nam Village, Songam-dong Massacre² the organizing and activities of the 5. 11 Research Committee³, and whether the North Korean military intervened during the 5.18 Democratic Movement. Therefore, on March 13, 2018, with the aim of “contributing to national unity by investigating human rights abuses, violence, murders, and black burial incidents caused by anti-democratic or anti-human rights acts by the state power during the 5.18 Democratic Movement in Gwangju in 1980 to find out the distorted and concealed truths”, the 「Special Act for the Realization of the 5.18 Democratic Movement(This is called the "5.18 Investigation Law")」⁴ was enacted. However,

² The "Yangmin Massacre" incident in the village of ○○, the commander of the 11th Airborne Brigade who was in charge of road sealing, ordered soldiers to fire at minibus when a minibus with citizens aboard reached the road in Yeongdong, Donggu, Gwangju around 1980.5, 23:09.00. At that time, about 10 people, including Park ○○, 18, were shot to death, Hong ○○, 17, and two men, who were injured, were taken to the brigade headquarters on the mountain behind Junam Village, and only Hong ○○ was sent by helicopter and two men were shot dead.

The "Songam-dong massacre" took place around 13:30 when the 11th Air Force Brigade led 63 battalions to the Songjeong-ri Airport from the village of Junam. The shooting took place when soldiers met with civilians on the road in front of Hyodeok Elementary School in Songam-dong, Nam-gu, Gwangju, where two soldiers, Bang ○○ (male 13years old), played in a reservoir, and Jeon ○○ (male 10years old)) who played in a playground, were killed by martial law soldiers. Then, when a misdemeanor shooting took place near the Namseon Yontan Plant in Songam-dong at 2 p.m. and killed nine soldiers in the airlift unit, the airborne soldiers searched nearby houses under the excuse of searching for civilian troops in anger, injuring several people, killed young villagers, Kwon ○○ (male, 33years old)), Kim ○○ (male 18years old)), Lim ○○ (male 25ears old)), and Park ○○ (female 50ears old)) who were hiding in the sewers.

³ The "May 11 Research Council" was launched in 1988 to prepare for a fact-finding meeting of the Gwangju Democratization Movement under the Roh Tae-woo administration, and was an organization that rationalized the military's brutal crackdown and killing activities and prepared a report on countermeasures that covered up, reduced and distorted facts.

⁴ For an analysis of the need for and how to enact the law, see Min Byung-ro, "Performance and Limitations of the Law on the 5.18 Democratic Movement," and "Democratic and Human Rights Vol.17 No.2, 2017 and 77-82.

despite the enactment of the law on September 14 last year, the truth-finding committee could not even be launched to date, raising doubts as to whether it will be possible to start the 5.18 investigation under this government.

Therefore, we will review the main contents of the 5.18 Investigation Law, examine what the key issues are, and present what is necessary for the effective identification of the 5.18 truth-finding.

II. Main Contents of the 5.18 Truth-finding Act

1. The scope of the Truth-finding

First of all, 5.18 Special Committee should identify the truth about the cases ① in May 1980, the deaths, injuries, disappearances, and murders of persons who had been subjected to illegal or unjustifiable acts of public power such as genocide by civilians and destruction of constitutional order, ② the initial launch of the army's citizens at the time of the Democratic Movement, the supervisor and supervisor of the group firing, the investigation of the helicopter shooting of the martial law forces, the status of the fire commander and the victim of the civilian victims, ③ the military security officer and the defense ministry ⑤ The organization of the 5.11 research committee organized by the related organizations, the facts of the activities, the distortions of the truth, the suspicions of manipulation, ④ the material of the massacre, ⑥ The case of the intervention of the North Korean army at the time of the Democratic Movement and the incident of infiltration of the North Korean army, ⑦ The investigation of the fact of the Democratic Movement according to Article 4 that it is necessary to clarify the facts (Article 2 of the Act)

2. 5.18 Democratic Movement investigation committee, composition and work

Next, we will set up a committee for the commission of the 5.18 Democratic Movement (hereinafter referred to as the "Committee" or "Committee for the Investigation of Facts and Figures") for the purpose of identifying the truth of the 5.18 Democratic Movement. The committee shall consist of nine members, including three standing committees. At this time, the members of the committee shall consist of one person recommended by the speaker of the National Assembly, four persons recommended by the party's bargaining group to which the president belongs or belongs, and four other persons recommended by the bargaining group and the comparative group. The standing committee members shall be appointed by the president, one person recommended by the speaker of the National Assembly, one person recommended by the party's bargaining group to which the president belongs or belongs, and one person recommended by other bargaining groups and comparative organizations. The

qualifications of the committee shall be one of ① A person who has worked for a judge, a prosecutor, a military judge, or a lawyer for at least 5 years; ② A professor in the field of history, military security, politics, administration, law or physics or ballistics · Associate professor or associate professor who has worked for more than five years, ③ A person majoring in forensic medicine who has been engaged in related work for more than 5 years, ④ A person engaged in research activities such as historical research or historical compilation for more than 5 years, ⑤ people who have worked in domestic and foreign human rights organizations for more than 5 years(Articles 4 and 7 of the Act).

And the committee should perform (1) matters related to the selection of the survey subjects and the initiation of the investigation, (2) matters concerning the progress of the investigation, (3) matters relating to the determination of facts and determination of facts, (4) ⑤ research activities for identification of facts, ⑥ matters that the Committee deems necessary for the realization of the purpose of this Act, independently and carry out the work with the political neutrality and objectivity(Article 5, Article 6).

3. Period of activity of the committee

The committee shall carry out truth-finding activities for two years from the date of its completion. If it is difficult to complete the truth-finding activity within two years, it may be reported to the President and the National Assembly three months before the expiration of the period and extended within a period of one year. In addition, if the Commission finds that there is no need for an investigation before the expiration of the investigation period, the Commission may decide and complete the investigation (Article 9).

4. Application for Truth-finding and initiation of investigation

Any person who has a special relationship with the victim or a person who has a kinship with him or a person who knows a special fact about the extent of the truth in Article 3 of the Act shall, within one year from the enforcement date of this Act, may file a statement with the name and address of the applicant(However, if there are special circumstances that can not be submitted in writing, it is possible to do so by oral communication) (Article 23 and Article 24 of the Act).

If the petition for petition is any of the following, the Commission shall dismiss the petition without reviewing the petition;① If a Truth-finding application is not subject to the Commission's truth-finding investigation, ② If the Truth-finding application is recognized as clearly false or unprovoked by itself, ③ Committee applies again for the same fact as the one dismissed by the Commission(Provided, however, that this shall not apply if the applicant submits material vital petitions that were not filed in the

previous application). The Commission shall dismiss the application if the application falls under any of the above ①~③ even after the commencement of the investigation. The Commission shall make a decision on the commencement of the investigation if the application for Truth-finding does not constitute the reason for the dismissal, and shall make the necessary investigation without delay. The Commission may, if necessary, conduct a preliminary investigation to determine the commencement of the investigation within a period of not more than 30 days before the commencement of the investigation (Article 26).

5. Research Method about Truth-finding

The committee may conduct field surveys of places, facilities, data or objects in any of the following ways: ① request for submission of a statement to the surveyee and reference person, ② request for attendance and listening to the surveyee and reference person, ③ request and submission of related materials or objects related to the surveyee and reference person, other related institutions, facilities, Storage of material or objects(Hereinafter referred to as "the institution"), ④ inquiry of the facts about the institution, ⑤ assignment of the appraiser's designation and appraisal, ⑥ access to the place where the fact that caused the case was found and other necessary places.

When the committee carries out a substantive investigation, it may request the institution to submit the necessary data or objects. In such a case, the person who receives the request for submission of materials or objects shall respond without delay.

If the Commission hears a statement, it shall be applied in accordance with Articles 147 through 149 and Article 244-3 of the 「Criminal Procedure Act」.

If the Commission requests the submission of necessary materials or objects, it shall be applied in accordance with Articles 110 to 112, 129 to 131 and 133 of the 「Criminal Procedure Act」, when refusing to submit materials or objects, the reasons should be specifically stated.

Institutions receiving orders for submitting materials or objects in connection with actual investigation or truth-finding by the Committee shall not refuse to submit materials or objects without justifiable reasons. However, if the relevant Minister (the head of the relevant office of the President and the Prime Minister's office) shall explain in detail that the announcement as a matter of national confidentiality of military, diplomatic or inter-Korean relations within 5 days from the date of receipt of the request for the submission of materials and objects has a significant impact on national security, it is not necessary to respond. Despite these cues, the head of the organization that received the request for the submission of materials and objects shall take steps to ensure that the committee can view the data and articles only. However, the committee shall not disclose the materials and articles it has read (Article 27).

6. Warrant of accompanying

The committee shall issue the warrant of accompanying by decision of commission, if the person who has evidence of the investigation or who is recognized as having information does not comply with the request for attendance more than 2 times without justifiable reason, they should request the warrant of accompanying by the decision of the committee.

At this time, the companion command shall not include the name, address, reason for accompanying, place to accompany, date of issuance, expiration date and period of expiration, and if he/she refuses, he/she shall impose a penalty fee, and the chairman shall sign and seal. When the name of the subject is not clear, the impression, the physique, and other items that can identify the subject can be indicated. If the place of living is not clear, the address may be omitted.

The companion command is issued by presenting the companion command to the subject. The warrant of accompanying shall be executed by the staff of the committee and the execution of the companion command against the person in the prison or in the detention center (including military prison or military detention center) shall be carried out by the administration of the commissioner by the delegation of the staff of the committee. When the active duty soldier is in the unit, the unit commander is obliged to cooperate with the executive order of the staff of the committee (Article 28).

7. Conducting a hearing

When the Commission is deemed necessary for the performance of its duties, the Committee may conduct a hearing by a vote of the Committee to hear testimony, feelings, and statements from witnesses, appraisers, and reference persons and to adopt evidence. The hearing shall not be conducted for the purpose of engaging in the prosecution of an ongoing trial that is invading or continuing to infringe on an individual's privacy.

The hearing must be open. However, by the decision of the Committee, whole or part of the hearing may not be disclosed.

Any person who is requested by the Commission to submit materials or objects related to the hearing or to be present as a witness, appraiser or reference person, notwithstanding any other provision of law, shall comply, except as provided in this Act. A person who is requested by the Commission to submit materials or objects related to the hearing or to attend witnesses, appraisers, or reference persons shall be explained in accordance with Article 3 and Article 4, Paragraph 1 of the 「Act」 (Articles 38 and 40).

8. Penalties for Assurance of the Effectiveness of Truth-finding

Since it is important how to guarantee the effectiveness of the truth-clarification for the success or failure of the 5.18 Investigation Law, it is setting up a concrete apparatus for it. In other words, no person shall violate, intimidate or obstruct the performance of his or her duties as a member of a committee, an employee or an advisory body or an appraiser who executes his/her duties pursuant to Article 61, Paragraph 1 of the Act. Any person who commits or threatens to violate or violates the committee's members, employees, or advisory organizations, or interferes with the execution of his or her duties in violation of the hierarchy, shall be liable to imprisonment for not more than 5 years or a fine of not more than 50 million won (Article 67 1, 2).

And the person who has submitted false data or object to the request for submission of data or objects under Article 27 (1) (3) of the Act without justifiable grounds, (Article 70, Paragraph 1 of the Act) shall be imposed on a person who does not comply with the request for presentation or who presents false data or goods.

Furthermore, in order to guarantee the effectiveness of the warrant of accompanying, a fine of not more than ten million won shall be imposed on a person who has not complied with the order of co-operation without justifiable reason (Article 70, Paragraph 2, Item 3 of the Act).

III. Major issues of the 5.18 Truth-finding

1. Composition and qualification of committee

In September last year, 5.18 Investigation Law was enforced, but the investigation committee, which is the subject to clarify the Truth-finding, has not been constituted for 7 months. It is because of the delays caused by the delayed recommendation by the free Korean government, the recommendation of three ineligible members, and the refusal of the president to appoint two free members of the Korean National Assembly. At present, 5.18 Investigation Law has become a "dummy law" that has virtually no function.

Specifically, according to 5.18 Investigation Law, the committee consists of nine members. One member of the National Assembly, four members of the ruling party, four members of the opposition party should be recommended each of them and nine members of the committee must be appointed by the President to initiate activities for two years (Article 7, Article 9). However, Liberty Korea Party who should be responsible for three out of four candidates that the opposition should refer to were questioned by Ji Man-won who claimed the "5.18 th North Korean Military Intervention rumor" as a recommendation target. On January 14, 2019, it was 'lately recommended', Kwon Tae-oh, former secretary-general of the Advisory Council on Democratic and Peaceful Unification(former chief of operations at the Combined Forces Command, former chief of the 8th Army Headquarters), Lee Dong-wook who is former monthly Chosun reporter(Present Ceo of Jayujeonseo publisher), and former Suwon District Court judge, Cha Ki-hwan(Present Co-president attorney at Woojung attorneys at Law)

as the committee.

Two of them, however, are leading the way to undermine and distort the value of 5.18. Those who are placed in front of the purposes of "This law...aims to contribute to the integration of the people by investigating the distorted or concealed truth...by investigating human rights violations by anti-democratic or anti-humanitarian acts by the state power at the time of the 5 · 18 democratization movement...", Article 1 of the Act. First of all, in 1996, Lee Dong-wook when he was a reporter for <The Monthly Chosun>, in an article titled "Verification, Top Ten Wrong and Exaggerated Articles on the Gwangju incident" claiming that "almost all misinformation is centered on the victims" and "As a result of acting irrationally with the view that taking sides with the victims is justice", as a result, demanded an apology by the group of 5.18. Next, former judge Chae Ki-hwan said, "There is a misperception that Korea is a country that brutally kills the people through films such as a movie called 'A Beautiful Vacation'(about 5.18)", "No one has ever fired at the protesters who march peacefully in Gwangju". In particular, apart from 5.18, Chae acted as a government committee member of the special investigation committee on the Sewol Ferry during the period of the Park Geun-hye government, and was accused of abusing his authority by the family members of the victims on Sewol Ferry under the criticism that he deliberately interfered with the investigation.

On the other hand, the former secretary-general, Kwon Tae-oh was appointed as the head of the office of the Democratic Privy Council in 2016 when Park Geun-hye was in her government, and it is inappropriate to recommend a former military man as a member of the investigation committee to investigate the matter.

5.18 Investigation Law provides that in the capacity of a member of the Committee for 5.18 Special Committee, ① a person who has worked as a judge, a prosecutor, a military judge or a lawyer for at least five years ② a professor, an associate professor, or an assistant professor in fields related to history, military security, politics, administration and law, A person who has worked for 5 years or more in a job, ③ a person who has engaged in related work for more than 5 years as a forensic major, ④ a person who has worked for more than 5 years in research activities such as history, and either of them should be included(Articles 4 and 7 of the Act). Lee Dong-wook and Kwang Tae-oh do not qualify as committee members because they do not fall into any of the above-mentioned five factors, and although Chae Ki-hwan has formal qualifications as lawyers he is not appropriate because he damaged and distorted the value of 5 · 18.

In response, The Blue House said on Feb. 11, 2019, former Judge Cha Ki-hwan may distort 5.18, but will accept the request as he has formal qualifications. However, for Kwang Tae Oh and Lee Dong-wook, they asked to recommend again, for lacking the possibility of distorting history and qualification requirements under the law.

This behavior of the Liberty Korea Party is a direct challenge to the history and spirit of the May 18 Democratic Movement, an insult to spirit of the May 18 and victims. For

this reason, political circles are demanding the Liberty Korea Party return the right to recommend a member of the committee and cooperate immediately with the launch of a truth-finding meeting for the 5.18 Democratic Movement, but this is nothing more than a political demand that cannot be confirmed.

Then, should we stay out of hand until the Liberty Korea Party's reappointment? No. In spite of the lack, the solution is in the interpretation of Article 2 of the Code of Verification. In other words, Article 2 of the Act stipulates that "the preparation of the establishment of the Committee, including the appointment of members and their staff, and the establishment of rules, can be made before the effective date of this Act." The meaning of this regulation is to appoint members and their staff to prepare for the establishment of the committee, even before the effective date of September 14, 2018. On the other hand, it is not interpreted that it is not possible to prepare for the establishment of the committee on the grounds that the appointment of some members has been delayed, even though the effective date has passed. In other words, even if it is not possible to launch a 'formal' truth-finding committee on the grounds that some members were appointed after the effective date, even before the date of implementation, the president appointed seven recommended members as members as early as possible, and called for the reappointment of two members of the committee and the preparation of the committee for the re-examination of the committee's establishment.⁵

2. Related to the scope of the Truth-finding

(1) Unfairness about including 'North Korean intervention at the time of the 5.18 Democratic Movement and manipulation of North Korean infiltration incident'

⁵ According to a recent report, the committee is expected to be launched before the 39th anniversary of the 5.18 Gwangju Democratization Movement on April 18. A person who also has a military background should be appointed as a member of the investigation committee by revising the law to include in the requirements for the committee's qualifications, so that he can be appointed as a member of the investigation committee, and that the Liberty Korea Party has a plan to recommend a new person as a qualified member of the committee and replace one of the four members recommended by the Millennium Democratic Party (Report by the Kwangnam Ilbo, April 16, 2019). In particular, according to the "Special Act on the Proposition of the 5.18 Democratic Movement," represented by Baek Seung-joo of the main opposition Liberty Korea Party on April 14, 2019, military investigators may need expertise in finding out the truth about the 5.18 Democratic Movement, and may need to participate in the military investigation that the scope of the truth-finding committee includes a helicopter shooting by the martial law army. That is why adding a person who has served more than 20 years as a soldier to the committee's qualification as a member of the truth-finding committee for the 5.18 Democratic Movement may be helpful for a clear truth-finding investigation (Article 7, para 2 and 6 of the Act). But it is questionable whether a plenary session can be held and passed on 5.18, 2019, to revise the previous law, given the current political situation confronting the ruling and opposition parties.

Another issue related to the 5.18 Truth and Reconciliation Act is whether the "North Korean military intervention during the 5.18 Democratic Movement and the infiltration and fabrication of North Korean soldiers" as stipulated in Article 3 of the Act should be investigated, and whether sexual crimes committed by martial law army and airborne troops should be targeted by adding to the truth-finding.

First of all, regarding the fact that the scope of the investigation included the involvement of the North Korean military, Article 2 of the "Special Act on the Proposed Proposal for the Investigation of the Democratic Movement of 5.18, 2017," which was proposed by Rep. Choi Kyung-hwan, a member of the Democratic Peace Party, did not include the scope of the North Korean soldiers' involvement in the 5.18 Movement and the infiltration of the North Korean soldiers. However, Rep. Lee Jong-myung of the main opposition Liberty Korea Party, who was a member of the National Assembly's National Defense Committee, strongly demanded the inclusion of the investigation into North Korean military intervention, saying, "Let's clean up the misunderstanding regarding whether the North Korean military was involved or not," and "I hope we can restore the honor of the 5.18 Democratic Movement." At that time, Rep. Lee Jong-myung described 5.18 as a "democratic movement" unlike ultra-rightists, talking as if "resolution of misunderstanding" was the purpose of the investigation into "North Korean military intervention." At a plenary session of the National Defense Commission held on Tuesday, he also said, "The draft (special law) calls for investigating the fabrication and fabrication of North Korean military intervention." To investigate it, we need to clarify whether it is clear or not," he said, reiterating that should include "North Korean military intervention." In addition, according to Democratic Party of Korea lawmaker Park Hong-keun's explanation, "At that time, the main opposition Liberty Korea Party had insisted on investigating North Korean military intervention to prevent the passage of the special law, and the opposition parties, including the Democratic Peace Party, also said, 'There is no problem because it has already been identified, and the passage of the special law is important for now'".⁶

As a result, this issue, which the four main parties of the ruling and opposition parties "rewarded" for the early passage of the 5.18 truth-finding act, undermined the purpose of the 5.18 truth-finding act and provided an excuse for a delay in the launch of a truth-finding committee. In particular, Lee Jong-myung made absurd remarks at a public hearing on the 5.18 , 2019, saying, "Thousands and hundreds of people were photographed in front of the South Jeolla Provincial Government in May 1980, no one called me, not the North Korean Army", and "the 1980 Gwangju uprising was led by those who used it politically 10 or 20 years later". It is typical shameless of historical

⁶ Report by Hankyoreh, 2019.2.13.

<http://www.hani.co.kr/arti/politics/bluehouse/881729.html#csidx5f6e26f29a77e7289160f06ebecc55d>,

(Final search date : 2019.4.20.)

irregularities that have returned good-will concessions from relevant organizations and the ruling party as a thoughtless words.

As you may know, rumors of North Korean military intervention have frequently emerged as a means to denigrate and distort the 5.18 Democratic Movement, which Ji claims consistently⁷. It's a rumor, which exclusion has been in the previous administration, Park Geun-hye announced in 2013, the government caps can confirm that North Korean military intervention via the official document called 'The army's position'. The remarks by the defense minister and the prime minister have also confirmed the government's official position of denying the alleged involvement of North Korean soldiers. Nevertheless, the rumor of North Korean military intervention remains the most representative example of denigrating and distorting the 5.18 Democratic Movement, which has already been proven and evaluated. This is an issue that denies both the Constitution of the Republic of Korea and the noble values of democracy and violates national consensus. As the problem continued to grow, Rep. Park Hong-geun of the main opposition Democratic Party of Korea represented the revision bill of the 5.18 Truth and Identification Act on February 13, 2019, to remove 'North Korean military intervention and North Korean infiltration manipulation cases' from the scope of the truth-finding act of the 5.18 Democratic Movement, in order to preempt political attempts to divide the public opinion and keep the spirit of the 5.18 Democratic Movement. It is judged to be a wholly reasonable proposition.

(2) Possibility of including sexual violence incident at the time of '5 · 18 democratization movement' and possibility of criminal punishment

After the 5.18 th Investigation Law was enacted on March 13, 2018, testimonies and reports continued that women who suffered sexual assault or sexual torture by martial law soldiers and military officers in Gwangju in May 1980 were unable to escape severe aftereffects and suffering. This has been reported a lot in the media over the past 39 years, with at least 10 cases and as many as 25 cases reported. A case in point is that

⁷ January 2008, far-right conservative Ji Man-won published a message titled "The Truth of the Fifth 18" on the bulletin board of the 'System Club' which a website he runs. "Kim Dae-jung is in the southwestern city dispatched, and agrees to 1980, decision of civil war case North Korea's special command systematically sure once more that the operational command." The prosecution indicted him with the prosecution made a public complaint based on the accusation that it defamed Shin ○○, Kim ○○, the victims of the Gwangju Democratization Movement, and Moon ○○, the victims who died in the Gwangju Democratization Movement. However, the first trial of the Suwon District Court in January 2011 and the second trial of the Seoul High Court in August 2012, respectively, and despite the prosecution's appeal, the Supreme Court rejected the prosecution's appeal on Dec. 27, 2012, and finally confirmed the innocence. For a detailed analysis of this, refer to Kim Jae-yoon, "Paragraphs of Criminal Regulation for the Women of the 5.18 Democratic Movement," and Article 35 No.2, 2015.8 and 227.

female college students were sexually assaulted the day before they were released after being questioned by martial law. In some cases, the victim's parents died or their families were broken due to mental shock. There is a story of a woman who was psychologically shocked and missing by the mass sexual assault of five members of airborne troop.

However, there is a problem that it is difficult to reveal the truth of sexual crimes without courageous testimony from the victims as sexual violence committed by martial law soldiers during the 5.18 Democratic Movement is not within the scope of truth-finding. Sexual violence against women by the state is an anti-humanitarian crime that tramples on human dignity, so the truth must be revealed and held accountable. Thus, three amendments were made to the Act on the Proof of the Proof of the Proof of the Proof of the Proof of the Proof of the Prostitution, which includes "sexual violence." ⁸

Some people say that it is unnecessary to revise the law because it is a problem that will be solved if the Commission recognizes that the truth-finding committee of the 5.18

Democratic Movement needs to be investigated in order to achieve the purpose of the act. However, there is a clear difference between what the Commission acknowledges and what is explicitly recognized by law as the subject of investigation. Crimes against sexual violence against women by martial law and others should be explicitly included in the scope of truth-finding in the law, as they are an anti-human rights act and a representative crime corresponding to human rights abuses mentioned in Article 1 of the 5.18 th Investigation Law.

However, it is a different matter to conduct a thorough truth-finding mission, including "sex violence," under Article 2 of the 5.18 Investigation Law, and to find and punish the offender through truth-finding. Unlike the crimes of sexual violence at that time, the criminal responsibility for key persons involved in the 5.18 civil war crimes began as a historic indictment on Jan. 23, 1996 and the Supreme Court ruled on April 17, 1997⁹, rejecting the appeal of the defendant and the prosecutor, and confirming the ruling by the Seoul High Court. Chun Doo-hwan, the mastermind of the civil war, was sentenced to life in prison, while Roh Tae-woo, a key insurrectionist, and was sentenced to 17 years in prison, while Hwang Young-si, Heo Hwa-pyung and Lee Hak-bong were sentenced to eight years in prison. The indictment against the defendant, who died on April 3, 1997, shortly before the Supreme Court's ruling, was rejected.¹⁰ This is the result of the application of the "Special Act on the Disclaimer of Crimes against

⁸ They were Sohn Geum-ju's flagship proposal on May 10, 2018, Choi Kyung-hwan's representative proposal on May 11, 2018 and Kim Sang-hee's representative proposal on July 12, 2018.

⁹ Supreme Court's 1997.4.17 sentencing 96 degrees 3376 unanimous decision. However, the indictment against the defendant was rejected because he died on April 3, 1997, which is the case of the Supreme Court ruling.

¹⁰ For a detailed analysis of the judicial process on the Dec. 12 and 5.18 constitutional order-destroying crime cases, see "The statute of limitations of constitutional order-destroying crime" written by Kim Sung-cheon, Title 19 of the Central Law School, Vol. 2, 2017.6 and 10-21.

Constitutional Order" (hereinafter referred to as the "Constitutional Crime Enforcement Act") and the "Special Act on the 5.18 Democratic Movement" (hereinafter referred to as the "5.18 Democratic Movement Act"), which were enacted on December 21, 1995 to bring the case to justice.¹¹ But the crime of destroying constitutional order, whose statute of limitations is suspended under the 5.18 Democratic Movement Act and the Constitutional Crimes Enforcement Act, amounts to the crime of civil war, the crime of foreign exchange and rebellion in the military criminal act, and the crime of transfer in the second chapter. Sexual violence is not the case. Therefore, crimes against sexual violence at the time of 5.18 can no longer be held liable because the statute of limitations has expired after 39 years. Nevertheless, thoroughly uncovering the state's violence against women committed by martial law soldiers and others at the time of 5.18 and keeping it as a historical record is a necessary task for "progress through reflection and reflection."

3. Whether or not there is a need for a hearing regulation

The 5.18 Truth and Reconciliation Act provides regulations for hearings as stipulated in Articles 31 through Article 36 of the 「Special Act for Identifying the Facts of the 4 · 16 Sewol Ferry and the Establishment of a Safe Society」 (hereinafter referred to as the "Special Act for the 4 · 16 Sewol Ferry"). However, it is questionable how effectively the truth can be determined through the hearing, as shown during the hearing of the 4 · 16 Sewol Ferry.

Indeed, the question can be answered by looking at how successful the hearings were conducted under Special Act for the 4 · 16 Sewol Ferry. The 4 · 16 Sewol Ferry Special Investigation Committee(hereinafter referred to as the "Sewol Ferry Committee") was empowered to conduct hearings, as opposed to other similar committees having provisions for hearings. In other words, the Sewol Ferry Committee has the authority to listen to testimonies, emotions and descriptions from witnesses, appraisers and witnesses and conduct hearings to adopt evidence under the Sewol Investigation Act(Article 31 1). Accordingly, the Sewol Ferry Committee decided to actively use the hearings to clarify new evidence and facts and increase the effectiveness and transparency of truth-finding activities, and established the 'rules of hearing operation' to prepare conditions for holding hearings. Also, the task force has set a topic based on the facts that are actually being investigated, and has made it possible to directly assist in the investigation activities by selecting the contents of the investigation as suspicions during the investigation activities.

Through these processes, the first hearing was held for three days from December 14 to

¹¹ For a detailed analysis of this, see "Restoration of Justice by excluding the statute of limitations on crimes that destroy constitutional order," and "Refer to Human Rights Law Review No. 21, 2018.8, and less than three pages."

16, 2015 in Seoul YWCA. The topics were ① appropriateness of the early rescue of the Sewol ferry disaster and the appropriateness of the government response, ② whether or not the manual for responding to maritime accident, ③ the problem of the victim support measures at the disaster site, and the problems of the Coast Guard's rescue during the disaster were intensively questioned.

The second hearing was held at Seoul City Hall from March 28-29, 2016. The hearing was held to find out "the cause of the 4.16 Sewol ferry disaster, related statutes and institutional problems." For this purpose, the problems of ① cause of sinking and crew action, ② problems in the process of introducing and operating ships, and ③ matters concerning the management and salvage of the hull after sinking were investigated.

Difficult to maintain the government's budget an outstanding and due to the survey activities, in the third round of hearings from September 1, 2016, Yonsei University two days on September 2. Held in Kim Dae-jung Library. Under the theme of "The State's Action and Responsibility for the 4.16 Sewol Ferry Disaster", were investigated ① the government's insufficient fact-finding measures, ② the adequacy of rescue and government response to the disaster, ③ the fairness of the press reports on the disaster, ④ the issue of the state's measures to deal with victims after the disaster, and the ⑤ intact salvage of the ferry, salvage, salvage, and salvage of the sunken ferry. It also held ⑥ a meeting to tell the public and the bereaved families about the new facts that were revealed by the Coast Guard's Trunked Radio System (TRS).

However, the Park government also interfered with the legal hearings. In the first hearing, a document titled "Seewal Special Investigation Committee Hearing Document" with a warning word "Foreign Attention" was found. In this section, the 'Questionnaire' and the 'Answer' were put together.¹² Even back then, it was created path is unknown where production in accordance with instructions in the former president, Park Geun-hye since a strongly suspect that the prosecution and the circumstances. Captured in the process of the investigation. According to them, a document titled 'Report on the Implementation of Presidential Directives' written by the Office of the Senior Presidential Secretary for Economic Affairs was found in the document, which was made on Dec. 13, 2015, a day before the first hearing on the 4.16 Sewol ferry. It is said that former President Park Geun-hye ordered An Jong Bum "We need to make a practical part about the 4.16 Sewol ferry hearing, but we need to make a political judgment, so analyze the propensity of the witnesses and the reference person and carefully prepare the expected Q&A(question and answer)". This means that there was a presidential directive to prevent and neutralize the activities of the hearing in advance so that the answers of the witnesses would not be confused.

¹² Report by Media Today, 2015.12.22.

〈http://special.mediatoday.co.kr/sewol_ship/?p=1331〉, (Final date: 2019.4.20.)

In addition, In addition, there was an obstruction to the third hearing. In a press release on Aug. 23, 2016, the Ministry of Maritime Affairs and Fisheries claimed that the Sewol Ferry Committee "cannot hold a hearing because the investigation period ended on June 30, 2016," prompting witnesses to skip attendance and most government officials who were actually asked to appear as witnesses or witnesses. There were also problems in the process of setting up the venue for the hearing. Initially, the committee decided to hold a hearing in the auditorium of Teachers' Pension and paid the fees, but the agency suddenly contacted them that it would cancel the ceremony. In the process, it was discovered that the pressure was exerted by the Ministry of Education → Teachers' Pension → the Seoul Center for Teachers' Pension.¹³

The three hearings, held amid interference from the president and the government, failed to ask questions effective enough to reverse witnesses' claims of repeating their wives, as they did not have much time to prepare. Nevertheless, he consistently asked questions about those responsible for the 4.16 Sewol ferry disaster at a public meeting, confirming that there are still many matters to be clarified about the disaster, and that it was an opportunity to publicize the appeal of the bereaved families to the truth.¹⁴

In the case of the 4.16 Sewol ferry disaster hearing, a more thorough investigation of the truth will be made possible as the hearing for the 5.18 Democratic Movement will be held by witnesses, appraisers and witnesses. However, if the hearing to investigate the May 18 Democratic Movement turns into a political issue, it is likely that the truth will become difficult. Also, it is questionable how accurate and credible the testimonies of relevant witnesses are, as the truths that should be revealed at the hearing were not relatively recent events like the 4. 16 ferry disaster in 2014.4.16, but happened 39 years ago in May 1980. Therefore, although there is a provision related to the hearings of the Truth and Reconciliation Act, Sewol ferry disaster should be a good lesson to a hearing of 5.18 Democratic Movement.

4. Whether the warrant of accompanying is effective

In addition, questions may be raised about how effective the warrant of accompanying system can be under the May 18 Investigation Bill. The accompanying order system is derived from a system that allows the National Assembly to order accompanying witnesses or witnesses to the conference room if they refuse to attend without due cause during a parliamentary or parliamentary audit. Refusing to follow orders to accompany

¹³ Report by Kyunghyang Shinmun, 2016.8.11.

<http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201608112308015&code=940100&nv=stand>,

(Final search date : 2019.4.20.)

¹⁴ Lee Ho Young, "Seowal Special Tide Activity and Intervention by Park Geun-hye Government", Democracy Law No. 63 (May 2013), pp. 223–225.

the National Assembly under the "Test of Testimony and Emotion Act" (hereinafter referred to as the "Proof and Sentiment Act") may result in criminal punishment of up to five years in prison, rather than fines, for contempt of the National Assembly (article 13 of the Act).

The U.S. and Japan also operate a similar warrant of accompanying system to Korea.¹⁵ The U.S. Congress has a strong mandate to summon witnesses and punish those who are not present. A House committee or sub-committee may issue subpoenas to witnesses (Article 11 (m)(1)(B) of the House of Representatives Rules). Summoner is executed by federal court enforcers or committee members, and is also executed by the Chief Inspector of the Council. In the event that a witness who has received a request for parliamentary attendance is absent or refuses to testify in attendance, he shall be liable to a contempt of Congress, to a fine not exceeding \$100 and not exceeding \$1,000 or to imprisonment for a term not exceeding one month and not more than one year(2 U.S.C. §§ 192-194). Parliament has the sole authority to file charges against contempt of Congress. When the committee responsible for investigating the witnesses approves the charges of contempt of Congress according to the general quorum, and submits the complaint to the House speaker or the Senate speaker, the chairman submits them to the federal prosecutor, and the federal prosecutor sends the charges to the grand jury, which determines whether they are indicted or not. At the same time, the Senate has the power to enforce subpoenas in civil case (2 U.S.C. § 288b(b), 288d; 28 U.S.C. §1365). When a Senate or Senate committee submits a suit to a federal district court to confirm the obligation to fulfill a summons, the court confirms the existence of an attendance obligation under the subpoena and then gives an order to appear. Even after the ruling is made, being absent constitutes a contempt of court.

In Japan, it is similar to the Korean system, which provides for the provision of criminal punishment and Congress accusations against witnesses who fail to attend in court. A witness who is required to appear in the Lower House or the House of Councilors shall be sentenced to up to one year's imprisonment or a fine of up to 100,000 yen if he is absent without due cause or fails to testify after his attendance(「the Law on the Proclamation and Testimony of Witnesses in Parliament」 Article 7). For criminal punishment, it is necessary to file a complaint from Congress, which requires the approval of two-thirds or more of the committee members. The quorum for the complaint is more than in our National Assembly.(Article 8 Clause 2 of the above Act). However, since 1988 when the system of accompanying orders was established in Korea, there have been no actual cases of receiving prison sentences, raising a constant debate over whether the system is effective. In fact, 25 witnesses who were absent from the first and fourth hearings of the "Choi Soon-sil gate" parliamentary investigation were issued with the warrant of accompanying, only Chang Si-ho, who was present at

¹⁵ Choi Jung-In, "Institutional Improvement Plan for Strengthening Attendance of the National Assembly Witnesses", Issues and Issues No. 564 (November 21, 2012), pages 2-3.

the second hearing. Only one out of 25 people attended, and the effectiveness of the warrant of accompanying system is only 4 percent. As such, the effectiveness of the warrant of accompanying system under the Test of Testimony Act, which can impose up to five years in prison for contempt of the National Assembly, is also very low, and critics say that it would be difficult to expect the effectiveness of the warrant of accompanying system under the 5.18 Investigation Law which imposes a fine of up to 10 million won, to be imposed. Despite such criticisms, however, it is difficult to impose criminal sanctions higher than fines as the warrant of accompanying system under the 5.18 Special Committee is different from the one related to the parliamentary inspection or investigation.¹⁶

IV. A conclusion

The truth of the May 18 Gwangju Democratization Movement has been overshadowed over the past 39 years by attempts to disparage, cover up and distort all kinds of fake news, anti-May 18 groups, 5 Republic military coup advocates and far-right groups. As a result, there are still no state-approved government reports on the 5.18 Democratic Movement. Still, there are so many things that we do not know what happened by Chun Doo-hwan, who committed military coups and founded an illegal state and martial law soldiers, who were ordered by Chun Doo-hwan 39 years ago in Gwangju. Some argue that 5.18 is a history that has already been sorted out, but most citizens think that 5.18 is still a history that has yet to be sorted out. Only when a thorough investigation of the 5.18 Democratic Movement is carried out by the government and recorded as a government report can the government create a basis for punishing those who repeatedly disparage or distort the 5.18 Democratic Movement like Jee Man-Won, as if they were malicious and repeatedly, and a standard for how to deal with the 5.18 Democratic Movement can be prepared in history textbooks. Therefore, it is necessary to launch a truth-finding act and a fact-finding committee as soon as possible.

Expectations are high for the 5.18 Truth and Reconciliation Act, but there are also concerns that if fact-finding is actually carried out according to the law, the investigation of the 5.18 Democratic Movement may not be conducted thoroughly due to resistance from Chun Doo-hwan, a constitutional destruction order criminal and his sympathizers. Despite these concerns, however, it should be remembered that history will be retreating, not progress, unless efforts are made to uncover the historical truth related to the still unfinished 5.18 Democratic Movement. It is the mission and mission of the Republic of Korea to get to the bottom of the 5.18 Democratic Movement

¹⁶ However, in order to secure the effectiveness of the warrant of accompanying, some amendments to the law revising the 5.18 Investigation Law by Rep. Choi Kyung-hwan, which will raise the fines from current KRW 10 million to KRW 30 million, are pending in the National Assembly on June 4, 2018 have.

properly, thoroughly and clearly in accordance with the 5.18 Investigation Law. Before the 40th anniversary of the 5.18 Democratic Movement next year, we strongly urge all members of the National Assembly of the ruling and opposition parties to make efforts to ensure that the 5.18 Special Committee can be launched normally.



The Phase of the Media Reports by Korea Far-rights on the May 18 Democratic Uprising and Distortions

Jeong Heesang (Senior Reporter at Sisa IN)

1. How May 18th has been reported in Korean media

Focusing on how the May 18th Gwangju Uprising has been reported in Korean media is essential because it clearly shows the Korean modern history itself. It may be necessary to highlight the changes of the way that May 18th has been reported here. Until the June Struggle in 1987, May 18th in the media has been reported just as "Gwangju Riot". Additionally, May 18th just appeared when student's activists protested for its truth finding. During the Chun Doo-hwan's military regime, "Gwangju" and "May 18" were taboos.

In almost every newspaper, the protests of university students who claimed for "the truth finding of the Gwangju Incident" were only reported as brief news. Furthermore, except for the government announcement, it was impossible to find anything about Gwangju in newspapers during the dictatorship. Such reports were too strong before the June Struggle in 1987.

However, after 1983, people started to resist against the Chun Doo-hwan's authoritarian regime. Whenever May came, people participated in protests, but the newspaper didn't cover enough of the social changes.

During the mid-1980s, before the Hankyoreh, a progressive newspaper was established, The Donga Ilbo was known as a quite objective newspaper. However, the Donga Ilbo covered the protests only as, "Protesters gathered to require the truth finding of the Gwangju Incident (May 17, 1985)", "There were six memorial protests for the Gwangju Incident, people marched after attending a mass at the Archdiocese of Gwangju, university students also held memorial

ceremonies, pro-democratic activists announced a statement (May 17, 1986)", and "80 universities across the country fiercely protested inside and out". As such, May 18th was never a headline.

In 1985, after the "February 12 General Election" Chun Doohwan's ruling party lost its power and political dissidents Kim Daejung and Kim Youngsam became rising stars. The two Kims announced a statement on May 18th, and the "truth finding of the Gwangju Incident" became political agendas. Journalists started to report the people's protests demanding for the truth of May 18th and the bloody suppression. Despite these marginal changes, public TV networks were trying to devalue May 18th under Chun Doohwan's regime and they did so before the June Struggle in 1987. When people started to fiercely resist against the Chun's military dictatorship especially after the "February 12 General Election", the public TV networks were just a sycophant to the government. In particular, the "Gwangju Special Series" which was produced by KBS and televised for eight times, is the worst example. Throughout the "Gwangju Special Series", KBS made a frame that May 18th was a "riot", but they changed their attitude after the June Struggle. The "Gwangju Incident" was then changed to "Gwangju Uprising" and journalists started to criticize the government and required the truth finding of May 18. It was astonishing to see how many things were changed when May 18 reached its 8th anniversary. Even the most conservative newspaper, the Chosun Ilbo covered the May 18 commemoration events with a headline which pacified the victims. TV stations produced special programs to highlight May 18th especially the "Mother's Song" which was produced and televised by MBC and was highly reviewed because it showed the deep depression and sadness that the victims would bear after May 18th. In March 1989, "Gwangju Tells" which was made by KBS revealed the shocking fact of the massacre that occurred in Junam Village during May 18th.

The June Struggle in 1987 affected the political landscape and as a result of

general election in 1988, the opposition party finally became a majority. Accordingly, the December 12 Coup and the May 18 Democratic Movement became key issues in the National Assembly. Also, people demanded for the truth about May 18th and punishing high level perpetrators of state violence. Eventually the "May 18 Gwangju Democratic Movement Special Investigation Committee" was formed and the National Assembly conducted hearings on May 18th. During this period, the former President Roh Moohyun became famous. In December 1989, the term of the "May 18 Gwangju Democratic Movement Special Investigation Committee" was terminated and as domestic politics changed, May 18 disappeared from the media again.

After Kim Youngsam was elected, things didn't quite change. The first May after the "Civilian Government" was established, journalism just focused on power relationships and government solutions rather than the truth finding of May 18. During the Kim Youngsam government, a few newspapers like The Central Times published a special series on May 18, but it is a very exceptional example.

Given Kim Youngsam's political stance, it was difficult to require him to pursue the truth finding of May 18 and the punishment of the perpetrators. President Kim Youngsam released a statement on May 14th, 1993.

"The truth finding should aim at correcting history. It shouldn't be about repeating the past tragedy and punishment. What is important at the moment is honoring the May 18 Democratic Movement. The historical evaluation of May 18 should be done in the future. We should break the circle of grudge and conflict. We shouldn't try retribution." (Emphasized by the author)

This statement made people angry because it says he didn't have a political will to conduct any investigations on the state violence. He just focused on compensation for victims rather than the truth finding of May 18.

In 1994, citizens filed complaints and denounced Chun Doohwan and Roh Taewoo at the Seoul Central District Prosecutors' Office. However, the

Prosecutor's Office decided a disposition not to institute a public action. Their decision made people much angrier. Finally, the National Assembly legislated the May 18 Special Law and the Special Law on Statute of Limitation for Crimes breaking the constitutional order on December 19, 1995. May 18th was established as a national holiday in 1997.

Chun Doohwan and Roh Taewoo were indicted under the two special laws and Chun was sentenced to life imprisonment and Roh was imprisoned for 17 years. In addition, other high-level perpetrators were also convicted. However, Chun and Roh soon have been pardoned during the Kim Daejung administration.

Though the results were not enough, May 18 Special Law enabled punishment of perpetrators of May 18. Unfortunately, the truth finding hasn't been done yet. We still don't know who ordered the shootings at citizens, the massive shooting from helicopters, if Chun actually visited Gwangju during that time, sexual assaults against women, missing bodies, etc. It is true that the military destroyed all the related documents to conceal the truth.

The journalism that covered May 18 from the authoritarian regime's perspective didn't apologize for their past behaviors and kept silent about May 18. Meanwhile, an extreme right winger Ji Manwon tried historical distortion against May 18 saying that May 18 was created by 600 North Korean secret agents. It may be necessary to highlight that newspapers in Gwangju and Jeonnam area also didn't really focus on the truth finding, but rather they just covered commemoration events, cultural activities related to May 18. It shows the clear limitation of the role of journalists.

2. Historial Distortion against May 18 and Extreme Right Wingers

Right after Chun was criticized and denounced for perpetrating state violence, particularly from 1995, some extreme right wingers constantly tried historical distortion and devaluation against May 18. The key figures are Cho Gabje, Lee

Dongwook from the Chosun Monthly and Ji Manwon.

Though Cho Gabje has a slightly different view with Ji Manwon, they both try to justify the inevitability of bloody suppression.

Cho Gabje was a reporter working for the Chosun Ilbo in 1980 and was in Gwangju during May 18 to cover what was going on. Cho continuously tries historical distortion against May 18 by delivering lectures such as "the bloody suppression was accidental" which is completely opposite with the official history of May 18. Additionally, Cho distorts the historical fact on why people armed themselves to fight against the martial law army. Cho said the stories about how brutal the bloody suppression are all wrong. Also, he argued that soldiers fired guns because the protesters armed themselves. However, during May 18, the first victim, Kim Kyungcheol, died after being beaten up by the soldiers. This was the start of the cruel violence against people. A lot of women were sexually harassed by soldiers. The martial law army also fired guns at students at Chonnam National University. In addition, the soldiers shot in a massive group on Geumnam Street on May 21st, 1980. After this massive shooting, people decided to arm themselves. Except for these, he also claimed that the martial law soldiers came from Jeolla Province, where Gwangju is part of it. According to population proportion, a few soldiers in the army actually came from Jeolla Province. If Cho is right, the military authoritarian regime particularly chose soldiers from Jeolla Province for the suppression. However, we are not able to find any evidence to prove it. He continued his irresponsible argument on May 18 interpreting that it was an "anti-communist" movement which is not actually true. Also he tried to justify the Chun Doohwan military government by saying, "We don't necessarily see history based on morality. We can't simply judge the good and evil. Chun Doohwan was a hardworking President and did a great thing for our economy."

3. The Shadow of the Korean Conservative

Cho Gabje's attempts to devalue May 18 are not just ludicrous words but harming the history of democratization in Korea. This is crucial. Even the Korean conservatives string along with Cho. Last September, a journalist working for Chosun Monthly, Lee Dongwook, was nominated to the May 18 Special Investigation Committee by a right wing Liberty Korea Party. Lee Dongwook, who shares the same view on May 18 with Cho Gabje, wrote a problematic article about May 18 in 1996 and was required to apologize for trying to distort the history of the May 18 Democratic Movement. In the article, he argued that the brutal suppression, shooting, sexual violence, and torture are not true. Also, he wrote that the responsibility of the political violence is not obvious, using armored cars are a false report, and the number of victims are questionable. He also argued that all the "false reports" are victim-centered and claimed that victims are not necessarily righteous. He calls May 18 as a "Gwangju Incident" rather than using the official term "The May 18 Democratic Movement". Therefore, it was controversial when he was nominated as a member of the May 18 Special Investigation Committee. After the six months joint investigation, it was confirmed that the reported number of sexual assaults committed by martial law soldiers is 17. This also includes gang rape and sexual assaults against minors. These results are opposite of what Lee Dongwook had been arguing.

President Moon Jaein required the Liberty Korea Party to nominate other people instead of Lee Dongwook because they are not qualified to take the position according to the guideline which was established by law since the guideline says that the Special Investigation Committee Member should be a judge, public prosecutor, military judicial officer, or lawyer. Otherwise, the member should be a professor in the field of history, military studies, political science, or physics. Also, the member should be a human rights activist who has been working for more than five years in the respected field. Not only Lee Dongwook but also Kwon Taeoh who was also nominated by the Liberty Korea Party are not

qualified to be a member of the May 18 Special Investigation Committee. However, the Liberty Korea Party persists to re-nominate the two people and said that President Moon's requirement is "quite impolite". In addition, the Liberty Korea Party hasn't re-nominated anyone and the May 18 Special Investigation Committee is not able to start their work.

4. Ji Manwon's Delusion and Liberty Korea Party

I first met Ji Manwon in 1990 as a reporter for a progressive monthly magazine called Mal. I was sick and tired of politically ambitious military officials and Ji Manwon was not the case. At that time, he wanted to be a "rationalist" and he argued that change and reform are needed. During the 1990s, he was regarded as a quite progressive and rational thinker. He was the chairperson for the Unification Committee at the Citizen's Coalition for Economic Justice. In addition, he sometimes published columns for the Mal, Sisa Journal, and Hankyoreh.

As a former highly ranked military official, he gave me some information on corruption cases within the military. Based on his testimonies, I was able to write exclusive news several times. Also, he gave me an account on the relationship between Chun Doo-hwan's regime and weapon business. It became a scoop and through this exclusive news, Ji became famous. So Kim Dae-jung's presidential campaign team wanted to work with him. Ji worked for the campaign team, but he disappeared afterwards. I asked him why and he said that he wants to live a free life. One person who worked with Ji said to me that his private life and inappropriate behavior came into question. I felt bad for Ji, but in 1999 he came to me to discuss the possibility that North Korea might invade the South by an underground tunnel. He continued to say that Kim Dae-jung's government didn't take any action against it. He was serious and I found out that he was no longer a "rationalist". So I left without taking his remarks seriously. In 2000, he launched

his homepage called "System Club" and wrote a slogan, "Assassinate Kim Daejung". He explained that it was a counter-reaction against Kim Daejung's policy to reconcile with North Korea. I criticized him over the phone and Ji sued me to the Press Arbitration Commission.

Afterwards, he started to argue that the May 18 Gwangju tragedy was a riot that was created by 600 North Korean secret agents. He pointed at 54 protesters and labeled them as Gwangsu (North Korean secret agent). He claimed that some of the protesters are actually top politicians in North Korea. He was sued for this by the victims of May 18, but he didn't stop to do so. To make things worse, the Liberty Korea Party actually tried to nominate him as a member of the May 18 Special Investigation Committee and it was greatly criticized.

Against Ji's ridiculous remarks, Cho Gabje disputed Ji's North Korea secret agents stating, "Arguing such things are revealing his level of intellectual ability. 600 North Korean secret agents came to Gwangju and left after the riot without any evidence is possible? It can't even be possible in SF films."

Ji wrote an article and this may explain why he became a person talking nonsense. Excerpts from it are below: "In 1990, I focused on how to change Korean society and it became well known. A lot of newspapers required me to write columns and I was almost a star. Therefore, a presidential candidate, Kim Daejung, approached me and I talked with him over many issues. After he was elected as President, people who worked with him, met me and asked me if I was interested in taking a position in Kim's administration. However, I refused because I value a free life and I don't like politicians. It may be wordy but what I mean by this, I want to say that I didn't hate Kim Daejung from the beginning, but I criticize him as a history researcher with a pure purpose. I believed that Chun Doohwan was bad and Kim Daejung was a victim. When I worked for the intelligence agency, I actually thought that Kim Daejung must be killed. But I left Kim Daejung because of his policy to reconcile with North Korea. Through the policy, I realized that they are all pro-Communists. I think they are dangerous

North Korean sympathizers. I finally realized that the military regime's judgments on Kim Daejung was true and I should start to fight against the left-wingers. After that, I began to work on May 18. That's my motivation to say that the Gwangju Incident is a riot that a few leftists and North Korean secret agents created. This is the history written in the past and this is my belief.”



Session 4: Correcting Past Injustice Session

Unfinished Mission – Righting Past Injustice;
Outcomes and Prospects (I)

- **State-led Truth-finding Commissions and Development of Democracy**

Mr. Kim Han-gyun (Korean Institute of Criminology)

- **The Outcomes and Limits of State-led Truth-finding Projects – Centered on the Truth and Reconciliation Committee & the Committee on Death under Suspicious Circumstances**

Mr. Ahn Gyeon-ho (The April 9 Unification & Peace Foundation)

State-led Truth-finding Commissions and Development of Democracy

Han-gyun Kim (Korean Institute Criminology)

History would not be composed only of honor and self-respect.
Contemporary history of Korea we have gone through has to be written on the basis of
not only achievement and boast, but self-reflection and confession.
(Hoon Kim. Writing with Pencil. 2019)

I. What does the Liquidation of the Past mean in Korea?

Korea society still struggles with a deep-rooted evil of contemporary history in 2019. What is a cause of a deep-rooted evil, in other word, ‘an ingrained negative effect that has been accumulated for a long time’? It is unsettled past. The liquidation of the past has to be completed not to be evaluated that the contemporary history of Korea was the history of the failure of the liquidation of the past again. Only if we do that, we would hope better future. Of course, there could be a criticism that Korea, the developed country in 21st century, still should be tied down to the past. However, it is a prior task to complete the liquidation of the past to qualitative progress of the democratization and growth.

The contemporary history of Korea is the history that has achieved both democracy and economic growth, however, there would have been the wrong past affairs that had not to be corrected and recovered in the back of the history. The task of the liquidation of the past is multi-layered and complex. Thus, it is difficult to achieve the goal and there still be strength of the past to prohibit the promotion. That is, the liquidation of the past in Korea is the task to break through

the situation in three dimensions that 4 injustices(不正義) due to colonialism, civil war, division of territory and dictatorship were piled one over another vertically and intensified and settled in horizontally. In fact, the liquidation of the past-illegality is the dilemma itself so there was no case to complete at a time even though each country carries out the liquidation tasks in various types. There are few cases that the judicial action about the person in charge of the past illegality was performed successfully.

The liquidation of the past in Korea has been proceeded in stubborn resistance and political conflict for a long time. Reaction and conflict was reflected plainly to the judicial system of the liquidation of the past and actual process of promotion. The legal base of the liquidation of the past could not be possible until democratization in 1987. 'Law on the Compensation of Persons Related to the Gwangju Democratization Movement' in 1990 is that. But it is merely the law not for victims but 'related persons', not reparation according to the illegal responsibility but 'compensation'. In 'Act on Special Measures for the Restoration of the Name of those involved in Geochang Incident' in 1996, it was also defined regaining the impaired reputation without a fact finding, and not for victims but 'regaining the related persons' restoration. The law that specified 'a fact finding' and 'victims' is 'Special Act on the Investigation of the Truth of Jeju Incident and Restoration of Victims' Names' in 2000.

The definition of 'democracy movement' of the Law on the Restoration of the Name and Compensation of those involved in Korea(Democratic Compensation Law) in 2000 has become the concept shared by the liquidation laws of the past since Special Act on Inquiry into Suspicious Deaths(Law No. 6170). That is, 'Democracy Movement' means 'The movement that resisted against the authoritarian rules that invaded the people's basic human rights guaranteed by the constitution after on august 7, 1969 so contribute the establishment of democratic constitutional order and recover and increase the freedom and rights of the people'. Thus, the mysterious death related to democracy movement is defined as 'Suspicious Death', and people to be regained the reputation and compensated are defined as 'Democratic Activists'.

The concept of 'Democracy Movement' also suggests the concept of the past-illegality to be liquidated indirectly. The acts and the results of 'the authoritarian rules that disordered the liberal basic order and invaded the people's basic human rights guaranteed by the constitution' is the

past-illegality to be liquidated. The example of the active legal definition about the past illegality is 'Anti-democratic Act' on Anti-democratic Act on the restriction of the Civil Rights. That is, it is the act of breaking democratic principles by violating or violating the basic rights of the Korean people under the Constitution Other Law. (Article 2 of the same law)

But there is no established legal definition about the illegality of the past after this. It is just suggested individually according to the individual liquidation law of the past and organization. The object of the compensation for the loss and regaining the reputation is just defined indirectly without specification about the target of the institutional and human problem of liquidation. On the following, let me sort the liquidation law of the past and organization with the individual and inclusive liquidation law of the past and analyze the outcome and limit, and suggest the task for the completion of the liquidation of the past.

II. What does the Liquidation of the Past in Korea achieve?

The actual liquidation of the past is made up of the law and the system. We could make the new history and culture in that course. The task to make the law and the system is the most important beginning of the liquidation of the past but very hard and difficult.

In the course of the establishment and act of the liquidation of the past, first, the contents of the establishment and act have to be disclosed to the public clearly except for the information that damage the reputation of the victims and their family or not helpful to social integration. It is because that the establishment and act itself raise the social awareness. Also, it could support the act of the liquidation of the past against the political resistance.

Second, the participation of the related people has to be assured. The judicial system has to be supported in order that the participation of the voluntary supporters, whistle-blowers, victims, related specialists among the people of the responsibility of the past illegality is actually possible. The passage has to be set among the liquidation organization, victims and supporting civil society to cooperate with each other.

Third, it has to be given to do the actual investigation, hear evidence and get the right of the basic data to probe the truth that is basis of the liquidation of the past.

The outcomes of the act of the liquidation of the past organization is, first, the actual bounds and level of the actual investigation, second, the punishment of the responsibility and the apology of the responsibility, and third, the regaining of the victims and actual implementation of reparation or compensation. The individual organization of the liquidation of the past is in the case to push ahead the finding fact, the punishment of the responsibility and the implementation of reparation or compensation individually. The outcomes of the organization of the liquidation of the past have to not to repeat the illegal history of the past to get results at last. Thus, first, the record of achievement including the report has to be taught and share to the society at large. Second, the advice of system reform that the organization of the liquidation of the past suggested as outcomes of the acts has to push ahead as the law and the system. Third, the outcomes of the liquidation of the past have to be connected with the democracy of Korean society and evolution of human rights.

1. The outcomes of the judicial system of the individual past liquidation

[Chart] The individual judicial system and organization of the individual past liquidation since 1990¹

Name of committee	Period of activity	Legal basis	Belonging	Main functions
Committee for the Compensation of those involved in the	August, 1990-	·1990. Law on Compensation for those involved in the Gwangju	Prime Minister	·Compensation for the loss ·Giving life support fund, medical support fund for victims ·Designation 5.18 cemetery as

¹ Truth and Reconciliation Commission, General Report of the Truth and Reconciliation Commission I – Reconstructing the contents of Recommendation of Commission's history and activity, 2010, page 13-15.; Presidential Advisory Policy Planning Committee, The summary of the inclusive past history, Participatory Government Policy Report page 1-05, 2008,167-169.

Gwangju Democratization Movement		Democratization Movement ·2006. Law on Compensation for those involved in the 5.18 Democratic Movement		National cemetery ·Establish and operate 5.18 memorial foundation
Committee for the Restoration of the Name of the People involved in the Geochang Incident	February, 1998-	·1996. Act on Special Measures for the Restoration of the Name of those involved in Geochang Incident		·Review designation victims and bereaved family ·Making memorial park and operation support
Jeju 4.3 Incident Investigation and Medication Committee	August, 2000-	·2000. Special Act on the Investigation of the Truth of Jeju incident and Restoration of Victims' Name		·Publishing incident status report ·Giving medical support fund ·Review designation victims and bereaved family ·Making memorial park
Samcheong Education Victim's Name Restoration and Compensation Review Committee	August, 2004-December, 2008	·2004. Law on the Restoration and Compensation of the Victims of Samcheong Education		·Review designation victims of samcheong education ·Compensation for the loss ·Giving medical support fund ·Restoration of honor
Committee for the Review and Restoration of Nogun-ri incident victims	August, 2004-	·2004. Law on the Review of Victims and Restoration of Fame in Nogun-ri		·Review designation victims and bereaved family ·Giving medical support fund ·Making history park
Special Mission	January,	·2004. Act on		·Review special mission

Executives Compensation Review Committee	2005-	the compensation of Special Mission Executives		executives ·Giving compensation ·Giving special contribution fund, compensation
Special Operations Authorization Review Committee	February, 2005- November, 2006	·2004. June 25 Law on Military Service Authorization and Compensation for those who contributed to Operation in the Rear area of the Korean War	Ministry of National Defense	·Investigating truth ·Review special operations authorization ·Giving compensation
Military Truth Commission on Suspicious Deaths	January, 2006- 2008	·2005. Special Act on the Investigation of Military texts, etc.	President	·Investigating truth of military suspicious deaths ·Accusing a criminal suspect ·Suggesting amnesty for confessed assailant

1. 1. Investigating Truth

The tasks of the first Presidential Truth Commission on Suspicious Deaths(2000-02) and the second Presidential Truth Commission on Suspicious Deaths(2003-04) were the selecting the recipients of the suspicious death and those who have suspicious deaths according to the Special Act on inquiry into Suspicious Deaths. (article 4 of the same law) They held a public hearing to collect and reflect opinions from all levels of society related to the suspicious deaths. But there was no forced right to investigate, and related organizations like National Intelligence Service, Ministry of National Defense, Defense Security Command were uncooperative about the

submission of materials and visiting research. The second committee reported the condition of noncooperation of each organization.²

Noticeable change is that national organizations of responsibility of the past illegality investigate truth autonomously to accept the social demands of investigating truth according to the will of definite the liquidation of the past of President in 2004. This was proceeded by Truth Commission on the Past participated by civilians each by National Intelligence Service, Ministry of National Defense, and National Policy Agency. Truth Commission on the Past of National Policy Agency composed the committee with civilian committee members and Policy Agency committee members and set up the investigation team in 2004. They proceeded the investigating truth proposed suspicion of the past like Kang Ki-hoon's ghostwriting incident(1991).³ Truth Commission on the Past of Ministry of National Defense composed the committee with civilian committee members and Ministry of National Defense committee members in 2005 and proceeded the investigating Truth about the Process of Coming into Power of New Army Group, Forced Conscription, Samcheong Education Corps. Incident arised from 518 Democratic Movement.⁴ The Developing Committee through the Investigating the Truth of the Past of National Intelligence Security composed the committee with civilian committee members and NIS committee members in 2004, and set up the subcommittee and investigating team and proceeded the investigating the truth of the suspicious of Central Intelligence Agency and Agency for National Security Planning and the past illegality in the area of Politics, Jurisdiction, The Press, Labor, Campus and Spy. Especially, they reported the result of the investigation that Inhyeokdang Incident in 1974 was fabricated by the government at that time.⁵ That result served as a momentum that the court decided the retrial of Inhyeokdang Incident.

² Truth Commission on the Suspicious Deaths, The First Report of Truth Commission on the Suspicious Deaths (2000.10-2002.10) I, 2003, page 261-263.; The Second Report of Truth Commission on the Suspicious Deaths (2003.7-2004.6.), 2004, page 146-156.

³ National Police Agency, The report of the Truth Commission on the Past of National Police Agency, 2007, page 128-381.

⁴The Truth Commission on the Past of Ministry of National Defense, 12-12,5-17,5-18 incident investigation result report, 2007, page 16 below.

⁵ National Intelligence Service, Conversation with the Past Introspection of the future, The Introduction of the Report of the Truth committee of NIS (I), 2007, page 296-309

About this, as a work of private and public joint liquidation of the past, organs of national government that has not only the responsibility of violence but concealing the truth could recover the trust and reasonable authority, and there were expectations that civil society participate in the liquidation of the past and broaden a bond of social consensus. On the other hand, civil group related with the liquidation of the past criticized that it is hard to expect for the people of responsibility to investigate the truth by themselves and it would rather be a indulgence. For the more, the Prosecution and court that have a greater responsibility of the liquidation of the past than any other organizations did not operate the organization of the liquidation of the past due to the position of judicial authority.⁶

In addition, Military Suspicious Deaths Investigation Committee in 2006 established by ‘Special Act on the Investigation of Military Suspicious Deaths’ in 2005 performs the work of receiving petition related with military suspicious deaths, selecting the object of military suspicious deaths, investigating the truth of military suspicious deaths, request of accuse · investigation of military suspicious deaths, relieving the damage and regaining the reputation of concerned.(article 4 of the same law) They investigated the issues that is selected as investigating subjects decided to be needed the truth ascertainment among accidents or incidents of dead people when they worked as soldiers, guards post, riot police · conscripted police had unclear and suspicious reasons of deaths.⁷

The first Truth Committee of Suspicious Deaths achieved the desired results that were connected to the second Committee. That is, 19 cases among the suspicious deaths of investigating subjects were recognized as Suspicious Deaths related with Democracy Movement by illegal governmental authority, and they submitted 51 proposals of recommendation to prevent recurrence of suspicious deaths in October, 2002.⁸ The second committee investigated the truth

⁶ Presidential Advisory Policy Planning Committee, the Summary of inclusive the past history, page 64, 78-79.

⁷ Military Truth Commission on Suspicious Deaths, the report in 2007-commission work and investigating act, 2008, page 75-81.

⁸ Truth Commission on Suspicious Deaths, the first report of Truth Commission on Suspicious Deaths I, page 271-343 면.; the second report of Truth Commission on Suspicious Deaths(2003.7-2004.6.) 2004, page 107-108.

ascertainment decided to be incapable of investigating and incidents decided to reinvestigate at the first Committee, 11 cases were recognized as suspicious deaths.⁹ Especially, they disclosed that Inhyeokdang Incident was fabricated by Central Intelligence Agency, and disclosed the military suspicious deaths related with special management of the students who participated in Democracy movement, and disclose the oppression of students movement like illegal surveillance, observation, torture, etc. by intelligence agencies like National Intelligence Service, Police and so on. Also, they investigated the actual condition of the covert operation and human rights violation by illegal investigation and hauling in detention.¹⁰ The major achievement of the Truth Committee of Suspicious Deaths was revision(abolition) of National Security Law, and suggested the exclusion of prosecution about the crime against humanity and human rights violation by the national government first as national organization.¹¹ Suspicious deaths that were incapable of truth ascertainment were transferred to Truth and Reconciliation Commission to continue investigating the truth. Meanwhile, Military Truth Commission on Suspicious Deaths decided the 11 cases of investigating truth from 2006 to 2007.¹²

1.2. Name Restoration and Compensation

Samcheong Education Victim's Name Restoration and Compensation Review Committee established in 2004 according to the 'Law on the Restoration and Compensation of the Victims of Samcheong Education' in 2004 checks whether the person is relevant to the victim or bereaved family, compensation payment to the victims or bereaved family, the period of recuperation and decision of disability rating of victims frosted, name restoration of the victims or bereaved family and review · decide the matter about the support of related group.(article 3 of the same law) Samcheong Education Victim's Compensation Review Committee reviewed and

⁹ The second report of Truth Commission on Suspicious Deaths (2003.7-2004.6.) 2004, page 107-108.

¹⁰ Truth Commission on Suspicious Deaths, the first report of Truth Commission on Suspicious Deaths II, 2003, page 15 below. ; the second report of Truth Commission on Suspicious Deaths (2003.7-2004.6.) page 132-140.

¹¹ Truth Commission on Suspicious Deaths, the first report of Truth Commission on Suspicious Deaths I, page 333-335.

¹² Military Truth Commission on Suspicious Deaths, the investigating report in 2007-commission work and investigating act, 2008, page 38-40.

decided the requesting compensation, name restoration and requesting reconsideration, and paid compensation from September, 2004 to September, 2007.¹³ The name restoration and the actual compensation were realized so contributed to the national harmony according to the requesting the compensation of Samcheong Education related group and the will of realization of the government. However, the compensation was paid to 12% of the inmates because they defined the range of the Samcheong Education Victims to wound or the dead during the education or aftereffect.

Committee for Review and Restoration of Nogun-ri incident victims established in 2004 according to the ‘Law on the Review of Victims and Restoration of Fame in Nogun-ri’ evaluates · decides the victims, reviews · decides the written facts of the report of Nogun-ri incident victims’ review report.(article 3 of the same law) Committee for Review and Restoration of Nogun-ri incident victims could not do the regular truth investigating activity, but decided the victims and bereaved family.¹⁴ Committee for Review and Restoration of Nogun-ri incident victims took charge of the evaluating victims according to the results of the joint investigation between Korean and US government. But the report could not get the trust because there were some documents that Korean investigation group paid attention to the alliance with US rather than investigating truth when wrote the joint investigation report of Korea-US. Committee of Nogun-ri incident example was the case that it was hard to resolve the similar case during the Korean war.¹⁵

Jeju 4.3 Rehabilitation Committee on the Truth of Incident and Victims established in 2000 according to the ‘Special Act on the Investigation of the Truth of Jeju Incident and Restoration of the Victims’ Names’ establishes the truth of 4.3 incident, and regains reputation of the related victims and bereaved family. It is the special liquidation committee of the past aimed the period of government formation and the Korean War. The committee collects the related data of internal and external of the country and analyze them for the investigation of the truth of Jeju 4.3 incident,

¹³ Presidential Advisory Policy Planning Committee, the summary of inclusive the past history, page 133-13

¹⁴ Presidential Advisory Policy Planning Committee, the summary of inclusive the past history, page 105-106.

¹⁵ Presidential Advisory Policy Planning Committee, the summary of inclusive the past history, page 106-107.

evaluates · decides the victims and bereaved family, gets restoration of victims and bereaved family, writes the fact finding report and makes history museum, makes memorial tomb and memorial tower, reviews · decides the suggestions about the expression of the government's position about Jeju 4.3 Incident.(article 3 of the same law) The result of activity of Jeju 4.3 Incident Committee is that they drew the government's effort of apology. The President published the government stance of apology about Jeju 4.3 Incident victim in 2013. Jeju 4.3 Peace Memorial opened on March, 2008, Jeju 4.3 Peace Foundation was launched on November, Jeju 4.3 Committee white paper 'Reconciliation and Coexisting' was published on December. ¹⁶

There was already fact finding of National Assembly about Gyeongnam Geochang Civilian Massacre in 1951 right after 4.19 in 1960. Rehabilitation Committee for the Geochang Incident was established according to the 'Special Act on the Restoration of Geochang Incident Victims' in January, 1996. The Committee reviews · decides the matter about the victims and bereaved family, restoration of the victims and bereaved family, cemetery, the ancestral ritual formalities and memorial.(article 3 of the same law) Rehabilitation Committee for the Geochang Incident decided victims and bereaved family and gave them the name of restoration.¹⁷

'Special Act on the 5.18 Democracy Movement' was legislated in 1995, people in charge of 12.12 Incident and 5.18 Incident were sentenced to severe punishment due to the military insurgency and rebellion in 1996 so that it became an important turning point of the liquidation of the past in Korea, but the work of the investigating truth could not be continued. Merely, they made a legal basis to give reparation or compensate in cash to victims. That is, the official name 'Gwangju Democracy Movement' was given by legislating and proclaiming the 'Law on Compensation for those Involved in the Gwangju Democratization Movement' on August, 1990. And the legal basis of compensation was made. Committee for the Compensation of those involved in the Gwangju Democratization Movement established of the same law performed the support to compensate victims and bereaved family, restoration of the victims, financial

¹⁶ Presidential Advisory Policy Planning Committee, the summary of inclusive the past history, page 100-104

¹⁷ Presidential Advisory Policy Planning Committee, the summary of inclusive the past history, page 107-108.

countermeasures of victims and bereaved family, supporting the work related 5.18 Democracy Movement.(article 3 of the same law) Committee for the Compensation of those involved in the Gwangju Democratization Movement paid compensation about the 5,517 cases of after effect deaths, missing, wound, taking into detention as well as 155 cases of deaths until on December, 2014.¹⁸

1.3. Punishing Person in Charge

The only example of the law of the liquidation of the past for punishing person in charge of the national criminal in contemporary history of Korea is Act on Special Cases concerning the statute of limitations of constitutional order-destructive crime in 1995. The law defines rebellion and disturbance on criminal law, revolt and act to benefit the enemy on military criminal act as 'Constitutional order Destructive Crime(article 2)', and statute limitations of Convention on the Prevention and Punishment of the Crime of Genocide in 1948 was excluded.(article 3 of the same law) Merely, there is no example of the organization of the liquidation of the past for punishing person in charge of the national criminal yet.

2. The outcomes of the inclusive judicial system of the liquidation of the past

The judicial system of the liquidation of the past has advanced to the level of inclusive liquidation since 2000. Committee on the Restoration and Compensation of Persons Related to Democratic Movement proceeded the restoration and compensation inclusively for 'Democracy Movement' in 2000, and Truth and Reconciliation Commission dealt with all kind of agenda of the liquidation of the past like investigating truth, restoration, amnesty, study on the past history and social integration. After establishment of the inclusive organization of the liquidation of the past, it was pointed out that the targets and the ranges of acts of the investigating truth of the individual organization of the liquidation of the past and Truth and Reconciliation Commission

¹⁸ Senior Secretary for the National Assembly Safety and Public Administration Committee, the Revision of the Law of the Compensation of People for the 5-18 Democratic Movement (2015 년 4 월) page 8.

including the national organization of investigating truth are repeated. Merely, in the investigating truth of Truth Reconciliation Commission, there would be complementary cooperation function for the collaboration of each organization because they need investigation and data security internally.

[Chart] The inclusive judicial system and organization of the liquidation of the past since 1990

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Name of committee	Period of activity	Legal basis	Belonging	Main functions
Truth and Reconciliation Commission	April, 2006 – 2010	·2005.The Basic Law of the Past History for Truth and Reconciliation	Independent organization	·inclusive investigating truth ·Suggesting special amnesty, reinstatement ·Founding past history research foundation
Committee on the Restoration and Compensation of Persons related to Democratic Movement	August, 2000-	·2000. Laws on the Restoration and Compensation of Persons related to Democratic Movement		·Review designation persons related to democratic movement ·Giving compensation for the dead, wound ·Giving life support fund ·Suggesting measures of restoration of honor

2.1. Inclusive Restoration and Compensation

The first Committee on the Restoration and Compensation of Persons related to Democratic Movement was legislated according to the ‘Law on the Restoration and Compensation of persons related to the Democratic Movement’ in 2000, and it was connected to the second committee in

¹⁹ Reconstructing Truth and Reconciliation Commission, the synthesis report of Truth and Reconciliation Commission I, page13-15; 6 Presidential Advisory Policy Planning Committee, the summary of inclusive the past history, page 167-169.

2002, the third committee in 2004. It is the organization for the restoration and compensation at government level. 'Democratic movement related persons' means that the persons dead or missing related to the Democratic Movement, wound or disease and the after effect deaths related to Democratic Movement, the persons who got the judgment of the conviction, a dismissal notice, and a scholastic warning related to Democratic Movement. The committee performed review and decision whether the person was related or not, review and decision of the compensation and paying, restoration of related persons, financial measures of compensation, support the commemorate group, support a life fund, tasks of decision of commemorate related with Democratic Movement.(article 3 of the same law) The committee accepted the application of compensation and restoration, and suggested erasing the criminal records of persons who got a judgment of guilty as follow up measures for the persons related to restoration. They also suggested reinstatement of the persons who hoped reinstatement as dismissal related persons and it was accepted partly.²⁰

Committee for the Review of Democratic Compensation worked for the longest time among the organizations of the liquidation of the past. In the case of restoration and compensation, retroactivity has to be regulated by its nature so that the problem of legal stability with existing law. There would be a discrepancy to the applicants because Democratic Compensation Law has only the function of suggestion related to retroactivity. The need of institutional guarantee for committee expertise should be proposed as well.

2.2. Inclusive Investigating Truth and Restoration

In 'The Basic Law of the Past History for Truth and Reconciliation' in 2005, they investigate the independence movement against Japan, violation of human rights with anti-democratic or anti-human rights and incident of violence, massacre and suspicious deaths so that they disclose the truth distorted and concealed, and secure national legitimacy and have the object of national unity for the future through the reconciliation with the past.(article 1 of the same law) The law regulated violation of human rights with anti- democratic, anti-human rights inclusively doing

²⁰ Presidential Advisory Policy Planning Committee, the summary of inclusive the past history, page 111-113.

that the period of the past was considered to the independence movement against Japan, and the contents of the past were violence, massacre and suspicious deaths. Also, they regulated reconciliation, future and unification as the intended values of the liquidation of the past. Truth and Reconciliation Commission established by the law is the first independent organization of the liquidation of the past like National Human Rights Commission of Korea that manages inclusively the tasks like investigating truth, restoration, a special pardon, study of the past history, and reconciliation. Especially in participatory government, the individual organization of the liquidation of the past and Truth and Reconciliation Commission regulated the truth of the past in considerable level, and gave status to the victims not as one-sided opinion but as the new national truth.

Truth and Reconciliation Commission intended to investigate not only for the application of the victims but for commission's authority. They could request for investigation object and testifier to submit the statement and related documents, attend the commission and could order of accompanying whom ignored them more than 3 times. They prohibit the disclose of contents of investigation related with investigating object and harmful acts until report to President and National Assembly, and could request protection of persons who participated investigating truth or discovered or submitted the documents that was needed to investigate truth receive threats of life and body and have worry about that. Also, they prepared measures to protect testifier and appraiser, secure the related data and prevent extinction, and took actions of compensation or support or amnesty about the persons who disclosed the truth, discovered or submitted the important data needed investigation truth. Especially, in the case of assailant who confessed truth completely during the investigating truth, let him go unpunished or ask for a reduced sentence in the case of the judgement process, and in the case of a judgement of guilty, ask the special amnesty and reinstatement according the law.

With this, Truth and Reconciliation Commission processed 11,175 cases. They published periodic report of investigation(2006-2010), and published report of investigation by case, took actions about the damage and restoration of victims and bereaved family(act of proper reconciliation in legal and political about the assailant, suggest the reconciliation between assailant and victims' bereaved family), asked the special amnesty and reinstatement for persons who got a judgement of guilty by concealing and distorting the truth or disqualification or

suspension of qualification. Also, in the activity report, they suggest the legislate Special Act on the Compensation for the Victims of Civilian Groups of Post Korean War, excavation of remains and laying the remains, establishment of Past History Research Foundation. They suggested making a prevented measure of recurrence like human rights education for the organization done the human rights violations.²¹ These suggestions show that the original meaning of the liquidation of the past is for the future. It is because that the suggestions are the actions that the nation has to practice in front of the investigated truth.

III. What limitation is the effort of the liquidation of the past in Korea?

1. The limits of the law of the individual liquidation of the past

Presidential Truth Commission on Suspicious Deaths proceeded as the way of decision confined individual cases within the democracy movement and illegal intervention of governmental power. Thus, there were limits to regulate the human rights violations by governmental power systematically and structurally. As a result, the suggestions of commission could not result in improvement. And Military Truth Commission on Suspicious Deaths confirmed the need of legal and institutional measure so even in the case of simple suicide, they could get respectful treatment and compensation. Accordingly, they suggested the need of prevention of suicide in the military and better treatment for restoration of the trust and prevention recurrence military suspicious deaths. The outcomes of the investigating truth of the liquidation of the past are meaningful only when those are shared socially and connected with reformation of system. The limits of existing law and organization of individual investigating truth would be connected the limits of reformation of system to prevent governmental violence and proceed Democracy and human rights.

²¹ Truth and Restoration Commission, the synthesis report of Truth and Restoration Commission I, 76-81, page 215-228.

Also, despite the realistic limits, the liquidation of the past could be evaluated to get achievement through restoration and compensation. Merely, it is hard to expect the real restoration and system improvement in the level of compensation without the investigating truth of violations and punishment or apology.

2. The limits of the law of the inclusive liquidation of the past

When considering the achievement of Presidential Truth Commission on Suspicious Deaths in 1999 and Truth and Restoration Commission in 2005, despite the effort and achievement of the inclusive investigating truth, the operation and the course of investigating process was not opened to promise the social participation. Also, the achievement and the effect need to be evaluated for a long time, but there was no progress about the recognition and punishment of the assailant and violent group, compensation and legislation improvement despite 10 years of activity.

Especially, Truth and Restoration Commission suggested synthetic suggestions about the nation and society through the inclusive liquidation of the past, but could not go through the process of public hearing and consultation of the specialists. Special Act on Compensation and Reparation for Civilian Victim Group post Korean War, Civilian Victim Group Excavation of Remains and disposal, establish the past history research foundation could not proceeded.²²Also, restoration of victims and measures for remedy, national measures to prevent recurrence, remedy of law · system · policy · custom, legal and political reconciliation about assailant of investigating truth, measure of nation for national reconciliation and development of democracy, etc. still remain as tasks. Among 17 cases of suggestions, systematic complement to prevent recurrence genocidal like punishment of assailant in the process of the investigating civilian sacrifice post Korean War(suggestion 5), caution of the application of National Security Law(suggestion 6), systematic complement to minimize the limitation of fundamental human rights like preventive custody, residential restrictions, freezing property in the state of emergency(suggestion 7), in the case of a

²² Truth and Restoration Commission, the synthesis report of Truth and Restoration Commission I, page 206,211-214.

secret document about national security, the measure to open to the public after a period in the range of having little influence of national security, and the complement of public information Act in the range of the public interests and the people's right to know(suggestion 8), systematic complement for repentance of assailant and reconciliation through forgiveness of victims and bereaved family(suggestion 11) still remained as unfinished tasks.

IV. What are the Tasks for the Future Liquidation of the Past?

The legislation for 'Special Act on the 5.18 Democratic Movement' in 1995 is meaningful because it was the chance to do individual and inclusive liquidation for the past in earnest. 5·18 Democracy Movement left 'The model of liquidation of the past in Korea'. That is, the principle of the liquidation of the past like investigating truth, punishment of persons in charge, recovering the damage (restoration, recompense and compensation, succession and commemoration)²³. Thus, we have to mediate the three general principles of liquidation of the past – investigating truth, punishment of persons in charge and recovering the damage. We have to introspect what is order of priority, what are the facts of truth, responsibility and damage, what kinds of organization have to be made for investigation, punishment and recovery. Reflecting on the liquidation in 1990's, in the case of individual liquidation of the past, similar laws and committees are repeated, works are repeated, the basic concept of laws are different from each other, administrative measure would be crossed. The investigation on the human rights violations by governmental power in general and overall has to be done to reflect the illegalities of the past and liquidate them.

The tasks for these are the followings. First, in the law on the liquidation of the past, there are practical limits of investigating contents and range, cooperation with related organization, and guarantee of operation right. The legal basis of the organization of liquidation of the past

²³ 5 Principles of Solving Gwangju Problem, that is, investigating truth, punishment of persons in charge, restoration, recompense and compensation, succession and commemoration were regulated as general principles. (Changil Kang, etc. liquidation the past, how far and where to, memory and prospect, page 23.)

legislated the investigating contents and ranges with stiff and restrict and the autonomy of investigating organizations. The range of investigation was specified in too detail in law compared that the right of investigation was weak. It is difficult to apply rules flexibly in the investigating contents and range at the course of the investigation. Also, the organizations of liquidation of the past have to be considered the distinct characteristics because they focus and act on the specific subjects temporarily other than general organizations nationally, and perform the investigation for other countries. The flexibility of execution of the budget has to be guaranteed for flexible and autonomous work coincided with the basic purpose of the investigating truth.

Second, most investigating truth issues related with liquidation of the past are difficult to access without cooperation and support of national organization because they are related with national organizations directly and indirectly. It is difficult to investigate truth without public records and testimony of inside related persons. Meanwhile, they would conflict with victims and give them disappointment without collaboration and coordination with related organizations.

Third, the construct and the work of liquidation of the past would be constricted because of political interests and compromise. The organization of liquidation of the past formed as committee, and the members were got recommendation from President, National Assembly and Chief Justice of the Supreme Court. They are justified of secure of justice according to the separation of legal, administrative and the judicial powers formally, but actually there are problems that the organization of liquidation of the past became a political structure. The contradictory articles related to the liquidation of the past resulted from accepting the conflict insists due to the political interests. On the background, the issues of individual and inclusive liquidation of the past always conflicted with resist of party and media taken the opposite stance. For example, there are logics that we must not dwell on the past because recovering the economic crisis is urgent, and they aggravate ideological conflict disregarding the public welfare, and let them leave at the academic world because it could be influenced by political intention, and 'pro-communist action dissembling democratic forces' has to be included in the target of liquidation of the past.

To overcome these limits, the second committee of liquidation of the past has to reactivate followed the former committee of liquidation of the past from 2005 to 2010. The Basic Law of the Past History for Truth and Reconciliation in 2005 is still a law in force, the second committee

have complete the liquidation of the past by revised the law and overcoming the limits. The 9 revised bill was laid in the 20th National Assembly February, 2019. Among them, the revised bill proposed by 60 members of National Assembly January 1, 2017 still could not apply the investigating truth and could not investigate truth even though the application was done, and despite the decision of investigating truth, it was difficult to get compensation, so the work of committee of liquidation of the past has to reactivate, the period of investigation of committee is specified by June 30, 2021 so to make basis of existence.²⁴ In the proposed bill December 12, 2018, Truth and Reconciliation Commission in 2005 could not complete the investigating about the victims because of short period of investigating work, and the follow up measures were insufficient including fulfillment of suggestions of national organizations, and even after the end of the activity, national violence appeared like detention by force about child, youth and tramp, etc. They intend to contribute nation integration to go to the bright future through reconciliation with the past by giving aid to the victims who could not apply the investigating truth, reactivating the committee for completion the issues that could not be completed and having a loose end.²⁵ That is, the liquidation of the past was not finished yet. Truth to investigate, persons in charge to be punished, damages to get compensation. The tasks to continue the liquidation of the past is ‘to go to the bright future through reconciliation with the past’.

²⁴ The basic Law of the Past History for Truth and Reconciliation, a partial revision bill (bill number 2005352, Byeonghun So representative)

²⁵ The basic Law of the Past History for Truth and Reconciliation, a partial revision bill (bill number 2017525, Jaegeun In representative)

The Outcomes and Limits of State-led Truth-finding Projects – Centered on the Truth and Reconciliation Committee & the Committee on Death under Suspicious Circumstances

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1. Prologue

It has been nine years since the activity of the Truth and Reconciliation Commission, a commission to liquidate past nationally, was suspended. The 15 commissions on this, which were established at the time of Kim Dae-jung and Roh Moo-hyun administrations, have been targeted for merge and abolition since the time of the transition commission of Lee Myung-bak administration. With the strong backlash of the bereaved on the matter, in the end, the past commissions were survived but leaving only the basic activity period without extending another period. After that, Korea's past liquidation movement was again pushed out to a street. Since 2010, for 9 years, the bereaved and civil societies have been pushing for legislative activity to establish the Truth Reconciliation Commission.

This year marks the 30th year of the struggle on the suspicious victims that has died or has been lost due to the national authority at the process of democratization during the military dictatorship. The bereaved of the suspicious death that occurred during the authoritative period began a sedentary sit-in at the Christian Hall in Jongno of Seoul in Oct. 1988. They requested an investigation of truth lasting 135 days until Feb. 1989. Three or four people began to sit down, and on the third day the number increased to about 30. They formed the “the Bereaved commission on suspicious death” and systematically launched a battle on suspicious death and truthfulness.

After the Christian Hall sit-in, the bereaved started to set up a tent in front of the National Assembly in Seoul from Nov.4 1998 with the aim of establishing a national organization through legislation. The tent sit-in which started in the early winter took place for 422 days, sending twice cold winters, and finally created the "special law for the fact-finding on the suspicious death." The “Presidential Commission of investigation on suspicious death” established at the time of the Kim Dae-jung government received 85 cases, but except for some cases, many have been left mysterious, even not being found any confirmation of fact and relationship on death reasons and perpetrators.

“Truth and Reconciliation Commission” established by the Roh Moo-hyun government with the claim to liquidate comprehensive past, in addition to questioning cases, investigated manipulation cases, and human rights violations cases that occurred during an authoritative period, and the case of civilian victims during the Korean war. As a result of the

investigation of the Truth and Reconciliation Commission, many human rights abuse cases have been re-examined, and state reparations such as civilian victims cases in the Korean War have been carried out, and still the outcomes continue. However, this achievement has only limited under the investigation of the Truth Reconciliation Commission, and many events still remain unsolved.

2. Activities of Investigation Commission on Suspicious Death

After liberation, the Special Investigation Commission of Antinational Activists was created to deal with Antinational activists, but the liquidation on pro-Japanese collaborators was closed by former vested interests. After that, Korea's past liquidation movement followed the continuing war with the state power that brought anti-Communism to the fore, and it was always only steep to overcome the unfortunate history during the military dictatorship regime. For a number of events that occurred between the Japanese colonial era and the dictatorship period, except for some, they did not properly investigate the cases. In many cases, it is the "suspicious death" that was thoroughly planned and created for the security of political opponents and the regime. Investigations have been conducted through the national organization for more than a decade, leaving many errors and limitations. In particular, in the case of suspicious death, it was not possible to identify a perpetrator or put a perpetrator at the judgment of the law. Without mentioning the punishment for the perpetrators, even facts can only identify some of the cases with indirect evidences and circumstances, etc., while they can't be identified.

Nevertheless, a 10-year investigation by the state agency was a result of the tears of the bereaved. In April 1984 the bereaved set up a human rights conference by holding public debates and visiting for protest against investigation on enacting the special law on the honor recovery of national democratic activists and fact-finding on suspicious death. In the process of the democratization movement, the "Investigation Commission on suspicious death", created by the parents who lost their children after a long and hard struggle, is the history of the bereaved struggle, and the hopelessness, anger, and repentance of the bereaved. Over the rainy season and typhoon on the road in midsummer, the law on suspicious death was made, while clambering in the snowstorm in winter and shouting the punishment of the person in charge. It is a work of the superhuman fathers and mothers who have lost their children. The fathers and mothers showed their struggle to appease the spirits of the children, but also the idea of exposing the essence of the deceptive dictatorship regime and trying to slay it was a main one. And again, to give the warning and lesson that such death should not be repeated in history. Korea's past liquidation movement was in full swing, and investigation of specific cases was also possible because the bereaved family opened the horizon. Many parents who fought headed for suspicious death have become passed

away, and now some fathers and mothers who are old still stands on a road and a square. Because many cases are unfinished and remain.

(1) Establishment of investigation on Suspicious Deaths

A special law on questioning the cause of death was passed for the sit-in of the bereaved, but the interest of the citizen movement was not expanded and participation did not increase. Only those who directly experienced or understood the cases were the survivors and their neighbors, and there were not many people who tried to internalize this problem and make it their own one. As it is now, but at the time there were many pessimistic prospects that the cases would not be resolved through the special law within a progressive team. With the establishment of the democratic government when expectations of each field of society are high, in addition to the cynical worries of sticking to past incidents, the opinion that the working at the government commission under the Kim Dae-jung government would be being improved was dominant. It defines that the participation of the Commission on investigation seemed to be “publicized by the government” within the ‘People’s government’. Some concluded that it was difficult to solve the case and some groups were concerned about organizational bonds, pointing out the lack of understanding of the cases and the difficulty of the investigation. So the issue of finding facts became the share of the bereaved family, the victim related organizations, and the friends.

The Commission was the first attempt on past liquidation at a state-level and at the same time was an experimental organization in which the structure of the investigators took the form of the organization including not only government officials but civilians. It was a joint investigation agency in which investigators from major agencies such as the police and the prosecutors, the National Intelligence Service, Defense Security Command and the Ministry of Defense were combined with people from so-called political activism area. At that time, the people went through a preparatory process for more than a year to enter the commission into the investigators. The “preliminary” investigators made a private team to obtain and analyze the case records, and systematically conducted study related to investigation practices such as investigation methods and forensics. The enforcement order was not passed until just before the establishment of the commission, and the bereaved engaged in sitting-in and shaving struggles, and the negotiations with the government was difficult to be settled on the formation of the commission. Looking back at the process of establishing the Truth and Reconciliation Commission, the state-level organization on the past liquidation has been constantly subjected to regime restraint.

After some twists and turns, the private-sector investigation team passed through multiple gateways, and finally entered the Commission as an investigator and entered into a full-scale investigation. At that time, the investigators of the private team recognized that they were a member of the state agency, and at the same time, an organized entity with dual identity as an investigator from the private sector. The position for the private investigators who had the goal of carrying out a full investigation of the cases and fulfilling the task of the past liquidation depended on the bereaved. The bereaved was given a right to summon on the private investigators and they should receive it. The investigators and the commission, who can only be evaluated by the results, had to go through a misconduct issue during the period of activity.

(2) Investigation result of the Presidential Truth Commission on Suspicious Deaths

There were 80 cases in which petitions was received at the 1st Commission, and a total of 85 temporary investigation activities were launched, including 5 cases that the Commission initiated investigations with its own authority. Some of these incidents were dismissed and withdrawn, and among the investigations, some were cited to be closed as deaths in the democratization movement due to government intervention. In the Second Commission, 44 cases were re-established, and when the Truth Reconciliation Commission was established, 40 cases were again filed. The results of these cases are: 4 cases of finding a fact, 4 cases of incapability, 5 cases of rejection, 2 cases of investigation suspension, and 1 cases of transfer. The rest 24 are pulled all out Jan. 2010¹.

The petition filed to the commission is "the case that resulted in death due to illegal public power in the process of democratization movement". The investigation was limited to the cases from the opposition movement on the 3rd election revision in 1969 to the Kim Young-sam administration. In the legislative process, we were in a position to investigate all the mysterious deaths and disappearances infringed on the right to life, but it was ultimately limited to cases of death or missing in the process of the democratization movement. These legislative issues have led to conflicts at key issues during the Commission's activities, and have subsequently led to a comprehensive past liquidation agenda.

¹

	Total	Approval (Finding a fact)	Incapability	Reject	Dismiss	Other
the 1st Commission	85	19	30	33	2	1
the 2nd Commission	44	11	24	7	2	
Truth Reconciliation Commission	40	4	4		5	Suspension 2 Transfer 1 Withdraw 24

A total of 19 cases were found to have died in the exercise of illegal public power in the process of the democratization movement at the 1st Commission. There also were the cases revealing clearly the fact that the illegal public power was brought to the fore so killing, manipulating, and concealment on death reasons were done. Although suicide and accidental death are obvious, this is an incident in which illegal public power intervention has been confirmed in the death process such as forced greening projects, labor cases among the rescue workers, and stall removal cases. In the case of Professor Choi Jong-gil of Seoul National University, the case of the Reconstruction Commission of Inhyeok-dang People's Revolutionary Party, Heo Won-keun case, Bak Young-du case, and Kim Jun-bae case, the investigation results were proved to be that they were murdered. In addition, there were other cases that confirmed murder probability and intervention status. Also, it revealed the post-operation and concealment of the investigative agency. However, those concerned with the case and the perpetrators still denied the facts of the damage or defended that it was a legitimate exercise of public authority.

Despite the investigation by the Commission, 30 cases in which the cause of death could not be accessed, such as investigation of the cause of death, were determined to be "impossible to investigate facts". The 33 cases that there was no connection with the democratization movement, or without public power intervention status were decided to be "rejected". In the case of incapability, there are also uncoordinated causes such as non-submission of the materials of the investigated organization, and the reasons for not having identified the facts with the changing and denying statement from the investigated person who was regarded as a perpetrator.

Immediately after the 1st Commission was over, the bereaved and citizen groups continued to sit in the camp in front of the National Assembly and to stage a one-man demonstration. They had the second commission through the law reform struggle for about one year. The private investigators joined the law reform struggle during this period, and also carried out activities such as case analysis of the major cases of the 1st Commission and recruitment of preliminary investigators and education. Through the evaluation of the activities of the First Commission, they newly formed a "Private Investigation Team" and decided on their "preparations" activities, but while the perspective of the commission activities and the judgment were divided, the team was dismantled. And "preliminary investigators" entered the commission while being thoroughly individualized, and went on a path of differentiation.

The Second Commission investigated 44 cases, 11 of which were approved and 24 were incapability, and 7 were rejected

and 2 were withdrawn. The Second Commission worked to extend the period for one year, but the reason for the hardship to achieve special results was the serious limitation of the commission and the severeness of the political powers of vested power. As a result, the investigation which clarified the substance of the case by making it a social agenda was failed.

(3) Evaluation of the activities of the Investigation Commission

At the beginning of the commission's establishment, it took time for the stability of the commission due to the struggle of enforcement order and the problem of personnel selection, which was the worst situation. In addition, because poor activities and the issue of the settlement of human resource within the investigation group was risen, and organizational power was further weakened.

While a briefing session were held to the bereaved at the early stage, some heads and investigators showed the actions to insist on the uniqueness of the commission and to doubt the authenticity of the bereaved and the Commission. It became a starting point to confront each other. The bereaved brought up a fundamental issue of the commission's activities, and the commission returned again to the issue of personal liquidation and continued conflict and struggle over the period of activity.

In particular, the chairperson's room occupancy by the bereaved was led to the resign of the chairperson and standing commission members. And the gap between the bereaved and the commission was expanded irreparably. The competence of the private team was reached to the limit, who should simultaneously solve the limits of the bereaved and the commission requiring reform of the commission, the possibility of reform of the commission, problems of investigation activities, etc. Although they tried to perform serious internal evaluation work, the difference between the evaluation and judgment of the investigation did not give the speed of the activity progress, and the investigation of the case was conducted depending on the ability of each investigator.

At the condition of the conflict and disbelief with the bereaved, the Commission did not properly formulate basic case checks and future plans. At the time of the establishment of the commission, they departed with the same goal as the commanding group. But the viewpoints of past liquidation from chairpersons, standing commission members and secretary general were different, and the handling policy and attitude of the case were also distinctly different as well. Such perspectives and attitudes made the bereaved dissatisfied, and the process of making the commission bureaucratic

became advanced.

There was a debate about the nature of the democratization movement and the degree of public power intervention each time through an investigation process. Although they tried to reflect the performance of the victims and the social background in the report as the basis for deliberation decisions, the tendency to interpret them legally due to the voting structure of the commission resulting in the problem of interpretation and judgment is also remarkable.

The commission was launched with the characteristic of a public-private joint team, and the investigators from the private sector confirmed that the penetrance of private sector leadership formed the beginning of the past liquidation. However, from the beginning, the private investigation team turned out to be the status of the incomplete one and did not properly settle in the structure of the commission. Even in the process of the commission's activities, it wasted a lot of time due to unnecessary conflicts, and did not grasp the keynote and content of the activities. It was the absence of a strategic goal to find out the fact. If the goal is to prepare an institutional device to prevent the recurrence of human rights abuse cases such as suspicious death in the future, and to prepare an opportunity for solving past liquidation issues based on this result, the practical way to solve the strategic goals was very lacking. There were few efforts to make concrete alternatives and to put into practice.

The commander team did not carefully check the progress and not clearly summarize the goals of the investigation and the tasks of the activities. They didn't pay attention to analyzing the process of each case and creating an investigation-centered culture that focuses on activities to be supported by policy. A investigation model could have emerged if they had gone through a process of transparent and detailed agreement on the entire stages from setting the goal of the investigation to the investigation method such as interview investigation, summons investigation, hearing statement etc..

In order to conduct a thorough investigation for a fact, the purpose and method of the investigation, the ability to analyze the results, and various information analysis necessary for the investigation are required. The absence of organisational viewpoint and the weakening of executive force of the command resulted in the investigators being buried in their individual cases and creating unnecessary friction with the dispatched civil servants working together as partners.

The commission did not embody the strategic issues that extend past liquidation into social movement horizons, and could not create a long-term perspective of past liquidation. There is also an aspect that places emphasis on the

investigation of individual cases, with the inability to materialize the points of the movement of self-directedness, spontaneity and accountability. Although the commission clarified the clear limitations and problems as a temporary organization, it clearly indicated that the past liquidation in Korean society should be solved by the state. In the situation of a case that a state agency was appointed as a perpetrator, it confirms the principle that the country needs to fulfill its responsibility. In the end, it was the activities that made it clear that the country had the responsibility to investigate the fact, and that national efforts such as apology and relapse prevention, the establishment of laws and systems through the national investigation should be accompanied.

Although the Second Commission started its activity through the reform struggle by the bereaved, they had difficulty from the beginning with restraint and denial to the private investigation team. At the same time of the 2nd commission establishment, the private investigation team was completely destroyed, the private investigators became individual, and the groups caused dissonance and conflict with the solidarity organizations which lost their leadership and became incapacitated. They eventually broke on each way.

3. Activities of the Truth Reconciliation Commission

(1) Establishment of the Truth Reconciliation Commission

The History Reorganization Commission for Truth Reconciliation (hereinafter the Truth Reconciliation Commission) was officially launched on December 1, 2005. The commission worked for 5 years and 1 month until it closed on December 31, 2010. Of these, since the first investigation was from April 25, 2005 and until June 30, 2010, the period of pure activity is 4 years 2 months 6 days.²

The decisive trigger for the Truth Reconciliation Commission was inaugurated on August 15, 2004, when Roh Moo-hyun announced “comprehensive liquidation of the past” with a congratulatory remark. It was the time when the “Presidential Investigation Commission on Suspicious Death”, established through the maximum long-term sit-in for 422 days, ended the activity, and also it was time for the victims of national violence during the dictatorship regime and the

² The Framework Act for Truth and Reconciliation Article 25 (Investigation period) sets the period of investigation activity of the Commission to four years of activity after the first investigation decision date. According to the law, the period could be extended to two years, but the Truth and Reconciliation Commission at the time decided to extend the investigation period for two months and six days. After it for 6 months, the activity ended on December 31, 2010 through the preparation of the report, the processing of the opposition, the record transfer work, etc..

bereaved on the slaughter to civilians during the Korea war to seek out a fact and raise their social voices. Furthermore, through the 2004 general election, the Uri Party, the ruling party at the time, was the majority party, so a political situation in which the legislation for the liquidation of the comprehensive past could be realized was prepared.

However, when the Uri Party, the Democratic Labor Party, and others established a bill on the liquidation of the past, the Grand National Party countered it. And the law finally made a compromise over the years, with the ruling and opposition parties and it came to pass.

A great deal of controversy has taken place recently because the special law to investigate the fact of the 5.18 Gwangju democracy movement has included the investigations into whether the North Korean military intervened. However, this is not new. The Grand National Party, the predecessor of the current Liberty Korea Party, also opposed the enactment of the Framework Act for Truth and Reconciliation. Eventually the scope of Truth and Reconciliation Commission in the process of compromise between the ruling and the opposition party included contents to investigate cases such as human rights abuse by hostile forces to the nation³.

(2) Achievements and limitations of the Truth Reconciliation Commission activities

The scope of the Truth and Reconciliation Commission can be considered largely in the anti-Japanese independence movement, the Overseas Brotherhood, the civilian group sacrifice cases before and after the Korean War, and the human rights abuse cases up to the time of authoritarian rule. Let's look at the contents and results of the commission activities, focusing on civilian victims' cases before and after the Korean War and human rights abuse cases.

By June 30, 2010, the Truth and Reconciliation Commission processed 100% of a total of 11,175 cases including the separated and merged cases with 10,860 application cases and 15 examination cases by authority⁴.

³ The Framework Act for Truth and Reconciliation Article 2 (scope of the investigation of truth) Article 1 No. 5: From August 15, 1945 to the time of authoritarian rule, Human rights abuses and violence by terrorism, human right abuses, slaughter, suspicious death by a power who denies the legitimacy of the Republic of Korea, or hostiles the Republic of Korea. When this provision was included in the law, civil society organizations and survivors at the time made "rags law on past issues", and immediately proposed revisions, but by the time the commission ended its activities, the law was not revised once. This provision was reflected in the investigation of civilian casualties before and after the Korean War by hostile forces within the scope of the Commission's investigation.

⁴ As a result of the investigation case processing, the general report of the Truth Reconciliation Commission Vol. 1, page 76

a result of the investigation cases

(2010. 11. 25. Present, unit: number, %)

Scope	Total	Complete					
		Approve	Incapability	Reject	Withdraw	Transfer	Suspend
Total	11,175	8,450	528	1,729	351	97	20
(%)	(100.0)	(75.62)	(4.72)	(15.47)	(3.14)	(0.87)	(0.18)
Anti-Japanese Movement	274	20	23	221	10	-	
Overseas Brotherhood	16	5	-	8	1	-	2
Hostile power	1,774	1,445	10	292	22	1	4
Civilian group sacrifice	8,206	6,742	454	764	242	4	-
Human rights violations	768	238	41	373	73	29	14
Other	137	-	-	71	3	63	-

The investigations of civilian victims before and after the Korean War included the cases during the war in various parts of the country such as the case of National Guidance of Alliance, the collaboration suspicion after the occupation of the North Korean People's Army, and casualties by bombing of the US military.

On human rights violations cases during the rule of authoritarianism, investigations of various types of cases were dealt with such as cases of espionage manipulation including the Korean Residents in Japan and abduction fishermen and emergency action violations cases, forced discharge, labor rights, damage to property rights, suspicious death, etc. The commission recommended retrials in the case of a suspected conviction case in the past through a decision of the investigation.

The Truth and Reconciliation Commission conducted a nationwide and comprehensive investigation on the tragic events of our modern history, and the results have been enormous. However, after many twists and turns, despite the fact that the Truth and Reconciliation Commission was launched, there was little promotion of its activities. As a result, not only the

general public but also the victims and the bereaved were not aware of the Truth Reconciliation Commission, and the number of applications was exorbitantly small compared to the cases of past damages. Especially in the case of civilian casualties before and after the Korean War, the bereaved applied for about 8,200 applications, compared with the number of victims approaching 1 million, and the number of confirmed victims only reached 16,000. Even in the case of human rights abuses, when the retrial related news was reported, there was a case that tried to apply to the commission later, but it was already after 1 year of application period being missed.

The Truth and Reconciliation Commission has completed the investigation of 10,860 application cases received over a short period of one year. However, only 15 cases were investigated by the commission in office. Of course, among these, there were cases involving a wide range of investigation contents compared to the number of cases, such as the National Guidance of Alliance, the case of sacrifice for prisoners across the country, and the case of Yeosu-Suncheon, but the commission was very passive to decide the authority on investigation in the four years of activities.

In the course of the investigation, the Truth Reconciliation Commission unearthed many materials that could not be identified until now, and conducted investigations on victims, perpetrators and many other people involved. In the case of civilian casualties during the Korean War, "List of the executed", "List of members of the National Guidance of Alliance", "List of collaboration", "Blacklist" etc. held at each police station were collected to identify the victims. Even in the case of human rights abuse, in addition to collecting a material by case, the sentence of the law violation cases used for human rights abuse cases such as emergency measures, national security law, anti-community law, fishery industry law, and national defense law violations was collected extensively. However, in addition to the analysis report⁵ of the decision on the emergency measures violation case, the commission did not provide the analysis result using the collected data.

The Truth and Reconciliation Commission decided to investigate about "Ethnic Daily Cho -Yong-su case" etc. within one year of the commission launched. Even though it was the first to launch a comprehensive historical liquidation, they gradually stabilized with speed to the work. However, two years have passed since the commission's establishment, and the Lee Myung-bak government joined, and the discussions on the consolidation of the commission started. The members of the Grand National Party from January 2008 proposed a bill of government organizing revision or a revised one related to the past issues to abolish that the commissions which its term were stipulated when it expired and other related commissions were once merged into the Truth and Reconciliation Commission and then terminated at the end of period. Although it was not executed to unify the commission, it could not be seen that the activity of the truth

⁵ The Truth and Reconciliation Commission. It was included in the report for the second half of 2006

reconciliation commission was not affected at all. An example is the fact that the Truth Reconciliation Commission did not actively decide on the investigation with its authority, and that it decided to make a passive decision on the "partial investigation" in the "investigation".

The work results of the Truth and Reconciliation Commission became even clearer after the Commission finished.

In February 2009, plaintiffs, in the Central District Court in Seoul, won the case in a state compensation claim filed by the bereaved on Ulsan National Guidance of Alliance case. The case was later defeated by the appellate court, but the Supreme Court has ruled that the statute of limitations for the country's torts violates the principle of good faith and integrity, deciding partially in favor of the plaintiff. It can be seen that the state compensation lawsuit for civilian victims was in full swing from June 30, 2011, when the Supreme Court ruled remand after reversal. 4.9 Unification Peace Foundation examined 2,547 cases of state compensation cases for civilian victims before and after the Korean War. It found that among 926 cases at the first trial only 25 cases filed before 2011.

Of the 16,572 persons identified as victims at the Truth and Reconciliation Commission, 6,417 victims (6 victims were not able to find a fact.) advanced state compensation lawsuits, of which 5,625 won⁶.

The major issues in the state compensation lawsuits for civilian victims before and after the Korean War are whether the country has committed illegal acts in each case, whether the victims are right, and whether the statute of damages has been extinguished or not. As to whether the state was illegal or not, as the state was not a perpetrator on the issues related to US military and the hostile force, the courts decided that the state was not liable for it on the basis that it is difficult to admit the responsibility on state's tort or the general protection obligation. And also, the court strictly confirmed whether he/she was a victim through individual trial, and did not accept liability in this process for reasons such as lack of evidence, even if the truth and reconciliation commission decided he/she as a victim. In addition, the court maintained the prescription of three years after the Truth and Reconciliation Commission's decision on the right to claim damages. But the victims who received the decision from the commission at the early stage of the activity and had not filed yet were not able to claim⁷ due to the expiration by around 2011, when a serious lawsuit was filed.

⁶ 4.9 Unification Peace Foundation, Current Situation of Sue on state tort liability for Civilian victims Cases before and after the Korean War (2017), 12 pages

⁷ Recently, in a lawsuit brought by the bereaved family members of the "Civilian victims on Jeollanam-do eastern region case," the court decided that there was no evidence found to prove that the state did notify or made efforts to the bereaved family and the plaintiff won the case, at the time the decision to find a fact in 2008 came out. (Seoul Central District Court 2018.9.12. Declaration 2017 Gahap 589141 Decision) This case has been appealed by the Republic of Korea, and an appeals trial is currently in progress.

After victim family's compensation claim lawsuit started to file continuously, the Truth and Reconciliation Commission, which has already finished its activities, has been widely known by the bereaved. Since there was still a sense of damage to the bereaved such as the bereaved of the victims on collaboration suspicion or no recognition of the existence of the commission, the members of the bereaved, who could not apply to the commission, gathered together started to ask for clarification.

The Truth and Reconciliation Commission recommended to re-evaluate the 79 cases of human rights abuses and confirmed the re-examination reasons. The Truth and Reconciliation Commission's activities ended, but retrials of related cases are continued, and retrials of 78 cases have been completed, and "human rights abuse cases such as Park Jong-duk" are under retrial. As a result of the retrial, the court sentenced not guilty in the most of retrial requesters.

The retrials kept continuing. So in October 2017 the prosecutor's office said that the prosecutor would request retrials under its authority in case of co-defendants did not request retrials among the retrial acquittal cases, including the emergency measures violation case⁸.

In the case of a manipulation case on human rights abuse, if the retrial decision is confirmed, the state compensation claim lawsuit was proceeding or is currently in progress after going through criminal requisition procedures. 4.9 The Unification Peace Foundation has organized the current state of the state compensation case for human rights violations investigated by the Truth and Reconciliation Commission. It confirmed that many of the victims on the human right abuse case have filed for the state compensation claim lawsuit.⁹

⁸ In December 2018, 73 cases and 78 victims were acquitted, with the prosecution of the emergency measures violation case by prosecutors' requesting retrials. (4.9 Unification Peace Foundation, Current Situation of Reexamination of Emergency Measures Violation Cases, Apr. 20, 2014) In addition to the cases, it was confirmed that the prosecutors requested retrials to the co-defendants like Lee Su-kun, Aram-hoi, Oh Ju-sok, Park kwan-su (The Supreme Court acquittal notice)

⁹ Current status of the state compensation claim lawsuit (4.9 Unified Peace Foundation, Retrial of Human Rights Infringement Cases by Truth and Reconciliation Commission, 2017. Page 28)

Division	Retrial recommendation case (79 cases)	Other than the retrial recommendation case, human rights abuse cases	Total
Determined	206	60	266
Incapability	2	2	4
Reject		4	4
Total	208	66	274

Among these, 45 cases have lost the case of negative prescription, 18 cases have been lost in Reconciliation in trials and remand after reversal 18 cases have been lost, and 4 cases are under the trial or they have lost cases according to not admitting tort liability by the state on emergency measures violation cases.

The Truth and Reconciliation Commission confirmed the facts of cases, investigated the truth, and made the state admitted the tort liability in the court. That is a major progress for the honor recovery to the bereaved and the victims. However, in the course of the lawsuit, there were some cases¹⁰ that went against the liquidation of the past, such as changes in the start date of interest for arrears, extinct prescriptions, and trial reconciliation, etc.

4. Closing

The reason for summoning a questionable case on the suspicious death that has not been revealed in the past several decades is because the state does not fulfill its own responsibility. The bereaved family and civil society replaced what the nation needs to solve, and began to solve the problem in a legislative way.

The Commission on suspicious death and the Truth and Reconciliation Commission have conducted investigations on death and concealment operations committed by perpetrators despite the embryonic limitations. It has always been a pain to represent the working system of state power and to fully grasp the substance of death. The suspicious death was not incidental but occurred purposefully in the ugliest violent way of the regimes. The consequences of the operation of structural security and power issues in the regimes were the suspicious death.

Various human rights abuse cases due to national violence including questionable cases are waiting for investigation. However, as of 2019, there is no Truth Reconciliation Commission in Korea.

The Truth and Reconciliation Commission conducted the investigation for only four years, two months, and six days, but its results have continued to this point. However, there have been numerous challenges left by the Truth Reconciliation Commission, which has brought about such remarkable results as rewriting Korean modern history. The projects that we should do but still is far away are these: The special law of reparation for illegal activity and compensation for damage to the relief of the victims who were alienated in the state compensation lawsuit, the special law for excavating the remains of the civilian victims who are scattered nationally, and the foundations responsible for the memorial and research support after the activity of the Truth and Reconciliation Commission.

¹⁰ Recently, in the process of investigating Yang Sung-tae, the former Chief Justice of the Supreme Court, a trial transaction has been revealed on the past cases.

Above all, the victims of mass casualty during Korean War and victims of alleged manipulations, labor cases and victims of human rights violations related to detention facilities are desperately seeking the investigation settlement activities of the Truth Reconciliation Commission.

After the Truth Reconciliation Commission ended its activity on December 31, 2010, civil society organizations, survivors, and victims have been calling for the resumption of Truth Reconciliation Commission activity. Every year, legislative debates and legislative meetings are held, and bereaved families, victims, and activists of civil society groups have demanded to the National Assembly by visiting there as if they were homes to promote legislation. The bereaved has been continuing one person demonstration in front of the National Assembly and the Blue House, making a nameless tombstone in a burial ground for civilian group victims. The victims of the Brothers Home case have entered the camp in front of the National Assembly for more than 500 days. The civil society organizations are engaged in the project of excavating bones every year with talent donations and volunteers from the country to find out the Korean people's group of civilian victims who have left the Korean war.

In the past 18's and 19's parliament the revision bill of the Framework Act for Truth and Reconciliation (hereinafter referred to as revision bill) was proposed, but it all was abolished at the expiration of terms. Although the relevant laws including the revision bill were proposed to the 20' parliament, the process of debate in the parliament has been tardy. On August 29, 2017, seven bills including the revision were introduced en bloc¹¹ to Legislation and Judiciary sub commission of the National Assembly Administrative and Safety Commission, which is the National Assembly Standing Commission, and the bill review has been conducted seven times so far. The lawmakers at the eighth bill review of the sub commission on April 1, 2019, which was dramatically held in the pressing needs from the bereaved, said, “We will open a meeting monthly on the law of investigating the past issues with the highest priority” and finished the meeting with the verbal promise. However, so far, the debate about the bill has not progressed.



¹¹ Seven bills introduced en bloc to Legislation and Judiciary Sub commission of the National Assembly Administrative and Safety Commission

Bills	Proposal Members (Date)
Special bill for investigation on past liquidation for Jang Jun-ha case and others	Kim Hae-young and 47 members (2016. 8.16.)
Partial revision of the Framework Act for Truth and Reconciliation	So Byoung-hun and 50 members (2017. 1.31.)
Partial revision of the Framework Act for Truth and Reconciliation	Jin Sun-mi and 17 members (2017. 2. 3.)
Partial revision of the Framework Act for Truth and Reconciliation	Kwon Eun-hwui and 14 members (2017. 2. 8.)
The Framework Act for Truth and Honor Recovery on the Cases of Civilian Victims before and after Korean war	Lee Kae-ho and 11 members (2017. 3. 9.)
Partial revision of the Framework Act for Truth and Reconciliation	Choi Yeon-hoe and 11 members (2017. 7. 4.)
Partial revision of the Framework Act for Truth and Reconciliation	Chu Hye-sun and 10 members (2017. 7.13.)

Session 4-1: Correcting Past Injustice Session

Unfinished Mission – Righting Past Injustice; Outcomes and Prospects (II)

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Social Imagination on Historical Reckoning in South Korea - With a Focus on History, Theory, and Social Science

Han Sung-hoon (Yonsei University)

1. Introduction: Social Imagination on Historical Reckoning in South Korea

Historical reckoning in South Korea has benefited by democratization and human rights movement. The most important socio-political moment which enables this was Kim Dae-jung's winning presidency in 1998. Kim Dae-jung administration prioritized human rights issues and started special investigations on the past state violence. His predecessor, President Kim Young-sam, made a contribution to such historical reckoning project particularly the May 18 and Geochang Incident, and Kim Dae-jung's administration institutionalized it.

Special Investigation Committees for Jeju April 3rd, Presidential Truth Commission on Suspicious Deaths, and National Human Rights Commission of Korea was established by enacting the Special Law. In addition, civilian massacre during the Korean War finally became an issue within social discourse. After Kim Dae-jung's presidency, President Roh Moo-hyun was elected and comprehensive historical reckoning became Roh administration's agenda. During their terms, the Presidential Truth Commission on Suspicious Deaths showed their achievement and limitation. Some human rights violation cases still remain unsolved. Fabricated spy charges and civilian massacre were dealt with by the Truth and Reconciliation Commission. Five years of investigation on such issues were done by 2010.

This paper aims at evaluating and reflecting the historical reckoning projects. The reflection should be helpful for the future, but at the same time it doesn't mean we have to solve all the problems right way. The discussion on the historical reckoning in South Korea can be done in various ways. For instance, we can talk about how the state and power actually form the characteristics of modernity in Korea, the relationship between historical reckoning and development of civil society and civil rights. This paper doesn't provide conceptualization on debates, achievements, and limitations on the theme. The debates, achievements, and limitations are not actually only seen in South Korea. However, in this paper, time and capacity are limited to fully address the reason and context.

This paper focuses on history, theory, and social sciences in terms of historical reckoning and social imagination. Charles Taylor once said western modernity can be analyzed with the concept of social imaginary.

For him, modernity is not singular but it rather should be seen as multiple modernity . He focused on the particularity of western modernity and found that its nature is conceptualization of moral order in society. The new moral order formed social imagination and was spread to the whole society. In this social imagination, a moral order was changed and it created some characteristics of western modernity. He suggests that social imagination is a way to imagine a society that ordinary people "imagine" their social environment. It includes their imagination on their social existence, their way to make harmony and work with other people.

In this paper, the themes which will be discussed in greater detail later are based on history, theory, and social science with a particular focus on historical reckoning. The reason is of the following: First, historical reckoning is about incidents that occurred in the past. However, history is not just about the past but about the present and the future. In this regard, it may be necessary to ask the question, "Why do we need to deal with the past?" Surely, it shouldn't be about condemning but rather should be about coexistence and current social order. Second, the lack of theoretical background on historical reckoning is due to the lack of historical philosophy and political theory. In terms of international human rights regime, the concept of historical reckoning is critical. In the point of view of humanities and social science, historical reckoning has been considered as part of transitional justice. But this approach is mainly about methodologies on "how to face the past". Third, social science didn't really focus on historical reckoning and its case studies. The limitation of positivism led to the limitation of research. That is to say, there might be many reasons for such limitation, but it is obvious that the limitation of positivism and their theoretical argument weakened the possibility of historical reckoning and its public role. Though the government should take the primary responsibility in doing so, the weaknesses and limitations of social science should also be discussed.

The how, what and why are all connected with each other. They are interactive factors. Among these lines, historical point of view, establishing theoretical framework, and research in social science are closely intertwined. In this paper, some cases of historical reckoning will be presented. Jeju April 3rd, civilian massacre before and after the Korean War, suspicious deaths occurred during the military dictatorship, and fabricated spy charges will be discussed. But among these, I would like to suggest we take a look at the way how Korean society imagines historical reckoning particularly when it comes to civilian massacre. I would bring some examples from the May 18 Gwangju Democratic Movement when it is necessary.

2. The status of victim and perpetrator

1) Treatment for victims

In Korean society, there is dishonor against victims because it is believed that they did something wrong and that is why they became victims. It's an example of victim blaming. When we objectify a certain group or people, there is a great possibility for violence. Dehumanization brings conspiracy and conspiracy creates commitment. Victims are not bad or wrong but are just dehumanized.

A victim has various identities. They exist not only as a victim. Their ordinary lives after violence is very important. We need to approach For human beings in the modern era, their will and identity are very important. They can construct their subjectivity and open a space for social imagination.

The principles of treatment for victims are based on the guidelines which was published by the UN and their General Assembly in 2005. It is called the International Bill of Rights of Victims and it describes the general principles and customs when dealing with victims.

The historical reckoning process in South Korea has a lot of problems. Among other things, the biggest issue is treatment for victims, their rights and reparation. Victims should be treated in an appropriate way especially based on human dignity and human rights. Also, their family members' physical and psychological health and privacy should be guaranteed. People who are traumatized should be provided with appropriate attention during legal and administrative process. Considering these, the treatment for victims in South Korea is at a very beginning level.

Reparation is a big issue. When the Special Law for the Special Investigation and Reparation for Victims of Jeju April 3rd enacted the reparation it became an issue. Reparation is deeply related with state's financial ability and it shows a wide range of problems per se. From individual lawsuit cases to legal prescription, the reparation really matters in terms of legal system, its continuity for applying laws in reality, and administrative problems because the state doesn't have a comprehensive measurement for victims' reparation. To summarize, the legislature, judiciary, and administration are not aware of and applying the International Bill of Rights of Victims. The Truth and Reconciliation Commission recommended to enact a special law for reparation, but the National Assembly hasn't taken action. The judiciary is under confusion with reparation lawsuits.

To see this problem in detail, I'll bring up the example of the Geochang Incident. It is the first civilian massacre which restored their honor. Even though the Special Law for the Geochang Incident was enacted in 1996, the reparation problem hasn't been solved yet. Also, when its victims claimed their rights for reparation, each judiciary department resulted in a

different judgement. It is clear the reality in Korea is quite far from the principle for reparations that were established by the UN. In the meantime, numerous victims claimed their rights for reparation. Even though they won the trial, any coherent law or policy were not applied for such cases. In addition, the most realistic problem is finance. The administration is reluctant to address this issue because of the financial limitation of the state that it can't afford to pay. Almost every case of reparation was done with a single individual payment. However, there was an attempt to pay reparation as pensionary money for the first time in Korea for the victims of Jeju April 3rd and Geochang Incident. Internationally, individual victims' reparation, community group reparation, and bereaved family members' reparation approaches were adopted and implemented. It is a long-standing and old custom that the government is reluctant to pay reparation money. To solve the problem, collective reparation and pensionary approach can be considered. In Chile and Peru, such collective reparation and pensionary approach were adopted and implemented when they tried historical reckoning.

2) Perpetrator Testimony and Peer Pressure

The focus of this chapter is the absence of testimony and impunity. Speaking about the past is delivering testimony. Whether the speaker is a perpetrator, victim, witness, or helper, their testimony is very important for truth finding. It is true the survivors and victims' testimony has a much different level of depth and pain. The research on such testimonies have been done in the field of qualitative research. At the very beginning, the research focused on narratives of historical events. Now, the research scope has been extended into life history and microhistory.

On the other hand, the testimony of the perpetrators are very few. Their testimony is probably hard to be heard. In our current legal system, it is obvious that there are very few possibilities of punishing perpetrators. It is a reality that perpetrators of civilian massacre won't be punished. Thus, punishment shouldn't be the matter in this regard.

Then why are there only few perpetrators' testimonies? From the point of view of social philosophy, the perpetrators are not able to have moral judgement on their past behavior.

Except for some brave soldiers and police officers, it is very difficult to find perpetrators' testimonies. Their testimony is precious because it is rare to find. Also, the perpetrators don't have the conscience for political responsibility. Perpetrators' testimony is important not because of the possibility of punishment, but it should be their responsibility.

Responsibility doesn't necessarily need to be taken in the context of criminal justice, but the criminal justice for perpetrators is still an issue. As I mentioned above, the perpetrators' responsibility is related with the political group which constantly tries historical distortion. Social recognition on such brutal political past is the requirement of public concern. To elicit perpetrators' testimony, peer pressure is essential. To break the circle of violence, I'd like to quote what an American social activist Derrick Jensen once said.

If a man beats up his girlfriend, his friends should exclude him from their circle and let him know the reason. The other men should criticize him, and isolate him who committed such violence. Such exclusion should be done whenever violence happens. The most important thing is people who are in the same circle with a perpetrator should take the responsibility by doing so.

Accordingly, the peer pressure is necessary to require responsibility and take responsibility. This means the social imagination on perpetrator its circle, and their socialization. In the book, 『On Killing』, the author Dave Grossman, suggests peer pressure can be negative. So for instance, in South Africa, perpetrators' testimony has been gained by promising amnesty. Such positive policy is needed to hear perpetrators' voices because peer pressure can work in both positive and negative ways. In the case of South Korea's historical reckoning process, it seems that peer pressure is negatively influenced.

Testimony as a way of speaking means sharing narratives. Also, testimony brings liberation. Oral history or testimony enable listeners to have their own interpretation. Paul Ricoeur called this “l'autonomie sémantique du texte”. Thus, the meaning of testimony should be newly highlighted.

3. Historical Reckoning as Basic State Policy

This chapter is about how the state characterizes certain values during a historical reckoning process. It may be impossible to bring all the examples, but South Korea suggests the purpose and goals for historical reckoning when a law is enacted.

As it is mentioned in the introduction, historical reckoning is about how we perceive history. To build the way of perceiving history is about the whole society. It can be possible by thinking about the current meaning of history. Generally, transitional justice includes a various range of practices that try to correct political violence in history. It is about punishment,

restoring honors of victims, reparation, institutional reform, socio-political reconciliation, and sharing narratives. The reason why historical reckoning is important is because this enables society to transform.

The goals of transitional justice is not just focusing on restoring victim's honor but also about the perpetrator's responsibility. When we think about the victims and bereaved family members, the discourse on transitional justice should be understood within the context of social, political, economic areas. In reality, transitional justice is being practiced on many levels.

The goals of transitional justice which is written on the Law for Truth and Reconciliation were not possible to achieve only by the activities of the Truth and Reconciliation Committee. The Committee mainly worked on investigation, recommendation for policy making, and requiring institutional reform. Their top priority was truth finding and restoring victims' honor. The ultimate goal of the law "to make contribution for future by reconciliation with the past" was impossible only by the Truth and Reconciliation Committee. So it has a fundamental limitation.

To overcome such limitation, we can imagine to include such a historical reckoning agenda into our constitutional law and making it as the basic state policy. Recently, there was an argument that the spirit of May 18 Gwangju Democratic Movement should be included in the constitutional law. This means historical reckoning should be regarded as much more universal and as basic agenda and thus it should be included within the constitutional law.

Similar example can be found in South Africa's constitutional law. December 1996, Nelson Rohihlahla Mandela finally signed and it states, "We acknowledge that there was a brutal past and we salute people who suffered for justice and freedom. To heal the past and build a society based on democratic value, social justice, and fundamental human rights". After the Apartheid, South Africa enacted the Promotion of National Unity and Reconciliation Act (Act. No. 34 of 1995) in 1995 and included the meaning and spirit into constitutional law as well.

As mentioned earlier, historical philosophy and political thoughts are needed to support historical reckoning process. It might be very difficult to bring the historical value into constitutional law. Thus a longstanding practice is necessary. Also, for making a social consensus on this, we need social imagination. In addition, we need historical perspective on South Korean society and build theoretical framework.

4. Memory, Culture, and Field

Historical reckoning should be connected into memory. Otherwise, it can disappear into oblivion. However, perpetrators' position may be different. Their position may lie in oblivion. They usually say, "Let's forget about the past and go beyond to the future." Carolin Emcke's emphasis on culture of memory can be applied for massive human rights violation cases. Emcke references Georges Didi-Huberman to talk about which memory should be our focus.

It is about future-oriented agendas based on brutal history. Emcke writes that labeling an individual or a group as "the other" can't be tolerated and we need to create such culture of memory to prevent future violence. Emcke also emphasizes that the young generation can be educated about history and inspired by programs at museums or cultural complexes.

Here it is necessary to take a look at Martha Minow and the collective response. Some people always remember what happened in the past, but if there is no effort to remember something together, we can't prevent future violence. Then we can't stop dehumanization or correcting our problematic past.

Visible field can contribute to remembrance. There is a politics of image. We need to make visible fields of massacre. There should be memory sites. Though we can't preserve all the fields as historical sites, we need those places for inheriting memories. Also, such fields should be for citizens. The places should be available for citizens and available to make them think about the past. History doesn't belong to a certain era. And field is the bridge between past and present, and present and future. History is about how we weave memories and inherit it to the next generation.

5. Conclusion: Historical Reckoning as Responsibility and Obligation

Korean political community has maintained passive attitude for historical reckoning. There has been a wide range of historical interpretations in the political arena. The interpretations were not able to be freed from someone's political faction. In this sense, perhaps Kim Daejung administration's standard on historical reckoning can be the best model for it.

Bill of rights of victims is a universally and widely used approach in the world. However, the level of democracy is different in each country. The historical, political, social contexts vary from country to country. Therefore, the actual way to practice bill of rights of victims can be different. In any case, it is preferable to follow the UN guidelines for historical reckoning process.

Historical reckoning is based on continuity of a society, and it is not all about retroactive actions. This issue should be discussed in terms of how

an individual is actually related to political society. Additionally, the power for historical reckoning is coming from culture and politics. Facing the past will not just be one generation's agenda.

People still suffer from human rights violation due to their belief, race, religion, sexual orientation, etc. They are discriminated by those factors. Standing against such unjust power, social imagination is needed. Historical reckoning shouldn't be limited to just one society's responsibility and obligation or a certain political power. We need more discussions on ethics and morals. Among these lines, much more abundant historical philosophy and thoughts should be added to transitional justice.



Correcting Past Injustice Session

Lesson from Transitional Justice in Germany

Jens Rommel, (Central Office of the Land Judicial Authorities for
the Investigation of National Socialist Crimes)

I. Introduction

1. Current events

Only in recent weeks, the public prosecutor's office in Hamburg has indicted a 92-year-old man. As a guard at the German concentration camp Stutthof, in 1944 he allegedly has contributed to more than 5,000 systematic killings of Jewish deportees.

Even today, 74 years after the Second World War, Germany tries to investigate national socialist crimes.

I feel very honoured that you have invited me as the director of an institution that has been engaged in this work for more than 60 years. I am happy to share some of our experience.

2. Lessons from transitional justice?

As you all know, the term transitional justice covers the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses.

If we use this term with regard to national socialist crimes, we should take into account the peculiarities: This term has arisen from the confrontation with dictatorships and armed conflicts (internally or internationally) since the Second World War. The investigation of the crimes during the Second World War is therefore only the beginning of an understanding, composed of many experiences and expectations (especially from the concept of human rights). We have to be careful, applying it to the decades-long process in the Federal Republic of Germany, since the development of the concept and the concrete efforts are parallel in time.

3. Special aspects

A peculiarity of the national socialist crimes is that they reached a hitherto unknown extent - on the one hand during the dictatorship in Germany since 1933 and on the other during the Second World War from 1939 to 1945.

This international dimension has also led to many different answers: by the Allies in the International Military Tribunal in Nuremberg, by numerous foreign states that have punished the crimes committed on their territory, by the four occupying powers in Germany, and finally by the Federal Republic of Germany and the (former) German Democratic Republic.

II. Legal aspects

1. Allied Powers

The international approach is characterized by three attributes:

- (1) After the end of the war, special penal provisions are laid down retroactively, specifically tailored to state mass crimes, especially crimes against humanity.
- (2) Only for these procedures, a special tribunal is set up, whose staff comes from the victorious powers.
- (3) The process is based on a specially created procedural code partially restricting the rights of the defense.

National procedures are similarly organized in neighbouring countries. The same applies to the military courts of the occupying powers within Germany.

There are considerable reservations about this approach in Germany. Rather political is the argument of "victors' justice" - meaning an unfair procedure by the winners against the losers. A legal objection is relevant: the Allied laws apply with retroactive effect to crimes committed before the rules were passed. In Germany, therefore, the accusation is raised loudly that the Allied procedure violates itself an elementary legal principle: "nulla poena sine lege".

2. Approach in (Western-) Germany

And that brings us to (Western-) Germany. As a reaction to “Nuremberg“ but also to the experiences with the abuse of criminal law during the dictatorship, our constitution upholds a strict prohibition of retroactive penal law. There was also a political motto: „No special law for Nazi perpetrators“. This led to a solution that deviated in all three points from the Allies:

- (1) The general penal code is applicable that was already in force during the acts.
- (2) The Code of Criminal Procedure is to be followed without any special rules.
- (3) The general law enforcement authorities and the regional criminal courts are competent to dealing with these mass crimes.

a) Applicable law

Thus, no special legal basis has been established retroactively for dealing with NS crimes: neither crimes against humanity nor genocide. Consequently, German courts can only pass judgements in accordance with the provisions of the German criminal code - applicable already during the “Third Reich”. We have to deal with the definitions in the code, established for individual acts with individual motives: distinguishing for example between murder, homicide in particularly aggravated circumstances and manslaughter. Up to now, we apply an individual criminal law, which is not tailored to mass crimes that the state organizes or tolerates.

Recourse to the general criminal law led to the application of the usual statutory limitations. After the period of limitation, a crime may no longer be punished. For legal reasons only NS crimes defined as murder can be prosecuted already since May 1960: a killing for pleasure or out of otherwise base motives, by stealth or cruelly.

There is no room in criminal legislation for the concept that mere membership of an agency or unit participating in a crime provides prima facie evidence of culpable conduct.

The most difficult legal question is: Where does personal responsibility begin when the state organizes crimes? For a long time, the jurisdiction was

prevalent: Not everyone who was somehow integrated into Auschwitz concentration camp is responsible for everything that happened in the context of the extermination program. Rather, it must be demonstrated how the individual's behaviour concretely supported the murders.

Only in 2016, the Federal Criminal Court (Bundesgerichtshof) has clarified where to draw the line for criminal responsibility in cases of mass crimes, organized or tolerated by the state with thousands being involved in the bureaucracy: Today, it is sufficient for someone to have kept the murder machine running by performing his general duties in a certain function (for example, as a guard). This is why we could turn our attention to tracking down those who might have contributed to the killings even in low-level positions.

b) Procedure

In addition to these material problems there are no special provisions concerning the procedure or jurisdiction.

A great deal of surprise has been voiced about the strict requirements laid down by West German courts in Nazi trials as the regards the furnishing of proof. Yet these are the same standards as those stipulated in any other criminal trial conducted along constitutional lines in order to produce enough evidence to convict someone.

c) Institutions

The judicial power is exercised mainly by the courts of the Länder - meaning a decentralized system. Unlike acts of terrorism, there is no competence for federal institutions when it comes to Nazi crimes. The local public prosecutor's offices and criminal courts are primarily responsible only for crimes conducted in their district or for perpetrators resided in the respective area. However, most of the crimes had been committed outside Western Germany. Often, the victims did not know the names of the suspects or their whereabouts. Thus, in the beginning no institution seemed competent to deal e.g. with Auschwitz.

In addition to these legal restrictions, there were de-facto-limitations on the prosecution of Nazi criminals due to shortage of manpower in the judiciary

and police, and registration documents getting lost. The division into zones of occupation also made supra-local communication difficult and showed already the lack of coordination of public prosecution.

In the 50ies staff in administration and police, prosecutor's offices and courts were re-employed, who had exercised their offices during the dictatorship. Even if obstruction is difficult to determine on a case-by-case basis, these people should not have had any particular interest in effective prosecution. They were part of the post-war society in West Germany. Many people wanted to deal with "political" things no longer in a time of food and housing shortage and struggle for survival in the early post-war years. It was important for the government to integrate former party members into the new democratic state of law.

3. Central Office

Just as the number of procedures had decreased sharply in the mid-fifties, the approach in the Federal Republic changed. By chance, there was the so called "task force trial" (Einsatzgruppen-Prozess) in Ulm. For the public and for politicians two things became clear: Not all crimes had been investigated. And we can no longer leave it to chance to determine whether a crime is prosecuted.

That is why the Ministers of Justice have founded the Central Office for the Investigation of National Socialist Crimes in Ludwigsburg. The task of the Central Office is to collect, to scrutinise and to evaluate the whole accessible material on NS crimes worldwide. Our main aim is searching for acts limited in space, time and committed by a certain group of culprits and to determine which persons involved into these atrocities can be still prosecuted. As soon as the Central Office has found the group of the perpetrators who are to be prosecuted, the preliminary investigations are closed and the files are transferred to the prosecutor's office in charge. Furthermore, the Central Office renders investigative assistance.

Unfortunately, the Central Office can neither obtain court decisions nor impose coercive measures - like a house search. Instead, we rely on the voluntary participation of witnesses, on publicly available sources and on the support of

the police or from abroad by means of legal assistance.

The Central Office is constructed as a judicial institution – but its task is very similar to a fact-finding body – only limited to murder crimes and without any mandate to awareness programs.

III. Fact-finding investigations

As our task is to prepare criminal proceedings, we try to find the means of evidence allowed in German courts:

1. Confessions

In some of the early Nazi trials, the courts were able to base their verdicts on the most convincing proof possible in a criminal case, i.e. a confession by the accused. Since the 60ies, this has played no role at all until the recent trials of our days. The defendants in the various criminal proceedings have maintained contact with each other and enjoyed the opportunity of exchanging notes on the experience gained in their trials. Of course, it is the right of every defendant to remain silent. According to our experience, the investigating officials and judges have come up against a wall of silence or subterfuge - at least, they have found no sign of regret for the victims.

2. Judicial inspection

Another form of evidence usually lacking in Nazi trials - unlike other legal proceedings against crimes of violence - is the local taking of evidence by a judge visiting the scene of the crime. In the overwhelming bulk of cases, a local inspection was not possible during the Cold war - a fact that is even more important when we take into account that most crimes have been committed on the territory of Poland or the former Soviet Union. Nowadays, most scenes of the crimes are accessible - but can no longer help to ascertain the true facts because of changes in property and vegetation. Moreover, of course, most of today's means of evidence are not available, such as DNA analysis, wiretapping, control of accounts etc. We try to integrate modern techniques: The conditions in a camp can be illustrated with a modern 3D-virtual reality-model of Auschwitz; thus, it can also be clarified, what a defendant could see from his position.

3. Witnesses

Courts are compelled to base their verdicts almost entirely on the testimony of witnesses and on documentary proof.

As a rule, Nazi criminals may be divided into two major groups. The first group comprises those who issued or passed on the orders - now usually referred to as the "armchair culprits". The second group comprising the actual perpetrators of the crimes and their accomplices may be described as the "physically involved culprits": the members of the firing squads, the guards and personnel at the concentration and extermination camps, the drivers of the gas vans - in brief, all those who actually looked into the eyes of their victims. The furnishing of proof differs for the two groups.

a) The armchair culprit, making his decisions on life or death for hundreds or thousands of people far away from the actual scene of the crime, remained unknown in name and appearance to the victims. The only witnesses whose evidence may be taken into account in such a case are usually those people who worked close to the "mastermind" in question and knew of the relevant responsibilities and chains of command. Such persons mostly display great reluctance to come forward because they fear possible implication among the accused or criminal prosecution.

b) By contrast, the "physically involved culprits", who were hardly ever individually named on documents relating to the crime because of their mostly subordinate duties and low rank, can as a rule only be convicted on the strength of witnesses' testimony.

Compared with other criminal trials, the obstacles encountered in Nazi cases are much greater because of the almost complete absence of "neutral" witnesses. Most of the series of murders were carried out under conditions of great secrecy and with the virtual exclusion of third parties. The number of witnesses available for the Nazi trials has been decreasing since WW II. To the losses from death and illness must be added the reluctance and exhaustion of witnesses from among the victims - especially those who have emigrated to North America or Israel. On the other hand, we have experienced a motivating support from victims of Stutthof concentration camp: When they read in the

newspapers about Germany's efforts, survivors in Cleveland (Ohio) came forward to contribute to our current investigations.

4. Experts

Experts have largely taken their place. Historians or military historians, in particular, are teaching us about the state of research, general events, chains of command, or constraints in the dictatorship. Interestingly enough, this contemporary history only got underway through the criminal proceedings of the 50ies and 60ies.

5. Documents

In addition to the experts, documents have been the most important evidence, especially in the past for "armchair culprits". Today, they also have gained significance for the immediate helpers/aider/abettors on the crime scene, because each piece of the puzzle can give an indication to the general service of, for example, a guard in a concentration camp.

Many documents have been deliberately destroyed by the SS; others have got lost by the effects of the war or have been inaccessible for decades in foreign archives. Staff members of the Central Office who until 1964 were forbidden by the federal government making trips to Eastern Europe, received in this period of the Cold War in the second half of the 60s permits and were over several weeks in Polish and Czechoslovak archives as well in the Soviet Central Archives in Moscow.

After the changes in the former Eastern bloc, the Central Office has gained access to large parts of the archive material. Soon after German reunification, the Central Office looked through the NS-Archive in the "Ministry of State Security", access to which had been refused for so many years by the authorities of the German Democratic Republic.

Since many years, the Central Office has been cooperating with similar authorities from abroad, which also deal with NS crimes, especially with the Criminal Division of the United States Department of Justice and with the Commission for the Prosecution of the Crimes against the Polish nation.

Our main difficulty is the passage of time since the deeds. In more than two generations, the evidence has deteriorated in every way. The accused have also

aged or died in the meantime. Nowadays, the defendants are between 92 and 99 years of age. Our task is not to collect historical knowledge but to further criminal investigation: Therefore, we can conduct proceedings only if the accused is still alive and as long as he is fit to stand trial.

IV. Mixed results

The balance sheet after decades of investigations is ambivalent.

1. Positive results

On the one hand, the Federal Republic strives for clarification up to this day. The Central Office is still investigating staff members of concentration camps e.g. in Buchenwald, Ravensbrück and Sachsenhausen. Last year, five alleged perpetrators were indicted before courts in Germany.

Through trials since the 1960s, individuals have been repeatedly held responsible for their acts. The proceedings have informed the public, which has contributed to the painful debate in our society. There was also a learning process within the judiciary – demonstrated in dealing with the crimes of communism in the GDR in the 90ies. Possibly, the factual findings are what will remain: whether it is the irrefutable proof of what has happened in Auschwitz; be it the view on the perpetrators (Were they really just “ordinary men“?). Moreover, our transitional justice program has generated documents of its own: They are already archived and accessible, as they represent a rich source of information both on the history of conflict and on the post-war society.

2. Negative aspects

On the other hand, one has to acknowledge that there have been too few convictions: There were proceedings against more than 170,000 defendants – less than 7,000 have been convicted. Often the punishments were very mild. In addition, many procedures just came too late. The reasons are both legal difficulties caused by national criminal law, which was not tailored to state crimes, and factual limitations – but also a widespread unwillingness among the population, which is also reflected in the lack of competence of the Central Office.

3. Why continue?

For survivors or members of family it is often very important and it remains a remembrance that such acts will be prosecuted until the end. This gives both sides the opportunity to tell their stories: both the defendant and the victims (or their relatives) are heard by the current German state. We have to accept the fact, that the mass crimes of the former German state were only possible with the participation of thousands in the Nazi death machine and that they should therefore share responsibility.

We will continue our efforts to investigate murder crimes of the Nazi-regime for some more years. Despite all difficulties, I think it is worth trying.

It is only an attempt - but at least, an attempt.



1965 Indonesia's Mass Killings – Long Road to Justice

Bedjo Unting (YPKP65)

Dear the participants of the 2019 Gwangju Asia Forum, Activists of Human Rights and Democracy from Asia countries.

First of all, I thank you so much for the opportunity given to me so that I can stand up in front of you to deliver my presentation concerning the topic above. This is a great honor for myself, victims of Gross Violations of Human Rights Genocide 1965 and the organization of YPKP 65 Indonesian Institute for the Study of 1965/1966 Massacre as well.

○ Mass Killings in 1965 – 1968

Let me look back in 1965. When the tragedy of 1965 happened I was 17 years old, still sitting on 3rd year study of the SPG Teacher Education School in Pemalang Central Java. I did not know what was going on in Jakarta the capital city approximately 400 kilometers westward from my native village.

A few days after the tragic affair took place, precisely at the first week of October 1965 most of the people alleged of PKI were seized, tortured and detained in military camps, exiled to Nusa Kambangan and then moved to Buru Island in Maluku. They were enforced to work as if slavery. They were detained for 14 years since 1965 without going through court proceedings. Houses belonging to people suspected of being PKI followers and the sympathizers were burned, valuable things in the houses were robbed.

Since then, the persecution of people alleged to be members of PKI and the sympathizers of President Sukarno were arrested, including myself.

On October 24th, 1970 I was captured by “Kalong” (means Bat) Military Intelligent Agency in Jakarta, got brutal and cruel interrogation

process, electrical shock, tortured, worst sanitary and lack of food. I was sick of malnutrition in this interrogation camp then moved to Salemba Prison in Jakarta. The condition even worse than when I was in Kalong Interrogation Camp. There were 2000 detainees gathered together in a small cell, over-crowded. Eat bad small quantity of rice full of sand and glasses. Many detainees died of starvation. I was moved to Tangerang Concentration Camp to be enforced labour/slavery, were forced to work: planting rice, hulling rice, cutting wood, making soil brick, collecting stones, cultivating land, buffalos farm, goat farm, chicken farm, fishery, etc. The production of this farming was completely owned by military. They worked without payment.

To solve lack of food condition, I had to look for vegetables that grow in the camp. I had to eat mice, snakes, cats, lizards, dogs, insects, bees, etc., just to survive. I did not know, what was my mistakes? I was just a student not belonging to the member of Communist organization.

○ Mass Killings in Boyolali Central Java

Similarly, occurred not only in my village, but also in neighboring villages in various cities throughout Indonesia. In a short time, persecution, arrests, kidnappings and extra judicial killings happened everywhere.

More terrible it occurred in the village of Jetis Kragilan Mojosongo in Boyolali Regency, Central Java. The people were arrested, tied in their hands, dragged and beaten along the road. The body of the victims were full of blood. The head is cut (sorry to say) and displayed on every street corner by plugging it in a pointed bamboo. [1]

○ Genocide 1965 started on October 1, 1965 from Aceh

In a short time, not until one day, on October 1, 1965, Colonel Yoga Soegomo as Assistant I of Kostrad Intelligence Agency immediately announced, “This is the PKI’s action, prepare all safeguards, weapons, unload warehouses. PKI rebelled “[2]

In fact, PKI did not know anything, what was happened to the generals. It was entirely an internal problem of the Armed Forces.

Indeed, the operation to destroy PKI members and their sympathizers has

been planned carefully by the Army officials. As fast as lightning across Indonesia, a radiogram of the military was sent to military commandos in each city everywhere in Indonesia to crash down the PKI.

In the first week of October 1965 an arrest operation had begun for those accused of being members of the PKI. This happens in almost all cities in Indonesia. Military Operations using the support of anti-Communist militia organizations such as Banser, Muhamadyah, Pemuda Pancasila and various organizations created by the army. They are mobilized to killings operation against PKI.

PKI as the third largest Communist party after the Soviet Union and People's Republic of China which had 3 million members and its sympathizers almost reached 26 million, was destroyed in a short time, because indeed the PKI did not fight, there were no instructions to fight because the PKI was not designed to rebel, but its struggle to achieve and develop socialism community based on Pancasila and the 1945 Constitution. PKI struggles for a democratic and peaceful society by using non-violence principles.

PKI members and sympathizers at that time obeyed the orders of the local military authorities and government offices to come, gather, report themselves. Because they feel innocent. But afterwards the PKI people together with their sympathizers were not allowed to go home, were detained, interrogated, and later at night were kidnapped by a group of military-trained civilians. Under military support and assistance, the prisoners were executed without legal process. This happens every night from 1965 to 1968.

Operation of killings in peace time not in war has killed 500,000 to 3 million of the innocent people. Hundreds of thousands were held in concentration camps for forced labor, kidnapped and tortured. Thousands of women were abused of sexual violence. Hundreds of scholarships Students who studies abroad have to live in stateless condition because their passports are revoked by military government.

Property seized by the army illegally. And, up to this day the victims of the 1965 tragedy still get persecution, stigmatize and discrimination

as well.

Not surprisingly, according to Bertrand Russell a British Liberal figure in 1966 said: "... in four months, five times as many people were killed in Indonesia as in Vietnam War for twelve years." - Russell, 1966.

The destruction of the PKI started from Aceh on the northern tip of North Sumatra since October 1, 1965 - reinforced by Jess Melvin's research in her article entitled *Mechanics of Mass Murder: A Case of Understanding the Indonesians Killings as Genocide*. [3]

Killings of the people accused of the Communists continued to spread to Medan, North Sumatra with the same pattern. It can be seen from the documentary film *The Act of Killing* made by director Joshua Oppenheimer [4]. How sadistic and barbaric are civilians recruited by the military to carry out arrests, torture and then murder. The operation of the destruction of the PKI was also carried out by burning villages which were suspected of being the basis of Communists.

In short, the killing of PKI followers and their sympathizers occurred throughout Indonesia: West Sumatra, Riau, South Sumatra and also Lampung. The killing operations then moved to Java Island: Jakarta, West Java, Central Java, Yogyakarta, then East Java.

Killing operations then moved to Bali, West Nusa Tenggara, East Nusa Tenggara, Maluku, Papua, Sulawesi, Kalimantan.

○ Chain of Military Command

Suharto, who, after October 1, 1965, was in control of security operations was also strengthened by the establishment of KOPKAMTIB (Command for Operations on Security and Order) on October 10, 1965 where it was Suharto who became Commander of the Operations. Kopkamtib has the authority to arrest, detain, interrogate and execute without due process of law. Kopkamtib is also supported by the Laksus (Special Executor) command and the Laksusda (Regional Special Executor). The system works by using / coordinating the military command line: Kodam (Military Regional Command) for the Provincial level, KODIM (Military District Command) for the District level and Koramil (Military Rayon Command) for the District level. Up to the

Village / City / District level.

The military used religious mass organizations - Banser / Ansor and Pemuda Muhammadiyah as well as organizations created by the army such as Pemuda Pancasila. In Jakarta and the big cities formed KAMI (Indonesian Student Action Unity) and KAPPI (Indonesian Student Youth Action Units).

The organization created by the army easily and freely carried out acts of destruction and pursuit of people accused of being PKI members and sympathizers. The army is behind the organization, it supports destructive actions such as: arresting people, torturing, burning houses / buildings and looting goods.

The RPKAD Commander was also tasked with coordinating a national network of killer teams consisting of civilians. Regarding RPKAD's involvement in recruiting civilian groups to be part of armed civilian forces assigned to assist in the killings of the PKI, one of the RPKAD officers Sintong Panjaitan said in his testimony at the historical Symposium of the 1965 tragedy at the Aryaduta Hotel Jakarta in April 2016: RPKAD was forced to provide military training to groups of civil society organizations because of the limited number of RPKAD troops.

Meanwhile in Bali, which is also known as the base of PKI activity, was a priority for the second wave of military attacks. In Bali massacre began when Sarwo Edhie Wibowo the RPKAD Commander assigned by Suharto to start a mass murder campaign in Bali. The assassination began against a PKI Chair in Bali named I Gede Puger, stabbed with bayonet, his intestines spilled out, then shot in the head and witnessed by mobs who packed the terrain where the massacre was carried out. Not only Puger who was killed but also all his children and wife. In fact, the Governor of Bali, who was highly respected by the Balinese people named Anak Agung Bagus Sutedja, also disappeared, he was killed without a trace where his grave was. From that time on, a widespread massacre began on the island of Bali. [5]

○ Genocide was provoked by Hoax Spread, Black Propaganda and Hate Speech

Scenarios that were prepared in advance by the Army to discredit the PKI by spreading hoaxes as if Gerwani (Indonesian Women's Movement) - a Left women's organization that had a program for the advancement of women in Indonesia - mutilated the bodies of the generals, the genitals were cut, the eyes taken out. The Gerwani did the cruel and sadistic behaviour. This was all false and untrue. It was proven later on October 4, 1965 after the body was removed from an old well where the bodies of the generals were thrown away, post mortem evidence from a doctor who examined the dead bodies stated that there were no evidence of violence as propagated by the army. [6]

The PKI destruction operation was successfully carried out by designing the so-called G30S which was completely engineered by the military with the Central Intelligence Agency (CIA) behind it. With the killing of 6 high-ranking officers and one middle-ranking Army officer, it was used as a pretext to destroy the PKI.

Starting the day after the movement, on October 1, 1965 the Indonesian Army sent radiograms throughout the chain of military commands throughout Indonesia to crush the PKI to its roots. And this is interpreted as a command to mass killings of PKI followers and their families and sympathizers. [7]

○ Novums have been found

A number of documents on American diplomatic cable conversations (telegram) about the 1965 tragedy as many as 39 files with 30,000-pages of documents have been opened to the public by the National Security Archive (NSA), the National Declassification Center (NDC), and the National Archives and Records Administration (NARA).

In the declassified documents, the Government of the United States of America (US) knows in details that the Army (Armed Forces) part of the Armed Forces of the Republic of Indonesia (ABRI) involved to mass murder operation against the Indonesian Communist Party (PKI) since 1965. Those files also showed further that diplomats at the US Embassy in Jakarta kept an identity of PKI leaders who were murdered, and US officials actively supported military efforts to destroy the left-oriented

labor movement in Indonesia. [8]

The document also clearly shows the close cooperation between Islamic mass organizations that were anti-PKI. The military then launched a campaign to eradicate the PKI and its mass organizations affiliated. In this extermination campaign, 500,000 people accused of PKI supporters were killed between October 1965 and March 1966 and up to one million people were arrested. Until finally Sukarno was deposed and replaced by General Suharto who led Indonesia for 32 years. [9]

In the declassified CIA documents, it became clearer the role and involvement of the United States, United Kingdom and Australia which supplied weapons equipment, communication tools and financial to facilitate the efforts to destroy the PKI and overthrow President Soekarno. It is very clear that the CIA was behind the engineering of the 1965 genocide. [10]

○ Recommendations of National Human Rights Commission and IPT 65

The National Human Rights Commission of the Republic of Indonesia (Commission), which conducted an investigation related to the violations tragedy of 1965-66 by developing a team of investigation pro-justice. The Commission announced on July 23, 2012 that the 1965 tragedy was a crime against humanity, among others: murder, detention, torture, looting, rape, forced labor similar to slavery, discrimination and forced displacement. The Commission also recommended that the Attorney General should establish an ad hoc Human Rights Court to investigate those crimes and proceed legally according to the Human Rights Law Number 39/1999 and Law Number 26/2000 concerning Human Rights Courts. The Commission also revealed that there was a chain of command by military officers in designing the killings and violences of the tragedy 1965-66. [11]

The International People's Tribunal for Human Rights Violations 65 (IPT 65) in The Hague which convened on 10-13 November 2015. It was to confirm the report of the Indonesian Human Rights Commission that the tragedy of 1965 and the years after was not only crimes against humanity but also Genocide because it contains elements of the

elimination of certain races, group of people based on differences in belief/religions.

○ Discovery of Mass Graves Genocide 1965

The crashing down of PKI and its sympathizers that killed at least 500,000 - 3,000,000 people were not fiction or fantasy, but supported by evidence, facts and testimonies. YPKP 65 in its research has found the location of 112 mass graves - reported to Human Rights Commission and the Coordinating Minister for Politics, Law and Security in 2016. And now (April 2019) has reached 319 places - only in Sumatra and Java. In the island of Bali is still not fully recorded. The number is still increasing because the research is still going on. [12]

On the report of the discovery of the Mass Graves carried out by YPKP 65, the Coordinating Minister for Political, Legal and Security Affairs promised to follow up, to verify, to keep and have no intention to destroy or eliminate the evidence. However, later the military denied it. Again, this is a proof that the State/Government is not serious and no intention to resolve the case of genocide of 1965-66.

In December 1999 and early January 2000 YPKP 65 conducted exhumation in the forests of Situkup, Dempes, Kaliwiro, Wonosobo, Central Java. A total of 21 bodies were found, and identified. They were victims of the 1965 genocide. [13] Unfortunately, the State / Government of the Republic of Indonesia up to this day has been no political will to resolve the cases of human rights violations, so that the exhumation and memorialization efforts have not been carried out as desired by the victims and their families. Efforts to open up past history are considered as giving the opportunity to Communism to arise, a reason that is absurd, perpetuating impunity, stigmatization and deception.

○ Urgent Demands and Victims' Voice

On behalf of the Victims of Human Rights Violations Genocide of 1965, I herewith invite all of you Human Rights Activists in various parts of the world, especially in the Republic of Korea to join together, shoulder

to shoulder to increase solidarity in urging the State/the Government of Republic of Indonesia to resolve cases of human rights violations.

In Indonesia 500,000 – 3,000,000 people were murdered. In Jeju Island Republic of Korea 25,000 – 30,000 people were killed.

We urge the Indonesian government and also the countries involved in engineering the genocide of 1965: United States of America, United Kingdom, Australia and Western countries that take advantages of acts of mass killings and genocide of 1965 should apologize to the victims, acknowledge that there have been crimes against humanity facilitated by the State apparatus, conduct investigations and develop Human Rights Court to give deterrent effect for the perpetrators. The Government of The Republic of Indonesia should rehabilitate and give reparation for the victims.

Thank you very much.

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Argentina's Reckoning with Past Injustice: Implications and Lessons

Yongju Choi (The 5·18 Memorial Foundation)

The implications of Argentina's reckoning with past injustice, which has proceeded more than 30 years since her democratization in 1983, are summarized as follows. First, the practice of "criminal justice" to the perpetrators of human rights violations has been highly successful. The Argentine government clearly defined individual criminal accountability for state terrors, consequently presenting us an interesting case of how the "impunity" barriers can be overcome through judicial reforms. Second, the "truth commission" for past atrocities was effectively operated to officially acknowledge systematic and gross human rights violations and then preserved its tragic history as a collective memory. Finally, comparing to other countries, active participation of "civil society" has been remarkable. Argentine civil society, centered on the victims' organizations and human rights NGOs, has aggressively monitored and criticized government's compromise with the legacy of the military dictatorship, contributing to successfully constructing two axes of transitional justice: truth and justice.

Limited Practice of Criminal Justice (1983–1989)

Like other transitional countries, the trial of human rights violations in Argentina didn't advance smoothly. It was mainly because that the political power of the military dictatorship wasn't terminated after the transition to democracy. Just over 30 years after the democratization, the practice of criminal justice in Argentina has experienced ups and downs and thus this cycle itself reveals well social and political dynamics to overcome several barriers against performing transitional justice.

After Raul Alfonsín took office in 1983, he took a series of key steps to advance the movement toward justice. The most important of these were the revocation of the self-amnesty law; the creation of the National

Commission on the Disappeared (CONADEP); and trial of the military Juntas. CONADEP was composed of 10 members nominated by the president and 1 member nominated by the House and Senate, and Ernesto Sábato, a prominent Argentine writer, chaired the commission. The main task of CONADEP was to identify the “missing persons“, which were supposed to be more than 20,000.

The greatest significance of the CONADEP activity was that it provided the investigative authorities with a vast amount evidences of human rights abuses such as secret documents, testimonies, field surveys, and forensic evidences achieved through its fact-finding activities, and recommended the judicial process to the perpetrators. CONADEP’ s final public report did not name the perpetrators, but the materials handed over to the judiciary identified perpetrator’s real names and related allegations. That is, the first gate of judicial treatment against the perpetrators of human rights violations opened with the activities of CONADEP.

Nevertheless, the Alfonsín government failed to meet the Commission’s recommendations and social demands for criminal justice. In fact, the Alfonsín government wanted to minimize the political friction with the military by prosecuting only a handful of upper-level military leaders who led human rights violations, rather than immediately and fully enforcing justice against all perpetrators. Behind this “limited justice“ was growing anxiety about the history of military coups and the potential political influence of the military.

In September 1983, nine former military Junta leaders, including former President Jorge Videla and Viola, and naval commander Emilio Massera, were handed over to the trial. Videla and Massera were sentenced to life in prison; Viola was sentenced to 17 years; and four were released innocently. The trial, however, faced severe criticism from civil society in that it did not fully respond to the explosive expansion of social indignation and expectation to criminal justice.

Despite criticism from civil society for lack of justice, the military also criticized the trial results for the opposite reason. First of all, the military was embarrassed by the sudden increase in the appeal of criminal trial against the perpetrators encouraged by CONADEP's fact-finding activities. The Argentine "civil law" system was fateful for the perpetrators because it permitted the victims and victims' families to directly prosecute the perpetrators to criminal courts (i.e., private prosecution). For example, in 1986, more than 6,000 prosecutions of human rights violations were filed in the Argentine courts. The rapid increase of these lawsuits was enough to impulse military groups to plot coups and rebellions. In fact, from 1987 to 1990, there were four military rebellions led by a political army group "carapintadas," consisting of mid-ranking officers, all motivated by opposition to the rapidly increasing prosecution.

The Alfonsín government, consequently, started to restrict human rights trials by enacting de facto amnesty laws: The Full Stop Law (Ley de Punto Final) and the Due Obedience Law (Ley de Obediencia Debida). Furthermore, President Carlos Menem, who inaugurated in 1989, pardoned most of the perpetrators who were convicted in the Alfonsín government and in 1990 pardoned leaders of the 1976 coup d'état including Videla and Massera.

Decline of Criminal Justice and the Rise of Social Movement (1990-2003)

In the 1990s, mainly led by victims' organizations and human rights groups such as "Mothers of the Disappeared" (Madres de la Plaza de Mayo) and "the Center for Legal and Social Studies" (CELS), a variety of social movements began to take place, requiring legal reforms for prosecuting perpetrators.

C. Menem, who had rapidly lost popular support due to his reckless orders of pardons, sought to reclaim his political position by agreeing to civil society's strong demand to insert human rights clauses into the constitution. Finally, in 1994, the constitution was amended, and

international human rights laws and international human rights treaties took a prior legal position over domestic law. In accordance with this amendment, 9 international human rights treaties the Argentine government already ratified, including the Universal Declaration of Human Rights and American Declaration of Human Rights, took legal effects in domestic courts. In 1997, the Inter-American Convention on Forced Disappearance of Persons became a priority over domestic law.

In March 1995, former naval officer Adolfo Scilingo exposed the massacre of so-called “Death Flight“, re-opening past records of human rights violations that had closed under the memories of Argentine people. In 1996, the 20th anniversary of the military coup, more than 150,000 people gathered at Plaza de Mayo in Buenos Aires to conduct massive demonstrations demanding justice. And international pressures on the Argentine government, which was lukewarm in prosecution of human rights crimes, increased rapidly. The Inter-American Commission on Human Rights (IACHR) pointed out that the “Full Stop Law“ and the “Due Obedience Law“, which restrict the judicial treatment of offenders, do not comply with the standards of international human rights law.

The social demands for punishing perpetrators evolved more systematically with the development of new social movements since the 1990s. The “escrache“ movement, which began with HIJOS, a new-generation human rights movement group composed of children of victims, is a representative example. “Escrache“ is a social performance to expose in public identities and criminal activities of the perpetrators. The escrache performance had the effect of bringing social punishment on human rights crimes exempted from trials in courts

In addition, the civil society of Argentina contributed greatly to the introduction of the “truth trial“ system, which was evaluated as a fresh judicial innovation, given a situation where prosecution of perpetrators was significantly restricted. The truth trial is a judicial process that the court recognizes the victim’s legal “right to know truth” about past violation

of human rights, and then obliges offenders and institutions to provide relevant information the victims want to know. Although the victim's right to truth was already recognized normatively in the international human rights law, it was first performed in the Argentine courts by Argentine civil society's constant endeavor to reckon with past wrongdoings.

The *esgrache* movement and the truth trial led to various campaigns to prosecute pardoned perpetrators with new charges. In order to prosecute the perpetrators who were already pardoned by presidential orders, it was necessary to prove new crimes that had not been applied before. Victims' groups and lawyers of human rights groups tried to review the records of past trials thoroughly to create new legal rationales for war crimes and "crimes against humanity.

Argentine federal courts eventually arrested Videla and Massera who were released as amnesty measures in 1998. The charges against them were not treason and rebellion, but crimes against humanity and war crimes such as violation of the Geneva Convention, forced disappearance, and child abduction. At the end of 1999, the Buenos Aires Court of Appeals ruled that isolation and adoption of children who were born in detention centers from their parents is a crime against humanity and consequently statutes of limitations will not be applied.

Return of Criminal Justice (2003-)

In 2003, the Nestor Kirchner government focused on abolishing the legal, institutional, and personal barriers that so far restricted criminal justice implementation. Kirchner demanded the parliament to immediately abolish the Full Stop Law and the Due Obedience Law, beginning to reform the justice system. Five of nine Supreme Court judges appointed during the Menem government were resigned on charges of corruption and the government also initiated to reform law enforcement agencies including prosecutors and police organizations. The reform of the military was also carried out. In March 2004, the portrait of Videla hanging at the Central

Military Academy was removed, which symbolically showed the civil control of the military.

In June 14, 2005, the Supreme Court of Argentina ruled that the Full Stop Law and the Due Obedience Law are unconstitutional, and the 2003 parliamentary legislation, which stipulated the retroactive nullification of the effect of these two laws, was constitutional. The court's judgement cited the 1994 amendment of constitution, which sets forth the international human rights treaty and the international human rights law as superior ones above domestic law. In 2006, the Supreme Court ruled that the pardon order of the Menem government is unconstitutional, and on April 2007, the Supreme Court ruled that it is constitutional to prosecute Videla and Massera on a charge of the crime against humanity.

These judicial reforms led to explosive increase in prosecution and trial of human rights violations during military dictatorship. As of December 2012, 1,926 were charged with crimes against humanity, of which 799 were prosecuted, 262 of whom were guilty, 20 were innocent, and 306 died during the trial. In 2006, two high level police officers were sentenced to life in prison for alleged kidnapping, murder, torture, child abduction, and rape during the military dictatorship. In March 2007, the Ministry of Justice established a Special Investigation Department to charge prosecutions for human rights crimes. In October 2012, Federal Prosecutor's Office created a department to investigate and prosecute crimes of child abduction and illegal adoption during the military regime.

In July 2010, Videla and Massera were again prosecuted for new crimes such as war crimes, crimes against humanity, murder, and child abduction. Videla was sentenced to life imprisonment on December 22, 2011 and died in prison on May 17, 2013. Massera, awaiting trial, died of a stroke on November 8, 2010.

Lessons

What can we learn from the Argentine experiences? At least, following lessons should be emphasize:

- The truth commission's (CONADEP) truth-clarification activities (the practice of "historical justice") and the judicial authorities' punishment of the perpetrators (the practice of "judicial justice") proceeded in a complementary relationship. CONADEP continued to provide the evidences required for the preparation of the prosecution; the limitation of the CONADEP's fact-finding activity was supplemented by the prosecution's investigation and trial process.
- Punishment of perpetrators obstructed by the resistance of the military resumed with the continuous efforts of civil society and the pressure of the international community, finally being strengthened even more than before. Most of judicial reforms, including amendments of constitution, truth trials, discovery of new prosecution requirements, and abolishment of pardon laws, were mainly possible by civil sectors' bottom-up efforts and the transnational advocacy network.
- The legal and moral justification of the punishment of the perpetrators was consolidated by reflecting the natural law ideals of international norms such as international human rights laws and international human rights treaties. Argentina has led the "justice cascade" driven by the third wave of democratization, re-illuminating the issue of transitional justice with the perspective of "human rights."



Session 5: Closing Plenary Session

Closing Round Table Session:
What is to be done?

- Civil Society's Role to Overcome Discrimination and Hatred

Mr. Gopal Siwakoti (INHURED International)

Mr. Il Lee (APIL)

**- Demand for State Responsibility in the May 18 Uprising
Truth-finding & Protecting Process**

Ms. Lee Sang-hee (Law Firm Jihyang)

**- Rolls and Responsibilities of Asian Nations and International
Human Rights Organizations**

Mr. Lee Tak-geon (Probono Dongcheon Foundation)

Ms. Deepa Nambiar (International Detention Coalition)

Refugee Protection through Transitional Justice

Gopal Siwakoti (INHURED International)

PROTECTION OF REFUGEES THROUGH TRANSITIONAL JUSTICE



Gwangju Asia Forum-2019
May18 Memorial Foundation

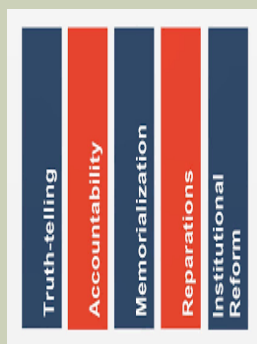
Gopal Krishna Siwakoti, PhD
Chair: INHURED International/ IP Chair: APRRN

DOCTRINE OF TRAN-JUST



- Addresses legacies of past human rights abuses
- Mass atrocities or other forms of severe social trauma
- Deals with war crimes, genocide, crimes against humanity
- Confronts wrongdoings of repressive predecessor regimes
- Aspires to build a more democratic/just/peaceful future
- Mostly involves judicial/non-judicial mechanisms /processes

TRANJUST: CENTRAL PILLARS



TRANJUST: CORE ELEMENTS



- Derives from need felt by whole of society
- Not a complete way of reparation a way to start
- Difficult to create solely as a response to victims' demands
- Historic bridge in a deeply divided society
- Creates a future founded on recognition of human rights
- Foundation for restoring democracy/peaceful co-existence
- Prevents repetition of such acts in future
- Understanding but not for vengeance; reparation but not retaliation, ubuntu (kindness/humanity) but not victimization



DISPLACEMENT & REFUGEE DYNAMICS

- Contemporary refugee movements distinct from that of era immediately following WWII
- Triggering factors very often complex & not merely results of immediate persecution (conventional scenario)
- Persons flee because of civil conflicts, massive HRV, foreign aggression/occupation, poverty, famine, disease/ecological disasters, including climate change
- Reintegration is a critical aspect of durable solutions, but significantly hindered by legacies of past abuses



CONFLICTS INTERFACE DISPLACEMENT

- Serious HRV often integral part of displacement crises
- Certain violations (mass killings, arbitrary arrests, torture, rape, extortion) often cause mass displacement
- Destruction of homes/property, undercut return possibility
- Displacement deliberate strategy used by parties in conflict
- Displacement can constitute war crime/crime against humanity
- Displacement leaves victims vulnerable to other abuses



REFUGEES INTERFACE TRANJUST

- Instrumental towards uncovering truth to establish faith in new institutions/sustained reconciliation
- Crucial for restoration of damaged relationship between refugees & state
- Significant tool for prevention of future atrocities/crimes against returnees



REFUGEES & TRAN-JUST DILEMMA

Refugees face obstacles to accessing tranjust programs due to:

- Access to and absence of information
- Lack of necessary identity documents
- Poverty/marginalization/physical inaccessibility
- Fear of reprisals can prevent proactive engagement
- Other concerned authorities/actors don't share same goals, approaches, priorities: hesitate confronting the past



DISPLACEMENT & TRAN-JUST: NORMATIVE FRAMEWORK

Series of resolutions, guidelines acknowledge to resolve displacement crises with justice concerns of IDPs/refugees:

- 2004 & 2011 versions of UN SecGen's Report on Rule of Law & TJ in Conflict/Post-conflict Societies
- Inter-Agency Standing Committee's 2010 Framework on Durable Solutions for IDPs
- 2009 AU Convention for Protection & Assistance of IDPs
- UN Principles on Housing & Property Restitution for Refugees/Displaced Persons
- Int'l legal framework exists to criminally prosecute arbitrary displacement if qualified war crime/crime against humanity



DISPLACEMENT & TRANJUST: CASE-BASED SCENARIO

Tran-just measures traditionally unengaged in depth with concerns of refugees/IDPs with some exceptions:

- Programs in Guatemala, Peru & Colombia consider displaced persons eligible to receive benefits, but yet to receive any for violation of displacement itself
- Restitution programs implemented in Bosnia-Herzegovina, East Timor, Kosovo, Iraq
- TRCs in Liberia, Sierra Leone, Timor-Leste, Guatemala recognize displacement, investigate w/ recommendations
- Cases at ICC, ICTY, Columbia included charges of forcible displacement



DISPLACEMENT & REPARATION

Reparations

- contribute to social reintegration by reducing tensions between those who remained home, who were displaced & host communities
- provide benefits for abuses leading to displacement, for harms suffered while displaced, or for displacement itself
- facilitate economic reintegration & rebuilding of livelihoods
- increases access to shelter/land, supporting construction of homes/businesses, mental health/education assistance



REPARATION & RESTITUTIONS: ACTIONS & APPROACHES

- Given huge numbers of people affected by displacement, administrative processes more appropriate than judicial ones
- Admin measures: faster, more accessible, cost effective, flexible in terms of evidentiary standards
- Given resource constraints, reparations programs serve better with tailor-made needs assessment of Displaced Persons
- Restitution of housing/land/property, e.g, is an excellent justice measure most directly connected to displacement



ACTIONS & APPROACHES....

- Help reduce economic vulnerability through assistance for education, mental health with a priority
- Collective, symbolic reparations particularly appropriate in displacement/refugee contexts
- Demographic/quantitative analysis is used to portray scope/patterns of displacement in refugee context
- For criminal justice, specific investigation methodologies can be set up at national level for crimes of displacement



ACTIONS & APPROACHES...

- If TJ measures do respond to displacement, they must engage with IDPs/refugees thru outreach/participation
- Participation of displaced populations can be supported by IEC materials in different format-languages, holding events in camps/in diaspora communities
- Dispatching investigators/officials to meet refugees by using media/technology for info dissemination across borders
- Facilitating integration or reintegration of refugees into communities/societies, including political reintegration



SECURITY SECTOR REFORMS

Criminal justice & justice-sensitive SSR facilitates reintegration of refugees by:

- improving the security of formerly displaced persons
- removing known perpetrators from security institutions/local communities
- making reintegration more durable by helping to prevent recurrence of the abuses that led to displacement
- dismantling of criminal networks, small arms, vigilantes and structures



RIGHTS OF REFUGEES & TRANJUST ENDEAVOR

- Right to be accounted for (national census)
- Right to enfranchisement (to vote and to be elected)
- Right to belong (identity and nationality)
- Right to family reunion
- Right to security
- Right to livelihood
- Access to justice
- Right to return, etc.....



TRANJUST REMEDIES: 3-DIMENSIONAL APPROACH

If a major cause of exodus is:

Situation A:

- **Poverty:** Solutions could be found in development aid or technical assistance

Situation B:

- **HRV:** Solutions may lie in continuous monitoring by UN HR bodies, condemnation of violations by int'l community, appointment of Special Rapporteurs etc.

Situation C:

- **Violent Conflicts:** Solutions may be found in preventive diplomacy, promotion of mediation for conflict resolution, compliance with humanitarian law



REFUGEES & TRANJUST: DIFFICULTIES & DILEMMAS

- Highly sensitive/sensational political issue
- Costly, time-consuming/risky TJ process (*a Herculean task!*)
- Polarized society: eroded efficiency of credibility, courage/conviction of TJ mechanisms
- Context: "United violators: Divided victims": unfavorable for return of refugees
- When victor's justice prevails...reconciliation diminishes
- Battle fatigue syndrome/eroding social enthusiasm in favor of refugees
(Elapsed time = Enemy of justice!)



CRITICAL BALANCING QUESTIONS

- Is peace inevitable at the cost of justice to refugees?
- Does monetary compensation guarantee satisfaction?
- Does memorization contend the displaced victims?
- Does reconciliation mean 'forget /forgive' atrocities?
- Does truth-seeking auto-lead to reconciliation?
- Does amnesty lead to guarantee of non-repetition?
- Does sharing of transitional power heal the wound?
- What if there is obvious threat for 'back to war' ?



TRANJUST: NON-JUDICIAL METHODS

- Programs for reconciling fractured societies
- Reforming repressive state institutions (army, police)
- Rewriting history/sociology/anthropology books
- Opening museums, erecting statues /monuments, changing street names (Memorializing /remembering victims)
- Official apologies/condemnations by highest authority



MEMORY & MEMORIALIZATION

- Generally state-sponsored initiatives that help repair material/moral damages of past abuses
- Typically distributes a hybrid of collective sentimental material/symbolic satisfaction benefits to victims
- Benefits generally include financial compensation/ official apologies

In TJ front, memorialization is probably most visible/impactful on everyday lives of populace



May18 Memorial



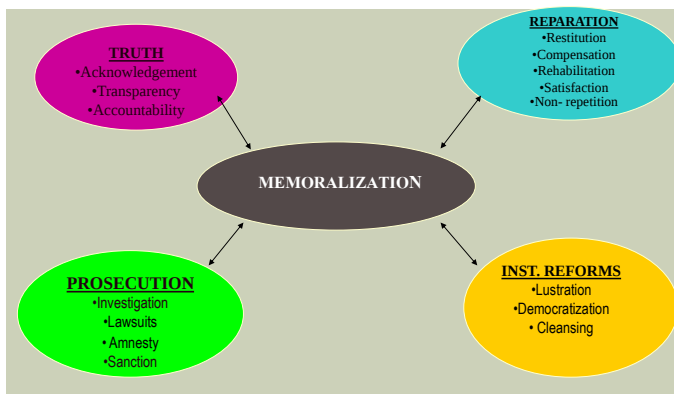
WHY MEMORIALIZATION ?

- Collective remembrance: fundamental processes in societies recovering from traumatic pasts
- Efforts include museums, memorials that preserve public memory of victims
- Raises moral consciousness about past abuse, in order to prevent its recurrence



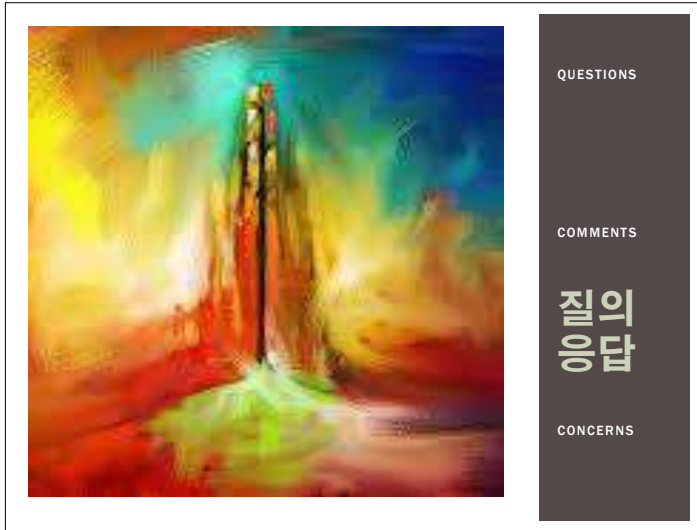
Public memorials, reburial of victims, compensations, reparations, literary/historical rewritings, revision of history books, literature / so on...

ADDRESSING IMPUNITY THROUGH TJ



**EVENTUALLY...
THE POWER OF PEN SHALL PREVAIL**





The Role of Civil Society to Overcome Hatred and Discrimination

Li Lee (Lawyer) ¹⁾

1. Introduction – The Hatred Appeared in Public Sphere against Refugees in 2018

In the middle of last year, around 500 Yemeni people entered Jeju Island, Korea through a non-visa system. South Korea has implemented refugee protection system since 1994. However, the existence of the system and social recognition of it is not yet well-discussed. The refugees in Korea have been “invisible” in a way, but as recent as 2018 they became “visible”, when people began to express their hatred against them. In this paper, the contexts of such hatred will be covered especially in Korea which is not an immigrant, multi-racial, nor multi-cultural society yet. Then, how the Asian civil society can cooperate to solve the problem will be presented. While trying to have some distance with the traditional way of a refugee movement like advocating refugee rights and fighting against repatriation, I would like to argue the importance of overcoming hatred and discrimination, and how important co-existence is.

2. The Contexts of Discrimination and Hatred against Refugee in Non-Immigration Countries – Why Yemeni Refugees Became Targets of Discrimination and Hatred

Asia is not a singular concept. There is no immigrant country yet, but according to various and complicated historical contexts, it is true a lot of immigrants or refugees are living in Asia. Sometimes it is due to the long history of ethnic diversity, or due to the history of immigrants. Also, there are some cases that immigrants and refugees co-exist in a society even though they are not able to obtain legal status. Thus, Asia can't be defined in a simple way especially when it comes to immigrants or refugees.

Korea is a homogenous society and because of its closed nature, immigrants are not fully regarded as a member of the society. But in 2018, Yemeni refugees were framed as potential criminals of sexual violence against women, terrorists, or false refugees. It became a big social issue and their vulnerability became quite visible. Seven hundred thousand people signed a petition to require abolishment of the Refugee Law and deportation of refugees. It shows South Korea's attitude on refugees. So it might be

useful to take a look where such hatred comes from.

First, the hatred against refugee is situated in the context of hatred against minorities. In Korea, discrimination against minorities including women, people with disabilities, LGBTQ+ have been accumulated and it has been visible with virulent anger. Hate speeches that justifies discrimination are appearing in the public sphere. The #MeToo movement, queer parade, disability rights movement are targeted and attacked because such minorities don't belong to the norm which means a heterosexual man who served military service, with no disabilities. The hatred against refugees is a recent version of such hatred against minorities. As an "absolute other", it can be said that refugees are the most vulnerable group in South Korean society that can be deported anytime.

Second, refugees' vulnerability and their otherness are the target of hatred. Under rapid economic development, effectiveness has been emphasized in Korea rather than equality. Survival of the fittest has been the rule of the society. Thus, "vulnerability" has been a target of contempt. In this logic, advocacy for refugee rights based on their vulnerability is not "reasonable".

Third, ethnically homogeneous characteristic of Korean society is one reason to explain such hatred. Diversity hasn't been understood enough in Korea. Not only nationalism, but extremely competitive atmosphere and anti-North Korean sentiments are the background of it. Also, neo-racist ideas like cultural homogeneity and ability to be integrated, triggers such hatred. Furthermore, the hierarchical order of race makes things worse. In this sense, "western white male" is most superior, and refugees are most inferior.

Fourth, we can think about the matter of ignorance. The Yemeni refugees who arrived in Korea last year were regarded as potential criminals rather than a refugee who needs protection. They are considered as suspicious people. In my opinion, the basic reason of such stereotype is complete ignorance. Korean society is hearing all the international news from the American point of view. In this regard, Muslim is not visible and thus, is not known in Korea. Moreover, some extreme right wingers publish fake news which sparks hatred. Consequently, a healthy discourse or discussion on this matter is rarely seen.

Fifth, nationalist ideology is one of several reasons for this hatred. Nationalism provided ideological background to fight against Japanese colonial rule, particularly under the military dictatorship era, and nationalism strengthened to make people more

united. Further, nationalism hasn't been challenged or discussed enough. Under such ideological framework, only Korean nationals can be a member of Korean society and refugees are dangerous because they are seen as a threat to the ethnic homogeneity.

3. What Are the Domestic and International Roles of Civil Society to Solve These Problems?

Considering these historical, political, and social contexts, the hatred can't actually be the voice of the "majority". Even though most people in Korea experienced being refugees themselves during the Korean War; sympathy, solidarity, and hospitality are rarely found. Rather, strong hatred propaganda is widely spread among the majority of people. Also, civil society activists have usually focused on refugee rights and policy. But we have not really thought about their membership in society.

Under these circumstances, there are a few things that can be done in civil society. First, we need to demand the government to take action. We must pressure them to have a clear position and attitude on the issues. Official reports should be made on refugee determination for Yemeni refugee by the government. They should declare that hate speech against refugees will not be tolerated. In addition, hate speech should be regulated and enact laws to actually practice it. When the government designs policies for refugees, the understanding of refugee issues should be included in the education system. There are various examples in other countries that can be good references.

Second, we need to communicate with citizens. We have to try to isolate extreme right wingers who constantly spread the hatred in Korean society for their political purposes. We should take actions against fake news on refugees as well. We need to work so that refugee issues would be well-understood among citizens.

Third, expanding proactive solidarity is necessary. We have to think about the membership of refugees in a society and fight against discrimination, ethnic homogeneity, racism, etc. Such solidarity should be made not only in the field of immigrant or refugee rights movement, but also anti-discrimination movement. We can form solidarity with researchers, pro-refugee politicians, and so on. Thus, we have to make a society where diversity of culture, nationality, and race are respected.

What about international solidarity? Solidarity across the globe should be made. Since 2015, we have witnessed the rising of anti-immigrant and racist remarks made by extreme right wing politicians. We have to focus on the dynamics of political arena

and public sphere. If we only concentrate on institutional reform, these problems are not fully addressed. Though emphasizing refugee rights, policy making, and preventing forced deportation are critical and time-sensitive, we also have to integrate anti-refugee sentiment in society and form an international solidarity. Refugee Rights movement should be done in the global context, and cases of forced deportation and hate crimes against refugees around the world should be much more known. Thereby, our voice of solidarity must be expressed.



Civil Society's Response after the Yemeni Refugee Crisis in Jeju

Lee Tak-geon (Probono Dongcheon Foundation)

1. Introduction

South Korea joined the Refugee Convention in 1992 and implemented the Refugee Law for the first time in Asia. This is one of the biggest achievements that the South Korean government can be proud of. However, the South Korean government has been criticized for its very low refugee recognition rate (1.51% as per 2017). The government has ignored such criticism, and the legislative branch didn't take any action after enacting the Refugee Law. Unfortunately, after the Yemeni Refugee Crisis in Jeju, we witnessed the state actively take part in the hatred against the refugees. So in the chapter below, such state's response will be discussed with a focus on a revision of the Refugee Law which was proposed in 2018 by the National Assembly.

2. Background of the Refugee Law

The history of the Refugee Law enactment is of the following: *The Lawyers for a Democratic Society* and *the Refugee pNan* published a report on refugee rights based on the support of the National Human Rights Commission of Korea. Refugee rights activists and lawyers gathered once a month to draft the Refugee Law. The group continually extended, and it finally became the "Refugee Support Network Monthly Meeting" and started their activity for enacting the Refugee Law. In 2006, the National Human Rights Commission of Korea recommended enacting the Refugee Law to the Ministry of Justice during the same period the UN Refugee Agency suggested the enactment of independent Refugee Law to the government. Based on

these suggestions, a member of the National Assembly, Hwang Wooyeo, proposed a draft on the status and treatment of refugees to the National Assembly. It passed on December 29th, 2011 as the “Refugee Law”, legislated with the number of 11298 on February 10th, 2012, and implemented on July 1st, 2013.

The Refugee Law is a comprehensive law which is based on longstanding discussions on refugees. To be enacted, human rights activists and lawyers made a significant contribution. However, there is a critical reflection that their efforts didn’t play a key role after the enactment. There were several revisions to the Refugee Law in terms of fair determination process, treatment, etc., but no meaningful revisions yet.

Unlike in 2018, recently submitted revisions are problematic because they try to limit refugee rights. Those revisions appeared after the Yemeni Refugee Crisis in Jeju.

3. Yemeni Refugee Crisis in Jeju and State’s Poor Response

561 Yemeni Refugees arrived on Jeju Island in April 2018 and they applied for refugee recognition. This brought a giant controversy across the country. More than seven hundred thousand people signed a petition to require abolishment of the Refugee Law and extreme right wingers were appearing in public spheres. The government’s reaction was disappointing. The Ministry of Justice prohibited Yemeni Refugees to travel outside of Jeju Island and removed Yemen in the no-visa required countries’ list. At the same time, the government stated, “We’ll prevent all the possible crimes and unnecessary conflicts beforehand.” Such responses were quite racist. The Ministry of Justice granted humanitarian protection status to 362 Yemeni Refugees out of 484 applicants and rejected 34 applications. That being said, “There is no refugee” among the refugee applications. Thus, the decision was criticized by refugee rights activists.

Let’s take a look at how the legislative branch reacted to it. After the crisis in Jeju, a lot of revisions on the Refugee Law were submitted to the National Assembly within a very short time. Those revisions are mainly about (1) limitation of refugee application places and rights to apply, (2) strengthening punishment on false refugee

application, (3) limitation of refugees' residence in Korea, (4) expanding the reasons of rejection of application.

The revisions are unrealistic and don't fit with the international refugee convention. For example, one of revisions tries to limit refugee application places to Korean consulates in an applicant's country and it doesn't meet the definition of refugee. Also this doesn't consider the fact that in some cases, people become refugees during their stay in South Korea. Restriction on applying refugee after entering South Korea with no-visa, contrasts to the international refugee convention which states that everybody has the right to apply for a refugee application. The application should still be seriously considered even under the following circumstances: applicant submits false document, applicant didn't know it was false, the applicant knew that it was false but there is obvious reason to be recognized as a refugee. In addition, false documents or false statements are weeded out during the determination process. Limiting refugees' residence excessively violates their rights, and it also violates the international convention on the refugee and freedom.

Among these lines, it is obviously apparent that the revisions are the reflections of anti-refugee sentiment in Korean society.

4. Civil Society's Efforts to Revise the Refugee Law

There was no proactive struggle against such revisions. The crisis in Jeju became the center of excessive interests, but eventually people became indifferent. Therefore, the revisions were not on the table at the National Assembly. However, refugee rights organizations filed a petition to the National Human Rights Commission of Korea, for the cases that applicants were rejected to be recognized due to false reports. As we see from this, the priority should be improving the refugee determination process in a more fair and accurate way, rather than weeding out false refugees.

5. Conclusion

I have discussed the history of the Refugee Law and its recent provisions. I am concerned because if the revision attempts are strengthened, it might be led by anti-refugee sentiment. To react to those attempts, civil society should form an international solidarity. Such efforts should be made to interpret and apply the international convention on refugees, and to analyze the causing factors of forced displacement internationally. Still, there is a strong stereotype that refugee applicants are actually fake refugees and they come to Korea to make money. We should respond with much more detailed examination to such hatred and prejudice.



REFUGEE PROTECTION IN ASIA: THE ROLE OF HUMAN RIGHTS ORGANIZATIONS

GWANGJU ASIA FORUM, 19 MAY 2019

Deepa Nambiar
International Detention Coalition

OVERVIEW OF REFUGEE PROTECTION IN ASIA PACIFIC

- Common features:
 - Absence of, or weak normative frameworks nationally and regionally. Reluctance to formalize policies into laws, preference for ad hoc, temporary policies
 - Low political will to situate refugees within a human rights framework
 - Little public support, negative and xenophobic attitudes influencing policy making
 - Narrow interpretation of sovereignty, resistant to "outside influence"
 - Weak or insufficient understanding by the public and authorities of refugee issues
 - Mixed migration flows
- **Leading to:**
 - Refugees and asylum-seekers not distinguished from undocumented migrants: risk of arrest, detention exploitation and deportation
 - Lack access to basic rights (i.e. healthcare, education, livelihoods and employment)

ROLE OF HUMAN RIGHTS ORGANIZATIONS

- To address these gaps: focus of organizations have traditionally been to **meet basic humanitarian needs through service provision**
- Increasingly:
 - **Collaboration with national or local governments** (e.g. pilot projects, training and capacity-building)
 - **Advocacy to improve laws and policies :**
 - Closed-door diplomacy
 - Research and technical advice
 - Public pressure and awareness-raising
 - Engaging with international process

CHANGING LANDSCAPE: EMERGING CHALLENGES & OPPORTUNITIES IN THE REGION

- Challenges:
 - Numbers of displaced people on average are rising
 - Options for resettlement are decreasing – requiring new, creative ways of approaching protection
 - Governments influenced by public sentiment
 - Gap in advocacy know-how by local CSOs
- Opportunities:
 - States desire for greater international prominence, Southeast Asia displaying political will to develop policies on ATD, screening and work rights.
 - Global, non-binding processes (GCM, GCR)
 - Strong emerging civil society and regional networks
 - Greater media and CSO scrutiny
 - Increasing refugee empowerment and recognition of their contributions and agency

HOW DO WE CAPITALIZE ON THESE?

STRATEGY AREA 1: STRATEGIC COLLABORATION AND COORDINATION

- Local CSOs networks: Advocating for an MOU to release children from detention in Thailand (Coalition for the Rights of Refugees and Stateless Persons (CRSP))
- Tripartite working groups with Gov't to develop pilot programs: Alternative care arrangements for unaccompanied children in Malaysia (SUKA Society, SUHAKAM, YCK)
- Developing evidence-base and sharing good practice (International Detention Coalition, APRRN)
- MOU for legal aid and representation in RSD (Ara Legal Aid and Asylum Access Malaysia)
- UNHCR – CSO: Malaysia Partner Referral Network, Law and Policy WG

STRATEGY AREA 2: SHIFTING THE PUBLIC NARRATIVE AND THE ROLE OF THE MEDIA

- More critical than ever before
- Some examples
 - Yemeni refugees in Jeju Island
 - Chin cessation advocacy towards UNHCR
- Impactful strategies for NGOs :
 - Highlighting individual stories and visual images (e.g. image of Alan Kurdi)
 - Featuring stories of integration with local communities
 - Clear and actionable asks for the public to mobilize
 - Partnership with media or PR companies for campaigns
 - Persistent pressure
 - Strategic use of social media

STRATEGY AREA 3: MAKING SPACE FOR REFUGEE SELF-REPRESENTATION

- Why?
 - It is the smart thing to do: Experts by experience
 - It is the right thing to do: "Nothing about us without us".
- Positive examples.:
 - APRRN delegation to Geneva
 - NZ MP breakfast
 - Freed Voices (UK)
- Challenges: Insecurity due to lack of legal status, lack of preparation and opportunity
- Role: of NGOs: Move to create space and opportunity, integrate refugees into policy planning and implementation, support creation of refugee networks, training and capacity building where needed.

THANK YOU

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2019
**GWANGJU ASIA
FORUM**

Session 6:
Asia Democracy Network Session

Appendix

- Asia Human Rights Charter(1998)
- 2019 Participants List

Asian Human Rights Charter is a peoples charter. It is part of an attempt to create in Asia a popular culture on human rights. Thousands of people from various Asian countries participated in the debates during the three-year period of discussion on this document. In addition, more than 200 non-governmental organizations (NGOs) directly took part in the drafting process, and many other NGOs and peoples organizations (POs) have endorsed the document. Several drafts of the document, including some translations, were published widely in newspapers, magazines and NGO newsletters. This final version of the charter was written by Prof. Yash Ghai under the direction of a committee of which he was a member consisting of Justices Krishna Iyer and P. N. Bhagwati, Prof. Kinhide Mushakoji, Mercedes V. Contreras, Lourdes Indai Sajor and Basil Fernando, Mark Daly and Sanjeewa Liyanage from the Asian Human Rights Commission (AHRC). This charter is presented to deepen the Asian debate on human rights, to present the peoples views on human rights as against those of some Asian leaders who claim that human rights are alien to Asia and to promote political, social and legal reforms for ensuring human rights in the countries of the region. While drawing from the cultural wells of the region, it also points to the need for cleaning these wells that have been polluted by millenniums of prejudice, discrimination, inequality and violence.



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OUR COMMON HUMANITY

ASIAN HUMAN RIGHTS CHARTER

A PEOPLES' CHARTER

DECLARED IN KWANGJU, SOUTH KOREA ON 17 MAY 1998

On the Occasion of the 50th Anniversary of the
Universal Declaration of Human Rights

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OUR COMMON HUMANITY



ASIAN HUMAN RIGHTS CHARTER



PREAMBLE

For long, especially during the colonial period, the peoples of Asia suffered from gross violations of their rights and freedoms. Today large sections of our people continue to be exploited and oppressed and many of our societies are torn apart by hatred and intolerance. Increasingly the people realize that peace and dignity are possible only when the equal and inalienable rights of all persons and groups are recognised and protected. They are determined to secure peace and justice for themselves and the coming generations through the struggle for human rights and freedoms. Towards that end they adopt this Charter as an affirmation of the desire and aspirations of the peoples of Asia to live in peace and dignity.

BACKGROUND TO THE CHARTER

1.1 The Asian struggle for rights and freedoms has deep historical roots, in the fight against oppression in civil society and the political oppression of colonialism, and subsequently for the

establishment or restoration of democracy. The reaffirmation of rights is necessary now more than ever before. Asia is passing through a period of rapid change, which affects social structures, political institutions and the economy. Traditional values are under threat from new forms of development and technologies, as well as political authorities and economic organizations that manage these changes.

1.2 In particular the marketization and globalization of economies are changing the balance between the private and the public, the state and the international community, and worsening the situation of the poor and the disadvantaged. These changes threaten many valued aspects of life, the result of the dehumanizing effects of technology, the material orientation of the market, and the destruction of the community. People have decreasing control over their lives and environment, and some communities do not have protection even against eviction from their traditional homes and grounds. There is a massive exploitation of workers, with wages that are frequently inadequate for even bare subsistence and low safety standards that put the lives of workers in constant danger. Even the most elementary of labour rights and laws are seldom enforced.

1.3 Asian development is full of contradictions. There is massive and deepening poverty in the midst of growing affluence of some sections of the people. Levels of health, nutrition and education of large numbers of our people are appalling, denying the dignity of human life. At the same time valuable resources are wasted on armaments, Asia being the largest purchaser of arms of all regions. Our governments claim to be pursuing development directed at increasing levels of production and welfare but our natural resources are being depleted most irresponsibly and the environment is so degraded that the

quality of life has worsened immeasurably, even for the better off among us. Building of golf courses has a higher priority than the care of the poor and the disadvantaged.

1.4 Asians have in recent decades suffered from various forms of conflict and violence, arising from ultra-nationalism, perverted ideologies, ethnic differences, and fundamentalism of all religions. Violence emanates from both the state and sections of civil society. For large masses, there is little security of person, property or community. There is massive displacement of communities and there are an increasing number of refugees.

1.5 Governments have arrogated enormous powers to themselves. They have enacted legislation to suppress people's rights and freedoms and colluded with foreign firms and groups in the plunder of national resources. Corruption and nepotism are rampant and there is little accountability of those holding public or private power. Authoritarianism has in many states been raised to the level of national ideology, with the deprivation of the rights and freedoms of their citizens, which are denounced as foreign ideas inappropriate to the religious and cultural traditions of Asia. Instead there is the exhortation of spurious theories of 'Asian Values' which are a thin disguise for their authoritarianism. Not surprisingly, Asia, of all the major regions of the world, is without a regional official charter or other regional arrangements for the protection of rights and freedoms.

1.6 In contrast to the official disregard or contempt of human rights in many Asian states, there is increasing awareness among their peoples of the importance of rights and freedoms. They realize the connections between their poverty and political powerlessness and the denial to them of these rights and

freedoms. They believe that political and economic systems have to operate within a framework of human rights and freedoms to ensure economic justice, political participation and accountability, and social peace. There are many social movements that have taken up the fight to secure for the people their rights and freedoms.

- 1.7 Our commitment to rights is not due to any abstract ideological reasons. We believe that respect for human rights provides the basis for a just, humane and caring society. A regime of rights is premised on the belief that we are all inherently equal and have an equal right to live in dignity. It is based on our right to determine our destiny through participation in policy making and administration. It enables us to develop and enjoy our culture and to give expression to our artistic impulses. It respects diversity. It recognizes our obligations to future generations and the environment they will inherit. It establishes standards for assessing the worth and legitimacy of our institutions and policies.

GENERAL PRINCIPLES

- 2.1 It is possible from specific rights and the institutions and procedures for their protection to draw some general principles which underlie these rights and whose acceptance and implementation facilitates their full enjoyment. The principles, which are discussed below, should provide the broad framework for public policies within which we believe rights would be promoted.

UNIVERSALITY AND INDIVISIBILITY OF RIGHTS

2.2 We endorse the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and other international instruments for the protection of rights and freedoms. We believe that rights are universal, every person being entitled to them by virtue of being a human being. Cultural traditions affect the way in which a society organizes relationships within itself, but they do not detract from the universalism of rights which are primarily concerned with the relationship of citizens with the state and the inherent dignity of persons and groups. We also believe that rights and freedoms are indivisible and it is a fallacy to suppose that some types of rights can be suppressed in the name of other rights. Human beings have social, cultural and economic needs and aspirations that cannot be fragmented or compartmentalised, but are mutually dependent. Civil, political and cultural rights have little meaning unless there are the economic resources to exercise and enjoy them. Equally, the pursuit and acquisition of material wealth is sterile and self-defeating without political freedoms, the opportunity to develop and express one's personality and to engage in cultural and other discourses.

2.3 Notwithstanding their universality and indivisibility, the enjoyment and the salience of rights depend on social, economic and cultural contexts. Rights are not abstractions, but foundations for action and policy. Consequently we must move from abstract formulations of rights to their concretization in the Asian context by examining the circumstances of specific groups whose situation is defined by massive violations of their rights. It is only by relating rights and their implementation to the specificity of the Asian situation that the enjoyment of rights will be possible. Only

in this way will Asia be able to contribute to the world-wide movement for the protection of rights.

- 2.4 Widespread poverty, even in states which have achieved a high rate of economic development, is a principal cause of the violation of rights. Poverty deprives individuals, families, and communities of their rights and promotes prostitution, child labour, slavery, sale of human organs, and the mutilation of the body to enhance the capacity to beg. A life of dignity is impossible in the midst of poverty. Asian states must direct their development policies towards the elimination of poverty through more equitable forms of development.

THE RESPONSIBILITY FOR THE PROTECTION OF HUMAN RIGHTS

- 2.5 The responsibility for the protection of rights is both international and domestic. The international community has agreed upon norms and institutions that should govern the practice of human rights. The peoples of Asia support international measures for the protection of rights. State sovereignty cannot be used as an excuse to evade international norms or ignore international institutions. The claim of state sovereignty is justified only when a state fully protects the rights of its citizens.

- 2.6 On the other hand, international responsibility cannot be used for the selective chastisement or punishment of particular states; or for the privileging of one set of rights over others. Some fundamental causes of the violation of human rights lie in the inequities of the international world economic and political order. The radical transformation and democratization of the world order is a necessary condition for the global enjoyment of human rights. The logic of the universalism and equality of

rights is the responsibility of the international community for the social and economic welfare of all people throughout the world, and consequently the obligation to ensure a more equitable distribution of resources and opportunities across the world.

2.7 The primary responsibility for the promotion of human rights rests with states. The rights of states and peoples to just economic, social, political and cultural development must not be negated by global processes. States must establish open political processes in which rights and obligations of different groups are acknowledged and the balance between the interests of individuals and the community is achieved. Democratic and accountable governments are the key to the promotion and protection of rights.

2.8 The capacity of the international community and states to promote and protect rights has been weakened by processes of globalization as more and more power over economic and social policy and activities has moved from states to business corporations. States are increasingly held hostage by financial and other corporations to implement narrow and short sighted economic policies which cause so much misery to so many people, while increasing the wealth of the few. Business corporations are responsible for numerous violations of rights, particularly those of workers, women and indigenous peoples. It is necessary to strengthen the regime of rights by making corporations liable for the violation of rights.

SUSTAINABLE DEVELOPMENT AND THE PROTECTION OF THE ENVIRONMENT

2.9 Economic development must be sustainable. We must protect the environment against the avarice and depredations of commercial enterprises to ensure that the quality of life does not decline just as the gross national product increases. Technology must liberate, not enslave human beings. Natural resources must be used in a manner consistent with our obligation to future generations. We must never forget that we are merely temporary custodians of the resources of nature. Nor should we forget that these resources are given to all human kind, and consequently we have a joint responsibility for their responsible, fair and equitable use.

RIGHTS

3.1 We endorse all the rights that are contained in international instruments. It is unnecessary to restate them here. We believe that these rights need to be seen in a holistic manner and that individual rights are best pursued through a broader conceptualization which forms the basis of the following section.

THE RIGHT TO LIFE

3.2 Foremost among rights is the right to life, from which flow other rights and freedoms. The right to life is not confined to mere physical or animal existence but includes the right to every limb or faculty through which life is enjoyed. It signifies the right to live with basic human dignity, the right to livelihood, the right to a habitat or home, the right to education and the right to a clean and healthy environment for without these there can be no real and effective exercise or enjoyment of the right to life. The state must also take all possible measures to prevent infant mortality,

eliminate malnutrition and epidemics, and increase life expectancy through a clean and healthy environment and adequate preventative as well as curative medical facilities. It must make primary education free and compulsory.

3.3 Yet in many parts of Asia, wars, ethnic conflicts, cultural and religious oppression, corruption of politics, environmental pollution, disappearances, torture, state or private terrorism, violence against women, and other acts of mass violence continue to be a scourge to humanity resulting in the loss of thousands of innocent human lives.

3.4 To ensure the right to life, propagation of war or ethnic conflict or incitement to hatred and violence in all spheres of individual or societal or national or international life should be prohibited.

3.5 The state has the responsibility to thoroughly investigate cases of torture, disappearances and custodial deaths, rapes and sexual abuses and to bring culprits to justice.

3.6 There must be no arbitrary deprivation of life. States should take measures not only to prevent and mete out punish for the deprivation of life by criminal acts and terrorist acts but also prevent arbitrary disappearances and killings by their own security forces. The law must strictly control and limit the circumstances in which a person may be deprived of his or her life by state authorities or officials.

3.7 All states must abolish the death penalty. Where it exists, it may be imposed only rarely for the most serious crimes. Before a person can be deprived of life by the imposition of the death penalty, he or she must be ensured a fair trial before an independent and impartial tribunal with full opportunity of legal representation of his or her choice, adequate time for preparation of defence,

presumption of innocence and the right to review by a higher tribunal. Execution should never be carried out in public or otherwise exhibited in public.

THE RIGHT TO PEACE

- 4.1 All persons have the right to live in peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence. The peoples of Asia have suffered great hardships and tragedies due to wars and civil conflicts which have caused many deaths, mutilation of bodies, external or internal displacement of persons, break up of families, and in general the denial of any prospects of a civilized or peaceful existence. Both the state and civil society have in many countries become heavily militarized in which all scores are settled by force and citizens have no protection against the intimidation and terror of state or private armies.
- 4.2 The duty of the state to maintain law and order should be conducted under strict restraint on the use of force in accordance with standards established by the international community, including humanitarian law. Every individual and group is entitled to protection against all forms of state violence, including violence perpetrated by its police and military forces.
- 4.3 The right to live in peace requires that political, economic or social activities of the state, the corporate sector and the civil society should respect the security of all peoples, especially of vulnerable groups. People must be ensured security in relation to the natural environment they live in, the political, economic and social conditions which permit them to satisfy their needs and aspirations without recourse to oppression, exploitation, violence, and without detracting from all that is of value in

their society.

4.4 In fighting fascist invasion, colonialism, and neo-colonialism, Asian states played a crucial role in creating conditions for their peoples to live in peace. In this fight, they had justifiably stressed the importance of national integrity and non-intervention by hegemonic powers. However, the demands of national integrity or protection against the threats of foreign domination cannot now be used as a pretext for refusing to the people their right to personal security and peaceful existence any more than the suppression of people's rights can be justified as an excuse to attract foreign investments. Neither can they justify any refusal to inform the international community about the individual security of its people. The right of persons to live in peace can be guaranteed only if the states are accountable to the international community.

4.5 The international community of states has been deeply implicated in wars and civil conflicts in Asia. Foreign states have used Asian groups as surrogates to wage wars and have armed groups and governments engaged in internal conflicts. They have made huge profits out of the sale of armaments. The enormous expenditures on arms have diverted public revenues from programmes for the development of the country or the well-being of the people. Military bases and other establishments (often of foreign powers) have threatened the social and physical security of the people who live in their vicinity.

THE RIGHT TO DEMOCRACY

5.1 Colonialism and other modern developments significantly changed

the nature of Asian political societies. The traditional systems of accountability and public participation in affairs of state as well as the relationship of citizens to the government were altered fundamentally. Citizens became subjects, while the government became more pervasive and powerful. Colonial laws and authoritarian habits and style of administration persisted after independence. The state has become the source of corruption and the oppression of the people. The democratization and humanization of the state is a pre-condition for the respect for and the protection of rights.

- 5.2 The state, which claims to have the primary responsibility for the development and well-being of the people, should be humane, open and accountable. The corollary of the respect for human rights is a tolerant and pluralistic system, in which people are free to express their views and to seek to persuade others and in which the rights of minorities are respected. People must participate in public affairs, through the electoral and other decision-making and implementing processes, free from racial, religious or gender discriminations.

THE RIGHT TO CULTURAL IDENTITY AND THE FREEDOM OF CONSCIENCE

- 6.1 The right to life involves not only material but also the moral conditions which permit a person to lead a meaningful existence. This meaning is not only individually determined but is also based on shared living with other human beings. The Asian traditions stress the importance of common cultural identities. Cultural identities help individuals and communities to cope with the pressures of economic and social change; they give meaning to life in a period of rapid transformation. They are

the source of pride and security. There are many vulnerable communities in Asia as elsewhere whose cultures are threatened or derided. Asian peoples and governments must respect the cultures and traditions of its diverse communities.

6.2 The plurality of cultural identities in Asia is not contrary to the universality of human rights but rather as so many cultural manifestations of human dignity enriching universal norms. At the same time we Asian peoples must eliminate those features in our cultures which are contrary to the universal principles of human rights. We must transcend the traditional concept of the family based on patriarchal traditions so as to retrieve in each of our cultural traditions, the diversity of family norms which guarantee women's human rights. We must be bold in reinterpreting our religious beliefs which support gender inequality. We must also eliminate discriminations based on caste, ethnic origins, occupation, place of origin and others, while enhancing in our respective cultures all values related to mutual tolerance and mutual support. We must stop practices which sacrifice the individual to the collectivity or to the powerful, and thus renew our communal and national solidarity.

6.3 The freedom of religion and conscience is particularly important in Asia where most people are deeply religious. Religion is a source of comfort and solace in the midst of poverty and oppression. Many find their primary identity in religion. However religious fundamentalism is also a cause of divisions and conflict. Religious tolerance is essential for the enjoyment of the right of conscience of others, which includes the right to change one's belief.

THE RIGHT TO DEVELOPMENT AND SOCIAL JUSTICE

- 7.1 Every individual has the right to the basic necessities of life and to protection against abuse and exploitation. We all have the right to literacy and knowledge, to food and clean water, shelter and to medical facilities for a healthy existence. All individuals and human groups are entitled to share the benefits of the progress of technology and of the growth of the world economy.
- 7.2 Development, for individuals and states, does not mean merely economic development. It means the realization of the full potential of the human person. Consequently they have the right to artistic freedom, freedom of expression and the cultivation of their cultural and spiritual capacities. It means the right to participate in the affairs of the state and the community. It implies that states have the right to determine their own economic, social and cultural policies free from hegemonic pressures and influences.

RIGHTS OF VULNERABLE GROUPS

- 8.1 Asian states should formulate and implement public policies within the above general framework of rights. We believe that in this way we will establish fair and humane conditions for our individual and corporate lives and ensure social justice. However, there are particular groups who for historical or other reasons are weak and vulnerable and consequently require special protection for the equal and effective enjoyment of their human rights. We discuss the situation of several such groups, but we recognize that there are also other groups who suffer from discrimination and oppression. They include people who through civil conflict, government policies or economic hardships are displaced from

their homes and seek refuge in other places internally or in foreign lands. Our states and societies have become less tolerant of minorities and indigenous people, whose most basic rights are frequently violated. Many of our societies still discriminate against gays and lesbians, denying them their identity and causing them great anguish and misery. Various economic groups, like peasants and fishing communities, suffer from great deprivation and live in constant fear of threats to their livelihood from landlords and capitalist enterprises. All these groups deserve special attention. We urge states and communities to give the highest priority to the amelioration of their social and economic conditions.

WOMEN

- 9.1 In most Asian societies women suffer from discrimination and oppression. The cause of their oppression lies in both history and contemporary social and economic systems.
- 9.2 The roots of patriarchy are systemic and its structures dominate all institutions, attitudes, social norms and customary laws, religions and values in Asian societies, crossing the boundaries of class, culture, caste and ethnicity. Oppression takes many forms, but is most evident in sexual slavery, domestic violence, trafficking in women and rape. They suffer discrimination in both public and private spheres. The increasing militarization of many societies in Asia has led to the increase of violence against women in situations of armed conflict, including mass rape, forced labour, racism, kidnapping and displacement from their homes. As female victims of armed conflict are often denied justice, rehabilitation, compensation and reparation of the war crimes committed against them, it is important to emphasize that systematic rape is a war crime and a crime against humanity.

9.3 To end discrimination against women in the field of employment and the right to work, women should be given the right to employment opportunities, the free choice of profession, job security, equal remuneration, the right to compensation in respect of domestic work, the right to protection of health and safe working conditions, especially in safeguarding of the function of reproduction and special protection in times of pregnancy from work that may be harmful. Women should be given the full right to control their sexual and reproductive health, free from discrimination or coercion, and be given access to information about sexual and reproductive health care and safe reproductive technology.

9.4 There are few legal provisions to protect women against violations of their rights within the domestic and patriarchal realm. Their rights in public law are seldom observed. Affirmative measures should be taken to ensure full and equal participation of women in the political and public life of the society. A considerable increase in the presence of women in the various institutions of state power and in the fields of business, agriculture and land ownership must be provided for by way of affirmative action. The political, social and economic empowerment of women is essential for the defence of their legal rights.

CHILDREN

10.1 As with women, their oppression takes many forms, the most pervasive of which are child labour; sexual slavery; child pornography; the sale and trafficking of children; prostitution; sale of organs; conscription into drug trafficking; the physical, sexual and psychological abuse of children within families; discrimination against children with HIV/AIDS; forced

religious conversion of children; the displacement of children with and without their families by armed conflicts; discrimination; and environmental degradation. An increasing number of children are forced to live on the streets of Asian cities and are deprived of the social and economic support of families and communities.

10.2 Widespread poverty, lack of access to education and social dislocation in rural areas are among the causes of the trends which increase the vulnerability of children. Long-established forms of exploitation and abuse, such as bonded labour or the use of children for begging or sexual gratification are rampant. Female infanticide due to patriarchal gender preference and female genital mutilation are widely practised in some Asian countries.

10.3 Asian states have failed dismally to look after children and provide them with even the bare means of subsistence or shelter. We call on Asian states to ratify and implement the Convention on the Rights of the Child. We also call on communities to take the responsibility for monitoring violations of children's rights and to press for the implementation of the UN Convention in appropriate ways in their own social contexts.

DIFFERENTLY ABLED PERSONS

11.1 Traditionally Asian societies cared for those who were physically or mentally handicapped. Increasingly our communal values and structures, under the pressure of new forms of economic organizations, have become less tolerant of such persons. They suffer enormous discrimination in access to education,

employment and housing. They are unable to enjoy many of their human rights due to prejudice against them and the absence of provisions responding to their special demands. Their considerable abilities are not properly recognized and they are forced into jobs which offer low pay and little prospects of promotion. They have the right to provisions which enable them to live in dignity, with security and respect, and to have opportunities to realize their full potential.

- 11.2 The need to treat such persons with respect for their human rights is apparent in the dismal way Asian states treat those with HIV or AIDS. They are the victims of gross discrimination. A civilized society which respects human rights would recognize their right to live and die with dignity. It would secure to them the right to adequate medical care and to be protected from prejudice, discrimination or persecution.

WORKERS

- 12.1 The rapid industrialization of Asian societies has undermined traditional forms of the subsistence economy and has destroyed possibilities of the livelihood of large sections of the rural people. Increasingly they and other groups are forced into wage employment, often in industry, working under appalling conditions. For the majority of the workers there is little or no protection from unfair labour laws. The fundamental rights to form trade unions and bargain collectively are denied to many. Their wages are grossly inadequate and working conditions are frequently grim and dangerous. Globalization adds to the pressures on workers as many Asian states seek to reduce the costs of production, often in collusion

with foreign corporations and international financial institutions.

- 12.2 A particularly vulnerable category of workers are migrant workers. Frequently separated from their families, they are exploited in foreign states whose laws they do not understand and are afraid to invoke. They are often denied rights and conditions which local workers enjoy. They slog without access to adequate accommodation, health care, or legal protection. In many cases migrants suffer racism and xenophobia, and domestic helpers are subjected to humiliation and sometimes, sexual abuse.

STUDENTS

- 13.1 Students in Asia struggled against colonialism and fought for democratization and social justice. As a result of their fearless commitment to social transformation they have often suffered from state violence and repression and remain as one of the key targets for counter-insurgency operations and internal security laws and operations. Students are frequently denied the right to academic freedom and to the freedoms of expression and association.

PRISONERS AND POLITICAL DETAINEES

- 14.1 In few areas is there such a massive violation of internationally recognized norms as in relation to prisoners and political detainees.
- 14.2 Arbitrary arrests, detention, imprisonment, ill-treatment, torture, cruel and inhuman punishment are common occurrences in many parts of Asia. Detainees and prisoners

are often forced to live in unhygienic conditions, are denied adequate food and health care and are prevented from having communication with, and support from, their families. Different kinds of prisoners are frequently mixed in one cell, with men, women and children kept in proximity. Prison cells are normally overcrowded. Deaths in custody are common. Prisoners are frequently denied access to lawyers and the right to fair and speedy trials.

- 14.3 Asian governments often use executive powers of detention without trial. They use national security legislation to arrest and detain political opponents. It is notable that, in many countries in Asia, freedom of thought, belief and conscience have been restricted by administrative limits on freedom of speech and association.

THE ENFORCEMENT OF RIGHTS

- 15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.

PRINCIPLES FOR ENFORCEMENT

- 15.2 We believe that systems for the protection of rights should be based on the following principles.
- 15.2a Human rights are violated by the state, civil society and business

corporations. The legal protection for rights has to be extended against violations by all these groups. It is also necessary to reform these groups by strengthening their ethical foundations and values and inculcating in them a sense of their responsibility towards the disadvantaged and the oppressed.

- 15.2b The promotion and enforcement of rights is the responsibility of all groups in society, although the primary responsibility is that of the state. The enjoyment of many rights, especially social and economic, requires a positive and proactive role of governments. There is a clear and legitimate role for NGOs in raising consciousness of rights, formulating standards, and ensuring their protection by governments and other groups. Professional groups like lawyers and doctors have special responsibilities connected with the nature of their work to promote the enforcement of rights and prevent abuses of power.
- 15.2c Since rights are seriously violated in situations of civil strife and are strengthened if there is peace, it is the duty of the state and other organizations to find peaceful ways to resolve social and ethnic conflicts and to promote tolerance and harmony. For the same reasons no state should seek to dominate other states and states should settle their differences peacefully.
- 15.2d Rights are enhanced if democratic and consensual practices are followed and it is therefore the responsibility of all states and other organisations to promote these practices in their work and in their dealings with others.
- 15.2e Many individuals and groups in Asia are unable to exercise their rights due to restrictive or oppressive social customs and

practices, particularly those related to caste, gender, or religion. Therefore the immediate reform of these customs and practices is necessary for the protection of rights. The reforms must be enforced with vigour and determination.

15.2f A humane and vigorous civil society is necessary for the promotion and protection of human rights and freedoms, for securing rights within civil society and to act as a check on state institutions. Freedoms of expression and association are necessary for the establishment and functioning of institutions of civil society.

15.2g It is necessary to curb the exploitative practices of business corporations and to ensure that they do not violate rights of workers, consumers and the public.

STRENGTHENING THE FRAMEWORK FOR RIGHTS

15.3a It is essential to secure the legal framework for rights. All states should include guarantees of rights in their constitutions, which should be constitutionally protected against erosion by legislative amendments. They should also ratify international human rights instruments. They should review their legislation and administrative practices against national and international standards with the aim of repealing provisions which contravene these standards, particularly legislation carried over from the colonial period.

15.3b Knowledge and consciousness of rights should be raised among the general public, and state and civil society institutions. Awareness of the national and international regime of rights should be promoted. Individuals and groups should be acquainted with legal and administrative procedures whereby

they can secure their rights and prevent abuse of authority. NGOs should be encouraged to become familiar with and deploy mechanisms, both national and inter-national, for monitoring and review of rights. Judicial and administrative decisions on the protection of rights should be widely disseminated, nationally and in the Asian region. Governments, NGOs and educational institutions should co-operate in disseminating information about the importance and content of human rights.

- 15.3c Numerous violations of rights occur while people are in custody and through other activities of security forces. Sometimes these violations take place because the security forces do not respect the permissible scope of their powers or do not realise that the orders under which they are acting are unlawful. Members of the police, prison services and the armed forces should be provided training in human rights norms.

THE MACHINERY FOR THE ENFORCEMENT OF RIGHTS

- 15.4a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections

of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.

15.4.b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.

15.4c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.

15.4d Civil society institutions can help to enforce rights through the organization of People's Tribunals, which can touch the conscience of the government and the public. The establishment of People's Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

REGIONAL INSTITUTIONS FOR THE PROTECTION OF RIGHTS

16.1 The protection of human rights should be pursued at all levels, local, national, regional and international. Institutions at each level have their special advantages and skills. The primary responsibility for the protection of rights is that of states, therefore priority should be given to the enhancement of state capacity to fulfil this obligation.

16.2 Asian states should adopt regional or sub-regional institutions for the promotion and protection of rights. There should be an inter-state Convention on Human Rights, formulated in regional forums with the collaboration of national and regional NGOs. The Convention must address the realities of Asia, particularly the obstacles that impede the enjoyment of rights. At the same time it must be fully consistent with international norms and standards. It should cover violations of rights by groups and corporations in addition to state institutions. An independent commission or a court must be established to enforce the Convention. Access to the commission or the court must be open to NGOs and other social organizations.

APPENDIX A

GROUPS AND INDIVIDUALS INVOLVED WITH SHAPING THIS CHARTER

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Cambodia ♦ **LAW Yuk Kai**, Hong Kong Human Rights Monitor, HongKong ♦ **LEE Jai-eui**, Kwangju Citizens' Solidarity (KCS) ♦ **Dr. Molly N. N. LEE**, ALIRAN, Malaysia ♦ **LEE Chang-bok**, Democratic Reunification National Association, south Korea ♦ **LEE Dae-soon**, President, Honam University ♦ **LEE Dong-gyoon**, Kwangju Human Rights Watch ♦ **LEE Don-myung**, Lawyer ♦ **LEE Jun-hyung**, Catholic Justice and Peace Committee ♦ **LEE Ki-hong**, 5.18 Memorial Foundation, Kwangju ♦ **Prof. LEE Young-hee**, Hanyang University ♦ **Sanjeewa LIYANAGE**, Asian Human Rights Commission ♦ **Prof. Kinhide MUSHAKOJI**, Hu-Rights Osaka, Japan ♦ **Jean NACPIL-MANIPON**, Asian Regional Exchange for New Alternatives (ARENA), Hong Kong ♦ **Peter B.H. NG**, Taiwan Association for Human Rights, Taiwan ♦ **PANG Wai Sum Diana**, Hong Kong Human Rights Commission, HongKong ♦ **PARK Hyung-kyu**, KNCC Human Rights Commission ♦ **PARK Jae-Man**, Kwangju Citizens' Solidarity ♦ **PARK Jung-kee**, National Democratic Association of Bereaved Families (Pusan) ♦ **PARK MOON Yongiel**, Minkahyup, Human Rights Group ♦ **PARK Soon-kyung**, National Conference for Reunification ♦ **Romulo PERALTA**, Solidarity Foundation, The Philippines ♦ **Ven. POM-NYUN**, JTS Korea ♦ **Sushil PYAKUREL**, Informal Sector Education Centre (INSEC), Nepal ♦ **Brig. Abid RAO**, Human Rights Commission of Pakistan (HRCP), Pakistan ♦ **Prof. RHEE Jong-soo**, National Professors Association ♦ **SHIN Dong-il**, Kwangju Citizens' Solidarity ♦ **SHIN Sam-suk**, Korean Church Human Rights Center ♦ **SIN, Kyong-rim**, Poet, National Writer's Conference ♦ **SINAPAN Samyodorai**, Asian Human Rights Commission ♦ **SOH Eugene**, Kwangju Citizens' Solidarity (KCS) ♦ **SONG, Eon-jong**, Mayor, City of Kwangju ♦ **Ven. SONG Wol-ju**, Buddhist Priest ♦ **SUH Joon-sik**, Sarangbang Group for Human Rights, Seoul ♦ **SUN Wai Han Louise**, Asian Human Rights Commission ♦ **Bo TEDARD**, Taiwan Association for Human Rights, Taiwan ♦ **Songsan UDOMSILP**, Amnesty International, Thailand ♦ **Boonthan VERA WONGSE**, Asia Cultural Forum on Development (ACFOD), Thailand ♦ **Pat WALSH**, Human Rights Desk, Australian Council For Overseas Aid (ACFOA), Australia ♦ **Herbert WOTTAWAH**, Amnesty International Korean Section ♦ **Dr. YOON Jan-hyun**, Citizens' Solidarity (KCS) ♦ **YOON Han-bong**, Future of the Nation Institute ♦ **Most Rev. YOON Kong-hee**, Catholic Archbishop of Kwangju ♦ **YOON So-hyun**, Kwangju Citizens' Solidarity ♦ **YUN Yongkyu**, Korean Teachers' and Educational Workers' Union

OTHER GROUPS AND INDIVIDUALS WHO HAVE ENDORSED THE ASIAN HUMAN RIGHTS CHARTER SO FAR

ALLMARK C. V., Tribal Refugee Welfare in Southeast Asia, Western Australia ♦ **AUGUSTINE Clifford**, Order of Friars Minor, Jurong West, Singapore ♦ **Asian Human Rights Commission**, Hong Kong ♦ **Asian Legal Resource Centre**, Hong Kong ♦ **BAGH Mohananda**, Social Education and Basic Awareness (SEBA), Bastar, India ♦ **BANIS A. S. Justice**, Punjab Human Rights Organization, Chancligarh, India ♦ **BATCHA A. Mahaboob**, Society for Community Organisation Trust, India ♦ **BOYD Daniel**, The National Catholic Commission on Migration, Bangkok, Thailand ♦ **BUDIARDJO Carmel**, TAPOL Indonesia Human Rights Campaign, Indonesia ♦ **CHIU H. C. Ken**, Taiwan Association for Human Rights, Taiwan ♦ **CONROY Loreto**, New South Wales Ecumenical Council, State of National Council of Churches, Australia ♦ **COOPER Joshua**, Pacific Peace Center, Honolulu, Hawaii ♦ **COORAY Sunil**, Vigil Lanka Movement, Colombo, Sri Lanka ♦ **D'SILVA Allwyn**, Justice and Peace Commission, Bombay, India ♦ **DIMARANAN Mariani Sr.**, Task Force Detainees of the Philippines (TFDP), The Philippines ♦ **FIANZA Paul**, Cordillera Center for Indigenous Peoples' Rights (CRCIPR), The Philippines ♦ **FRANCIS M. Joseph**, Centre for Legal Aid, Assistance and Settlement (CLAAS), Pakistan ♦ **HAKIM Abdul**, LPIST (Institute for the Development of Strategic Initiatives for Social Transformation), Indonesia

◆ **HALIM Ahmad**, Chhotanagpur Environmental Society, Bihar, IndiaV ◆ **ITTY V. I.**, Vigil India Movement, Bangalore, India ◆ **IYER V. R. Krishna Justice**, former judge of the Supreme Court of India, India ◆ **IWATA Sumie**, Center for Christian Response to Asian Issues-NCCJ, Japan ◆ **JAYAWARDANA Jayalath**, Member of Parliament, Sri Lanka ◆ **KAMALUDDIN Latif**, Research and Education for Peace, Penang, Malaysia ◆ **KHALKHO Renuka**, Purani Ranchi Fishermen Co-op Society, India ◆ **KIM Kyung-nam Rev.**, National Council of Churches in Korea (NCCCK), south Korea ◆ **KUIPPELS Rianne**, Mensen in Nood/Caritas Nederland, Ben Bosch, The Netherlands ◆ **LANUR Alex Fr.**, Justice, Peace and Integrity of Creation, Jakarta, Indonesia ◆ **LASIMBANG Anne**, Partners of Community Organization (PACOS), The Philippines ◆ **MADHAVAN P. K. S.**, Action for Welfare and Awakening in Rural Environment (AWARE), Hyderabad, India ◆ **MANOHAR Moses**, National Council of Churches in India (NCCI), New Delhi, India ◆ **MARTINSON Jerry Fr.**, Jesuits Engaged in Communications in East Asia and Oceania (JESCOMEA), Taipei, Taiwan ◆ **MAYO Anne Rev.**, Hannam University, Taejon, south Korea ◆ **MALINI Madhu**, Social Action Interest Litigation, Ranchi India ◆ **MEDINA Carlos**, LAWASIA Human Rights Committee and Ateneo Human Rights Center, The Philippines ◆ **NICHOLAS Colin**, Center for Orang Asli Concerns, Kuala Lumpur, Malaysia ◆ **PARIS Antonio**, Philippines Peace and Solidarity Council (PPSC), The Philippines ◆ **PETER Daniel Rev.**, World Student Christian Federation – Asia-Pacific Region (WSCF-AP), Hong Kong ◆ **RAJANAYAGAM A. E.**, Centre for Peace and Progress, Madhu Church, Sri Lanka ◆ **RAO M. Venkat**, Action for Welfare and Awakening in Rural Environment (AWARE), Hyderabad, India ◆ **ROY Ranjit Kumar**, National Human Rights Association, Hinoos, India ◆ **SHAKIR Naeem**, Committee for Justice and Peace Lahore, Lahore, Pakistan ◆ **SINGH Rashmi**, Janpyras Paniyra-Kaitholi (Mau Nath Bhanjan), U.P., India ◆ **SITH Phuong**, Human Rights Vigilance of Cambodia, Phnom Penh, Cambodia ◆ **SODHI K. B. S.**, Panjab and Chandigarh College Teachers' Union, Ludhiana, India ◆ **VELLARADA P. M. Mani**, Kerala, India ◆ **XIMENES M. J. S.**, East Timor Solidarity Group, Macau

Asian Human Rights Charter is a people's charter. It is part of an attempt to create in Asia a popular culture on human rights. Thousands of people from various Asian countries participated in the debates during the three-year period of discussion on this document. In addition, more than 200 non-governmental organizations (NGOs) directly took part in the drafting process, and many other NGOs and people's organizations (POs) have endorsed the document. Several drafts of the document, including some translations, were published widely in newspapers, magazines and NGO newsletters. This final version of the charter was written by Prof. Yash Ghai under the direction of a committee of which he was a member consisting of Justices Krishna Iyer and P. N. Bhagwati, Prof. Kinhide Mushakoji, Mercedes V. Contreras, Lourdes Indai Sajor and Basil Fernando, Mark Daly and Sanjeewa Liyanage from the Asian Human Rights Commission (AHRC). This charter is presented to deepen the Asian debate on human rights, to present the people's views on human rights as against those of some Asian leaders who claim that human rights are alien to Asia and to promote political, social and legal reforms for ensuring human rights in the countries of the region. While drawing from the cultural wells of the region, it also points to the need for cleaning these wells that have been polluted by millenniums of prejudice, discrimination, inequality and violence.

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 **OUR COMMON HUMANITY** 



**ASIAN
HUMAN
RIGHTS
CHARTER**

A PEOPLES' CHARTER

DECLARED IN KWANGJU, SOUTH KOREA, ON 17 MAY 1998



**On the Occasion of the Commemoration of the
50th Anniversary of Universal Declaration of
Human Rights**

2019 Participants List

세션/Session	구분/Category	이름/Name	소속 및 직책/Organization and Position	국가/Country
개막식 Opening Ceremony	개회사 Welcoming Speech	이철우 Cheolwoo Lee	518기념재단 이사장 Chairman/the May 18 Memorial Foundation	Korea
	축사 Congratulatory Speech	이용섭 Yong-seop Lee	광주광역시 시장 Mayor of Gwangju City	Korea
		안자이 이쿠로 Anzai Ikuro	리츠메이칸대학 명예교수 Prof. Emeritus of Ritsumeikan University	Japan
광주인권상 Human rights Prize	수상자 Laureates	조아나 까리뇨 Joanna Carino	코딜레라 민중연합	philippines
		Dialita Choir	디알리타 합창단	Indonesia
세션 1 Opening Plenary Session	사회 Chairperson	이기봉 Gibong Lee	518기념재단 사무처장 Secretary General, the May 18 Memorial Foundation	Korea
	기조발제 Keynote Speech	이양희 Yanghee Lee	Prof. Sungkyunkwan University 유엔미얀마인권상황에 관한 특별보고관 Special Rapporteur on the situation of human rights in Myanmar	Korea
		안병욱 Byung-ook Ahn	한국학중앙연구원 원장 President, the Academy of Korean Studies	Korea
		김한균 Han-gyun Kim	한국형사정책연구원 Korean Institute of Criminology	Korea
세션 2 난민세션 Refugee Session	좌장 Moderation	템바 루이스 Themba Lewis	APRRN 사무총장 Secretary General at the APRRN	United States
	발제 Speech	이슬 Seul Yi	난민인권센터 활동가 Activist, Refugee Human Rights Center	Korea
		미츠루 난바 Mitsuru Nanba	난민을 위한 변호사 네트워크 사무총장 Secretary General, Japan Lawyers Network for Refugee	Japan
		아이작 샤퍼 Isaac Laban Shaffer	Justice Centre Hong Kong	England
		E-링치우 E-Ling Chiu	타이완 인권 연합 사무총장 Secretary General, Taiwan Association for Human Rights	Taiwan

		지코 페스탈로찌 Zicco Efraindio Pestalozzi	난민보호를 위한 인도네시아 시민사회 네트워크 법률 고문 Legal advisor, Indonesia Civil Society Network for Refugee Rights Protection	Indonesia
		와리트사라 룡통 Waritsara Rungthong	Lawyer, Freelancer work with Coalition for the Rights of Refugees and Stateless Persons	Thailand
		수씨 프라파크라난트 Sussi Prapakranant	APRRN 프로그램 코디네이터 Programme Officer of the APRRN	Thailand
		데살레 아브라하 Desale Abraha	APRRN & 일본 난민네트워크 멤버 Member of Japan Refugee Right Network (JRRN) and the APRRN	Re - entry permit to Japan
	토론 Discussion	캐롤라인 스토버 Caroline Stover	ARTICLE 아시아프로그램 코디네이터 Asia Programme Officer of ARTICLE	United States
		샤리풀 이슬람 Md Shariful Islam	Dhaka대학 조교수 Associate Professor of Political Science at the University of Dhaka	Bangladesh
		브라이언 바버 Brian Barbour	APRRN 지역 난민보호 고문 Regional Refugee Protection Advisor at the APRRN	Australia
		신지원 Julia Jiwon Shin	전남대학교 교수 Prof., Chonnam National University	Korea
세션3 진상규명 세션 Truth-finding Session	좌장 Moderation	정명중 Myong-june Jeong	전남대학교 호남학 연구원 Research Institute of Honam Studies at CNU	Korea
	발제 Speech	김재윤 Jae-yoon Kim	전남대학교 교수 Prof. Chonnam National University	Korea
		정희상 Hee-sang Jeong	시사인 선임기자 Senior Journalist of the Sisa-In	Korea
	토론 Discussion	김정인 Jeong-in Kim	춘천교육대학교 교수 Prof. Chuncheon national University of Education	Korea
		정문영 Mun-young Jeong	전남대학교 518연구소 May 18 Research Institute of CNU	Korea
세션 4 과거사 청산 Unfinished Mission	좌장 Moderation	최정기 Jeong-gi Choi	전남대학교 교수 Prof. Chonnam National University	Korea
	발제 Speech	김한균 Han-gyun Kim	한국형사정책연구원 Korean Institute of Criminology	Korea

(I)		안경호 Gyeong-ho Ahn	4.9통일평화재단 사무국장 The April 9 Unification & Peace Foundation	Korea
	토론 Discussion	장완익 Wan-ik Jang	4.16 세월호참사 특별조사위원회 위원장 Special Investigation Commission on Social Disaster	Korea
		임재성 Jae-seong Lim	법무법인 해마루 변호사 Attorney, Law Firm Haemaru	Korea
세션 4-1 과거사 청산 Unfinished Mission (II)	좌장 Moderation	김동춘 Dong-chun Kim	성공회대학교 교수 Prof. Sungkonghoe University	Korea
	발제 Speech	한성훈 Sung Hoon Han	연세대학교 교수 Prof. Yonsei University	Korea
		엔스 롬멜 Jens Rommel	독일 나치범죄 중앙수사 국장 Head of the Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes	Germany
		벳조 운통 Bedjo Untung	65-66년 대학살 연구를 위한 인도네시아 연구소 소장 Chairperson, YPKP 65 Indonesian Institute for the Study of 1965/1966 Massacre	Indonesia
		최용주 Young-ju Choi	518기념재단 비상임연구원 Researcher, the May18 Memorial Foundation	Korea
	토론 Discussion	서승 Sung Suh	우석대학교 명예교수 Prof. Emeritus of Woosuk University	Korea
		서지원 Jiwon Suh	창원대학교 교수 Prof. Changwon University	Korea
융합세션 Closing Roundtable Session	좌장 Moderation	황필규 Pilkyu Hwang	공익인권법재단 공감 변호사 Attorney at the Human Rights Law Foundation GongGam	Korea
	발제 1 Speech 1	고팔 시와코티 Gopal Krishna Siwakoti	인권, 환경과 개발 국제 연구소 President, International Institute for Human Rights, Environment and Development International	Nepal
		이일 Il Lee	공익법센터 어필 변호사 Attorney, the Advocates for Public Interest Law (APIL)	Korea
	발제 2 Speech 2	릴리안 판 Lilianne Fan	Geutanyoë 재단 공동설립자 International Director, Geutanyoë Foundation	Malaysia

	발제 3 Speech 3	이상희 Sang-hee Lee	법무법인 지향 변호사 Attorney. the Jihyang Law Firm	Korea
		이탁건 Tak-geon Lee	공익재단법인 동천 변호사 Attorney. Dongcheon Foundation	Korea
		디파 남비알 Deepa Nambiar	IDC 코디네이터 Coordinator of the International Detention Coalition	Malaysia
Asian Democracy Network	참가자 Participants	이찰 수프리아디 Ichal Supriadi	ADN 사무총장 Secretary General, Asian Democracy Network (ADN)	Indonesia
		서수연 Soo Yon Suh	ADN 프로그램 매니저 Program Manager of ADN	United States
		로렌조 우비나티 Lorenzo Urbinati	포럼 아시아 선임 프로그램 관리자 Development and Knowledge Management Senior Programme Officer at Forum Asia	Italia
		올리아 라마 푸트리 Aulia Rahmah Putri	INFID 프로그램 관리자 Program Officer at International NGO Forum on Indonesian Development (INFID)	Indonesia
		바와나 밋타 Bhawana Bhatta	여성 토론 포럼 대표 Chairperson, Women Dialogue Forum	Nepal
		거렐리 오돈치메드 Gerelee Odonchimed	변화를 위한 여성 부 디렉터 Vice Director of Women for Change	Mongolia
		디벤디 아리오 푸트로 Devandy Ario Putro	ASEAN 청년포럼 인도네시아지부 대표 Indonesian Focal Point Representative at ASEAN Youth Forum	Indonesia
		마크 바타 Mark Batac	IID 지역 프로그램 코디네이터 Regional Program Coordinator of Initiatives for International Dialogue	Philippines
		레자우르 라만 Md Rezaur Rahman	활동가 Independent Academic Activist	Bangladesh
		모리 사르 Mory Sar	캄보디아 청년 네트워크 공동설립자 Co-founder of Cambodian Youth Network	Cambodia
		라메쉬 리티카 Ramesh Ritica	이주민 포럼 연합 Migrant Forum Association	India

		세레이봇 노안 Sereiboth Noan	Polikoffee 멤버 Member of Polikoffee	Cambodia
		니키타 라카니 Nikita Rakhyani	PRIA 프로그램 관리자 Assistant Program Officer, Society for Participatory Research in Asia (PRIA)	India
		사트엔드라 쿠마르 Satyendra Kumar	사회평등과 참여 센터 공동설립자 Centre for Social Equity and Inclusion	India
		알릿사 수이코 Alyssa Suico	Dakila 공공 참여 관리자 Public Engagement director of Dakila	Philippines
		소말리 쿼 Somaly Kum	인권과 국제 정의를 위한 WSD Handa 센터 Program Officer, WSD Handa Center for Human Rights and International Justice	Cambodia
		치 풍 휘 Chi Fung Hui	홍콩 입법부 Member of Legislative Council of Hong Kong	Hong Kong
		린 하메드 Lyn Hameed	몰디브 민주주의 네트워크 인턴 Maldivian Democracy Network	Maldives
		자이 린 몬 Zay Linn Mon	양곤 청년네트워크 대표 President, Yangon Youth Network, ASEAN Youth Forum Myanmar Focal	Myanmar
		오타폰 프라파사노볼 Autthapon Prapasanobol	Eduzenthai 멤버 Member of Eduzenthai	Thailand
		리니 줄리아 Lini Zurlia	Advocacy Officer of ASC Sogie	Indonesia
		주인애 In Ae Joo	ADN 프로그램 행정부원 Program Administrative Officer of ADN	Korea
		노미제렐 쿼약 Nomingereel Khuyag	Women for Change 공동설립자 Co-founder and Board Member at Women for Change	Mongolia
		시리파 인타비체인 Siripa Intavichein	태국 민주당 당원 Member of Thailand Democrat Party	Thailand
해외동포세 션 Overseas Koreans	발제 Speech	강준화 Jun-hwa Kang	미주 5.18민주화운동기념사업회 대표 Chairman, May 18 Commemoration Committee, United States	Korea

Meeting		김용현 Yong Hyun Kim	518기념재단 LA 상임고문 Executive Advisor, the May 18 Memorial Foundation in LA	Korea
		김용철 Ryong Cheor Kim	말레이시아 518민주항쟁기념사업회 Chairman, the May 18 Commemoration Committee in Malaysia	Korea
		이윤희 Yun-hee Lee	미주지역 518광주민중항쟁 동지회 The May 18 Comrade Committee in American region	Canada
		최보인 Bo-in Choi	오사카 호남향우회 Honam Alumni in Osaka	Korea
		한정화 Nataly Jeong-hwa Han	독일 코리아협의회 대표 Chairman. Korea Ver Band, Germany	Korea
폐막식 Closing Ceremony	AHRC 선언	바실 페르난도 Bail Fernando	아시아인권위원회 대표 Chairman, AHRC	Sri Lanka