

2022

Gwangju Democracy Forum

An Answer to Global Crisis - Collaboration and Solidarity

Host · Supervision



The May 18
Memorial Foundation

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The May 18 Memorial Foundation (eng.518.org)



The May 18
Memorial Foundation

5·18기념재단

The May 18 Memorial Foundation is a non-profit organization established by the surviving victims of the May 18 Democratic Uprising, the Victims' families, the citizens of South Korea, and the overseas Koreans.

Since it was established on August 30, 1994, the Foundation has carried out numerous projects in various fields for performing the Five Principles of Settlement of the May 18 Democratic Uprising; Truth Ascertainment, Perpetrator Punishment, Compensation for Victims, Regaining the Impaired Reputation, Commemoration. The Foundation try to realize the civic self-governing community that existed during the Uprising and inherit the spirit and value of the May 18 to youth through history education. Moreover, the Foundation takes the lead in human rights and peace activity beyond the border to promote the May 18 Uprising and shares solidarity and equality with minority. And it does research, education projects, international and solidarity activities, culture projects for truth revealing, data collection, research, publication to reveal the truth.

Gwangju Democracy Forum Since 1999



The Gwangju Democracy is aims to make a better future through strengthening 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. 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 "Global Democracy and Human Rights Situation in Covid 19 and Review of International Organization's Covid Campaign"

Welcome Remark

Mr. Dongnyun Jung

Chairperson,

The May 18 Memorial Foundation

First of all, to worldwide activists fighting for advanced democracy and promoting human rights, I express my respect and gratitude to you all for making changes in our society from the bottom of my heart.

The May 18 Memorial Foundation has developed international exchange events through the Gwangju Democratic Forum, starting with the "Solidarity Group of Victims of State Violence" in 1999 and the Foundation is striving to enhance democracy and human rights globally by sharing the experience and values of the May 18 Democratic Uprising and building solidarity.

The truth-finding investigation of the May 18, which is called the successful democratization movement, is still ongoing, and unresolved conflicts and tasks demonstrate that it is not easy to completely realize transitional justice. In addition, many countries around the globe are still striving to work for the settlement of the past, such as past human rights violations.

Moreover, military regimes and authoritarianism are reappearing in many countries worldwide, and discrimination against race, gender, and religion is being exacerbated under the pretext of the COVID-19 pandemic.

In particular, the Myanmar citizen has still struggled against the military coup since last year, and the number of refugees and casualties has increased due to Russia's recent invasion of Ukraine triggered by a new U.S.-Russia and U.S.-China conflict.

The values of democracy, human rights, and peace, which are the aim of May 18, demand strengthening our robust solidarity in order to overcome this situation.

Cooperation and solidarity have overcome the crisis of the global community, which is why we are here today.

I hope to re-dream the united world of sharing, autonomy, and solidarity shown during the May 18 Uprising and practice the value of the May 18 through the Gwangju Democracy Forum 2022.

And I look forward to gathering wisdom to recognize the current situation and come up with solutions in the forum.

Thank you.



Gwangju Democracy Forum 2022

May 17 - May 21, 2022 (KST, GMT +9)



	Day 1 May 17 (Tue.)	Day 2 May 18 (Wed.)	Day 3 May 19 (Thur.)	Day 4 May 20 (Fri.)	Day 5 May 21 (Sat.)
			Hybrid	Hybrid	Online
10:00-12:00		42th Anniversary of the May 18 Democratic Uprising National Ceremony	Opening Ceremony and Plenary Session	Solidarity of Gwangju International Civil Society Solidarity - Expand a Network! (AJAR) (E) Systematic Historical Materialization of Press Video and Identification of Video Journalists' Activities During the May 18 Democratic Uprising (KWA) (K)	Closing Ceremony
12:00-14:00			Transitional Justice: Power of Memory and Memorialization (NHRED) (E)		Historical Discrimination against minorities in South Asia and Define the Transitional Justice (HDDC) (E)
14:00-16:00	Gwangju Youth Democracy Forum 2022 5.17.-5.19.	Gwangju Youth Democracy Forum 2022 The May 18 Historical Sites Exploration	Recession to Resilience: Road to Unite for Solidarity in Asia (KPR) (E) Gwangju Democracy Summit (E)	BRAS-Net Session (E) Prospects for Democracy in Asia 2022 - "We Unite for Solidarity" - 1 (Comprehensive Session) (K-E)	
16:00-18:00		Gwangju Prize for Human Rights Award Ceremony 18:00-20:00	Vaccine Inequality and Democracy (K-E) A Crisis of Myanmar's Democracy and a Pain of Nation-State (JISEAS) (K)	Prospects for Democracy in Asia 2022 - "We Unite for Solidarity" - 2 (Three Simultaneous Sub-Sessions) (JISEAS, ADHOC, POF) (K-E)	Recollection of Memory After Mass Atrocities (YPP 65) (E)
18:00-20:00	The May 18 Eve Celebration Event	2022 Gwangju Prize for Human Rights Awards Ceremony 18:00-20:00	The Effect of Presidential Election Results in South Korea, the Philippines, and India on Young People and Peacebuilding (YPA 2022) (E) Multiparty Democracy in Southeast Asia (Asia Centre) (E)		

An Answer to Global Crisis - Collaboration and Solidarity

Keynote Speech

- Democracies in Asia: Democratic Backsliding and International Solidarity
Mr. Yoon Hwan Shin (Sogang University)
- An Answer to Global Crisis / Ms. Cynthia Maung (Mae Tao Clinic)

Democracies in Asia: Democratic Backsliding and International Solidarity

Mr. Yoon Hwan Shin
Sogang University



1. Post-Cold War and political changes: the “End of History” or the “Third Wave of Authoritarianism?”

- Only a very few people raised an objection against the opinion that the post-Cold War era, which was emerged from the collapse of the socialism in Eastern Europe and the dissolution of the Soviet Union around the year 1990, ended the arguments on the political economy's ideology and system by the free democracy and capitalism of the Western world.
- In fact, the “third wave of democratization” at the time was started from the Southern Europe, expanding to Latin America and East Asia in the middle of the 1970s¹⁾. Hence, the socialists' planned economies were being gradually turned into market economies during the late 1970s in which China led this global trend with the Chinese economic reform.
- It was therefore timely and appropriate that Francis Fukuyama hastened to affirm the “end of history, the moment when the mankind's ideological evolution ends, but the universalization of the Western liberal democracy as the final form of human government begins (due to the end of the Cold War)²⁾.”
- The socialists' economic system, which was once the only rival to the capitalism, is now deemed as the vestige of the post-Cold War era, and thus the democratization of political systems couldn't avoid this historical change. As the capitalism established

1) Samuel P. Huntington, The Third Wave: Democratization in the Late Twentieth Century (University of Oklahoma Press, 1991).

2) Francis Fukuyama, The End of History and the Last Man (Free Press, 1992).

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the hegemony under the repeated crises and internal contradictions, it was obvious that there were no alternative political ideologies or systems to challenge the democracy.

- However, this optimism to the future of capitalism and democracy that enjoyed the end of the 20th century couldn't last over a single generation because of the unavoidable matters. There were emerged the signs showing the democratic decline that shook the very root of democracy in Western and other societies for the last two decades.
- The series of the global economic crises, including the Asian financial crisis (1997), the global financial crisis (2008), and the COVID-19 recession (2019), had been occurred exactly in every 11 years, and it threw a question to the completeness of the global capitalist system and the globalization thereof. Hence, this democracy, which was once thought as the final wave, faced the unexpected backlash and made us to realize how long and harsh was the journey to reach democracy and how persistent was the life of authoritarianism.
- In contrast to the "third wave of democratization" spread throughout the non-Western world from the 1980s to the 1990s, the analysis that the first 20 years of the 21st century were dominated by the "third wave of autocratization" is gaining strength.³⁾
- In addition, there was already raised a critical view that the "third wave of democratization" has created the "illiberal democracy" disguised under its mere visage.⁴⁾ By extension, we are now witnessing various phenomena of the unprecedented "democratic backsliding" from the democratic countries of the Western world, which maintained the stable democratic system by establishing the political consolidation a long time ago, and even from the United States and the United Kingdom, the countries that have been respected as the model of democracy.⁵⁾

3) A. Lührmann and S. I. Lindberg, "A Third Wave of Autocratization Is Here," *Democratization* 26, 7 (2019); S. F. Maerz, A. Lührmann, S. Hellmeier, S. Grahn, and S. I. Lindberg, "State of the World 2019: Autocratization Surges – Resistance Grows," *Democratization* 27, 6 (2020).

4) Daniel Bell, David Brown, and Kanishka Jayasuriya, *Towards Illiberal Democracy in Pacific Asia* (St. Martin's Press, 1995).

5) Democratic backsliding means "a national act to weaken or eliminate the political systems that support the democracy," and also "an intended operation to threaten the root of the system, shut down the public areas, and restrict the media." In other words, it means the "coup promised the transition of power, administration's authority reinforcement, and the manipulation and corruption in election." For example, you may refer to Nancy Bermeo's "On Democratic Backsliding," *Journal of Democracy* 27 (1) (2016). Suzanne Mettler and Robert C. Lieberman suggested four conditions that a democratic backsliding may occur: political polarization, racism and nativism, economic inequality, and administration's excessive authority. (Suzanne Mettler and Robert C. Lieberman, "The Fragile Republic: American Democracy Has Never Faced So Many Threats All at Once," *Foreign Affairs* 99, 5 (September/October, 2020).)

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- Conclusively, the “democracy is undergoing a global democratic recession⁶⁾,” and the “democracy in retreat” is now become a phenomenon to define the politics of the beginning of the 21st century.⁷⁾ Hence, we can raise a question: Is the present “democracy in retreat” a temporal event, or the cycle of advancing and backsliding? In other words, is it possible to eliminate the authoritarianism for good?
- We can verify the democratic backsliding that is happening around the world in this century through various indicators as well.
- V-Dem Institute (University of Gothenburg, Sweden) released an astounding report that the number of democratic countries has been decreased from 42 countries in 2012 to 34 countries in 2021, which marked the lowest number in 25 years, and that the number of people who enjoy the democracy merely accounted for 13% of the world population in total. On the other hand, the number of the countries with the most closed autocracies has been increased from 25 to 30 countries for the last decade. The report says the ratio accounted for 26%, which is double. The number of people who are undergoing the non-democratic system accounted for 70% of the world population, which is about 5.4 billion people in total, even if we extend the scope of the democratic concept to that of electoral democracy.⁸⁾
- The Economist Intelligence Unit (EIU), the research and analysis division of the Economist Group in the United Kingdom, released an analysis result that only 21 countries enjoy their “full democracy” and the population merely accounted for 6.4% of the world population in total. In contrast, the number of countries that suffer from the “authoritarian regime” and the population respectively accounted for 35.1% (59 countries) and 37.1%. In addition, 70% of the countries around the world experienced the decline of the democracy index in 2020, and 44.3% in 2021. However, the number of countries that are advanced or maintained their democracy respectively accounted for merely 27.5% in 2020 and 28.1% in 2021. The EIU reported that there were two moments when the democracy index marked the lowest records since they started to survey it: the year 2020 and 2021 when the COVID-19 pandemic reached its apex.⁹⁾
- “Freedom House (USA)” released a report (freedom in the world 2020) that the Freedom index's average point has been declining for 16 years since 2006 and, for

6) Larry Diamond, “Democracy's Deepening Recession,” The Atlantic (May 2, 2014).

7) Freedom House, Freedom in the World 2019: Democracy in Retreat, https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf

8) 『Democracy Report 2022』, https://v-dem.net/media/publications/dr_2022.pdf. This institute focuses on the trend of “autocratization” in the 21st century's global politics, globally collecting tremendous amount of national data in various fields and releasing annual reports by the comparison analysis method.

9) <https://www.eiu.com/n/campaigns/democracy-index-2021/>. The EIU compares and analyzes the democracy index, which they developed on their own, about 165 countries and 2 territories around the world, releasing the annual reports since 2006.

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example, 25 countries improved their freedom index, but 60 countries suffered from the worsened index in 2021. According to this analysis, the number of “free” citizens who currently live under the democratic system accounted for 20.3% of the world population in total, but that of “not-free” citizens who live under the most non-democratic countries accounted for 38.4%, which is double. This analysis also marked the unusually largest drops in 2020 and 2021 when the COVID-19 recession reached its apex.¹⁰⁾

2. Democratic backsliding in (East) Asia: the development and aspect

- Asia is the continent with the most clear sign of backsliding from the “third wave of democratization” to the “third wave of authoritarianism.”
- Asia, especially East Asia has been the leader of the “third wave of democratization” since the middle of the 1980s, and thus it has been recognized as the most democratic region in the non-Western world.¹¹⁾ However, this region also has the prolonged infamous dictators within and the anachronistic military coups retake their authorities. Hence, as the democratic backsliding has been occurred during the past two years of the global COVID-19 pandemic, this democratic backsliding has been found more clearly than any other region or continent.
- The EIU releases annual reports based on their strict criteria and thus they gave the state of “free democracy” to only 21 countries, including Taiwan, South Korea, and Japan of East Asia.¹²⁾ On top of that, East Asia has nine
- Countries that are classified as “flawed democracy,” so only the half of its countries are classified under the “democratic” system.
- Furthermore, Asia also has the countries regarded as the least democratic country, including Afghanistan, North Korea, Myanmar, Laos, and China, and some of them

10) Freedom House, Freedom in the World 2022: The Global Expansion of Authoritarian Rule, <https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule>.

11) The regions classified as Asian region from the thesis includes East Asia and South Asia, which are consisted of Northeast Asia and Southeast Asia, excluding the Middle East and Central Asia. The EIU's annual reports classifies the countries of the Middle East and Middle East and North Africa (MENA) differently from those of Asia, and include the Central Asian countries in the European region. The “Asia-Pacific (APAC) region” indicated by V-Dem includes East Asia and South Asia in addition to the Oceania and the South Pacific's island countries, and designates the Middle East and North Africa as MENA with the EIU together. Freedom House also recognizes the APAC region, but they included the Central Asian countries in Eurasia.

Seven non-Western countries are among those 21 countries in addition to three East Asian countries: two Central and South American countries (Uruguay and Costa Rica), one Oceania country (New Zealand), and one African country (Mauritius). For reference, France, Spain, and the United States are recently downgraded to “flawed democracy.”

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had already experienced the drastic democratic backsliding during the last decade. For example, Afghanistan is now suffering from the Taliban forces that believe in theocracy due to the withdrawal of the United States troops; Myanmar once hoped for the democratization, but came back to the former military authority with the more vicious and brutal visage; and it is needless to say that Thailand, a country that showed the stable and steady democratic consolidation for more than 10 years until 2006, is now on the verge of their democracy's collapse due to the military's constant interventions.

- It may be therefore appropriate to say that the COVID-19 pandemic led the democratic backsliding and the authoritarian apex of Asian countries.
- East Asian countries had been conducted the most powerful social restrictions in the world for the last two years of the COVID-19 pandemic.
 - It is a matter of course that not only China, North Korea, Vietnam, Laos, and other communist countries, but also even some democratic countries, including Singapore, the Philippines, Malaysia, Thailand, and Indonesia, enforced the national and regional lock-downs. For example, Indonesia declared the emergency martial law to grant the full authorities to the military against the COVID-19 pandemic, declining the democratic index.¹³⁾
 - China still conducts the strict lock-down and quarantine measures, which are the same to those conducted at the first stage, even in the first half of this year (2022) when the Omicron variant's fatality is rapidly decreased after the large scale infection.
- The COVID-19 quarantine measures of Asian countries were conducted with various methods in various fields at the full-scale level.
 - In addition to the most strict lock-downs and domestic and foreign travel restrictions, Asian people were undergone the unimaginable restrictions and violations of their basic human rights and liberty: lock-downs of schools, religious facilities, public agencies, public areas, stores, and business places and the temporal management; quarantines at hospitals and homes; confinements and penalties against those who violate the restrictions; COVID-19 contact tracing; movement and health status reports; compulsory vaccination, COVID-19 relevant information control; and personal information provision.

13) From the internal view of the Indonesian military, it is hard to determine that the military's social role performances deter the democratization. However, it is clear that Indonesia's democratic backsliding is being occurred under the Joko Widodo's administration due to his populism movements.

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- Asia's democratic backsliding and authoritarianism has been led by multiple factors that organize a nation for the last decade. Given the fact that these countries were the leaders for the most strict quarantine measures, Asia fulfilled the requirement of "democratic backsliding."
- Various subjects, such as military (Myanmar and Thailand), armed religious forces (Afghanistan), national leaders (Cambodia, the Philippines, India, and Indonesia), ruling parties (Vietnam, Singapore, Malaysia, South Korea, and Japan), and special administrative region (Hong Kong), led the democratic backsliding, and they all were national agencies. Moreover, they were lack of the autonomy and competence to stop this backsliding in civil society.
- In other regions, especially in East Asian regions other than those of Europe and the United States, the fact that there was a few social resistances against such strict restrictions unilaterally conducted by these countries –including democratic countries– is as follows: a. Asian countries' compulsory character is stronger than the other regions and; b. Asian people's political culture is obedient and thus it has the weakness that it's not democratic enough.
- The authoritarianism in Asian politics was developed in the most of Asian countries in regardless of governmental system, but it is different by each nation.
- The most democratic Asian countries; South Korea, China, and Taiwan, are positively recognized that they have been steadily developing the democratic consolidation for a long time. In the light of the COVID-19 pandemic, South Korea experienced the severe democratic backsliding, while Taiwan was highly recognized that they implemented the democratic crisis management well. Koreans and Japanese tend to highly anticipate their country's competence, and thus they are well known that they have the highest distrust in their government.
- Afghanistan, North Korea, Myanmar, and China are being developed into an authoritarianism at the totalitarianism level, out of the most democratic countries. It is therefore appropriate to say that they didn't respond to the COVID-19 pandemic, but did reflect the changes in their leadership. Laos and Vietnam also have the higher authoritarianism, but they all focused on overcoming the COVID-19 pandemic.
- As there are numerous countries from the intermediate group, of which contains the categories such as "partial freedom," "electoral authoritarianism," "electoral democracy," and "hybrid governance," Asia's political changes will be determined depending on whether these countries follow the path of democratization, or that of authoritarianism.

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- The upper group out of them, namely, the countries that are partially free with flawed democracy and election under the hot weather; the Philippines, Indonesia, East Timor, Malaysia, and Mongolia, had succeeded in implementing the democratization, but failed to consolidate it. Hence, they're remained as electoral democracy. With the Philippines and Indonesia as the starter, every country's basic principles for democratization are being threatened by the partially free and fair election, lack of voluntary participation of people, restriction on basic human rights, media, and assembly and association, and damage to judicial independence.
 - Next, we should take a closer look at the countries whose system's basic characters are based on authoritarianism, but elections are being held regularly, in other words, the countries under electoral authoritarianism, or hybrid system: South Asian countries (India, Pakistan, Bangladesh, and Sri Lanka) in addition to Southeast Asian countries (Singapore and Thailand). The fact that South Asian countries replace their current administration through an election or motion of no confidence makes them to stand closer to electoral democracy, but the other fact that they also voluntarily implement the infringement of human rights, terrorism against the opposite parties, political authority, restriction on people's freedom, censorship on media, and surveillance on people makes them more like authoritarian dictatorship. Southeast Asia's Singapore and Thailand are unlikely to replace their administration through an election, but they're slightly better than the South Asian countries in the light of basic human rights and freedom.
 - Finally, there are the countries that can be clearly declared as authoritarianism; Brunei, a country that never hold an election; Cambodia, a country that has only the ruling party because the other opposite parties have been recently disbanded; and Hong Kong, a special administrative region whose electoral system became meaningless due to China's intervention and indirect electoral system. The authoritarianism in Cambodia and China has moved back to the time when the third wave of democratization is yet to emerge.
- In summary, Asian countries' authoritarianism has already been developed for a remarkably long time, and it has been reinforced more than ever in the wake of the COVID-19 pandemic.

3. Democratic backsliding in Asia: foreign and international factors

- Political scientists in comparative politics consider the most of various internal, domestic, foreign, and international factors when analyzing political changes. However, with respect to the 21st century's global politics, Asia's democracy is especially being

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threatened from the democratic backsliding, and that is because of the post-war aftereffects, namely; the reorganization of the global orders after the Cold War, policy changes to Asia because of the United States' political changes, China's sudden rise and Xi Jinping's dictatorship reinforcement, globalization and the side effects, and COVID-19 pandemic. Now we're living in the era where foreign and international factors strongly affect us more than ever before.

- Political scientists who studied on democracy and democratization with their actual experiences show their agreement to the fact that foreign and international factors are the most clear –but, not very critical– ones for democratization.
- First, the post-Cold War era began at the end of the 20th century. It ended the international conflicts at the time, but also made new conflicts. The moment that the United States' capitalism and liberal democracy had established their hegemonic position was merely a temporal illusion. The dissimilarity of civilizations, religions, races, and political systems to replace the Cold War ideologies are now became the new domestic and international conflicts.
- The "Clash of Civilizations and the Remaking of World Order": Samuel P. Huntington, an American political scientist, found that the conflict of civilizations under the international order escaped from the conflict of ideologies during the Cold War, especially the conflict on the Western civilization and Islamic civilization is the most serious conflict. The September 11 attacks, a terrorism that shocked the whole world, and the conflict of the United States and the Middle East had badly affected Asia's democracy. As the Islamic extremists expanded their terrorism to Southeast Asia, there were occurred the oppression, discrimination, and infringement of human rights to minority Muslim groups or specific religious sects in Indonesia, the Philippines, Thailand, and Singapore. Hence, the social restrictions to limit people's basic human rights had been reinforced nationwide in the name of anti-terrorism.
- Revival of nationalism: experts thought that nationalism would be weakened after the Cold War, but it became even stronger than before. Especially, East Asia's economic development had elevated the people's unity and pride in race remarkably. The revival of nationalism accelerated the ethnic minorities' sense of deprivation and discrimination in multicultural countries such as China, Myanmar, Thailand, and the Philippines. These countries control the news on ethnics minorities and restrict their basic human rights and freedom, greatly contributing to the democratic backsliding.
- Loosened alliance against authoritarianism: The mutual assistance system or loosened alliance between the United States, a country that wants to consolidate their hegemonic position, the European Union, a union that wants to share political and

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economic ideologies and systems, and individual authoritarian countries have been formed around Russia and China. There are the increasing cases that the countries, which were excluded because of their supports on terrorism, infringement of human rights and other factors by the United States and the European Union, are now being supported and assisted by authoritarian countries.

- Second, the United States' internal political changes and the weakened commitments to democracy can be the cause. After the Cold War, most of countries couldn't reinforce their national power as the Middle East, China, or Russia to become a competitor to the United States. However, there were continuously emerged new challengers who couldn't accept the United States' unilateral hegemonic position, and that the United States' conservative tendency that national interests must be prioritized became stronger had greatly contributed to Asia's democratic backsliding.
- Meanwhile, the United States' foreign policies weren't focused on Asia only; they took a closer look at the Middle East after the September 11 attacks; the Trump administration had focused more on foreign policies than the domestic issues and economic national interests; and the Biden administration held the "Summit for Democracy" to restore the United States' leadership in the global democracy in December, 2021. However, President Joe Biden had to put a brake on his plans due to the Ukrainian War caused by the Russian invasion in February, 2022.
- The United States' policies to Asia were not focused on protecting or expanding democracy in Asia, but mainly on establishing the bilateral or multilateral alliance, or security cooperation system with Asian countries around China to prevent its economy and military from expanding.
- Especially, the Trump administration expressed his friendly stance to India's Prime Minister Narendra Modi, Philippine President Rodrigo Duterte, and Kim Jongun, Supreme Leader of North Korea, partially contributing to Asia's authoritarianism.
- Third, China's constant growth and its emergence on international stage, and the changes occurred in the relationship with Asian countries based on it have been remained as deterrent factors rather than positive effects to Asia's democratic development.
- China's rise is beyond the meaning of an economic power or potential hegemony that corresponds to that position. It delivers the hidden significance to Asia's democracy, even to the democratization of global politics, that if China's authoritarianism becomes greater under Xi Jinping's governance, it will badly affect the democratization of Asia and the whole world.¹⁴⁾

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- China is the country with the largest population that accounts for 18% of the world population. Hence, the Chinese democratization itself will mean lots of things and Huntington asserted that it will complete the global democratization.
- Democratic countries positively affect the neighboring countries' democratization, and thus a huge country like China becomes the greater influence to Asia's democratization or authoritarianism. For the last decade, China might have severely damaged Asia's democracy.
 - Although we can't find out the exact cause and effect and the circumstances around China, the fact that Hong Kong, Myanmar, and Cambodia lost their democracy and turned themselves into authoritarianism and the other fact that these countries have the direct and close relationship with China are likely to be relevant.
 - It wouldn't be a coincidence that President Duterte is the most intimate president to China since the Philippines' democratization.
 - China itself is not beneficial for South Korea as well. On top of that, we should show our respects to Taiwan because they're one of the most democratic countries in Asia.
- China delivers their authoritarianism to the world and allied with the other authoritarianism countries, disturbing the expansion of democracy.
 - China actively cooperates with Myanmar, Laos, and Cambodia for economic development in East Asia, and globally provides supports to authoritarian or small countries in Africa or the South Pacific regions. China is not only providing these unilateral supports, but also establishing the cooperative systems with other powerful and authoritarian countries such as Russia and Hungary, helping each other under international conflicts. Hence, China showed their least action to the super-national sanctions on Russia when Russia invaded Ukraine.
 - This is because of the so-called "Chinese model." After the 1980s, many leaders of developing countries might have found that that China achieved the rapid growth while maintaining the one-party dictatorship is very attractive. Especially, China's strict social restrictions and the achievements made during the first phase of the COVID-19 pandemic in 2019 made China more noteworthy from the other countries that conducted loosened restrictions, which cost the tremendous

14) The EIU named the title of this year's annual report as "Democracy Index 2021: The China Challenge," to highlight China's influence to the global democracy.

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sacrifices. However, we should be patient until such achievements are finally concluded and then analyze China and its people.

- China leads the antidemocratic and dictatorship alliance: When Venezuela was economically sanctioned by the Western world because they manipulated the election and oppressed the opposite parties at the time, China once supported Venezuela by trading and investing in them with Russia and Turkey. In 2021, China and Russia also cooperated, when a coup was occurred in Myanmar and the UN had therefore passed the resolution, to ease its intensity.
- Fourth, globalization has been accelerated even more after the Cold-War, causing severe economic inequality and various "social divides." Hence, these side effects has been negatively affecting the global democratization.
- The optimism that the globalization will take the human society to the advanced, equal, and peaceful land is now facing the serious challenge in the wake of the 21st century's emergence. The globalization created inequalities and contradictions in various areas and classes, and these contradictions have been stacked up, making the most extremely polarized conflicts in society and politics. The Asian Development Bank (ADB) released an analysis report that Asia's regional inequalities are becoming worse faster than those of Africa or Latin America.
- The globalization was accompanied with scientific developments, especially with informatization. The informatization means to intensify "digital divides" rather than expand objective and clear information, and thus it makes people to distrust each other extremely and then deny to communicate, creating the "toxic polarization" in society and politics.
- The globalization prevails populism. It increased migrants and then an ultra-right party was emerged to blame them for economic and social responsibilities. In countries where democratization or the consolidation was not completed, populists abuse political polarization to hinder the election processes and the freedom of information, accelerating the political backsliding. Populists were gaining strength by abusing the internal disharmony and the people's pride against foreign countries at the time.
 - ◆ Philippine President Rodrigo Duterte sentenced thousands of drug offenders without judicial procedures, and thus he could secure the full public trust. Narendra Modi, prime minister of India, Joko Widodo, president of Indonesia, and Moon Jaein, president of South Korea, hindered the independence of judicial and constitutional authorities, or strengthened the status of the military, which delayed the democratic consolidation. However, they all secured the full

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public trust and support.

- The globalization impact has been contributing to creating conflicts in domestic politics and international society. The non-Western world deems globalization as westernization. For example, the Islamic world, China, and Russia tend to deny liberal democracy and universal values. They're not competent to stand against the market economy and global capitalism, but still criticize that the concept and system of liberal democracy are built on the Western world's ideology and thus it can't be universal.
- Fifth, the worst impact to Asia's democracy is, of course, the spread of COVID-19 pandemic occurred in early 2020. Most of countries weren't ready to respond to this unexpected, lethal, and global pandemic spread throughout the world, which obviously deteriorated democracy with no exception.
- For the two years of 2020 and 2021 when the COVID-19 pandemic reached its apex, democracy has stepped back to the furthest from the last wave of democratization that was occurred in the 1970s. Agencies that monitor the democracy of countries around the world has been constantly reporting that the democracy index has decreased greatly during the global pandemic in regardless of democratic and non-democratic governments.
- A nation is the main force of authoritarianism in this COVID-19 era. Democratic backsliding leading by a nation has been straightly witnessed in East Asia with China as leader. Nationwide lock-downs has been conducted, personal information was forced to be provided, and religious activities were prohibited or restricted in the name of pandemic prevention. Countries restricted the freedom of expression, assembly and association, and media. They controlled media, blocked smooth information transfer, and created fake news. As there were raised arguments on whether a country's strict quarantine measures are appropriate or not online, digital divides and fake news led the "toxic polarization."
- However, East Asia's democratic backsliding can't be the fault by its countries only. People and civic groups also kept silent and turned their blind eye to their country's quarantine measures above the law. What's different between Asian and European societies is that Asian people tend to waive their freedom easily for individual's safety and life.
- But, we can't also assert that East Asian countries have the better governance than that of Europe and the United States. European citizens didn't support the country's compulsory quarantine measures because their basic human rights and freedom are

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threatened. Hence, it is therefore appropriate to say that they shouted for "Freedom or Death!"

- Finally, domestic factors may be more important than external ones. International difference is made by the difference between the level of democratization and the quality of democracy. There are, of course, domestic factors by each nation, but what Asian countries have in common are antidemocratic and pro-authoritarian factors as the followings:
- Asia's political culture may be explained as subject political culture. The subject political culture is different from participatory and parochial political cultures. People under this political culture are unlikely to actively participate in political procedures and obedient to what the country decides. Unlike the EU member states, Asian people accepted their country's strict quarantine measures that may greatly prohibit or restrict their basic human rights or freedom as citizen when the COVID-19 pandemic prevails.
- Asian countries are seemed to be satisfied that democracy has settled at the level between illiberal democracy and electoral democracy. Democracy lacks the awareness on ways, procedures, and systems to elect a representative through a free and fair election. Distrusts in democracy may be increased because of the perspective to directly use democracy for other ideologies or ultimate values, such as social economic equality, specific religious value, and nationalistic ideal, and transitional justice. Politics by political parties won't root and popular policies depending on specific famous people will surely expose the Asian democracy's limit as well.
- As a tool for democratic socialization, these countries lack the competence to perform the roles as home, school, and media. There were even emerged a trend to deny democracy itself because of the disappointment in democratic system's performances. This COVID-19 pandemic deteriorated the trusts in democracy.
- Social network services (SNS) take the dual personality to democratization. Information exchange through online is now recently spreading fake and false information, and thus critics say that SNS blocks people from accessing to correct information and then accelerates the "toxic polarization."¹⁵⁾ SNS may be powerful as a tool for resistance against authoritarianism, but it becomes retrogressive as a tool for democratic consolidation. Hence, SNS takes the more important role in East Asia

¹⁵⁾ It is noteworthy that former US President Barack Obama takes the lead to inform people of the threats of online information to destroy democracy. Please refer to the video that he gave his speech on it at Stanford University on April 22nd (<https://cyber.fsi.stanford.edu/events/challenges-democracy-digital-information-realm>) and the script (<https://barackobama.medium.com/my-remarks-on-disinformation-at-stanford-7d7af7ba28af>).

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where the informatization has been greatly progressed more than any other regions around the world.

4. Future of Asia's democracy: how do we restore it?

- ☐ To stop democratic backsliding and restore the path to democratization, we need to consider of new ways and directions to reflect chronological changes in international solidarity, participation and action, and education on democracy.
- ☐ First, the "third wave of autocratization" or "democratic backsliding," which has been developing after entered the 21st century, is greatly being affected by international factors, and thus the responses thereof must be proceeded at super-national level.
- ☐ The most clear factors for democratization verified by researches this far are international and external factors, such as spread of democratic values or ideologies, democratization of neighboring countries, intervention of democratic powerful nation, and globalization (i.e., free movement of product, capital, worker, and traveler).
- ☐ International solidarity and the activities should be performed in various areas at various levels, to monitor and report any deed to destroy democracy, and support and aid those who work for democratization. The "social capital" of international democratic force can be secured by establishing an international solidarity where democratic groups, organizations, or agencies can bilaterally, regionally, and internationally exchange and cooperate. It is also important to strategically connect international solidarity's activities and the organizations with those of domestic democratic groups.
- ☐ Democratic groups of each country should reinforce their monitoring activities not to let their country support and help the countries that destroy democracy and oppress people's human rights. Unlike the Western world, Asia values economic national interests more, and thus Asian people don't have much of activities to monitor and sanction on deeds of which their country cooperates and conspires with dictatorship.
 - Asian civic society should pay their keen attentions on China's circumstances and then establish the Pan-Asian solidarity make China democratic and peaceful country.
- ☐ Asian countries are penny-pinching for recognizing the status of political refugees and supporting their migration. Providing shelters and activity spaces to political refugees is an effective and specific way in international cooperation activities for democratization.

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- Second, as we're living in the 21st century, we need to seek for other methods of actions and the participation promotion that can correspond to globalization, informatization, and illiberal international order.
- The existing democratic movement was national and large-scale struggle against authoritarian dictatorship, which was mainly for liberal and fair elections. However, it is now difficult to use this old-fashioned way in which increase democratic forces and the opposite parties through large-scale protests to strike down dictatorship or achieve a fair election system.
 - In Thailand, the Thai military used every available mean to revise the constitution and election laws, and neutralize the parties or elections that they don't want by controlling the Constitutional Court, as pro-Thaksin political party has been winning elections to become a ruling party since the military coup was occurred in 2006. Myanmar's military unilaterally objected the election result in 2021, and Cambodia illegalized the opposite parties and proceeded the election with the only one ruling party in 2018.
- Democratic backsliding of the 21st century is being secretly proceeded under various illiberal governances, such as electoral democracy, electoral authoritarianism, and hybrid system rather than obvious authoritarianism, by strongmen and populists' media manipulation with advanced technologies and strategies. Hence, we need to secure effective counter-strategies and new ways for struggle.
- The shift in generations of leaders for civic movements is therefore required. The democratic activists and leaders who led the traditional democratic movement for a long time ago should at least leave from the field of political movements. Seeking effective countermeasures by understanding new political changes should be assigned to new generations.
 - It is inspirational that new young political leaders stand on the stage, expanding their influence and approval rating in Thailand, Singapore, Taiwan, and Hong Kong.
- Third, the factor that is most severely lacking is democratic political culture. The democratization of a political culture is the most certain and secured measure for consolidated liberal democracy. However, a political culture is highly unlikely to change in a short period of time. We should therefore make our every effort constantly through re-socialization and long-term education through home, school, social organization, and media.

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- Asian people, who have the history of centralized dynastic systems or oppressive colonial governances, still couldn't escape from the swamp of the so-called "subject (obedient)" political culture. This backsliding to voluntarily and silently accept a country's antidemocratic control under the COVID-19 pandemic has been generalized throughout Asia, and that is because of the lack of democratic citizenship in their political culture.
- In Asia, democracy has been delivered from the outside or the compact version of it has been achieved through struggles in a short period of time, and thus Asia is highly likely to tend to misunderstand or distort the concept of democracy. Asia needs to shake off the illusion of "practical democracy," which only values results and the achievements, clearly figure out the true visage of electoral democracy, reorganize the concept of democratic participation, and establish the education system to reaffirm the spirit and principles of democracy: tolerance, compromise, and pluralism.
- Democracy is merely a set of fair rules for elections, and people must believe that they will witness what they want through repeated elections in the long term. When a crisis comes, antidemocratic political parties gain strength, populists become popular, and fascists' parties are likely to win. Hence, to prevent them from being dominant, people need to clearly understand and believe in democracy, and make a mature civic culture that is not swaying by interests before the eyes, propaganda, and incitement.
- It is therefore hard to find the ways and means to improve political culture in a short period of time. We therefore need to foster right education and media, and then wait for the result no matter how long it will take, because it is never enough to emphasize the needs for right democratic education and fair and responsible media.

An Answer to Global Crisis

Ms. Cynthia Maung
Mae Tao Clinic



Today, I take great pride in being invited to be a speaker for the Gwangju Democracy Forum. I learned that since 1999, the May 18 Memorial Foundation has held an international Gwangju Democracy Forum, to suggest creative solutions to democracy, human rights, and peace and strengthen solidarity between experts and field activists in the field. I am humbled to be part of this meaningful event and honoured to discuss the theme "An Answer to Global Crisis – collaboration and solidarity" today.

33 years ago, I, myself was a displaced person from my home after fleeing the oppressive regime in Myanmar. Since the beginning of my journey to the neighbouring country, Thailand, I witnessed the people suffering from Malaria, Malnutrition and war casualties along the way. The rate of maternal death was high due to poor access to health services. Other invisible sufferings were fear, insecurity, uncertainty and psychological trauma derived from separation from their home and their family. Indeed, even before I moved to the border area, there have been long-lasting conflicts and displacements in ethnic areas in Myanmar and along the border as of today. Due to the perpetuating conflicts between 1990 and 2020, 350,000 IDPs were generated and had remained in IDP camps in 4 ethnic areas in Karen, Rakhine, Kachin and Shan state. Democratically elected Myanmar government declared the national strategy for the closure of IDP camps in 2018 without consultation and involvement with IDPs and affected communities. Given that the humanitarian crises have escalated and to understand what IDPs face amidst these intensified conflicts, the needs-based support should be considered.

Protracted displacement

Since 2021, I have been sadly witnessing a worsening humanitarian crises situation not only in Myanmar but also across the globe. Increased militarization and the COVID-19 pandemic caused refugee crises and ongoing wars in Syria, Afghanistan, Myanmar and

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Ukraine among others. People are in desperate need of humanitarian support due to conflicts, food insecurity, poverty, and lack of infrastructure or protection. UNHCR reported that 84 million people all over the world are forcefully displaced as of 2021. The total number of IDPs also have been soared from 43.5 million in 2019 to about 51 million in 2021. International collaboration has become fragile because some states are involved in war crimes, are structurally militarized, become authoritarian and violate human rights with impunity.

In February 2021 in Myanmar, atrocities and violence committed by the State Administration Councils following the coup have internally displaced over 566,000 people including civil servants from the cities as well as civilians from rural communities. In addition to the IDPs, over 1.1 million refugees from Myanmar have been scattered all over the world. In the wake of the coup, the health workers were the first group of people that joined their resistance against the coup and many of them were faced with violent repression by the SAC. Many of them had fled the atrocities and joined the ethnic health workers to provide life-saving care to their fellow displaced communities and the ethnic communities along the border. According to Physicians for Human Rights Myanmar and Insecurity Insight, 499 incidents of violence or threat against health care were reported since the coup. 260 health workers have been arrested or detained and 157 were killed. Myanmar military has systematically targeted the health system which is the crime against humanity.

Myanmar faces multiple dire humanitarian crises that are deeply rooted in politics, manifesting through widespread oppression and human rights violations against civilians, particularly the ethnic peoples and other minorities of the country. Longstanding impunity and decades of unchecked abuses have already resulted in extensive displacement, poverty, and food insecurity, along with a protracted public health emergency. The public health emergency in Myanmar needs to be seen in the context of the coup and ongoing country-wide conflict and displacement. It is not just about COVID-19. COVID-19 has added to the great burden of disease and the complexity of the public health crisis.

Health inequity and poor access to health facilities were prevalent throughout Myanmar as Universal Health Coverage was so poorly rolled out and health inequities remained. Maternal mortality is still appallingly high. We also saw a handful of hope after the democratic government was inaugurated and the country seemed to move forward into a democratic country. In 2010, health expenditure in Myanmar was approximately 1.96 % of the country's GDP which became 4.86% in 2019, which is a significant increase over the years. Despite it was still lower than other high-income countries, it was a positive indicator to show that the state was becoming more accountable to its citizens and the positive impact of democracy on its own people.

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Nonetheless, this transition became in vain as the SAC has now added to the humanitarian crisis through forced displacement and security issues for health workers, teachers and other professionals. Escalating forced displacement and food insecurity due to the military attacks across the country has been worsening the situation.

Prior to COVID-19 and the coup, ethnic health organizations and community-based organizations coordinated for standardization of services delivery and quality care, and health worker capacity building as the Ethnic Health System Strengthening Group network. Access to secondary health care was improved through relationships and trust with the Myanmar Ministry of Health and Sport including emergency medical referrals and the Essential health services. Cross-border medical referrals, EPI and disease surveillance network with local Thai hospitals and public health offices were also strengthened.

In this environment, humanitarian aid must be flexible in order to effectively, equitably, and efficiently respond to what has been called Myanmar's longstanding "chronic emergency". The international community must also realize, as the vast majority of the peoples of Myanmar now do, that the only sustainable way to address and ultimately end these crises is to end the impunity of the military junta and its agents, standing in solidarity with all the peoples of Myanmar as they resist militarization and build resilient communities. Building resilience means promoting understanding and respect for our neighbors and human rights for each one in our community are ensured by each of us-which involves rights to security including health, food and a sense of being safe in our own home and community.

Pursuing alternative ways of delivering aid based on the basic premises of humanity, impartiality, independence, and neutrality have become crucial in these circumstances. One such approach would be to leverage existing channels, community networks and local aid structures, many of which have been operating for over three decades, to deliver humanitarian assistance to the most vulnerable communities of Myanmar.

Local structures are able to adapt their programs to different contexts and cultures, responding to the specific needs of each community in a culturally competent, trusted fashion. This includes not only helping to address the consequences of conflict, abuse, and displacement but also adapting to new realities, such as controlling infectious diseases and instituting preventive measures. To support these initiatives, flexibility is key.

We must also underscore that, given the current circumstances facing our country, all potential options must be pursued to rapidly increase humanitarian assistance including access to COVID-19 vaccinations, particularly for the country's most vulnerable communities, such as the growing numbers of people displaced by conflict and abuse.

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In the case of Myanmar, this includes pursuing cross-border options when needed, working with ethnic health organizations to most efficiently do so to save the lives of the most vulnerable populations but also helping to protect the public health of Myanmar's neighbors and the region from uncontrolled spread of COVID-19.

From a small ethnic village in the periphery of Myanmar to a community of slum houses in the heart of Bangkok, Gwangju, a city of the human rights movement in Korea where people realized that they are the center force in the nation's history, to the roundtable of United Nations leaders, we are all obliged to talk about ensuring a dignified livelihood, a safe and healthy childhood and an enabling environment for youths and women's participation in community development amongst other human rights that we are all entitled to, as a responsibility of the community as a whole.

In every roundtable talk, policy paper, government scheme, humanitarian project and public consultation, we must ensure that the realization of human rights for everyone is inclusive. In working toward a more just and fair society, we can not compromise the rights of any single person, especially, in communities that are systematically left out due to their religion, ethnicity and their legal status and many other reasons.

Decades of our work on humanitarian responses and rebuilding communities show that we can not act alone despite our commitment and dedication. It should be a collective effort of individuals and organizations working toward the same cause. Our journey shows that building strong human-centred and inclusive institutions and humanitarian communities that consist of organizations and agencies from diverse backgrounds helps immensely in promoting human rights and the empowerment of communities.

Finally, I would like to reiterate once again that Myanmar's humanitarian disaster is not simply a conflict. It is about impunity, not only in the commission of abuses that drive the disasters we have been struggling to address but also in weaponizing many of the tools that could help alleviate the sufferings of the people.

In this challenging time of the double crisis "COVID-19 and the COUP in Myanmar", the world's solidarity with the Myanmar people's fight for the road toward genuine freedom, democracy and human rights is more important than ever. I believe that the power of solidarity with the Myanmar people and to overcome these humanitarian crises through this unified power will be a great role model for other nations like the Gwangju May 18 uprising became symbolic of democratic movement for many Asian countries suffering from oppression and authoritarianism.

Impunity and Injustice should be recognized as they are and we all must condemn

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them openly and join forces to fight them, not just for the sake of fighting but for the sake of our community and more importantly for our humanity, and the pathway to genuine peace and security for all. Last but not least, I humbly accept to be part of the campaign calling for international leaders to designate May 18 as the "Universal Day for Prevention of Militarism and Authoritarianism" so that we have a focus on the fight to end militarism and authoritarianism and realize democracy where everyone across the globe enjoys his/her inborn rights.

Thank you.

Session 1

The Future of May 18

Following the Death of Chun Doo Hwan, What are the Remaining Tasks to Us?

On November 23, 2021, Doo-Hwan Chun, the former South Korean military dictator, died without admitting what he committed against the Gwangju people and apologizing for the 1980 massacre in Gwangju. The responsibility for responding to the unresolved issues of the Gwangju massacre has been left to survivors.

Following the death of Chun, the May 18 Memorial Foundation established a plan to reorganize the remaining tasks and future activities for transitional justice. Meanwhile, the May 18 Democratization Movement Truth Commission is actively conducting its investigation of the May 18 Democratic Uprising. The 2022 Gwangju Democracy Forum intends to cover the following topics

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Activities of The May 18 Democratization Movement Truth Commission: Principles, Strategies, and Tasks¹⁾

Mr. Yongju Choi

The May 18 Democratization Movement Truth Commission



1. Preface

As the Commission's activities are still in progress, it seems to still too early to announce and evaluate specific results here. Therefore, I would like to use this occasion as an opportunity to discuss the philosophy and principles of the investigation that the Commission has maintained since its inception as a "truth commission," and to discuss some of the issues at hand.

2. May 18 as an Atrocity Crime

It goes without saying that the "Gwangju Uprising", which we usually call the May 18 Democratization Movement, in its tragic aspect, is the worst state violence ever committed since the Korean War. Military soldiers used violence against their own fellow citizens and killed 167 people at the scene, with more than 80 civilians who went missing. At least 70 other victims died later due to direct or indirect causes of martial law military fire and violence. More than 2,000 people were injured, more than 4,000 civilians were illegally detained and tortured, and more than 400 people were brought to trials. Furthermore, the tragic legacy left behind by this unprecedented state violence is still being passed down and expanded and reproduced across generations and regions, even though it's been 42 years since the incident occurred. Given that all these widespread and serious human rights abuses took place in just 10 days, the intensity of the violence committed by the state or an illegal insurgent group claiming as to the state is comparable to many tragic massacres at home and abroad at the same time.

1) This paper and arguments of this paper are those of the author and do not reflect the opinions of the Commission to which the author belongs. Citation of this paper is prohibited.

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The Commission has yet to reach an agreement on the concept for defining the historical and social nature of this widespread and serious act of state violence. (The Commission was launched based on the acceptance of the victim's right to seek truth, but it is worth considering that it is a product of political compromise between the ruling and opposition parties.) However, in my personal judgment, at least, in that the state (or similar national group) monopolizing the means of violence systematically by mobilizing highly trained elite troops to engage in violence against "civilian residents", it falls under the term "atrocities crimes" as defined by the United Nations and others, in that it has engaged in "war" against civilians by mobilizing modern means of killing, and that the damage caused by the violence was severe.²⁾ As "part of a widespread or systematic attack on the civilian population," it is a criminal act with the elements of "crimes against humanity". After all, the purpose of the Commission's activities is to reveal and officially announce to the public by whom, for what purpose, and how these atrocities and crimes against humanity were committed.

Here, it is necessary to correct two misconceptions regarding the purpose of the Commission's activities. First, it is the misconception that most of the truth that the committee wants to reveal has already been explained in the course of the so-called New Military Insurgency Group Trials in 1995-1997. In fact, if we carefully examine the prosecution's investigation, litigation records, and rulings at the time, it is worth noting that the trials at that time made almost no legal judgment on the atrocities committed by the martial law enforcement forces in Gwangju, in relation to the May 18 Democratization Movement. In other words, at that time, the prosecution and the court made legal judgments based on the standards of punishment for the so-called new military group plotting a military insurgency and illegally usurping the ruling government. But the punishment for human rights abuses such as murder, assault, illegal detention and imprisonment, torture, secret burial, and enforced disappearance were hardly considered in Gwangju's cases punishments. Despite the deaths of 167 civilians at the scene, only 18 victims of the wiretapping operation on May 27 were found guilty of "murder for insurgent purposes." The rest of the victims were included as a result of the anonymous riot that accompanied the insurgency. Martial law enforcement forces captured civilians and carried out retaliatory killings or killings equivalent to summary convictions, and indiscriminate firing of unarmed children, women, and the elderly. Despite that fact, little effort has been made to prosecute the perpetrators and those in charge and hold them legally responsible for the crime. In other words, as assessed by a legal expert, the trials at that time were aimed at the

2) The UN collectively refers to genocide, crimes against humanity, and war crimes altogether as atrocity crimes. United Nation, Framework of Analysis for Atrocity Crimes: A Tool for Prevention, 2014. Scott Straus, Fundamentals of Genocide and Mass Atrocity Prevention, United State Holocaust Memorial Museum, 2016. David Scheffer, "Genocide and Atrocity Crimes," Genocide Studies and Preventions: An International Journal, vol.1 (3), 2006.

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"crimes against the state" of the rebellion group, and the "crimes against people" were conceived.³⁾ The Commission is responsible for revealing the substantive truth of the criminal act against this very person and filling the gap in the substantive truth of the atrocities at the time of May 18.

Second, it is the misconception that the purpose of the Commission's activities is to find decisive evidence that holds a specific person responsible for the firing at that time. In short, it is argued that it is enough to reveal that Chun Doo-Hwan was the de facto commander of the firing, as the leader of the insurgency. Certainly, much of the public expectation for the Commission's activities lies here. It is no exaggeration to say that finding the truth related to the firing of martial law enforcement forces is a key task of the Commission's investigation activities, and the success of the Commission's activities depends on the achievement of this task. However, the Commission draws attention to the fact that responsibility related to the firing of martial law enforcement forces does not fall entirely on any specific person. Based on the investigation activities carried out so far, the Commission suspects that not only the firing of martial law enforcement forces, but also all atrocities and crimes against humanity in Gwangju constitute a kind of "collective crime."⁴⁾ The focus of the investigative activities is to reveal the existence of a "joint criminal enterprise" in which actors with similar goals and common interests jointly plan and execute criminal acts. From this point of view, the purpose of the truth-finding task related to the firing of martial law enforcement forces is not to attribute responsibility to a specific person, but to officially confirm the attributes and collective responsibility of the group to which the specific person belongs.

In short, the Commission is reconstructing the atrocities committed by the martial law enforcement forces in Gwangju by focusing on the collectivism and anti-humanitarian character of the perpetrators, and further examining whether separate judicial measures are possible if the punishments of these acts are not fully reviewed in the 1995-1997 trials. Although the Commission is not a judicial body, this is relevant because truth and justice are complementary to each other in the completion of transitional justice.

3. Approach Principles

The Commission is an institution established at the request of the victims to meet the rights of victims of state violence. According to the 2005 Resolution of the United Nations, also known as the so-called Bassiouni Principles, victims of violations against international humanitarian law and human rights have three universal rights.⁵⁾ The first

3) Han In-Seop, "The May 18 Trials and Social Justice", Gyeongin Cultural History, 2006.

4) Mark Osiel, Making Sense of Mass Atrocity, CUP, 2009.

5) UN, Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of

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is the right to claim reparation and compensation for the damage (the right to reparation); the second is the right to demand punishment against the perpetrator (the right to justice); and the last is the right to know why my beloved family should have been sacrificed (the right to truth). Also, the practice of these principles is a major task of "transitional justice" that must be realized by the government and civil society of a country ending the era of conflict and dictatorship, and transforming into a system of peace and democracy, for the establishment of the peace regime and the consolidation of democracy.⁶⁾

What is the reason for the social evaluation that these measures are still insufficient despite the fact that compensation has been made several times for the May 18 victims and the bereaved family, and that there has been punishment for the perpetrators through the trials in 1995-1997? Here, it is very persuasive to point out that there were hasty compensations and punishments based on judicial standards before there was a social consensus and national "recognition" of the substantive and historical truth of the May 18 incident. Political and compassionate compensation policies implemented without clear and objective standards for the level of damage and sacrifice caused social conflicts over compensation rather than achieving the original purpose of healing and restorative justice. Judicial punishment based on positive law has made the mistake of providing indulgence for moral, conscientious, and social "injustices" that falls outside the standard of legal punishment. As discussed earlier, the "sin committed against the people" by the insurgent group and perpetrators at the time caused an error that was not taken into account. The Commission's work of truth-finding can be understood as part of an effort to rectify this inverted process and realize the definition of transitional justice.

Based on this recognition, the Commission strives to follow the internationally agreed and recommended transitional justice practice and the universal operating guidelines of the Truth Commission's activities.

The first is victim-centered approach. The Commission was established as a result of the government's acceptance of the victims' and their bereaved family's request to find out the truth. Therefore, the Commission's activities should be conducted at the level at

Violations of International Human Rights and Humanitarian Law, 2005,

6) According to the 2004 U.N. Security Council resolution, the transitional justice refers to "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (and none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (UN Security Council, 2004).

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which the victim's basic right, the "right to seek truth," is first satisfied. The violation

against the victim's human rights should first be confirmed based on the statements of the victims, and based on these statements, the perpetrators should "acknowledge" the facts. The perpetrators also have the legal and social right to refute the statement of the victims, and of course the rebuttals must be open and rational. This is why the Commission is devoting its utmost effort to receiving and verifying the victim's extensive statements first and foremost through its investigation activities. Although there have been numerous victim statements centered on the civil category, as a national organization, the Commission is carrying out work to officially reaffirm and reflect such statements and is incorporating them into its report. This work has the significance of a documentary work that records the memories of individual victims as a national memory.

The second is inductive approach. The purpose of the Commission's truth-finding investigation is not to prove that a given proposition is true, but to empirically verify the truth of the claim based on the field data. The Commission adheres to the principle of starting with what John Rawls called as "veil of ignorance," excluding all moral, political, and psychological predictions, at the level of re-verification of claims that so far have been taken for granted in relation to the comprehensive truth of May 18. This is also the reason why the Commission declared a "bottom-up" approach to reconstructing the case based on the statements of the enlisted soldiers who were active at the scene of the atrocities. The Commission is trying to secure at least 2,000 statements from the 20,000 martial law enforcement forces who participated in the operation at the time of May 18, to reproduce the incident and reflect it in the report.

The third is evidence-based approach. The evaluation and deliberation of the results of all investigation activities must be based on evidence that guarantees objectivity, consistency, value neutrality, and reproducibility, beyond the level of "reasonable doubt". This evidence includes all statements, testimonies, documents, and video materials secured by the Commission, and the judgment of objectivity, consistency, and value neutrality of the evidence shall apply mutatis mutandis to the universal standards recognized by our society and the verification of groups recognized for neutrality. However, in case of a conflict of opinion, a decision must be made by the "reasonable deliberation" of the Commission. Given that the Commission was established as a result of political compromise, and that members with different political views deliberated and voted on the outcome of the Commission's activities. It goes without saying that this evidence-based approach is the most powerful means of avoiding conflict of interests.

The fourth is the principle of accountability. All statements and evidence obtained by

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the Commission shall be in real-name, accessible to anyone, and the speaker of the statement shall be exposed to the public domain. Furthermore, in principle, a person who

is socially responsible for certain actions must disclose his or her identity. This principle of disclosure and responsibility is a condition that must be met to ensure social trust and publicity of the results of the Commission's activities.

4. Challenges

The ultimate goal of the Commission is to fully reproduce the substantive truth of May 18 as a tragedy in front of the public, by mobilizing all the capabilities permitted by the law, and to make the perpetrators responsible for this tragedy to "acknowledge" this substantive truth. It is a very difficult process for the Commission, which is not a judicial institution but has limited legal enforcement, to receive an acknowledgment of the violation from the perpetrators. However, at least for the state and rational civil society to officially confirm the perpetrator's atrocities and leave them as a common memory, it is a painful task for the Commission to bear until the end.

This process will eventually become a major turning point in realizing transitional justice, which is desperately needed to solidify social cohesion and democracy in Korea, which has achieved democracy as an institution through the sacrifice of May 18. Such tragic situation should not repeat itself again. Furthermore, the dignity of the lives sacrificed during the May 18 Democratization Movement should never be undermined.

The Commission has currently set a total of 21 fact-finding tasks and is moving forward beyond the mid-term of its activities. There's a significant number of discarded, concealed and fabricated records that are necessary for finding the truth; traces of concealment and manipulation are evident; and the key figures holding the key to finding the truth are responding with a strategy of denial and refusing to speak. However, the relentless march toward the truth will be hard to resist. The true driving force behind the Commission's activities eventually comes from the unsparing solidarity and support from civil society. Certainly, the Commission's efforts to meet the expectations of civil society should come first.

Transitional Justice and the Challenges of May 18

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1. Role of May 18 in Settlement of the Past

Korea is the country that has experienced the Japanese occupation, division, war, coup d'état, and military dictatorship overlapping in less than 80 years from 1910 to 1987. A society that has undergone a huge political upheaval that entails changes in the "state political system" or "identity" inevitably faces the task of settlement and transition. From the Constitutional Assembly immediately after liberation, the settlement of anti-national activists during the Japanese colonial period began. After destroying Syngman Rhee's ambition for long-term constitutional power, which was marred by excerpts of the constitutional amendment, rounding off constitutional amendment (Sasaoip), and March 15 rigged elections, through the "April 19 Revolution", attempts were made to punish "anti-democratic acts, fraudulent elections, and illicit fortune maker" and to settle the Geochang Civil Massacre during the Korean. In the early days of the Park Chung-Hee's administration, the demand for the settlement of colonial contradictions was raised. At that time, the reason why he was able to imitate the settlement of the past was not because of the will of political power, but because of the great public demand. If the phase before the democratization movement in June 1987 was called the first phase of settlement of the past in Korea, attempts to settle the first phase were repeatedly thwarted, and the tasks of settlement that were postponed or avoided have accumulated and lurched in Korean political society in a special form. Also, during the authoritarian regimes of Syngman Rhee, Park Chung-Hee, Chun Doo-Hwan, and Roh Tae-Woo, the harms of state crimes were not properly resolved, and they were accumulated and mixed with different levels of settlement of the past agendas, or called as political tools depending on the dynamics between political forces.

Although more sophisticated standards will be required in the future, in this presentation, the first phase of settlement of the past in the Korean society is from liberation up to the democratization movement in June 1987; the second phase is from 1987 to 2021 when Chun Doo-hwan (Roh Tae-woo) died,¹⁾ and the third phase from

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2022. The first phase is a period of about 40 years from 1948 to 1987, covering various settlement of the past tasks such as the Japanese colonial era, the Korean War, and the military dictatorship, in multiple layers. During the first phase, there have been several attempts to settle the past, but most of them have payout to no avail by the ruling forces. The second phase can be taken as the beginning of the transition to democracy as a result of the June 1987 movement. Compared to the first phase, the striking change was that the authoritarian system began to shrink compared to the previous one as the public demand for democratization expanded, and this changed political landscape allowed settlement of the past in a different aspect from the first phase. The May 18 Democratic Uprising was at the central role that led to the second phase of settlement of the past in Korean society. Unlike the first phase, in the second phase, the bottom-up call for "finding the truth" and "punishment of those responsible" served as a driving force behind the transition of democracy amid public response. As the base of democratization expanded, the leading forces of the 5th Republic were inevitably forced to make certain concessions and compromises to the democratization forces. Even if candidate Roh Tae-Woo's "reconciliation" on May 18 during the presidential election process is a strategic reconciliation request in terms of collecting vote strategy, he defines May 18 as mob disturbance and shared medals by praising each other's repression by tyranny. It clearly shows a different pattern from the actions of the 5th Republic.

Even after the presidential election victory, as demands for May 18 truth finding and punishment for those responsible emerged as important political issues, when the political power was put under pressure, the Roh Tae-woo administration had to accept the Gwangju Hearing and push for the 1990 Gwangju Compensation Act. On December 21, 1995, the enactment of the "Special Act on The May 18 Democratic Uprising, etc." and the "Special Act on the Prescription for Public Prosecution, etc. against Crimes Disrupting Constitutional Order" were important institutional achievements in settlement of the past of Korea and bringing about a qualitative change in the normalization of democratic constitutional order. It is significant that the perpetrators of state crimes, including the two former presidents, were punished through a normal judicial system under the democratic constitutional order. This legally establishes the norms of legitimacy of the democratic constitutional order, and "successful coup d'état" serves as a safety valve for democracy that fundamentally blocks the possibility of illegal governance in the future. In 1997, the convictions of those responsible for the May 18 armed suppression, including the two former presidents and other officers, continued, and requests for the settlement of the past other than May 18, which had not surfaced in

1) Chun Doo-Hwan, who was sentenced to life imprisonment by the Supreme Court in 1997 for military rebellion, insurrection, and murder for the purpose of insurrection, died on November 23, 2021. Chun Doo-Hwan did not reveal the truth to the victims and the public for 41 years until just before his death and never apologize, but was consistent with excuses and denials (The May 18 Truth Commission press release, November 23, 2021).

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the meantime, were able to enter a full-scale institutionalization phase.

Since 2000, when the people's government came to power, May18 played a central role, and the second phase of settlement of the past, which has been driven by it, began in earnest. Many of the tasks of settlement of the past that have accumulated over the years such as 'Jeju April 3', 'Uimunsa(Unexplained Death)', 'Institutional Democratization', and 'Pro-Japanese or colonial remnants' burst. The form of settlement was the same as the Gwangju Compensation Act, and the government-led 'Commission' was established through the enactment of a special law. As such, May 18 was the key driving force behind the settlement of the past in the second phase that started after the transition of democracy, and it was a role model for the later settlement using the reparation model or justice model. In particular, the May 18 reparation model was later used as a basis for the enactment of a special acts for the purpose of restoration of honor and compensation for pro-democracy movement, such as the Bu-Ma Democratic Protest, and for the operational of the commission.

In the meantime, successful reparation, punishment of those responsible, retrial by the judiciary institution, and courtesy to people who have contributed to democracy, which has been carried out in the May 18, are undoubtedly important achievements in terms of institutional settlement of the past. However, despite these series of achievements, can we be confident that the definition of May18 transitional justice is being properly implemented in Korean society as of 2022, 42 years since the May 18 outbreak? Due to the structural limitations caused by the implementation of the convention-based democracy, the truth-finding, which should have been the most advanced among the 'Five Principles of Resolving the Gwangju Problem', was pushed back to the next priority. Given that the delayed truth-finding is currently in progress, it can be expected that the definition of the May 18 transitional justice will be further implemented based on the result of The May 18 Democratization Movement Truth Commission. However, it is also true that there is skepticism about whether the distortion and denigration of the May 18 will disappear, even if the truth is revealed, and about how much change will be made in the perception of the May 18 Uprising in Korean society. Even now, reports about the May 18 distortion are constantly being posted on the website of the May 18 Memorial Foundation. In his memoir in 2017, Chun Doo-Hwan never apologize for the May 18. Let alone an apology, he insisted that it was a just and inevitable measure.

Just as the struggle to protect the liberal democracy of the Republic of Korea during the 1950 North Korea's invasion to South Korea was a struggle, at the cost of millions of lives, the government measures and martial law enforcement forces confronting the armed revolutionary forces that tried to overthrow the South Korean government on May 18 incident were just and justified to protect the Republic of Korea. I believe that it will soon be clear that the government and martial law enforcement forces' confronted the armed revolutionaries who tried to overthrow the government of the Republic

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of Korea (Chun Doo-Hwan 2017, 535).

Why should May 18 suffer from denigration or distortion, and why should the problem each time be solved through new legislation? Will all of these issues be resolved once the Truth Commission's findings are announced? Eventually, on January 5, 2021, the "Special Act on the May 18" was amended to introduce a new clause to punish those who spread false information. The reason for the revision was none other than because the May 18 transitional justice was not properly implemented.²⁾ This current situation shows why we should pay attention to the dimension of transitional justice in seeking the future task of the May 18 after Chun Doo-Hwan's death.

Jung Geun-Sik, a representative May 18 researcher, also suggested the need to pay attention to transitional justice. On the occasion of the 40th Commemoration of May 18, he pointed out that "there is no sufficient answer to the question of what is the difference between looking at the May Movement in the context of settlement of the past and in the context of transitional justice." (Jung Geun-Sik 2020, 38). The social implementation of the May 18 transitional justice cannot be resolved solely at the institutional dimension of settlement of the past. The transitional justice of May 18 is not only composed of the confirmation of facts and institutions, but it is implemented only through social interaction, recognition, and expansion of consensus. The social value of May 18 is not fixed, but constantly reconstructed, and the living world should be able to be reconstructed as a social assets. This is why we should pay attention to the transitional justice. In the following part, the presenter will look at how settlement of the past and transitional justice can be conceptually distinguished; the performance of May 18 settlement of the past over the past 40 years; and the tasks of the May 18 that can be presented in terms of transitional justice.

2. Distinction between Settlement of the Past and Transitional Justice

Since around 2000, domestic academia has shown increased interest in transitional justice.³⁾ Theoretical approaches to settlement of the past has begun in earnest, and

2) The reasons for the amendment are as follows. "The May 18 Democratic Uprising is a representative democratization movement that contributed to the development of democracy in the Republic of Korea and it is a sad history of the modern and contemporary history of Korea. However, even after 40 years have passed, there are still forces that slander and denigrate, distort and fabricate the historical facts on the May 18 Democratic Uprising, thereby promoting division in the national opinion and using it politically. The distortion of history of The May 18 Democratic Uprising goes beyond simply insulting victims and the bereaved families or defaming their honor, and can lead to a greater social repercussions, such as dissemination of false historical perceptions and division of national public opinion. Therefore, it is necessary to punish them more severely than general laws such as the "Criminal Law" or "Act on Promotion of Communication Network Utilization and Information Protection, etc." Refer to the homepage of the Korean Law Information Center of the Ministry of Government Legislation (Search date: February 13, 2021.2.13). <https://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=228079&lsId=&efYd=20210105&chrClsCd=010202&urlMode=lsEfInfoR&viewCls=lsRvsDocInfoR&ancYnChk=0#>.

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cases from South America and Africa were introduced (Jung Geun-Sik 2002; Kim Hoon 2001; Ahn Jong-Chul 2002). In particular, the May 18 discussion was focused on as Korea's representative case of settlement of the past. In a critical sense of the civilian government's policy of resolving reparation and commemorative projects, as the five principles for solving the May 18 problem (investigating the truth, punishing those who are responsible, restoring honor, compensating, and spiritual succession) were established, focusing on truth finding and punishment of those who are responsible, the principles and directions for settlement of the past and transitional justice were established. Since then, various research results have been presented, including discussions on the principles and measures of settlement of the past, substantive discussions on activities and achievements, and limitations of each past historical commission, and comparative studies with major overseas cases (Kim Jae-Kyun 2000; Lee Kwang-Il 2004; Lee Young-Jae 2006; Jung Ho-Ki 2006).

In the past, the definition of the past liquidation and transitional justice was often used almost synonymously. The concept of a transitional justice has been increasingly used since 2000, as can be seen from the descriptions such as, "The question of how to settle the atrocities committed during the dictatorship under the new government is defined as the transitional justice period (Lee Jae-Seung 2002, 47)." or "The past liquidation is a democratic-based modern phenomenon, usually defined as a transitional justice" (Han Sung-Hoon, 2010, 117)." Even in the undifferentiated aspects of the concept of settlement of the past and the transitional justice, the concept of the transitional justice was gradually used in various contexts, revealing differences in the content and perspective of the transitional justice among researchers. Kim Hak-Jae identifies the transitional justice as a temporary and limited concept of "the justice necessary for the 'transition period' to a democratic system" (Kim Hak-Jae 2010, 83). Choi Jeong-Ki proposes that the content of the transitional justice is what constitutes it. "In the course of settlement of the past, there is bound to be a fierced debate over what is justice, and in the process, the concept of justice is constructed (Choi Jeong-Ki 2006, 4)." The concept of the transitional justice and the differentiation of the settlement of the past mechanism are not unique aspects that appear in the discussion of the domestic transitional justice. Elster, who discusses the transitional justice by extending his view to the restoration of Athenian democracy (411 and 403 BC) and the restoration of the French monarchy (1814 and 1815), is also in a position to equate the justice with the mechanism or method of settlement of the past. Elster argues for the concept of a transitional justice that requires 'the existence of political transition', and explains the transitional justice in conjunction with trials, acquittals, and reparation, which can be

3) Although there are more cases where 'transitional justice' is translated as 'justice at the turning point' in Korean language According to the confirmed search on the Korean Journal Citation Index, there were 205 research papers with the keyword "transitional justice" published from 2002 to 2022.

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said as the mechanism or method of settlement of the past. Elster roughly equates the mechanism of settlement of the past with the transitional justice. According to him, "the transitional justice consists of the processes of trial, acquittal, and reparation that occur after the transition from one political system to another (Elster 2004, 1)."

On the other hand, Kriger distinguishes between settlement of the past and transitional justice. Kriger criticizes Elster for failing to universalize the transitional justice by limiting it to the mechanism of settlement of the past and analyzing it mainly on empirical utility. Kriger criticizes Elster for failing to consider the transitional justice from a historical perspective emphasized as a subtitle in his book (Closing the Books: Transitional Justice in Historical Perspective) (Kriger 2006, 662). Since the past settlement mechanism and settlement method cannot reflect the political, historical, and social structure of the country, it inevitably differs depending on the characteristics of the society, the object of settlement, and the settlement subject. Therefore, there is a limit to subdividing and generalizing the frame of the settlement mechanism. Jung Geun-Sik said, "the political and philosophical agenda that 'Gwangju May 18' has thrown toward Korean society over the past 40 years has been 'settlement of the past' and 'transitional justice', which were the most important tasks in Korean modern history, along with the right to resistance as a human right. However, the difference between 'settlement of the past' and 'transitional justice' has not been sufficiently discussed and has been used interchangeably (Jung Geun-Sik 2020, 13)," suggesting that sufficient discussion on the definition of settlement of the past and transitional justice is necessary.

On the other hand, the transitional justice is sometimes regarded as a temporary dimension limited to the transitional justice. Webber defines the transitional justice as a concept that refers to "situations in which society moves from injustice to justice, from oppressive government to government that respects the rule of law, and from authoritarianism to democracy" (Webber 2012, 98). Perry and Sayndee define the transitional justice as "an effort to rebuild a failed state that can enable a restoration of the rule of law and participatory democracy from a situation that has been suffering from terrible human rights violations and undemocratic rule." According to them, "transitional justice" is a concept that appears in the political transition between the past and the future in a fragile state (Perry & Sayndee 2015, xii). When transitional justice is viewed as transitional concept that refers to situations in transitional period such as Webber, Perry, and Sayndee, the transitional justice become something that is understood as a temporary dimension limited to the transition period rather than a dimension to be implemented in the future. As such, the definition of the transitional justice is used in various ways, such as 'means or mechanisms of settlement of the past', 'limited definitions related to democratization implementation', and 'new justice to be constructed' based on somewhat different concepts. Before considering the task of defining the May 18 transitional justice, it is necessary to examine in more detail the

3. Concept and Definition of Transitional Justice

To avoid confusion in the concept of transitional justice, the presenter first proposes to distinguish between the mechanism and the content dimension of transitional justice. If the operation of the mechanism to correct the destruction of democracy and human rights abuses by injustice such as coercion is the settlement of the past model, the mechanism of justice in the transition period, that is the settlement of the past liquidation model, is divided into a "truth commission model" and a "justice model" in a broad framework. In addition, the 'reparation model' has been used in various dimensions along with the truth commission model and justice model. Each of these settlement of the past models does not work independently. In the actual process of the past liquidation, punishment and compensation for damage are usually accompanied as part of follow-up measures following the finding of the truth. In the reality of the past liquidation, such as punishment of those responsible or reconciliation, various combinations work interrelated according to political and social forces. As in Korea, in cases where the justice of the convention democratization has been carried out, the compensation model is often centered on the punishment of those responsible or the reduction of the political burden of finding out the truth. Although these settlement of the past mechanisms differ in the method and procedure of settlement, 'dismantling authoritarian order and consolidation of democracy', 'realization of historical and social justice', 'preparation of an institutional framework to prevent recurrence of state crimes' (Sung Kong-Hoe University Human Rights and Peace Center 2005, v-vi) is common in that it pursues the transitional justice.

The International Center for Transitional Justice (ICTJ) defines transitional justice as follows.

Transitional justice is a response to systematic or widespread human rights violations. Transitional justice seeks to promote recognition of victims and the possibility of achieving peace, reconciliation and democracy. Transitional justice is not a special form of justice, but a justice that is appropriate for a society that is transforming itself after a period of widespread human rights violations. These transitions can happen either suddenly or over decades. This approach emerged in the late 1980s and early 1990s, primarily in response to political changes in Latin America and Eastern Europe, and the demands for justice in the region. Since this change has been commonly referred to as the 'transition to democracy', this new multidisciplinary field has started to be called 'transitional justice' (ICTJ homepage).

The ICTJ definition of a transitional justice is that it "consists of judicial and

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non-judicial measures implemented in order to redress legacies of human rights abuses.” Such measures include ‘criminal prosecutions’, ‘truth commissions’, ‘reparations programs’, ‘gender justice’, ‘security system reform’, ‘memorization efforts’, etc., to implement the transitional justice implementation model (settlement of the past model) and institutional reform (ICTJ homepage). However, the mechanisms of this transitional justice are not the same as the contents of the transitional justice.

In addition, it is necessary to keep in mind that the transitional justice is a unique concept that emerged as a response to the situation of ‘political transition’ at ‘a specific point in time’. As seen in the ICTJ definition, the political situation in Latin America and Eastern Europe in the late 1980s and early 1990s is the direct background to the emergence of the transitional justice of the second phase⁴⁾, identified by Teitel. The political situation at this particular point in time has a transitional characteristic of transitioning from authoritarian or oppressive domination to democracy. At this turning point, the political situation becomes highly politicized. In this specific political situation at a specific point in time, the transitional justice is emerging from the oriented dimension of promoting ‘democracy’ and ‘state construction’. Transitional justice are broadly adopted ‘after atrocities’ or ‘following periods of conflict, civil unrest and oppression’. As such, transitional justice can be said to be a concept of justice combined with the dimension of political change and transition (Teitel 2014, 49).

It is necessary to pay attention to the challenges facing the country or society in the transition period to overcome past injustice. Countries in transitional political situations escaping from political unrest, suppression of state by authoritarian rule, and violent conflict face the question of how to deal with the injustice arising from authoritarian governance and violent conflict. Here, past injustice mainly refers to large-scale atrocities and human rights violations. Despite some conceptual differences, transitional justice represent a special approach to addressing the legacy of large-scale human rights violations and the legacy of international crimes (Villalba 2011, 3). In addition, the problem of the goals to be achieved through the transition justice is also important. After large-scale atrocities have occurred, the country must establish justice for the past crimes and achieve peace, democratic society, and the establishment of the rule of law. The United Nations evaluates that transitional justice contributes to promoting accountability, reinforcing respect for human rights, and strengthening the rule of law, economic development, and democratic governance (Report of the Secret-General. S/2011/634, paragraph 17). In this way, the transitional justice is a future-oriented justice that aims to form a society that respect human rights, establish the rule of law, economic development, and promote democracy. Forsythe suggests that the main goals

4) Teitel divides the war crime trial phase centered on the Nuremberg Trials in the post-war era after 1945 as the first phase of transitional justice, and after the first phase ended by the Cold war, the second phase came with the democratization wave in 1989. The third phase is a steady-state phase and is associated with contemporary condition of persistent conflict, which lay the foundation for a normalized law of violence (Teitel, 2003).

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of transitional justice include establishing a human rights-protecting state, deterring future atrocities, reconciliation among divided communities, and building a rights-protective polity in the future (Forsythe 2012, 117). While the transitional view of justice that progressed after World War II focused on establishing criminal justice, transitional justice in the global wave of democratization is expanding its concept to a new theory of justice that restores the leaning foundation of social justice.

The concept of transitional justice can be divided into two separate concepts: transition and justice. Although both 'transition' and 'justice' are controversial concepts in the social sciences, according to some agreed practice, transition refers to regime transition. Systemic transition refers to various kinds of systemic change, such as transition from authoritarianism or totalitarianism to democracy, transition from democracy to authoritarianism (reverse transition), transition from authoritarianism or democracy to state failure, state collapse or the birth of a state, or it can encompass any transition from state failure to authoritarianism or democracy. In the context of transitional justice, transition generally refers to a transition towards liberal democracy. This kind of transitional justice excludes transitional justice introduced by governments under authoritarian regimes without regime transition or transitional justice introduced without democratic transition (Lee Byung-Jae 2015, 88).

Lundy and McGovern present meaningful suggestions in relation to how transitional justice are constructed. They emphasize that transitional justice must adopt a participatory approach to achieve long-term sustainability. This is also a proposal for a new challenge to the settlement of the past in Korean society, which operated the transitional justice mechanism in a government-led commission method. Lundy and McGovern emphasize the need to move away from a top-down 'one size fits all' approach to being able to listen and pay attention to the 'voices from below' with respect to transitional justice. Lundy and McGovern's proposal for the need to implement a transitional justice based on bottom-up participation is meaningful in that it suggests the need to revise the trajectory of Korean society, which is consistent with the method of institutional settlement of the past from the top through an official government body (Lundy & McGovern 2009, 265-292). The settlement of the past carried out under certain political structural constraints after the conventional transition has no choice but to expose certain limits in finding the truth and punishing those who are responsible. The enactment or revision of law addressing this constraint and institutionalization at another level need to be paralleled with the program to solidify the transitional justice through various social interactions.

4. Reasons Why May 18 Is Important in Terms of Transitional Justice

From the perspective of transitional justice, it can be evaluated that the series of processes for the settlement of the past surrounding The May 18 Democratic Uprising

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reflected and overcame the social structural dynamics between state violence and authoritarian governance and democratic constitutional order, despite the political structural constraints. It is still difficult to assert that the implementation of the May 18 transitional justice has been successful. The May 18 transitional justice is currently in progress, and it is at a time when the composition and concrete implementation of future challenges toward solidification are required.

Again, the past series of processes for settlement of the past surrounding May 18 must be an important achievement that solidified Korean democracy through a series of democratic legislative processes. The process of settlement of the past for May 18 was not only a process of confirming the principle of popular sovereignty, but also a process of concretely embodying the principle of the democratic rule of law. In the past, the settlement of the past process was a process of erasing the stigma of the new military government against May 18 as a riot by mobs who were ordered by North Korea, establishing a normal political order and judicial system one by one. In the end, May 18 found its place in terms of legitimate national resistance to the "barbaric" regime that came to power through insurrection and murder for the purpose of insurrection, and created an advantage of national legitimacy for distorted facts through successive judicial rulings.

The chronological summary of this series of processes is as follows. The Past liquidation process of the May 18 started with a consolation money provided by the new military government and was institutionalized as a compensation model according to the Gwangju Compensation Act in 1990. However, the May 18 settlement of the past continued to move forward without complacency, having individual compensation as final destination. On December 21, 1995, the "Special Act on The May 18 Democratic Uprising" and the "Special Act on the Enforcement Decree of Crimes of Destruction of Constitutional Order" were enacted, leading to the punishment charge of Chun Doo-Hwan and Roh Tae-Woo in 1997. This series of processes was a process of confirming that the people were the source of the legitimacy of the constitution and political power in the Korean democratic constitutional order.

Some key points need to be addressed. The controversy over the "successful coup d'état," which became an issue during the struggle for recognition of The May 18 Democratic Uprising, provided a judicial basis to be recorded as an important precedent in South Korea's democratic constitutional order. The judiciary ruled that a successful coup d'état could not exist without a legitimate process or power and could not be tolerated only as a subject of punishment by the South Korean judiciary. The following is the content of the court's ruling. "Even if the constitution was amended through a referendum and the country has been governed according to the amended constitution, it cannot be said that a new legal order was established through the military insurgence and civil rebellion. Under the constitutional order of the Republic of Korea, it is unacceptable under any circumstances to make it impossible to exercise the power of a

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constitutional institution, or taking over the regime through violence, except in accordance with the democratic procedures stipulated in the constitution. Therefore, those acts of military insurgence and rebellion are subject to punishment" (Sentence 96-do-3376. Judgment 1 Majority Opinion).

On the other hand, it is also important to interpret the 'legal interest' presented by the Constitutional Court when it made a constitutional decision on the constitutional petition ahead of the enactment of the "Special Act on May 18". The Constitutional Court declared that even if a special act was an individual case law, it would not violate the constitution if the important public interest to justify the legislation could be recognized. As the basis for the important public interest, "the necessity of correcting the distorted flow of Korean constitutional history for half a century and the need to restore justice by punishing those who committed the crimes of destroying constitutional order during the process of taking power" were cited. In addition, 'the profit resulting from the completion of the statute of limitations is a simple legal benefit. While it does not belong to the basic rights guaranteed by the Constitution, it is necessary not only to correct the distorted flow of our constitutional history, but also to restore justice by punishing those who committed the crime of destroying constitutional order during the process of taking office. In the future, it is required to prepare a milestone in the constitutional history for the establishment of a liberal democratic basic order so that such an unfortunate situation will not be repeated again in our constitutional history' (Han In-seop 2002, 201-203).

Here, let's pay attention again to the 'five principles of solving the Gwangju problem, i.e. 'truth finding', 'punishment of those who are responsible', 'restoring honor', 'reparation', and "mental succession." These five principles are both the principle of settlement of the past and the principle of implementing the transitional justice. Paradoxically, among these five principles, to implement the first principle the settlement of the past began the latest. Forty years after the May 18 incident, a special law was enacted for truth investigation, and a truth commission was established. The commission is working to "contribute to national unity by investigating human rights abuses, violence, massacres, and burial cases caused by anti-democratic or anti-human rights acts by state power during The May 18 Democratic Uprising in Gwangju in 1980, and uncovering the distorted or concealed truth." Through thorough truth-finding activities, it is hoped that the facts of various rumors and speculations can be properly identified, along with the tasks of finding the truth that have been accumulated over the years. Rumors, distortions, and slander surrounding May 18 are factors that seriously hinder the implementation the May 18 transitional justice. In fact, false claims that May 18 was a rebellion and riot involving 600 North Korean Special Forces have been publicly raised not only on the internet and in publications, but also at the National Assembly public hearings. The distortion and fabrication of truth about May18 seriously deviated from the limit of the constitutional right of the 'freedom of expression'. On January 5, 2021,

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the National Assembly revised the "Special Act on The May 18 Democratic Uprising" and added a provision to punish those who spread false information, taking measures to cope with denigration and distortion of The May 18 Democratic Uprising. However, this may be a suboptimal solution, not the best way to implement the May 18 transitional justice. It should be made so that the distortion and denigration of May18 can be purified not out of fear of punishment, but by voluntary social consensus. The current situation in which we have to borrow the coercive force of laws and institutions is also a proof that the May18 transitional justice has not been consolidated.

In the future, institutional absurdity bans and truth-finding activities will be officially carried out at the institutional level, but the important issue is whether the social consensus that implements the May 18 transitional justice can be further expanded. The settlement of the past for May 18 needs to be transformed into a political project that can be combined with broader political and social recognition, trust, and solidarity beyond the judicial and corrective definitions of individual victims. We should ask what May 18 has been for the past 40 years and what should be for the future of Korea. It is time to solidify the transitional justice of Korean society, which should be constructed under the long-term perspective.

5. The May 18 Transitional Justice Challenges

To summarize the contents and goals of the transitional justice at the political ideological level, the transitional justice aims to correct and restore the destruction and damage of justice shared by the political community. Justice shared by the political community will be the higher norms of natural law existing on the democratic constitutional order or positive law. From Aristotle's concept of corrective justice, it is possible to infer the definitional characteristics and content origins of the justice conception of settlement of the past. The useful implications of this corrective view of justice and settlement of the past justice can be found in Adam Smith's discussion on justice. Adam Smith connected the context of justice with 'punishment' and 'coercion' and conceptualized justice as a core element supporting society. Adam Smith's warning that "if [justice] is removed, the great, the immense fabric of human society, that fabric which to raise and support seems in this world if I may say so has the peculiar and darling care of Nature, must in a moment crumble into atoms," (Smith 2009, 2.3.3.4) is important. Justice is not just a decoration of society, but a major pillar that supports every building in society. "[T]he prevalence of injustice must utterly destroy [the society] (Smith 2009, 2.3.3)." It is the role of settlement of the past to get it right and correct injustice so that justice is not temporarily violated and injustice does not prevail and destroys the society. According to Smith, the reason why the issue of justice is important in society is that the least indispensable requirement for the full functioning of social virtues such as friendship, humanity, kindness, and generosity lies in the

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establishment of the foundation of justice. Therefore, the restoration of justice through the settlement of the past and the future realization of justice are laying the foundation for the restoration of 'happy' and 'pleasant' social nature (refer to Lee Young-Jae 2012).

Unlike in the past, the necessary and sufficient conditions for justice for the maintaining the modern political society need to be established more clearly, rather than staying at the normative level. The presenter seeks to find the necessary and sufficient conditions in the democratic constitutional order.⁵⁾ Those who arbitrarily seized political power in order to destroy the democratic constitutional order that forms the basis of social justice and satisfy self-interest should be classified as criminals who have destroyed the democratic republic. As Smith put it, the criminals are the ones who have harmed our neighbors and community out of their own needs. These criminals are destroyers who endanger justice, the pillar of social foundation.

If the injustice of the past is properly investigated, the reputation that has been damaged is restored, and forgiveness and reconciliation are not achieved based on the true apology of the perpetrator, then the legacy of this past 'injustice' is the present and the future. It becomes a fatal obstacle threatening procedural and distributive justice, which will undermine social justice in future generations. The "oblivion model," which was frequently mentioned as a method of settlement of the past in Spain, was to cover up and forget about the injustices in the past without holding accountable the perpetrator. This means that we should not encourage conflicts in reality. However, if we recall the fact that the existence of society is in jeopardy without restoring the violated justice, "the agreement of oblivion is nothing more than a delay in justice and suppression of justice" (Lee Jae-Seung 2011, 35). 'Justice delayed is justice denied'.

Transitional justice towards the present and future justice logically and inevitably presupposes the bridgehead of settlement of the past. The truth-finding (first principle), which should have been the most preceded among the "five principles for solving the Gwangju problem", is belatedly in progress in accordance with the "Special Act on the Truth-finding". At the time of the May 18 crackdown, the actual command system, the firing order system, the actual killing of civilians, injuries, and sexual violence in Gwangju, and the investigation into the buried and missing persons is underway. If the truth-finding is successfully completed, it is expected that the lack of the other four principles can be supplemented based on this. In addition, the revision of the "Special Act on May 18" in 2021 will have the effect of introducing a new provision to punish those who spread false information related to May 18. It is important that the final settlement of the past to correct this past injustice is prioritized and successful. In addition, it is necessary to emphasize that it is an important task to materialize the

5) Here, it is not intended to emphasize the actual legal characteristics of this constitutional order. More intrinsically important, the 'power to enact constitution' should be the basis for forming and standardizing the rules of justice. This constitutional norm is a source of justice that can resist and rectify the injustice of the 'positive law' in which "power established by the constitution" mobilizes "arbitrary" force to destroy and produce constitutional justice norms.

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transitional justice of future Korean society. The practical tasks for implementing the May 18 transitional justice are as follows.

First, from the perspective of democratic and constitutional history, the May 18 spirit contains the most important essence of the Constitution of the Republic of Korea. It is necessary to solidify its value in the context of democratic and constitutional history by including the May 18 in the full text of the revised constitution in the future. In addition, regarding the establishment of the "May18 Study" prepared by the May 18 Memorial Foundation, May 18 needs to be treated more importantly as an case of law or social science in the context of constitutional history.

Second, May 18 is recognized for its global value as a democratization movement, a social movement for human rights and peace, with documents related to May 18 being registered as a UNESCO World Record Heritage (May 25, 2011). In this regard, more systematic government-level support and follow-up measures are required..

Third, the settlement of the past of May 18 so far has mainly been directed towards the experience generation and the memory generation. It should be taken into account that May 18 is the modern history of 42 years ago for future generations. We need to think about the point of contact for the next generation who will come into contact with May 18 as history without sharing the experiences and memories. It is time to seek more actively for the definition and value of May 18 to be passed down to the next generation. Recently, a number of local governments have enacted the "Ordinance on Courtesy and Support for Persons Related to Democratization Movement". According to Article 4 (Responsibility of the Mayor) of the "Gwangju Metropolitan City Ordinance on the Honorable Treatment and Support for Persons Related to Democratization Movement", the Mayor shall cooperate with the superintendent of education in Gwangju to develop programs for teenagers and reflect them in each school and lifelong education course. It is necessary to be actively develop programs that can be used in schools and civic education, so that each local government's ordinances can play a practical role in accordance with the purpose of enactment, without staying at the level of declarative ordinances. In addition, considering that the field of national veterans has expanded to the level of "democratic merit" in the wake of May 18, it is necessary to actively expand the role at the level of national veterans.

Fourth, now is the time to find out what May 18 can contribute to the consolidation of democracy in Korea. Over the past 40 years, a number of May 18 organizations such as The May 18 Democratic Uprising Contributors Association, The May 18 Democratic Uprising Injured Association, and the May 18 Democratization Merit and Freedom Families Association have been launched, and May 18 related organizations such as the May 18 Memorial Foundation and the May 18 Archives have been established. In January 2022, The May 18 Democratic Uprising Public Operatives Association was launched as a public law organization related to May 18 for the first time, and subsequent public law organizations are scheduled to be launched one after another. The

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conditions for May 18 meaningful activities for Korean society are being created. It is also necessary to constructively explore what May 18 will do for Korean society.

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The Truth Commission in South America and the Process and Lessons of Transitional Justice¹⁾

- Focusing on the Illegal Land Cases in Paraguay -

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1. Background of the Truth Commission in Paraguay and South America

It is no exaggeration to say that the modern history of Latin America is the history of democratization surrounding the dictatorship and the forces that resisted it. For the past 200 years since independence from colonial rule, Latin America has been alternating between dictatorship and anti-dictatorship struggle against it, i.e., the struggle for democracy. The most intense place among these struggles for democracy in Latin America is probably the Conosur region. Conosur is commonly referred to as the southern region of South America, and it includes Argentina, Chile, Uruguay, Paraguay, southwestern Brazil, and parts of Bolivia.

In the 1970s and 1980s, the region was the site of Operación Cóndor, where anti-democratic oppression was carried out on a large scale. Operación Cóndor refers to an incident in which South American governments under the military dictatorship at the time worked together to define communist and socialists, the so-called left-wing forces, as subversive forces, and attempted to kill, kidnap, torture, and imprison them. In the process, innocent people unrelated to communist and socialist ideas were also harmed, resulting in tens of thousands people being killed and missing.

1) This presentation consists of four papers (Gu Kyung-Mo and Noh Yong-Seok, 2012 'Impeachment of Fernando Lugo and the Specificity of Justice in the Paraguay Transition Period', *Journal of Democracy and Human Rights* Vol. 12, No. 3, pp. 201-234, "The Establishment of the Paraguayan Military Dictatorship and the Role of Anti-Communism," *Comparative Culture Research*, 45, pp.145-1668, "The Historical Factors of Land Policy and Farmers' Movement of the Paraguayan Military Dictatorship," *Latin American Studies*, Vol. 31, No. 3, pp. 129-148, Gu Kyung-Mo 2020, *The Relationship between Economic Inequality in Paraguay and Land Policy in Military Dictatorship*, *Humanities and Society* 211, Vol. 4, pp. 1957-1968) and a contribution (Gu Kyung-Mo 2020, 'Legacy and Inequality of the Latin American Cold War', and *University Intelligence In&Out* (August 09 2020) are reconstructed, so we refrain from quoting without the author's permission.

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The anti-humanitarian act, named Operación Cóndor, first started in Argentina under the guise of national security, and it is also called as "Guerra Sucia" (The Dirty War). The operation was widely known throughout the world as "Nunca Más", a report by the Argentine Historical Commission, was published in 1984, and carried out in collaboration with Argentina's Asociación Madres de Plaza de Mayo. In Korea as well, with the rise of the issue of the past history of the June 25 War and undemocratic acts committed during the military dictatorship, domestic academia has begun to pay attention to the case of Latin America, a "senior" in settlement of the past.

Anti-communism and military dictatorship during the Cold War are not only historical products of the past, as seen in the transitional justice and past historical issues in Latin America. Each country in Latin America still remains in the paradigm of the Cold War today, even when the political dynamics of the Cold War disappeared after the collapse of the former Soviet Union. Paraguay and other countries in South America are still practicing transitional justice, focusing on the Truth Commission (hereinafter referred to as "the Commission") to heal the pain suffered during the military dictatorship.

In this paper, the cases of the Transitional Justice and the Truth and Reconciliation Commission in Argentina, Uruguay, and Chile, where the Condor operation was performed with Paraguay, will be compared. The process and characteristics of the transitional justice will also be examined. To this end, we will focus on the background and characteristics of the establishment of Paraguay's military dictatorship, and the contents related to illegal land disposition during the military dictatorship revealed through the process of transitional justice.

2. The Process of Transitional Justice of Paraguay and South America

Since the 20th century, Latin America is the place where the world's most military coups and dictatorships have emerged, and it is also the place where Truth Commission have been operated mostly. This reason cannot be explained without omitting the main keywords of "USA," "cold war," and "military dictatorship" that occurred in Latin America after World War II. Combining these three elements, Operation Condor, combined with the interests of Latin American oligarchs, destroyed the constitutional order, deepened the gap between the rich and the poor, and drove the society into a dark age. In addition, political subordination and the emergence of dictatorships inevitably involve state violence and human rights violations in Latin America, where enforced disappearances of civilians and left-wingers, assassinations, genocide, and human rights violations were frequent. There is commonality in the process of transitional justice for Latin American countries, but the pattern of all countries is not a one-size-fits-all. For comparison, the following are the transitional justice in Paraguay and the transitional justice in Argentina, Uruguay, and Chile, the three South American countries where the Condor Operation was carried out.

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Country Name	Transitional Justice Target	Composition and Timing of the Truth Commission	Transitional Justice Content	Investigation Results
Paraguay	Military dictatorship and military government (1954-2003) ²⁾	Truth and Justice Commission (2004–2008) Truth and Justice Department (2009–present)	Human rights violations and violence Land illegal dispositions Excavation of remains Victim compensation	Final report (Anive Hagua Oiko, 2008)
Argentina	Military dictatorship (1976- 1983)	National Committee for Truth-Finding of Missing Persons (1983-1984)	Human rights violation and violence Excavation of remains Victim compensation	Final report (Nunca Mas, 1984)
Uruguay	Military dictatorship (1973- 1985)	Peace Commission (2000-2002) Working Group for Truth and Justice (2015-2019)	Human rights violation and violence Excavation of remains Victim compensation	Final report (2003, 2019)
Chile	Military dictatorship (1973- 1990)	National Commission for Truth and Reconciliation (1990-1991) National Commission for Advisors and Political Prisoners (2003-2004, 2010-2011)	Human rights violation and violence Excavation of remains Victim compensation	Final report (1992)

The biggest feature of the Paraguayan transitional justice process is the problem of illegal land dispositions. Argentina, Uruguay, and Chile commonly share the issues of human rights violations, violence, excavation of remains, and victim compensation during the military dictatorship as major agendas and tasks for transitional justice. The issue of land illegalities in Paraguay during the military dictatorship were recorded in a report published in 2008 by the Comisión Verdad y Justicia (CVJ). The Paraguayan Truth and

Justice Commission published its final report in 2008 (Anive Hagua Oiko) on human rights violations and violence during the roughly 50-year period of the Colorado Party's

2) The Paraguayan Truth and Justice Commission investigated from 1954 to 2003. However, most of the research is focused on the period between 1954 and 1989, during the Stroessner era.

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reign from 1954 to 2003. A total of eight reports were published on the investigation into illegal land dispositions. Among them, cases of illegal land dispositions are described in Tierra Mal Habidas Tomo IV, which is the fourth volume of the report.

If so, why was land illegality issues prevail in Paraguay during the military dictatorship? This is related to the characteristics of the Paraguayan military dictatorship. Paraguay has maintained the longest stable military dictatorship compared to the three other South American countries, as Paraguay was the the region that forms the backbone of the U.S. anti-communist policy toward Latin America, especially in South America. From the U.S. point of view, Paraguay was a geopolitically important country among South American countries, such as Brazil, Argentina, Bolivia, and Uruguay. Reflecting to this, Paraguay had a U.S.-backed military dictatorship earlier than other South American countries. In addition, Stroessner, a Paraguayan military dictator, was less widely known compared to Pinochet in Chile and Videla in Argentina. Nevertheless, he ruled Paraguay for 35 years from 1954 to 1989. As such, Paraguay maintained a stable military dictatorship for a long time due to its internal and external environment, so it was a good condition for Stroesner's aides and the military to occupy illegal land.

3. Background of the Establishment of the Military Dictatorship in Paraguay and Illegal Land Occupation

1) Background of the establishment of the military dictatorship in Paraguay

The U.S. invited Stroesner to Washington a year before he took power to implant anti-communism in Paraguay, drawing a sketch for the creation of a regime. Stroesner came to power through a coup in 1954 and passed the Anti-Communist Act the following year. The U.S. also gave Stroesner a "gift," providing military and economic aid for years, starting from the year he became president. From the U.S. point of view, the success of Stroesner's government was paramount to successfully establish anti-communism in South America. With such a strong background, Stroesner was able to maintain a solid military dictatorship for 35 years.

Shortly after he came to power, Stroesner established the Anti-Communist Investigation Bureau (La Dirección Nacional de Asuntos Técnicos) to enforce the anti-communist law. The Anti-Communist Investigation Bureau played a role in arresting, imprisoning, and torturing anti-government figures and left-wing forces for public security investigations. The bureau is widely known as its abbreviation, La Técnica.

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Memory Museum (former
Anti-Communist Investigation Bureau)



Reproduction of the torture chamber of the
Anti-Communist Investigation Bureau in the
Memory Museum

At that time, Paraguay had no expert to find and torture public security offender, so Dr. Campos Alum was sent to the U.S. to study. After completing a dissidents intelligence gathering and torture technology course in Washington, he became one of Paraguay's top torture experts. Along with him, the Paraguayan government asked for another experts from the U.S. government. In response, the U.S. government appointed Lieutenant Colonel Robert Thierry to support the establishment of the Paraguayan Anti-Communist Investigation Agency. He served as an intelligence agency supervisor and military intelligence agency investigator, and was an expert in military strategy who also participated in the Korean War.

Stroessner's long dictatorship was completed in 1959 after blocking the Movimiento de 14 de Mayo. This incident refers to a revolutionary army composed of Paraguayan anti-government figures organized in Argentina and Uruguay,³⁾ planned to overthrow the Stroesner government in partnership with supporters within Paraguay. With the support from the U.S., the Stroesner government identified the trends of the revolutionary forces in advance and immediately hit the border. In the wake of this incident, Stroesner, the military, and the Colorado Party, have fully established a political position for dictatorship.

Stroesner, whose political position has become solid, has used the Anti-Communist Investigation Bureau to suppress human rights against anti-government activists to maintain a dictatorship. In addition, he illegally distributed land for the military and his aides who followed him.

2) Military Dictatorship and the Scale of Illegal Land Disposition

In order to achieve geopolitical stability, Stroesner provided land as carrot for his aides, the military, and supporters. That is the illegal disposition of land using the Agricultural

3) At that time, the Revolutionary Army was organized by opposition forces (liberals, socialist parties) who fled to Argentina after the Colorado Party took power, in solidarity with socialists in Argentina and Uruguay .

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Land Act. Illegal land disposition was based on the Agricultural Land Act enacted in 1940, and in was implemented in earnest based on the Agricultural Land Act amended in 1963. The Agricultural Land Act of 1940 was not intended for illegal land occupation, but was abused by the Stroesner government.

The Agricultural Land Act of 1940 was a product of land reform that reform forces⁴⁾ sought to promote after the Chaco War in 1935. In 1940, Estigaribia, President of the Liberal Party enacted the Agricultural Land Act as a decree to fully implement the land reform policy of the previous government.⁵⁾ However, with the death of the President of Estigaribia in an unexpected aircraft accident, land reform came to a standstill.

The illegal land occupation began when the Colorado Party won the civil war against reformers in 1947 and took power, and established the Land Reform Association (IRA) in 1951, as an organization dedicated to land distribution based on existing land laws. And when the Stroesner government came to power, the existing Agricultural Land Act were revised to facilitate land disposition to his aides. That is the Agricultural Land Act, which was amended in 1963. Under the pretext of land reform, the military established the Instituto de Bienestar Rural, an organization in charge of the matter through the Agricultural Land Act amendment in 1963.

The major amendment to the Agricultural Land Act is to allow the disposition of land to military personnel through consultation with the Ministry of National Defense, and to nullify the previous Agricultural Land Act depending on the circumstances. This law can be seen as providing institutional legitimacy so that military and pro-government personnel can freely receive the land disposition. Based on the revised Agricultural Land Act, the Stroesner government illegally acquired land on a large scale as follows.

<Table 1> Scale of the illegal land disposition

Period (years)	Scale of illegal land disposition (ha)	Total national territory Ratio	Total farmland Ratio	Remarks
1954-1988	6,744,005	16.6%	28.1%	Stroessner's reign
1954-2003	7,851,295	19.3%	32.7%	Democratic government Prior to the establishment

4) Reform forces refer to the Liberal Party and the Socialist-affiliated parties.
A representative socialist party is the February Revolutionary Party, founded by General Rafael Franco, who won the Chaco War. The first stage of land reform was the Agricultural Land Reform Commission, which was created after General Rafael Franco took office.

5) The purpose of this Agricultural Land Act was to dismantle foreign landowners who came in after the end of the War of the Triple Alliance in 1870, and distribute the land to poor farmers.

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In terms of the military dictatorship period, during Stroessner's rule alone, the amount of illegal land disposition is 6,744,005 hectares, which is 16.6% of the total land area. It also corresponds to 28.1% of the total farmland. Most of the land illegal disposition occurred during the Stroessner military dictatorship. Expanding the period before the inauguration of the democratic government, the land illegally distributed from 1954 to 2003 accounts for one-fifth of the entire country area and one-third of the farmland.⁶⁾ The fact that such a vast amount of land was distributed by a specific group in a short period of time has great economic implications.

The original Agricultural Land Act was aimed at alleviating economic inequality by distributing land to poor people, but after Stroessner's government came to power, it was turned into a tool to accumulate wealth for the military and ruling party forces. In addition, the illegal land disposition by the military was made in defiance of the provisions of the Agricultural Land Act. The types can be classified into six cases of land disposition, i.e. 1) those who are not eligible for land disposition; 2) those who have received more than one lot of land; 3) those who have received a disposition for a farm of 100 hectares or more (based on the Eastern region); 4) those who have received a disposition for a farm of 1,500 hectares or more (based on the Eastern region); 5) those who have received a disposition for a farm of 8,000 hectares or more (based on the Western region); and 6) those who have received a disposition for a farm of 8,000 hectares or more (based on the Eastern region). The scale and contents of the type of illegal land disposition are revealed in detail in the following table.

6) Paraguay has a total land area of 40,675,200 hectares, and a total farmland area of 24,000,000 hectares.

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<Table 2> Scale of the illegal land disposition

1	Those who are not eligible for land disposition		
	Detail	Scale	Illegal content
	Number of recipients	1,080 (person)	Not a farmer
	Disposed area	4,978,198 (ha)	
Disposed area (per person)	4,609 (ha)		
2	Those who have received more than one lot of land		
	Detail	Scale	Illegal content
	Number of recipients	257 (person)	Not more than one lot
	Disposed area	682,034 (ha)	
Disposed area (per person)	2,653 (ha)		
3	Those who have received a disposition for a farm of 100 hectares or more (based on the Eastern region)		
	Detail	Scale	Illegal content
	Number of recipients	1,730 (person)	No more than 100 ha
	Disposed area	782,145 (ha)	
Disposed area (per person)	452 (ha)		
4	Those who have received a disposition for a farm of 1,500 hectares or more (based on the Eastern region)		
	Detail	Scale	Illegal content
	Number of recipients	83 (person)	In the eastern part of Paraguay, it is not possible to purchase more than 1,500 ha.
	Disposed area	299,242 (ha)	
Disposed area (per person)	452 (ha)		
5	Those who have received a disposition for a farm of 8,000 hectares or more (based on the Western region)		
	Detail	Scale	Illegal content
	Number of recipients	87 (person)	In the western part of Paraguay, it is not possible to purchase more than 8,000 ha.
	Disposed area	992,209 (ha)	
Disposed area (per person)	11,404 (ha)		
6	Those who have received a disposition for a farm of 8,000 hectares or more (based on the Eastern region)		
	Detail	Scale	Illegal content
	Number of recipients	99 (person)	In the eastern part of Paraguay, it is impossible to purchase more than 8,000 ha (regulation before 1963)
	Disposed area	109,566 (ha)	
Disposed area (per person)	1,106 (ha)		

Among the various types of illegal land dispositions, the type to be noted is the 'non-subject to land disposition' presented in the first table. Unlike the other five types, "non-subject to land disposition" are cases in which non-agricultural workers who meet the condition for land disposition have received it. This violates the most basic conditions of the Agricultural Land Act. The amount of land illegally received by the "non-subject to land disposition" accounts for 63.4% of the total land illegal disposition. The "non-subject to land disposition" includes a large number of influential figures from

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the military and the ruling party at the time. The following is a look at the aspects of the majority 'non-subject to land disposition'.

During his presidency, Stroesner illegally acquired 30 hectares and 1,275 hectares of land in 1962 and 1976, respectively. General Andrés Rodríguez, who was sworn in as president after Stroesner's resignation, illegally seized a total of 7,695 hectares of land on three occasions, in 1963, 1975 and 1980. His wife, Nélida Reig, illegally acquired 400 hectares of land in 1967 and 1978.

Anastasio Somoza, known as Nicaragua's military dictator, also defected to Paraguay and illegally disposed 8,000 hectares of land in 1980.

In addition to the presidents and first ladies at home and abroad, the military, leading Colorado Party politicians, and their associated relatives had accumulated huge wealth after the illegal land disposition. The total number of land illegally disposed in this way was 4,241 cases, and the number of disqualified people illegally received the reaches a number of 3,336. As such, illegal land acquisition during the military dictatorship is not just a matter of land distribution and the scale. Based on the wealth of the powerful people at that time through land ownership, they maintain domination on major fields, including the political and business field.

4. In Place of Conclusion: Economic Inequality Issues in the Transitional Justice

Starting from the Stroesner regime, the amount of land illegally disposed during the half-century (1954-2003), when the military took power, accounts for 19.3% of the total land, and nearly 32.7% of the total farmland. A total of 3,336 people were involved in the illegal land disposition, and as mentioned earlier, the list includes Stroesner, General Andrés Rodríguez and his wife, and the Nicaraguan dictator Anastasio Somoza Debayle, who fled to Paraguay. They "laundered" the unfairly distributed land in the name of relatives and neighbors, and then incorporated it into their own assets. At that time, government officials and relatives who received land illegally owned large farms and owned a number of companies. In addition, they were currently the influential figures or lawmakers of the ruling Colorado Party, or are firmly maintaining their vested interests as members of the National Assembly.

Farmers' disputes, which occur frequently in Paraguay, are mostly caused by the eviction of indigenous peoples and farmers from illegally disposed land during the military regime. In many cases, indigenous peoples and farmers who have lost their land like this have joined guerrillas in the name of revolutionary forces or migrated to neighboring cities, capitals, or neighboring countries, Argentina, to and settle in poverty-stricken areas. Occasionally, farmers or indigenous peoples protested in solidarity with farmers' movement organizations, or engage in armed struggle. However, their demands have been repeatedly ignored by the government. Through this process, farmers

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and indigenous peoples are falling into the abyss of poverty.



Farmers demonstrating in front of the Supreme Court



Protests chant (land is a gift from God and belongs to everyone)

Paraguay has the lowest Gini coefficient for land ownership in Latin America. Considering that about a third of Paraguay's farmland is illegally distributed land, it can be seen that poverty among farmers and indigenous peoples due to the imbalance in land distribution is closely related to land policies of the past military regimes. Thus, Paraguay's socioeconomic inequality can be attributed to the imbalance in land distribution, which is deeply related to the illegal land disposition committed by the military regime, against the backdrop of anti-communism.

However, the Paraguayan government has not been able to properly compensate farmers or indigenous peoples, let alone punish politicians and military officials who have illegally obtained land. Instead, farmers and indigenous peoples are being swept away by massive bloodshed (Curuguaty massacre, Guahory farmers dispute) on farms that are related to illegal land. In the end, Paraguay's farmers' disputes and bloodshed were expressed as violent conflicts as they failed to properly settle the past. The issue of land distribution and economic inequality is a topic that is not often dealt with in the process of transitional justice in South America, so it is necessary to closely examine the Paraguay case.

Transitional Justice and Race Issues in the United States of America

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Unlike similar previous events, the deaths of George Floyd and Breonna Taylor in the spring of 2020 have resonated not only in the U.S. but also internationally. Compared to previous cases of human rights violations by the police against black people, the peculiarity of these two cases was that they sparked interest in the issue of structural racism. After the case of Michael Brown's death in Missouri just a few years ago, police officers' portable body cameras and police officers' excessive behavior were pointed out as problems, but it did not lead to the discussion of structural racism.

The ongoing police violence against black people in American society can be seen as a systemic and structural problem that has been prevalent in American history since the British colonial era. Some of the most prominent examples of these problems in American history include the genocides against Native Americans, the slavery of African Americans, and the detainment of Japanese Americans during World War II. Issues such as the causes of historical human rights abuses, historical impacts, truth-finding of human rights violations, and compensation/reparation and restoration of victims have not been dealt with as topics of full-fledged discussion in American history. A more theoretical approach is needed to understand historically deep-rooted structural discrimination and accumulated complaints (Joshi 2020; Ladisch and Rocatello 2021). This article introduces the discussion of transitional justice¹⁾ as a theoretical resource to deal with this historical and structural problem of human rights oppression, and discusses human rights oppression that has been perpetrated in American history, and also the current solutions and proposals from the perspective of transitional justice.

1) Transitional justice is translated into justice in 'transitional period' in Korean language, but there is no significant difference in terms of meaning. It can be seen as dealing with the problem of human rights abuses due to the change of system or during the transition period of the previous system.

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Problem Posing

Transitional justice is generally defined as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (Annan 2004). According to this definition, transitional justice may include judicial processing (Sikkink and Kim 2010), lustration (David 2011), truth and reconciliation commission, reparation and compensation (de Greiff 2006), as well as formal and informal apologies, anniversaries, museum construction, history textbooks revisions, or renaming places or changing street names. Measures based on regional characteristics, such as Rwanda’s Gacaca Courts, may also be included (Kritz 1996; Teitel 2000, 2003; Shaw et al 2010; Stan and Nedelsky 2013).²⁾

If so, can the case of the U.S. be included in the discussion of transitional justice? In American history, the period right after the Revolutionary War and right after the Civil War can be seen as the political system transition, but in general, the case of the U.S. is rarely discussed in transitional justice. This is because most of the studies on transitional justice is focused on countries that have experienced the third wave of democratization since the 1970s, and it is difficult to see the U.S. as a country that has experienced the transition from authoritarianism or civil war. However, considering that the concept of transitional justice is expanding, and the structural legacy of racial discrimination, including slavery, in the U.S. is still going on today, it is considered a meaningful attempt to apply the discussion of transitional justice to the U.S. case.

According to Colleen Murphy, the case of the U.S. may be included as an example of transitional justice for the following reasons (Murphy 2020). First, it is a continuing structural inequality in the American society. If we look at a society in which political, economic, legal, and cultural discrimination against a particular group exist; and in which rules and norms that lead to poverty of a particular group, and hinder their political participation and interaction exist; as a society in which structural inequality exists, then the current American society can be seen as a society in which structural inequality is prevalent in terms of race.

Second, it is routine political repression. The fact that the number of black people who died in the course of conducting daily activities, not crimes, continues to show that a certain group, black people, are intensively exposed to human rights abuses by the police or white people.

Third, it is a matter of serious existential anxiety. When a community is in a crisis and the future is uncertain, it can be said to be existentially unstable. But it is also an issue of existential anxiety in that it is uncertain when and how the structural reforms demanded by black people in the current American society and the responsibility for the perpetrators will be resolved.

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Of course, no society is completely free from these problems, but the problem of structural racism stands out in the present-day U.S. is prominent. Considering these points, it is difficult to see the U.S. case as an example of system transition in a general sense, but it can be considered as a case of transitional justice in a broad sense. In this article, we will first examine the goals and types of transitional justice that are generally applied. And then, we will examine the history of racial discrimination in the U.S. and the measures of transitional justice in various directions in response to it, focusing on the Truth Commission, apology, reparation, and institutional reform.

Transitional Justice Goals

The goals and effects of the transitional justice can be classified into the influence on the perpetrators, victims, and society as a whole. Of course, this classification is an abstract classification, and there are many cases in which the perpetrator and the victim overlap, and there are many cases in which the perpetrator and the victim are not clearly distinguished. In order to discuss the goals and effects of the transitional justice, it is necessary to first look at the working mechanism of the transitional justice. This is because the work of justification on why a society should go through this process must be preceded.

First is the mechanism by which the measures of transitional justice are applied to the perpetrators of human rights abuses. The basic assumption is that changes in norms drive changes in the actor's incentive structure. In short, through transitional justice measures, respect for human rights can be established throughout the society, and potential perpetrators can be socialized to respect such norms, and through this process, the political system would ultimately be stabilized. If the transitional definition works ideally, it is expected that norms will limit the scope of action of the state, control various actors, especially potential disruptor of democratic order, disseminate new values, and gradually permeate all institutions of the state (Finnemore and Sikkink 1998, 887; Harzan 2006, 19).

Secondly, it is a mechanism that works on the victim. If you have suffered from human rights violations in the past, it is necessary for you to heal the wounds as a prerequisite for reconciliation. Victims must restore their dignity, restore trust in government and institutions, and through this process they can be incorporated into the political system. At individual level, this process involves feelings of catharsis and forgiveness, the ultimate goal of which is, of course, reconciliation between groups. Reconciliation between groups means peaceful coexistence with those formerly considered as "enemies," which calls for new social agreements that can break the vicious circle of violence and revenge. The second mechanism is based on the belief that they will be able to regain their identity by openly confiding their pain in court or in front of the Truth Commission.

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Of course, these effects – the deterrent effect on the perpetrator and the healing effect on the victim – do not apply exclusively to the perpetrator or the victim. For example, judicial processing has a deterrent effect on the perpetrator, but the goals of witnessing the judicial process are also giving catharsis to the victim and giving an educational effect on ordinary citizens.

Of course, social consensus is necessary to achieve this goal. The need for change should be shared across the society, and the process of finding the truth about how inequality has specifically occurred should be preceded. Therefore, the transitional justice should include the process of revealing not only past actions, but also the wrong actions that are continuing today.

Types of Transitional Justice

The issue of transitional justice has been discussed in Aristotle's writings in the ancient Greek period, and in modern times it has also been discussed in earnest since the French Revolution (Moore 1975). In addition, models of post-war treatment were presented at the Nuremberg trials after World War II and at the International Military Tribunal for the Far East. After the discussion of transitional justice began in earnest, the interest in the early period (1980s) was mainly focused on the determinants of judicial processing and the advantages (O'Donnell et al. 1986; Pion-Berlin 1994; Snyder and Vinjamuri 2003/4). After the Cold War, as many countries gradually became democratized, it started to come to a consensus that other transitional justice measures were necessary in addition to judicial process, and that truth and justice are essential, complementing or reinforcing each other. However, although there has been an agreement among researchers of transitional justice to the level that non-fragmentary, holistic, and multifaceted measures are needed, such as judicial processing or the Truth Commission, there are many disagreements as to how transitional justice measures should be introduced.

The commonly known transitional justice measures are the judicial process and the Truth Commission, but there are other types of measures. At an abstract level, the options faced by the new government can be categorized into the following: 1) punitive measures, 2) informational measures, 3) reparative measures, and 4) pardon (Lavinia and Nedelsky 2013; Lee 2020).³⁾ Punitive measures usually take the form in judicial prosecution and trial of members of the past system in international or national courts. Criminal prosecutions are generally brought against people who were in charge of the military or police. Judicial action is taken in such a way as to hold those people accountable for their actions while in office. The effectiveness of judicial processing is usually closely related to the independence of the judiciary and the balance of power

3) It is controversial whether pardon can be viewed as a measure of transitional justice, but as defined above, pardon can also be seen as a measure of transitional justice if all the ways in which a society considers human rights abuses both in the past and the present as transitional justice.

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between the old and the new forces.

Another punitive measure is a lustration. Lustration is a ban on various types of people who have actually been or are believed to have been involved in human rights abuses while holding positions - typically in public office - in the past administrations. It originally started in Eastern Europe, but has been gradually introduced to other regions (Mayer-Rieckh and Pablo de Greiff 2008; David 2011), targeting various government agencies, including civil servants, the military, and the police. It also includes official ban on political parties such as the Communist Party for a certain period of time.

Reparational measures may take various forms – such as financial compensation, restoration of property rights, employment or pensions, or long-term livelihood measures. What kind of compensation a victim receives usually depends on the extent of violence and deprivation from which they have suffered in the past, and the victim's current conditions and needs are also major determinants. In the case of transitional countries, the government has the authority to decide how to repair and compensate, and in this process, viable reparation or compensation is determined by the resources available. In this process, land reform and property rights pose unique problems. This is because the process requires discussion on the removal of current occupants or owners, as well as counterfactual calculations (Waldron 1992; Gibson 2009).

The purpose of institutional reform is to review and restructure all state institutions so that they respect human rights, uphold the principles of the rule of law, and be accountable to citizens.⁴⁾ Specifically, measures to achieve the ultimate goal of transitional justice include reform of major institutions used as tools for oppressions and human rights abuses, such as the military, the police, and the judicial system. Judging from the study of transitional justice conducted so far, reform of oppressive institutions in a narrow sense has only a short-term effect. In order to achieve long-term consolidation of democracy, institutional reform requires more comprehensive changes in the power structure. Furthermore, reform of the judicial system or police body can confront all kinds of past human rights violations, including violations of economic and social rights, only when political, economic, social and cultural system and institutional changes are involved.

Other measures may include official and informal apologies, anniversaries, monuments or museum construction, revision of history textbooks, or renaming places or changing road names. Measures based on regional traditions and characteristics, such as such as Gacaca may also be included. Next, the history of human rights abuses of black people in the U.S. will be briefly discussed, and major measures taken in the past and present will be discussed in terms of the transitional justice discussed above.

The History of Human Rights Abuses of Black People in the U.S.

Although slavery in the U.S. was officially abolished by the Emancipation Proclamation in 1863,

4) <https://www.ictj.org/institutional-reform> (search date: March 20, 2022)

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there were no fundamental changes in the economic structure of the southern part where slavery was based, such as reparation or compensation for the economic benefits of slavery obtained by the white people group. In fact, this change did not actually take place until the 1960s (Alston 1999).

In the South, black people enjoyed freedom during the brief Reconstruction Period, when the federal government ruled the southern part of the country, during which citizenship could be enjoyed thanks to coercive measures at federal level. It was also during this period that the 13th, 14th, and 15th Amendments to the Constitution, which emphasized equality before the law, including the right of black people to vote, were passed.

However, these changes did not last very long. The Great Compromise of 1877 brought an end to the Reconstruction Period, and after the federal government withdrew from the South, movements took place throughout the South to practically deprive black people of their voting rights using various methods. Various kinds of laws were passed in the 1890s to enforce segregation in white supremacist-controlled state legislatures. These laws, known as the Jim Crow Laws, were racist policies that dominated the southern part of the U.S. until about the mid-1960s. The Voting Rights Act of 1965 prohibited racial discrimination in voting, and a federal law of 1967 made interracial marriage legal.

Persistent racism led to a large migration of the black population, with about 6 million black people migrating from the south to the north between 1916 and 1970.⁵⁾ Although the Housing Discrimination Act was legally prohibited by the Supreme Court's ruling in 1917, residences for black people were separated from residences for white people, using various methods such as railways, highways, and barriers. Black people inevitably formed their own residential zones within the urban areas, and it is true that black culture that blossomed with the Harlem Renaissance of the 1920s brought about this environment and inspired much of the civil rights movement in the 1960s. The white people community, which was reluctant with the migration of the black people, joined the local police to substantially limit black people's basic rights to housing.

The concept of 'black criminality' also arose in this process. Black criminality refers to the process of stigmatizing black people as criminals, regardless of whether they are actually criminals or not. And since their basic rights are not guaranteed, black people are more easily arrested and unable to exercise their rights in the process. Consequently, it is increasingly regarded as a dangerous entity due to the high crime rates. Through this process, there is a vicious cycle in which black people are increasingly deprived of their rights. Riots against this kind of discrimination broke out across the U.S. in the summer

5) Of course, this means that the migration of black people to northern cities, along with the tightening immigration regulations (strong immigration laws were enacted in 1924) was an inevitable consequence of the surge in the demand for cheap labor, as the labor market expanded due to the U.S. industrial expansion after World War I.

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of 1919, known as the "Red Summer." For example, the riots in Chicago that year lasted from July 27 to August 3, killing 38 people (23 blacks, 15 whites), injuring 537 people, and destroying more than 100 black people homes. Frank Lowden, the then-Governor of Illinois, set up a Commission on Race Relations. A 1922 report published by the Commission confirmed that the police had systematically intervened in the riots against black people, and the report also made explicit recommendations (The Chicago Commission on Race Relations 1922). However, this report states that a direct solution is not possible, and it only draws an abstract conclusion that harmony and cooperation can be achieved through mutual understanding and empathy between races.

Discriminatory practices did not persist only in official sectors such as policy, law enforcement, and the police. Throughout the American society, the "otherization" of people of color continued. For example, even in the early 1900s, postcards containing primary-colored photographs of scenes of lynching against black people were sold as souvenirs. These so-called "lynch postcards" were used until the federal government banned them in 1908, indicating that racism and lynching against black people were prevalent throughout the society, not limited only to some groups such as the KKK.

Truth Commission

The Truth Commission is the most widely used informational measure (Hayner 2001, 2010; Chapman and Ball 2001; Freeman 2006; Wiebelhaus-Brahm 2010). The Truth Commission is an institutional mechanism established to investigate human rights abuses by past regimes and has the following characteristics. 1) Focus on the past; 2) focus on a specific time period; 3) is a temporary mechanism; and 4) is approved and established by the state. The Truth Commission usually produces official reports concluding their activities, which often include other purposes in their preface rather than just reinterpretations of the past history. They include, for example, 1) discovering, identifying, and formally acknowledging past oppression; 2) restoring the dignity of victims and promoting their right to know; 3) contributing to the truth and accountability; 4) enhancing reconciliation and reducing conflict; 5) clarifying relationships among government institutions and encouraging reform; and 6) establishing the legitimacy for the new system. The Truth and Reconciliation Commission is an ad-hoc organization that usually operates for a period of six months to two years, and although there is a possibility of extension, it is usually predetermined. The functions of the Truth Commission are 1) production of "truth"; 2) presentation of "truth"; and 3) publication of the fundamental values of the society.

The Truth Commission is a measure that sits halfway between maximalism and minimalism in the conceptual spectrum of transitional justice. It was widely known through several well-known cases of the 1980s and 1990s (Argentina, South Africa, and

South Korea), and it is sometimes considered the next best option for judicial processing.

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In general, the introduction of the Truth Commission is advocated when judicial processing is likely to threaten the stability of the system. According to advocates of judicial processing, the Truth Commission is not necessary when judicial processing is possible, and unless it is for the purpose of collecting data for future judicial processing, the Truth Commission weakens the foundation for justice. In addition, the Truth Commission provides the basis for perpetrators to continue to commit human rights violations. Therefore, critics of the Truth Commission argue that the Commission's attempt to rectify the past could be dangerous in that it could turn against both the victims and the perpetrators. Revealing painful "truths" in a divided society can spark tensions, make circumstances variable, provoke new resentments, in which situation it is possible for groups critical of the new government to take advantage of.

The Truth Commission is a measure in the conceptual spectrum of transitional justice that has been introduced in more than 40 countries, including the widely known Truth and Reconciliation Commission in Argentina and South Africa (Hayner 2001, 2010; Chapman and Ball 2001; Freeman 2006; Wiebelhaus-Brahm 2010). The primary purpose of the Truth Commission is to collect information on past human rights abuses. In the case of the U.S, there is an advantage compared to other countries, because many literatures and researches on racism have already exist. However, the existence of such data is one thing, and the recognition of past human rights abuses by the government and its integration into the society's memories and narratives about the past is another. It can be seen that the so-called "racial innocence" flows on the basis of structural racism (Anderson 2016). For example, in an attempt to intentionally forget the history of slavery in American history, one of the primary school textbooks in Texas referred to slaves as migrant workers who moved across the Atlantic Ocean to the U.S. The history of this kind of deliberate oblivion to slavery and racism in American society continues.

It is not that there has been no attempt at the federal level to pursue the truth. Although several commissions had been formed, including the National Advisory Commission on Civil Disorders, also known as the Kerner Commission, most of them did not work properly. Most recently (February 25, 2021), a bill was proposed by Barbara Lee, a California congressman, and Senator Corey Booker, to request the formation of a "Truth, Racial Healing, and Transformation Commission". The purpose of this committees was, of course, to begin discussions on the history and reforms of slavery, structural racism and people of color issues at the federal level.⁶⁾

In addition to federal government-level attempts, local government-level truth-finding efforts is also underway. These include the Ferguson Commission in Missouri, the

Greensboro Truth and Reconciliation Commission in North Carolina, and the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission. In April 2019, Maryland

6) As of February 25, 2021, there are 100 members of the House of Representatives and 12 Senators participating in this resolution as co-initiators (<https://www.ustrht.org/>).

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received unanimous support from the state legislature and passed HB307, paving the way for the establishment of the Maryland Lynching Truth and Reconciliation Commission. The Commission, which aims to investigate lynching related to racism, was scheduled to begin hearings in the second half of 2021.

Reparation and Compensation Measures

In the case of the U.S., many types of compensation measures have already been discussed. Tax reductions, establishment of a development fund for black people, baby bonds, and cash payments are typical examples. The method of compensation should proceed in parallel with the truth finding process. For example, recently, the Center for Civil Rights and Restorative Justice at North Eastern University has been conducting activities to help find descendants of lynching victims and help them participate in reparation programs, as an example of a combination of truth seeking and reparation.⁷⁾

Other compensation-related measures currently underway in the U.S. include the Movement for Black Lives (M4BL).⁸⁾ In the case of M4BL, it clarifies the claim for compensation for past and present damages, and explicitly sets out who is responsible for providing them. For example, the M4BL provides guidelines for compensation-related measures, which aim to end and prevent systemic responsibility, recognition, past and present damage, financial compensation for individuals and institutions led and accountable by black communities, and policies and practices that perpetuate harm rooted in the history of racism against black people.

In the case of the M4BL, the subject of compensation includes African-Americans outside the U.S., not just within the U.S. In other words, it targets comprehensive damage, not only direct damage caused by slavery. Of course, in this case, there is a problem that compensation may become practically impossible if the scope of the victim is set too wide. A similar example is Germany's post-war Holocaust victims' compensation program. Since 1952, the German government has paid more than \$80 billion in the form of pensions or social security benefits to more than 800,000 Holocaust victims through the Conference on Jewish Material Claims against Germany.⁹⁾

The history of the U.S. is not without precedent for reparation for state violence. In 1988, a total of \$1.25 billion was provided as compensation after President Reagan signed a bill to provide \$20,000 each to approximately 65,000 Japanese-Americans who were detained during World War II. In addition, although it was on a small scale, there were compensations made at the local government level. Florida agreed to pay \$2.1 million in compensation for the massacre of black communities in Rosewood on January 1, 1923. North Carolina set aside \$1 million in compensation for survivors of a genetic research program that forced 7,600 people to undergo sterilization surgery in 2014. ⁹⁾

7) <https://crrj.org/> (search date: March 22, 2022)

8) <https://m4bl.org/> (search date: March 22, 2022)

9) <https://ncadmin.nc.gov/about-doa/special-programs/welcome-office-justice-sterilization-victims>

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Similar fertility procedures have been implemented in 30 states in the U.S., and Virginia has passed a bill to pay \$25,000 each for the surviving victims.¹⁰⁾

In some cases, compensations have been made for torture damages. In 2015, the Chicago City Council issued an ordinance and city-level apology to John Burge's victims of torture. The ordinance contained an apology for torture committed during John Burge's tenure as a Chicago police investigator and police officer at the Chicago Police Department. Burge tortured about 200 innocent black people over a period of more than 10 years. The city of Chicago set aside \$5.5 million in funding for victims of torture, with each victim receiving a financial compensation of \$100,000. Measures such as an official apology to the victims from the then-Chicago Mayor, Rahm Emmanuel, and exemptions from college tuition were also included. In addition, public schools' curriculum in Chicago included education on the torture in Burge's era, and permanent monuments were installed.¹¹⁾

Official Apology

Unlike judicial processing, the Truth Commission, and compensation, formal apologies have symbolic meaning. The most widely known official apology in American history is an apology for human rights violations committed against Japanese-Americans during World War II. The Civil Liberties Act of 1988 was passed and a formal letter of apology from then-President Reagan were delivered to the victim along with a \$20,000 check for each individual. Another example is a joint resolution of both houses of Congress in 2010, which expressed an apology to Native Americans.¹²⁾ However, the resolution contained a proviso that the apology could not serve as a basis for any legal claim against the U.S. government.

In addition, there have been several other official apologies made by the government in the U.S. history. There were a U.S. government apology for concealing Klaus Barbie, a Gestapo officer during World War II (1982); an apology for the fall of the Kingdom of Hawaii in 1893 (1993), and an apology for syphilis research experiments in Tuskegee, Alabama (1997).¹³⁾

So far, the U.S. government has yet to make an official apology for human rights abuses, including centuries of structural racism as well as slavery. Although the House and Senate each issued an apology through separate resolutions¹⁴⁾, it did not proceed with the president's signature and official apology. State legislatures in Virginia, Alabama,

(search date: August 10, 2021)

10) https://en.wikipedia.org/wiki/Virginia_Sterilization_Act_of_1924 (search date: August 22, 2021)

11) <https://www.themarshallproject.org/records/551-jon-burge> (search date: August 24, 2021)

12) <https://www.congress.gov/bill/111th-congress/senate-joint-resolution/14/text> (search date :August 20, 2021)

13) <https://www.smithsonianmag.com/smart-news/five-times-united-states-officially-apologized-180959254> (search date: August 20, 2021)

14) <https://www.congress.gov/bill/111th-congress/senate-concurrent-resolution/26> (search date: August 21, 2021)

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Maryland, North Carolina, Florida, and New Jersey have passed similar resolutions, but they are still insufficient.

Although there was no official apology, there were presidents who mentioned the injustice of slavery and racism. Clinton and George W. Bush addressed the injustice of slavery in 1998 and in 2003, respectively.

In addition, the private sector, including religious groups, criticized past practices such as slavery, and apologized to black people for individual and structural racism. Individual apologies have also been made by some segregationist.

A notable work currently in progress is the HR40 proposed by Congresswoman Sheila Jackson Lee and others.

The bill was named the "Commission to Study and Development Reparation Proposals for African-Americans Act", and the purpose of the commission to be established under the Act is to investigate slavery and racism that has been going on since the colonial period of 1619 to the present. The commission first aims to investigate (1) the role of the federal and state governments in the continuation and maintenance of slavery; 2) various discriminations in the public and private sectors against free slaves and their descendants; and 3) the impact of slavery on black people and the society.

Police Reform

Discriminatory policing of people of color by police has been prevalent since the early days of the U.S. and has been a practice that has been passed down through centuries. Slave owners formed slave patrol to prevent runaway slaves. First, they track and arrest fugitive slaves, and then return them to their owners. Second, they carry out organized terrorism to prevent slave rebellion. Third, they make summary judgments to slaves without a formal trial. As one of the most widely active policing groups in the southern part of the country, the main purpose of the patrol was, above all, to control black people. The then-U.S. Constitution and the Fugitive Slave Act of 1850 gave legitimacy to the activities of these patrols.

After the Civil War, and 150 years after the abolition of slavery, the judicial and criminal justice system targeted black people, especially youngsters. For example, sentencing standards that differ according to race were applied especially in the 1980s and 1990s, a period known as the War on Drugs, leading to large-scale arrests of young black people. Until now, the idea that white police had the right to shoot black people who committed relatively minor crimes or disrupted social order persisted. In this context, George Floyd is just one of the countless cases of arrest, detention, or death while in police custody or while police duties were performed.

Therefore, trust in the police in the black community is very low, and it is not easy to restore trust in the police in this state. There is also the need to revise the narrative on police violence. Currently, the excessive suppression of the police is a judgment made by the individual police under extreme circumstances, and the narrative is mainly

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based on the limitations of the police force. Accordingly, when using excessive violence, although it is inevitable, police officers have either disregarded an explicit regulation or at least violated the Code of Conduct. Therefore, the officer is often described with a personal deviation due to excessive work. However, police violence is not an issue that can be explained as a personal deviation of some police officers. It can be said that this problem overlooks the problem caused by the institutionalized culture within the police force.

The purpose of institutional reform discussed in transitional justice is to restore trust between citizens and state organizations by transforming state agencies that used to suppress human rights and advocated the interests of certain groups into institutions that protect human rights and prioritize enforcement by law. Ultimately, it can be said that it is to make it play the role of the guardians of democracy. This process must be accompanied with actual institutional reform and a change in the internal culture of the police organization. Mutual trust can only be restored when measures that can change the expectations of the police and citizens toward each other are introduced. This process requires a lot of effort over a long period of time. If the system is regarded as an equilibrium of systematic expectations for actors' behavior, a drastic change should be introduced in the systematic expectations between the police and citizens. In this process, it is thought that discussions on police reform, including lustration, introduced after large-scale violence in Italy, Kenya, and Spain, can be referred to (Mayer-Rieckh and de Greiff 2008).

In the U.S., the problem of police reform requires state-level measures as well as the role of the federal and congressional government. In this process, the state needs to allocate more resources to the police system, strengthen human rights education programs, and review overall practices. In addition, citizens' surveillance of the police system should be strengthened at the state and local levels. Proposals that emerged since the Floyd incident include reducing police budgets, banning the use of lethal weapons, and banning chokeholds. The focus can be summarized as reducing police violence, reducing crime, and increasing trust in the police.

Closing Remarks

In this article, we have examined the racial problem in the U.S. from the perspective of transitional justice. The study of transitional justice, which began with the study of democratization, has mainly dealt with the issue of past human rights abuses in politics that have shifted from authoritarianism or civil war to democracy. However, it is not necessary to limit it to a concept that is applicable only to a regime transitioning from an authoritarian regime, civil war, or a state failure to a democratic regime. As defined in the previous section, transitional justice encompasses "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."

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It is possible to seek solutions to not only physical integrity, but also broader human rights violations, and to seek solutions to the problem of structural human rights abuses that have been perpetrated over a long period of time. At this point, the approach from the perspective of transitional justice to structural racism in the U.S. has great implications for expanding the realm of transitional justice, as well as seeking solutions to the racial issues in the U.S. The problem of dealing with the history of human rights abuses against indigenous children in Europe and North America can also be seen in this context.

In the U.S., people of color, including black people, have historically and structurally suffered a lot from discrimination. Formal institutions such as slavery were abolished long ago, but informal discrimination is still ongoing, and efforts in various sectors of society, including the federal government and local governments, are still insufficient to overcome this problem, and the results are not that great. However, the issue of structural discrimination triggered by BLM has made it possible to re-examine the racial problem in American society, and is very encouraging in that it begins to lead to specific congressional bills and government measures.

Research and activities on transitional justice have made a lot of progress, and it is believed that they have contributed to laying the foundation for future social integration by seeking solutions to the problems of human rights violations in the past. In this process, many achievements have been made on which measures are more effective for things that society values (desiderata), such as human rights, democracy, social integration, development, gender equality, and trust, and which measures are more effective when prioritizing them. It is time to discuss how to expand these achievements to solving more fundamental structural problems. In this respect, it is very useful and practical to apply the discussion of transitional justice to the structural problems of the U.S. and other countries with a long tradition of formal and practical democracy.

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Session 2

Solidarity of Gwangju

- Solidarity with International Civil Society Against State Violence - Expand the Network!

In Gwangju, South Korea, the May 18 Memorial Foundation will provide a space for transnational solidarity against state violence, genocide, and enforced disappearance. Together with Asia Justice and Rights (AJAR), the Gwangju Democracy Forum will invite those who work in the sector of civil society in each country to talk about transitional justice and historical reckoning.

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The Peace Process and Transitional Justice in the Aftermath of the Jeju Uprising

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Hankyoreh Newspaper,
Board member of Jeju April 3rd Research Institute



1. Introduction

The Jeju Uprising, also called the Jeju April 3 Incident was a tragic incident that resulted in the second most casualties next to the Korean War in modern Korean history. "Jeju April 3 Incident" refers to uprisings, armed conflicts, and killings of residents on Jeju Island from March 1, 1947, and April 3, 1948, to September 21, 1954.¹⁾ However, it is difficult to define the Jeju Uprising in this one sentence.

The Jeju Uprising lasted for over seven years and six months since its onset during the U.S. military government rule in South Korea and continued throughout the establishment of the Republic of Korea Government. It came to an end well over the end of the Korean War. Its aftermath has been felt for over 74 years since its outbreak.

As shown in its definition, the beginning of the Uprising traces back to March 1, 1947. On that day, there was a rally that the left-wing activists organized to commemorate the 28th anniversary of the March 1st Independence Movement at Buk Elementary School in Jeju City. Amid the rally, the participants took to the streets and staged non-violent peaceful protests. However, in response to the protests, the police shot at the protesters, which resulted in killing six people and injuring eight people. This incident is so-called the 'March 1 Incident.' The U.S. Armed Forces in South Korea

1) Special Act on the Investigation of the Truth and Reparations for Victims of the Jeju Uprising (hereafter, 4.3 Special Act) Article 2 (Definition) Section 1. According to the "Jeju Uprising Truth Investigation Report" published by the Commission of the Investigation of the Truth and Reparations for Victims of Jeju Uprising (hereafter, 4.3 Commission) in 2013, Jeju Uprising is defined as "a series of incidents, which began from March 1, 1947, when the police opened fire and include the insurgency launched by the armed members of the Workers' Party of South Korea (WPSK), attacking the police on April 3, 1948, in protest to the election and government to be held and established in South Korea in separation from North Korea; the incidents also include armed conflicts and lots of atrocities committed to a large number of residents and civilians until September 21, 1954, when Halla Mountain area was completely open to being public." 4.3 Commission, "The Truth Investigation Report on the Jeju Uprising" (4.3 Commission, 2013), p. 536.

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were mobilized to dissolve the protesters that day.²⁾ However, the U.S. Armed Forces failed to investigate the incident and get the police who opened fire punished but arrested the protesters instead, which threw Jeju into confusion. Until April 3, 1948, when an armed uprising broke out, the police had arrested approximately 2,500 civilians on Jeju Island. After the armed uprising, the authorities, under the direct guidance of the U.S. Armed Forces, began its comprehensive and indiscriminate operations of arrests and detentions of the residents in Junggansan, Jeju. In the following months of the establishment of the Republic of Korea, between October 1948 and March 1949, the military and police forces in alliance took the scorched earth operations throughout Jeju Island, making the entire island the 'island of death.' During the Korean War, the authorities committed massacres as part of their preventive detention or crackdown operations. The aftershock of such atrocities continued until September 21, 1954, when the ban on access to Hallasan Mountain was officially lifted.

According to "The Truth Investigation Report on the Jeju Uprising" (hereafter "The Truth Investigation Report"), the number of victims is estimated to be about 25,000 and 30,000. This figure is equivalent to approximately 10% of the total population in Jeju during that time. The tragedy of the Jeju Uprising is not only attributed to the significant human and financial losses but to the destruction of communities, the guilt-by-association system heavily imposed on the survivors and their families, and the forced amnesia among the people in Jeju by the violence of the state authorities. When Syngman Rhee's anti-communist dictatorship was toppled by the April Revolution in 1960, the families of the Jeju Uprising victims and student activists called for an investigation of the truth about the Uprising. Unfortunately, however, as the May 16 military coup d'état occurred in the following year, the civil society was forced to keep silent once again.³⁾ The strong 'anti-communism' ideology supported by the regimes before the democratic transition of Korea from the Syngman Rhee regime to the Doo-hwan Chun regime made it not merely taboo to talk about the Jeju Uprising openly in public but a justifiable cause for political suppression.

It was only after the June Democracy Movement in 1987 that the discussion on the

2) A report from the U.S. Armed Forces in Korea records, "The U.S. Army dissolved the protesters but did not use any weaponry," acknowledging its involvement in the incident. Hq. USAFIK, G-2 Periodic Report No. 469, 2 March 1947; No. 479, 13 March 1947.

3) After the April Revolution, seven students from Jeju National University formed the 'Comrade Society to Identify the Truth of the Jeju Uprising' and conducted investigations by visiting 50 neighborhoods in Jeju. Residents in Moseulpo held a rally, calling for a truth investigation. Jeju Ilbo Newspaper made an announcement titled the 'Report on the Jeju Uprising and Massacres during the Korean War' on June 2, 1960, asking readers to report anything they knew about the Jeju Uprising and massacres occurring during the Korean War. Until June 10, 1,259 cases were reported, totaling the number of victims reported to 1,457. Du-bang Shin, the executive officer of the Jeju Ilbo Newspaper, who also reported a case, reported the massacre of an entire family in Oido-dong, Jeju City, to the Public Prosecutors' Office on June 23. Seong-suk Kim, a legislator of the Unification Socialist Party born in Gapado, submitted the 'Proposal for the Truth Investigation of Jeju Massacres,' claiming that about 40,000-50,000 civilians in Jeju were slaughtered during the Jeju Uprising and the Korean War. However, it did not come to fruition. "The Kyunghyang Shinmun" January 26, 1961; "Donga Ilbo" January 26, 1961.

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Jeju Uprising began in Korean society. Since 1990, the world was ushered in the post-Cold War era globally, creating civic space where people could start having post-Cold War ideas. In this trend, the forcibly erased memories of the Jeju Uprising began surfacing one by one, beyond the ideological barriers. 19 years later after the publication of the government's "The Truth Investigation Report", a follow-up investigation began in 2022 and reparations are planned to be made to the victims of the Jeju Uprising as part of the government's efforts to destigmatize their harm. This paper will examine the process of repairing the legacy of the Jeju Uprising and identifying the truth. Further, it will discuss the achievements of the efforts made to restore the victims' dignity and the remaining tasks.

2. Beyond the Suppression and Taboo: How Far the Truth Investigation Has Progressed

The Jeju Uprising was the first case the Korean government launched its state-led truth investigation concerning the nation's past affairs. During the Cold War era, especially in its unique geopolitical situation where South and North Korea were in conflict, the historical memory of the Jeju Uprising was painted with ideologically charged colors. Under the grip of draconian anti-communist ideology, the Jeju Uprising had been concealed, distorted, and forgotten by the state authorities. As society was forced to forget it or keep silent about it for about half a century since its occurrence, official documents and records about the incident became almost nonexistent, which made it extremely challenging to identify its truth.

Despite such challenges and the suppression of the state authorities, an investigation and research have been conducted to clarify the truth about the Jeju Uprising by collecting testimonials, interviews, and pieces of records. People in Jeju have created the 'counter-memory' in accordance with their cultural system of meaning, and thereby they have staged their own hegemony struggle against the dominant historical narrative created and forced by the state.⁴⁾ The phases of the Truth Investigation Movement for the Jeju Uprising can be categorized into the following: (1) The dominance of the state-led narrative about the Jeju Uprising (1948-1987), (2) The June Democracy Movement and the dominance of the civil society-led narrative about the Jeju Uprising (1987-2000), (3) The enactment of the Special Act on the Investigation of the Truth and Reparations for Victims of the Jeju Uprising and the finalization of the Truth Investigation Report (2000-2003), (4) Government apology and the resolution of Jeju Uprising issues (2003-present).

4) Kim, Gi-bong. 2000. "Beyond the Question, 'What is History'" (Seoul: Pureun Yoeksa), p. 66.

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(1) The Dominance of the State-Led Narrative about the Jeju Uprising (1948-1987)

During this phase, it was impossible for victims to talk about their and their family's loss and harm. From the Syngman Rhee regime to the Doo-hwan Cheon regime with a short interruption in the aftermath of the April Revolution in 1960, when the call for a truth investigation for the Jeju Uprising was made. Official documents made before the late 1980s were based on the view that the Jeju Uprising was a 'communist riot,' forcing the narrative that 'April 3 Uprising = rioting' and the 'victims = rioters.'

When the discourse around the Jeju Uprising was dominated by the state authorities, discussing the Uprising itself was framed as 'pro-communist leftism,' and due to the existence of the guild-by-association system, it was impossible for people to reveal their memories about the Uprising in Korea. For this reason, the discussion on the Jeju Uprising in the civic sector began in Japan instead of Korea.⁵⁾ Since the Japanese colonial rule, Japan became another living space for people in Jeju, and during the Uprising, many people in Jeju fled to Japan.

In spite of the oppression and persecution of the state, there were individuals who sought to let the world know about the Uprising and find its truth. Gi-young Hyun, a novelist, published his novel titled 'Sun's Uncle' in the Autumn volume of "Creation and Critics (or Changbi)" in 1978. This novel significantly contributed to the revelation of the tragic truth about the Jeju Uprising after three decades, but the cost the novelist was assumed to pay was incredibly high.⁶⁾ Universities in Jeju began to call for investigations. On April 3, 1986, the Student Council at Jeju National University set up a memorial altar for the victims of the Jeju Uprising on the first floor of the Student Hall Building. However, the University coaxed and threatened the students to move the altar to the Student Council's office, showing that the 'April 3 issue' was considered politically sensitive.

(2) The June Democracy Movement and the dominance of the civil society-led narrative about the Jeju Uprising (1987-2000)

With 1989 as a benchmark, the Truth Investigation Movement had a new beginning. The June Democratic Movement in 1987 gave momentum to gain public attention to the Jeju Uprising, which had been a taboo for the past four decades and to raise the willingness to clarify the incident. Accordingly, the demands for straightening up the distorted narratives and disinformation of the Uprising and restoring the reputation of the victims and their families were raised. In 1988, to commemorate the 40th anniversary

5) Kim, Bong-hyeon and Min-ju Kim. 1978. "The History of Jeju Residents' April 3 Armed Conflict – A Reference" (Daepan: Munwusa); also, its Japanese version

6) Gi-young Hyun was taken to the Security Office of the Doo-hwan Cheon government and was tortured. San-ha Lee, a poet, published a poem on the Jeju Uprising titled 'Hallasan Mountain' in "Nokdu Seopyeong" in March 1987. He was arrested for violating the National Security Law and imprisoned for a year and six months in November of the same year. Myeong-sik Kim published books "Jeju People Uprisings" I, II, III (Seoul: Sonamu, 1988) and was also put in jail for a year and six months.

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of the Jeju Uprising, a number of seminars and commemoration ceremonies were held at universities in Korea and in many places throughout Jeju Island and even in Japan, with more people calling for the need to investigate the truth. On April 3, 1988, an April 3 academic conference was held simultaneously in Seoul, Korea and Tokyo, Japan.⁷⁾ In 1988, in Gasiri, Jeju, its villagers voluntarily conducted a survey of the April 3 incident's damage in their community and published the list of 386 victims and their financial damage in their village bulletin, "Gasiri Paper-Gasurum".

The demand for truth made by cultural influencers, artists, students, and activists was pioneering as it later led the academics to embark on their research on the April 3 Incident. After the June Democracy Movement, progressive cultural influencers and artists in Jeju Island formed several cultural and art organizations, which took the initiative to reveal the issue of April 3 to the public. The hearing on the corruption committed during the 5th Republic in Korea was conducted in 1988, which in turn served as an opportunity for people in Jeju to begin talking about the Jeju Uprising. The survivors of the Jeju Uprising started opening up slowly, saying, "The April 3 Incident was even worse," after watching the hearing. In 1989, a private research institute, "Jeju April 3 Research Institute," was established, which started collecting interviews and testimonials of the victims and their families. A long series of stories covering this topic was published in the major local newspapers such as Jeju Shinmun and Jemin Ilbo; also, several documentaries on this topic were aired on major public TV channels. This media attention has made the Jeju Uprising a salient social issue in the country.

Politicians also began discussing the need for a truth investigation of the Jeju Uprising shortly after 1988. The first politician who brought the 'April 3 issue' to the fore in Korean politics in the 1980s was Dae-jung Kim. In the presidential election in late 1987, the candidate for Peace Democratic Party promised to embark on an investigation to identify the truth of the Jeju Uprising if elected. Since then, candidates of every political party who ran for the districts in Jeju pledged to identify the truth, propose its in-depth discussion in the National Assembly, build a memorial tower, and so on. Even these days, three decades after this movement, the April 3 issue continues to be a popular campaign pledge for candidates for the presidency, the National Assembly, and local government offices to make.

However, the perspectives shared by the military and police forces in Korea did not change much even after the civilian government was established. They still viewed the Jeju Uprising as 'brutality of radical leftists' and a 'riot'.⁸⁾

7) On April 3, 1988, an academic conference was held in Women Baekin Hall located in Yeouido, Seoul, organized by the Council for Jeju Social Issues, composed of people from Jeju who resided in Seoul. The conference's theme was 'Revisiting the modern history of Jeju Island—The Background of April 3 Incident and Its Aftermath. At the conference, Han-kwon Yang and Myeong-rim Park, who earned a master's degree with their research on the Jeju Uprising that year. On the same day, a seminar was held by the 'Meeting for Jeju April 3 Incident' in Korean YMCA Building in Tokyo, Japan. Speakers included Hideki Kajimura, a scholar of Asian history, Ha-eun Jeong, Seok-beom Kim, and Myeong-sik Kim. The seminar was a success with a large audience of more than 500 people.

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In 1992, the remains of 11 victims who were killed by the military, police, and civilian alliance forces were uncovered in Darangshi Cave after the 44 years passage of the Uprising. This provided momentum to the truth investigation movement, which then emerged as a national issue. The finding of the remains was the substantiated and direct evidence of the April 3 incident. Even around this time, the state intelligence and security authorities attempted to prevent it from becoming a national issue.

In the following years, the April 3 Special Committee was established in Jeju Legislature (1993)⁹⁾, and a mass memorial service was offered (1994)¹⁰⁾, both of which gave more legitimacy to the efforts of the truth investigation movement. Also, it provided a foundation for Jeju's province-wide and national struggles to achieve the enactment of the 4.3 Special Act. By the time of the 50th anniversary of the Uprising, the demands and movements for identifying the truth about the incident and restoring the dignity and reputation of the victims got stronger.¹¹⁾ The supporters in and out of

8) Counter-Unconventional Warfare History," published by the Institute for Military History in 1988, reads, "The first operation to combat communists by the National Defense Guard was conducted in Jeju Island in response to the riot occurring on April 3, 1948, prior to the establishment of the Republic of Korea." This indicates that they view Jeju Uprising as a 'riot' and a prototype of a 'guerilla warfare'. The Institute for Military History at the Ministry of National Defense, "Counter-Unconventional Warfare History (1945-1960)" (Seoul: The Institute for Military History, 1998), p. 47. The Jeju Headquarters of the Police Department published "Jeju Police Forces History" in 1990 when the discussion on the Jeju Uprising actively began. The publication defines the uprising as a "riot, the manifestation of brutality by radical leftists under the command of the Workers' Party of South Korea". Moreover, it contains serious errors, for instance, regarding its discussion of Bukchonri Massacre by switching the perpetrators and the victims. Also, Jeju Police Agency published a book titled "The History of Jeju Police Forces" (revised edition) in 2000. This book also describes the Jeju Uprising as "brutality caused by radical leftists under the command of the Workers' Party of South Korea". Jeju Policy Agency was backlashed by April 3 organizations and victims' families.

9) The establishment of the April 3 Special Committee (Committee Chair: Young-hun Kim) in Jeju Legislature (Speaker: Jeong-eon Jang) on March 20, 1993, opened a new era for the truth investigation movement for the Jeju Uprising. The committee set up three-phase plans, including investigation for truth, reestablishment of history, reparations, and memorial projects. The committee opened an 'April 3 Report Room' in February 1994 and started collecting and registering cases pertaining to the Jeju Uprising. As a result, the committee was able to publish the "Report on the Damage of the Jeju Uprising", which lists the names of 14,125 victims. This publication served as a foundation for later efforts for truth investigation.

10) The mass memorial service was not agreed upon in 1993 but later reached a consensus with the arbitration of the Jeju Legislature in 1994. The 'Committee for the Preparation of the April Memorial' and the 'Bereaved Family Association' determined to offer a memorial service for the victims of the Jeju Uprising for its 46th anniversary in order to "develop the memorial service as a Jeju provincial event to comfort the souls of the victims, unite 510,000 people in Jeju, and restore their reputation." On April 3, they successfully held the 'Memorial Ceremony to Commemorate the 46th Anniversary of the Jeju Uprising'. As such, the memorial event that had been organized by the 'Committee for the Preparation of the April Memorial' for five years since 1989 and the memorial service that the Bereaved Family Association had offered for three years since 1991 became merged. It has become a province-wide memorial ceremony in Jeju.

11) On April 1, 1997, the 'National Committee for the Preparation of Projects to Commemorate the 50th Anniversary of the Jeju Uprising' was organized in Seoul (Committee Co-Chairs: Man-gil Gang, Jung-bae Kim, Chan-guk Kim, and Yun-hyeong Jeong). Later in Jeju, the 'Jeju Executive Committee for Projects to Comfort the Souls of Jeju Uprising Victims' was founded on September 26, 1997. In the following year, civil society organizations organized the 'Executive Committee for Academic and Cultural Projects to Commemorate the 50th Anniversary of the Jeju Uprising', which organized many activities domestically and overseas in order to identify the truth and restore the dignity and reputation of the victims. Moreover, another organization of many different groups titled 'Jeju People's Alliance for the Truth Investigation and the Restoration of the Victims' Dignity and Reputation' was formed in March 1999, while in October

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Jeju and victims' families worked hard to get the 4.3 Special Act enacted in the 15th National Assembly before its session ended in the late December of 1992. Their slogan was 'We can't let the incident of the 20th century enter the 21st century unresolved.' Such efforts and movements aiming at the enactment of the special act were not limited to Jeju but were supported nationwide. People in Jeju and the victims' families formed an alliance with progressive intellectuals and students to educate the public about the rightfulness and need for 4.3 special legislation and to demand politicians work on this issue. Thanks to the demand from the people and politicians' response to the call, the National Assembly passed the 'Special Act on the Investigation of the Truth and Reparations for Victims of the Jeju Uprising' on December 16, 1999.

(3) The enactment of the Special Act on the Investigation of the Truth and Reparations for Victims of the Jeju Uprising and the finalization of the Truth Investigation Report (2000-2003)

With the 4.3 Special Act promulgated in January 2000, an investigation over the Jeju Uprising was launched. The legislation became the legal foundation for the truth investigation and restoring the victims' dignity and reputation. This was the very first effort made by the Korean government to investigate and re-assess its past affairs. According to the law, the 4.3 Committee (Committee Chair: Prime Minister) was set up within the Prime Minister's Office on August 28, 2000. Also, to ensure objectivity and efficiency of drafting reports, the 'Team for Drafting Reports on the Jeju Uprising' was established on January 17, 2001. Within this Team there was a standing investigation team, which was composed of five experts and 15 investigators. Under the proposed timeline that the investigation process would collect evidence and data and analyze them in two years and the final report would be drafted in six months, these organizations embarked on the investigation in September 2000, which lasted for two years and six months until February 2003. Through this process, the 4.3 Committee finalized the 'Report on the Truth Investigation of the Jeju Uprising' on October 15, 2003. The main conclusions drawn from the Report are as follows.

(i) Based on the authority structure responsible for mass casualties, we have no choice but to assign the primary responsibility to the 9th Regiment and the 2nd Regiment, who executed repressive operations in Junggansan Village, including the scorched earth tactic. Between October 1948 and March 1949, for which both regiments

executed their operations, 80% of the total casualties occurred. However, the ultimate responsibility should go to President Syngman Rhee. President Rhee proclaimed martial law and said in the cabinet meeting in January 1949, "Although the United States recognizes the importance of Korea and sympathizes with us, it is important to exterminate

of the same year, the 'Alliance Meeting for the Enactment of the 4.3 Special Act' was formed.

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the aftermath of the incidents in Jeju and Jeollanam-do. By doing so, the U.S. will be more willing to give us aid. We should also establish a stricter rule of law by suppressing crimes and punishing radicals with no tolerance.” Through this investigation, we uncovered that President Rhee ordered strict and oppressive operations.

(ii) The U.S. Military Government in Korea and Korea Military Advisory Group (KMAG) cannot be free from the guilt for what happened in the outbreak of the Jeju Uprising and how the Uprising was responded to. This incident occurred during the reign of the U.S. Military Government in Korea, and a captain from the U.S. armed forces commanded the suppression operations as the commanding officer for Jeju Division. Even after the establishment of the Republic of Korea, the U.S. military retained the operational control authority of the Korean military through the Military Agreement between Korea and the U.S. Accordingly, the U.S. military supported the Korean armed forces deployed to suppress the Jeju Uprising with weaponry and reconnaissance planes. Especially, the U.S. praised the scorched earth operation in Junggansan Village executed by the 9th Regiment as a highly ‘successful operation.’ There is a record that Brigadier General William Lynn Roberts, the leader of the Korean Military Advisory Group, made a request to the Korean government to publicize the achievements of Colonel Yo-chan Song, such as through the presidential statement.

The “Report on the Truth Investigation of the Jeju Uprising” identified the accurate scale of casualties and clarified those who were responsible for the massacres. At the same time, the Report defined massacres as the “human rights violations and fault”. The Report indicates, “We evaluate that the investigation was highly successful in collecting evidence and data in Korea and overseas. However, data concerning the military and police forces and armed forces involved directly in the armed conflicts were relatively insufficient. Especially as the policy eliminated significant portions of related documents and data already, it was challenging for us to uncover the detailed facts about the Jeju Uprising.”¹²⁾

(4) Government apology and the resolution of Jeju Uprising issues (2003-present).

President Moo-hyeon Roh visited Jeju Island on October 31, 2003, which was 15 days after the finalization of the Report and officially apologized for the ‘fault committed by the state in the past’ in public. Although the Report revealed the tragedy and many facts of the Jeju Uprising, it was far from revealing it completely. Still, many associations

and researchers related to the Jeju Uprising emphasized the need for follow-up investigations. Especially, they stressed the need for uncovering new evidence and data, re-investigate the status of those missing as it became relevant after the recent uncovering of the remains of the victims, and the need for clarifying the role played by the U.S. military at the village level. In response, a follow-up investigation, in accordance

12) The 4.3 Committee, “Report on the Truth Investigation of the Jeju Uprising”, pp. 45-55.

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with the amendment made to the 4.3 Special Act, was launched by Jeju 4.3 Peace Foundation, an organization founded in 2008. The follow-up investigation aimed to enlarge the base for the restoration of the victims' and their families' dignity and reputation by identifying specific and accurate damages done during the Jeju Uprising, which were insufficient in the previous investigation. Jeju 4.3 Peace Foundation set up an investigation of damages village by village. The foundation identified five types of damage such as missing persons, Jeju natives living in Japan, education organizations, military, police, right-wing organizations, and religious organizations. The village-level investigation for damages is the core project of the follow-up investigation. It was conducted for four years and eight months, from May 2012 to December 2016. The project identified the facts of the harm and loss caused by the Jeju Uprising by looking into 12 eup or myeons, 165 villages, types of damage, and individual cases. The investigation defined mass casualties of over 50 persons in the same place as a 'massacre'. Through its village-level investigation, it became clearer about the scale of 'massacres'. The need to identify missing persons was raised as a major issue that necessitated the follow-up investigation. The number of missing persons who were identified until November 22, 2019, was 3,610. However, it increased to 4,255 as a result of the follow-up investigation. Concerning the losses for the military and police forces and right-wing organizations, the major forces to suppress the participants of the Jeju Uprising, the previous government-led investigation said it was 180 soldiers, 232 policemen, and 639 right-wing activists. However, this follow-up investigation revealed that 162 soldiers, 289 policemen, and 640 right-wing activists were lost, totaling 1,091 in number. The caveat is that this follow-up investigation was led by Jeju 4.3 Peace Foundation, and the government was not involved. There still remain tasks to further clarify the village-by-village damage, the role of the U.S. military government, and the role of the Korean military and police forces and armed forces.

Therefore, there was a call for another round of investigation. The 4.3 Special Act was revised entirely in March 2022, and this revision created a government-led investigation. Accordingly, another government-led investigation will take place 19 years after the finalization of the government-drafted report on the Jeju Uprising. On March 14, 2022, the 4.3 Committee determined six major topics the new investigation needs to focus on: (1) damages at the regional level, (2) missing persons, (3) the role played by the U.S. and U.S. military government, (4) the suppression operations executed by the armed forces and military, police forces, (5) Jeju natives living in Japan, (6) damages due to the guilt-by-association system. Also, the Committee called for the need to interview

the victims and their families, uncover documents and data housed in government agencies and organizations, and visit the U.S. for field research. The revised 4.3 Special Act stipulates that the government should complete the publication of the follow-up investigation report and the report to the National Assembly by December of 2024.

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Therefore, Jeju 4.3 Peace Foundation will conduct an additional follow-up investigation until December of next year and draft a report in 2024.

Nevertheless, the path to the resolution of the April 3 issue was not all smooth and nice. For instance, in the Myeong-bak Lee and Geun-hye Park administrations, both presidents did not participate in 4.3 memorial ceremonies. Also, conservative organizations brought the 4.3 Special Act to challenge its constitutionality, trying to dismantle the foundation for the efforts made so far to resolve the Jeju Uprising issues.

3. The Movement to Restore the Dignity and Reputation of Victims and Their Families

President Moo-hyeon Roh visited Jeju Island 15 days after the finalization of the government-drafted report on the Jeju Uprising. During his visit, he officially apologized for the 'fault committed by the state in the past' in public.

The biggest obstacle in the effort to restore the dignity and reputation of the victims involves those who were imprisoned and the provision of reparations. Concerning 2,530 individuals who were wrongfully detained after illegal military court procedures previously, the reparation process for them has been implemented based on a series of court rulings. Jeju District Court ruled in the case filed by 18 survivors who were illegally imprisoned against the state that these victims were not guilty.¹³⁾ With this ruling as a beginning, the families of those missing persons filed cases, and the Court ruled in recognition of the illegality of the military court procedures during the Jeju Uprising. Through this, the Court restored the dignity and reputation of the victims legally. According to the 4.3 Special Act revised in 2021, the Ex Officio Reexamination Taskforce for the Jeju Uprising was set up within Gwangju High Prosecutors' Office. The Taskforce has been reexamining the cases of those imprisoned during the Jeju Uprising.¹⁴⁾

Another obstacle in the process of restoring the victims' dignity and reputation has been reparations. Since November 2002, the 4.3 Committee has identified and determined 98,919 persons for who the government is responsible for the compensation. This figure accounted for 15% of the Jeju population (697,718 as of April 2022). Victims (the deceased, missing, disabled, and imprisoned) are 14,577, and victims' families are 84,340. This makes the scale of reparations exceedingly large.

13) "The Hankyoreh", January 18, 2019

14) On March 29, 2022, in Jeju District Court, there was a trial for 40 victims of the Jeju Uprising, for which the Ex Officio Reexamination Taskforce had requested a retrial. The prosecutor said, "Because of the brutality imposed by the name of ideology and the abuse of state power, the bereaved families have lived through a period of bitter grief. We sincerely hope that this retrial ex officio could correct the injustice of state power and its illegality, and this tragedy will not happen again in this country. We request the court to rule not guilty for all the victims." Jeju District Court, Penal Section 4-1 (Chief Justice: Chan-su Jang) delivered the verdict of not guilty for all victims.

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For this reason, reparations have been one of the most challenging tasks in resolving the April 3 issue. People in Jeju have taken strategic approaches. The construction of 4.3 Peace Park and the establishment of Jeju 4.3 Peace Foundation were done from the perspective of community reparation. However, the bereaved families have argued that the restoration of the victims' dignity and reputation can be completed only when the legitimate reparations follow after the president's official apology, given that the truth investigations have confirmed the abuse of state power and resources.

The issue of reparations became more salient as the Jae-in Moon administration began. Back on April 18, 2017, President Moon, during his campaign as a presidential candidate, announced his pledges on Jeju, "I believe that reparations are an important part of the process to fully restore the dignity and reputation of the Jeju Uprising victims. If elected to the office, I will actively work on it."¹⁵ After a long struggle and controversies over this issue, the partial revision of the 4.3 Special Act that stipulates the reparation measures took effect on April 12, 2022. Starting June 2022, eligible individuals and parties should apply for reparations. The government will provide 90 million KRW (approximately \$71,000) to those killed or missing, and the amount (less than 90 million KRW) to be determined by the Jeju 4.3 Committee within the Prime Minister's Office to those disabled or imprisoned. Also, to those victims who received a suspended jail sentence or fine, the government may provide up to 45 million KRW (approximately \$35,500) after the review of the 4.3 Committee. The reparations will be provided to surviving victims first and then other victims in order the government has identified. There are 109 surviving victims who are expected to receive the reparations this year. Also, about 1,800 other victims are expected to receive the reparations this year in order. The government has apportioned 181 billion KRW (approximately \$142.6 million) in the budget for this first year of reparations and will provide the reparations throughout the following five years in order until 2026.

4. Conclusion

In the case of the Jeju Uprising, transitional justice has been achieved to a certain degree after the long period of suppression and persecution in the aftermath of the Jeju Uprising in tandem with the movement of recorrecting unjust historical legacies.

¹⁵ The pledges made by then-presidential candidate Jae-in Moon were as follows: (1) In order to correct the historical errors that the state is responsible for, the provision of a standing system where the victims of the Jeju Uprising and their remaining families can report cases about the loss and damage done by the abuse of state power and authorities and the active assessment of practical measures for reparations; (2) the revision of the Jeju 4.3 Special Act and/or the enactment of an additional special law related to it to identify the truth of those imprisoned illegally during the Jeju Uprising as well as to restore their dignity and reputation in realistic terms; (3) the introduction of a standing system through which victims and their families can report their cases to the government; (4) the provision of practical aid to victims and their remaining families such as cash transfers; (5) the support for family reunification through preserving 4.3 ruins and historical sites, exhuming the bodies of victims and DNA forensic.

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Due to the oppression imposed by the four-decade-long dictatorships, it had been taboo to talk about the Jeju Uprising in Korea for a prolonged period of time.

The June Democracy Movement became an opportunity for people in Jeju to surface their counter-memory and student activists. In the midst of the rising demands for democracy, student activists and progressive intellectuals began calling for an investigation of the truth of the Jeju Uprising. The Gwangju hearing held in the National Assembly in 1988 opened the door for people in Jeju to bring the hidden story of the Jeju Uprising to light. Jeju citizens joined the truth investigation movement and forming alliances with many forces in society, such as academic, cultural and art, media, the student movement, and religious sectors and organizations called for the investigation to uncover the truth of the Jeju Uprising. As a result of such efforts, the 4.3 Special Act was enacted half a century after the outbreak of the Jeju Uprising. Although there were attempts to dismantle the momentum toward the resolution of the Jeju Uprising made by conservative regimes, the Dae-jung Kim, Moo-hyeon Roh, and Jae-in Moon administrations have made significant progress in correcting and reestablishing the wrong history and restoring the dignity and reputation of the victims of the abuse of government power through the enactment and revision of the 4.3 Special Act. As such, the progress in the process of resolving the April 3 issue has come hand in hand with liberal democratic regimes.

The movement to identify the truth of the Jeju Uprising has yielded meaningful achievements and provided us with some implications. First, it has created a model for Korea to resolve historical wrongdoings made by the state authorities. With approaches prudently paced by phase, the resolution process has progressed from persecution and oppression to the enactment of the 4.3 Special Act and a series of truth investigations, and finally, the restoration of the dignity and reputation of the victims. In this regard, the Jeju Uprising case yields a clue about how to approach other similar cases involving historical wrongdoings committed by the state, such as Yeosu and Suncheon Rebellion. Second, it highlights the importance of alliances. The alliance among the 4.3 Bereaved Family Association, various 4.3 organizations, media, culture and art sectors, and politics served as a driving force for the enactment of the 4.3 Special Act as well as the foundation for the progress toward truth investigations and dignity and reputation restoration. Third, the movement to identify the truth of the Jeju Uprising can be considered a human rights movement for the restoration of the dignity and reputation of victims and their families who have suffered from the victimized mentality as well as a peace movement for reconciliation and coexistence. The families of the Jeju Uprising

victims did not demand punishment of the perpetrators, and the Bereaved Family Association and Jeju Chapter of the Veteran Police Association shook hands for reconciliation.

It does not mean that the road toward the resolution has been all easy and smooth.

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The leading forces of the armed conflict, the issue of so-called 'those to be excluded', remains to be a complicated issue in the process. The 4.3 Special Act is a law for reconciliation and coexistence and law of inclusion. There is no room for 'exclusion' in the 4.3 Special Act. The title of 'those to be excluded' was created by the suit brought to the Constitution Court of Korea by conservative, right-wing organizations to challenge the constitutionality of the 4.3 Special Act in 2001. In the suit, the Constitution Court ruled that persons who instigated and led the armed uprising should be excluded from the boundary of victims.¹⁶⁾

For this reason, about ten victims of the Jeju Uprising have been excluded from the process of truth investigation and dignity and reputation restoration. Such "exclusion" is an extension of the guilt-by-association from the perspective of these victims. The resolution process of the Jeju Uprising is still ongoing and open. Even after the completion of reparations, it is important for us to remember the Jeju Uprising and continue to commemorate it based on reconciliation and coexistence. Moreover, we should fix the current legal system so that the children of the deceased victims who were adopted by their relatives can receive reparations, which is not the case currently because they are not legally recognized as the victims' family due to the adoption.

The follow-up investigation that the government is about to conduct 19 years after the first one is not that simple. As seen in the previous attempts to dismantle the 4.3 resolution process made under the conservative regimes, it is not clear how this new investigation will unfold under the Seok-yeol Yoon. I am wondering how the issue of 'justice and clarity' demanded by civil society at the 70th anniversary of the Jeju Uprising will develop at the 80th anniversary.

16) The Constitution Court of Korea established the standards for reviewing and determining the eligibility of a victim of the Jeju Uprising with the exception clause for the eligible victim as follows: "1. The core officials of the Worker's Party's Jeju Chapter, who were directly responsible for the occurrence of the Jeju Uprising; 2. The leaders of the armed protesters who played a leading role in fighting against and actively fought against the suppression of the military and police forces during the Uprising. These individuals explicitly breached the basic order of liberal democracy of our society, and therefore they are not protected by our Constitution and legal system. For this reason, they should be excluded from the boundary of victims, which requires specific and explicit evidence to verify the objectivity of such criterion."

Present situation on Transitional Justice in Myanmar, and the Resilient Response of Civil Society in Promoting Democracy

Ms. Lway Peo Kamaekhour
Board Member of the ND-Burma



Good morning, everyone,

Thank you so much for the opportunity to share what is happening in relation to transitional justice in Myanmar, as well as the response by civil society to promote democracy in our country. My name is Lway Poe Kamaekhour and I am representing the Ta'ang Women's Organization where I am the General Secretary. I am also a board member of the Network for Human Rights Documentation- Burma.

For over 70 years, there has been a civil war in Myanmar. Innocent people have suffered from human rights violations, crime against humanity, and genocide as well as war crimes. When the Burma Army feels threatened by opposition forces, they respond with airstrikes and indiscriminate firing and shelling in areas controlled by ethnic armed organizations. These tactics are systematic and widespread.

After the 2010 general election, the country began to open, despite being guided by the flawed military drafted 2008 Constitution. When the people's representatives were represented in greater numbers in the 2015 election, people from the whole country enjoyed a taste of democracy. People received more awareness about human rights because there was a safer space for activists and human rights defenders to spread knowledge about truth and justice, particularly for victims of atrocities. Issues surrounding transitional justice improved. Civil society organizations initiated a reparation policy to advocate to Members of Parliament in Naypyidaw under the National League for Democracy government between 2019 and 2020.

The political situation changed after the 2020 national election. Despite the National League for Democracy winning in an overwhelming landslide, the military refused to accept the results. On the eve of the first day of a new Parliament on 1 February 2022, the military junta attempted a coup. People from across the country were shocked. Since then, the junta has tried to control all the affairs, but this has not been successful. Since the first day, civilians have rejected the coup. In response, the junta has beat, shot at, tortured and killed the non-violent protestors in public and private spaces.

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The Myanmar military renamed itself as the State Administration Council (SAC) after the coup. Their first and most immediate target was to eliminate pro-democracy groups, political leaders, and the ruling party who won the 2020 election. Their course of illegal actions includes arbitrary arrest, unlawful detainment, torturing, and killing civilians. This included children, the disabled, the elderly and pregnant women. This is still ongoing.

People are being brutalized in mass killings, including scorched earth campaigns. The military wants people to suffer and to fear them in order to convince them to forfeit any opposition to their dictatorship.

Youth and activists, and protestors from different backgrounds fled to ethnic areas demanding to receive military training from Ethnic Revolution Organization; mostly they were in urban areas.

A nationwide revolution began on 1 February 2021. The military has done nothing to serve the people or improve the revolution. Those who joined the Civil Disobedience Movement received threats by the junta. One third of those involved quit because they were being deprived of their livelihoods and could not flee to a safe area. Human rights defenders have also received threats which have forced them to seek asylum.

Some commanders, soldiers, police, and members of their families who have defected are becoming activists. However, their families have also been targeted.

It has been over 435 days since the coup. During this time, at least 1741 have been killed, including women and children, 13201 have been illegally arrested and detained and 1976 are on the warrant list.

The junta has continued to cut off internet access, phone access in many areas in both urban and rural areas, especially in areas where there has been strong opposition and increased warfare has resulted.

Cooperating with International Community

The junta is committing crimes against humanity, genocide, and war crimes. The revolutionary groups and civil society organizations working for human rights called on the international community to take action on Myanmar by holding the Myanmar military accountable. There is no mechanism which can hold the military liable in Myanmar. Therefore, the UN and international community can help Myanmar by releasing petition letters, statements, interviewing and collecting the evidence, and boycotting the Myanmar military owned companies and products. The United Nations has rejected the representative of the junta. Even though the international community and the people of Myanmar refuse to accept the military, the junta continues to commit grave injustices.

There are more reasons that the junta manages to extort funds and resources from the people and the country:

- (a) The junta receives taxes from their controlled areas including claiming natural resources,

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taking the properties of protestors, increasing communication taxes, and collecting from cronies

- (b) There is limited ability to hold the junta accountable for war crimes in the country. Domestic accountability mechanisms are not strong enough.
- (c) The junta is still able to access weapons of war from bordering countries such as India and China who cooperate with the military for security.
- (d) The junta can control communication tools fully such as satellite intelligence, communication operators, etc.

Therefore, transitional justice is still a challenge. On the other hand, the revolution groups, and civil society organizations never give up and they have more commitment to fighting against the dictatorship.

Civil Society resiliency to promote democracy

The junta continues to target civil society organizations. As a result, many human rights groups and women's organizations have experienced crackdowns while participating in the movement together. Civil society organizations are supporting the people to participate in protests with effective strategies. Despite the many risks to their physical safety, they continue to persevere.

Some organizations are working on the reparation issue and trying to find a network to contribute to the concept of transitional justice. The time is now to bring awareness to democracy by promoting Transitional Justice. The number of victims and survivors are increasing according to human rights documentation. The victims deserve and are entitled to an apology from the State at the very least.

Policy Change

The National Unity Consultative Council (NUCC) is one of the new stakeholders along with the National Unity Government (NUG). Civil society organizations have an opportunity to work with news stakeholders for policy advocacy about Transitional Justice issues.

In conclusion, there are many obstacles for transitional justice and democratization of Myanmar. However, we all must win this revolution for the future Myanmar. When the revolution succeeds, the future of Myanmar will be bright.

The EL Salvador experience in the Search of the Disappeared in the aftermath of an armed conflict



Ms. Leonor Arteaga

Due Process of Law Foundation (DPLF), CONABUSQUEDA 2022

Thirty years ago, El Salvador began a new era. On January 16, 1992, the government signed a peace agreement with left-wing guerrillas at Chapultepec castle in Mexico City, ending the 12-year-long civil war, during which at least 75,000 people perished.¹⁾ The Chapultepec Peace Accords (hereinafter "Agreement," "Peace Accords," or "Accords"),²⁾ their implementation and limitations, and the transitional process that followed, can provide valuable lessons for peace processes following conflict. The political consensus arrived at by the signing parties in El Salvador was considered a remarkable success, but yet, the majority of victims of human rights violations during the war, including victims of enforced

1) There is no exact, universally agreed upon figure for the number of victims killed during El Salvador's internal armed conflict. However, experts generally agree that the war was one of the most intense and violent internal conflicts in Latin America's history. In 1982, the Inter-American Commission on Human Rights estimated that there were nearly 35,000 victims between 1978 and 1983 alone. See Inter-American Commission on Human Rights (IACHR), Informe Anual, 1981-1982. OEA/Ser.L/V/II.57, doc. 6 rev.1, 20 September 1982, Chapter V, El Salvador, available at: <https://www.cidh.oas.org/annualrep/81.82sp/cap.5a.htm>.

Academics cite different numbers for how many people lost their lives in El Salvador's internal conflict, with figures ranging from 50,000 to 90,000 victims. For example, Sieder believed that during the same five-year period (1978-1983) nearly 42,000 people were killed by State agents (out of a total of 50,000 people killed by both sides during the same period). Seligson and McElhinny, on the other hand, estimated that between 80,000 and 94,000 people were killed during the conflict, with 50,000-60,000 civilians among the victims. See Rachel Sieder, "Políticas de Guerra, Paz y Memoria en América Central," in *Las políticas hacia el pasado. Juicios, depuraciones, perdón y olvido en las nuevas democracias*, eds. Alexandra Barahona de Brito, Paloma Aguilar Fernández, and Carmen González Enríquez. Madrid: Ediciones Istmo, 2002, 247-284; Mitchell Seligson and Vincent McElhinny, "Low-intensity warfare, High-intensity death: The Demographic Impact of the Wars in El Salvador and Nicaragua," in *Canadian Journal of Latin American and Caribbean Studies*, 21, 42(1996): 211-41, available at: <https://www.tandfonline.com/doi/abs/10.1080/08263663.1996.10816742>.

Both Buergenthal and Wood estimated that the total number of dead was likely more than 75,000 people. See Thomas Buergenthal, "La Comisión de la Verdad para El Salvador," in *Estudios especializados de Derechos Humanos*, coords. Thomas Buergenthal and Antonio Cancado Trindade, I. San José: IIDH, 11-62, available at: <https://archivos.juridicas.unam.mx/www/bjv/libros/5/2061/6.pdf>; Elisabeth Wood, "Insurgent Collective Action and Civil War in El Salvador," Cambridge: University Press, available at: https://books.google.es/books?hl=es&lr=&id=QBAAN3ABKmlC&oi=fnd&pg=PR8&dq=Insurgent+Collective+Action+and+Civil+War+in+El+Salvador&ots=7_KGRnVtFY&sig=-SzPWnYBAr1twp9wB2b2ON-kno#v=onepage&q=Insurgent%20Collective%20Action%20and%20Civil%20War%20in%20El%20Salvador&f=false

2) Chapultepec Agreement (El Salvador and FLMN, 1992)," available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/SV_920116_ChapultepecAgreement.pdf.

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disappearances, have had little chance to obtain the truth about those violations, or any modicum of justice that could serve as a foundation for forgiveness and reconciliation.

In the years immediately after the conflict, while human rights organizations and victims' groups in El Salvador sought to highlight the need for transitional justice measures, they were not as effective in emphasizing the need for truth and justice or advocating for those measures as their counterparts in Argentina, Chile, and Guatemala. Finally, after decades of denial of past atrocities, the FMLN party rose to power for the first time in 2009, with the promise to heal the wounds from the civil war. The government opened formal and informal dialogues with victims, experts, and civil society to address the massive human rights violations committed during the armed conflict. In 2010 – 18 years after the Peace Accords were signed and after much advocacy by and pressure from Salvadoran civil society – then-President Mauricio Funes, acting as representative of the state, officially acknowledged El Salvador's responsibility for the human rights violations committed during the internal armed conflict in a public act.³⁾ Subsequently, **El Salvador's government established two national mechanisms (commissions) for the search for children and adults who were forcibly disappeared during the conflict;** these mechanisms were not specifically contemplated in the Peace Accords, but their formation represents a significant advance for transitional justice and the peace process in El Salvador. Both commissions continue to operate today and have achieved notable successes, even as they confront significant obstacles and work with limited resources.

I The National Commission on the Search for Adults Disappeared during the Armed Conflict, CONABÚSQUEDA, and the National Commission on the Search for Children Disappeared during the Internal Armed Conflict in El Salvador, CNB.

Enforced disappearance as a repressive practice deployed by the State against political opponents began to be used systematically in El Salvador in the mid-1970s. It later became part of the "counterinsurgency" strategy for the elimination of perceived political opponents, during the 1980-1992 internal armed conflict between state forces – supported by far-right paramilitary groups and death squads - and left-wing armed guerilla movements grouped under the banner of the Frente Farabundo Martí para la Liberación Nacional, FMLN ('Farabundo Martí National Liberation Front'). Between 1970

and 1992, thousands of people were disappeared in El Salvador. Hundreds of accounts from survivors and victims' relatives, compiled and investigated by national and international human rights organizations, show common features: targeted disappearances,

3) In addition to this general public acknowledgment, the state has acknowledged its responsibility and issued public apologies for specific cases of human rights violations committed during the conflict, including the massacres of El Calabozo, Las Canoas, and San Francisco Angulo, as well as the assassination of Archbishop Oscar Romero.

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often in urban settings, saw heavily armed men, sometimes in uniform, sometimes in civilian dress—abducting victims without warning from their homes, outside their workplaces, or at roadblocks; victims deprived of their liberty with no arrest warrant – abducted, in other words - and forcibly taken in military or private vehicles to unknown destination. What followed was the classic denial of information that is part of the crime of enforced disappearance: no authority would acknowledge the detentions, or provide any information on the whereabouts of victims, exacerbating families' uncertainty and suffering. A second strand or pattern of enforced disappearance, occurring in El Salvador as in Peru and elsewhere, consists of the disappearance of groups of people, including family groups, during so-called "scorched earth" military operations in rural areas, in which the army massacred thousands of civilians. This form of enforced disappearance has similar psychosocial, family, and community-level effects to the other, more individually targeted, form described.

Among the most appalling human rights violations committed during the conflict was the abduction and appropriation of children, often specifically the sons and daughters of individuals who were persecuted, disappeared, or killed by State agents. The vast majority of these abducted children were kept alive,⁴⁾ and their birth identities were erased and replaced. Some were later appropriated by perpetrators into their own families; given to other families who falsely registered them as their own; or put up for pseudo-legal adoption, either in El Salvador or abroad, through the institutions responsible for organizing adoptions at the time.

This state-perpetrated enforced disappearance of children in El Salvador reached its height between 1980 and 1984.⁵⁾ The majority of children disappeared in this way were quite young, as children of this age were generally less able to hide, escape or protect themselves. Younger children were also less likely to be considered a threat by the armed forces.⁶⁾ In addition to these enforced disappearances carried out by State agents, some cases of child disappearance have also been attributed to the FMLN. These disappearances had a distinctive nature: the FMLN used kidnapped or abducted children as a cover for clandestine activities in safe houses,⁷⁾ or sometimes as so-called

4) According to information from the National Commission for the Search for Children Disappeared during the Internal Armed Conflict in El Salvador, CNB, in 70% of the cases of disappeared children that were resolved, the victims were found alive.

5) Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos (henceforth, 'Asociación Pro-Búsqueda') (n.d.) 'Informe sobre El Salvador ante la Comisión Interamericana de Derechos Humanos, La Actuación del Estado de El Salvador en la problemática de la niñez desaparecida a consecuencia del conflicto armado', p. 8. See also Mejía, Azucena (2003), *La Paz en Construcción: un estudio sobre la problemática de la niñez desaparecida por el conflicto armado en El Salvador*, San Salvador: Asociación Pro-Búsqueda, p. 25.

6) Mejía, Azucena (2003), *La Paz en Construcción...*, op. cit., p. 16.

7) Safe houses sheltered members of insurgent groups, allowing them to evade detection and continue their activities. The presence of young children was used to simulate a family home, in an effort to avoid suspicion.

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“mail children”: messengers sent to carry communications to the front lines of the conflict. Although these child abductions and disappearances were far less numerous than those committed by the armed forces, they took an equally heavy emotional and psychological toll on the children’s families and communities.

On January 16, 1992, the ‘Chapultepec’ peace accords were signed between the Salvadoran government and the FMLN, officially putting an end to El Salvador’s 12-year internal armed conflict. The peace agreement, supported by the United Nations, contained immediate measures aimed at bringing the open phase of conflict to an end - such as disarmament, demobilization, and reintegration of combatants - as well as numerous measures for legal, judicial, and security services reform.⁸⁾ Some of the long-term reform measures were however never implemented, while others were only implemented much later. Among the transitional justice measures adopted in El Salvador following the end of the internal conflict, with varying degrees of success, were a vetting process for public officials, a land restitution program, and judicial and security sector reforms, and a truth commission.⁹⁾

El Salvador’s Truth Commission, provided for in the country’s 1991 and 1992 peace accords, and was tasked with investigating the “serious acts of violence “committed during the conflict whose” impact on society urgently demands that the public should know the truth¹⁰⁾ The Commission, established in July 1992, was made up of international commissioners and staff, an effort to ensure objectivity and the safety of the commission, as El Salvador remained extremely polarized.¹⁰⁾ The Truth Commission operated under severe time constraints and faced significant challenges: it was initially

given only six months to carry out its work (later extended for two more months), and powerful sectors of society with valuable information, such as those with military connections, were openly hostile to the Commission’s work. In spite of these challenges,

8) The 1992 Chapultepec Peace Accords contained provisions for a cease-fire; the demobilization of regular army and guerrilla forces; the conversion of the FMLN into a political party and the reintegration of its combatants into society; reduction, streamlining and other changes in the armed forces; the creation of a new, de-militarized national civilian police force and intelligence service; the creation of human rights infrastructure including a Human Rights Ombudsperson’s Office; electoral and judicial reforms; legal, including constitutional, change including to enshrine human rights protections; and limited social and economic programs primarily benefiting members of the demobilized combatant forces and war-ravaged communities. See Chapultepec Agreement, Chapter. V, Economic and Social Questions, available in official translation at <https://peacemaker.un.org/elsalvador-chapultepec92> , last accessed 1 January 2022.

9) For a more detailed discussion of El Salvador’s transitional justice process and efforts to combat impunity, see Daniel Cerqueira and Leonor Arteaga (2016) ‘Challenging the Amnesty Law in El Salvador: Domestic and International Alternatives to Bring an End to Impunity’, Washington: Due Process of Law Foundation, available at https://www.dplf.org/sites/default/files/amnesty_law-final-24june.pdf, , last accessed 1 January 2022. See also Jo-Marie Burt (2018) ‘Transitional Justice in the Aftermath’... op. cit.

10) Priscilla Hayner (2010), *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. New York: Routledge, 2nd edition.

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the Truth Commission was able to document a significant, though far from comprehensive, number of the atrocities that took place during the conflict. The Commission recorded 3,880 cases of enforced disappearance based on primary sources, and 1,057 cases of enforced disappearance based on secondary sources, between 1980 and 1992 in the context of the internal armed conflict¹¹⁾. The United Nations Working Group on Enforced or Involuntary Disappearances lists of 2,281 registered cases of enforced disappearances dating from the Salvadoran armed conflict, while human rights organizations have estimated the number of cases to be around 8,000¹²⁾.

Although enforced disappearance was a systematic, institutional practice during the war, the State allowed these grave acts to go unpunished for decades by denying their occurrence and covering for perpetrators. Nor did it take any action to search for the disappeared. It was not until years later, following years of advocacy from victims and civil society, that the Salvadoran government began to engage in dialogue with victims, experts, and civil society to address the massive human rights violations committed during the armed conflict. Change began to be visible in 2009, the year in which the FMLN, now a political party, became the largest single party in the country's legislature and took the presidency, both for the first time.¹³⁾ In 2010, then-President Mauricio Funes, in his capacity as Head of State, publicly and officially acknowledged the State's responsibility for the grave human rights violations committed during El Salvador's internal conflict.¹⁴⁾ Following this acknowledgment, the government established two national mechanisms (commissions) to search for persons forcibly disappeared during the conflict. One mechanism, to search for disappeared children, was set up in 2010 in response to an Inter-American Court of Human Rights ruling. Later, in 2017, a separate mechanism was created to search for adult victims of disappearance. While not explicitly contemplated in the Peace Accords, the creation of these mechanisms was a major step forward for transitional justice and the peace process in El Salvador. The commissions, unified into a single mechanism in 2018 (see below), are still in operation today despite ongoing

11) These are the figures confirmed by CONABÚSQUEDA on the basis of information in the annexes published by the Truth Commission. CONABÚSQUEDA (2020, August), 'La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador: Una primera aproximación al fenómeno', San Salvador: CONABUSQUEDA, p. 53-55 available at: <https://en.calameo.com/read/003512072c3f70ba6a19d?fbclid=IwAR3-0cYIUJVO-rMJKZWCNhO9Hayuvtg141YxjGaPaW0g4ySbwn9UlwzCzmE> (hereinafter CONABÚSQUEDA 2020), at 17, last accessed 1 January 2022. For a discussion of the Truth Commission's methodology, see El Salvador Truth Commission Report, op. cit., at 17.

12) CONABUSQUEDA has determined that this figure is not at this time empirically supported, although many organizations do have files on cases of disappearances. Determining the exact number of people disappeared in the war is a pending task in El Salvador, and CONABÚSQUEDA is working on its own registry, using different sources. CONABÚSQUEDA 2020, op. cit., at 53-55..

13) The FMLN is a left-wing political party founded by former members of the FMLN guerrilla group. Its platform in the 2009 elections included a promise of reconciliation regarding the aftermath of the internal armed conflict.

14) In addition to this general public recognition, the State also acknowledged responsibility and issued public apologies for certain notorious incidents, including the massacres of El Calabozo, Las Canoas, and San Francisco Angulo, and the 1980 assassination of Archbishop Oscar Romero.

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challenges and limited resources.

● **The National Commission on the Search for Children, CNB**

In 2010, the National Commission on the Search for Children Disappeared during the Internal Armed Conflict in El Salvador (Comisión Nacional de Búsqueda de Niñas y Niños Desaparecidos durante el Conflicto Armado Interno de El Salvador, CNB, henceforth 'National Commission on the Search for Children or CNB) was created by executive decree.¹⁵⁾ The decree came about in response to a reparations measure ordered by the Inter-American Court of Human Rights in its judgment in the Serrano Cruz case: requiring El Salvador to set up "... a national commission, to trace the young people who disappeared when they were children during the armed conflict, with the participation of civil society".¹⁶⁾ The subsequent decree made it the mission of the CNB to investigate and determine the whereabouts and status of children who disappeared during the internal armed conflict in El Salvador, and promote family reunification while ensuring absolute respect for the dignity of the victims. The commission did not actually start work until 2011, since which time it has seen some important success in tracing children -now adults- still alive, and reuniting them or placing them back into contact with their families. The CNB's resolution rate has averaged one case per month: as of end 2020, it had resolved 113 cases of children who disappeared during the conflict, and had 250 cases under active investigation.¹⁷⁾ By mid-June 2021, the open caseload had reached 367, with some cases opened ex officio, and others in response to requests from families of disappeared children and others ex officio. As a result of the Commission's resolved cases, 38 young people have been reunited with their families face to face, with a further five reunifications carried out virtually, due to the COVID 19 pandemic.

The CNB is the longest-running experience of its kind in state-sponsored search for disappeared persons in these types of contexts in Latin America.¹⁸⁾ A pioneering institution in a number of ways, it has set an important precedent in the history of deploying ad hoc State mechanisms to search for and identify persons disappeared as the result of internal armed conflict. The CNB has used innovative methodologies to search for, identify, and, where necessary, exhume the bodies of disappeared children. It has also

15) Executive Decree No. 5, of January 15, 2010, subsequently amended (regarding civil society representation, independence and co-operation, and duration) by Executive Decrees No. 45, of April 9, 2010; No. 133, of August 31, 2011, and No. 18 of February 19, 2014.

16) Inter-American Court of Human Rights, Serrano Cruz sisters vs. El Salvador Merits, Reparations and Costs, Judgment of March 1, 2005, Series C, No. 120.

17) Héctor Rosemberg and Leonor Arteaga Rubio (2021, March 30), 'La otra historia: el robo de niños y niñas en la Guerra de El Salvador' Blog Justicia en las Américas, available at: <https://dplfblog.com/2021/03/30/la-otra-historia-el-robo-de-ninos-y-ninas-en-la-guerra-de-el-salvador/>, last accessed 1 January 2022.

18) Rosemberg and Arteaga, "La otra historia....", op. cit.

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led the way in providing psychosocial accompaniment to families of the disappeared,¹⁹⁾ an experience that served as a solid foundation for the later creation and operation of CONABÚSQUEDA.

● **CONABÚSQUEDA**

In August 2017, following decades of advocacy and tireless struggle by the relatives of the disappeared and human rights organizations, the Salvadoran government created the National Commission on the Search for Adults Disappeared during the Armed Conflict in El Salvador (Comisión Nacional de Búsqueda de Personas Adultas Desaparecidas en el contexto del Conflicto Armado de El Salvador, CONABÚSQUEDA). The window of opportunity that led to the establishment of CONABÚSQUEDA came about in part due to the 2016 overturning, by the Supreme Court, of the 1992 blanket Amnesty Law that had done much to ensure impunity for conflict-related violations. The 2016 sea change allowed for renewed dialogue, creating new opportunities for clarifying the truth about the enforced disappearance of children and adults during the armed conflict, as about other serious human rights violations.²⁰⁾

CONABÚSQUEDA was set up as an independent entity, attached to the Ministry of Foreign Affairs but with functional (technical and administrative) autonomy. The fact that CONABÚSQUEDA was, like the CNB, created via executive decree²¹⁾ rather than by legislative statute nonetheless means that its continued existence and budget allocation depend on the will of each successive presidential administration. Its mandate is to “investigate and determine the whereabouts and status of adult victims of enforced disappearances during the internal armed conflict in El Salvador, and promote family reunification or the return of remains to their families, ensuring respect for the dignity of the victims”.²²⁾ The mention of the return of remains as part of the mandate is read as also tasking CONABÚSQUEDA with exhumation and identification.

Three commissioners were appointed, ad honorem, and CONABÚSQUEDA opened its doors and began search operations in September 2018. Its budget is very limited, and local capacity in forensic genetics has proved insufficient for the new demands. While the previous experience of the CNB has been useful, as mentioned, CONABÚSQUEDA's work and trajectory are distinctive in significant ways. First, there has been much more political will behind the search for disappeared children in El Salvador than there has been

19) Idem.

20) Due Process of Law Foundation, (2018, April) ‘La Comisión de búsqueda y la tarea de reconstruir la verdad’, Washington: DPLF. Available at: http://www.dplf.org/sites/default/files/la_comision_de_busqueda_y_la_tarea_de_reconstruir_la_verdad.pdf, last accessed 1 January 2022.

21) Executive Decree No. 33, August 17, 2017.

22) Executive Decree No. 33, op. cit.

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for the corresponding search for adult victims. Due to the circumstances prevailing in each type of case, there is also a much greater chance that disappeared children may be traced alive. One positive sign for both mechanisms is that they have had greater support from civil society than many initiatives that were suggested in the immediate aftermath of the conflict, a change that constitutes a hopeful sign for search and for the broader transitional justice process.

In 2018, the Ministry of Foreign Affairs merged the functions of CONABÚSQUEDA and CNB into a single body, the 'Integrated Search Mechanism in El Salvador', via an internal agreement.²³⁾ This has had positive impacts²⁴⁾, particularly in logistical and practical matters: given extremely limited resources, the sharing of staff, offices, and infrastructure has been especially useful. The merger has also, however, posed significant challenges, particularly for the objectives of CONABÚSQUEDA: the process of searching for and identifying adult victims of disappearance – almost all of whom are most likely deceased – is completely distinct from, and more complex than, the search for disappeared children, the majority of whom are alive.

● **Mandate, key powers, and characteristics of CONABÚSQUEDA**

Under its current legal framework, CONABÚSQUEDA's main responsibility is to investigate, on its own initiative or on request, enforced disappearances²⁵⁾ that began during the internal armed conflict, in order to determine the location of adult victims of enforced disappearance, and to restore the person or their remains to their relatives.²⁶⁾ CONABÚSQUEDA is to co-ordinate with other public institutions and with national or international non-state organizations to this end, and is also authorized to request information and inspect the records of executive branch institutions that may hold documents or information related to disappearance during the internal armed conflict, and/or the current whereabouts of persons disappeared. This applies especially to the records or archives of the intelligence services, the armed forces and police, detention centers, hospitals, or prisons that were in operation before January 16, 1992 (i.e., the date of the Chapultepec peace accords).

Importantly, as we will see below, CONABÚSQUEDA has the power to ask the Office of the Prosecutor General and the Office of the Human Rights Ombudsperson to issue any precautionary measures for protection or inspection that may be necessary to ensure

23) Ministerial Agreement No. 1925, 2018.

24) Elsy Flores, General Coordinator of CNB and CONABUSQUEDA, Interview for this report.

25) Article 3 of CONABUSQUEDA's mandate refers to conducting searches for forced disappearances, but CONABUSQUEDA has also interpreted this mandate to include looking for people that disappeared at the hands of non-state actors as well, especially Salvadoran guerrilla forces during the Civil War. CONABUSQUEDA 2020, op. cit.

26) Ibid.

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the integrity of the search actions. This includes, for example, measures to preserve relevant information that is in danger of being altered, destroyed, or concealed. Regarding its obligations toward victims, CONABÚSQUEDA's mandate makes it responsible for maintaining regular communications with victims and/or relatives. It is also tasked with promoting national campaigns to raise awareness of the rights of victims of enforced disappearance; fostering academic and cultural exchanges, and undertaking other activities to publicize its mandate and preserve historical memory about the phenomenon of enforced disappearance, nationally and internationally.

In order to accomplish all of this, CONABÚSQUEDA is responsible for entering into technical and financial cooperation arrangements, both nationally and internationally, to enable its day-to-day operations. This task has proved to be a difficult administrative burden, given the Commission's limited human resources and the erratic financial situation it has had to face.

● **Limitations of CONABÚSQUEDA's mandate**

CONABÚSQUEDA's activities have nationwide reach, and it is headquartered in office space belonging to the Ministry of Foreign Affairs in the capital, San Salvador. The specifics of its mandate mean it is not asked or able to search for any and all missing persons: rather, it exists solely to establish the whereabouts of adults who were victims of enforced disappearances during the internal armed conflict that ended on January 16, 1992.

Although the institution's mandating decree establishes limits on the term of office of commissioners and staff, it is silent on the subject of the duration of the commission's mandate. CONABUSQUEDA itself has stated, in its publications, that it will have an indefinite term of operation in order to guarantee the continuity of the search processes it conducts, until its objectives are fully achieved. ²⁷⁾

One factor of uncertainty, already mentioned, is CONABÚSQUEDA's dependence on the executive branch, and specifically on the president, given its nature as an institution created and sustained by executive mandate. As well as introducing potential instability, this lack of legislative backing also means that only institutions dependent on the executive branch can be obliged to cooperate with CONABÚSQUEDA. This introduces an initial structural limitation on access to information, further exacerbated in practice because even those agencies and institutions that are dependent the executive branch, do not co-operate even when required to do so. The Armed Forces have been particularly uncooperative over requests for access and information, whether made by CONABÚSQUEDA

27) CNB and CONABÚSQUEDA produce a regular joint publication, Re-Cordis, which reports on the search, location, and reunification work carried out by the two commissions.

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or others. One illustrative example concerns access to historical archives in possession of the Armed Forces, which they have been reluctant to open up even to the judicial branch. There is currently a major domestic criminal trial in course over the emblematic case of El Mozote, a 1981 massacre in which an elite, United States-trained, Salvadoran military unit murdered over 1,000 civilians in a single day.²⁸⁾ Military officials prevented the trial court judge from entering military premises housing relevant historical archives.²⁹⁾ The court later ordered the military to unseal the archives and allow for their inspection. It is clear that ensuring respect for, and compliance with, CONABÚSQUEDA's authority will be extremely difficult unless backed by political will from the president at the head of the executive branch.

● **Investigative and forensic capabilities**

CONABÚSQUEDA's most recent public report shows that until November 2021 there's 416 cases actively being investigated³⁰⁾. When broken down by gender, 78% of these cases were over people identified as men, with 22% corresponding to women. This is consonant with what is already known about patterns of enforced disappearance during the conflict: the majority of direct victims were men.³¹⁾

El Salvador's first National Search Commission Plan for locating victims of disappearance victims was publicly presented in May 2019. The plan sets down general guidelines for the search commissions to follow, allowing for more specific search plans to be drawn up for individual cases or for situations, such as massacre victims, that present particular characteristics, challenges, and patterns. Forensic investigative work is in its early stages: to date, 19 exhumations of adult disappearance victims have been started, but no cases have yet been resolved. It is still too early to make a meaningful assessment of how well co-ordination arrangements between CONABÚSQUEDA and the public prosecutor's office are working.

According to the decree creating CONABÚSQUEDA, the forensic part of its mandate is to be carried out through collaboration with the Institute of Legal Medicine of the Supreme

28) For more on El Mozote and the ongoing criminal case against 17 former military officers, see Cristosal, 'El Mozote', available at: <http://www.cristosal.org/el-mozote>; see also DPLF)2018, October 16) 'The El Mozote massacre trial: the decades-long search for justice in El Salvador continues', available at: <http://www.dplf.org/en/resources/el-mozote-massacre-trial-decades-long-search-justice-el-salvador-continues> . Last accessed 1 January 2022.

29) For more on El Mozote and the ongoing criminal case against 17 former military officers, see Cristosal, 'El Mozote', available at: <http://www.cristosal.org/el-mozote>; see also DPLF)2018, October 16) 'The El Mozote massacre trial: the decades-long search for justice in El Salvador continues', available at: <http://www.dplf.org/en/resources/el-mozote-massacre-trial-decades-long-search-justice-el-salvador-continues> . Last accessed 1 January 2022.

30) CONABUSQUEDA and CNB, Re-Cordis—CNB: 10 años de reparaciones, 16th Ed., No. 3, November 2021, available at: <https://t.co/pxdThnT86b>

31) CONABUSQUEDA and CNB, Re-Cordis, No. 15.

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Court of Justice, and where necessary with international forensic agencies. It is to promote the creation of a forensic data bank to contain genetic profiles of disappearance victims and their relatives for comparison and identification. Although the data bank has not yet become a reality, there has been some notable progress. Investigative teams from both commissions (CNB and CONABÚSQUEDA) are being trained, by the specialist non-state Guatemalan Forensic Anthropology Foundation (FAFG), in the application of forensic sciences to the search for missing persons. Other inter-institutional cooperation has included work with the equally renowned nonstate Equipo Argentino de Antropología Forense, EAAF, which has assisted and advised CONABÚSQUEDA regarding the use of forensic sciences in the search, localization, and identification of disappeared persons.

● **Relationships with victims**

CONABÚSQUEDA and CNB were created thanks to the tireless work of the families of victims of disappearances during the internal conflict in El Salvador: for instance, as we have seen, it took three years of negotiations and, finally, months of joint efforts by the government and civil society to get CONABÚSQUEDA created.³²⁾ Both institutions clearly have considerable moral backing. However, administrative obstacles, budgetary restrictions, and the lack of specific search strategies for the adult population, have already led to significant rifts between CONABÚSQUEDA and some of the civil society organizations that supported its creation. Relatives have a well-founded fear that the creation of this fledgling institution will be used to give an impression for international consumption that El Salvador is complying with its legal obligations, but without truly substantial and effective action.

32) Due Process of Law Foundation (2018, April), 'La Comisión de búsqueda y la tarea de reconstruir la verdad sobre las personas desaparecidas en El Salvador', available at: http://www.dplf.org/sites/default/files/la_comision_de_busqueda_y_la_tarea_de_reconstruir_la_verdad.pdf, last accessed 1 January 2022.

A Lengthy Road to Truth and Reparation for Victims of Past Human Rights Violation in Aceh, Indonesia



Ms. Oni Imelva
Chairperson of KKR Aceh

Look back to Aceh's Contemporary Conflict

Aceh's journey, as recorded in history, has been hit by armed conflict endlessly, even started before Aceh joined into Indonesia. The most obvious chapter that was clearly recorded began in the Dutch colonial era, which was unable to control Aceh. The Dutch declared a war against Aceh in 1873, better known as the Aceh War. The war lasted quite a long time, although not continuously until 1942. The Dutch finally left Aceh due to their defeat in the second world War. On March 12, 1942 the Japanese entered Aceh, which aimed also to invade Asia. The anti-colonial spirit of the Acehnese continued with the resistance against the Japanese. Until August 14, 1945, Japan surrendered to the allies. On August 17, 1945, Indonesia proclaimed its independence. Japan left Aceh in December 1945.

After Indonesia's independence was proclaimed, Aceh was still hit by a 'civil war' called the Cumbok War, 1946-1947. This war took place between the ulama (tengku) and the nobility (ulee balang) who had different views on how to fight for the fate of Aceh at that time. The ulama supported the proclamation of Indonesian independence, while the uleebalang hoped for the return of Dutch rule. The Cumbok War ended in defeat on the part of the uleebalangs which marked a social revolution in the Acehnese society.

In 1953 the great ulama leader who served as governor of Aceh Tengku Daud Beureuh was involved in the Darul Islam (DI/TII) rebellion in Aceh. This armed resistance was triggered by his disillusionment with Mr. President Soekarno, who betrayed the Acehnese people's anti-colonial struggle and wanted to uphold Islamic principles, coupled with some of Jakarta's political actions not siding with Aceh. The rebellion subsided after going through several negotiation processes in which Aceh was returned to being a province with a special status and given the widest possible authority to enforce Islamic law based on local regulations.

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And when the rebellion had just ended, the G30S political turmoil at the national level made blood splatter again in Aceh. There is no official data on the number of people killed or missing in Aceh, although military documents in circulation put it at around 2,000 people. There is also an estimate that the victims of the massacre were around 3,000 people. Meanwhile, researchers from Australia, Jess Melvin in his book, *The Army and the Indonesian Genocide: Mechanics of Mass Murder*. Routledge, estimates the number of possible 10,000 people.

The disappointment of the Acehnese people continues when Aceh's natural resources on the north coast are exploited by the central government without sharing fair profits for Aceh. The workers were brought in from outside Aceh as well as the security forces who were suspected of later committing many human rights violations against the people of Aceh. This injustice by the government has triggered a revolt in Aceh

In 1976, Hasan Tiro declared Aceh's independence from Indonesia. Blood spilled again. Various operations were carried out by the Indonesian Military Armed Forces in Aceh to crush the Free Aceh Movement. In 1989, Aceh was designated as a Military Operations Area then known as "Jaring Merah" operations. The operation was repealed 10 years later along with the collapse of President Suharto's regime. The democratic process slowly began to emerge which was marked by the referendum in 1999 and the birth of several people's resistance organizations in Aceh. The peace agreement between Indonesia and GAM was first made in December 2002 in Geneva. Then proceed with forming a Joint Security Committee.

The peace agreement did not go smoothly and was declared a failure. The Indonesian government then imposed Martial Law for Aceh on May 19, 2003. After Martial Law, Aceh's status changed to Civil Emergency on May 19, 2004. The war was not over, the earthquake and tsunami on December 26, 2004 devastated Aceh and caused hundreds of thousands of deaths and tremendous damage. The status of Civil Emergency was changed to Civil Order on 19 May 2005 when Aceh began to gradually rebuild after the tsunami. Although gun battles still occur in several areas in Aceh.

The Government of Indonesia and GAM reconsider that it is impossible for the reconstruction and rehabilitation will proceed smoothly if there is no peace in Aceh. In this good faith, which is facilitated by the Crisis Management Initiative, the negotiations between GAM and the Indonesian government were held in Helsinki Finland, which was chaired by former president of Finland Martti Artisaari. Signed on 15 August 2005, the agreement became known as the Helsinki MoU. The Beginning of the Peaceful Period in Aceh.

The length of the armed conflict in Aceh, which not only has an impact on economic growth and the welfare of the Acehnese people. The conflict also brought casualties, trauma, insecurity and deep wounds in Acehnese society. The victims are generally civilians who are not directly related to the conflict. Civilians are the targets of every effort of resistance, suppression, subjugation and control in an area. Based on a historical experience, the situation in Aceh is different from other provinces in Indonesia.

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Main point of MoU

Many parties considered the MoU Helsinki is a ray of hope for thousands of victims of the Aceh conflict. Both Indonesia Government and GAM agreed to establish a peaceful, comprehensive, sustainable and dignified solution for the past Aceh conflict. They determined to build trust on one another. The MoU consists of details agreement and principles, that would guide the process of transformations which concerns human rights. Point #2 of the MoU stressed on at least three main points:

1. The Government of Indonesia would obey the United Nation's International Covenant of Civil Rights, and of economic, social and culture rights;
2. A Human Rights Court would be established for Aceh
3. The National Truth and Reconciliation Commission would establish a Truth and Reconciliation Commission in Aceh to formulate and determine reconciliation efforts

Timeline

In the same year, on October 28th, in line with Indonesia's national agenda of human rights, and to follow up the Helsinki MoU, Indonesia ratified two main human rights covenants. The covenants are the International Covenant on Economic, Social and Cultural Rights authorized through Law No. 11/2005, and the International Covenant on Civil and Political Rights, through Law No. 12/2005.

On August 1st, 2006 the Government of Indonesia had issued a special law on the Governing of Aceh (LoGA) through Law No. 11/2006 to carry out the mandate of the first point from the Helsinki MoU about the Government of Aceh. Referring to MoU, there are two main agendas concerning the human rights. The first is the forming of the human rights court for Aceh, and the second is the establishment of the Aceh TRC as a step toward a full disclosure of human rights violations and reconciliation in Aceh. Both mechanisms couldn't be separated from the scheme of transitional justice and handling of the past violence, which in itself is a vital instrument in a conflict resolution. These mechanisms have been stipulated also in the Aceh Government's Law No. 11/2006.

CSOs Initiatives

The establishment of the Aceh TRC was an initiative of victim's group, both local Aceh and national civil society organizations to manifest Government's obligation for recovering the victims's right of past conflict and gross human right violations in Aceh. A year after the UUPA was issued, on July 2007 around 200 people consisting of victims and civil society staged a peaceful demonstration in the courtyard of Aceh parliament building demanding the immediate establishment of a Human Rights Court for Aceh and Aceh TRC. CSOs had also accompanied the process of producing the Qanun (local by-law) No. 17/ 2013 to establish the Aceh TRC.

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As we all know, the toughest challenge faced by CSOs at that time was most of the politicians, bureaucrats and international society focused on the efforts to establish peace in Aceh, and but they "forgot" to address human rights violations issues. There are still many victim's stories to be rewritten and told to the public, and to fulfill victims' rights to truth, justice and reparation as obligation, both the Government of Aceh and the Government of Indonesia

A senior researcher ELSAM the field of human rights, Indriaswati Dyah Saptaningrum stated that if we reflected on history, a human rights city is a movement and political commitment to return (the people and society) to the local realm. "Considering the case of the city of Gwangju, South Korea, they had defined a human rights city as the togetherness of the citizens and policy makers to learn from the past violations of human rights," Ms Saptaningrum said. Aceh should learn from this experience so that can be an example of how to handle and resolve past human rights violations which were very complex in Indonesia.

Timeline

Finally, On 31 December 2013 the Government of Aceh issued the Qanun No.17/2013 about establishment of the Aceh TRC. But it was not immediately could carry out one of the main points of the Helsinki peace agreement. Aceh TRC need more than seven years to be established. Both national and local Aceh civil society organizations had been working hard to encourage it. After a long process, on October 24th, 2016, the commissioners of Aceh TRC for the 1st period (2016 – 2021) was officially inaugurated by the Governor of Aceh in plenary session of Aceh parliament.

The Aceh TRC

Referring to the Qanun No. 17/2013, the Aceh TRC establishment has the purpose to ensure the full disclosure of truth behind the past human rights violations committed in Aceh, strive reconciliation, provide recommendations for effective remedies to the victims, and other measures necessary to serve justice for the victims.

Mandates

The mandates are stated in Article 3 Qanun KKR Aceh:

- a. Strengthen peace through truth revealing about past gross human rights violations
- b. Help in establishing reconciliation between the perpetrator of the human rights violations both individual and institutional with the victims; and
- c. Recommend a thorough reparations for the victims of violations of human rights that meet the universal standard of victim's rights

Slide 10 – Efforts for Truth

In effort to disclosure the truth, KKR Aceh uses three mechanisms. The first is statement taking. It can use closed or opened method. For the closed method, we directly

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visit the victims or witnesses to their home or other place where they feel comfort to tell the story. Vice versa, we held the public hearing so the public could know the event of violations also the impact faced by victims, and the victim's hopes for justice from government. The second is investigation, which is aimed to deeply analyze about the special cases that we found in statement taking proses. And the third is, collecting information and document from many sides in order to strengthen our analysis about past human rights violations and for making policy or recommendation.

Statement Taking

For the first five years or the first period of commissioner, KKR Aceh already carried out several mandates. Such as statements taking of 5264 victims and witnesses from 17 Regencies/Cities around Aceh.

Public Hearing

We had also held three Public Hearings in two regencies where witnesses and victims told their stories in front of government representatives, members of civil societies, foreign bodies and also press media. The Public Hearing had disclosure many kinds of past human rights violation in Aceh including forced disappearance, torture and general themes of violations.

Reparation

Regarding recommendations on reparations of the victims' rights, we had recommended 245 victims to get urgent reparation from Aceh Government in 2019. It was followed up by a Decree of Aceh Governor No. 330/1269/2020. And this decree would be undertaken by the Aceh Reintegration Board (BRA) as budget executing agency. The urgent reparation for the victims will be distributed in the middle of this year. In addition, we already recommended 5264 victims to get comprehensive reparation from Aceh Government.

Memorialization

We had also built memorial monuments in three regencies in Aceh, Pidie Jaya, Aceh Jaya, and Bireuen. And hopefully we can build a human rights museum in this our period and more memorial place around Aceh.

Networking and Partnership

The partnership built by the Aceh TRC with various institutions at the local, national and even international levels brought a positive impact on the work of the Aceh TRC in the first period. Starting from socialization and institutional strengthening, the preparation of academic texts, institutional rules, truth disclosure, witness/victim protection, and also budget supporting.

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On 12 October 2017, Aceh TRC held a regional seminar aims to gather the experiences and lessons learned from truth commissions, and to encourage ongoing truth-seeking efforts in order to strengthen peace and promote accountability in Asia. More than 100 policymakers, academics, civil society and survivors from Indonesia, Philippines, Sri Lanka, Thailand, Myanmar, Timor-Leste and South Korea are gathering in Banda Aceh. It was a good opportunity for the Aceh TRC and the Acehnese society to recognize the TRC's work, receive support from experts and learn from their experiences. This regional seminar was supported by Asia Justice and Rights (AJAR), KontraS Aceh, ICAIOS, Kata Hati, LBH Aceh and the Transitional Justice Asia Network (TJAN).

Recommendation

At the end of the working period, the commissioners is obligated to compile a report containing human rights violations and gross human rights violations, based on the evidence and facts that have been collected, including analysis of the causal factors, background events, political and/or economic motivations, acts and actors, both state actor and non-state actor, and their impacts; and make recommendations "for the protection of human rights" regarding to:

1. legal, political and administrative reform;

a. Legal and Institutional Reform

- Indonesia parliament carry out intensive supervision of all security sectors (Indonesian National Armed Forces/TNI, Indonesian National Police/Polri, and Intelligence)
- Government acknowledges the gross human rights violations that have occurred in Aceh
- Indonesia parliament and government revise the Criminal Code, ratify the draft Law on Torture, Convention against Enforced Disappearances; Revision of Law No. 26 of 2000 to include war crimes in accordance with the Rome Statute
- Government promotes judicial reform of military court
- Government strengthens understanding and knowledge of human rights and Acehnese local wisdom to all security actors (Indonesian National Armed Forces, Indonesian National Police, and Intelligence)
- Governor of Aceh and Aceh Parliament check the track records of candidates for security and law enforcement actors who become vertical leaders (Commander of Military Region Command, Chief of Regional Police, and Chief Prosecutor)
- Indonesian National Armed Forces, Indonesian National Police did not assign security personnel who had served during the conflict (1976 – 2005) in Aceh to reduce the impact of trauma on Acehnese people.

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b. Political Policy

- Indonesia Parliament, Central Government, Aceh Parliament and Aceh Government formulate political policies (UU, Perpres, PP, Qanun and other regulations) prioritizing respect for and protection of human rights and Acehnese local wisdom
- Wali Nanggroe needs to ensure that the Aceh Parliament and Aceh Government assign the handling of victims of past human rights violations in Aceh's specific perspective.
- Planning for development policies carried out by National Development Planning Agency (Bappenas), Regional Development Planning Agency (Bappeda) must be based on human rights-based development
- Aceh government develops a policy plan as the implementation of the Commission's recommendations must be integrated into a human rights-based development approach
- Aceh government and civil society support programs to empower women victims to take leadership roles in building peace.
- Central government and Aceh government immediately establish a claims commission in order to handle claims that have so far not been resolved;

c. Administrative Policy

- Central Government, Aceh Government and District/City Governments ensure public services that prioritize respect, protection and fulfillment of human rights in order to serve the public interest, especially in this case the survivors or victims of past human rights violations.
- Indonesia parliament and Aceh parliament develop a public service scheme run by the Government by prioritizing aspects of protection, respect and fulfillment of human rights, especially for victims of human rights violations;
- The Ombudsman of the Republic of Indonesia maximizes its role in ensuring public services that respect human rights.

2. Implementation of the reconciliation mechanism;

- a. Aceh TRC together with the Aceh Government and all elements of society, will carry out a reconciliation process based on local Acehnese wisdom.
- b. The reconciliation process must be oriented as part of the restoration of the dignity of the victim and/or her family.
- c. The perspective of justice and sensitivity to the rights of women and vulnerable groups should be a key principle in developing a reconciliation approach.

3. Reparations for the victims;

- a. The Aceh government immediately implements Decree of Aceh Governor No. 330/1209/2020 concerning Urgent Reparations for the victims and makes a new policy to acknowledge the victims' contributions to truth and peace in Aceh.

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- b. With the support of the Aceh Parliament, the Aceh Governor immediately drafted a regional policy for victim reparations, including establishing a Trust Fund for Victims.
 - c. With the support of the Parliament in district/city, the Regent/Mayor should formulate a regional policy to implement a victim rights recovery program that is in line with the Governor's Policy.
 - d. The City/Regency Government, together with the Aceh TRC, inventory former places of torture include supporting information, in order to plan and build memorial monuments in various forms.
 - e. The central Government makes a financial contribution to the Trust Fund for recommended reparations. At the same time, formulating a national policy in the form of a Presidential Regulation or Instruction and other regulations for a national reparations program, which is also linked to reparations in Aceh.
 - f. The Companies that were profited during the conflict in Aceh made financial contributions to the Trust Fund for recommended reparations above.
 - g. The Government of Aceh, together with civil society, and Komnas Perempuan supports the Aceh TRC in developing a reparations/recovery program in a broad sense with a gender perspective and encourages the government to build a mechanism for urgent reparations and reparations for victims of sexual violence who need special treatment.
 - h. Aceh TRC mapping the psycho-social conditions of conflict victims that are relevant to the current context of Acehnese society to ensure the fulfillment of rights and reparations for victims
 - i. Aceh TRC collaborates with relevant agencies, and civil society to ensure concrete long-term reparations support,
4. Legal action against perpetrators of human rights violations; and
- a. The Government and Indonesia parliament will immediately establish a Human Rights Court for Aceh
 - b. The Attorney General immediately followed up the pro-justice investigations carried out by National Human Rights Commission (Komnas HAM) for 3 cases (Rumah Geudong, Jamboe Keupok, and Simpang KKA), the Indonesia Parliament immediately established an Ad Hoc Human Rights Court in accordance with Law 26/2000.
 - c. Komnas HAM follows up on the findings report of Aceh TRC which at least should be suspected as incidents of serious human rights violations; in particular establishing an investigative team to continue pro-justice investigations into the security forces and those in command responsibility referred to in the Findings and Accountability Section

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5. Other Actions.

a. Human Rights Culture and Learning

- The government and civil society build a culture of legal and human rights awareness through revisions to formal and non-formal education curriculum
- The Regional Education Council ensures that the curriculum for human rights, peace and knowledge about the Aceh conflict, based on the TRC-Aceh Final Report, becomes the subject of Aceh's history at the high school and university levels in Aceh.
- Civil society continues to carry out strengthening, capacity building, solidarity and assistance to victims and their families.

b. Individual and Collective Trauma Recovery

- The Aceh government and civil society need to improve mental health services, counseling and spaces for survivors to share traumatic experiences.
- The Aceh government and DPR ensure that mental health services are available as basic health services.
- The Aceh government has developed an integrated trauma healing policy in all services, in which the community is given a platform to process, discuss, understand, and reinterpret their experiences during the conflict and how it affects their lives today.
- The Witness and Victim Protection Agency (LPSK) ensures that the implementation of witness and victim protection runs well to protect all sources whose statements have been taken by KKR-Aceh from legal and other demands, and provide support/assistance for urgent medical and psycho-social services .

c. Aceh TRC Archives and Museum of Human Rights

- The Aceh Parliament drafts a local law (qanun) that regulates the preservation, regulation and use of archives. These archives form part of an active human rights center that will be developed by the Aceh TRC with the aim of remembering, respecting, and learning from the history of human rights in Aceh.
- The government and civil society build memorialization to efforts for learning, knowledge and respect for victims of past human rights violations. Including ensuring the existence of a day, monument, museum of human rights to honor the existence of the victims of the conflict (both living and dead); the existence of meaningful communal activities (according to local culture and customs) targeting various age and gender groups at the village level
- The government and security institutions disclose all documentation related to military operations that caused human rights violations against civilians.
- The Aceh TRC take steps to access the archives of court cases (military, criminal, civil), including the Mobil Exxon case in US courts, and used the Freedom of Information Act to obtain the files official archives from Indonesia and various countries, especially the United States.

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Focus Aceh TRC in the Second Period

Amidst the seemingly stagnant road to the solutions of past human rights violations, the Aceh TRC success in carrying out several of its mandates and it is a very valuable achievement. But the duties of Aceh TRC, and both of Aceh Government and Indonesia Government as the actor that is responsible for the past human rights violations, is far from over. The commissioners in the second period have a lot of responsibilities, not only the main mandates. But also implement the recommendations for improving the work of the commission.

For the second five years, The Aceh TRC will be focused:

- To strengthen the institutions of Aceh TRC especially to encourage the permanent secretariat and budget allocation in accordance with the needs of the commission's duties and functions in addition to capacity building and partnership cooperation
- To analyze and develop mechanism for implementing reparation services. It will be included coordination with multi-stakeholder to make policy and recommend 5264 victims to get comprehensive reparation from the government.
- To gain statement taking volume which will cover the whole Aceh, of course with an analysis of the expansion of the statement-taking area
- To analyze and develop mechanism reconciliation as well as mentioned in Qanun KKR Aceh
- To advocate government policy regarding local curriculum in High School and university
- To improve database quality and archive management as a form of accountability as well as saving historical evidence.

Session 3

Vaccine Inequality and Democracy

The global pandemic of the last three years has left many wounds. Peace and coexistence on the global level have lost meaning and become useless with the unprecedented pandemic and the selfish approach of the pharmaceutical companies based on nationalism in the powerful nations.

The Gwangju Democracy Forum aims to create a space to discuss the relationship between COVID-19 and democracy. Furthermore, in the session, we will discuss to whom we need to require to hold accountability for aggravating poverty and disease over the past three years, the effects of the pandemic on democracy, and potential solutions in a civil society.

Moderator: Mr. Jooho Lee (The Korean Health and Medical Workers' Union)

Speaker

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/ Ms. Dorothy Guerrero (Global Justice Now) 118
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(Korea NGO Council for Overseas Development Cooperation) 143

Ending Vaccines Apartheid and a Profiteering by Multinational Pharmaceutical Corporations

Ms. Dorothy Guerrero
(Global Justice Now)



Current health, climate and development challenges are creating long-term economic shocks and leading to deeper social inequality that are becoming increasingly hard to solve. The still ongoing Covid-19 pandemic not only disrupted health services and stretched the health systems of countries globally, but is also producing repercussions beyond health concerns. Amongst other things, it has pushed more than half a billion people across the world into extreme poverty.¹⁾

The lives that it claimed, and is still claiming, already surpassed some wars. Nearly twice as many Americans have died during the pandemic as American soldiers in World War 2²⁾. The World Health Organisation (WHO) estimate that as of early April, the Covid-19 global pandemic has already killed at least 6.18 million people around the world since 2020³⁾.

However, studies show that if we consider excess deaths, the number of people that died could be more than three times of the recorded figures in official statistics. The research, published in the Lancet, estimates there were 18.2 million excess deaths globally between 1 January 2020 and 31 December 2021⁴⁾. The difference between excess mortality and reported Covid-19 deaths could result from underdiagnoses due to insufficient testing or higher than expected mortality from other diseases because of behavioural change, or reduced access to healthcare or other essential services. This staggering number of deaths reveals the failed approach to global health and the crisis.

Although Covid-19 affected every person and community due to lockdowns, work stoppages and suspension of classes, it does not do so equally within countries and between richer and poorer nations. It has actually exposed and exacerbated existing

1) World Health Organisation, "More than half a billion people pushed or pushed further into extreme poverty due to health care cost", 12 December 2021, <https://www.who.int/news/item/12-12-2021-more-than-half-a-billion-people-pushed-or-pushed-further-into-extreme-poverty-due-to-health-care-costs>

2) BBC News, "Covid-19: US surpasses 800,000 pandemic deaths", 15 December 2021 <https://www.bbc.co.uk/news/world-us-canada-59645307>

3) Our World in Data accessed 06 April 2022: <https://ourworldindata.org/explorers/coronavirus-data-explorer>

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inequalities and injustices. It widened the already increasing inequalities between countries. A stark divide exists between nations as millions of people in developing countries cannot access vaccines and health services that are available in developed ones. There are different impacts for people and families in different social classes, as well as disparities related to gender, race, ethnicity and citizenship status.

The pandemic is far more than a health crisis: while the impact of the pandemic varies from country to country, it produced more poverty, loss of livelihood, learning gaps in young people and other inequalities at a global scale. According to the Organisation for Economic Cooperation and Development (OECD), Covid-19 has reduced life expectancy in four fifths of OECD countries and has caused enormous harm to mental health⁴). The UN Sustainable Development Goals report 2021 alerts the world to the fact that the pandemic has halted decades of progress in the 15-year global work on SDGs, which was already off track in 2019. Global extreme poverty rose for the first time since 1998, chronic hunger increased, and the equivalent of 255 million full-time jobs were lost⁵).

Structural economic inequalities play a significant role in determining who lives and who dies and the length of economic recovery in a health crisis.

Lives are not valued equally in the Covid-19 pandemic

Since the start of the pandemic, rich countries overwhelmingly acted selfishly and insularly. Their governments' narrow approach chose to manage the pandemic within their territories rather than end the global pandemic.

First, many rich countries hoarded vaccines and exerted their extra-ordinary power as monopsony procurers of vaccine supplies, buying significantly more doses than the number of their population. They were able to inoculate their populations at a fast rate and multiple times over, and chose to do so rather than ensure poorer nations have at least a first round. In doing this, they disregarded the logic that "no one is safe unless everyone, everywhere is safe in a pandemic". As of this writing, 74% of people in the UK are now fully vaccinated while around two-thirds of fully vaccinated Americans over the age of 65 and just over half of people between the age of 50 and 64 have gotten their first booster dose⁶). Of the more than 10 billion doses given out worldwide, only one per cent have been administered in low-income countries⁷).

To address the vaccine apartheid, in October 2020 India and South Africa proposed at

4) Organisation for Economic Cooperation and Development. Health at a glance 2021: covid-19 pandemic underlines need to strengthen resilience of health systems. Nov 2021. <https://www.oecd.org/health/health-at-a-glance/>

5) United Nations, The Sustainable Development Goals Report 2021, <https://unstats.un.org/sdgs/report/2021/>

6) Our World in Data, Shares of people vaccinated against Covid-19, April 13, 2022, https://ourworldindata.org/covid-vaccinations?country=OWID_WRL

7) UN News: Health, UN analysis shows link between lack of vaccine equity and widening poverty gap, 28 March 2022: <https://news.un.org/en/story/2022/03/1114762>

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the World Trade Organization (WTO) that all patent rights for COVID-19 vaccines, drugs and diagnostics be temporarily suspended (TRIPS waiver) to ensure smooth manufacture and distribution. Over 100 governments are now supportive of this demand. Many former heads of governments⁸⁾, scientists and experts are also backing the proposal. As expected, given the history of disagreements at the WTO over Intellectual Property (IP) rights, the US, many of the EU countries, the UK and others were against such TRIPS waiver. Now, US President Biden is fully backing it.

That choice means the majority of governments of highly industrialised countries, where transnational pharmaceutical corporations are based, are not contented with merely having the power to dominate the supply of Covid-19 vaccines. More importantly, they are also blocking the possibility for more manufacturers to develop vaccines that would help in vaccinating the world faster. The populations of poor and developing countries are being made to wait for a few years, to continue living with the risk of infection and death and watch their loved ones and friends succumb to the virus.

The battle over intellectual property rights

Pharmaceutical companies and multilateral financial institutions like the World Bank are opposed to the suspension of patent rights⁹⁾. Pharma companies argue that retaining current IP protections benefits society by spurring innovation and protecting what they see as the rightful ownership of companies that develop vaccines and technologies. Removing such protection would hamper innovation in the pharmaceuticals sector, reduce assurance of good product quality, and that many countries lacked the know-how and facilities.

This shows the deep moral bankruptcy of an intellectual property system which operates at the expense of human lives. Since the proposal was tabled at the WTO and the continuing opposition of a few governments to it, 10,000 people are dying every day¹⁰⁾. Meanwhile, rich governments continue their hypocrisy of donating small numbers of vaccine doses while at the same time stopping more manufacturers from producing the vaccines in different countries.

8) Global Justice Now, "More than 140 former heads of state and Nobel Laureates call on candidates for German Chancellor to waive intellectual property rules for Covid vaccines", 14 September 2021

<https://www.globaljustice.org.uk/news/more-than-140-former-heads-of-state-and-nobel-laureates-call-on-candidates-for-german-chancellor-to-waive-intellectual-property-rules-for-covid-vaccines/>

9) Reuters, "World Bank opposes vaccine intellectual property waiver as WTO talks resume" 08 June 2021,

<https://www.reuters.com/business/healthcare-pharmaceuticals/world-bank-chief-says-does-not-support-vaccine-intellectual-property-waiver-wto-2021-06-08/>

10) Global Justice Now, "Over 10,000 people die every day the UK blocks covid vaccine patent waiver, 02 October 2021,

<https://www.globaljustice.org.uk/news/over-10000-people-die-every-day-the-uk-blocks-covid-vaccine-patent-waiver/>

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The various organisations that are in favour of the temporary waiver have set forth positive ethical arguments about standing in solidarity with the majority, especially the poor populations, and holding companies accountable. The slow progress in making vaccines available to low-income and middle-income countries (LMICs) are gravely concerning. Sharing vaccine recipes would expand global manufacturing capacity unhindered by industry monopolies that are creating artificial, but dire, supply shortages and thereby blocking vaccine access.

It is also morally wrong that governments like the US, UK, Germany and others poured billions of public funds into research and development, procuring raw materials, financing clinical trials, and retrofitting factories for drug companies, which made it possible for pharmaceutical companies to develop the vaccines in record time. After such massive support from governments, no requirements were imposed on companies to share know-how or make vaccines accessible to poor and developing countries.

In 2021 alone, Pfizer/BioNTech reaped nearly \$37bn (£27bn) in sales from its Covid-19 vaccine sales, overall revenues in 2021 doubled to \$81.3bn, and it expects to make record revenues of \$98bn to \$102bn this year¹¹⁾. This amount of annual revenue was more than the GDP of most countries. Pfizer is, in fact, richer than most countries; it has made more than enough money from this crisis. Pfizer's Covid-19 jab was invented by BioNTech through the support of €100m (£84m) in debt financing from the publicly owned European Investment Bank and a €375m grant from the German government.

Likewise, US pharma company Moderna makes \$13bn profit from Covid-19 vaccines¹²⁾ while 94% of people in low-income countries have yet to receive their second dose. The Moderna vaccine was invented with US government scientists, developed and trialled with taxpayer funds, and finally purchased with public money. The \$13.2 billion of pre-tax profits on revenues of \$18.5 billion in 2021. Another US pharmaceutical company, Johnson & Johnson earned 10 billion US dollars in 2021 alone¹³⁾.

In early March, a leaked compromise text¹⁴⁾ in the WTO negotiation showed that the European Union proposed that the intellectual property rights held by international

11) Kollwe, Julia, "Pfizer accused of pandemic profiteering as profits double", 08 February, 2022, The Guardian
<https://www.theguardian.com/business/2022/feb/08/pfizer-covid-vaccine-pill-profits-sales>

12) "Product sales for the full year 2021 were \$17.7 billion from sales of 807 million doses of the Company's COVID-19 vaccine." Moderna Q4 results, 24 February 2022, <https://investors.modernatx.com/news/news-details/2022/Moderna-Reports-Fourth-Quarter-and-Fiscal-Year-2021-Financial-Results-and-Provides-Business-Updates/default.aspx>

13) Kollwe, Julia, From Pfizer to Moderna: Who's Making Billions from COVID-19 Vaccines? The Guardian
<https://www.theguardian.com/business/2021/mar/06/from-pfizer-to-moderna-whos-making-billions-from-covid-vaccines>

14) Koshy, Jacob, "Patent rights on Covid-19 vaccines may be waived for five years", The Hindu, 16 March 2022
<https://www.thehindu.com/sci-tech/health/patent-rights-on-covid-19-vaccines-may-be-waived-for-five-years/article65230047.ece>

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pharma companies on Covid-19 vaccines be relaxed for up to five years. This will however not apply to Covid therapeutic drugs or diagnostic devices. The original broad waiver proposal by India and South Africa and supported by over 100 countries, if followed, would allow pharma companies in developing countries to make, as well as export, vaccines without explicit permission from the patent holders.

Many critics say the EU's proposed solution is worse than no deal at all. While on the surface it signals equity, the proposal does not go far. Several Indian companies, similar to those in Europe and the US, are now makers of COVID-19 vaccines that feed domestic needs and are available for export. They have achieved this through technology licensing arrangements with the U.S. and elsewhere. International facilities such as COVAX are now dealing with a problem of surplus vaccines and India too has begun expanding the drive to vaccinate younger populations.

A waiver of IP rights means little if companies will not share their 'trade secrets', and nothing in the current agreement hints at whether such sharing will be facilitated. Several developing countries, including India, already have 'compulsory licensing' arrangements wherein the government can revoke existing patents to enable drug manufacturing. Governments in developing countries must press more to get access to drugs and diagnostics and strongly oppose moves to hinder the flow of ingredients necessary to manufacture life-saving vaccines. As to capacity of companies in developing countries, experts identified more than 100 companies in Africa, Asia, and Latin America with the potential to produce mRNA vaccines¹⁵⁾ proving that increased production of mRNA vaccines is possible outside the US and Europe.

Charity is not enough

The WHO's Covax programme is the global bulk purchasing agency set up in 2020 to ensure equitable vaccine distribution. The G7 nations, a grouping of the world's most industrialised countries, committed one billion doses to developing countries through this programme in their June 2021 Leaders' Summit held in the UK¹⁶⁾. In the same summit, UK Prime Minister Boris Johnson promised that the whole world would be vaccinated during 2021 and 2022. Unsurprisingly, like most of Johnson's promises, it is clear now that the promise has no chance of being honoured, and was largely hot air.

More than 100 countries failed to meet the target of inoculating the first 10% of their population by September 2021, and as things stand there is very little chance of meeting the further target in December 2022 to vaccinate the rest. Overall, only 4% of

15) Human Rights Watch, "Experts identify 100 plus firms to make Covid-19 mRNA vaccines", 15 December 2021

<https://www.hrw.org/news/2021/12/15/experts-identify-100-plus-firms-make-covid-19-mrna-vaccines>

16) Lee, Joseph and Morton, Becky, "G7: World leaders promised 1 billion Covid vaccines doses for poorer nations, BBC News, 13 June 2021, <https://www.bbc.co.uk/news/uk-57461640>

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all vaccines produced worldwide have been channelled through Covax¹⁷⁾.

Covax is failing to deliver because it is not changing the global power dynamics, and nor does it even aspire to do so. Instead of a globally collaborative initiative that governments should support to get the pandemic under control it relies on charity. Although it is supplying vaccines, it has been criticized for what it doesn't do - namely, equip nations with the knowledge and infrastructure to produce their own vaccines.

The WHO also launched the Covid-19 technology access pool (C-Tap) in May 2020 to facilitate the sharing of patent-protected information to fight the virus, including diagnostics, therapeutics and trial data. The "pooling" of treatments and data would allow capable manufacturers from around the world to produce critical equipment, drugs or vaccines without fear of prosecution for breaching patents. The goal would be to lower production costs, and to ease global shortages of key drugs and technology. Pharmaceutical companies, however, are boycotting C-TAP.

Another UN-backed patent-sharing platform, the Medicines Patent Pool (MPP), widened its mandate in 2020 to include Covid-19 treatments. As with C-Tap, it too has so far not negotiated any deals for drugs, data or technology to fight the coronavirus pandemic.

This lack of engagement was emblematic of a widespread failure to tackle the pandemic in a global way.

Reckless

These failures show recklessness too on the part of rich countries and companies. There is always a chance that new variants may emerge that are more dangerous or transmissible or more capable of rendering currently existing vaccines ineffective. The Omicron variant of the virus was significantly more infectious and more resistant to vaccines than the original strain that first emerged in Wuhan, China. Its impacts on vaccinated people is generally milder than previous variants. However, there is no reason, at least biologically, that the virus won't continue to evolve, and it is not automatic that new variants are progressively milder.

Friedrich Engels used the phrase "social murder" in his 1845 work *The Condition of the Working-Class in England*¹⁸⁾ to describe the conditions created by the capitalist class, the class which holds social and political control that places hundreds of the poorest classes in such a position that they inevitably meet a too early and an

17) Brown, Gordon, "The West has more vaccine doses than it needs – and no excuse not to share them", *The Guardian*, 09 September 2021, <https://www.theguardian.com/commentisfree/2021/sep/09/west-vaccine-doses-covid-production>

18) Engels, Friedrich, (2009) [1845]. *The Condition of the Working-Class in England*. Cosimo, Inc. p. 95.

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'unnatural death'. It seems that today's global elite wilfully and knowingly created the same conditions again in this century. The inefficiency of many governments, especially in rich countries, the narrow approach and wrong priorities in addressing the global pandemic has, effectively, been a conscious and deliberate political option equivalent to social murder rather than an accident.

The prevailing belief among politicians in market fundamentalism or that corporate power should have primacy over people's health and human rights will not bring the world to the end of this pandemic soon. As long as the majority of people have yet to receive their first dose of Covid vaccine the virus continues to flourish, and future mutations may render current vaccines ineffective.

The fact that billions of dollars/pounds/euros public funding from taxpayers' money have paid for research, development and manufacturing of the vaccines, and in the end they ended up as privately-owned assets of a profit-driven industry is wrong. The coronavirus has created new billionaires. The top six are linked to the successful mRNA vaccines.

This is a failure of governments including those with democratic political systems, which in reality remain very deferential to corporate power. Instead of approaching the pandemic with global solidarity, rich countries have been unable and unwilling to pursue genuine international cooperation and planning outside the logic of private profit. It is unethical, though sadly not too surprising, that in a pandemic, life-saving vaccines become the most lucrative product in any given year in history.

This may be doom and gloom and you will ask where is hope is? Hope lies in the reality that the demand for people's vaccine is popular, people understand that we can only be safe when everyone, everywhere is safe. We will continue demanding everywhere, in key meetings and summits of governments, in the streets, everywhere. Change is possible

Response to the Covid Crisis in Korea: Quarantine, Social Policy and Public Health

Mr. Seok-Kyun Woo

Co-Chairperson, The Korean Federation Medical Activist Groups
for Health Rights



This article examines mainly the Covid-19 crisis and Korea's public health system with a great topic on Covid-19 and democracy. As many people acknowledge, the Covid-19 pandemic is not just a health crisis. The Covid-19 pandemic was a big challenge to the whole society and thus a great challenge to democracy, which persists even today. Of course, it is clear that the Covid pandemic was primarily a health crisis for social members. Accordingly, it is still important to examine a society's public health policy to cope with the Covid crisis, which would become the most fundamental analysis.

In that regard, this article examines Korea's basic disease quarantine policy for the Covid-19 crisis and the response policy to the health crisis while discussing how they affect social policy and even the democracy of Korean society. Although this article focuses on the health policy and public medical system issues, this article will also explore how Covid-19 quarantine policies in Korea affects the freedom of assembly and protest and Korea's international vaccine policy.¹⁾

1. Covid-19 and Democracy: Covid-10 and the Social Determinants of Health

Although it is often said that the virus does not discriminate against individuals, the virus-related disease does have varying social effects and outcomes for different social groups' in particular social geographies. The Covid-19 was not exceptional. In particular, health inequality becomes a prominent issue when the disease becomes a global issue as in the Covid-10 pandemic case.

The World Health Organization (WHO) published "COVID-19 and the social determinants of health and health equity: evidence brief" in October 2021.²⁾ This report

1) This article was written based on the author's health and medical field report, which is a part of the 2021 Democracy Annual Report of the Korean Democracy Foundation and the author's writings for 2021 discussion panel.

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points out the following groups with a high chance of prevalence and death rates during the Covid-19 pandemic.

- Poor people
- Marginalized racial groups, including aborigines
- Low-income essential workers
- Immigrants
- Groups affected by disasters, including conflicts
- Inmates
- Homeless people

Furthermore, the report points out the following social determinants for health inequality.

- Poverty and deprivation
- Forced mobility of low-income workers with job insecurity
- Lack of social protection
- Crowded inhabitation
- Inferior protection and low health criteria in workplaces
- Unequal legal or residential status
- Social stigma
- Unequal access to satisfactory health information
- Unequal available treatments, quarantine, or vaccine access.

Health inequality in the age of Covid-19 is one of the major issues for democracy. In Korea, these groups of people, such as the poor, low-income essential workers, the disabled, inmates, the homeless, HIV/Aids patients or the socially vulnerable, are either confirmed or assumed to have a high chance of prevalence and death rates. The WHO's report confirms that the health inequality issue in the Covid-19 pandemic is not just an issue for Korean society but a common global phenomenon.

Although the imposed inequality results from social factors, as WHO suggests, we need to explore how the Korean government has dealt with the Covid-19 pandemic to understand the issue more specifically in the Korean context.

2) WHO, COVID-19 and the social determinants of health and health equity: evidence brief, December 6th, 2021. <https://www.who.int/publications/i/item/9789240038387> (Visited April 19th, 2022)

2. Overall Evaluation of the Korean Government's Response Policies against the Covid-19

1) The Early Stage "Zero-Covid" Policy

Although many countries adopted quarantine policies that emphasized the Covid-19 mitigation in the early pandemic period, the Korean government adopted the "Zero covid" policy that emphasizes elimination or containment until October 2020, when vaccines have been introduced to some extent. As many studies confirm, the countries that adopted the zero covid policy have shown a low death rate compared to countries with the covid mitigation policies.³⁾

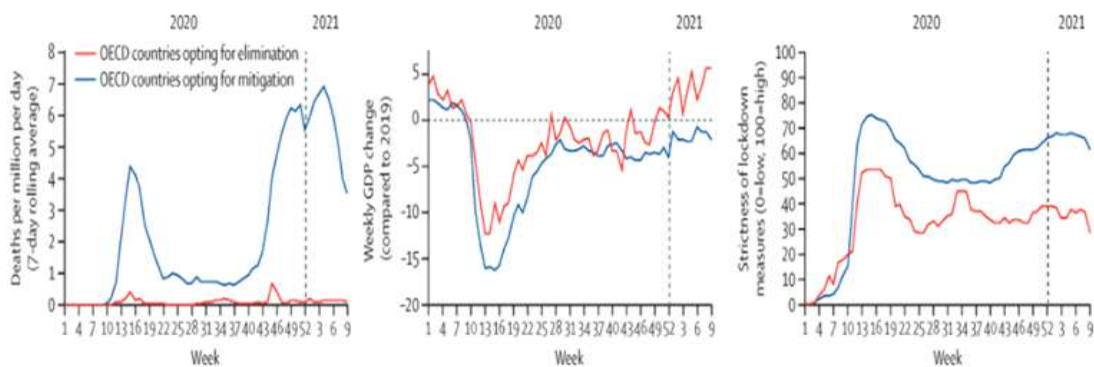


Figure COVID-19 deaths, GDP growth, and strictness of lockdown measures for OECD countries choosing SARS-CoV-2 elimination versus mitigation

Figure 1. Death Rates, Growth, and Lockdown Strictness in OCED countries with Elimination and Mitigation

As we can see in Figure 1, OECD 5 countries that adopted the zero covid policy (Korea, Australia, New Zealand, Japan, and Ireland) show about 1/25 death rates of the other OECD countries with mitigation policy. The Korean government has implemented very strong quarantine policies common to all zero covid countries, such as individual quarantine, social distancing, and test-trace-isolation policies. Accordingly, Korea shows the very low prevalence and death rates compared to other countries.

3) Olliu-Barton M, Pradelski BSR, Aghion P. SARS-CoV-2 "elimination, not mitigation, creates best outcomes for health, the economy, and civil liberties," *Lancet*, Volume 397, Issue 10291

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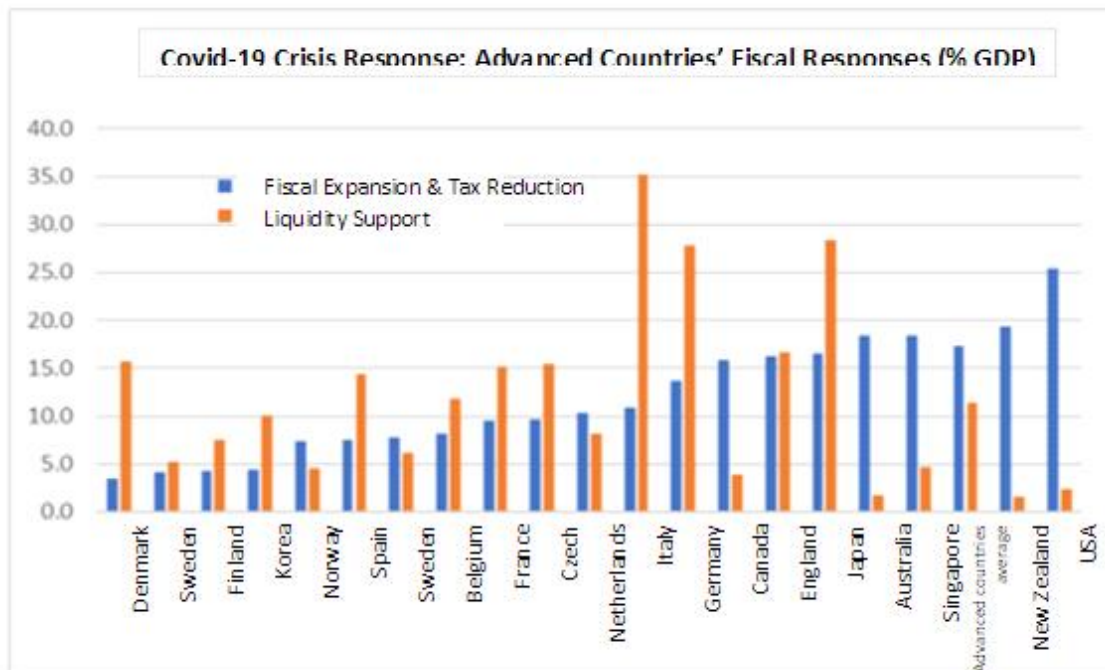


Figure 2. Government Expenditures in Advanced Countries during the Covid-19 Pandemic (up to June 2021) (from IMF)

2) Covid-19 and Fiscal Austerity

As Figure 2 shows, the Korean government's expenditure was significantly low compared to other OECD countries during the Covid-19 pandemic. This pattern is more prominent if we compare Korea to other countries with the zero covid policy.

Among countries that IMF classifies as advanced economies, the average GDP ratio of government expenditures is 17.4% for countries with zero covid policy, while Korea has only 4.4%.⁴⁾ If we calculate in terms of the annual GDP, the Korean government spent 230 trillion won less than other countries with the zero covid policy. This fiscal austerity policy, in reality, resulted in a lack of social policies and worsened inequality during the economic crisis. This created a situation where the economically hit sectors by the Covid-19 cannot receive appropriate financial support. This means that the financial backing was absolutely low for workers in the service and tourism industries, unofficial and part-time workers, self-employed workers whose business has been limited by quarantine measures, and their employees.

For example, in the case of Japan, for small business owners' rent support, the government covered 2/3 of the rent up to 750,000 yen for six months when the profit drops by 30-50%. As for income, the government covered 100,000 yen monthly for 12 months. For areas where the emergency was proclaimed to limit operation hours or

4) IMF Statistics, June 2021.

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liquor sales, the government provided 60,000 yen daily and 40,000 yen daily for neighboring regions.⁵⁾ If we examine other countries' support programs, it is clear that the Korean government's support for small business owners and workers in the affected sectors was significantly lower than other countries with a similar economic status.⁶⁾

3) With Covid Policy Since October 2020

The Korean government's austerity policy during the Covid-19 pandemic was very unusual. As Figure 2 shows, the countries that have a low level of government expenditures during the pandemic are countries with a high level of social spending in the first place. On the other hand, in the case of Japan and the United States of America, which have a low level of social welfare expenditure in the first place, the government expenditure during the covid pandemic is substantially increased. In other words, the social welfare expenditure in Korea was low, and despite the strict covid quarantine policies, the Korean government provided very limited financial support.

Furthermore, this stringent financial support was mostly directed to corporations. While the amount of financial aid the Korean government provided for corporations was 91.2 trillion won (4% of GDP), the expenditure for retaining existing employees and supporting the real income reduction was only 4.7 trillion won (0.2% of GDP). The amount for corporate support was 30 times larger than employment retention and 53 times larger than unemployment measures.⁷⁾

On the other hand, the Korean government's disease quarantine policy was not fair in imposing its strict applications and was not consistent. While the procedures were loosely applied to big corporations' major manufacturing, logistics and distributions, and social service sectors, the usage of the same measures to individual services, education, public cultural sectors, elderly care, and facilities for the disabled was very strict. In other words, the disease quarantine policies were loosely applied where large capitals make profits while having a strict application on different sectors. Accordingly, the biggest victims of the Covid-19 crisis in Korea were supposed to be workers, classified as the essential workers, the self-employed groups, and the workers they employ.

A strict disease quarantine policy, the zero covid policy, without financial support, was difficult to become a sustainable policy. In the meantime, the Moon Jae-in

5) 全国中小企業団体中央会, 家賃支援給付金について <https://www.chuokai.or.jp/>, 事務連絡 令和3年8月5日 各都道府県知事 殿 各府省庁担当課室 各位 内閣官房新型コロナウイルス感染症対策推進室長 基本的対処方針に基づく催物の開催制限、施設の使用制限等に係る留意事項等について https://corona.go.jp/news/pdf/jimurenaku_seigen_20210805.pdf etc.

6) Jun-Heon Kim and In-Hwan Park, "Cases and Analysis of Disaster Subsidy Payments in Major Countries," National Assembly Research Service, 10.26.2021.

7) Recited in Chang Keun Lee. "The First year with Covid-19: the Analysis of Employment and Unemployment Policy Outcomes," KCTU Policy Research Institute. 4.1.2021. & Jeon-Jin Han, "Capitalism System and Pandemic: 2 Years of Corona Virus Prevention and Medical Care," Medical and Society 11, Spring 2022.

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administration emphasized that these painful policies are inevitable, that we can go back to normal if more than 70% of the people are vaccinated, and that the policy would be temporary by then. As a result, in October 2021, in the middle of the Covid-19 Delta variant wave, the Korean government started to adopt the quarantine measure easing policies, the step-by-step back-to-normal approach promoted by the government. Under the austerity policy, the strict disease quarantine policy and the affected groups' lives, such as the self-employed, are to be in a trade-off relationship.

The transition to policies that ease the disease quarantine measures is to increase the number of patients. Because of this, the confirmed cases have risen compared to other countries, unlike the period before October 2021, and a relatively high number of deaths was observed.

4) Lack or Absence of Social Economic Policy for Covid Pandemic Support

The Covid-19 pandemic in Korea worsened the pains of the members of the society because Korea has limited social protection policies that other OECD countries established with a similar economic status. A good example is that the authorities, including the Korea Centers for Disease Control and Prevention, advised to "stay home" and "rest if sick". At the same time, there were no social protection policies to provide residential or resting options.

Korea is the only OECD country without paid sick leave and sickness allowance. Furthermore, the paid leave policy for care providers was empty. The paid sick leave or sickness allowance was only available to a small cluster of jobs, such as public servants, among the full-time regular workers. These policies were not available to most workers, and the self-employed were excluded from the sickness allowance.

At the same time, although the online class has been a new normal for school or care-providing facilities, the paid leave for care providers is provided in a very limited way institutionally. Even this policy was not available if workers did not have a full-time regular job. This could result from the general lack of social protection politics. At the same time, it could be criticized in terms of the lack of disease quarantine policies.

We have the same issues with employment policies and housing policies. As mentioned above, despite the strict disease quarantine policies of zero covid were in place up to October, the self-employed, who embraced the enforcement measures to limit the capacity and operation hours, were not able to receive the government's livelihood support or the compensation for loss while making all the sacrifices. Of course, no relief measures were provided to the workers employed to the self-employed. At the same time, there was no outstanding housing policy. As the housing price boom concurred in this period, it worsened the pains of the working class.⁸⁾

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Moon Jae-in's administration designated four sectors (transportation services, care provider services, street cleaning services, and health care services) and took measures.⁹⁾ However, the score of measures was narrow, and it was hard to say that these measures enhanced the labor conditions for those affected workers.

4) Summary

As the Korean government adopted a considerably stricter zero covid policy, which applies strict social distancing and adopts test-trace-isolation measures, the Covid-19's prevalence and death rates were successfully lowered compared to other countries.

On the other hand, while taking social policy measures, the government made a very limited expenditure on those negatively affected groups. The level of social protection was not that high in the first place, and there were no additional social policies during the pandemic, which aggravated the pain of the Covid-19 pandemic for workers, ordinary people, and the socially disadvantaged.

3. Korean Government's Failure on the Covid Medial Responses

1) Failure to Mobilize Private Hospitals & Problems of the Public Hospital-Centered Medical Responses

The most notable difference in Korea's Covid-19 responses compared to other countries was the medical response. Unlike other countries, Korea's Covid-19 responses were centered around public hospitals. While about 80% of the covid patients were treated in public hospitals by July 2021, about 67% were also treated in public hospitals around October 2021.¹⁰⁾

However, public hospitals take only 10% of the total hospital beds in Korea. This is just about 1/7 of the national average for public hospitals (73%) among the Organization for Economic Co-operation and Development (OECD) member countries. Even if we compare it to U.S. and Japan, which centered around private hospitals and public hospitals taking about 25 – 30% of total beds, the number in Korea is very short. The regional public hospitals (local medical centers) that took an important role in fighting against the Covid-19 virus take only about 3.8% of all the beds for urgent treatment (excluding geriatric hospitals, oriental hospitals, and dentistry), including all municipal hospitals in Seoul. The Korean government mainly designated local medical centers as the Covid-19-dedicated hospitals, and national university hospitals are selected for intensive care beds. As the government tries to cope with the global covid

8) JEONG, Kiseong. "A Review of Housing Policies in Response to COVID-19 in OECD Countries", International Social Security Review. 2021. Summer.

9) Joint Government Departments, Measures to Protect and Support Essential Workers in Response to COVID-19

10) From the internal documents of the National Health Insurance Service

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pandemic crisis in 100 years through the public beds, which only take up 10% of the total national beds, including the local medical centers' 3.8%, the issues of bed and medical personnel shortages have emerged continuously whenever Covid-19 waves arrive. This shortage of beds and medical personnel is often called the "collapse of the medical system. "

In fact, Korea has the highest number of beds per capita in the world. The number of beds itself is about 2.6 times higher than the OECD average. However, we confirmed that whenever the daily confirmed cases are over 3,000, we hear that there was a bed shortage. There were a lot of beds. However, the Korean government was hesitating to mobilize the beds from private hospitals that take about 90% of beds nationwide. At the same time, even with the executive orders, private hospitals did not comply.

In the case of the U.S. and Japan, the percentage of public beds is also around 25 to 35%. France and Germany also have public beds less than 50%. However, these countries equally mobilized private hospitals together with public hospitals during the covid pandemic. Except for the first big wave in 2020, when the medical systems collapsed, these countries never experienced the bed shortage phenomenon again, even with more than 50,000 – 100,000 new daily patients.

On the other hand, even after Korea had the bed shortage event during the Daegu and Gyeongbuk area's 1st wave, which resulted from the government's public bed-centered mobilization and pushed patients to public hospitals all over the country, the Korean government didn't change the public hospital mobilization policy and created the bed shortage events every time the new wave arrives.

During the 2020 summer wave, the 2nd and 3rd waves during the 2020-2021 winter period, and even the 4th wave in November 2021, there were bed shortage issues. Although civil society organizations requested that the government mobilize 5 -10% of beds from the large private hospitals since the 2nd wave, the government did not listen. The Korean government belatedly issued a mobilization decree for about 1.5% of intensive care beds from large private hospitals. It turned out that the measure was too late. Furthermore, another mobilization decree for mobilizing about 1.5% of the usual treatment beds was made. This measure was also too late. The number of patients, who stay home just because there are not enough beds, was dramatically increased, and finally, a patient passed away while staying home. This phenomenon occurred again during the 3rd wave in the 2020-2021 winter period.

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Moving-average case fatality rate of COVID-19

The case fatality rate (CFR) is the ratio between confirmed deaths and confirmed cases. Our rolling-average CFR is calculated as the ratio between the 7-day average number of deaths and the 7-day average number of cases 10 days earlier.

Our World
in Data



Source: Johns Hopkins University CSSE COVID-19 Data

CC BY

Figure 3 Comparison of the Covid-10 Fatality Rates between England, France, and Korea

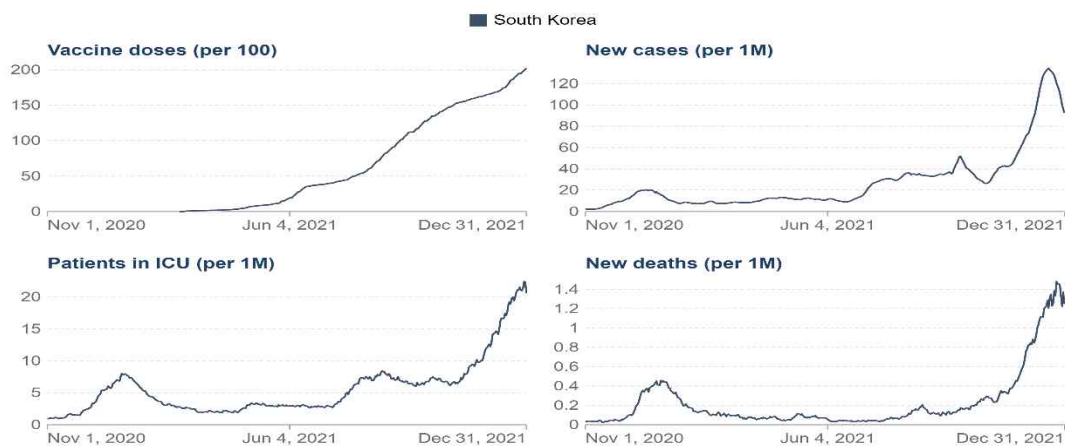
As a result, as Figure 3 shows, even though France and England have about 10 times higher number of confirmed cases per capita, Korea's fatality rates are similar to these countries in the 2nd and 4th waves or higher in certain periods. In particular, during the recent 4th wave in the 2021 fall-winter period, despite the fact that the daily confirmed new cases were about 10 times or 20 times less than other countries, the fatality rates were 4 or 5 times higher than other countries. It implies that the medial response system was not well prepared despite a low number of patients.

2) Unprepared "With-Covid" Policy

COVID-19 vaccine doses, ICU patients, and confirmed deaths

Limited testing and challenges in the attribution of cause of death means the cases and deaths counts may not be accurate.

Our World
in Data



Source: Official data collated by Our World in Data, Johns Hopkins University CSSE COVID-19 Data

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Figure 4. Vaccination Rates, Daily New Confirmed Case, Critical Patients, Fatality Rate Trends in Korea's With-Covid Period

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The bed shortage problem worsened during the 4th wave, right after the Korean government proclaimed the with-covid policy, a "staged recovery of everyday life," in October when about 80% of the population completed the vaccination process. The with-covid policy is based on the argument that herd immunity through vaccination is impossible after having the Covid-19 delta variant and that the Covid-19 fatigue is too deep.

Korea is one of the countries that hold on to the zero covid policy with Australia, New Zealand, and Singapore, even though most countries have already adopted the with-covid policies. Because the level of immunity was low and there was not much experience in understanding the consequences of easing quarantine measures, the policy should be introduced gradually. However, in a situation where the level of small business owners' discontent was high as the Korean government did not provide enough financial support for them, the government adopted the with-covid policy to appease them. In that regard, the government lifted quarantine measures on capacity and operation hours all at once.

As shown in Figure 4, although the daily confirmed cases are still high in the middle of waves between September-October 2021 and the 2020-2021 winter period, the government eased the quarantine measures as soon as the daily confirmed cases went down a little bit. Within less than a month in November, this resulted in hundreds of stay-home patients and a shortage in covid-patient beds and intensive care beds.

Despite the situation, the Korean government could not impose stricter quarantine measures right away. After two weeks of procrastination, which resulted in the emergency room breakdown, the lack of beds for usual treatment and intensive care, and more than 1,000 covid-19 patients waiting for treatment on beds, the government was finally able to strengthen the quarantine measures. This late response to strengthen the disease quarantine measures is largely considered a reaction to the small business owners' dissatisfaction. This implies that the Korean government designed and implemented the disease quarantine measures not to prioritize human lives against the Covid-19 virus but to weigh the disease quarantine policies and the dissatisfaction of small business owners. This paradoxically proves the argument that the disease quarantine policy should be balanced by an appropriate level of government expenditure and social policies.

3) Bed Shortages, Medical Personnel Shortages

The shortages in beds and medical personnel, which repeatedly occurred between the 1st and 4th waves, resulted from the Korean government's policy to mainly mobilize public hospitals while excluding private hospitals. This was mentioned above.

The second reason is the lack of publicness of private hospitals, which results from

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the absolute lack of public hospitals. The percentage of patients who need to be treated by the tertiary hospital (special treatment patients) is only about 38.5%.¹¹⁾ Thus, the argument that the tertiary hospital cannot treat covid patients because it needs to deal with these special treatment patients does not make sense. The fact that although the government issued a decree to mobilize additional 1% beds from large private hospitals, which is an extra 1% on top of the existing 3%, the decree fulfillment rate was only about 49% implies that the Korean government had no willingness or capabilities for bed mobilization and private hospitals had no desire to follow the bed mobilization decree. All in all, it clearly shows that there is a lack of publicness in the Korean medical system.

Third, the shortage of medical personnel, especially the shortage of nursing personnel, is serious. The nursing workforce in Korea is about 4 to 6 active nurses out of 1,000 people, which is about a half of the OCED average of 9.9. The nursing personnel per acute phased bed is 0.28, only $\frac{1}{4}$ of the OECD average of 1.25. Because of this, many hospitals had a situation where they could not treat patients even though there were enough beds. In particular, it was problematic because the intensive care units did not have enough nursing personnel. Although the Korean government was able to predict such a situation, the situation became worsened as there were no preparatory works, such as education or training of nursing personnel.

4) Explosion of Patients and Deaths during the Omicron Wave

Although Korea has boasted the "K-quarantine," Korea had many confirmed cases and death rates during the Omicron wave. Compared to countries with zero-covid policies and countries that have used the mitigation policy in the first place, Korea did not have any particular difference.

The Korean government argues that the overall fatality rates are lower compared to other countries. However, that is the case only by October 2021. It does not apply to the period where the government pursued the quarantine-easing policy after October 2021.

11) Choi, Jisook. et al, "A Study on Patient Composition for the Tertiary Hospital Designation and Evaluation,". January 2021. Health Insurance Review and Assessment Service.

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Daily new confirmed COVID-19 cases & deaths per million people
7-day rolling average. Limited testing and challenges in the attribution of cause of death means the cases and deaths counts may not be accurate.

Our World
in Data

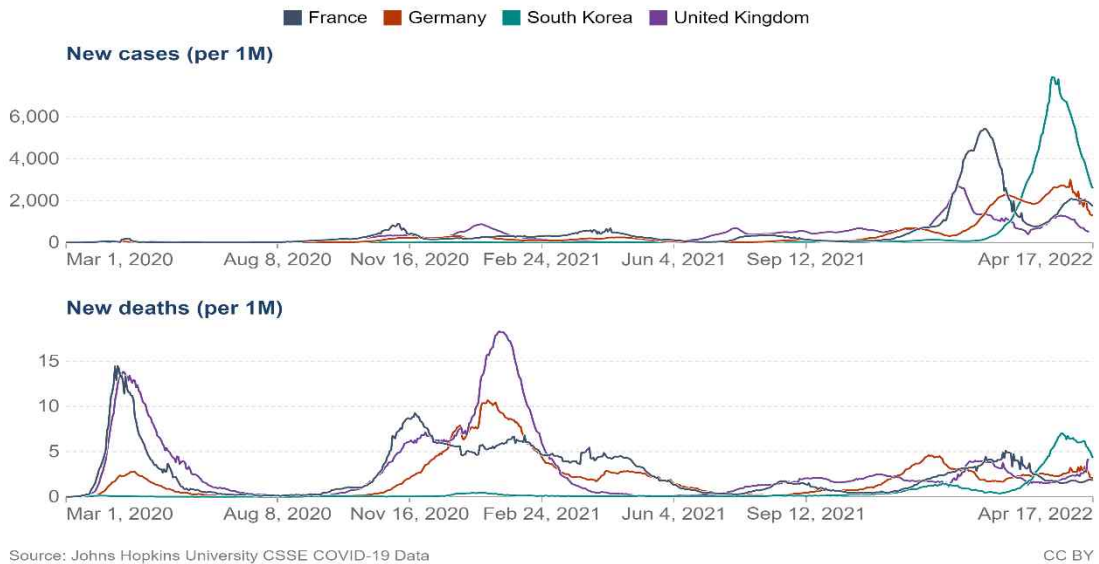


Figure 5 Trends in Confirmed Cases and Deaths in France, Germany, England, and Korea

As we can see in Figure 5, compared to England, Germany, and France in Europe, Korea has not only more confirmed daily cases but also daily death numbers.

Daily new confirmed COVID-19 cases & deaths per million people
7-day rolling average. Limited testing and challenges in the attribution of cause of death means the cases and deaths counts may not be accurate.

Our World
in Data

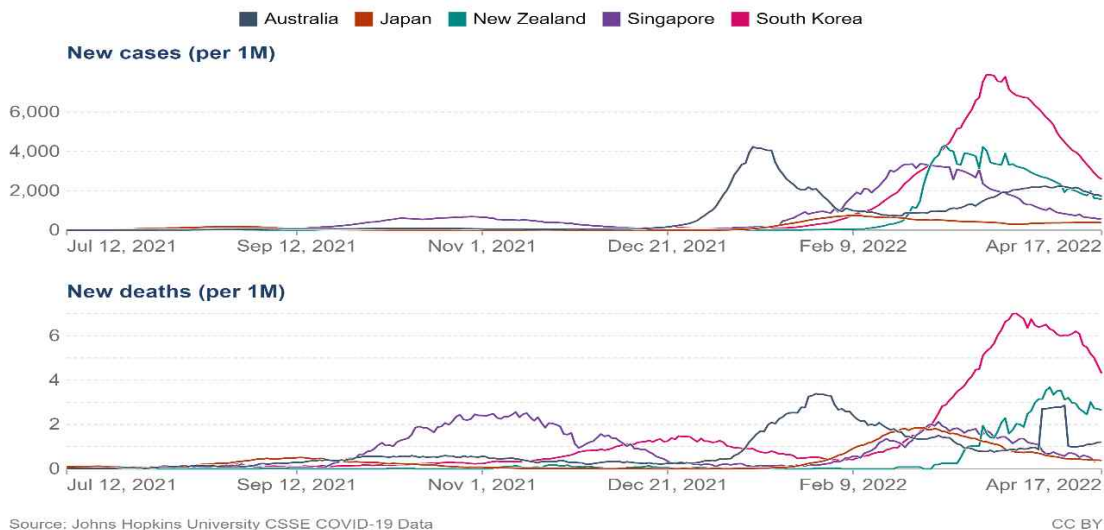


Figure 6 Trend Comparison in Confirmed Cases and Deaths between Korea and Zero Covid Countries (Australia, Japan, New Zealand, Singapore)

The point is clearer if we compare Korea to countries with zero covid policies. As Figure 6 shows, Korea had similar or lower confirmed case and death numbers than

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Australia, Japan, New Zealand, and Singapore until October 2021. However, starting in November 2021, when the country had the Delta variant wave, the number of deaths increased. In 2022, we can see that the number of confirmed cases and deaths is higher than in other countries. This implies the failure of the covid quarantine policies and the failure of the medical response policies.

As mentioned above, the Korean government was not able to sustain the strict quarantine policies because of the fiscal austerity policy and the lack, or limited capacity, of social policies. This situation led to the quarantine failure brought by the quarantine easing policies. At the same time, the public hospital-centered responses and the failure to mobilize large private hospitals have led to a large number of deaths as well as high fatality rates. This means that Korea had a lot of patients who were not able to have proper treatment. In March 2022, there were even testimonies from medical personnel that the number of deaths was under-reported. From March to mid-April, there have been approximately 300 to 400 reported daily death. This suggests that there could have been more deaths in reality.

Many deaths (more than 30%) occurred in nursing facilities, particularly in care hospitals and care centers. It revealed Korea's nursing facility issues for the elderly as it is because even before the pandemic, about 40,000 elderly people were residing in populated nursing facilities without proper nursing care.

4. The Sufferings of the Socially Disadvantaged

1) Elderly People Who Reside in Group Facilities

The death rates for the elderly population who live in group residential facilities were high to the extent that the biggest victim was the elderly in the group residential facilities. In Korea, about 250,000 older people reside in about 150,000 nursing facilities, which do not have enough space for social distancing and nursing personnel so much that 1 nurse provides care to up to 10 or 20 people. The death rates result from this poor environment.

At the same time, when older people catch the virus because of the shortage of beds and care providers, beds are often designated for older people residing in group facilities as the last priority or abandoned in the name of cohort isolation. Originally, cohort isolation refers to the quarantine measure for those with the disease. In Korea, cohort isolation was used to quarantine the entire facility, such as hospitals, nursing hospitals, care centers, and facilities for the handicapped, from the society. This is not acceptable in a civilized society. In order not to repeat this type of barbaric situation, we need to reorganize nursing facilities into local-based small-sized facilities and reconstruct the care-providing systems.

2) Disabled People who Reside in Group Facilities

Disabled people were one of the greatest victims of the Covid crisis. In particular, in the case of disabled persons who reside in group facilities, the situation was similar with the older people. Due to the lack of space and shortage of care providers, disabled people suffered, including those who had the virus and those who did not. The fact that the first death was in a closed mental hospital during the 1st wave of Daegu and Gyeongbuk areas proves this point symbolically. The notorious "cohort isolation" to separate a group of people from society was imposed on the facilities for the disabled.

In the case of disabled persons, the pain was serious because of the lack of a care provider system. This problem persists even today.

3) The Poor, Homeless, Immigrant Workers, HIV/Aids Patients

As the public hospitals were designated as the Covid-treatment hospitals, there became no hospitals for homeless people. The situation was the same for the immigrant workers. As the National Medical Center is also designated to treat the Covid patients, HIV/Aids patients also have practically no place to be admitted. This problem was also applied to the poor who had the treatment in public hospitals. This was happening because the government ignored the role of public hospitals in treating the socially disadvantaged groups and designated them as the Covid-treatment facilities. The situation was worse near the capital areas.

The Korean government tried to make the covid-test mandatory for immigrants, and some municipal governments actually adopted the policy for that purpose. The fact that immigrants have a high level of infection rate is not because of their characteristics but because of their poor living environment. Accordingly, the mandatory test method to solve the issue was not appropriate and efficient for disease quarantine or treatment. As immigrants and their children were not receiving general treatment from public hospitals, they were not able to receive general vaccinations for 2 years. The issue was partially addressed in 2022.

5. Other Important Issues

1) Infringement of the Freedom of Assembly and Protest on the Excuse of Covid Crisis

The Korean government substantially limited the freedom of assembly during the Covid pandemic period. Near Gwanghwamun or major places in metropolitan areas, protests and rallies were practically prohibited. However, some studies show that the outdoor demonstrations have less than a 0.1% probability of infection¹²⁾, and there were

12) Bulfone TC et al. "Outdoor Transmission of SARS-CoV-2 and Other Respiratory Viruses: A Systematic Review," J Infect Dis, 2021 Feb 24, 223(4):550-561; NYT 2021.5.11. "A Misleading

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no confirmed cases from civil organizations or unions in rallies.

The only demonstration that had the confirmed covid cases was the right-wing protests on August 15th, 2020. In this case, the participants were the members of the Sarang Jeil Church, who are mostly anti-vaxxers. We can assume that the covid patients participated in the event even without basic quarantine measures. Thus, this special case is difficult to generalize to all demonstration events. These about 400 confirmed cases from the 815 demonstrations are the only protest-related cases. Let alone the cases from the Omicron variants, the percentage of these cases to the whole number of cases is less than 0.1%.

The government regulations that prohibit the outdoor protests or indoor assembly during the overall quarantine measure easing period in the midst of Omicron waves are foundationless, given that concerts, outdoor sports attendance, and other indoor gatherings are allowed.

2) Government's Excessive Dependence on Vaccines and Vaccine Pass Issues

The anti-vaxxers were not a major social problem before the pandemic in Korea. However, as some conservative press, conservative parties, and Christian left-wing groups raised political issues on vaccines, the anti-vaxxers became a social issue. This issue has a high probability of becoming a major social problem in the future. In the case of Korea, the vaccine introduction was slightly late compared to other advanced countries, such as the U.S or countries in Europe. At the same time, the 3rd vaccination was also delayed due to miscalculation of the government authorities. However, the situation could not justify exaggerating the side effects of the vaccines and does not provide any evidence that the vaccine policy entirely failed.

However, the government's adoption of quarantine-easing policies as the inoculation rates went beyond 70% reveals its somewhat excessive dependence on vaccines. Although vaccines are important parts of the quarantine measures, it is effective when combined with other major quarantine measures, such as social distancing, test-trace-isolation method, and personal hygiene. The fact that vaccines alone cannot protect society from the Covid-19 diseases was paradoxically revealed as the government started easing the quarantine measures in October 2021.

Another problem with the vaccine policy was the vaccine pass issue. Before we discuss the vaccine pass problem, we need to discuss whether the government has prepared enough social guidelines for vaccine injections, whether there was sufficient

C.D.C. Number We have a special edition of the newsletter on a misleading C.D.C. statistic." "In truth, the share of transmission that has occurred outdoors seems to be below 1 percent and may be below 0.1 percent, multiple epidemiologists told me."
(Seok-gyun Woo. "Problems of the Government's Quarantine Guidelines and Improvement Plans." 2021.8.12., recited in a discussion panel of the Korean Confederation of Trade Unions)

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public persuasion about vaccines' effects and side effects, and whether the government prepared the compensation policies.

3) The Attitude of the Korean Government on the Waiver of the Intellectual Property Rights for Vaccines and Medical Supplies

In his World Health Assembly speech on May 19th, 2020, President Moon Jae-in emphasized "cooperating in developing vaccines and cures beyond territories" and "supplying the developed vaccines and cures to the whole world as they are public goods for humanity." This statement about the vaccine as public goods were proclaimed multiple times before and after this speech.

However, the Korean government did not clearly discuss the TRIPS waiver on the Covid-19-related medicines and medical supplies suggested by the South African and Brazilian governments in October 2020. The position of the Korean government was not changed even after the U.S. government changed its position to approve the TRIPS waiver on the Covid-19-related matters. Although Korea's labor unions and civil society organizations have issued statements and demanded approval through multiple press conferences, the Korean government and conservative parties are silent on the matter even today.

4) Medical Security for Covid-19 and Vaccine Side Effects

According to the Infectious Disease Control and Prevention Act, the treatment costs to the Covid-19-related diseases are entirely covered when there are dangers of infections. When the threat of infection disappears, individuals should pay them out of their pocket even though the treatment is about Covid-19. It is necessary that the government make a clear principle to cover all costs related to Covid-19. This has been a serious social issue as the government shortened the quarantine treatment period from 20 days to 7 days during the Omicron period. For those critically ill, it is often the case that they need intensive care not only for a week but also after 20 days. However, the government supports the treatment only for one week, and medical insurance coverage kicks in between 1 week and 20 days. Accordingly, individuals are charged tens of thousands of won for treatment at most.

In October 2020, after we had the Covid-crisis, the Korean government revised the Quarantine Act Enforcement Rules to change the original quarantine treatment period, between the infectious disease symptoms and the end period of infectivity, to the duration of infectivity. The revision reveals the government's intention that the government does not cover the medical costs to treat the disease but only covers the patient who has the infectivity.

The object of government responsibility is not the micro-organism that spreads the

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virus but the infected people. The measure is nothing more than an excuse for the government to avoid the responsibility for infectious diseases by minimizing the medical coverage. This problem reveals not only the inferiority of the original medical insurance system but also the government's irresponsibility in passing the covid treatment costs to individuals through the quarantine-easing policies.

At the same time, we need to strengthen the government's responsibility regarding the vaccines' side effects.

We need a covid policy that establishes the principle that the government will take responsibility for the after-vaccine treatments if we cannot rule out the causality of side effects even though the causal relationship is not clear. This is important to overcome the social vaccine hesitancy.

6. On Behalf of Conclusions

As Korea responded to Covid-19 with the zero covid policy in 2020 and 2021, the prevalence and death rates have been successfully lowered compared to other countries. However, since October 2021, when the government proclaimed the staged recovery to the daily livelihood, the covid response was not that successful to the extent that both prevalence and death rates are not lower than in other countries. During the Omicron wave, about 90% of all death was concentrated in Korea, and that is higher than the death rates of other OECD countries in the same period.

Although the strict social distancing and test-trace-isolation policies created groups of negatively affected people, there have been no appropriate financial compensations or social policy supports. Because of this, small business owners have suffered financial damages and difficulties in livelihood. And, due to the lack of employment, housing, or income-compensation policies, the poor and irregular workers have continued to suffer. At the same time, the boundary of essential works was narrow, and the financial support was insufficient. This lack of fiscal expenditure and the shortage, of lack, of social supporting policies creates resistance to quarantine measures, which become the foundation of rapid directional change from the strict quarantine policy to the quarantine-easing policy. In other words, Korea's strict quarantine policy was not sustainable under the neoliberal austerity policy. As a result, death cases concentrated in Korea during the Delta and Omicron waves after the quarantine-easing policy was adopted.

Even if we consider the outstanding quarantine outcome, the medical response was also a failure. The same medial response failure was reported when the covid patients were developed in large numbers during the Delta and Omicron waves. The shortage of

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beds and medical personnel for every wave proved that the covid medical responses focused on public hospitals are not appropriate policies. In order to address this problem, we need to increase the percentage of public hospitals, which has been absolutely insufficient, somewhat. And, we need to establish a mobilization system for private hospitals. This shows that the system-wide reforms for the Korean medical industry to significantly expand the percentage of public hospitals and secure the publicness of private hospitals are a very urgent and important issue.

The right to have medical access was not appropriately secured for the socially disadvantaged groups, such as the elderly, people living in facilities, immigrants, the disabled, etc. In particular, during the Omicron wave, it became apparent that the medical responses alone cannot secure the health and life of the socially disadvantaged. We need to rethink and reform the entire care provider system in Korea.

The Role of International Development Cooperation Projects for Assisting the Covid-19 Responses of Developing Countries: Focused on the Role and Activities of Civil Society in South Korea

Mr. Daeshik Jo

Secretary-General, KCOC



1. The Role of South Korea to help Covid-19 Pandemic Responses of Developing Countries

A. Overview of Korea's Role

- The support of South Korea to assist the Covid-19 responses of developing countries has been provided through two different channels. The government-level assistance is the one, and civil society's assistance through the developmental NGOs is another.
- The government-level assistance has been provided mainly through the Korea International Cooperation Agency (KOICA), an agency for the Official Development Assistance (ODA) of the Ministry of Foreign Affairs. An exemplary project was the ABC program: Agenda for Building Resilience against Covid-19 through development cooperation. This program has provided developing countries with diagnostic equipment and test kits and supported the establishment of laboratories and hospital treatment facilities to increase the Covid-19 response capacity.
- Civil society-level assistance has been provided through about 140 member organizations of the Korea NGO Council for Overseas Development Cooperation (KCOC), the NGO council for development and cooperation. In 2022, KCOC used

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the KCOC Appeal to provide about 36 billion Korean won worth of support for developing countries' Covid-19 response activities.

* Korea NGO Council for Overseas Development Cooperation (KCOC) is a council of about 140 NGOs to provide development assistance and humanitarian assistance in the international arena. KCOC, the private platform of South Korea's global development cooperation sector, was founded in 1999. The KCOC member organizations have about 4.4 million sponsors, 7,000 full-time employers, and 700 billion won-worth projects across approximately 100 countries. Besides its workforce, KCOC connects tens of thousands of local activists who belong to affiliate NGOs to perform activities in foreign fields.

B. Domestic and Foreign Covid-19 Situations and the Responses of the International Development Cooperation Sector

- Major schedules in 2022 and the flows of response activities by period, which show Covid-19's domestic and foreign situations and responses of Korea's international development cooperation sector (government and civil society), are as follow:

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Figure 1. Domestic and Foreign Covid-19 Situations and the Response of Government and Civil Society in the International Development Cooperation Sector

	February	March	April	May	June	July
Confirmed cases	Global Korea	WHO pandemic declaration				
Responses of the Korean Government		- G20 special summit - Recommend withdrawing the overseas workforce of KOICA's Civil Society Cooperation program		- President Moon Jae-in's speech for the World Health Assembly		- Anti-Covid-19 KOICA-Civil Society Cooperation Program/ Humanitarian Assistant Program (July – December)
		* Assisting global society's covid-19 responses				
Korea development cooperation CSO responses		- (KCOC) knowledge, experiences, and information sharing - (Member organizations) Covid-19 response and assistant program for developing countries				
			KCOC statement (1 st)	KCOC statement (2 nd) Participation in global campaigns		
	July	August	September	October	November	December
Confirmed cases	Global Korea			1 million deaths		
Responses of the Korean government	- Anti-Covid-19 KOICA-Civil Society Cooperation Program/ Humanitarian Assistant Program (July– December)					
	* Assisting global society's covid-19 responses					
Responses of the Korea Development Cooperation CSO	- (KCOC) knowledge, experiences, and information sharing - (Member organizations) Covid-19 response and assistant program for developing countries					

2. Covid-19 Responses of Korean Civil Society for Developing Countries (KCOC-centered Common Response Activities)

A. Overview

- Korean civil society's covid-19 responses have been pursued at two different levels in the development cooperation sector. As for increasing capacities, knowledge, experiences, and information sharing have been followed. At the advocacy level, making statements and launching global campaigns have been the focus.

b. Responses to Increasing Capacity

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1) Knowledge Sharing

- Understanding Covid-19 disease and searching for response strategies
- Period: April 23rd, 2020 – May 20th, 2020

Table 1. List of Lectures

Order	Subjects	Dates and times	Lecturers
1 st	Covid-19 Disease Aspects and International Situations	April 23rd 10:00	Hoon Sang Lee (Yonsei University) Dongil Ahn (Yonsei University) Jun-seop Yeom (Yonsei University)
2 nd	Korea's Covid-19 Responses and Public Health	May 4th 13:30	Hoon Sang Lee (Yonsei University) Sang-woo Tak (Seoul National University) Jaegap Lee (Hallym University)
3 rd	How to Plan Covid-19 Response Projects - Health and Medical Sector	May 20th 14:00	Hoon Sang Lee (Yonsei University) Na-yeon Kim (MSF) Seong-hye Kim (Hanyang University)

2) Experience Sharing

- Interviews for the field situations and projects in 15 countries (SNS)
- Period: May 2nd, 2020 – July 24th, 2020

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Table 2. List of Interviews

Order	Subjects	Lecturers (organization/country)
1 st	Covid-19 Situations in Cambodia	Joo-yeon Bae (KCOC/Cambodia)
2 nd	Support for Covid-19 Affected Women in the Vulnerable Groups in the Philippines	Cheol Moon (UNI World/Philippines)
3 rd	Covid-19 Situations in Nepal	Jinkyung Kook (KCOC/Nepal)
4 th	Support for living for Covid-10 Affected HIV Children in Nepal	Joo-yeon Dong (Better World/Nepal)
5 th	Covid-19 Situations in Uganda	Seon-mi Im (KCOC/Uganda)
6 th	Covid-19 Situations in Rwanda	Kyunghee Nam (KCOC/Rwanda)
7 th	For Urban Low-income Families, They Answer to the Questions being Asked	Deuk-soo Lee (Bangladesh)
8 th	Covid-19 Situations and Responses in Refugee Camps in South Sudan	Bungjin Jeong (Better World/Uganda)
9 th	Covid-19 Situations and Responses in Ecuador	Dasul Jeong (Food for the Hungry/Ecuador)
10 th	Covid-19 Situations and Responses in Rwanda '900 cases vs. 12,952,218 cases'	Sang-hoon Lee (PIASS/Rwanda)
11 th	Haiti is Experiencing the Worst Situation in History	Seong-eun Kim (Global Care/Haiti)
12 th	The way Guatemalan People cope with Covid-19	Hee-sung Jang/Hanna Ryou (Food for the Hungry/Guatemala)
13 th	The Age of Covid-19, the Life of Syrian Refugees	Hee-jin Kim (Miral Welfare Foundation/Lebanon)
14 th	Unexpected Problems that Covid-19 Worsened	Hong-su Jeon (Good Neighbors/ Kyrgyzstan)
15 th	New Opportunities arising amid Crisis and Challenges	Hyewon Lee (Eastern Social Welfare Society/Sri Lanka)
16 th	Sustainable Development and Covid-19 with Residents	So-hee Yoon (Green Foundation/ Myanmar)
Special	Field News from Korean Embassy in Uganda	Byung-gyu Ha (Korean Ambassador to Uganda/Uganda)

3) Information Sharing

- Sharing Covid-19 current situation country report
 - Period: April 24th, 2020 – February 5th, 2021
 - Once a week, a total of 40 reports published
 - A total of 11 countries (Nepal, Laos, Myanmar, Cambodia, Philippines, Rwanda, Uganda, South Sudan, Bangladesh, India, and Kenya)
- Sharing the list of information trends about Covid-19
 - Period: 3rd week of May 2020 – July 2020
 - Once a week, a total of 663 information sharing with 12 times
 - sharing information, such as press releases about Covid-19 in the international development cooperation sector, research reports, or issues.

C. Advocacy-level Responses

1) KCOC statement (1st)

- ☐ Date: April 2020
- ☐ Contents
 - Emphasis on interests in and supports for developing countries' responses to the Covid-19 crisis
 - Welcome the Korean government's participation in developing countries' responses and her willingness to provide support
 - Request the policy directions and implementation of the Korean government and KOICA
 - Promises of KCOC (140 Development CSO)

2) KCOC statement (2nd)

- ☐ Date: May 2020
 - Overview of KCOC Appeal
 - ① Total scale: 62 billion won
 - ② Countries: 64 countries
 - ③ Projects: 170 projects
 - ④ Content: infectious disease prevention support, public health support, livelihood support for the vulnerable populations
- ☐ Promises and suggestions
 - ① Korean international development cooperation civil society will take the lead in overcoming the Covid-19 crisis in a global society.
 - ② Demand for comprehensive cooperation and joint response between government and civil society for KCOC Appeal
 - ③ Demand to augment and expand international development cooperation for joint peace

3) Global solidarity signature & campaign participation



D. Covid-19 Support and Policy Improvement through Government and Civil Society Cooperation

1) Securing special financial resources for government-civil society partnership to cope with the Covid-19 crisis

- KOICA civil society cooperation: 8 billion won emergency support for developing countries, 2 billion won emergency aid for refugee

2) 2021 International Development Cooperation Comprehensive Plan: Covid-19 Response

- Utilizing the total capacity of the nation through the civil society-corporation collaboration
- Using civil society's rich experiences and local network to provide focused support for the vulnerable population through civil society collaboration

E. 2020 Responses of Member Organizations

Figure 2. Total Amount of Support



Figure 3 Business Scale

Project Scale (billion won)	New Project Ratio	Vulnerable Population-focused Projects
Government cooperation 9.9 27%	304 New projects 67%	421 Focused projects 93%
Stand-alone projects 26.5 73%	148 Existing projects 33%	31 Non-focused projects 7%

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Figure 4 Cooperation Scale

Financial Cooperation	Cooperation Partners	Cooperation for Project Implementation
83 Government cooperation 19%	149 Local governments 29%	4040 Partnership projects 89%
20 Corporate cooperation 5%	52 INGO 10%	48 Stand-alone projects 11%
19 Domestic redistribution cooperation 4%	46 Other partners 9%	
2 International organizations (Foreign donor organizations) 0%	30 Local academics 6%	
2 Academic cooperation 0%	20 Religious organizations 4%	
2 Church cooperation 0%	11 Local companies 2%	
306 Stand-alone projects 69%	6 International organizations 1%	
	205 Local NGOs 39%	

Figure 5 Project Fields

Education (32 projects)	Health (13 projects)	Humanitarian (317 projects)	Increasing Development Awareness (2 projects)	Local Society Development (28 projects)
Primary education (7)	General health (2)	Emergency support (311)	Public Policy and Civil Society (1 project)	Other Social Infrastructure and Service (14 projects)
Elementary education (17)	Basic health (10)	Recovery and reconstruction (2)	Overseas Child Support (8 projects)	Finance (1 project)
Secondary education (6)	Population policy/reproductiv e health (1)	Disaster prevention and preparedness (4)		
Higher education (2)				

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F. Development Civil Society Organization (CSO) Level Responses

Figure 6 Support Contents
(Covid-19 Support)

Strengthening Health System and Workforce (Provide individual protective equipment, such as masks, sanitizers, and other PPE, and sink installation in local society)	Livelihood Support (Emergency living expenses, survival kits)
Psychosocial support (Gender-based violence, fear, isolation, etc.)	Education or Provide Training Tools

○ Project examples

- Food support for Zambia (Good Neighbors, April 29th, 2020)
- Education supplies support for Brazil (World Vision, May 21st, 2020)
- Sanitary education and sanitization for refugee camps in Bangladesh (Save the Children, June 19th, 2020)
- Support medical personnel and supplies (Global Care, June 30th, 2020)

3. Korean Civil Society's Covid-19 Responses in Developing Countries (Focused on KCOC Member Organizations)

A. Covid-19 Response Project Outcomes

- 2020 Covid-19 response project had a total of 367,385 million won for 453 projects in 80 countries. The government cooperation projects take 9,910 million won, which takes about 28% of the entire projects for Covid-19 responses.

Table 4. 2020 Covid-19 Response Project Outcomes

No. of Countries	No. of Projects	Government Finance		CSO Finance		Total Finance	
		Amount (million won)	Ratio (%)	Amount (million won)	Ratio (%)	Amount (million won)	Ratio (%)
80	453	9,910	28	26,475	72	36,385	100

- The government agencies that participated in the civil society's Covid-19 responses in developing countries are KOICA, local governments, and the Ministry of Culture, Sports and Tourism. Among them, KOICA takes a 98%

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Table 5. Government Cooperation Agencies for the 2020 Covid-19 Response Project

KOICA		Local Governments		Ministry of Culture, Sports and Tourism		Total Finance	
Amount (million won)	Ratio (%)	Amount (million won)	Ratio (%)	Amount (million won)	Ratio (%)	Amount (million won)	Ratio (%)
9,688	98	190	2	32	0	9,910	100

B. Covid-19 Response Project Type

- In 2020, the civil society either switched the existing projects to the Covid-19 response projects (33%) or established new projects (67%) to cope with the Covid-19 crisis in a rapid and flexible way.

Table 6. 2020 Covid-19 Response Project Types

The transition from Existing Project		New Projects		Total Project Numbers	
No. of projects	Ratio (%)	No. of projects	Ratio (%)	No. of projects	Ratio (%)
149	33	304	67	453	100

- As for the ratio of government cooperation by project type, projects transitioned from the existing one take 20% and new projects 29%.

Table 7. Government Cooperation by 2020 Covid-19 Response Project Types

	Government Finance Ratio (%)	CSO Self-finance Ratio (%)
Transition from the existing projects	20	80
New projects	29	71

C. Financial Cooperation for Covid-19 Response Projects

- The financial providers for the 2020 civil society's covid-19 response projects for developing countries were governments, domestic redistribution organizations, corporations, academic associations, and others. Among them, government cooperation had relatively higher in the number of projects and project scales compared to others. We can observe this pattern in both projects transitioned from the existing projects and new projects.

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Table 8. Financial Cooperation Status for 2020 Covid-19 Response Projects

Items	Criteria	Government	Domestic Redistribution organizations	Corporations	Academic associations	Others	Self-finance	total
Transition from the existing projects	No. of project	48	6	4	2	5	84	149
	Expenses (million won)	1,813	49	1,672	51	14	3,786	7,385
New projects	No. of project	36	2	17	16	4	229	304
	Expenses (million won)	9,096	458	936	504	473	17,533	29,000
Total	No. of project	84	8	21	18	9	313	453
	Expenses (million won)	10,909	507	2,608	555	487	21,319	36,385

D. Local Cooperation Status for the Covid-19 Response Projects

- For the 2020 Covid-19 response projects, local cooperation-based projects take 90% and stand-alone projects 10%. The case where the project sought cooperation with local agencies was overwhelmingly common.

Table 9. Local Cooperation Status for the 2020 Covid-19 Response Projects

Local Cooperation Projects		Stand-alone Projects		Total Project Numbers	
No. of projects	Ratio (%)	No. of projects	Ratio (%)	No. of projects	Ratio (%)
406	90	47	10	453	100

- The major local partners were the local NGOs (39%) and local governments (29%), whose cooperation takes about 68%. It contrasts with the 5.3% local civil society cooperation out of the total foreign projects we have in the 2019 handbook survey.

Table 10. Local Partner Status for 2020 Covid-19 Response Projects

Types	Local governments	Local NGOs	INGO	IOs	Local companies	Academic associations	Others	Total
No. of projects	149	205	51	6	11	30	68	520
Ratio (%)	29	39	10	1	2	6	13	100

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E. Covid-19 Response Status by Country

- The 2020 Covid response projects by civil society took place in 80 different countries.
- Based on the number of projects, the top 10 countries are the Philippines, Nepal, Cambodia, Myanmar, Bangladesh, India, Indonesia, Uganda, Laos, and Malawi, which take about 50.6% of the total Covid-10 response projects.

Table 11. Top 10 Countries with the 2020 Covid-19 Response Project Numbers

Rank	Country names	Project numbers	Ratio (%)
1	Philippines	41	9.1
2	Nepal	30	6.6
3	Cambodia	26	5.7
4	Myanmar	25	5.5
5	Bangladesh	24	5.3
6	India	20	4.4
7	Indonesia	18	4.0
8	Uganda	17	3.8
9	Laos	14	3.1
10	Malawi	14	3.1
Total		229	50.6
Total Covid-19 Response Project Number		453	

- (Based on project expenses) The top 10 countries are the Philippines, Ethiopia, Bangladesh, Mali, Kenya, Mongolia, Malawi, Uganda, Senegal, and Côte d'Ivoire. These countries take about 46.6% of the total expenses for the Covid-19 response projects.

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Table 12. Top 10 Countries for 2020 Covid-19 Response Project Expenses

Rank	Country names	Project expenses (million won)	Ratio (%)
1	Philippines	2,429	6.7
2	Ethiopia	2,387	6.6
3	Bangladesh	2,073	5.7
4	Mali	1,917	5.3
5	Kenya	1,788	4.9
6	Mongolia	1,604	4.4
7	Malawi	1,443	4.0
8	Uganda	1,309	3.6
9	Senegal	1,065	2.9
10	Côte d'Ivoire	946	2.6
Total		16,961	46.6
Total Covid-19 Response Project Expenses		36,385	

F. Covid-19 Response Projects Major Activities

- The major activities of the 2020 civil society's Covid-19 response projects turned out to be education, refugee support, livelihood assistance, and strengthening capabilities.
- Among them, strengthening the capabilities of the health system and the vulnerable populations was significantly high. Based on the number of projects, strengthening health competency (41%) was higher than strengthening the capabilities of the vulnerable populations (31%).
- Based on the project expenses, strengthening the capabilities of the vulnerable population (47%) was higher than strengthening the health competency. These two sectors take 72% of all project numbers and 85% of all project expenses.

Table 13. 2020 Covid-19 Response Projects' Major Activities

Item	Education	Refugee	Livelihood Assistance	Strengthening Competency (Health)	Strengthening Competency (Local society)	Strengthening Competency (Vulnerable population)	Other
Project Number (%)	4	2	17	41	3	31	2
Project Expenses (%)	1	4	4	38	3	47	4

4. Characteristics of the Korean Civil Society's Role in the Covid-19 Responses for Developing Countries

A. The Role of Civil Society in the Covid-19 Response of the International Development Cooperation

- Support the most vulnerable populations at risk situations in vulnerable countries in the global society
- Based on the network and experiences that have been accumulated through usual activities in disaster situations, a more rapid and flexible response was possible compared to the government.
- Expand the accomplishment and influence through government cooperation (Searching for the collaborative opportunities between civil society's international cooperation and public diplomacy)
- As a country with the 12th biggest economy in the world, demand for global-level solidarity and support
- Introduce citizens to the reality of international society and promote awareness and understanding of the international development cooperation
- Increasing solidarity and activity with global civil societies

B. The Role of KCOC in the Civil Society's Covid-19 Response Projects of the International Development Cooperation Sector

- Investigating and sharing the activity results of Covid-10 response projects to increase the transparency and responsibility of the civil society organizations' activities
- Sharing knowledge, experience, and information to secure the expertise of civil society organizations and provide appropriate support activities
- Increasing solidarity and connecting activities with global civil societies
- Connecting the needs of developing country fields, civil society's competency and experiences, and the government's responsibility. Cooperating to maximize the performance and influence

5. Future Tasks and Implications

- South Korea has received the global society's attention by relatively well-addressing the Covid-19 pandemic crisis. This reputation has increased the expectation from the global society for the role of South Korea in addressing the global Covid-19 pandemic situation. The Korean government needs to continue to expand diverse support program that has been pursued to fight against the Covid-19 pandemic situation. At the same time, in the recovery period after the Covid-19 crisis, it would be an important challenge to provide assistance to the socially vulnerable populations in developing countries.
- Furthermore, the role of South Korea in addressing the structural inequality

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issue in vaccine availability, which has been pointed out as one of the important issues during the Covid-19 pandemic responses, will be an important task. Beyond the current Covid-19 pandemic responses and support, strengthening global pandemic governance to respond to and cope with the future pandemic would require South Korea's role. In the long run, there should be some measures to establish a comprehensive public health disaster response system, including infectious diseases, and to protect vulnerable populations.

- On the other hand, in the recovery process of local society after the Covid-19 pandemic and in the process of reconstruction and recovery in the non-health sectors, the role of civil society is important. Alongside it, in the process of establishing the global pandemic governance, it is important to establish governance that embraces not only major advanced countries' voices but also the situations of the developing countries and low-income countries. For this, the role of South Korea is important.

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Session 4

Prospects for Democracy in Asia 2022

“We Unite for Solidarity!”

Whether the directions for policy development are inclusive and multilateral greatly influences the development of democracy. In addition, the global pandemic offers governments with no legitimacy a good excuse to regress democracy through inappropriate and illegal actions.

This year, the Gwangju Democracy Forum will discuss the situation in each of these countries again. Furthermore, the forum will provide a space to discuss specific ways and solidarity plans in detail to have practical effects for the civil society sector, which will be invited by organizations that maintain existing solidarity networks.

Moderator : Mr. Hyun Phil Na (Korean House of International Solidarity)

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Human Rights and Democratic Participation in Post-2020 Hong Kong: An Overview

Hong Kong Activist

1. Introduction

- 1.1 The holy alliance of "democracy", "rule of law" and "human rights"
- 1.2 Global recognition of Hong Kong's democratic movement
- 1.3 Hong Kong's strategic location and positions amid the global wave of authoritarian resurgence

2. Background

- 2.1 Hong Kong's history of non-violent democratic movement (since 1989)
- 2.2 From civil disobedience to uncivil disobedience (2014 – 2019)
- 2.3 Political suppression by the new national security regime
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3. The Fall of Hong Kong's Civic Space since 2020

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Thailand on the Long and Rough Road to Democracy

Pandit Chanrochanakit¹⁾

Professor of Chulalongkorn University



Looking back on 2021: a year like no other

Thailand had been under military junta from 22 May 2014 until the promulgation of 2017 Constitution on 5 April 2017. The junta government called for a general election on 24 March 2019. Its constitutional architects made sure in their design that during the first five years the Senate should be able to vote for the Prime Minister. Such transitory provision thus guaranteed the transition of General Prayuth Chan-o-cha from PM in an authoritarian regime to PM in a competitive authoritarianism.²⁾ Despite the fact that the junta's party were not able to gain a majority in the House of Representatives; Gen. Prayuth became the Prime Minister with a unanimous vote from Senate along with votes from small political parties. When the Constitutional Court dissolved the Future Forward Party (FFP) on 21 February 2020, his leadership was confronted with new challengers from FFP supporters, Thai youth, together with those from the pro-democratic wing who feeling how unjust it was, have risen up against the Prayuth regime. Regardless of the Covid-19 pandemic, they still are fighting the government and demanding for a new constitution, monarchy reformation, the abolition of the Senate, and the calling for a new general election. Protests and clashes in the central Bangkok and other major cities have become a normal sight.³⁾

According to the Thai Lawyers for Human Rights (TLHR), an independent organization,

1) Assistant Professor, Department of Government, Faculty of Political Science, Chulalongkorn University, Bangkok, Thailand. I would like to thank Carina Chotirawe, Chalida Tajaroensuk, and Don Tajaroensuk for their support.

2) Levitsky and Way (2010, 16) describe the notion of 'competitive authoritarianism' as a regime that opposition forces use democratic institutions to contest seriously for executive power. It means that even where election is allowed but the competition is limited by state mechanisms including formal and informal institutions, for example, elite circles or bureaucratic forces. They also point out that international linkage is important to the degree of free election. See further in Steven Levitsky and Lucan Way. 2010. *Competitive Authoritarianism: Hybrid Regimes After the Cold War*. New York: Cambridge University Press.

3) Pandit Chanrochanakit. 2021. *Thailand's Uneasy Path to Democracy: Rise of the Youth and Urgent Calls*. Gwangju City, Republic of Korea: May 18 Memorial Foundation, pp. 229-235.

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the year 2020 was the 'Year of Protests, Ceiling Breaking, and Political Lawsuits'. Incidentally, the call for monarchy reform remains a taboo in Thailand where one is not supposed to talk openly about the monarchy for fear of its lèse-majesté law, however, the Thai youth movements have openly questioned the role of the newly crowned King. As a result, the leaders of such youth movements have been charged with lèse-majesté and violation of national security laws. The youth's call for monarchy reform is considered to be an action tantamount to that of 'breaking the ceiling'.

To combat the Corona Virus-19 outbreak, the Prayuth government has declared the Emergency Decree that can restrict any public activity and public gathering including protests. It should be noted that the state of emergency has been used as an excuse for the police to use excessive violence and brutality when it came to dispersing the protestors. Thus, the youth movements have called for mass protests more frequently in response to the government's suppression. From 22 February 22 to 14 March 2020 there were protests in 61 universities and 37 street protests organized by high school students. The mass gathering also extended to provincial schools and universities in the next following months, especially after the 16 October 2020 Crackdown.⁴⁾

According to the TLHR 2020 Report, at least 234 people in 145 cases were charged as a result of their political participation between 18 July and 25 December 2020. Activists and demonstrators have been charged with criminal acts and violations of the emergency decree. (Table 1)

Table 1 Political Lawsuit against Protestors 2020

Criminal law section	Cases	Number of people charged	
112 or lèse-majesté law	23	37	
116	20	60	
Violation of Emergency Decree	64*	175	* (23 cases during the announcement of the state of serious emergency in Bangkok)
Public Assembly Act	46	60	

Source: Thai Lawyers for Human Rights. 2020. "Thai Lawyers for Human Rights Annual report 2020: The Year of Protests, Ceiling Breaking, and Political Lawsuits.", <https://tlhr2014.com/en/archives/24956> (accessed April 12, 2022).

In its 2021 annual report, TLHR indicates that the number of people who were prosecuted was even much higher than 2020, the TLHR calls 2021 the year of the 'state's retaliation' or the year of legal battles. From 18 July to 25 December 2021, the

4) Kanokrat Lertchoosakul. 2021. Songkramyen nai Rawang Beau Khao. Bangkok: Matichon Publishing, pp.331.

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number of cases increased to 980 cases, and at least 1,747 individuals have been prosecuted. (Table 2)

Table 2 Political Lawsuit against Protestors 2021

Charges of/under	Cases	Number of people charged	
Penal code Section 112 or lèse-majesté law	104	127*	*new people
Penal Code Section 116	16	55*	*new people
Violation of Emergency Decree	543	1,244*	*new people

Source: Thai Lawyers for Human Rights. 2021. Thai Lawyers for Human Rights Annual report "2021: The Year of Legal Battles," (<https://tlhr2014.com/en/archives/39665> (accessed April 12, 2022)).

There have been 1,513 individuals charged with 835 cases in 2021 alone. The leading members of student movements have been accused of violations of the Emergency Decree and numerous lèse-majesté cases, notably, for example, Anon Nampa (the recipient of the Gwangju 2021 Human Rights Award) has 24 cases, Jatupat (Pai) Boonpattaraksa (the recipient of the Gwangju 2017 Human Rights Award) has 19 cases, Parit (Penguin) Chiwarak has 43 cases, Panusya (Rung) Sithijirawattanukul has 24 cases.⁵⁾

The reason that the TLHR entitled 2021 the year of 'legal battles' is because the TLHR believes that all the charges are being used as a political tool to stop halt the actions of the leaders and put place legal burdens on them. Besides, such prosecutions intimidate anyone who wants to challenge the regime. It should be noted that such charges lead to temporary detention by court orders and as a result the TLHR requires a large amount of financial support to bail those activists out. Thus, the Thai courts have denied bailing rights on several occasions, claiming that those activists would repeat such offences. Most of the activists are put in prisons even before their final trial and court verdict, for example, Anon Nampa had been jailed for 198 days. When they are released from prison, their movements are curtailed, and they are required to wear Electronic Monitoring bracelets.⁶⁾ These tactics are widely applied to intimidate activists

5) Thai Lawyers for Human Rights Annual report '2021: The Year of Legal Battles'. (Accessed April 12, 2022, <https://tlhr2014.com/en/archives/39665>). There is one particular case of Anchan P. who was charged with Article 112, she faced 29 counts by the numbers of her Facebook posts. As a result, the Thai court rules that she was guilty and sentenced her to 3 years for each count, all together 87 years. The sentence was reduced by half to 43 and a half years. According to the penal code, the violation of Article 112 carries between 3 and 15 years' imprisonment per violation. See Anchan's case in Amnesty International. 2021. "Thailand: 87-Year Prison Sentence Handed in Harshest lèse-majesté Conviction." <https://www.amnesty.org/en/latest/news/2021/01/thailand-87-prison-sentence-lese-majeste/> (accessed April 15, 2022).

6) Online Reporters. 2022. "Bail Approved for Student Activist Benja," Bangkok Post. January 14, 2022,

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from staging any further political activity.

Attempts to amend the façade constitution

There have been numerous possible political deadlocks that could be said to have been caused by the 2017 Constitution because the constitution drafters designed it in such a way as to prevent the opposition parties from gaining majority in the House of Representatives. At the same time, the constitution was also designed to prevent Pheu Thai Party, the former Thai Rak Thai Party, from being the largest party in the House and forming a government.⁷⁾ Even Palang Pracharath Party, the junta's own party, also suffered from such political design. Both the government and oppositions wish to have a constitutional amendment. There have been 14 drafts of the constitutional amendment that went to the National Assembly session, 13 charters were proposed by representatives from both government parties and opposition parties while another draft was submitted by the people's collations.

In June 2021, the National Assembly's first reading passed only the government's draft from 13 drafts. The draft will bring the two-ballot system back and therefore it must pass other two readings to become effective.⁸⁾ The draft went through the readings and was submitted for royal approval and published in the Royal Gazette on 7 November 2021.

The first constitutional amendment will apply to the next general election. As a result, the number of representatives directly elected in constituencies of the House of Representatives will increase from 350 to 400 and the number of party list representatives will fall from 150 to 100. The new electoral system will be changed from a single-ballot system to a two-ballot system.⁹⁾

Another attempt to amend the 2017 constitution proposed by the 'Re-solution' group led by Piyabutr Saengkanokkul, secretary-general of the Progressive Movement, Parit Wacharasindhu, a former member of the Democrat Party, and Yingcheep Atchanont, manager of the Internet Law Reform Dialogue (iLaw). Re-Solution aims at dismantling the Prayut regime and preventing Gen. Prayut staying on in power. In doing so, the transitory provisions must be amended, and the Senate also needs to be eliminated. After running an extensive campaign, Re-solution gathered 150,921 signatures of

<https://www.bangkokpost.com/thailand/general/2247627/bail-approved-for-student-activist-benja> (accessed April 15, 2022).

7) Thai PBS World. 2021. "Parliament passes Two-Ballot Electoral System by Overwhelming Majority," Thai PBS World, September 10, 2021, <https://www.thaipbsworld.com/parliament-passes-two-ballot-electoral-system-by-overwhelming-majority/> (accessed April 15, 2022).

8) Online Reporters. 2021. "Thai Parliament Accepts Only One Draft Charter Amendment of the 13 Debated," Thai PBS World. June 25, 2021, <https://www.thaipbsworld.com/parliament-accepts-only-one-charter-amendment-proposal-out-of-13-on-ballot-system/> (accessed April 12, 2022).

9) Online Reporters. 2021. "Constitutional Amendments gets Royal Approval." Bangkok Post. November 22, 2021, <https://www.bangkokpost.com/thailand/politics/2219487/constitutional-amendments-get-royal-endorsement> (accessed April 12, 2022).

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supportors, much higher than the required minimum 50,000 signatures.¹⁰⁾ When the draft went to the National Assembly's first reading, it needed 362 votes from a joint parliament, including one-third of the Senate, a minimum 84 senators. The draft received 203 votes in favour from the House of the Representatives but only 3 from the Senate.¹¹⁾ As a result, the Re-Solution's draft was deposited.

To conclude, the government's constitutional amendment was successful because it gained support from the government's coalitions together with votes from Senate. It is clear that the 2017 Constitution was designed to be a rigid constitution. Such complicated procedures and requirements secure the junta's future and prolong its power for the years to come.

On the court and the right to bail

As mentioned earlier, the year 2021 was a year of intense legal battles with the government filing more charges against student activists and civil rights leaders during the Covid-19 outbreak. Those activists had been jailed and denied the right to bail. Some of them tested positive for Covid-19 whilst in prison.

The Assembly of the Poor, a grass root movement, and other civil movements organized an activity 'Stand, Stop, Imprison', a series of protests outside jails in Bangkok and other Thai cities to protest against the detention of pro-democracy activists on royal defamation charges.¹²⁾ They gathered and stood to hold vigil in front of the Supreme Court Headquarters showing placards to remind the public that student activists and leaders were still being jailed without the right to bail. The first day of protest was held on 22 March 2021. The main activity involved standing still for 112 minutes and later on the length of time was reduced to 1 hour and 12 minutes. Both figures refer to Article 112 of the Thai criminal code on lèse majesté that student activists and protest leaders have been charged. The participants stood from 5:30 PM to 6:42 PM. They also posed with the three finger salute while observing the national anthem being played at 6 PM. daily.

The standing protest soon spread and was organized in prominent cities like Chiang Mai, Ubon Rachathani, Ayudhya, and Khonkaen. The SSI lasted between 9 August 2021 and 4 March 2022, except for the period of 2 June to 15 August 2021 when the accused were granted bail, all together 193 days. In Chiang Mai, the activity was

10) Online Reporters. 2021. "Re-Solution' Group Submits New Constitutional Amendment Bill,' Bangkok Post, June 30, 2021, 2022, <https://www.bangkokpost.com/thailand/politics/2141139/re-solution-group-submits-new-constitutional-amendment-bill> (accessed April 12, 2022).

11) Prachatai. 2021. "135,000 voter-supported constitutional amendment rejected at the first reading," Prachatai, Nover 12, 2021, <https://prachatai.com/english/node/9563> (accessed on April 12, 2022).

12) Anusorn Unno. 2022. "'Stand, Stop, Imprison': People's Defiance against the Thai Establishment." FULCRUM. March, 3, 2022, <https://fulcrum.sg/stand-stop-imprison-peoples-defiance-against-the-thai-establishment/> (accessed April 15, 2022).

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conducted under title 'Stand, Stop, Dictator' and lasted for 197 days.¹³⁾

The SSI activity may not influenced the court's decision to grant bail but it has become a form of resistance that civil movements use to expose the abnormality of the judicial process and to challenge the Thai establishments.¹⁴⁾

Prospects and Challenges

To find a path to reconciliation, two challenges are waiting ahead:

First, drafting a new constitution by an elected council is the most preferred choice but it is not likely to be a choice. The junta's façade constitution was designed to have a strong Senate, which is the main obstacle towards constitutional amendments. With the Senate's intervention, the Junta can continue to stay in power. To change the junta's regime, civil rights movements must push their agenda for in order to draft a new social contract.

Second, by granting amnesty to political prisoners and dropping charges against activists, Thailand may find a way to negotiate reconciliation. This should include reinstalling political rights of those who have been stripped off because of political charges and verdicts during the last two decades. This, however, is not an option.

This short essay is not able to offer any viable recommendations and it seems that Thailand's road to democracy is a long, rough one.

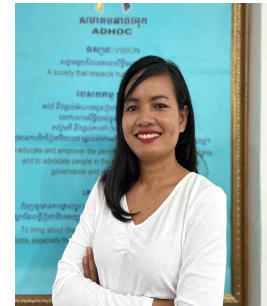
13) Wanna Tamthong. 2022. "Pakawadee Weerapaspong' mong 'Yeun Yud Thoraraj' pan moom karn dern khong mae hang jaturas May, Argentina." Prachatai, March, 7, 2022, <https://prachatai.com/journal/2022/03/97568> (accessed April 15, 2022).

14) Anusorn Unno. 2022. 'Stand, Stop, Imprison' (accessed April 15, 2022).

Cambodia's Human Rights and Democracy Situation Outline

Ms. Meas Salm

Cambodian Human Rights and Development Association



Context

Cambodia continues to suffer from a wide range of human rights concerns and still has significant progress to make towards promoting and protecting human rights and enhancing the independence and capacity of state institutions. Governance is widely recognised as the most critical challenge for development in Cambodia. The systemic lack of human rights protection - which stems from issues including long-standing impunity, severe shortcomings in the rule of law, slow legal and judicial reform, and corruption - continues to hamper democracy, in turn hindering sustainable development and poverty reduction.

Human Rights and Fundamental Freedoms violations

The RGC has so far failed to fulfil its duty to protect human rights and promote democracy in the country, and the last few years have indeed seen a continuation in the deterioration of the political and human rights situation in Cambodia. Shortly after the commune elections of 2017, the increasing popularity of the CNRP - the main opposition to the ruling CPP - led Prime Minister Hun Sen's Government to commence a severe crackdown on media, to dissolve the CNRP, and to introduce a host of repressive laws, undermining fundamental freedoms and restricting the democratic space for civil society. As a result, the general elections of 2018 saw the CPP secure all 125 National Assembly seats, effectively turning Cambodia into a one-party state. Seen as a sham by rights groups and the international community, the elections destroyed any façade of democracy in Cambodia and diminished space for the enjoyment of fundamental freedoms, including the rights of association, expression, and assembly. Despite the expression of serious concerns regarding the deterioration of the human rights and democratic situation in the country by civil society and the international community on numerous occasions¹⁾, the RGC has chosen to adopt a position of denial

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and is yet to take any significant action to redress the situation. The lack of any tangible and meaningful action to remedy the situation led the European Union to officially launch the formal procedure for temporary withdrawal of the EBA trade scheme in February 2019, due to the "deterioration of democracy, respect for human rights and the rule of law over the last eighteen months", and stressing a lack of conclusive action from the government. In this vein, the EU concluded that there were "severe deficiencies when it comes to human rights and labour rights in Cambodia that the government needs to tackle if it wants to keep its country's privileged access to our market"²⁾.

In the same way, United States (US) senators introduced a bill in 2019 - the Cambodian Trade Act of 2019³⁾ - requiring the US administration to re-examine Cambodia's eligibility to access the preferential trade treatment granted by the US under the General System of Preferences (GSP). Like the EU, such US senators stressed that Cambodia should not enjoy special trade privileges as it undermines democracy, ignores labour standards, and disregards human rights⁴⁾. After a year-long review of the EBA trade preferences, the European Commission announced in February 2020, its decision to withdraw part of the tariff preferences granted to Cambodia under the EBA trade scheme due to the serious and systematic violations of the human rights principles enshrined in the International Covenant on Civil and Political Rights.

Freedom House's annual Freedom in the World Reports further highlights the degradation of human rights and democracy in Cambodia. The 2019 Freedom in the World Report classified Cambodia as a "not free" country, with a score decline of 4 points in 2018, ranking Cambodia as one of the countries with the most significant decline in freedom in 2018⁵⁾. In 2020, Cambodia remained classified as a "not free" country.⁶⁾ Similarly, the EIU Democracy Index 2018 ranked Cambodia 125th out of 167

1) For details on the concerns expressed by the Special Rapporteur on the situation of Human Rights in Cambodia, see the full 2018 report "Report of the Special Rapporteur on the situation of human rights in Cambodia", August 2018, available at http://cambodia.ohchr.org/sites/default/files/Annual-reports/Annual%20Report%202018%20of%20SR%20-%20A_HRC_39_73_EN.pdf.

2) Press release European Commission "Cambodia: EU launches procedure to temporarily suspend trade preferences", 11 February 2019, available at http://europa.eu/rapid/press-release_IP-19-882_en.htm.

3) Cambodian trade Act of 2019 available at <https://www.congress.gov/bill/116th-congress/house-bill/1376/text?q=%7B%22search%22%3A%5B%22actionDate%3A%5C%22115%7C2017-02-01%5C%22+AND+%28billsReserved%3A%5C%22N%5C%22+or+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D>

4) See "US senators call for GSP trade privilege cut", Phnom Penh Post, 11 January 2019, available at <https://www.phnompenhpost.com/business/us-senators-call-gsp-trade-privilege-cut> and "US follows EU in reviewing Cambodia's Preferential Trade Treatment in light of alleged abuses", VOA Khmer, 11 January 2019, available at <https://www.voacambodia.com/a/us-follows-eu-in-reviewing-cambodia-preferential-trade-treatment-in-light-of-alleged-abuses/4737447.html>.

5) The Freedom in the World Report is a report on the state of political rights and civil liberties, annually released by the organisation Freedom House. See 2019 Freedom in the World Report, Freedom House, pages 6 and 16, available at https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf

6) Freedom House, Freedom in the World 2020 Data, available at <https://freedomhouse.org/country/cambodia/freedom-world/2020>,

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countries assessed in a ranking on the state of democracy worldwide, with a score of 3.59 out of 10 (10 being full democracy), defining Cambodia as an "authoritarian" country⁷⁾. In the 2019 EIU Democracy Index, the EIU registered a decline in Cambodia's overall score compared to the previous year (3.54 out of 10) and Cambodia remains classified as an authoritarian regime. Overall, between 2006 and 2019, Cambodia lost more than a point in its overall score, especially since 2017, leading to its deterioration from a hybrid to an authoritarian regime in the last decade.⁸⁾

The global COVID-19 pandemic that hit the world in early 2020 provided the Government with an additional basis and tools upon which to intensify its crackdown against political activists, human rights defenders, and other dissenters. CSOs have reported various cases of arrests of activists and individuals for allegedly spreading fake news about the pandemic or commenting on the Government's response to the health crisis. Overall, since the beginning of 2020, over one hundred individuals have been arrested for exercising their fundamental freedoms. The Government also took advantage of the pandemic to promulgate a State of Emergency Law in April 2020 that gives authorities further power to suppress fundamental freedoms, as well as a draft Law on Public Order, a sub-decree on the Establishment of the National Internet Gateway, and a Law on Cybercrime that, if passed, will further and seriously endanger human rights and fundamental freedoms.

Consequently, on International Human Rights Day 2020, no less than 67 CSOs called on the Government to end the targeting of activists, human rights defenders, journalists, political opposition, and other critical voices. These CSOs also called for the release of those arbitrarily detained for legitimately exercising their fundamental freedoms, to ensure existing and new laws are in conformity with international human rights standards, and to fulfil its human rights obligations⁹⁾. The alarming pattern of human rights abuse seen over recent years as denounced by the CSOs is worrisome, and signals what is likely to be a situation that will worsen, particularly in the period leading up to the commune elections of 2022 and national elections of 2023.

The precipitous decline in respect for human rights in Cambodia,

We have observed a severe shrinking of civic space, where increasing and

7) The Economist Intelligence Unit, Democracy Index 2018, available at http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy_Index_2018.pdf&mode=wp&campaignid=Democracy2018

8) The Economist Intelligence Unit, Democracy Index 2019, page 2020, available at http://www.eiu.com/public/thankyou_download.aspx?activity=download&campaignid=democracyindex2019.

9) Joint Statement "On Human Rights Day, civil society organizations call for the Royal Government of Cambodia to respect its human rights obligations", 10 December 2020, available at <https://teangnaut.org/joint-statement-on-human-rights-day-civil-society-organizations-call-for-the-royal-government-of-cambodia-to-respect-its-human-rights-obligations/?lang=en>

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disproportionate legislative and administrative measures limit the rights to free expression, peaceful assembly, association, and information, among others. We have also found that illegitimate restrictions on rights, oppression and intimidation, harassment of individuals /groups seeking assertion of their fundamental freedoms, as well as those actively participating in social activities, communities, and political associations. The incidents of restrictions or violations are as follows:

Severe restrictions are being placed on exercise of freedom of association and assembly, as seen through an escalation of surveillance, intimidation, and violence. The Government's armed forces or the government authorities have been closely monitoring, disturbing and intimidating citizens and communities, have limited participation in organizations, associations, and union programs and activities intended to protect common interests and prevent crime when it occurs, and have been sharing information with companies and/or powerful persons in cases concerning land disputes.

Monitoring and prevention of community gatherings in public, particularly those that categorically necessitate that the authorities respect exercise of fundamental freedoms.

Prevention and prohibition by the authorities of peaceful demonstrations demanding the release of social activists, human rights defenders, former opposition supporters/political activists, where these rights and freedoms are permitted by law.

Surveillance by local authorities and threats from members of the armed forces in situations whereby community members have sought to participate in social activities, such as rallies and protests over land, forest or natural resources solutions, community formation, participation in trade union activities, and community networks. Some armed forces members continue to prevent exercise of these freedoms.

Restrictions and violence carried out by armed forces officials in relation to public gatherings in relation to the public demand to release political party activists who frequently face crackdowns, arbitrary arrest, detention, and indictment.

After the main political opposition party was dissolved by the Supreme Court, freedom of expression and information sharing as a whole has been severely restricted. Former opposition activists and supporters were forced to sign an agreement to stop sharing information on social media and were subjected to violence by unknown persons, arrested and detained. Some opposition supporters have escaped arrest by fleeing to other countries, some were tortured, others were held in pre-trial detention, and some have been subjected to multiple charges according to dubious offences.

End mass criminal trials of politicians and activists

The government of Cambodia has used the recent COVID-19 outbreak as an opportunity to impose draconian legislative instruments aimed at crushing dissent; imposing harsh punishment that inherently violates human rights protections. Such laws include the state of emergency law of 2020, the draft law on public order of 2020, the 2021 law on a national internet gateway, administrative preventive measures against the

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spread of COVID-19 of 2021, and a newly drafted disability law which UN human rights experts have expressed concern about.

100 social and environmental activists, youth activists, human rights defenders etc. were recently arrested and detained. In this regard, the UN has expressed concern about the detention of many Cambodian human rights defenders in recent months for their participation in, or their intent to participate in or organize peaceful demonstrations against the detention of fellow human rights defenders and activists, and on environmental issues and labour rights.

Since 12 February 2020, part of the tariff preferences granted to Cambodia under the European Union's Everything But Arms (EBA) trade scheme were partially withdrawn owing to the government's serious and systematic violations of the human rights principles enshrined in the International Covenant on Civil and Political Rights. The Cambodian Government has failed to meet its responsibility to ensure equal and fair political participation of its citizens, and has in fact imposed broad and unlawful restrictions on freedom of expression and freedom of association. Civil society has been and will continue to call on the international community to closely monitor the situation, and to assess the effects that the partial EBA withdrawal has had on the most vulnerable sectors of civil society.

The Government of Cambodia's failure to address violations of civil and political rights, including land and labour rights, as identified by the European Union as part of its "Everything But Arms" trade preference program, led to the European Commission partially withdrawing Cambodia's preferential access to the EU market. The European Parliament expressed its regret that the government failed to meet the conditions necessary to retain the EBA benefits and requested that the European Commission maintain a human rights benchmarks approach when engaging with the government. The European Parliament also urged the EU Council to use its new global human rights sanctions regime to target Cambodian leaders and their economic interests.

The Phnom Penh Municipal Court reached a verdict in relation to the mass trials against political opposition members and civil society in Cambodia. UN experts expressed concern regarding the disproportionate prison terms handed down to exiled senior leaders of the disbanded Cambodian National Rescue Party (CNRP), which could potentially deprive them of their right to engage in public affairs. Since June 2019, more than 150 people associated with the CNRP have been arrested, detained, and subjected to legal proceedings. Such UN experts asserted that the entire trial process was tainted with irregularities and clear breaches of international law, including that the trials were not held in public. They called on the Government to reinstate the political rights of the individuals concerned, as well as to ensure that all political parties have equal opportunity to participate in political life.

The government should immediately end politically motivated trials of opposition politicians and quash recent convictions¹⁰⁾. The harassment and prosecutions by the

10) <https://bit.ly/2QkMKtX>

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government are part of a continuing effort to prevent the main opposition from participating in future elections and the country's political life¹¹⁾.

Governmental authorities have also filed unsubstantiated charges of incitement, conspiracy, and other offenses to enforce its crackdown. Activists, union leaders, online critics, and others have been facing an escalation of intimidation, threats, and arbitrary arrests. Over 30 opposition activists were detained as of November 2020, while between July and September at least 14 youth and environmental activists were charged with baseless incitement charges for peaceful protest activities.

Concerning

From our perspective and in relation to our mission of working to promote human rights and democracy in Cambodia, ADHOC remains seriously concerned about the human rights situation and the regression of democracy in our country over the last number of years. In this vein, ADHOC would like to express our gratitude to APS for having us express such concerns and voice our perspective on the development of human rights and democracy the context of Cambodia.

As the country prepares for Commune Council elections in June 2022 and a general election in 2023, there is no sign that Prime Minister Hun Sen's government will create the necessary conditions for genuine and inclusive elections in accordance with international law and standards. The UN Rapporteur on the situation of human rights in Cambodia has voiced such a concern about the environment for elections in 2022 and 2023, which may take place without the existence of a viable opposition party, and thus endangers the right of Cambodian people to genuinely participate in public affairs.

Intolerance towards online criticism of the COVID-19 response has led to arrests and prosecutions, causing a chilling affection freedom of expression. Persecution of government critics has continued unabated. Political opponents are subjected to indefinite trial, imprisonment, or are forced into exile. Many have been stripped of their political rights. In a shocking development, the autistic child of an imprisoned political activist has also been arbitrarily detained since June, in contravention of human rights treaties to which Cambodia is a state party.

Human rights and environmental rights defenders, government critics, and political opponents continue to be harassed and arbitrarily detained. At least 91 of them are currently behind bars. Others have been forced to flee Cambodia. However, the Cambodian government relentlessly pursues them abroad.

In addition, the Draft Law on Cybercrime and the Draft Law on Public Order would grant the government broad powers of surveillance of critics, and thus has created fear regarding the impact this may have on to freedom of expression. The National Internet Gateway, which was scheduled to be implemented in February 2022, could block access

11) <https://bit.ly/3v3IU8r>

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to information ahead of the elections.

By dissolving the largest opposition party in Cambodia without specific evidence and detaining the party leader, the will of the people has also been dissolved. More than 5,000 representatives of the opposition party have been fired from their commune councils, and 118 party leaders have been banned from politics for five years. Land disputes continue to rage on, with no solution yet that is acceptable to the people affected. Land and house owners have frequently become victims, subjected to detention and threats by powerful people.

Our recommendation to the government

While the position of CSOs in Cambodia is that we want to see the establishment of a national human rights body, taking into account the current situation, we have asked the government to delay. We believe that waiting until after the Commune / Sangkat Council elections have been held presents as a better time to engage in consultations in this regard, and subsequently to the NHRI's establishment and operation.

We urge that all detained activists, government critics and political opponents are immediately and unconditionally released with full reinstatement of their political rights, and further implore the authorities to end all acts of harassment against them and their family members.

We request that the signatories of the Paris Peace Accords appeal to the Cambodian Government to respect human rights and implement the principles of the Peace Accords and the International Declaration.

Free and drop politically motivated charges against political and civil society figures and grant political rights to all opposition politicians without discrimination.

We demand that civil society organisations are permitted to gather and join in coalition with one another without legal constraints, so as to organise collective action, monitor elections, and express disagreement or dissent with actions or decisions of the Royal Government where necessary. We similarly urge the Government to ensure that all independent media outlets are able to apply for and receive licenses to open their offices and studios in Cambodia.

Challenges and Tasks of Reconstruction of Democracy in Myanmar: Beyond the State System and ASEAN

Mr. Lee Sang-guk

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Myanmar's military coup and subsequent developments remind us of the vulnerabilities of Myanmar's democracy. The vulnerabilities are revealed in two aspects. One is the vulnerability to physical violence represented by the military. The other vulnerability is the tyranny of the majority and the exclusion of the minority. It seems that we did not take the vulnerabilities seriously until the military coup occurred on February 1, 2020. During the 10-year experiment, we seem to have been dazzled by the outward phenomenon/fantasy. Even if the vulnerability of the tyranny of the majority and the exclusion of the minority burst out, it seems that we believed that Myanmar's democracy was moving forward. The military coup revealed that our belief was fantasy. The 10-year experiment in democracy failed. We are carrying out the task of properly reconstructing Myanmar's democracy on the ruins.

The task of reconstructing democracy is underway in the direction of overcoming the two vulnerabilities. In response to the violent military, a civil defense force has been organized to wage armed struggle. Since the coup, the civil disobedience movement driven by the youth generation has led to an armed struggle by the civil defense force organized by the National Unity Government (NUG) on May 5, 2021. NUG declared war on the military on September 7, 2021, and has been engaged in an all-out war. The civil defense forces are resolutely confronting the "bad" military (Tatmadaw), while expressing their willingness to become a true military that is controlled by the civil sector and protects the people. In addition, they are fighting against the Tatmadaw at key points in solidarity with the Ethnic Armed Organizations (EAOs). These armed struggles pose a difficult question to us. Is the nonviolent struggle in the process of rebuilding democracy only a romantic rhetoric? Is armed struggle an effective to oust the Tatmadaw? It is not easy to answer this question. Who dares to insist on continuing the nonviolent struggle in the face of the fact that 1,700 people have been killed so far, including 130 children, 13,000 arrested, 550,000 lost their homes, and 50,000

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refugees?

The effort of overcoming the vulnerability of failing to control the tyranny of the majority is underway under the spirit of reflection and solidarity, centering around the National Unity Consultative Council (NUCC), a liaison of pan-democratic forces, which includes NUG, the Committee Presenting Pyidaungsu Hluttaw (CRPH), EAOs, unions, political parties and civil society. The solidarity was formed through the process as follows. On February 5, 2021, NLD lawmakers elected in the November general election of the previous year formed the CRPH. Meanwhile, on March 8, pan-democratic forces united to form the NUCC. After consultations within the NUCC, on March 31, the CRPH announced the 'Federal Democratic Charter', along with a declaration to abolish the '2008 Constitution' enacted by the military. Based on this constitution, the provisional government, NUG, was formed on April 16. The provisional constitution calls for the construction of federal democracy as a key goal. With NUCC at the center, the provisional constitution included recognition of the rights of minorities, which had been neglected even by the NLD government. For example, it contains a clause that recognizes minority languages as the official language. NUG also vowed to reflect on the Rohingya incident and seek ways to coexist with them. However, the fact that there is still no practical cooperation with the Rohingya people within NUG as well as within NUCC, that some minorities still keep distance from NUCC, and that it is difficult to control some minority warlords that have become interest group remain a challenge.

In fact, there is no denying that Myanmar's (pseudo) democracy based on the majority representation system encouraged the Rohingya massacre. NUCC's search for solidarity with minority may serve as a model to overcome the politics of populism and hatred that are facing not only Myanmar but also around the world. In doing so, I hope that we can imagine and realize a more bold model, an innovative governance system that goes beyond federation and confederation. This is the agenda that I would like to present as a topic of discussion at this meeting.

One irony here is that the military is looking for a way to stop the majority representation system. The pretext of protecting minorities is being misused unexpectedly. Min Aung Hlaing, the chief military commander and chairman of the State Administration Council, which was formed after the coup, took office as the prime minister of the transitional government on August 1, 2021, stating that election will be held in August 2023. He also hinted at revising the election law toward the multi-party proportional representation system in order to correct the "evil" of the majority representation system. At the time of the coup, he said he would step down after a year, but he reversed his promise and extended it by another year. This is a familiar tactic. The new military, which appeared containing the 1988 uprising, overturned the election results that ended in a landslide victory for the NLD in 1990, and organized a

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military-led National Convention under the pretext of working on the constitution, enacting the Constitution in 2008 in a way that thoroughly guarantees the interests of the military, that is, 25% of Congress is allocated to the military, and major ministers such as the Interior Ministry, the Border Department, etc., are held by the military, and holding elections in November 2010. Since the coup in 1988, the military ruled for almost 20 years in the pretext of drafting a new constitution. A similar situation may unfold this time. There is a possibility of continuing military rule by delaying the constitutional amendment process under the pretext of gathering various opinions. Even if the election is held in August 2023, as promised, it is highly likely that the election law and constitution will be revised in a way that prevents the monopoly of the NLD and guarantees the interests of military-sponsored parties considerably with the lesson of the 2015 and 2020 election defeats. The situation in which the military takes the lead to correct the evil of the majority representation system is a comedy of history.

Meanwhile, this reveals that the military has actually lost popularity and has fallen into the minority at least in the election system. The coup in February 2021 can be interpreted as an attempt of the fallen army trying to restore its presence by creating another game. I think the military staged a coup at all costs since they had something to rely on. I think it is the 'justification' of saving the country. In particular, in the process of building a national state in the early post-colonial stage, which had strong centrifugal force, the military intervened in politics, relying on such justification. What the military did not realize, however, is that legitimacy is not like fossils, but is newly constructed according to the times. Each era has its own tasks, but the military continues to keep its feet in the past era and terrain without knowing that it should secure legitimacy in the process of solving the task. In particular, the military coup was an unacceptable blow to the generation who grew up with the taste of freedom under the baptism of the new cultural energy created by the information and communication revolution since the 2000s. The military, which failed to keep up with the times, has become a living relic of the past that has hindered Myanmar's future and lost the legitimacy of its rule. All that's left is to rely on primitive power, and we are witnessing the terrible damage.

Another reason why the military staged a coup and tried to change the game may be that the neighboring country provided a precedent. The Thai military staged a coup in May 2014 to resolve political instability, and revised the election law in a way of thoroughly guaranteeing the military's interests, i.e., all 250 Senate seats being appointed by the military, and held an election in March 2019. As a result, Prayuth Chanocha, a former commander of the Army, who led the coup, was elected prime minister in the newly formed government following the transitional government. The degree and method may be different, but it is hard to say that any country in ASEAN is realizing democracy. Although Indonesia is emerging as a democratic country,

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Myanmar's military has come this far by steadily learning Indonesia's military-led guided democracy in the past.

Nevertheless, when ASEAN called in Min Aung Hlaing in April 2021 and reached an agreement on five things, 1) all parties stop using violence, 2) constructive dialogue between all parties for a peaceful solution, 3) dialogue through ASEAN's envoy, 4) providing humanitarian assistance through the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management, and 5) ASEAN envoys visit Myanmar and meet with all parties, I felt the determination of ASEAN. In particular, Indonesia, Malaysia and Singapore remained firm against Myanmar's military. When the agreement was not properly implemented, ASEAN excluded military participation at the ASEAN summit in October 2021. The military was not invited to the ASEAN-China summit in November and the Asia-Europe summit in December.

However, the situation changed suddenly when Cambodia took over the ASEAN chairmanship in 2022. Cambodian Prime Minister Hun Sen visited Myanmar on January 7 as chairman and met with Min Aung Hlaing. Hun Sen was the first ASEAN leader to visit Myanmar since the coup. Min Aung Hlaing told Hun Sen that he would implement 5 agreements and that he had proposed a ceasefire negotiation to ethnic minorities. Hun Sen shared his experience in the process of reconciliation and peace implementation of Cambodia, which had been mired in civil war, with Min Aung Hlaing. Hun Sen seems to think of Myanmar, which is suffering from the same situation, as a person that embodies Cambodia's modern and contemporary history. But it is absurd for him to pass on democratic values to Myanmar as a person who himself is strangling Cambodia's democracy. On the contrary, Hun Sen's visit has given an impression to the outside that ASEAN recognizes Myanmar's military as a partner, unlike last year's resolution. Furthermore, even though the agreement included all parties as dialogue partners, the military did not allow Hun Sen to meet NUG personnel such as Aung San Suu Kyi. Hun Sen played only a half role on the stage allowed by Min Aung Hlaing.

On March 21-23, 2022, a visit by ASEAN envoys was made, one of the 5 agreements. The envoys were led by Prak Sokhonn, the foreign minister of the Hun Sen government, and filled with Cambodian government officials, except for Brunei-born current ASEAN Secretary-General Lim Jock Hoi. The ASEAN envoys were none other than the Cambodian envoys, or Hun Sen's. The ASEAN envoys also failed to meet NUG figures such as Aung San Suu Kyi and other minorities because the military did not allow it again. It was only a formal visit, and it did not make any practical contribution to the settlement of the situation. Last year, the Myanmar crisis could have triggered an awareness of democracy in ASEAN members and helped to reverse their attitude to turn a blind eye to anti-democratic activities of members in the name of non-interference in domestic affairs or constructive intervention, but it seems unlikely given this year's

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move. Here we can derive another agenda that we should address in this meeting. How will civil society at home and abroad transform ASEAN into a party responsible for regional democracy? How will we move beyond ASEAN to promote regional democracy?

Now, let's turn to the international community. First, let's look at the response of U.N. Despite opposition from Myanmar's military, the U.N. continues to recognize Kyaw Moe Tun, the U.N. ambassador appointed under the NLD government, while refusing to accept the credentials of the ambassador appointed by the military. Of course, due to opposition from China and other countries, Ambassador Kyaw Moe Tun has not been given the opportunity to speak on behalf of Myanmar at the U.N. General Assembly. In March 2022, Michelle Bachelet, the top U.N. human rights representative, criticized the U.N. Security Council for not playing a sufficient role, stressing that more intensive measures should be taken against Myanmar at the U.N. level. Despite the limitations of the U.N., the retention of Ambassador Kyaw Moe Tun itself can be said to be a symbolic measure that the international community did not provide the military with a place to stand.

The United States takes a firm stance about Myanmar under the Biden administration. In October 2021, a high-level U.S. official said he would hold video talks with NUG representatives to support Myanmar's democratic activities. Myanmar's military will not be invited to the U.S.-ASEAN Special Summit to be held in May 2022. Europe's response is also interesting. The French Senate unanimously approved the NUG as Myanmar's official government on October 5, 2021. The European Parliament also adopted a resolution on October 7 to recognize NUG as Myanmar's representative. Many countries, including Korea, are being asked by civil society to recognize NUG. It will not be easy for many countries to recognize NUG as an official government at the government level. Nevertheless, the fact that Korea and other countries maintain a firm attitude against the military, extend visas for Myanmar immigrants living in each country, and provide direct or indirect convenience to NUG people's activities can be evaluated as an expression of solidarity.

Korean civil society groups have announced that they will continue to unite in the Myanmar's struggle for democracy in the 1st anniversary of the coup. Since the early 2000s, Korean civil society has supported the struggle for democracy in solidarity with Myanmar activists. The spirit of Gwangju was a key value in their solidarity. The spirit of Gwangju expanded into Asia with the solidarity between the two as a stepping stone, and sublimated into the banner of universal human rights. During Myanmar's 10-year democracy experiment process, the Rohingya incident caused their solidarity to fall apart for a while, but they are moving together on the path of reconstruction of Myanmar's democracy by recalling the spirit of Gwangju. I look forward to using a completely different imagination and exploring new ways on this path of reconstruction. Let me

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bring up two things again that I suggested for debate. One was the search for an innovative governance system that went beyond the federation and confederation models, and the other was the search for ways to change ASEAN or promote regional democracy beyond it.

Let's look at the first one. I think no attempt to encompass all groups within Myanmar's modern state territory today will be successful. They have never lived like that. Even during the heyday of the Myanmar Dynasty, only symbolic rule was realized, but it did not actually govern. Even Britain, which drew the line of Myanmar's territory today, failed to realize real control over the mountainous region and left it to indigenous forces in the so-called "separate rule." The modern state of Myanmar during the decolonization period also realized control mainly on the central plain. Nevertheless, mountainous areas shouldn't be romanticized. For example, it shouldn't be regarded that ethnic groups are united under the control of a single ethnic political organization. Endless meiosis has occurred, creating new groups, and dynamic reorganization of fighting and cooperation is occurring in mountainous areas. The mountainous society oscillates between the dynastic system, aristocratic government, and anarchism. Today, with information and communication revolution, the magnitude has become greater, and the tremors spread even outside Myanmar. It is difficult for a rigid political system to embrace such dynamic, whether it is a centralized system, a federal system, or a national confederation. Then what are we going to do?

I think we should start by questioning the attitude of taking issue with statelessness. In May 1980, Gwangju once blossomed a humane flower of mutual assistance during the period of liberation without a state. The space was destroyed by state power. I would like you to imagine restoring the space, making it continuous, not temporary, so that humanity can bloom even without the state. Recognizing the reality that we cannot escape the state, we can think about an alternative idea to boldly give individuals the right to choose the state, whether it is singular or plural. For example, if Myanmar becomes a national confederation, whether it is a virtual Karen country or Myanmar, individuals can choose their own affiliation. Furthermore, it would be nice to give a third option to choose from outside Myanmar. This would be a further step beyond a national confederation, but you can imagine that Korea can give them the right to become a citizen. Korea has been accepting and resettling Myanmar refugees since 2015. U.S., Australia, Canada and most of the European countries are implementing this system, and the U.N. Refugee Agency is trying to persuade each country to further increase the current number 200,000 a year. It is rather easy to grant citizenship to those who are already there at a time when they take in refugees, resettle, and grant citizenship. Realizing the plan in reality will fundamentally change the current UN governance system and lead to numerous complications. All that cannot be dealt with here. The key of my proposal is to think about the reconstruction of democracy in

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Myanmar by examining the issue of governance, the issue of plural citizenship and sovereignty more actively, rather than being bound by territory. In the traditional era, Southeast Asians lived in such a world for a long time. Rather, single sovereignty and single citizenship are a sudden phenomenon that is only 70 years old at the longest.

Let's move on to the second topic. ASEAN could be both a solution and a stumbling block to the Myanmar crisis. Last year's determination and this year's lukewarm attitude show ASEAN's indecision, inconsistency and limitation. There are also differences in attitudes within ASEAN. This year, Malaysia has been most active in criticizing ASEAN's lukewarm attitude and calling for practical intervention in the Myanmar situation. I think there is a problem with the composition of the ASEAN envoys. The ASEAN envoys should include voices calling for active intervention like Malaysia. A system should be established in ASEAN to control the chairman's arbitrary formation of special envoys.

Furthermore, it would be better to give up ASEAN centrality at least in the issue of democracy. We cannot just wait and see until they solve problems that they cannot solve by themselves forever. Myanmar peace talks just before the coup offer an idea. Despite controversy over Norway's leadership, a ceasefire/peace agreement has been signed between ethnic minority militants and Myanmar's military. This precedent can also be applied to ASEAN. For example, South Korea or Norway can participate in the ASEAN envoys. A democracy of this size, not a powerful country, can be the right party to solve the ASEAN democracy problem. The Korean government should appeal ASEAN to allow it to play this role actively. In this way, it will be possible to exceed the limits of ASEAN while respecting ASEAN while the horizon of K-democracy and K-diplomacy will be expanded.

Some may say that these two discussion proposals I have presented are far from reality. However, the current situation in Myanmar can serve as an opportunity to fundamentally doubt and reconstruct the world we live in. The people of Myanmar have sacrificed too much so far. The way to sublimate the sacrifice will be to create a world where humanity can bloom more. I hope that our debate will be a stepping stone on the way.

Prospects for Democracy in the Philippines after the May Elections

Ms. Joanna K. Cariño

Advisor of Cordillera People's Alliance



THE FRONT-RUNNER

National elections in the Philippines will be held on May 9, 2022. Barely two weeks before the elections, the son and namesake of the former Philippine dictator Ferdinand Marcos is leading in the surveys and may yet win the elections.

It will be recalled that the former Philippine dictator Ferdinand Marcos was ousted from the Philippines in an amazing display of people power in February 1986, after 14 years of brutal dictatorship and plunder of more than 10 million US dollars from the nation's coffers. The Marcos conjugal dictatorship involved the whole family, including the son and namesake Ferdinand Bongbong Marcos Jr. Marcos Jr. was conscripted as an officer of the Armed Forces of the Philippines, he was appointed as Director of the Philippine Communications and Satellite Commission, and was made vice governor, then governor of their home province, Ilocos Norte. He cannot wash his hands off the crimes against the Filipino people committed by the Marcos dictatorship.

An astounded world that celebrated with the Filipino the people power democratic uprising which ousted the dictator is now asking why is it that Marcos Jr. is now on the brink of becoming the next president of the Philippines? Have the Filipino people really forgotten the 70 million imprisoned, 34,000 tortured, 3240 extra-judicially killed and 77 disappeared during Marcos martial law? Have the Filipino people really forgotten the \$10 billion stolen wealth and the bloated foreign debt, the burden of which Filipino taxpayers are still paying up to the present? What is the source of this seemingly historical amnesia?

The simple answer to that mystery is that the truth about martial law has never been institutionalized into the Philippine educational system by any of the administrations after people power in 1986. It is certainly a question why the Corazon Aquino government, which was installed through people power, and was a revolutionary

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government to start with, was unable to institutionalize the teaching about the truth about Marcos martial law and the people power democratic uprising. The other succeeding regimes after her also failed to do so, such that there is a scarcity of available factual and truthful material about Marcos martial law, and practically nothing in official curriculum and history teaching. The truth can be found only in not so accessible institutions such as the Bantayog ng mga Bayani (Monument of Heroes), or in the very limited martial law museums. Progressive academics at the university level do try to teach about Marcos martial law, but the audience is limited only to their students, and has not reached the wider public.

While the 1986 democratic uprising ousted a dictator, it did not result in the much-needed structural changes in Philippine society. Many of the Marcos cronies were able to remain or return to power in the succeeding years. The human rights violators in the police and military were not prosecuted but allowed to stay. Democratic socio-economic reforms such as land reform and nationalist industrialization were not instituted to improve the plight of the poor, landless and unemployed who compose the majority of the Philippine population. Thus, while democratic space was temporarily restored in 1986, the economic crisis continued, and has worsened through the years, leading many to believe that not much has changed even after the people power democratic uprising.

Each generation learns about their nation's history from elementary school onwards through official curriculum which should be taught in all of the schools. Absent the systematic teaching of knowledge about Marcos martial law in the Philippine educational system, succeeding generations have not been provided with the necessary grounding on that darkest period in our nation's history. They are thus vulnerable to the historical revisionism being peddled to rehabilitate the image of the Marcoses and martial law in their bid to return to power, especially as the poor have remained poor while the rich and powerful have become richer.

People power ousted the Marcos dictatorship in 1986. This is a historical truth. Historical revisionism is that process that attempts to rewrite history for a questionable political agenda, such as capturing the presidency. Historical revisionism is done by minimizing, denying or simply ignoring essential facts, by revising the narratives through the manufacture of fake facts or unverifiable data, and by presenting new interpretations contrary to rules of logic and evidence.

In the Philippines, the Marcoses clearly had a historical revisionist project to rebrand and rehabilitate the image of Marcos and martial law in their design to regain political power. Using their stolen wealth, they have employed an army of trolls to spread lies, myths, distortions, and false news about Marcos martial law. They create and publish

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disinformation (eg. Marcos as a WWII hero, or the one-sided citing of dubious achievements to support their claim that martial law was a Golden Age) on various media platforms, but especially on social media, which is the platform of the youth.

Not having learned anything about Marcos martial law in school, the younger generations after martial law have been influenced by the insidious historical revisionism being peddled by the Marcoses and their cronies, especially on social media. President Rodrigo Duterte himself was party to historical revisionism when he announced, early in his presidency, that Marcos was his idol and allowed his burial in the Heroes' Cemetery (Libingan ng mga Bayani), in a slap to martial law victims and widespread opposition, to include the National Historical Commission of the Philippines, whose top officials resigned in protest.

Ferdinand Bongbong Marcos Jr. has teamed up with Sara Duterte, the daughter of the current authoritarian president Rodrigo Duterte, as his vice presidential candidate. The tandem has announced that they plan to continue with both their fathers' authoritarian rule, as both are of the position that "strongman" rule is what the Filipino people need to solve the quagmire of present-day Philippine society.

The Marcos-Duterte campaign has relied heavily on their unlimited resources from the Marcoses' ill-gotten wealth. They have been able to win over many local officials with promises of campaign funds. Their troll army continues to spread lies and disinformation, and gang-up on the opposition candidates in social media. There have been reports of vote buying in their campaign rallies. They have refused to participate in the presidential and vice presidential debates, thereby not presenting any comprehensive program of governance. They are taking advantage of the people's dissatisfaction with the economic crisis and current dire situation to say that authoritarianism is the answer.

They are the current frontrunners in electoral surveys, which certainly bodes ill for human rights and democracy in the Philippines if they win.

THE OPPOSITION

The strongest opposition to the Marcos-Duterte tandem is the team of current Vice President Leni Robredo for president and Senator Kiko Pangilinan for vice president. At the start of the campaign period, the Marcos-Duterte tandem had a commanding lead in all of the surveys. Slowly but surely, however, Leni Robredo has been able to inspire and capture the imagination of Filipino voters, such that her numbers have been rising in the more recent surveys.

The Leni-Kiko campaign has transformed into a people's campaign, reminiscent of the

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people power which was able to oust the Marcos dictatorship in 1986. They have been able to unite a wide array of political forces of all colors and have emerged as the genuine Opposition.

The Leni-Kiko campaign rallies are able to draw huge numbers of people, with massed up crowds reaching hundreds of thousands of people, the largest of which was estimated at more than 400,000 people! None of the Marcos-Duterte rallies have been able to match the numbers of the Opposition, notwithstanding claims of hakot paid mobilizations and vote buying. As the campaign rallies of the Opposition continue to grow in size, many supporters of other presidential candidates have been shifting their support to Leni Robredo.

There is a very high level of volunteerism in the people's campaign, with supporters giving freely of their time and resources. It is noteworthy that among their most active supporters are from the youth, those who have seen through and reject Marcos historical revisionism.

The Leni-Kiko campaign has drawn endorsements from a wide number of groups and social influencers, among them the schools, churches, artists, party list groups, professionals, business, workers, peasants, women, indigenous peoples, Moro people, youth, etc. There is a very active and creative Leni-Kiko campaign on social media, such that Google has predicted a Leni Robredo victory based on the numbers of social media engagements.

There is an observable momentum and winning trajectory to the Leni-Kiko campaign. In the final two weeks of the campaign, their supporters are going all out in the house-to-house ground campaign and organizing events and people's rallies all over the country to ensure that the genuine Opposition will win the elections.

Leni Robredo has assured the Filipino people that if she wins, she will restore democracy and human rights, ensure socio-economic reforms especially for the poor, protect Philippine sovereignty, and resume peace talks with insurgents towards a just and lasting peace.

CHARACTER OF PHILIPPINE ELECTIONS

Elections in the Philippines has been characterized as being determined by guns, goons and gold. Powerful political dynasties continue to use their huge resources and authority to maintain themselves in power from one election to the next. Spouses, siblings and children just replace incumbents when it is their time to go, as shown by the Duterte-Marcos tandem currently in the running.

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Even the party list system, which was intended to give voice to the marginalized and unrepresented sectors of society, has been coopted by dynasty families. They find this as a convenient means to buy their way to more seats in Congress. Electoral reform is badly needed to enforce the Constitutional ban on political dynasties and bring the party list system back to its original intent.

Serious questions have been raised regarding the independence of the Commission on Elections. The seven persons who make up the Commission are all Duterte appointees. A number of valid cases for disqualification of Marcos Jr. from the presidential race have been filed and disapproved by the COMELEC at the Division level. Petitioners are awaiting the decision of the COMELEC en banc on their motions for reconsideration so that the case can be brought before the Supreme Court. Time is running out before election day but the cases have not yet been resolved. Petitioners are sure to question the expected negative decision of the COMELEC en banc, given the tone of the decision at the Division level.

Duterte's authoritarian regime has allowed widespread political vilification and red-tagging, not only of the legal left, but of the whole Opposition. Campaign paraphernalia have been spray-painted accusing them of being recruiters of armed insurgents and warning voters not to vote for them. Campaign-related violence against Opposition campaigners is rampant. Vote-buying continues to be practiced by the rich and powerful.

There is the possibility of widespread cheating in the national elections. The automated electoral system has been awarded to a Duterte crony, and a security breach has been reported by the mass media.

With all the disinformation, fraud and cheating associated with Philippine elections, it is good that the International Coalition for Human Rights in the Philippines has launched an International Observer Mission to conduct international monitoring of the May elections. There is also the additional interest this time as the whole world watches whether the son and namesake of the Philippine dictator Ferdinand Marcos can really return to the presidential palace Malacañang.

In summary, the Prospects for Democracy in the Philippines will be very different depending on who wins the May elections. If Marcos-Duterte will win, the current situation of authoritarian rule and human rights violations will continue, if not worsen. With a Leni Robredo victory, and especially if her vice president and senatorial team also win, we can expect a more democratic regime which hopefully will review and amend past dictatorial decisions such as the Anti-Terror Law, the National Task Force to

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End Local Communist Armed Conflict, and the termination of the peace talks between the Government of the Republic of the Philippines and the Communist Party of the Philippines – New People's Army – National Democratic Front of the Philippines. We can also expect her to act on the promised and much-needed socio-economic reforms.

Note: This short paper was written two weeks before the May Philippine elections in May in order to have enough time to be translated and included in the publication of the Gwangju Democratic Forum 2022. I will present an updated report, including the results of the elections during the actual forum on May 20, 2022.

Session 5

Gwangju Democracy Summit and GRAS-Net Session

COVAX, a project to resolve inequality in vaccine supply and distribution, is a multinational community established by the World Health Organization, the Coalition for Infectious Disease Innovation, and the Global Vaccine and Immunization Alliance. The G20 has promised to expand the supply of vaccines to poor countries through the Rome Pact and has promised to vaccinate 70% of the world's population by the middle of 2022.

However, the promises made by participating governments and international organizations are not being fulfilled, and their support is not enough to keep up with the speed of virus variants, which is increasing every day. Through a critical review of the multilateral efforts of governments and international organizations in view of youth and senior activists, we will collect suggestions for sustainable approaches to overcoming the pandemic. We will adopt resolutions to be sent to each government, and we will send them in a open letter.

Gwangju Democracy Summit

Moderator : Ms. Joanna K. Carino

(Laureate of the 2019 Gwangju Prize for Human Rights)

Speaker

- Global Democracy and Human Rights Situation in Covid 19 and Review of International Organization's Covid Campaign
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GRAS-Net (Gwangju Research and Advocacy Solidarity Network) Session

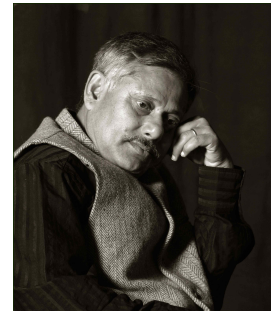
Moderator : Ms. Mafuja Akhtar (GRAS-Net)

Rapporteur : Ms. Fatima Mohammad Sayah Al-Khadire (GRAS-Net)

Global Democracy and Human Rights Situation in Covid19 and Review of International Organization's Anti-Covid Response.

Mr. Sushil Pyakurel

Laureate of 2010 Gwangju Prize for Human Rights



Background:

The Covid was detected in Wuhan, China in December 2019. It quickly spread throughout the globe. China was slow to report the outbreak of the virus to the World Health Organization (WHO) and international community. The WHO declared it as a Public Health Emergency, drawing the international concern on 30 January 2020, later declared COVID 19 as a pandemic on 11 March 2020. By the time COVID 19 had already spread in several countries of the world. As the media coverage US and West European countries were mostly affected. Immediately The US and other western countries imposed strict travel ban for those who had recently travelled to China. India, Brazil, Europe and most of the countries also imposed border restrictions. The producers of Vaccine and medical equipment such as US, France, Germany and India restricted the export of vaccines or imposed ban on them. Hundreds of millions of people were infected and millions died. Millions lost Jobs. Worst victims were the migrant workers and refugees. The people from the developing and poor countries were doubly victimized. Because of the lack of health facilities, even PCR test was not available in many countries. Nepal had to send the specimen to Hongkong for PCR test when suspected cases were found out during the initial stage of the pandemic. Mostly the countries from the Third World faced the similar situation. Nepal also faced vaccine crisis in the initial phase due to the restriction imposed to Astrazanica vaccine by India even after full payment in advance. In such situation, it was expected that the wealthy countries would cooperate each other helping poor countries to face the crisis. But the global population witnessed how the pandemic was used by the powerful countries as a tool of self-preservation at the cost of millions of vulnerable people living in the poor countries. Their attitude was guided by their international policy imperatives.

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Covid 19 and its Impact on Democracy and Human Rights:

In the pretext of controlling the pandemic the governments imposed several restrictions targeting the population. During the long period of lockdown mostly in the third world countries - people were deprived of their basic rights. The Institutions of democracy such as the legislature, judiciary and other non-governmental agencies, including National Human Rights Institutions, were virtually closed or prevented from functioning.

According to Institute of Democracy and Electoral Assistance (IDEA) research "as a measure to contain pandemic" 60% of democracies have declared states of emergency. 117 countries have seen their elections affected by COVID-19. Restriction on freedom of expression were linked to the spread of disinformation. In the pretext of controlling the spread of false information, countries like Egypt, Botswana, and India allowed publication of only official governmental statements about the pandemic. South Africa, Indonesia, and Algeria imposed severe prison sentences to those spreading disinformation."

As Nada Al-Nashif, Deputy High Commissioner for Human Rights, said the COVID-19 pandemic had taken its toll, touching all spheres of life and ending livelihoods of millions of people. Over 100 million people were pushed into extreme poverty. The International Labor Organization had estimated a rise of 5 to 25 million in global unemployment since the onset of the pandemic. The poorest and most vulnerable countries, in particular, had experienced major reversals in human rights protection and progress in achieving the 2030 SDGs agenda.

The policy of restriction adopted by the states to contain the pandemic has had severe effects in the Economic, Social and Cultural Rights of the people at large, particularly the minorities and vulnerable communities. Most of Countries closed schools, colleges and Universities for several months pushing more than 1 billion students at the risk of losing whole academic years. In order to continue the learning process of school children some countries even implemented remote learning programs.

But hundreds of thousands of children in poor and developing countries don't have the internet access. Many households in Asian and African Countries do not have internet networks installed. Many of them do not even have access to radio, TV and the computer. There is possible risk of the student whose education was interrupted by the pandemic not returning to schools and colleges again.

"While more than 90 per cent of the countries adopted digital and remote learning policies, only 60 per cent did so for pre-primary education. Policy measures taken by the governments to ensure continued learning through broadcast or digital media helped 69 per cent of schoolchildren (at the maximum) to gain access to education in

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pre-primary to secondary education globally. 31 per cent of schoolchildren worldwide (463 million) could not gain access to broadcast- and Internet-based remote learning facilities either due to the lack of necessary technological assets at home, or because they were not targeted by the adopted policies. Online platforms were the most used means by the governments to deliver education while schools remained closed, with 83 per cent of countries using this method. However, this allowed only about a quarter of schoolchildren worldwide to gain access to education. Television had the potential to reach the most students (62 per cent) globally. Only 16 per cent of schoolchildren could be reached by radio-based learning worldwide.

"Globally, 3 out of 4 students who cannot be reached by the remote learning policies come from rural areas or belong to the poorest households". (Prof. Sandra Fredman (<https://doi.org/10.1111/cdev.13654>))

International Cooperation and Organization:

International human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide medical care to those who need it. "But the fact that developing countries had faced many more difficulties, greater adversity, and limited resources during the pandemic. The system had shown that profit came before people's lives, and access to vaccines had been reserved first for a handful of privileged people" (Freddy Mamani, Vice-Minister of Foreign Affairs of the Plurinational State of Bolivia).

The system of "Profit before People's life" has to be addressed. Does that mean that there is absence of international rules and institutions or the prevailing systems and Institutions are being used /misused by the rich and powerful countries?

Several international instruments, rules, treaties and organizations are developed and created to address the cross border or global issues. The UN Charter to Universal Declaration of Human Rights 1948, and subsequent regulations have been developed, all together known as International Human Rights Law (IHRL). "It lays down a range of enforceable obligations on states in terms of how they should treat their citizens. Enforcement of IHRL is an obligation of signatories at the state level. In circumstances where there is a failure to enforce IHRL at the state level, there are regional bodies (for example within Europe the Council of Europe) and internationally through the UN." (Public Health, M.C. Van Hout, J.S.G. Wells)

Article 12 of International Covenant on Economic Social and Cultural Rights (ICESR) mentions the responsibility of the state to protect all form of contagion." The prevention, treatment and control of epidemic, endemic, occupational and other

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diseases; the creation of conditions which would assure the citizens of all medical service and medical attention in the event of sickness. (Art. 12 c & d ICESR). Thus, it is the obligation of the state and all UN agencies to work together for the prevention and treatment of vulnerable and communicable diseases including the health of women and children, nutrition and sanitation. The very purpose of the establishment of World Health Organization (WHO) is to coordinate health affairs, mainly within the United Nations system.

Though UN Secretary-General, António Guterres, sums up "global solidarity is not only a moral imperative, it is in everyone's interests." The UN also launched the COVID-19 Global Humanitarian Response Plan, asking governments to support global efforts to stop the spread of the novel coronavirus financially and politically. But the response from the international community was not as expected. Most nations, including the world's most powerful nations - the US, China, UK and European Union and other regional powers have turned inward, adopting travel bans, implementing export controls, hoarding or obscuring information, and marginalizing the WHO and other multilateral institutions. WHO struggled at the initial stages of the outbreak? The multilateral coordination and cooperation, such as the G-7, the G-20, and the UN Security Council, failed to rise to the occasion. The pandemic seems to have exposed the international community as selfish. The Governments also forsook opportunities for consultation, joint planning, and collaboration, opting instead a nationalist stance which creates a situation of near collapse of global policy coherence. The nationalist stance was of two form "COVID Nationalism" and Vaccine Nationalism".

The COVID vaccine producing Countries used it as another tool for expanding their sphere of influence and Nationalism. The needy countries are still struggling to get vaccine even after being compelled to pay exorbitant manner. The per unit price of the vaccine is not revealed made by the producers according to the rule they made themselves. On top of that, the COVID Vaccine is under patents Right. The developing countries have repeatedly demanded for lifting patents.

Lesson Learned:

The global population has learned an important lesson that the international cooperation is vital for combating the pandemics. Strengthening the international organization such as WHO by enhancing their capacity and ensuring their financial autonomy so that they are not dependent on couple of rich countries. UN and other International organizations should provide a permanent framework for countries to cooperate.

The already existing international mechanisms and tools should be activated ensuring

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their accountability. International Institutions should have jurisdiction for cross border cooperation. The International Humanitarian Law (IHL) must apply in the effected countries and similarly International Human Rights Law should be respected and implemented in each place so that the rights of the people are not curtailed in the pretext of combating pandemic. Ensure that COVAX facilities are available to each country in an equitable manner. The hording of Vaccine by any countries should taken as a grave violation of international rule. The patents must be lifted. Poor countries - especially the third world and developing nations- should develop a sustainable public health policy with institutional and legal framework as a lesson learned from the COVID pandemic.

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Keynote Speech	Cynthia Maung	Head of the Mae Tao Clinic in Mae Sot, Myanmar	Myanmar
	Yoon Hwan Shin	Emeritus Professor of Sogong University	South Korea
The Future of May 18 – Following the Death of Chun Doo Hwan, What are the Remaining Tasks to Us	Sang Sook Kim	Research Professor of Songkonghoe University	South Korea
	Youngju Choi	The May 18 Democratization Movement Truth Commission	South Korea
	Young Jae Yi	Research Professor of Hanyang University	South Korea
	Gyoung Mo Gu	Professor of Busan University of Foreign Studies	South Korea
	Byung-jae Lee	Professor of Yonsei University	South Korea
Solidarity of Gwangju - Solidarity with International Civil Society Against State Violence - Expand the Network!	Indria Fernida	Attorney, Asia Justice and Rights	Indonesia
	Ho Joon Heo	Hankyoreh Newspaper Senior Reporter	South Korea
	Lway Peo Kamaekhour	Board Member of the Network for Human Rights Documentation-Burma	Myanmar
	Leonor Arteaga	Commissioner for the National Commission for the Search of Disappeared Persons	El Salvador
	Oni Imelva	Deputy Chairperson of Aceh Truth and Reconciliation Commission	Indonesia Ache
Vaccine Inequality and Democracy	Jooho Lee	Policy Research Director of the Korean Health and Medical Workers' Union	South Korea
	Dorothy Guerrero	Head of Policy, Global Justice Now	Philippines
	Daeshik Jo	Secretary-General of Korea NGO Council for Overseas Development Cooperation	South Korea
	Seoc Kyun Woo	Co-Chairperson of Korean Federation of Medical Groups for Health Rights	South Korea
Gwangju Democracy Summit	Joanna K. Carino	Laureate of the 2019 GPHR	Philippines
	Sushil Pyakurel	Laureate of the 2010 GPHR (Co-chairperson of NLG)	Nepal
GRAS-Net	Mafuja Akhtar	Co-chairperson of GRAS-Net	Bangladesh
	Fatima Mohammad Sayah Al-Khadire	Member of GRAS-Net	Jordan

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Prospects for Democracy in Asia 2022 - "We Unite for Solidarity" I	Hyun Phil Na	Executive Director, Korean House of International Solidarity	South Korea
	Sang Kook Lee	Professor of Yonsei University	South Korea
	Pandit Chanrochanakit	Professor of Chulalongkorn University	Thailand
	Meas Salm	Deputy Head of Women and Child Rights Section of ADHOC	Cambodia
	Joanna K. Carino	Advisor of Cordillera People's Alliance	Philippines
Prospects for Democracy in Asia 2022 - "We Unite for Solidarity" II	Sang Kook Lee	Professor of Yonsei University	South Korea
	Than Khe	Chairperson, All Burma Students' Democratic Front	Myanmar
	Don Tajaroensuk	Peoples Empowerment Foundation	Thailand
	Svey Phin	ADHOC	Cambodia
A Seminar for Identification of Video Journalists' Activities During the May 18 Democratic Uprising	Mi Sun Shim	Professor of Soonchunhyang University	South Korea
	Hyung Seok Kim	Program Director of Korean Broadcasting System (KBS)	South Korea
	Young Gi Noe	Professor of Chosun University, Gwangju	South Korea
	Joon Young Na	Chairperson of the Korea Video Journalist Association	South Korea
	Jae Eui Lee	The May 18 Democratization Movement Truth Commission	South Korea
	In Hwa Hong	The May 18 Democratization Movement Archives	South Korea
	Youngju Choi	The May 18 Democratization Movement Truth Commission	South Korea

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The May 18 Memorial Foundation

Country: South Korea

Website: <https://eng.518.org>



Asia Centre

Country: Thailand

Website: <https://asiacentre.org/>



Asia Democracy Network

Country: Global

Website: <https://adnasia.org/>



Asia Justice and Rights

Country: Indonesia

Website: <https://asia-ajar.org/>



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Cambodian Human Rights and Development Assoc

Cambodian Human Rights and Development Association (ADHOC)

Country: Cambodia

Website: <https://www.adhoccambodia.org/>



Confederation of Indonesian People Movement (KPRI)

Country: Indonesia

Website: <http://pergerakan.org/>



Human Rights Development Centre

Country: Bangladesh

Website: <https://hrdcbd.org/>

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International Institute for Human Rights, Environment and Development

Country: Nepal

Website: <https://www.inhuredinternational.org/>



People's Empowerment Foundation

Country: Thailand

Website: <http://www.peoplesempowerment.org>



Pyeong Chang Youth Peace Ambassador 2022

Country: Global



YPKP65

Country: Indonesia

Website: <https://ypkp1965.org/>



Jeonbuk National University Institute for Southeast Asian Studies

Country: Indonesia

Website: <https://jiseas.jbnu.ac.kr/jiseas/>



Korea Video Journalist Association

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Website: <http://tvnews.or.kr/>



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