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# TRIAL AND ERROR IN TRANSITIONAL JUSTICE: LEARNING FROM SOUTH KOREA'S TRUTH COMMISSIONS

*Hun Joon Kim\**

## INTRODUCTION

Modern South Korean history has been marked by momentous social and political upheavals: Japanese colonialism (1910-1945); the U.S. military occupation (1945-1948); sundry insurgencies, riots, and uprisings (1946-1948); the war with Communist North Korea (1950-1953); the patriarchal dictatorship of Syngman Rhee (1948-1960); a short-lived democracy cut short by a military coup (1960-1961); the military and authoritarian regimes of Park Chung Hee (1961-1979), Chun Doo Hwan (1980-1988), and Roh Tae Woo (1988-1993); and, finally, the transition to democratization in 1987.<sup>1</sup> Remarkably, all of these events occurred within the last one hundred years, suggesting that modern and contemporary Korean politics, referred to as a politics of “strong vortex,” is characterized by an extremely dynamic process with multiple political transitions.<sup>2</sup> South Korea has indeed experienced at least three political transitions from past abusive regimes to democracy: one from U.S. occupation to self-governance in 1948, one from war to peacetime governance in 1953, as well as the multiple transitions embedded in the struggle against state power through insurgencies and popular uprisings, culminating in the 1987 formal transition to democracy. All of this tumult has left innumerable cases of civilian deaths, systematic human rights violations, and immeasurable suffering by the Korean people.

South Korea has launched various transitional justice measures in response. Criminal prosecutions, truth commissions and investigatory committees, and reparation programs have all been in use since the process of democratization took root in 1987. Of these, truth commissions have been employed most frequently. With at least ten truth commissions established to date, South Korea has been a leader in transitional justice initiatives, not

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1. For Korean names, the surname is written first followed by the given name (e.g. Park Chung Hee.) Syngman Rhee is an exception since Rhee decided to spell his name in such a way and he is known by this name in the West.

2. GREGORY HENDERSON, *KOREA: POLITICS OF THE VORTEX* 5 (1968).

only in the Asia Pacific region but throughout the world. So far, forty countries around the globe have created truth commissions, but only four of them – Chile, Ecuador, Uganda, and Uruguay – have established more than one official commission.<sup>3</sup>

In South Korea, remarkable progress was made in establishing truth commissions to investigate past human rights abuses under President Kim Dae Jung (1998-2003), who won a Nobel Peace Prize in 2000, as well as under President Roh Moo Hyun (2003-2008). Such truth commissions have revealed the systematic and gruesome nature of the abuse of state power in South Korea, not only during the Korean War and the armed conflicts that preceded it, but also under the subsequent military and authoritarian regimes. In quite a few cases, official apologies were issued not only by the head of state, but also by the head of diverse government branches and agencies such as the military, police, or intelligence services. Official governmental records, history textbooks, and major encyclopedia entries now reflect these initiatives through the incorporation of the commissions' findings. Politicians and public officials are more cautious in their speech and use terms and vocabularies reflecting a more balanced and neutral understanding of what happened in the past.<sup>4</sup> Simple denial or ignorant dismissal of past abuses is no longer a valid response in public discourse.<sup>5</sup> Although the processes have been far from perfect, several victims have cleared themselves of past false convictions, restored their previous social and political status, found the remains of family members, or received a symbolic subsidy for their medical bills. Memorials have been erected and museums

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3. PRISCILLA B. HAYNER, *UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS* 60-61, 68-69, 243, 251 (2d ed. 2011).

4. An illustrative example took place recently in the course of the 2012 National Assembly elections. The ruling Saenuri Party withdrew its selection of Lee Young Jo, a former head of the Truth and Reconciliation Commission, as a candidate over the controversies triggered by his use in a conference paper of terms like "rebellion" or "revolt" when referring to the Gwangju democratic movement and the Jeju 4.3 events. See Tae-hoon Lee, *Ruling party cancels ex-truth commission chief's candidacy*, THE KOREA TIMES, April 13, 2012.. For the original text of Lee's conference paper, see Young Jo Lee, *Commissioning the Past: South Korean Efforts at Truth and Justice after Democratization*, in TRANSITIONAL JUSTICE AND BEYOND IN SOUTH KOREA, 2ND ANNUAL SYMPOSIUM (2010).

5. While individual scholars, local newspapers, associations for victims, and local activists and research organizations have continuously published reports and carried out awareness campaigns about the details of civilian massacres and other human rights violations since 1987, South Korea's truth commissions have played an essential role by giving an official status to and legitimating the facts of civilian massacres, such that they can no longer be discredited as mere opinion or anti-government agitation.

have been filled with remains, documents, art, and sculptures, containing the collective memory of the dark past.

Despite these successes, research on the truth commission process in South Korea has lagged noticeably behind that on other country cases. Apart from a handful of English-language articles and monographs on the 1980 Gwangju massacre and the subsequent reparations program,<sup>6</sup> there are few English-language articles on other South Korean attempts to deal with past human rights abuses.<sup>7</sup> Even within the Korean academy, there has not yet been a thorough study on these issues,<sup>8</sup> both because the processes are rather recent and because the massacres remain ideologically controversial within South Korea due to the continued confrontation with the communist North.<sup>9</sup>

At the same time, the truth-seeking process in South Korea has been neither smooth nor without certain negative side effects that have provided opponents with ammunition to criticize the work of the commissions. Because so many initiatives were launched, opponents and supporters alike have questioned whether all these truth-seeking projects could effectively

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6. GI-WOOK SHIN, *CONTENTIOUS KWANGJU: THE MAY 18TH UPRISING IN KOREA'S PAST AND PRESENT* (2003); In-sup Han, *Kwangju and Beyond: Coping with Past State Atrocities in South Korea*, 27 *HUM. RTS. Q.* 998 (2005).

7. For rare exceptions, see generally Kim Dong-Choon, *Beneath the Tip of the Iceberg: Problems in Historical Clarification of the Korean War*, 42 *KOREA J.* 60 (2002) [hereinafter Kim, *Tip of Iceberg*]; GI-WOOK SHIN, ET AL., *RETHINKING HISTORICAL INJUSTICE AND RECONCILIATION IN NORTHEAST ASIA: THE KOREAN EXPERIENCE* (2007); Kuk Cho, *Transitional Justice in Korea: Legally Coping with Past Wrongs after Democratization*, 16 *PAC. RIM L. & POL'Y J.* 579 (2007). In 2010, a special issue of *Critical Asian Studies* had six articles on the South Korean transitional justice experience. Two articles are particularly relevant: Kim Dong-Choon, *The Long Road Toward Truth and Reconciliation: Unwavering Attempts to Achieve Justice in South Korea*, 42 *CRIT. ASIAN STUDIES* 525 (2010) [hereinafter Kim, *The Long Road*]; Jae-Jung Suh, *Truth and Reconciliation in South Korea: Confronting War, Colonialism, and Intervention in the Asia Pacific*, 42 *CRIT. ASIAN STUDIES* 503 (2010).

8. For rare exceptions, see DEUK-JUNG KIM, 'PPALGAENGI '-UI TANSANG: YEOSUN SAGEON-GUA BANGONG GUKGA-UI HYEONGSEONG [THE BIRTH OF THE "REDS": THE YEOSUN EVENTS AND THE FORMATION OF ANTICOMMUNIST STATE] (2009); KIM DONG-CHOON, JEONJAENG-GUA SAHOE [WAR AND SOCIETY] (2000); JUNG-SEOK SUH, CHO BONG-AM-GUA 1950-NYEONDAE (HA) [CHO BONG-AM AND 1950s, VOL. 2] (1999); GI-JIN KIM, KKEUTNAJI ANEUN JEONJAENG, GUKMIN BODO YEONMAENG [UNFINISHED WAR: CIVILIAN MASSACRES DURING THE KOREAN WAR] (2002).

9. Kim, *The Long Road*, *supra* note 7, at 550.

be carried out with the limited budgetary and human resources available.<sup>10</sup> Even proponents of these processes have worried that the multiplicity and breadth of truth-seeking efforts might cause public fatigue with transitional justice mechanisms, or precipitate a severe backlash by opponents of these efforts.<sup>11</sup> Additionally, some special laws were too narrow in their scope, addressing individual incidents rather than a pattern of abuses.<sup>12</sup> At other times, special acts were passed to investigate historically remote events, such as the Donghak peasant uprising of 1894, and the mandates of the various commissions frequently overlapped. Many of the concerns about backlash were realized in 2008 when President Lee Myung Bak began to publicly criticize the truth commissions immediately upon assuming office, giving the conservative wing of contemporary South Korean politics a powerful voice in the transitional justice debate. His administration proposed slashing the budgets of the myriad commissions, both by merging them and rejecting their requests for renewal.<sup>13</sup>

By the end of 2011, the major activities of the various truth commissions had reached an effective end, leaving a multitude of policy recommendations behind for implementation by the South Korean state and broader civil society. Within this context, the purpose of this Article is twofold. It is, first, to stimulate further academic study and community debate on Korean truth commissions by providing a comprehensive descriptive overview of state violence in Korea over the last hundred years and the transitional justice initiatives undertaken in response. Part I correspondingly details the abuses that occurred under four distinct periods: Japanese colonialism, the U.S. occupation, the Korean War, and the subsequent military and authoritarian regimes. Part II then details the transitional justice initiatives that have been undertaken in South Korea to address abuses in each of

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10. *History law passes*, THE CHOSUN ILBO (S. Kor.), May 3, 2005; *Does the Regime intend to Rewrite Korea's Modern History Completely?*, THE CHOSUN ILBO, Aug. 3, 2004; Jae Jung Kim, *Interview with Kim Dong-Choon*, MAL, 2006, at 47.

11. Jung-Hee Lee, *Determining history's truth*, KOREA JOONGANG DAILY (S. Kor.), Aug. 6, 2004, at 7; Woong Jae Jung, *Interview with Kim Dong-Choon*, MAL, 2008, at 133.

12. For example, some laws were enacted to address the following individual incidents: abuses in Samcheong detention centers, Nogun-ri shooting incidents, issues related to persons on special espionage missions to North Korea, discrimination and mass killing case of peoples with Hansen's disease, and the arrest and illegal detention of Buddhist monks. For more details, see REPUBLIC OF KOREA TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA, COMPREHENSIVE REPORT, vol. 1, pt. 1, 13-15 (2010) [hereinafter FINAL TRCK REPORT 2010].

13. Jung, Editorial, *Truth and Reconciliation Commission's disappointing end*, THE HANKYOREH (S. Kor.), Dec. 30, 2010.

these historical periods. By documenting these initiatives, the Article seeks to draw attention to, and encourage greater study of, the Korean experience within the broader transitional justice community.

The second purpose of the Article is to advance greater understanding of the conditions or factors that may facilitate successful implementation of truth commission recommendations in the South Korea context. To this end, I compare the experiences of two of South Korea's most prominent truth commissions: the National Commission for the Investigation of the Truth about the Jeju April 3 Events ("Jeju Commission")<sup>14</sup> and the Truth and Reconciliation Commission, Republic of Korea ("TRCK"). While the Jeju Commission's recommendations have been very effectively implemented to date, those of the TRCK have received less public attention. There is concern in this regard that the latter recommendations will not be taken up effectively.<sup>15</sup> In an effort to identify policy interventions that may increase the likelihood that the important recommendations in the TRCK's recently released final report will in fact be put into practice, lessons are drawn from the Jeju Commission experience. The Article concludes by offering these potential policy lessons with a view to both strengthening the implementation process in South Korea and offering potential lessons for other transitional justice initiatives.

## II. THE REPRESSIVE PAST

### A. *Japanese Colonialism*

The thirty-five years of Japanese colonialism (1910-1945) were marked by coercive sociopolitical repression and economic exploitation. The colonial authorities relied heavily on coercion, terror, and surveillance to rule the Korean population.<sup>16</sup> For instance, in 1919, immediately after

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14. An official English translation of the Jeju Commission's work is found at the National Committee for Investigation of the Truth about the Jeju 4.3 Incident, <http://www.jeju43.go.kr/english/>. The use of 'incident (*sageon*)' is a mistranslation since it reduces the scope and duration of not only the guerrilla warfare and counterinsurgency campaign over seven years but also grave human rights violations. In Korean, *sageon* literally means an event which causes social problem and attracts social attention and does not have an English connotation of a minor or subordinate event. It is most appropriate to understand *sageon* as 'an event' in this context and I use "events" to stress that the 4.3 events are complex and multifaceted events with a series of human rights violations.

15. Yun Hyeong Kil & O Seong Kwon, *Government bodies stall in implementation of truth and reconciliation recommendations*, THE HANKYOREH (S. Kor.), Apr. 15, 2009; Dong Gweon Lee, *Unsatisfactory and Slow Follow-up Processes*, MAL, 2008.

16. MICHAEL ROBINSON, KOREA'S TWENTIETH-CENTURY ODYSSEY 43 (2007).

World War I, thirty-three Korean representatives, inspired by the principle of self-determination articulated by President Woodrow Wilson in his Fourteen Points speech, declared independence from Japan and the public participated in peaceful demonstrations nationwide.<sup>17</sup> Japanese reprisals were extremely brutal, resulting in 7,500 killed, 15,000 injured, and 45,000 arrested.<sup>18</sup> In addition, the colonial authorities used an assimilation policy aimed at effacing Korean national identity and incorporating Koreans as second-class citizens.<sup>19</sup> In the course of events, Korean collaborators were widely used to accomplish these ends, appearing as politicians, businessmen, scholars, journalists, religious leaders, writers, and artists.<sup>20</sup> Pro-Japanese historians, for example, invented the idea that the Koreans and the Japanese share a common ancestry in order to facilitate assimilation and even to conscript Koreans into the Japanese army.<sup>21</sup> Koreans suffered most gravely after the outbreak of the second Sino-Japanese War in 1937, when their country became a reservoir of manpower and resources for the Japanese military and industry.<sup>22</sup> Some 140,000 Korean men and women were victims of forced labor and thousands of women were forced to work as sex slaves, known as “comfort women,” for the Japanese military during World War II.<sup>23</sup>

#### B. *Under U.S. Occupation*

The Japanese abuses suddenly came to an end in 1945 when the Japanese emperor surrendered to the Allied Forces. The U.S. Army arrived and soon set up a military government, effectively ruling as an occupier until the establishment of the South Korean government in 1948.<sup>24</sup> The occupa-

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17. *Id.* at 47.

18. *Id.* at 48. Japan, shocked by the magnitude of the movement, adopted a conciliatory policy known as “cultural rule” between 1920 and 1930 that allowed cultural autonomy. Koreans used this brief window of opportunity to promote nationalism by starting newspapers and studying history, language, and literature. For more details, see GI-WOOK SHIN, *ETHNIC NATIONALISM IN KOREA: GENEALOGY, POLITICS, AND LEGACY* 46 (2006).

19. SHIN, at 42-45.

20. *Id.*

21. *Id.* at 45.

22. ROBINSON, *supra* note 16, at 97-98.

23. *Id.*

24. Bonnie B.C. Oh, *Introduction: The Setting*, in *KOREA UNDER THE AMERICAN MILITARY GOVERNMENT, 1954-1948*, at 3 (Bonnie B.C. Oh ed., 2002). Immediately after the liberation, an interim Korean authority, known as the Committee for the Preparation of Korean Independence, was set up to keep law and order until the establishment of a new Korean state. This organization later developed into the Korean People’s Re-

tional forces pursued three major policies: first, suppression of grassroots state-building efforts, revival of the colonial state apparatus, and the filling of that apparatus with former pro-Japanese officials; second, the banning of the communist party and suppression of any progressive social movement; third, the favoring of rightist groups in the course of pursuing important socioeconomic policies, such as redistribution of land and industries and delayed and partial land reforms.<sup>25</sup> Public distress and frustration with these policies exploded in two nationwide resistance movements in 1946: the September strike and the October uprising.<sup>26</sup>

In 1948, two armed uprisings took place in the southern part of the country: the Jeju 4.3 events and the Yeosu-Suncheon military revolt.<sup>27</sup> Both started as armed protest by communists and ended with the brutal suppression and mass killing of civilians by the police, military, and rightist youth groups.<sup>28</sup> First, on April 3, 1948, around 350 communist insurgents attacked police substations and the offices and residences of rightist political leaders in Jeju, Korea's largest island and one of South Korea's nine provinces.<sup>29</sup> The armed uprising and responsive counterinsurgency strategy led to a prolonged confrontation of guerrilla warfare in the rugged and precipitous region of Mt. Halla in the Jeju Island, lasting until 1954.<sup>30</sup> This warfare

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public and People's Committee. However, this interim authority lasted a mere twenty days until the arrival of the U.S. Army in early September. For more details, see *id.*

25. Se Kyoon Kim, *Minjung Movement in early Liberation years*, in *MODERN KOREAN POLITICS 1945-1948*, at 74-75 (Research Inst. for Korean Politics, ed., 1993); Chan-Pyo Park, *The American Military Government and the Framework for Democracy in South Korea*, in *KOREA UNDER THE AMERICAN MILITARY GOVERNMENT, 1945-1948*, (Bonnie B.C. Oh ed., 2002). In the late 1940s, Korean politics was sharply divided along the line of left-right ideological cleavage. First, the rightists were generally forgiving to traitors and collaborators during the Japanese colonial rule while the leftists wanted strict punishment. Second, the rightists were pro-American and anti-Soviet, while the leftists were the opposite. Third, the rightists were more reluctant to carry out a revolutionary land reform while the leftists were active and supportive.

26. BRUCE CUMINGS, *THE ORIGINS OF THE KOREAN WAR, VOLUME II: THE ROARING OF THE CATARACT, 1947-1950*, at 237 (2004).

27. John Merrill, *Internal Warfare in Korea, 1948-1950: The Local Setting of the Korean War*, in *CHILD OF CONFLICT: THE KOREAN-AMERICAN RELATIONSHIP, 1943-1953*, at 143 (Bruce Cumings ed., 1983). In Korea, major historic events are remembered by their date of occurrence. For example, the Korean War which broke out on 25 June 1950 is referred to as 'the 6.25 (War).' Within this tradition, the armed conflicts in Jeju are commonly referred to as the Jeju 4.3 events.

28. *Id.*; John Merrill, *The Cheju-do Rebellion*, 2 *J. OF KOREAN STUDIES* 139 (1980).

29. JEJU COMMISSION, *JEJU SASAM SAGEON JINSANG JOSA BOGOSEO* [REPORT OF THE TRUTH ABOUT THE JEJU 4.3 EVENTS], 167 (2003).

30. *Id.*



intensified in August 1948 with the creation of the separate Korean governments. The conflict resulted in an estimated 25,000 to 30,000 deaths, which corresponded to ten percent of the total population of Jeju Province in 1947.<sup>31</sup> Of all the individual cases, eighty percent of civilian deaths were committed by state agents, while thirteen percent were committed by insurgents.<sup>32</sup>

To make matters worse, the 14th Regiment in Yeosu and Suncheon, in South Jeolla province, which had been scheduled to depart to Jeju for military operation, mutinied in 1948.<sup>33</sup> Around 2,000 armed forces under the leadership of Sergeant Ji Chang-soo revolted and took two cities and surrounding areas for eight days. In the course of operations, the military arrested and detained anyone suspected of being communist insurgents or their supporters, executing around 2,000 civilians on the spot.<sup>34</sup>

### C. *The Korean War*

The Korean War (1950-1953), which pitted communist North Korea against South Korea backed by the U.S. military, left around 640,000 combat deaths and injuries, and was accompanied by the height of civilian massacres in South Korean history.<sup>35</sup> During the war, nationwide systematic killings of civilians were committed by all parties to the conflict. For example, 700 villagers in Geochang were murdered by the South Korean 9th Regiment in 1951; 400 refugees were killed in Nogeun-ri by the U.S. 7th Cavalry Regiment in 1950; and there were numerous cases of mass killings of civilians committed by the North Korean army in occupied territories during the war.<sup>36</sup> Of these abuses, the violence of the South Korean government against its own people in the early phase of the war was the most appalling, both in its nature and the number of victims. Indeed, in order to avoid disruption and insurgency in the noncombat zone in the South, the police and military quickly arrested former communists and anyone suspected of being a communist supporter or even related to a communist.<sup>37</sup> From June to August of 1950, at least 300,000 alleged communists and their supporters were disappeared.<sup>38</sup> Testimonies of survivors and witnesses

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31. *Id.* at 367.

32. *Id.* at 371.

33. CUMINGS, *supra* note 26, at 259.

34. FINAL TRCK REPORT 2010, *supra* note 12, at 93 (§ III: *Massive Sacrifice of Civilians*).

35. KIM, *supra* note 8, at 237-38; ROBINSON, *supra* note 16, at 114.

36. *See generally* FINAL TRCK REPORT 2010, *supra* note 12.

37. SUH, *supra* note 8, at 608

38. *Id.* at 613.

confirm that most of them were either executed in unfrequented mountains and abandoned mines or buried at sea.<sup>39</sup> In addition, many prison inmates nationwide were summarily executed with the outbreak of the war, and many alleged civilian communist collaborators in the occupied territories were also executed by the South Korean government.<sup>40</sup>

The Syngman Rhee dictatorship was primarily responsible for the civilian deaths during the Jeju 4.3 events, the Yeosu-Suncheon military revolt, and the Korean War. It lasted until 1960, when it was overturned by student-led demonstrations prompted by electoral fraud and the murder of a student protestor by the police.<sup>41</sup> By means of an illegally adopted constitutional amendment in 1954, Rhee was able to serve three terms of presidency over twelve years, engaging in an “ultra-anticommunist policy,” suppressing basic civil and political rights, censoring opposition, and regarding any criticism of the regime as a breach of the National Security Act of 1948.<sup>42</sup> Communism was the main enemy of the state, and deterring both internal and external communist threats was the number one policy priority for Rhee.<sup>43</sup> Political opponents like Cho Bong Am, representing the Progressive Party, were severely punished, and even condemned to death on the false charge of espionage without due process.<sup>44</sup> Communists were purged from the police, the military, the Congress, and the public administration, and many were executed.<sup>45</sup> Victim demands to redress past abuses of state power were completely suppressed, claiming that those killed had either been communists or aligned with the communists.<sup>46</sup> Under Rhee’s anticommunist regime, any activities or ‘disgraceful’ pleas against the military or police were regarded as acts benefiting the enemy North.

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39. For the witness testimonies, see generally KIM, *supra* note 8.

40. SUH, *supra* note 8, at 584-90.

41. ROBINSON, *supra* note 16, 125-27.

42. *Id.* at 122.

43. After the end of the Korean War in 1953, Syngman Rhee strengthened his anticommunist stance by referring to it as a *myeolgong* (defeating communism) policy rather than a simple *bangong* (anticommunist) policy. He vehemently opposed the U.S.-led armistice talks and campaigned for the total defeat of North Korea. With citizens terrified by their war experience and fearful of further civilian massacres committed by the government, a perfect environment was in place for enforcing the political legitimacy of Rhee’s regime.

44. FINAL TRCK REPORT 2010, *supra* note 12, at § IV, 48-50.

45. HENDERSON, *supra* note 2, at 162-63.

46. Byung-Joon Jung, *Attempts to Settle the Past during the April Popular Struggle*, 42 KOREA J. 99 (2002).

D. *The Military and Authoritarian Regimes*

The stated priority of the new democratic state in 1960 was the protection of basic civil and political rights and the promotion of human rights.<sup>47</sup> The fledgling democracy nevertheless lasted only a year as public discontent with economic decline and social disorder grew. In May 1961, a group of military elites headed by General Park Chung Hee staged a coup and took over the government. Park skillfully maintained his rule over the next eighteen years (1961-1979) by justifying his 'extraordinary' seizure and exercise of power on grounds of anticommunism, national security, nationalism, and economic development.<sup>48</sup> Like Rhee, Park silenced his political opponents, suppressed farmer and labor union activities to maintain his 'low grain and low wage' policy, and generally terrorized citizens to make them submit to his dictatorial rule.<sup>49</sup>

The Anticommunism Law of 1961, which was more draconian than the existing National Security Law, declared any criticism or challenge to the regime to be an act of communism.<sup>50</sup> The logic was simple: any criticism of the South Korean government, which was officially still at war with the North, would cause social dissension in the South and thus endanger national security by benefiting the North.<sup>51</sup> Despite the continuous challenge to his rule by dissidents and political opponents, Korean elites and the public generally acquiesced in the dictatorship and accepted Park's claims of political legitimacy. For their part, urban middle class and working class citizens temporarily acquiesced to the dictatorship for the sake of "the historic modernization mission of the time."<sup>52</sup> Many accepted the government's stand that Korean society did not have the luxury of choosing both economic development and liberal democracy.<sup>53</sup>

The support for Park, however, rapidly declined after a constitutional amendment was passed in 1969 allowing him to run for a third term. After a close win against Kim Dae Jung, Park staged a self-coup in 1972 by dissolving the legislative and judiciary branches and creating an extremely

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47. JOHN KIE-CHIANG OH, *KOREAN POLITICS: THE QUEST FOR DEMOCRATIZATION AND ECONOMIC DEVELOPMENT* 44 (1999).

48. *Id.* at 52.

49. *Id.* at 58.

50. WON SOON PARK, *GUKGABOANBEOP YEONGU 1: GUKGABOANBEOP BYEONCHEONSA [A STUDY OF NATIONAL SECURITY ACT 1]* 194 (1994).

51. *Id.* at 198-99.

52. SHIN, *supra* note 18, at 103.

53. Jang Jip Choi, *Political Cleavages in South Korea*, in *STATE AND SOCIETY IN CONTEMPORARY KOREA* 13-50 (Hagen Koo ed., 1993).

powerful presidency.<sup>54</sup> Many opposition leaders, students, and social movement activists were arrested, tortured, and disappeared. For instance, prominent political dissidents and opponents like Choi Jong Gil and Jang Jun Ha were mysteriously found dead (in 1973 and 1975 respectively). In 1973 Kim Dae Jung was kidnapped by the secret service and almost drowned in the Pacific Ocean.<sup>55</sup> Students, intellectuals, workers, and churches started to vocally oppose Park's rule. The protests started in Busan and Masan, and were on the brink of exploding into a national uprising. However, these movements were abruptly brought to an end when Park was assassinated by his close subordinate in October 1979.<sup>56</sup>

The brief moment of democracy known as the "Seoul Spring" (October – December 1979) was followed by another military coup, staged by a clique of army officers led by Generals Chun Doo Hwan and Roh Tae Woo in December 1979.<sup>57</sup> The generals became presidents in 1980-1988 (Chun) and 1988-1993 (Roh), pursuing anticommunist, development-oriented, and authoritarian policies. The most violent challenge to yet another military rule occurred in 1980 in Gwangju, the capital of South Jeolla province.<sup>58</sup> Student demonstrations against martial law soon turned into a massive student-worker-citizen uprising, leading the military to open fire against civilians. Popular desire for democracy was blamed on a few troublemakers sympathetic to the communist North and was suppressed with brute force, leaving 5,060 victims, including 154 deaths, 70 disappearances, 3,028 injuries, and 1,628 arrests, tortures, and detentions.<sup>59</sup>

Under the Chun regime, numerous national and local media were closed down and merged for more convenient media control and many reporters and journalists, especially those opposed to another military rule, lost their positions.<sup>60</sup> At the same time, a nationwide sweeping arrest of alleged gangsters and ex-convicts took place in the name of "the purification of society."<sup>61</sup> Many innocent civilians were arrested and fell victim to suspicious deaths, disappearance, torture, and forced labor. Moreover, disappearances of dissidents continued under Chun and Roh and many student

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54. OH, *supra* note 47, at 59-60.

55. *Id.* at 60.

56. *Id.* at 73.

57. *Id.* at 75-76.

58. For more details, see OH, *supra* note 47, at 80-87.

59. MAY 18 MEMORIAL FOUNDATION, <http://www.518.org/ease/menu.es?mid=A10304010000> (last visited Dec. 21, 2012).

60. FINAL TRCK REPORT 2010, *supra* note 12, at 252-58.

61. *Id.* at 250-52; UK HEO & TERENCE ROEHRIG, SOUTH KOREA SINCE 1980, at 35 (2010)

and labor activists were disappeared in the course of their mandatory military service.<sup>62</sup>

After ruling for seven years, Chun started to pave the way for a long-term seizure of power by amending the constitution to favor his reelection and obstruct the united opposition party.<sup>63</sup> The constitutional amendment and the death of a university student from drowning during torture united civil society against Chun.<sup>64</sup> Pro-democracy demonstration initiated by students and opposition leaders spread to the general public, including workers, farmers, churches, and the urban middle class. Due to the public pressure, Roh Tae Woo, Chun's proclaimed successor agreed to have direct presidential elections in June 1987 and Roh himself was elected president in December 1987. Roh was elected president with 36.6 percent of the total votes mainly because opposing power was not able to achieve a united candidacy in the 1987 presidential election.<sup>65</sup> The opposition vote was split between Kim Young Sam (28 percent) and Kim Dae Jung (27 percent), both of whom had strong regional platforms in two historically antagonistic southern provinces – Gyeongsang and Jeolla.<sup>66</sup> The Roh administration thus served in a transitional period between authoritarianism and democracy. Certainly the arrival of institutional democracy, which allowed the free, fair, and direct election of the president and other key state offices, was an important change. Despite the formal transition to democracy, however, South Korean society had not changed much under President Roh. The police, military, and intelligence agencies were as powerful and obtrusive as during the Chun regime, and incumbent politicians and public officials maintained their positions.<sup>67</sup>

## II. TRANSITIONAL JUSTICE

### A. *Addressing Abuses Under Japanese Colonialism*

With the creation of the Republic of Korea in 1948, a special commission was instituted to investigate and punish collaborators with Japanese

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62. See generally FINAL TRCK REPORT 2010, *supra* note 12, at 245-348.

63. OH, *supra* note 47, at 91.

64. SUNHYUK KIM, THE POLITICS OF DEMOCRATIZATION IN KOREA: THE ROLE OF CIVIL SOCIETY 91-92 (2000).

65. HEO & ROEHRIG, *supra* note 61, at 40-41.

66. *Id.*

67. SI-UK NAM, HANGUK BOSU SERYEOK YEONGU [A STUDY OF CONSERVATIVES IN KOREA] 471 (2011).

colonialism and thereby to clear the disgraceful history they had wrought.<sup>68</sup> The commission was composed of ten members headed by Kim Sang Deok, a respected figure in the national independence movement. The commission had ten regional offices nationwide, as well as its own enforcement unit, special prosecutorial office, and special court.<sup>69</sup> The special court was headed by Chief Justice Kim Byung Roh, and consisted of sixteen judges who had the authority to sentence former collaborators to death for crimes of treason.<sup>70</sup> The former collaborators were arrested and investigated by the commission, then handed over to the prosecutorial office and the court for a trial. Within four months, the commission arrested 263 suspected collaborators and announced a list of 1,000 more persons for further investigation.<sup>71</sup>

However, the commission was doomed to fail because the new government of Syngman Rhee was mainly composed of colonial elites who survived under the protection of the U.S. occupation.<sup>72</sup> President Rhee was the most vocal opponent of the commission and refused to remove identified collaborators, such as Roh Deok Sul, an infamous police detective during the colonial period, from his administration.<sup>73</sup> Instead, Rhee and his supporters accused the commission and court members of being communists who threatened national security by instigating social dissension out of hatred and vengeance.<sup>74</sup> The members of the commission and judges were

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68. Special Act for the Punishment of the Anti-Nation Activities, Act No. 3, art. 1 (1948) (S. Kor.) [hereinafter Anti-Nation Activities Act].

69. For more details, see generally JONG HEO, BANMIN TEUKUI JOJK-GUA HWALDONG [THE ORGANIZATION AND ACTIVITIES OF THE SPECIAL COMMITTEE FOR INVESTIGATION OF THE PRO-JAPANESE COLLABORATORS] (2003); KANG-SOO LEE, BANMIN TEUKUI YEONGU [A STUDY OF THE SPECIAL COMMITTEE FOR INVESTIGATION OF THE PRO-JAPANESE COLLABORATORS] (2003).

70. See Anti-Nation Activities Act, *supra* note 68, art. 1.

71. HEO, *supra* note 69, at 211.

72. The U.S. military government declared any grassroots state building efforts illegal and dissolved the local councils which had been widely created nationwide immediately after the fall of Japan. Then, the U.S. military government revived the three most hated colonial state apparatuses – police, military, and judicial system – with former colonial state officials. About 80 percent of the former colonial policemen were reemployed by the U.S. military government, which was a grave mistake resulting from expediency. In addition, most positions in the administration were filled with the privileged elites under the colonial rule. The key posts in the central and local administration were filled with colonial elites who had been educated either in Japan or the United States. Rhee, who had previously spent most of his lifetime in the United States and did not have a popular and stable domestic political base, created a strong alliance with the colonial elites. For more details on the U.S. policy, see PARK, *supra* note 25.

73. HEO, *supra* note 69, at 271

74. *Id.* at 331.

threatened with assassination, and the police, with the tacit consent of President Rhee, raided the commission, injuring many and destroying documents.<sup>75</sup> The commission gradually withered, and clearing up the past became one of many ideologically controversial political issues.<sup>76</sup> The special act which created the commission went through three degenerative revisions and was finally annulled in 1951.<sup>77</sup> Within its term, the commission, prosecutorial office, and court investigated 688 cases, indicted 293, tried 78, and convicted 19, who were all soon released.<sup>78</sup>

The pro-Japanese collaborator issue returned to South Korea with the inauguration of President Roh Moo Hyun in 2003. Tensions with Japan intensified during this period over the issues of reparations for the victims of sex slavery and forced labor, a territorial dispute over Dokdo, the slanted content of Japanese history textbooks, and the Japanese prime minister's visit to the Yasukuni Shrine, where several Japanese war criminals are buried.<sup>79</sup> Another commission was thereby set up in 2005.<sup>80</sup> It had eleven members, headed by Seong Dae Gyeong, a history professor. The commission was given an identical mandate to the previous one, but much less power: it did not have any authority to subpoena witnesses or arrest suspects, and had no adjudication power.<sup>81</sup> After four and a half years of investigation, the final report on 1,006 collaborators was published in 2009, which consisted of 25 volumes comprising over 21,000 pages.<sup>82</sup>

At the same time, two other commissions were created to address related issues of Japanese colonialism. In 2004, a special commission was set up to investigate the victims of forced labor under Japanese colonial rule.<sup>83</sup> The commission, with eleven members headed by Jeon Gi Ho, a professor

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75. *Id.* at 351.

76. *Id.* at 362-363.

77. LEE, *supra* note 69, at 319.

78. HEO, *supra* note 69, at 297-300.

79. *Japan and South Korea fail to resolve disputes*, N.Y. TIMES, June 20, 2005; Norimitsu Onishi, *Koizumi visit deepens rift over war shrine*, N.Y. TIMES, Aug. 15, 2006.

80. The Committee for the Investigation of Anti-Nation Activities under Japanese Colonialism was established by the Special Act for the Investigation of Anti-Nation Activities under Japanese Colonialism, Act No. 7203 (2004) (S. Kor.).

81. *See id.* art. 4.

82. THE COMMITTEES FOR THE INVESTIGATION OF ANTI-NATION ACTIVITIES UNDER THE JAPANESE COLONIALISM, CHINIL BANMINJOK HAENGWI JINSANG GYUMYEONG BOGOSEO [REPORT OF THE ANTI-NATION ACTIVITIES UNDER THE JAPANESE COLONIALISM] (2009).

83. The Special Committee for the Investigation of Forced Labor under Japanese Colonialism was created by the Special Act for the Investigation of Forced Labor under Japanese Colonialism, Act No. 7174 (S. Kor.) (2004).

of labor economics specializing in the colonial era, has so far received 142,527 applications and is still working at the time of this writing.<sup>84</sup> In 2006, another commission was set up to investigate the properties of former collaborators, specifying that such properties shall be confiscated and reverted to state ownership.<sup>85</sup> For four years, the commission, with nine members headed by Kim Chang Guk, a prominent lawyer, investigated the properties of 462 collaborators and confiscated the properties of 168 of them.<sup>86</sup>

### B. *Addressing Abuses Under the U.S. Occupation*

Because the Jeju and Yeosu-Suncheon events started as communist uprisings, addressing civilian massacres related to these events was extremely difficult under anticommunist regimes, especially where the dead and missing were believed to be either communist insurgents or their supporters. Victims and their families had to remain silent because any actions to address civilian deaths were deemed illegal for over fifty years. However, mainly due to strong and persistent civil society activism, two commissions were recently established with mandates to address these events: the Jeju Commission (2000) and the TRCK (2005). While the former was established with an investigative mandate limited to the Jeju events, the later had a comprehensive mandate covering the entire period between 1910 and 1987, and hence incorporated the events of Yeosu-Suncheon.

The Jeju Commission was established in 2000 to investigate and reveal the truth, to identify victims, and to restore the honor of the victims of the Jeju 4.3 events.<sup>87</sup> The special act was enacted in 1999 in order to promote human rights, consolidate democracy, and contribute to national unity.<sup>88</sup> To achieve these goals, the commission, the administrative subcommittee, the subcommittee for the report, and a secretariat were set up.<sup>89</sup> As the highest

84. For more information in Korean on the commission, see [http://www.jiwon.go.kr/news/news\\_05\\_list.asp](http://www.jiwon.go.kr/news/news_05_list.asp) (last visited Dec. 21, 2012).

85. Special Act for the Reversion of the Properties of Pro-Japanese Collaborators, Act No. 7769 (S.Kor.) (2005).

86. THE COMMITTEE FOR THE INVESTIGATION OF THE PROPERTIES OF PRO-JAPANESE COLLABORATORS, DECISIONS ON THE REVERSION OF THE PRO-JAPANESE COLLABORATORS' PROPERTIES TO THE STATE (2010).

87. The Jeju Commission was established by the Special Act for the Investigation of the Jeju 4.3 Events and Restoration of the Honor of Victims, Act No. 6117 (2000) (S.Kor.) [hereinafter Jeju Special Act].

88. *See id.* art. 1.

89. JEJU COMMISSION, HWAHAE-WA SANGSAENG: JEJU 4.3 WIWEONHOE BAEKSEO [RECONCILIATION AND COEXISTENCE: THE WHITE PAPER ON THE JEJU COMMISSION] 49 (2008) [hereinafter JEJU COMMISSION WHITE PAPER].



deliberative body, the commission was headed by the prime minister and was composed of twenty members, including the governor of Jeju, seven ministers, and twelve civil society representatives.<sup>90</sup>

The administrative subcommittee, headed by the governor of Jeju, was designed to carry out practical business entrusted by the commission, such as accepting applications from victims and families, conducting an initial screening process of victims by reading individual applications and cross-checking them with resident registration information, and giving financial and medical support to victims.<sup>91</sup> The subcommittee for the report was in charge of collecting and analyzing domestic and foreign evidence needed to investigate the Jeju 4.3 events and human rights violations, establishing the archive, and publishing the report.<sup>92</sup> The subcommittee included fifteen members, composed of five public officials and ten members appointed by the commission, and oversaw the investigation unit with twenty investigators, who mainly conducted research and drafted the report.<sup>93</sup>

The Jeju Commission has worked on three key activities: investigation, screening of victims, and commemoration projects.<sup>94</sup> The special act mandated the commission to finish its investigation in two years and to prepare a report within six months of the end of the investigation.<sup>95</sup> Accordingly, the subcommittee for the report spent two and a half years collecting 10,594 documents and conducting interviews with 503 victim survivors, police/military personnel, scholars, lawyers, and politicians.<sup>96</sup> The special act granted the commission the right to request government secret files and to conduct interviews with victims and relevant witnesses.<sup>97</sup> However, unlike later truth commissions, which had at least minimal enforcement power, the Jeju Commission did not even have the power to issue fines. The final draft was completed in March 2003, but it was published only in December, after the commission repeatedly revised it in the midst of heated debates over nine months.

The report documented four categories of human rights violations: civilian massacres, disappearances, torture cases, and suffering related to guilt-by-association.<sup>98</sup> It confirmed systematic massacres by the military

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90. The ministers were those of justice, defense, public administration and security, health, finance, and government legislation.

91. JEJU COMMISSION WHITE PAPER, *supra* note 89, at 61-65.

92. *Id.* at 57-59.

93. *Id.*

94. See Jeju Special Act, *supra* note 87, art. 3.

95. See *id.* arts. 6, 7.

96. JEJU COMMISSION, *supra* note 29, at 46 -52.

97. See Jeju Special Act, *supra* note 87, arts. 5, 6.

98. See generally JEJU COMMISSION, *supra* note 29.

and police, and found evidence of indiscriminate and sweeping arrests, torture, illegal detention, and summary executions.<sup>99</sup> It also included the suffering of victims' relatives who received unfair treatment in employment, promotion, and international travel under the military regimes.<sup>100</sup> Following the special act, the Jeju Commission defined victims as "anyone who is deceased, missing, or injured due to the Jeju 4.3 events between 1947 and 1954."<sup>101</sup> Between 2000 and 2007, the commission received individual applications from victims and their relatives seeking to restore the victims' honor. Victims first submitted their applications to the administrative subcommittee in Jeju and went through a basic fact-checking process.<sup>102</sup> Then, applications were transferred to the commission, whose members made a decision on victimhood in plenary session.<sup>103</sup> In order to expedite the process, the commission created a subcommittee composed of seven members. The subcommittee went through 68 sessions between 2001 and 2010, setting the criteria for victimhood and applying those criteria to each individual case.<sup>104</sup>

By March 2011, the commission reported that 15,100 Jeju victims had been identified, among which 10,729 were killed (71 percent), 3,920 disappeared (26 percent), 207 injured (1.4 percent), and 244 imprisoned (1.6 percent).<sup>105</sup> The commission also announced 31,255 family members of victims who had suffered.<sup>106</sup> Of all the individual cases, 78.1 percent were attributed to state agents, such as the police, military, and rightist youth groups, and 12.6 percent to the insurgents.<sup>107</sup> Most victims were in their teens and twenties but twelve percent were civilians under ten years old (5.8 percent) or above 60 years old (6.1 percent).<sup>108</sup> Victims were 79 percent

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99. *Id.* at 386.

100. *Id.* at 496-508.

101. Jeju Special Act, *supra* note 87, art. 2.2.

102. JEJU COMMISSION WHITE PAPER, *supra* note 89, at 136-37.

103. *Id.* at 148.

104. *Id.* at 145-46.

105. For more statistical details on the commission's findings, see <http://www.jeju43.go.kr/sub/catalog.php?CatNo=30> (last visited May 2, 2012).

106. *Id.*

107. JEJU COMMISSION, *supra* note 29, at 371. Since August 1947, rightist youth groups were created in South Korea under the protection of the occupational forces and rightist politicians. The United Youth (*daedong cheongnyeondan*) was set up by anti-communist groups in the South; the Northwestern Youth (*seobuk cheongnyeondan*) was created by young people from the North escaping from the communists. Members of the Northwestern Youth arrived in Jeju in order to assist military and police operation.

108. *Id.* at 370.

male and 21 percent female.<sup>109</sup> The combined percentage of children, elderly, and women victims clearly indicates the nature of indiscriminate killings. Mass killings were concentrated – with 63.4 percent of deaths – within a five-month period between October 1948 and February 1949 when the authorities set up headquarters in Jeju and pressed for harsh suppression.<sup>110</sup>

The events of the Yeosu-Suncheon revolt, by contrast, were not addressed until the TRCK decided to investigate them in 2008.<sup>111</sup> The TRCK received individual applications from victims and families of the associated events and, after investigation of their cases, announced state responsibility for 1,340 civilian deaths in 2010.<sup>112</sup> It nonetheless acknowledged that this number under-represents the total number of victims since, in many cases, whole families were exterminated and no one was left to apply for victimhood.<sup>113</sup> The commission also reported that although the revolt was successfully suppressed within a week, sporadic guerrilla warfare and counterinsurgency operations continued for another two years until August 1949, causing frequent civilian deaths.<sup>114</sup>

### C. *Addressing Civilian Massacres During the Korean War*

The first attempt to address civilian massacres during the Korean War came in 1951 after 700 villagers in Geochang, South Gyeongsang province, were murdered by the Korean army.<sup>115</sup> Immediately, a special investigation commission composed of lawmakers and government ministers was set up and a special military tribunal was opened.<sup>116</sup> As a result, three army officers were convicted of murder and cover-up, but all of them were pardoned by President Syngman Rhee during the war and held high positions in his administration.<sup>117</sup> On the contrary, families of victims could not even collect the remains of the dead for three-long-years and were constantly under surveillance and threat. Because of the Geochang case, which

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109. *Id.*

110. *Id.* at 371.

111. FINAL TRCK REPORT 2010, *supra* note 12, at 69.

112. *Id.* at 93.

113. *Id.*

114. *Id.* at 93-94.

115. JUNG-SEOK SEO, CHO BONG-AM-GUA 1950-NYEONDAE (HA) [CHO BONG-AM AND 1950S, VOL. 2] 683-84 (1999).

116. *Id.* at 684.

117. *Id.* at 685.

set the example, victims of other severe massacres nationwide remained silent under the Rhee regime.<sup>118</sup>

The second attempt came immediately after Rhee's resignation in 1960. Families of victims nationwide formed associations to represent their collective demands and this led to the institution of a special congressional commission in 1960.<sup>119</sup> The commission was composed of nine lawmakers headed by Congressman Choi Cheon. The purpose of the commission was to conduct preliminary fact-finding for further legislation.<sup>120</sup> Although expectations were high among victims and their families, cursory nationwide investigations ended after two weeks without further development. The failure of the commission was mainly due to the timing of its institution. Although Syngman Rhee had stepped down, the 4th National Assembly, created under Rhee in 1958, was still composed of many members who were directly or indirectly responsible for the massacres.<sup>121</sup> For example, Choi, the head of the congressional commission had been the provincial police director of the most heavily affected areas – Jeju and Gyeongsang – at the time of war.<sup>122</sup>

What is worse, these initial efforts encountered a severe backlash with the military coup of General Park Chung Hee in 1961. Many who had held leadership positions in the victims' association were arrested and sentenced to death or life imprisonment.<sup>123</sup> Any evidence of massacres, such as monuments or mass graves, was systematically destroyed by the military police.<sup>124</sup> Unaddressed civilian massacres thus gave birth to another kind of human rights violation: the brutal suppression of victims and their families by the military government in 1960.<sup>125</sup> The coup of Park Chung Hee marked the beginning of 32 years of consecutive military and authoritarian regimes, and all discourses or attempts to bring justice to the past atrocities were completely suppressed.<sup>126</sup> With the creation of the TRCK in 2005, vic-

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118. *Id.* at 719.

119. Jung, *supra* note 46, at 104.

120. *Id.*

121. *Id.*

122. JEJU COMMISSION, *supra* note 29, at 192.

123. FINAL TRCK REPORT 2010, *supra* note 12, at 77-82.

124. *Id.* at 82.

125. In addition, families and relatives of victims have suffered discrimination through guilt-by-association or under the involvement system. Under the military and authoritarian regimes, families of victims were discriminated against in terms of unfair treatment in employment, promotion, state examinations, or international travels. Kim Dong-Choon further argues that the victims have also been treated as “second-class citizens” in Korean society. Kim, *Tip of the Iceberg*, *supra* note 7, at 62.

126. FINAL TRCK REPORT 2010, *supra* note 12, at 82.

tims submitted applications for investigation of such violations and, in 2009, the TRCK confirmed these cases.<sup>127</sup>

An important breakthrough came with the inauguration of the first civilian president, Kim Young Sam, in 1993. President Kim had his constituency in the Gyeongsang province and promised to investigate and make reparation to the victims of the Geochang village massacres.<sup>128</sup> In 1997, a special review committee was set up to investigate the massacres and identify civilian victims.<sup>129</sup> The committee acknowledged the responsibility of the military and identified 548 victims and 785 family members.<sup>130</sup> However, no further actions were taken beyond this investigation except a few subsequent commemoration projects at the local level.<sup>131</sup> Families of victims brought a series of lawsuits against the government for monetary compensation, but those lawsuits were ultimately dismissed in 2008 by the Supreme Court on statute of limitation grounds.<sup>132</sup> In 2004, the National Assembly passed a special law designed to make individual reparations to the Geochang victims, but the Prime Minister (an acting president while President Roh Moo Hyun awaited the Constitutional Court's decision on the validity of his impeachment) vetoed the bill. The Prime Minister's justification was that if individual reparations were made to the Geochang victims, other victims of state violence would soon request reparations and this would cause "enormous financial burden to the state budget."<sup>133</sup>

Interestingly, although the special act was designed to address other massacres nationwide, the committee's investigation work did not extend beyond the Geochang case.<sup>134</sup> This was primarily because victims and family members who had been hit hard by the backlash after the coup in 1961

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127. *Id.* at 188.

128. GOECHANG MASSACRE MANAGEMENT OFFICE, GEOCHANG SAGEON CHUMO GONGWON JOSEONG SAGEON JARYOJIP [THE DOCUMENT ARCHIVE PREPARING THE CREATION OF THE MEMORIAL PARK OF THE GEOCHANG EVENT] 34 (2005).

129. The Review Committee for Restoring the Honor of Victims of Geochang and Other Massacres, established by the Act for Restoring the Honor of Victims of Geochang and Other Massacres, Act. No. 5148 (1996) (S. Kor.).

130. GOECHANG MASSACRE MANAGEMENT OFFICE, *supra* note 128, at 37. More details on the Geochang event can be found at the website of the Geochang Massacre Management Office, <http://case.geochang.go.kr>.

131. *Id.* at 38.

132. *Victims of "the Geochang Civilian Massacres" lost a lawsuit*, THE HANKYOREH (S. Kor.), June 5, 2008.

133. *PM Koh vetoed the Geochang Special Act*, THE HANKYOREH (S. Kor.), Mar. 24, 2004.

134. The title of the special act was Special Act on Restoring the Honor of Victims of Geochang and Other Massacres, *supra* note 129.

were extremely cautious and slow to raise their voices.<sup>135</sup> There was a reason for this hesitancy under the Kim administration: Although elected as South Korea's first civilian president in 1993, Kim gained power by a merger of his party with the old ruling party of Roh Tae Woo in 1990. It thus took another decade for victims and families to create the National Association of the Bereaved Families of the Korean War in 2000. With their fervent activism and the support of President Roh Moo Hyun, the TRCK was created in 2005. (I will examine this commission later in detail.)

D. *Addressing Human Rights Violations Under the Authoritarian Regimes*

Two kinds of human rights abuses under the military and authoritarian regimes drew national attention after democratization in 1987: first, the massive deaths and injuries of protestors in the 1980 Gwangju democratic movement; and second, the systematic deaths and disappearance of opposition leaders and activists. Soon after President Chun stepped down in 1988, a nationwide focus was given to the 1980 Gwangju massacre for which Chun Doo Hwan and the then incumbent Roh Tae Woo bore responsibility.<sup>136</sup> The first initiative came from President Roh who immediately set up a presidential advisory commission to promote reconciliation after democratization.<sup>137</sup> The commission officially admitted that the Gwangju uprising was a prodemocracy movement, but opposed any form of punishment or truth-seeking in order to avoid disrupting democratic unity.<sup>138</sup> In response, lawmakers quickly set up a congressional commission on the Gwangju 5.18 events in June 1988 and held seventeen hearings by summoning sixty-seven relevant persons including Chun Doo Hwan.<sup>139</sup> It was the first time in South Korean history that a former president was brought into a public hearing and questioned.

Despite the sensation, the congressional commission suffered innate limitations. This was partly due to its lack of power to force reluctant perpetrators to testify in public, and partly due to the lack of political will of the incumbent Roh Tae Woo administration and his political party.<sup>140</sup> The cases were not transferred to the courts for further criminal prosecution, and Chun Doo Hwan retired to a hermitage on the grounds of the Baekdam Temple in Gangwon province. Nevertheless, in response to the growing national atten-

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135. Jung, *supra* note 46, at 110.

136. FINAL TRCK REPORT 2010, *supra* note 12, at 4.

137. *Id.* at 4-5.

138. *Id.*

139. *Id.*

140. Cho, *supra* note 7, at 581.

tion, the legislature passed an important reparations law in 1990.<sup>141</sup> This marked the first national legislation stipulating governmental reparations to the victims of state violence. From 1990 to 1998, individual reparations were made to 4,537 victims (247 deaths, 64 disappearances, 2865 injuries, and 1,361 arrests or indictments) with a total amount of 210 billion won (175 million USD).<sup>142</sup>

However, demands for truth and justice constantly increased under the first civilian government of Kim Young Sam, and human rights lawyers and activists filed several lawsuits against Chun Doo Hwan, Roh Tae Woo, and their subordinates on the charge of murder and other offences.<sup>143</sup> After intensive investigation, the Seoul district prosecutorial office acknowledged the crime of general murder in the course of suppressing Gwangju protesters in May 1980.<sup>144</sup> The office nevertheless decided not to prosecute the case, claiming that acts of the military coup of December 12, 1979, and the hard line suppression of protestors were highly political decisions, which did not fall under its legal jurisdiction.<sup>145</sup>

Both elites and the public vehemently protested the decision and, at the same time, information about hidden assets of Roh Tae Woo was disclosed.<sup>146</sup> President Kim Young Sam, who was initially against the criminal prosecutions of the two former presidents, finally supported the special act, which removed the statute of limitations and provided an opportunity for retrial of those who had been convicted in relation to the protest.<sup>147</sup> Both Chun Doo Hwan and Roh Tae Woo, along with fourteen generals, were arrested and sentenced to death (Chun) and life imprisonment (Roh), but later pardoned as a token of forgiveness and reconciliation by President Kim Young Sam, with the consent of the then president-elect Kim Dae Jung.<sup>148</sup>

Another widespread abuse of state power – the deaths and disappearances of students, activists and politicians under the military and authoritarian regimes – received attention under President Kim Dae Jung. The Presidential Truth Commission on Suspicious Deaths was created in 2000 and served two terms (October 2000-September 2002 and July 2003-August

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141. Special Act for Reparations for Persons Concerned with the Gwangju Democratic Movement, Act No. 4266 (S. Kor.) (1990).

142. MAY 18 MEMORIAL FOUNDATION, *supra* note 59.

143. Cho, *supra* note 7, at 581.

144. *Id.* at 582.

145. *Id.*

146. *Id.*

147. *Id.* at 583. Special Act Concerning the May 18 Gwangju Democratic Movement, No. 5029 (1995) (S. Kor.).

148. FINAL TRCK REPORT 2010, *supra* note 12, at 5-6.

2004, respectively).<sup>149</sup> The commission was created to investigate and find the causes of deaths, suspected to have been carried out directly and indirectly by government agents during the pro-democracy movement under the pre-1992 military and authoritarian regimes.<sup>150</sup> The special act sought to consolidate democracy and to contribute to national unity by finding the causes of suspicious deaths and restoring the victims' honor, especially in cases where suicide or accidental death was falsely alleged.<sup>151</sup> The commission was mandated to investigate individual cases upon request from the victims' families, to report its findings and policy recommendations to the president, and to identify perpetrators and report them to the relevant judicial bodies for prosecution.<sup>152</sup> In 2002, the commission concluded its first term, but because many cases were left unresolved, the commission began a second term in 2003. This time, the term was reduced to one year mainly because the commission was mandated to investigate only forty-four remaining cases.<sup>153</sup>

The commission consisted of nine commissioners headed by Yang Seung Gyu (2000-2002) and Han Sang Beom (2002-2004), both respected legal scholars. The commissioners, nominated by the president with the consent of the National Assembly, were all civilians with no apparent party affiliation in order to achieve neutrality and objectivity in their investigation.<sup>154</sup> The first-term commission was created with seventy-eight residing staff members within five departments and ten investigatory teams, but was

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149. Special Act on the Investigation of Suspicious Deaths, Act. No. 6170 (2000) (S. Kor.) [hereinafter Suspicious Deaths Act]. The law was revised three times: Act. No. 6496 (2001) (S. Kor.), Act. No. 6670 (2002) (S. Kor.), Act. No. 6750 (2002) (S. Kor.).

150. See Suspicious Deaths Act, *supra* note 149, art. 2.1. Although the Park Chung Hee dictatorship started as early as 1961, the Suspicious Deaths Commission covered only crimes that occurred after August 7, 1969, the date when President Park amended the constitution to allow him to run for three consecutive terms. Previously, the constitution allowed a person to hold a maximum of two terms during a lifetime.

151. *Id.* art. 1.

152. *Id.* art. 30.

153. THE PRESIDENTIAL COMMISSION ON SUSPICIOUS DEATHS, UIMUNSA JINSANG GYUMYEONG WIWONHOE-EUI HWALDONG-GUA GWEONGO: 2-CHA (2003.7~2004.6) [THE ACTIVITIES AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON SUSPICIOUS DEATHS: SECOND TERM (July 2003-June 2004)] 101-02 (2004) [hereinafter SUSPICIOUS DEATHS REPORT: SECOND TERM].

154. The first-term commission was composed of one public official, five professors, and three lawyers. The second-term commission was composed of new members, but its overall composition remained the same in the sense that three commissioners were lawyers, five were professors and one was a government official.



expanded in its second term to 101 staff members across thirteen teams.<sup>155</sup> Department 1 investigated suspicious deaths by all other agencies except the police and military; Department 2 investigated cases related to the police; Department 3 dealt with cases related to the military; while Department 4 consisted of a special investigation unit under the commission chair.<sup>156</sup> The first-term commission had a budget of 11.5 billion won (9.6 million USD), while the second-term commission's budget was 4.5 billion won (3.8 million USD).<sup>157</sup>

Initially, the commission's mandate was limited to six months with a possible extension for three more months.<sup>158</sup> Later the mandate and terms were extended because commissioners and lawmakers realized that the commission needed more time to fulfill its mandate.<sup>159</sup> The commission received eighty applications from victims and family members between October 2000 and January 2001 and brought five additional cases to the list.<sup>160</sup> Of the cases it investigated, thirty were attributed to the police (Department 2), twenty-eight to the military (Department 3), twelve to other agencies such as the Korean Central Intelligence Agency and Ministry of Justice (Department 1), and fifteen unspecified (Department 4).<sup>161</sup> Of the eighty-five suspicious deaths investigated, thirty were determined to have resulted from state violence, twenty-five were found undeterminable due to a lack of evidence, thirty-six were rejected, and five were dismissed.<sup>162</sup>

During its first term, the commission interviewed 6,536 witnesses and requested 3,126 documents from relevant government agencies, while it interviewed an additional 3,560 witnesses during its second term.<sup>163</sup> The special act gave the commission the rights to interview government officials and request secret files, but gave only the limited enforcement power to issue fines not exceeding 10 million won (8,800 USD).<sup>164</sup> Consequently it had to rely on voluntary cooperation from individuals, government

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155. SUSPICIOUS DEATHS REPORT: SECOND TERM, *supra* note 153, at 103-104; The Presidential Commission on Suspicious Deaths, Uimunsa Jinsang Gyumyeong Wiwonhoe Bogoseo: 1-Cha (2000.10~2002.10) [The Report of the Presidential Commission on Suspicious Deaths: First Term (Oct. 2000-Oct. 2007)] 97-98 (2002) [hereinafter SUSPICIOUS DEATHS REPORT: FIRST TERM].

156. *Id.* at 101.

157. SUSPICIOUS DEATHS REPORT: SECOND TERM, *supra* note 153, at 94.

158. *See* Suspicious Deaths Act, *supra* note 149, art. 30.

159. SUSPICIOUS DEATHS REPORT: FIRST TERM, *supra* note 155, at 79.

160. *Id.* at 136.

161. *Id.* at 137.

162. SUSPICIOUS DEATHS REPORT: SECOND TERM, *supra* note 153, at 107.

163. *Id.* at 111.

164. Suspicious Deaths Act, *supra* note 149, art. 37.

branches and agencies. The National Intelligence Service rejected thirty-five percent of the commission's requests, while the Defense Security Command (the military intelligence service) rejected twenty-seven percent.<sup>165</sup> The commission could also issue a warrant to compel witnesses to cooperate in an interview and investigation.<sup>166</sup> During its first term, it issued eleven warrants, including two for former presidents Chun Doo Hwan and Roh Tae Woo.<sup>167</sup> However, as the commission had no strong enforcement tools, none of the eleven warrants was carried out.<sup>168</sup> For their refusal to cooperate, former presidents Chun and Roh were fined 10 million won (8,800 USD) and 7 million won (5,800 USD), respectively.<sup>169</sup>

The final report, which covered the commission's first term activities, was published in 2002.<sup>170</sup> The report consisted of four volumes comprising over 3,000 pages. The first volume analyzed the overall causes of suspicious deaths and made policy recommendations, while the three other volumes focused on the eighty-five individual cases. The commission also published a second report on its second term activities in two volumes comprising over 1,300 pages.<sup>171</sup> In sum, the commission found two key causes of the suspicious deaths that occurred during the authoritarian regimes. First, state power was misused to protect and prolong the regime rather than to serve the public good.<sup>172</sup> Second, government bodies responsible for monitoring and protecting the citizens' basic political and civil rights not only failed to fulfill their mission, but also acquiesced in government abuses and were even involved in concealing, distorting, and manipulating the truth related to suspicious deaths.<sup>173</sup>

Based on the findings and conclusions drawn from individual cases, the commission made three sets of policy recommendations to the president.<sup>174</sup> The first set included recommendations to continue efforts at finding the truth about suspicious deaths, issuing government and individual apologies to victims and the general public, prosecuting identified perpetrators, restoring the honor of victims by the annulment of convictions, launching commemoration projects such as a memorial park and a museum dedicated to the victims, and prohibiting the destruction of the government

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165. SUSPICIOUS DEATHS REPORT: SECOND TERM, *supra* note 153, at 143-44.

166. SUSPICIOUS DEATHS ACT, *supra* note 149, art. 22.

167. SUSPICIOUS DEATHS REPORT: FIRST TERM, *supra* note 155, at 220-21.

168. *Id.*

169. *Id.*

170. *Id.*

171. SUSPICIOUS DEATHS REPORT: SECOND TERM, *supra* note 153.

172. SUSPICIOUS DEATHS REPORT: FIRST TERM, *supra* note 155.

173. *Id.*

174. *Id.* at 145.

records used by the commission.<sup>175</sup> In the second set, the commission documented the suffering of the bereaved family members in detail and recommended making significant reparations to the victims and their family members.<sup>176</sup> In particular, the commission recommended that the state make reparations to all the members of bereaved families, expressing state responsibility by enacting a special act.<sup>177</sup> Such reparation, the commission concluded, should come in the form not only of lump-sum cash, but also of pensions or other benefits in accessing government medical, educational, or vocational services.<sup>178</sup> In the third set, the commission recommended specific reforms to the government structure in order to prevent future abuse of state power. These included reform of the criminal justice and prosecution system, the practices of the intelligence services, and laws governing the activity and the structure of the military.<sup>179</sup>

Between 2004 and 2006 several other commissions were established to investigate human rights abuses under the military and authoritarian regimes. The police, the Ministry of Defense, and the National Intelligence Service (formerly known as the Korean Central Intelligence Agency) established commissions in 2004 and 2005 to investigate past human rights violations and suspicious deaths.<sup>180</sup> In 2005, the TRCK was likewise mandated to investigate the remaining cases of suspicious deaths and disappearances and other cases of systematic human rights violations that occurred under the military and authoritarian regimes.<sup>181</sup> In 2006, an additional special commission was created to investigate suspicious deaths within the military itself, and it confirmed 246 more death cases.<sup>182</sup>

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175. *Id.* at 148-57.

176. *Id.* at 173-83.

177. *Id.* at 176, 181.

178. *Id.* at 179.

179. *Id.* at 183-209.

180. FINAL TRCK REPORT 2010, *supra* note 12, at 12-13. For more details, see Ahn Kim Jeong Ae, *Gukga Gigwan-eui Minjuhwa-wa Guageosa Cheongsan [Democratization of Government Bodies and Transitional Justice]*, 93 YEOKSA BIPYEONG [CRITICAL REVIEW OF KOREAN HISTORY] 142-64 (2010).

181. The Framework Act on Clearing up Past Incidents for Truth and Reconciliation, Act. No. 7542, art. 2.5, May 31, 2005 [hereinafter Framework Act], *translation available at* [http://www.jinsil.go.kr/English/Information/legal/read.asp?num=76&pageno=1&stype=&sval=&data\\_years=2012&data\\_month=](http://www.jinsil.go.kr/English/Information/legal/read.asp?num=76&pageno=1&stype=&sval=&data_years=2012&data_month=)

182. The Truth Commission on Military Suspicious Deaths was created by the Special Act for the Investigation of Military Suspicious Deaths, Act. No. 7626 (2005) (S. Kor.).

### E. A Comprehensive Mandate

While the majority of truth commissions in South Korea were created under special statutes focused on discrete incidents or events, the TRCK was created with a much more comprehensive mandate.<sup>183</sup> It had the mandate to investigate and reveal the truth not only about past human rights abuses, violence, and massacres but also about more general history since 1910.<sup>184</sup> Its enabling act, the 2005 Framework Act on Clearing Up Past Events for Truth and Reconciliation, aimed thereby to enhance state legitimacy, reconcile South Korea with its past, and help the country achieve national unity by honoring those who participated in the independence movements.<sup>185</sup> The act stipulated five main categories of investigation: domestic independence movements under Japanese colonial rule (1910-1945); overseas independence movements during the same period or cases that enhanced the national prestige; civilian massacres from independence (1945) through the Korean War (1950-1953); human rights violations by the state since independence, especially under the military and authoritarian regimes (1961-1992); and human rights abuses, violence, massacres, terrorism, and suspicious deaths perpetrated by the enemies of the state (1961-1995).<sup>186</sup> Although victims of the Korean War massacres led the transitional justice movement to establish the TRCK,<sup>187</sup> the ruling National Congress for New Politics party had to include additional categories of investigation to the framing act, such as crimes committed by enemies of the state or enhancement of national prestige, in the course of negotiation with the opposition Grand National Party.<sup>188</sup>

The TRCK was mandated to investigate, at the request of victims and their family members, individual cases of human rights violations.<sup>189</sup> It had a four-year tenure, with a possible extension for two more years.<sup>190</sup> It had two key functions: first, to screen individual applications for further investigation, officially investigate the cases, and make decisions; and second, to recommend reconciliatory policies to relevant government branches and agencies and help establish further research institutes addressing past history.<sup>191</sup> The commission was an independent body composed of fifteen

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183. Framework Act, *supra* note 181.

184. *Id.* art. 2.

185. *Id.* art. 1.

186. *Id.* art. 2.

187. FINAL TRCK REPORT 2010, *supra* note 12, at 16.

188. *Id.* at 19.

189. See Framework Act, *supra* note 181, art. 19.

190. *Id.* art. 25.

191. FINAL TRCK REPORT 2010, *supra* note 12, at 38, 40.

commissioners; eight who were appointed by the National Assembly, four by the president, and three by the chief justice of the Supreme Court.<sup>192</sup> The commission has had three presidents: Song Gi Yin, a Catholic priest (2005-2007), Ahn Byung Wook, a professor of Korean history at the Catholic University of Korea (2007-2009), and Lee Young Jo, a professor of political science (2009-2010). For four and a half years, the commission had around 240 residing staff members and a total annual budget of 76 billion won (63.3 million USD).<sup>193</sup>

The commission worked in three subcommittees, thirteen investigation teams, and employed 157 investigators: the Subcommittee of Investigation on National Independence (3 teams with 39 investigators), the Subcommittee of Investigation on Mass Civilian Sacrifices (5 teams with 66 investigators), and the Subcommittee of Investigation on Human Rights Abuses (5 teams with 42 investigators).<sup>194</sup> Out of the 11,174 applications the commission received, 290 cases were related to the independence movement, 8,175 to civilian massacres, and 2,709 to human rights abuses either by the state or the state's enemies.<sup>195</sup> By September 2010, the commission investigated all cases, confirming the facts of 8,468 cases and rejecting 1,729 cases.<sup>196</sup> The most important category of investigation was represented by the civilian massacres during the early years of state-building, which constituted seventy-five percent of total applications. The commission could request secret files from relevant government agencies; conduct interviews with relevant victims, witnesses and perpetrators; and issue a warrant to call witnesses for an interview and investigation.<sup>197</sup> However, the warrant lacked strong enforcement mechanisms, with only a fine not exceeding 10 million won for noncompliance (8,800 USD).<sup>198</sup>

Since 2006, the commission has published seven interim reports, two per year, and widely distributed them to the National Assembly, government offices, human rights organizations, and libraries.<sup>199</sup> The final report comprised four volumes of over 1,100 pages in total, was released in December 2010, and included an overall analysis of human rights violations and the details of individual cases.<sup>200</sup> The commission attributed eighty-two percent of the 9,609 petitions regarding wartime massacres to state agents

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192. Framework Act, *supra* note 181, art. 4.

193. FINAL TRCK REPORT 2010, *supra* note 12, at 58.

194. *Id.* at 50-54.

195. *Id.* at 32.

196. *Id.*

197. *See* Framework Act, *supra* note 181, arts. 23-24.

198. *See id.* art. 47.

199. *See id.* art. 32.

200. FINAL TRCK REPORT 2010, *supra* note 12.

(the police, the military and rightist groups associated with the state) and only eighteen percent to the North Korean military and leftist groups.<sup>201</sup> The commission identified several patterns of massacres: nationwide preventive detentions and summary executions of former communists and their supporters immediately after the outbreak of war; retaliation against alleged communist collaborators with the North Korean occupational force; killings of civilians during the rooting-out of communist guerrillas during and after the war in the southern provinces of Jeolla and Gyeongsang; killings of civilians by indiscriminate U.S bombings; and nationwide massacres of civilians suspected of being communists or having family members with such an ideological disposition.<sup>202</sup>

### III. TRUTH COMMISSION RECOMMENDATIONS: LESSONS FOR IMPLEMENTATION

By 2012, the major activities of the various truth commissions have reached an effective end, leaving a multitude of policy recommendations behind for implementation by the South Korean state and broader civil society. While it is recognized that the process of implementing truth commission recommendations can be a long and politically complex one, are there lessons that can be drawn from South Korea's experiences with earlier commissions? This part analyzes two of South Korea's most prominent truth-seeking efforts – the Jeju Commission (2000-current) and the TRCK (2005-2010) – in an effort to identify factors that can facilitate the successful implementation of truth commission recommendations. These commissions are chosen not only for the many similarities they share in terms of the work environments they encountered,<sup>203</sup> but primarily because the recom-

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201. *Id.* at 32.

202. *See generally id.*

203. There is a close parallel between the Jeju Commission and the TRCK. First, both commissions are mandated to investigate mainly atrocities that occurred between 1945 and 1954. The implication, first of all, is that most of the key witnesses are already dead or are too old to give testimony. In addition, most of the key documents have been either destroyed or lost by the time of investigation, with many critical documents systematically destroyed under the military regimes. Second, the most frequent form of human rights violations was personal integrity rights violations, more precisely, massacres and disappearances. Third, both cases involved ideologically controversial issues because the previous anticommunist regimes suppressed truth, painted the victims as communists, and justified the crime of the military and police. Both commissions met with strong resistance from the conservative and anticommunist wing of the society, especially from the military and police. These challenges existed before, during, and after the commission activities, and in both commissions, attack came from both inside and outside.

mentations of the Jeju Commission have been particularly well implemented, while those of the TRCK appear to be faring less well.

Although we have to bear in mind that the Jeju Commission released its report containing policy recommendations for the government a full seven years earlier than the TRCK (2003 and 2010, respectively), the successful implementation of the Jeju Commission's recommendations and the comparable lack of progress in implementing the TRCK recommendations is noteworthy.<sup>204</sup> What accounts for this difference? This section will review several reasons that have been offered, although none of them appear to satisfactorily explain this difference. Without a proper understanding of this question, it is difficult to determine how the Jeju Commission's success in terms of implementing its recommendations might inform the implementation process of the TRCK recommendations and lead to successful outcomes.

The Jeju Commission offered seven recommendations: (1) the issuance of an apology; (2) the declaration of a memorial day; (3) the use of the report to educate students and the general public; (4) the establishment of a memorial park; (5) the provision of essential living expenses to bereaved families; (6) support for excavations of mass graves; and (7) continuous support for further investigation and commemoration projects.<sup>205</sup> With the exception of declaring a memorial day, the government has started to implement all of these recommendations.<sup>206</sup>

Immediately after the release of the report in 2003, President Roh Moo Hyun made an official apology to the victims, families, and Jeju islanders.<sup>207</sup> President Roh stated:

As the president, who is responsible for state affairs, I truly give you my apology and words of consolation for the wrongdoings of past national authorities. . . . The government will create an April 3 Peace Park and actively support suggestions made by the April 3 Truth Examination Committee, including swift recovery of the honor of those killed. . . . Now is the time to close the chapters of the unfortunate

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204. Suh Joong Seok also evaluates the Jeju Commission's activities as "relatively successful." See Joong Seok Suh, *Guageosa Jinsang Gyumeong-eui Jeomgeomgua Hy-anghu Gwaje [Revisiting the Truth-Seeking Efforts on the Past History and Remaining Tasks]*, 80 YEOKSA BIPYEONG [CRITICAL REVIEW OF KOREAN HISTORY] 73 (2007).

205. JEJU COMMISSION WHITE PAPER, *supra* note 89, at 112.

206. The commission recommended declaring a memorial day in order to appease the souls of the dead and make the past atrocities a lesson for the future. The administration was cautious in implementing this recommendation because forty-two memorial days had already been declared and a decision on forty-five other proposed commemoration days was still pending. *Id.* at 114.

207. *Id.* at 117-21.

events that took place here in the process of establishing the government in post-independence days, and to go forward. . . . We must put an end to all conflicts on this land through reconciliation and cooperation for peace on the Korean Peninsula to open a road to Northeast Asia and globalism.<sup>208</sup>

This was significant in that it marked the first apology issued by a head of state in Korea regarding human rights violations caused by state violence.<sup>209</sup> Moreover, in 2006, President Roh visited Jeju Island to participate in a memorial service for the victims, at which time he issued another apology.<sup>210</sup> Thus, the first recommendation was implemented swiftly, paving the way for the implementation of the remaining policy recommendations.

In addition, the narratives and descriptions in government documents and high school history textbooks have changed since the release of the report. Most textbooks have departed from the previous characterization of the Jeju events as a communist rebellion and moved toward a more balanced description of the armed uprising and civilian sacrifices.<sup>211</sup> The military has likewise changed its description of the Jeju events, albeit under significant public pressure. In 2004, for example, immediately after the release of the report, the military published and released the 2004 edition of *The History of 6.25*, describing the Jeju 4.3 events using the traditional anticommunist view while ignoring the findings of the Jeju Commission.<sup>212</sup> Although researchers and journalists had discovered several new facts in the 1990s, none of these new developments were reflected in the book, which suffered from obvious errors. In response, victims and activists organized rallies and local lawmakers demanded an apology from the minister of defense urging him to discontinue the release of the book.<sup>213</sup> Due to the pressure from civil society, the military eventually decided to discontinue the publication of the book, promising to revise it to reflect the findings of the Jeju Commission.<sup>214</sup>

A minimum level of monetary subsidy was also selectively given to the victims of Jeju and their family members who had suffered economic hardship and physical and mental illness.<sup>215</sup> In accordance with its recom-

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208. *Official Apology Issued for Jeju Killings*, THE CHOSUN ILBO, (S.Kor.), Oct. 31, 2003.

209. JEJU COMMISSION WHITE PAPER, *supra* note 89, at 117.

210. *Id.* at 302.

211. *Id.* at 114-15.

212. Ho Jin Kang, *Distortion of 4.3*, THE JEMIN DAILY (S. Kor.), Jul. 10, 2004.

213. Ho Joon Huh, '*Distortion of 4.3' Demand for the apology*, THE HANKYOREH (S. Kor.), July, 16 2004.

214. Suh, *supra* note 204, at 62; Huh, *supra* note 213.

215. JEJU COMMISSION WHITE PAPER, *supra* note 89, at 115.



mentations, the Jeju Commission has likewise been engaged in three commemoration projects. The earliest commemoration project was mainly focused on creating the Jeju Peace Memorial Park and Museum. However, both victims and activists saw the limitations of these projects and thus pushed for a major revision of the special act in 2007 to include further commemoration activities, specifically through the establishment of a permanent Jeju 4.3 Peace Foundation.<sup>216</sup> The Jeju 4.3 Peace Foundation was created to promote peace and human rights by, first, maintaining the Jeju 4.3 Museum and Memorial Park, and second, conducting additional investigations.<sup>217</sup> At the same time, the commission launched a long-term excavation project in 2006 to discover mass graves and find the remains of victims.<sup>218</sup> By 2010, eight out of 151 mass murder sites were unearthed, and the remains of over 400 victims have been discovered so far.<sup>219</sup> Recently, the Jeju 4.3 Peace Foundation launched a project headed by Park Chan Sik, a long-time researcher and activist of the Jeju 4.3 events, to further investigate the conflict and massacres.<sup>220</sup>

The TRCK recommendations, by contrast, have fared less well.<sup>221</sup> Although the TRCK's final report was released only in December 2010, the TRCK had by then already published seven interim reports, including recommendations on individual cases since 2006.<sup>222</sup> These recommendations were different in nature from the general policy recommendations made by the Jeju Commission, as they were made on individual cases already confirmed by the TRCK. Thus, by June 30, 2010, the TRCK had announced 855 recommendations on individual cases.<sup>223</sup> Most recommendations – about 74 percent of the total – were made to the military and police.<sup>224</sup>

To monitor the implementation process, the government set up the Recommendations Follow-Up Board (Board) under the Office of the Prime Minister in 2007, a body later incorporated into the Ministry of Public Ad-

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216. *Id.* at 116.

217. *Id.* at 311.

218. *Id.* at 115-16.

219. *Id.* at 275-76.

220. Hye Ah Ko, *Launching a Follow-up Investigation on the Jeju 4.3 Events*, THE JEMIN DAILY (S. Kor.), Feb. 10, 2012.

221. In 2009, the Hankyoreh, a progressive newspaper, reported that among twenty-seven policy recommendations of the TRCK regarding the victims of civilian massacres, half of them have not even begun to be implemented. See Kil & Kwon, *supra* note 15.

222. These recommendations were made available on the TRCK's official website, <http://www.jinsil.go.kr> (accessed on 2 May 2012).

223. FINAL TRCK REPORT 2010, *supra* note 12.

224. *Id.* at 202.

ministration and Security in 2008.<sup>225</sup> According to the TRCK's report, the TRCK and the Board worked closely together: The TRCK delivered the policy recommendations on individual cases to the Board and the Board requested relevant ministers to draft detailed implementation plans. In turn, ministers were to report back to the Board every quarter on the progress made on those plans, with the Board reporting back to the TRCK biannually.<sup>226</sup> The recommendations are divided into four categories: (1) measures to restore the honor of victims; (2) measures to prevent the recurrence of human rights violations; (3) measures to achieve reconciliation and to promote democracy; and (4) measures to educate about and publicize the past.<sup>227</sup> Specific recommendations included apology, correction of government records, revision of textbooks and government documents, legislation and revision of the relevant laws, human rights education, support for memorial projects, reparations, and retrials for those who were falsely convicted.<sup>228</sup>

The TRCK recommended the government apologize for 179 human rights violations cases and, as of 2010, fifty-two official apologies had been issued.<sup>229</sup> Such apologies were, however, issued mostly by local police chiefs and low-profile military commanders. Furthermore, most apologies were not apologies in a strict sense<sup>230</sup> as most merely expressed officials' "regrets" or "condolences" while delivering an address at a memorial service.<sup>231</sup> More recently, the military and police have stopped delivering addresses altogether, claiming that the simple presence of military and police officers at memorial services is sufficient.<sup>232</sup> The only exception to this trend has been President Roh Moo Hyun's apology to the victims of civilian massacres during the Korean War. However, even this message was not

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225. It was set up by the Regulations on the Establishment and Operation of the Recommendations Follow-Up Board (Presidential Directive No. 195) (S. Kor.), (2007); REPUBLIC OF KOREA, TRUTH AND RECONCILIATION ACTIVITIES OF THE PAST THREE YEARS (2009) [hereinafter TRCK THREE YEARS REPORT]. For more details, see Kim Dong-Choon, *Korea's Truth and Reconciliation Commission: An Overview and Assessment*, 19 BUFF. HUM. RTS. L. REV. 97 (2012).

226. TRCK THREE YEARS REPORT, *supra* note 225, at 33; *see also* FINAL TRCK REPORT 2010, *supra* note 12, at 119-200.

227. FINAL TRCK REPORT 2010, *supra* note 12, 201.

228. *See generally id.* at 205-17.

229. *Id.* at 203.

230. Editorial, *Is Government going to make the effort of the TRCK in vain?*, THE HANKYOREH, Sept. 7, 2009. .

231. Kil & Kwon, *supra* note 15.

232. *Id.*

delivered in person, as was done in the Jeju case, but rather via a videotaped message.<sup>233</sup>

As for retrials, the TRCK recommended retrials in forty-two cases, with eighteen victims having cleared their names of false convictions by June 2010.<sup>234</sup> In addition, several individual victims filed lawsuits against the government for reparations, and some have been successful in recovering very large damages awards.<sup>235</sup> Overall implementation of the individual recommendations has thus been reported to be quite good: according to the TRCK's final report, 361 out of 855 recommendations (42 percent) were implemented.<sup>236</sup> However, a closer look reveals that almost half of implemented recommendations involved measures that required very little effort, such as placing the TRCK's report in government offices (117 cases), or supporting and participating in memorial services (55 cases).<sup>237</sup> The *Hankyoreh*, a progressive newspaper, has referred to these efforts as the "least expensive or least controversial" measures.<sup>238</sup>

The picture becomes even gloomier when we consider the final and comprehensive policy recommendations the TRCK made to the government in 2009. The TRCK made three policy recommendations in August and October of 2009.<sup>239</sup> First, the TRCK recommended the government and National Assembly enact a special law to make reparations available for the victims of civilian massacres during the Korean War. Second, the commission recommended the government establish a permanent research foundation in order to continue the investigative work of the TRCK and promote reconciliation. Finally, the commission recommended that the government continue to unearth mass murder sites and collect and properly bury the remains of victims. Unfortunately, none of these three key policy recommendations have been implemented as of May 2012. The prospect for the future implementation of these recommendations is not bright either.<sup>240</sup> Upon the TRCK's announcement of a plan to create a permanent research foundation, for example, the conservative wing of Korean society vehemently attacked the commission. Major conservative newspapers criticized

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233. TRCK THREE YEARS REPORT, *supra* note 225, at 107.

234. FINAL TRCK REPORT 2010, *supra* note 12, at 192.

235. See Kim, *supra* note 225; Tae-Ung Baik, *Fairness in Transitional Justice Initiatives: The Case of South Korea*, 19 BUFF. HUM. RTS. L. REV. 169 (2012).

236. FINAL TRCK REPORT 2010, *supra* note 12, at 203.

237. *Id.*

238. Kil & Kwon, *supra* note 15.

239. FINAL TRCK REPORT 2010, *supra* note 12, at 211.

240. Jung, *supra* note 13; Kil & Kwon, *supra* note 15; Lee, *supra* note 15.

it for “trying to extend [its] work under [a] new title”<sup>241</sup> and impugned commissioners and staff as “people who are trying to benefit from the research foundation with taxpayer money worth 800 billion won.”<sup>242</sup>

What accounts for the differences between the Jeju Commission and the TRCK with respect to implementing recommendations? Commentators have offered several explanations, none of which appear satisfactory when considered in light of the experience of the Jeju Commission. These explanations focus on the built-in weaknesses and limitations of the TRCK, which, it is argued, hindered the TRCK’s work and eventually obstructed the implementation of its policy recommendations.

The first explanation offered is that the framework law creating the TRCK was a result of political compromise, thereby creating innate constraints for the TRCK.<sup>243</sup> According to this claim, the conservative party tried to weaken the TRCK in the first place by failing to give it sufficient power.<sup>244</sup> Yet, a similar political settlement underlies the special law creating the Jeju Commission. Although victims and activists demanded that the Jeju Commission be granted more powers to enhance its effectiveness, such as the powers to search and seize, to issue warrants, or to request retrials, none of these were adopted in the final bill. In addition, the Jeju Commission faced several crises and challenges throughout its tenure. Opponents, mainly retired military and police personnel and conservative elites and organizations, attempted to frustrate the activities and accomplishments of the commission from the start. The most important challenge to the Jeju commission’s work involved legal appeals to the Constitutional Court against its framework act (in 2000), its official report (2004), and the president’s apology (2004).<sup>245</sup> Although the court dismissed them all, these appeals had an important negative and constraining impact on the activities of the commission.

Second, TRCK commissioners and investigators often complained that, although the TRCK was empowered to request access to government files, the TRCK did not have any enforcement power when the government

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241. Editorial, *Who benefits from the research foundation*, THE KUKMIN ILBO (S. Kor.), May 18, 2009.

242. Editorial, *People trying to benefit from the research foundation with 800 billion won*, THE DONGA ILBO (S. Kor.), May 18, 2009.

243. Kim, *The Long Road*, *supra* note 7, at 548; Kim, *supra* note 225; Keun-Sik Jung, *Institutionalization of Social Movements for the Truth of Civilian Massacres and Its Prospects*, 1 GENOCIDE YEONGU [STUDY OF GENOCIDE] 26 (2007).

244. Kim, *supra* note 225.

245. JEJU COMMISSION WHITE PAPER, *supra* note 89, 123-25. For the Constitutional Court’s decisions, see 2009 Hun-Ma 238 (2001); 2000 Hun-Ma 509 (2003); and 2004 Hun-Ma 577 (2004).

branches or organizations rejected such requests.<sup>246</sup> While this certainly imposed a serious constraint, the Jeju Commission faced precisely the same problem.<sup>247</sup> In fact, the TRCK was more powerful than the Jeju Commission in that it had the power to issue warrants and fines if a person failed to comply with its requests.<sup>248</sup> The Jeju Commission, by contrast, did not have this power. As TRCK former standing commissioner, Kim Dong-Choon, explained in a media interview, the TRCK was likewise more advanced than the Presidential Commission on Suspicious Deaths given that the TRCK, if denied access to any information requested, had the power to request an explanation for the denial from the head of the institution.<sup>249</sup>

Moreover, one of many advantages of the TRCK was that it had more resources than the Jeju Commission. The TRCK had a total annual budget of 76 billion won and employed approximately 240 residing staff, including 147 investigators.<sup>250</sup> By contrast, the Jeju Commission spent less than 10 billion won and employed a mere sixty residing staff, including twenty investigators.<sup>251</sup> In other words, the TRCK operated with a budget and personnel seven times greater than the Jeju Commission. Even so, it often failed to operate effectively as a team. Conservative critics, including former TRCK president Lee Young Jo, have repeatedly pointed out the inefficiency of the large organization.<sup>252</sup>

It may be said that the TRCK's huge organizational structure and resources were necessary given its comprehensive investigative mandate. It might also be said that the Jeju case was better off since the events investigated were confined to a single island. This is true and certainly promoted unity in terms of how civil society organized to respond to controversies.<sup>253</sup> It does not nevertheless mean that the issues addressed were any less complicated than those addressed by the TRCK. In particular, although the major events occurred in Jeju, prisoners were transferred to the mainland and the Korean War broke out in the course of the Jeju events. Moreover, since

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246. Kim, *The Long Road*, *supra* note 7, at 546; Kim, *supra* note 225; Jung, *supra* note 243, at 27.

247. JEJU COMMISSION WHITE PAPER, *supra* note 89, at 73.

248. *See* Framework Act, *supra* note 181, arts. 45, 47.

249. Jae Jung Kim, *supra* note 10, at 44.

250. FINAL TRCK REPORT 2010, *supra* note 12, at 51, 58.

251. JEJU COMMISSION WHITE PAPER, *supra* note 89, at 60-66.

252. *See, e.g.,* Lee, *Commissioning the Past*, *supra* note 4, at 16; Mun-myeong Huh, Op-Ed, *Truth and Reconciliation Commission*, THE DONGA ILBO (S. Kor.), Dec. 12, 2008; Sun-taek Gwon, Op-Ed, *Korea's Obese Truth and Reconciliation Commission*, THE DONGA ILBO (S. Kor.), May 17, 2007; *Truth Commission Flags Colossal Waste of Money*, THE CHOSUN DAILY, Mar. 15, 2007.

253. Suh, *supra* note 204, at 56.

the number of victims was larger than in other single event cases, the resistance from the military and police was particularly severe and well organized.<sup>254</sup>

The third claim is the strongest. It argues that the TRCK's effectiveness was fundamentally undermined by the changing political context. Specifically, while the TRCK started its work under the Roh Moo Hyun administration, which fully supported the commission's activities, it finished under the current Lee Myung Bak administration, which has effectively denied the commission's core value.<sup>255</sup> In particular, President Lee has emphasized the importance of economic development and looking-forward rather than wasting money looking backward and unearthing past atrocities.<sup>256</sup> The effectiveness of the TRCK's activities was particularly compromised, it is said, by President Lee's nomination of a new TRCK president, Lee Young Jo, and other commissioners who were less enthusiastic about past truth commission activities. There is certainly some truth to this, as state officials became uncooperative with TRCK requests after the victory of Lee Myung Bak, not only in the military and police but also in other government offices.<sup>257</sup> At the same time, the TRCK had its budget for the last year cut significantly by the government and congress<sup>258</sup> and, although the TRCK had a right to request an extension of its mandate for up to two years, its new president Lee Young Jo requested only two months and hurriedly closed down the TRCK.<sup>259</sup>

Nevertheless, I do not consider this the critical cause of the commission's inability to implement its recommendations. There are two reasons. First, the TRCK operated for two years under the Roh administration and another two years under the Lee administration. The Jeju Commission had a two-year mandate, and almost every truth commission around the world

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254. *Id.* at 63.

255. Kim, *supra* note 225; *Truth committees face uncertain fate: National Assembly is likely to abolish, merge, or limit their activities*, THE HANKYOREH (S. KOR.), Sept. 4, 2008; Kim Dong-choon & Mark Selden, *South Korea's Embattled Truth and Reconciliation Commission*, JAPAN FOCUS, [http://www.japanfocus.org/-Kim-Dong\\_choon/3313](http://www.japanfocus.org/-Kim-Dong_choon/3313) (accessed on May 9, 2012).

256. Gavan McCormack & Kim Dong-choon, *Grappling with Cold War History: Korea's Embattled Truth and Reconciliation*, JAPAN FOCUS, [http://www.japanfocus.org/-Kim-Dong\\_choon/3056](http://www.japanfocus.org/-Kim-Dong_choon/3056) (accessed on May 10, 2012).

257. Kim & Selden, *supra* note 255.

258. *Budget cut for Truth and Reconciliation Commission*, THE DONG-A ILBO (S. KOR.), Nov. 21, 2009.

259. *Lee Team Unveils Blueprint for Slimline Government*, THE CHOSUN ILBO (S. KOR.), Jan. 17, 2008; Sang-Hun Cho, *Time presses on Koreans digging up a dark past*, N.Y. TIMES, Sept. 4, 2009.

ceases operation within two years.<sup>260</sup> In a sense, then, the TRCK operated over a longer period than average commissions and had two full years under the highly supportive Roh administration.<sup>261</sup>

Second, the Jeju Commission continued to operate successfully even under the current Lee administration. In 2008 it published a white paper on its activities and in January 2012 conducted its 16th plenary session, deciding on 4,000 more victims and approving 12 billion won for commemoration projects.<sup>262</sup> At the same time, the new administration attempted to merge the Jeju Commission with the TRCK, but was unsuccessful, largely because of strong resistance from Jeju victims and civil society more broadly.<sup>263</sup> Thus, simply saying that the TRCK's activities have been frustrated by the new administration is not convincing.

It is noteworthy that many political analysts predicted the win of the conservative candidate in the 2007 election. There were thus three critical things that the TRCK could have done during the window of opportunity between 2005 and 2007 when the Roh government was in place. First, its commissioners could have started to push early on for the creation of a permanent memorial and research foundation, for which the framework act provides explicit authority.<sup>264</sup> Second, based on the work of the Jeju Commission, the TRCK commissioners were already aware of the importance of creating a data archive.<sup>265</sup> Indeed, the Jeju Commission had systematically organized the data it collected during the first year and published it as an eleven-volume archive to enable scholars and researchers to continue to investigate simultaneously. The TRCK could have, but did not do this. As Kim Jong Min who worked in the Jeju Commission has pointed out, documents and interview scripts were not systematically organized and managed in the TRCK.<sup>266</sup> Third, if the commissioners knew that four years was not

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260. Geoff Dancy, et al., *The Turn to Truth: Trends in Truth Commission Experimentation*, 9 J. OF HUM. RTS. 1475 (2010).

261. Kim Dong-choon has nonetheless stated that even for those two years, the TRCK was accepted only as an "awkward or inconvenient organization" by several government organizations. McCormack & Kim, *supra* note 256. In other places, Kim Dong-choon stated that the TRCK was viewed as a "nagging" organization. See Kim, *supra* note 7, at 546.

262. JEJU COMMISSION WHITE PAPER, *supra* note 89; Mi Ra Park, *Decision was made on 2,485 Victims*, THE JEMIN DAILY, Jan. 26, 2011.

263. Mi Ra Park, *Civil society resists "the merge of the Jeju Commission"*, THE JEMIN ILBO (S.Kor.), Jan. 24, 2008.

264. See Framework Act, *supra* note 181, art. 40.

265. Cheol Woo Lee, *For Truth-Seeking of the Civilian Massacres, Collecting the U.S. Document is Critical*, OHMYNEWS, Aug. 29, 2007.

266. *Id.*

enough time to complete its mandate, they could have pursued the revision of the framework act to explicitly stipulate an extended term for the commission. Given that the Jeju Commission successfully pursued all of these options, the TRCK could have increased its effectiveness by following its example.

A more fundamental reason must, then, be sought to account for the different levels of implementation between the Jeju Commission's recommendations and those of the TRCK. A key reason, I contend, involves the different kinds of "truth" pursued by the two commissions. Truth commissions are created to investigate the truth. However, there are different notions of truth: factual or forensic truth, personal or narrative truth, social or "dialogue" truth, and healing and restorative truth.<sup>267</sup> The South Korean TRCK, despite being modeled after the South African commission, was designed to focus on the factual or forensic truth of individual cases only.<sup>268</sup> The process followed by the TRCK involved three steps: an individual victim submits an application, an individual investigator examines the case, and the commissioners take a final decision on the truth of that case. This approach is different from the Jeju Commission, which decided to work together as a team to create a comprehensive and historical truth about the civilian massacres in addition to the individual truths of particular cases.<sup>269</sup> First debated within the special investigation unit, headed by Park Won Soon, a renowned human rights lawyer, this approach was later approved by the full Jeju Commission.<sup>270</sup>

The Jeju Commission's final report thus had a single historical story to tell to society, while the TRCK report on individual cases lacked that master narrative. For the TRCK, every truth existed as a set of defragmented facts, without a strong narrative that organically connected the individual cases.<sup>271</sup> In order to have an impact on society as a whole, individual truth and comprehensive truth must be combined.<sup>272</sup> As one commentator who closely followed the activity of the TRCK lamented, "Last week's government admission to the massacre did not make much impact. The

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267. Truth and Reconciliation Commission of South Africa Report, Truth and Reconciliation Commission of South Africa vol. 1, at 110 (1998), <http://www.justice.gov.za/trc/report>.

268. Kim, *The Long Road*, *supra* note 7, at 547; Kim, *supra* note 225.

269. The Special Investigation Unit, Jeju Commission, Minutes of the 7th Plenary Session 17-19 (Apr. 8, 2002).

270. *Id.*

271. Lee, *supra* note 265.

272. Moo Yong Kim, *Truth and Reconciliation Commission, Institutionalization of the Transitional Justice Movement, and National Unification*, 6 4.3-GUA YEOKSA [4.3 AND HISTORY] 147 (2006).



story was tucked away on the inside pages [of Korean newspapers] and passed most people by.”<sup>273</sup> Suh Joong Seok likewise observed the lukewarm reaction in the general public to what was otherwise “world-shaking mega-scale news.”<sup>274</sup> The former president of the TRCK Lee Young Jo made a similar observation in referring to the TRCK’s individualistic approach as a “micro-approach” in contrast to a historically-oriented “macro-approach.”<sup>275</sup>

In these cases [of mass civilian killings before and during the Korean War], a macro-approach would have served the purpose better. The macro truth could be relatively easily verified. With documentary evidence and oral witnesses, the investigators could easily tell whether, when, where, how, and perhaps by whom these killings were committed. . . . But often times it [the micro-approach] hindered reconstructing the whole picture and drawing out the significance of the incidents by forcing the investigators to look through small window[s].<sup>276</sup>

Kim Jong Min’s observation is particularly informative. He has argued that different investigators separately investigated massacres committed by the same military unit and thus each investigator was not able to “see the wood for the trees.”<sup>277</sup> Because every case was treated as an individual case, he has argued, the TRCK was not able to reveal the chain of command on what apparently were nationwide and systematic massacres.<sup>278</sup>

This failure, I believe, constitutes the fundamental difference between the Jeju Commission and the TRCK, explaining why their respective recommendations have been implemented to different degrees. Individual truth is the initial step to achieve the comprehensive and holistic truth.<sup>279</sup> As a basic building block, it is a necessary element, but it is not a sufficient one. That is, the mere “collection” or “sum” of individual truths is not the equivalent of the comprehensive truth.<sup>280</sup> To achieve its objectives, and to have a larger impact on society, the TRCK should have pursued another stream of investigations to reveal the historical and political structures that allowed past violence to perpetuate, the political, social, and ideological

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273. Michael Breen, *Atoning for Murder of Own Citizens*, THE KOREA TIMES, Dec. 3, 2009.

274. Suh, *supra* note 204, at 75.

275. Lee, *supra* note 4, at 14-15.

276. *Id.* at 15.

277. Lee, *supra* note 265.

278. *Id.*

279. Kim, *supra* note 272, at 147.

280. *Id.*

contexts in which the violence took place, and the chain of command in ordering massacres and other gross human rights violations.<sup>281</sup>

#### IV. CONCLUSION

As many scholars and practitioners have already noted, it is extremely unlikely that another truth commission in South Korea will be established in the near future.<sup>282</sup> The prospect is even more discouraging if Park Geun Hye, a leader of the conservative Saenuri Party and daughter of Park Chung Hee (who regarded the TRCK's finding as a "personal offensive" against her),<sup>283</sup> wins the presidential election in December 2012. Most of Park's supporters in conservative political groups believe the activities of the TRCK are little more than "score-settling" by leftists.<sup>284</sup> What should then be the goal of the next truth and reconciliation movement? Fortunately, the TRCK left us with three practical policy recommendations that can be pursued: (1) enactment of a reparations law, (2) creation of a permanent research foundation, and (3) a continuation of excavation projects. Among these three recommendations, the most important for victims and activists to focus on, I strongly believe, is the establishment of a research foundation.

Indeed, a key difference between the Jeju Commission and the TRCK is the latter's failure to create the permanent memorial and research foundation stipulated in the Framing Act.<sup>285</sup> The TRCK attempted to do so, but its efforts have come primarily after the inauguration of Lee Myung Bak and have been effectively blocked by conservatives.<sup>286</sup> This should not, however, justify failure to continue such efforts. In the Jeju case, activists and victims struggled for over eight years to revise the special act creating the Jeju commission to incorporate a provision on the establishment of a permanent research foundation, and eventually created the foundation.<sup>287</sup> The importance of having a permanent institution in place cannot be overstated.

281. *Id.*

282. Hye Ryeong Kwon, *A Critical Evaluation on Treatment of Illegal Rulings by Truth and Reconciliation Commission - Citing Illegal Rulings Based on Unconstitutional Law*, 16 HEONBEOPHAK YEONGU [STUDIES ON CONSTITUTIONAL LAW] 421 (2010).

283. Myo-ja Ser & Il-hyun Baek, *Park calls release of judges' names a political attack*, THE KOREA JOONGANG DAILY, Feb. 1, 2007.

284. Sang-Hun Choe, *South Korea Reviews Its Dark Past, but the Pace Is Slow*, N.Y. TIMES, Mar. 11, 2007; Editorial, *Absurd Budget Planning*, THE DONG-A ILBO (S. Kor.), Dec. 11, 2006; Norimitsu Onishi, *Korea's Tricky Task: Digging Up Past Treachery*, N.Y. TIMES, Jan. 6, 2005.

285. Framework Act, *supra* note 181, art. 40.

286. Op-Ed, *Truth and reconciliation*, THE KOREA TIMES, Dec. 30, 2010.

287. JEJU COMMISSION WHITE PAPER, *supra* note 89, at 39-40.

Through a research and memorial foundation, other critical projects such as the enactment of a comprehensive reparations law and a continuation of excavations can be initiated. At the same time, through the continuation of truth-seeking efforts, the research and memorial foundation can better lay the foundation for the long-term goals of reconciliation and the achievement of historical, political, and legal justice.<sup>288</sup> A truth commission is only a temporary organization; its work and legacy can and must be continued in a permanent institution.

The creation of a permanent research foundation is highly feasible for a number of reasons. First, there is a group of activists, researchers, and victims who strongly believe that the work of the TRCK remains unfinished.<sup>289</sup> These groups are well-positioned to take the initiative to push government to create the research foundation and to implement the rest of the TRCK's policy recommendations.<sup>290</sup> Recently, for example, activists and former TRCK staff members created the Forum on Truth and Justice to continue the legacy of the TRCK by continuing its investigative work.<sup>291</sup> More of these civil society movements will work positively for the creation of a permanent research foundation.

Second, Korean scholars, particularly in the field of history, are paying more and more attention to contemporary Korean history due to the work of the TRCK.<sup>292</sup> Topics that were once forbidden in academia are now relatively freely discussed among a new generation of scholars.<sup>293</sup> Suh Joong Seok, a progressive historian, sees two reasons for this. First, the documents and interviews collected by the various truth commissions have become an important resource for research. Second, Suh thinks the commissions' decisions can now serve as a yardstick to evaluate past and future research. There is great potential here for future development, enhancing the possibility that academia and civil society will work together to continue the legacy of the TRCK.

Finally, the TRCK's work is increasingly well known in international scholarship.<sup>294</sup> The number of English-language journal articles, special issues like this one, and monographs on the South Korean TRCK are expanding, and more and more scholars are paying attention to the South Korean truth commission experience. The controversies caused by the

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288. Kim & Selden, *supra* note 255.

289. Kim, *The Long Road*, *supra* note 7, at 550; Kim & Selden, *supra* note 255.

290. Kim & Selden, *supra* note 255.

291. *Id.*

292. Suh, *supra* note 205, at 74.

293. *Id.*

294. Kim Dong-choon, *Reconciliation Commission Seeks to Build International Alliance*, THE KOREA TIMES, Oct. 13, 2008.

TRCK's last president Lee Young Jo's decision to stop the distribution of an English-language report due to alleged translation errors is already well-known among international scholars.<sup>295</sup> The decision was more shocking still since Lee Young Jo clearly said in a newspaper interview that "We [the TRCK] plan to hold an international forum sometime in the latter half of the year to share with the world our achievements."<sup>296</sup> The continued efforts in international scholarship to study the South Korean experience can likewise facilitate and stimulate domestic scholarship and research.

The work of any truth commission does not end with the mere completion of its mandate. Rather, that end is simply another beginning, as we have seen in many international and domestic examples. Continuing truth and reconciliation work is especially important in the context of the Korean peninsula given that revisiting the past will be a major issue when the North and South begin to discuss the possibility of reunification. The experience of the various truth commissions in South Korea will provide valuable lessons for the inter-Korean dialogue, aiming at peace, democracy, and human rights.

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295. Tae-hoon Lee, *Forbidden Book Haunts Truth Commission*, THE KOREA TIMES, May 4, 2010; Leigh Payne, *Banning of English Report on Findings*, THE KOREA TIMES, Apr. 15, 2010; Hamish McDonald, *Truth in Danger in South Korea*, THE SYDNEY MORNING HERALD (Aus.), Jan. 23, 2010.

296. Je-Hae Do, *Truth Commission Heals Wounds of Forgotten Victims*, THE KOREA TIMES, Mar. 9, 2010.