

What Is Transitional Justice and Why Is It Relevant to South Korea?

Hun Joon Kim¹
Griffith University

December 2013

Hun Joon Kim is Senior Lecturer in School of Government and International Relations, Griffith University, and Core Faculty of SSK Human Rights Forum. He has research interests in international norms and institutions, international human rights and transitional justice, international ethics, and international relations theory. He has placed articles in international relations journals (*International Organization*, *International Studies Quarterly*, *Journal of Peace Research*, and *Global Governance*) and law journals (*Human Rights Quarterly*, *International Journal of Transitional Justice*, and *Annual Review of Law and Social Science*). His co-edited book, *Transitional Justice in the Asia Pacific* (Cambridge University Press 2013) provides an in-depth analysis of transitional justice processes, practices and problems in the Asia-Pacific region. His forthcoming book, *The Massacres at Mt Halla: Sixty Years of Truth-Seeking in South Korea* (Cornell University Press 2014) tells a comprehensive story of state violence, human rights advocacy, and transitional justice in South Korea since 1947, focusing on the Jeju massacres and the subsequent political process.

What Is Transitional Justice?

Since 1970, around 100 countries experienced political transition from authoritarian regimes to democracy or from armed conflicts to peace. One of the novel features of this transition is that countries are expected to address gross and systemic human rights violations committed by the past regimes. The number of states addressing past crimes is rapidly increasing and almost a half of transitional countries so far have had trials and truth commissions.

However, trials and truth commissions are not an exhaustive list of options. Some countries choose policies like amnesty, reparation, or lustration. Others support societal projects of establishing monuments, museums, or research institutions. Still others establish foundations and memorial parks, engage in public education and rewriting of history textbooks, and proclaim a memorial day. These countries are different from those countries that decide to do nothing, keep silent, and forget about past wrongdoings.

Transitional justice should meet three conditions. First, a state must have gone through a transition. Second, the responsible bodies of new government must take actions against human rights crimes committed by former regimes. Third, actions contain interpretative, retributive, distributive, or rectificatory response to the past.

First, a transition usually refers to democratic transition when a country changes from a repressive and closed regime such as military, authoritarian, one-party dictatorships, or communist regimes into a more open and decentralized government. Usually, the clear indicator of transition is a free, fair, secret, and direct election for major government offices. A democratic election does not necessarily guarantee substantial democracy but allows room for development by setting up basic democratic procedures. Other forms of transition occur when countries recover from turmoil of civil wars. Transition in this case is made either by a surrender of one party or by a signed peace accord. Finally, states experience transition when a state is created by independence, collapse of former unions, or reunion.

Second, transitional justice must be initiated by the legitimate and responsible bodies of the government established after transition such as president, prime minister, congress, courts, or prosecutor's office. Therefore, measures adopted by non-state actors or international actors in exclusion of the government do not constitute transitional justice. In addition, actions usually address core human rights violations, which are committed by state officials but also by the members of paramilitary groups backed up by the government. The core human rights include torture, summary execution, disappearances, political imprisonment, genocide, war crimes and crimes against humanity. These are referred to as the non-derogable rights in international human rights and humanitarian laws.

Finally, actions must contain interpretative, retributive, distributive, or rectificatory responses to the past. Interpretation includes a reestablishment of suppressed and distorted facts and writing new narratives in official documents and history textbooks. Retribution is manifested in the judicial activities such as criminal or civil prosecutions and conviction, which exact certain costs to perpetrators. Distribution usually refers to economic activities and includes reparations or compensation for the loss of the past. Rectification is the restoration of the prior political and social status of the victims and their family members by restitution or rehabilitation.



Among many measures, trials and truth commissions are adopted most frequently. Human rights trials are the preeminent retributive measures and take the form of a prosecution of individual perpetrators on the charge of past human rights crimes. Criminal prosecutions in a domestic court have been most widely used since 1980 but states increasingly adopt other forms. These include prosecution in foreign or regional courts like Pinochet case, ad hoc international criminal tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC). Recently, states like East Timor and Sierra Leone used innovative criminal prosecutions in the hybrid – some combination of domestic, foreign, and international – courts.

Hayner defines a truth commission as an official government body temporarily set up to investigate a past history of human rights violations and to submit an official report. Famous examples are the National Commission on the Disappearance of Persons (CONADEP) in Argentina (1983) and the Truth and Reconciliation Commission (TRC) in South Africa (1995). However, there are lesser-known truth commissions. Truth commissions issue an official report showing the interpretative aspect of transitional justice. Truth commissions can be established by a president, congress, or peace accords. Some truth commissions are empowered with certain rights and privilege such as subpoena, search and seizure, or witness protection.

What Is Transitional Justice?

South Korea experienced marvelous development both in economy and politics since its liberation from Japanese colonialism in 1945. Nevertheless, modern South Korean history is also marked by the Korean War (1950-1953), the dictatorship of Rhee Syngman (1948-1960), and the military and authoritarian regimes of Park Chung Hee (1961-1979), Chun Doo Hwan (1980-1988), and Roh Tae-Woo (1988-1993). South Korea experienced two political transitions from the past abusive regimes to democracy (1960, 1987) and one from war to peace (1953). In the course, many civilians fell into victims of state violence, innocently being killed and disappeared, tortured, arrested, and detained.

The Korean War (1950-1953), which pitted North Korea against South Korea, left approximately 650,000 combat deaths and injuries, and marked the height of civilian deaths. During the war, all parties to the conflict committed the nationwide systemic killings of civilians. For example, 700 villagers in Geochang were murdered by the South Korean 9th Regiment in 1951 and 400 refugees were killed in Nogunri by the US 7th

Cavalry Regiment in 1950. Strikingly, massacres occurred in both combat and non-combat areas. Massacres of civilians suspected of being communist supporters or being related to communists occurred nationwide immediately after the outbreak of the war. Between June and August of 1950, the South Korean military and the police arrested and summarily executed at least 300,000 without due process.

After the war, the Rhee regime lasted for seven more years, engaging in ultra-anticommunist policy, suppressing civil and political rights, and censoring opposition. Political opponents like Cho Bong Am (representing the Progress Party) were severely punished, even condemned to death. Alleged communists were purged from the police, the military, the congress, and the public administration, and many lost their lives. In 1960, Rhee was overturned by student-led demonstrations prompted by electoral fraud and the murder of a student protestor by the police.

Democracy lasted for only a year. People's discontent grew as they experienced economic decline as a result of political instability. After staging a military coup in May 1961, General Park Chung Hee pursued anticommunism, sought export-based economic growth, and suppressed basic human rights. Like Rhee, Park silenced his opponents, maintained low wages for workers, prevented labor unionization, and terrorized citizens to make them submit to authoritarian rule. Prominent political opponents like Choi Jong Gil and Chang Joon Ha were mysteriously found dead, while Kim Dae Jung was kidnapped by the secret service and almost drowned. In 1971, opposition grew when Park amended the Constitution. Park was eventually assassinated by one of his subordinates in 1979.

The brief moment of democratization known as the Seoul Spring was followed by another coup, staged by Generals Chun Doo Hwan and Roh Tae Woo. The generals became presidents in 1980-1988 (Chun) and 1988-1993 (Roh), pursuing anticommunist, development-oriented, and authoritarian policies. The most important resistance to military rule occurred in 1980 in Gwangju, and was mainly triggered by the martial law of 17 May 1980. Brutally suppressed by the military, the protests left 5,060 victims (including 154 deaths, 70 missing, 3,028 injuries, and 1,628 arrests, tortures, and detentions).

In 1987, Chun amended the constitution to obstruct the formation of an opposition party. The Constitutional amendments and the death of a university student Park Jong Chul as a result of torture united South Korean civil society against Chun. Students, politicians and ordinary citizens participated in the demonstrations. As a result of public pressure, Roh Tae Woo, Chun's proclaimed successor, agreed to organize direct presidential elections on 29 June 1987.

Transitional Justice in South Korea

Human Rights Violations during the Korean War (1950-1953)

The first attempt to address civilian massacres during the Korean War came after the Korean army murdered 700 villagers in Geochang in 1951. Immediately, the special investigation committee composed of lawmakers and government ministers was created and a military tribunal was set up. Three army officers were convicted for murder and cover-up but Rhee Syngman pardoned them all during the war. 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, victims of other much severe massacres remained silent under the Rhee's regime.

The second attempt came immediately after Rhee Syngman's resignation in 1960. Families of victims nationwide formed associations to represent their collective demands and this led to the institution of the Congressional Committee for Investigation of Civilian Deaths in 1960. The committee was composed of 9 lawmakers. The purpose of the committee was to conduct preliminary fact-finding. Although expectations were high among victims and their families, cursory investigations ended in two weeks.

What is worse is that 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 after the coup. Any evidence of massacres such as monuments or mass graves was systematically destroyed by the military police. This coup marked the beginning of 32 years of consecutive military and authoritarian regimes in South Korea and all discourses or attempts to bring justice to the past atrocities were completely suppressed.

An important breakthrough came with an 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 reparations to the victims of the Geochang massacres and similar cases in the Gyeongsang province. The Special Act on the Recovering of the Honor of Victims of the Geochang Event and Others was enacted in 1996 and the committee started the investigation in the following year. The committee acknowledged the responsibility of the military and identified 548 victims and 785 family members. However, no further actions were taken beyond this investigation except a few subsequent commemoration projects. Families of victims brought a series of lawsuits against the government for monetary compensation but those lawsuits ended without success in 2008.

Interestingly, although the special act was designed to address other massacres cases nationwide by including the words "and others," the committee's investigation had not reached beyond the Geochang case. Victims and family members who had been hit hard by the backlash after the coup in 1961 were extremely cautious and slow to raise their voices. It 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 Framework Act on Clearing up the Past Events for Truth and Reconciliation was enacted in 2005. The Truth and Reconciliation Commission, Republic of Korea (TRCK) was created in 2005 based on this law.



Human Rights Violations under the Repressive Regimes (1961-1993)

Two kinds of human rights abuses under the military and authoritarian regimes drew national attention after democratization in 1987: first, massive deaths and injuries of protestors in 1980 Gwangju and second, systemic deaths and disappearance of opposition leaders and activists. Soon after Chun Doo Hwan 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. Lawmakers quickly set up the Congressional Committee on Gwangju and held a series of public hearings by summoning 70 relevant persons including Chun Doo Hwan. It was the first time in South Korean history when the former president was brought into public hearing and questioned. Despite the sensation, the committee suffered innate limitations partly due to the lack of power to enforce reluctant perpetrators to testify in public and partly due to the lack of political will of the incumbent Roh Tae Woo's regime.

Nevertheless, in response to the growing national attention, the Act for Compensation to the Victims of the Gwangju Democracy Movement was enacted in 1990. This marked the first national legislation stipulating the governmental reparations to the victims of the state violence. From 1990 to 1998, individual reparations were made to 4,537 victims (247 deaths, sixty-four missing, 2865 injuries, and 1,361 arrests or indictments) with a total amount of 210 billion Won.

However, demands for truth and justice constantly increased under the first civilian Kim Young Sam government 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 others. After intensive investigation, the Seoul District Prosecutor's Office acknowledged the crimes of general murder in the course of suppressing Gwangju protestors in 1980. The office nevertheless decided not to prosecute the case claiming that acts of the coup and suppression of protestors is not an object of the legal jurisdiction. Both elites and the public vehemently protested against the decision and this led to an enactment of the Special Act, which removed the statute of limitations and provided an opportunity for retrials for those of who were convicted in relation to the protest. Both Chun Doo Hwan and Roh Tae Woo were arrested and sentenced to death (Chun) and imprisonment (Roh) but later pardoned by the then president-elect Kim Dae Jung as a gesture of forgiveness and reconciliation.

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 who nearly escaped the drowning death by the Korean Central Intelligence Agency agents in 1973. Based on the Special Act, the Presidential Truth Commission on Suspicious Deaths was created in 2000 to investigate and find the causes of deaths suspected to have been carried out directly and indirectly by government agents. The committee investigated 85 individual cases throughout its terms and published two reports. Subsequently, based on the recommendation, the Presidential Truth Commission on Military Suspicious Deaths was created in 2006 and until 2010 investigated the suspicious death cases occurred within military ranks. During its term, the commission received over 600 applications and made decisions on 246 cases.

The TRCK in 2005 additionally investigated remaining cases of suspicious deaths and disappearances. The commission received 628 applications, among which 290 cases confirmed and 341 cases rejected. The commission additionally investigated other systemic human rights violations cases occurred under the military and authoritarian regimes. For example, the committee announced that many who were convicted on the charge of espionage in the past regimes were actually the victims of torture and fabricated evidence.



At the same time, Act on the Reparations and Restoration for the Victims of Pro-Democracy Movement was enacted under President Kim Dae Jung and provided a ground for individual reparation and restoration for the victims of suspicious deaths and other governmental abuses. So far, 13,348 victims applied for either reparations (1,744 in total: 344 deaths and 1,400 injury) or restoration (11,664 in total: 7,328 convicted, 3,670 dismissal, and 600 expels from university).

Concluding Remark

It is always difficult to re-examine the past events, which left a deep scar and chasm in the society. It is more controversial when those events are over fifty-years-old and consecutive military and authoritarian regimes have systematically concealed the truth and intentionally destroyed the evidence. Thus, the sheer number of transitional justice adopted by South Koreans after democratization in 1987 is quite amazing. Various transitional justice measures have been adopted in order to address the vast array of past human rights violations. Criminal prosecutions, truth commissions, and reparations have been used, with truth commissions being the most frequently and consistently employed choice.

However, the transitional justice process in South Korea has been neither smooth nor without certain negative side effects. Because so many initiatives were launched, opponents and supporters alike have questioned whether all these projects could effectively be carried out with the limited budgetary and human resources available. Even proponents of these processes have worried that the multiplicity and breadth of transitional justice efforts might cause public fatigue. Additionally, some special laws were too narrow in their scope, addressing individual incidents rather than a pattern of abuses. At other times, special acts were passed to investigate historically remote events, and the mandates of the various projects frequently overlapped.

Some scholars and politicians worry that unearthing the dark past and revealing the past state crimes might send a wrong message to the world and to the descendants and also might give a bad impression of the country. Some even called the activities of the TRCK are little more than “score-settling by leftists” after democratic transition. This view is, however, is shortsighted. Only mature and secure democracy can confidently look back and reflect its past wrongdoings. Examples can be found in a new trend in the United States, Canada, and Australia where the current government to look further back in their history and acknowledge their wrongdoings and redress historical injustice they committed long time ago. In the same vein, transitional justice experience in South Korea was a successful movement to reveal the truths and restore justice. This valuable experience must be further studied and publicized.