

# Past Issues and Transitional Justice in Korea<sup>1</sup>

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## Introduction

The purpose of this essay is to explore the historical context of transitional justice in Korea and its current situation. Part of this endeavour includes a case study on the establishment of the Truth and Reconciliation Commission (TRC) in South Korea. Transitional justice, in broad terms, means ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses’ (United Nations 2010: 3). Against this backdrop, the essay examines civil society’s involvement in the establishment of the TRC in 2005 and afterwards. The TRC, set up during the liberal Roh Moo-hyun government, was dissolved under a conservative president in 2010. Following the Candlelight Revolution, the election of Moon Jae-in and a new liberal president, a revival of the Commission is now on its way. The essay firstly offers an overview of truth commissions and their relations to civil society in general. This is followed by an attempt to situate truth commissions within the South Korean context. The essay also explores civil society’s activities to promote transitional justice. It ends with some reflection on civil society’s struggles and the future of the TRC.<sup>2</sup>

## Truth Commissions and Civil Society

Truth commissions usually seek to uncover something that was erased and hidden from official accounts. Generally, they are regarded as ‘bodies set up to investigate a past history of violations of human rights in a particular country’ (Hayner 1994: 600).<sup>3</sup> Priscilla B. Hayner (1994: 604) lays out four primary elements of a truth commission: focus on the past, focus on the overall picture of certain abuses or violations, temporary existence and some sort of authority. Throughout her exploration, Hayner (1994: 610) acknowledges that truth might not be established fully. That is because there are ‘clear limitations to truth commissions.’ The significance of truth commissions might be about ‘*acknowledging* the truth rather than finding the truth’ (Hayner 1994: 607, emphasis in original). These statements suggest that the notion of truth and seeking truth is unstable and contested. It is, therefore, unrealistic to expect ‘the whole truth’ from truth commissions’ operations (Hayner 1996: 24; Hayner 2011: 84). A truth commission, despite its historic and meaningful contribution to society, thus could face complex challenges.<sup>4</sup>

Civil society, which by and large monitors and sometimes critically cooperates with the state, can be in a good position to positively influence truth commissions. That is because truth commissions are designed to investigate past wrongs committed by the state or state-sponsored individuals and groups. Indeed, transitional justice – a main subject of a commission mission and a concept and practice of justice – ‘has come about as a result of years of negotiation, contestation and compromise between state and nonstate actors’ (Hovil and Okello 2011: 333).

In this way, ‘truth commissions can be viewed either as parts of civil society or as hybrid entities that mediate between the state and civil society’ (Crocker 2000: 110). Civil society, however, has its limitations. According to Crocker (2000: 113-114), those limitations are concerned with punishment, prosecution and compensation, among others. It is the state that has indispensable roles in such areas. Nonetheless, it is clear that civil society plays a significant role when it comes to truth commissions. Even in the post-commission period, civil society can continue its positive role in delivering transitional justice: it puts pressure on the state to adopt reform measures recommended by truth commissions (Bakiner 2014: 22).

### **Truth Commissions in South Korea**

South Korea’s effort to correct past wrongs goes back to 1948 when the country was formally established. It was three years after Korea was liberated from Japan. The National Assembly launched the Special Investigation Committee on Anti-National Activities to identify and punish those who collaborated with Imperial Japan. The Special Investigation Committee, however, did not last long. President Syngman Rhee and his government dissolved the Committee by force in 1949. It demonstrated that pro-Japanese elites were still powerful even after independence. The fundamental reason was that both the United States Army Military Government in Korea (1945-1948) and the Rhee administration hired many of those collaborators to run a newly-liberated country effectively. To counter a rising communist force in North Korea and other Asian region, the US and Rhee adopted a stubborn anti-communist policy. As a result, pro-Japanese factions were encouraged to transform themselves successfully into anti-communist fighters. This failure of the early effort would shape the political landscape in South Korea for many decades to come. The opportunity for a new democracy after the fall of President Rhee in 1960 was hijacked by the military general Park Chung-hee’s coup in 1961. Another opportunity following the death of Park in 1979, was lost when General Chun Doo-hwan staged a coup the same year. The next presidents Roh Tae-woo and Kim Young-sam were all from the same authoritarian ruling party, which meant they either opposed a reform or had very limited capability to redesign the country.

After long periods of authoritarian and military regimes, for the first time in South Korea’s modern history, the power shifted from the ruling party to the opposition when Kim Dae-jung was elected as president in December 1997.<sup>5</sup> Truth commission-like bodies now emerged. Most notably, the Presidential Truth Commission on Suspicious Deaths was established in 2000 and lasted for four years. To secure this piece of legislation, victims’ families and civil society staged a protest in front of the National Assembly for more than 420 days. The National Committee for Investigation of the Truth about the Jeju April 3 Incident, another truth commission-like agency, was also set up in 2000. It aimed to investigate the massacre of civilians by the government forces and militia groups on Jeju Island before, during and after the Korean War (1950-1953). The first democratic government, formed by the opposition, was succeeded by another democratic politician, Roh Moo-hyun, in December 2002, which meant that many of the liberal and humanitarian policies pursued by the Kim Dae-jung government could be consolidated and strengthened. Then, in 2004, the liberal ruling party won the National

Assembly election, gaining a majority of seats for the first time since 1961 (Kim 2010: 543). It should be noted that civil movements played a significant role in these transitions. In the past, it was very hard to investigate the wrongdoings of the state as these efforts were fiercely blocked by the ruling political establishments. With democratic transitions largely achieved by civil movements, however, there was now enough space for those seeking the justice and truth that had been suppressed by the past, authoritarian regimes.

In August 2004, on National Liberation Day, President Roh laid out some basic ideas about how to clear up past incidents in his commemoration speech. He proposed comprehensive measures on this issue. The National Intelligence Service (NIS) that first answered this call: the intelligence agency established an internal commission in February 2005, which would operate as a truth commission. The NIS Commission then selected seven priority cases in terms of their historical importance, including the abduction case of Kim Dae-jung in the 1970s and several suspected espionage-related cases. There are many important aspects to this Commission's work. The NIS Commission operated as a kind of leading example that attempted to investigate its own past wrongdoings as a government agency. Following the NIS Commission, other existing agencies set up their own internal commissions, such as the Department of Defence and the National Police Agency. It should be acknowledged that it is very rare for any intelligence or information agencies to do such a thing. Given its secrecy and special mission, the NIS' decision and its effort should be recognised. Unfortunately, however, it was this historic significance that limited the Commission's mandate and authority. As it was supposed to reinvestigate its own wrongdoings, the NIS Commission faced a substantial challenge within its organisation (Jang 2006).

The TRC was different from the NIS Commission in many ways. Most of all, it was launched by an external legislation as an independent government agency. In May 2005, the Framework Act on Cleaning up Past Incidents was legislated at the National Assembly. Following this Act, the TRC was established in December 2005. From the beginning, this Commission was more independent and open compared to the NIS Commission. It had six specific areas of interest, including anti-Japanese movements during Japanese rule, massacres occurring from 15 August 1945 (National Liberation Day) to the Korean War period and incidents ranging from 15 August 1945 to the end of the authoritarian regimes (Truth and Reconciliation Commission 2009: 14). These areas of interest indicate that the TRC was set up as a comprehensive agency specialising in past incidents.

Like the NIS Commission, this organisation had to work within various limitations or restrictions. According to Kim Dong-choon (2010: 544), who served as one of the standing commissioners, 'the cold war political landscape limited the purpose and mandate of the articles in the new law.' As a result, the TRC's investigative authority was limited. The Commission faced the biggest challenge when the conservative government was launched under President Lee Myung-bak, who had been against the Roh Moo-hyun government's truth-seeking policy. For example, a new chairperson of the TRC, appointed by President Lee, abandoned the Commission's interim English report, which prompted many people to suspect political influences were at work (Hayner 2011: 66; see also Kim 2010: 551). Unlike the NIS

Commission which selected its own target cases, the TRC's work was initiated by victims or their families' official request procedure. But with the comprehensive limitations of the Commission itself, and the subsequent lack of political will, many applicants asked the TRC to drop the reinvestigations in 2009.

### **Civil Society in South Korea**

There have been several core groups in civil society, acting collectively as a driving force behind the establishment of the TRC. Examples include the National Association of Bereaved Families of Civilian Victims in the Korean War, the Korean Association of Bereaved Families for Democracy, the National People's Committee for a Proper Clean-up of the Past and the April 9 Unification & Peace Foundation.

The National Association of Bereaved Families of Civilian Victims in the Korean War has a long and turbulent history. The families of civilians massacred in the Korean War launched the National Association in September 2000. But it would be more appropriate to say that they managed to *revive* the organisation. Their predecessor organisation was established back in 1960, a few months after the resignation of President Syngman Rhee, who held a strong anti-communist and anti-North Korean stance. The families raised a sensitive but undeniable issue of civilian killings committed by their own government forces: the Rhee government massacred numerous ordinary people who were falsely regarded as communists or North Korean sympathisers. Their activities, however, were severely repressed when the military general Park Chung-hee, another vigorous anti-communist figure, came to power. Under General Park, key members of the organisation were prosecuted mainly because their campaign, the government claimed, could have potentially benefited North Korea. They were heavily punished. For example, the then president of the group was sentenced to death (but the sentence was reduced later). The organisation subsequently ceased to operate in 1961. Forty years on and the National Association began to breathe again.

The Korean Association of Bereaved Families for Democracy was established in August 1986. During the military dictatorship between 1960s and the 1980s, many people were killed by state violence or sometimes took their own lives as a means of protest against oppression. The families who had lost their loved ones by the dictatorship got together and wanted to continue the movement that the deceased had committed to and contributed to building and advancing democracy. Even after 1986, state violence did not stop and people continued to sacrifice their lives. There were many cases where people, especially students and workers, were killed in suspicious circumstances. Although many were reported as a suicide, there was a strong suspicion of murder by the police, military or intelligence agency. Those victims' families played a decisive role in establishing the Presidential Truth Commission on Suspicious Deaths in 2000; they staged a 422-day protest in front of the National Assembly and succeeded in materialising the relevant legislation. They also greatly contributed to the creation of the TRC in 2005, together with other civil society groups, through a similar campaign.

The National People's Committee for a Proper Clean-up of the Past was launched in November 2004. It acted as an umbrella organisation consisting of about 1,000 groups across civil society, with a preliminary gathering in August the same year. The Committee's immediate goal was clear and urgent. It demanded a comprehensive legislation on dealing with the past. Almost every member group worked for the victims and their families of state violence or various human rights abuses. These groups included the National People's Investigation Committee on the Civilian Massacres in the Korean War, the Victims' Family Association of Suspicious Deaths, the Korean Council for Democratic Martyrs and the Centre for Historical Truth and Justice, among others. If they had wanted to go separately to fight for justice, a number of separate legislations were required, which would have taken too long. Hence they decided to collaborate and asked the government to set up one comprehensive agency covering a broad range of past issues.

The April 9 Unification & Peace Foundation was set up in October 2008. The establishment of this Foundation has a unique place in South Korea's turbulent history. On 8 April 1975, eight innocent people were sentenced to death during the notorious military dictatorship of Park Chung-hee. They were accused of subverting the state through the People's Revolutionary Party, apparently under the instructions from North Korea. This later turned out to be false. Subsequently all of them were executed on 9 April. Those eight people were all cleared after a retrial in 2007 and their families, who actively campaigned for proving innocence of their loved ones with the help of civil society, received compensation by the state. It was this compensation that led to the launch of the organisation. In other words, the Foundation symbolises the brutality of state violence and the continuous efforts to fight for justice. The Foundation works to promote the ideas of human rights, peace/unification and clean-up of the past. Since 2011, it has annually provided financial support for various organisations promoting the Foundation's values. Most importantly, it served as a core task-force group to continue to clean up the past by mobilising civil society.<sup>6</sup>

### **Ongoing Struggles and the Future of the TRC**

During the Lee Myung-bak and Park Geun-hye administrations, the concerned parties in civil society have attempted to set up the TRC again, but it was never successful. With a dramatic development of the Candlelight Revolution, however, circumstances changed rapidly. South Korea witnessed a massive corruption scandal in 2016-2017 and President Park, the daughter of Park Chung-hee, was ousted by people power. She became the first sitting president officially impeached in South Korean history. One key question now drew all attention: who will be the new president? Moon Jae-in, a leading opposition candidate, was elected as president on 9 May 2017. President Moon then announced his government would have 100 policy tasks. The third of which would be to address the past issues. It was announced that the government would strive to pass the relevant law by 2017 and launch the second-term TRC sometime in the first half of 2018.

It is expected that civil society will keep playing a crucial role in seeking transitional justice in South Korea. Without their continuous effort, the possibility of the establishment of the first and the upcoming TRC could have been still far away. The clean-up of the past project, put forward by civil society and supported by the current liberal government, is now under way. This task will not be easy in any way though. Most of all, conservative and reactionary forces are still powerful in South Korea. There is a high possibility that they will try to block or water down the legislation as much as they can, just like their predecessor did in 2005 in the run-up to the first TRC. Indeed, there has been a substantial delay in the legislative process. According to the government's plan, the law should have been enacted by the end of 2017. As of March 2020, the process is still going on. Even when the second-term TRC is established, a backlash from outside and bureaucratic or other internal limitations within the commission will likely interrupt the TRC's operation. It is for this reason that civil society's role, as a driving force and watchdog, will not and cannot end any day soon.

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<sup>2</sup> Many parts of this essay are drawn and revised from the author's work-in-progress paper.

<sup>3</sup> One of the most well-known examples is South Africa's Truth and Reconciliation Commission. In the case of the Czech Republic, the Office of the Documentation and the Investigation of the Crimes of Communism (Úřad dokumentace a vyšetřování zločinů komunismu, ÚDV) can be regarded as a truth commission.

<sup>4</sup> For more on truth commissions, including their limitations of reconciliation project and gender awareness see, among others, Rotberg & Thompson (2000); Bell & O'Rourke (2007); Ní Aoláin (2012).

<sup>5</sup> From this paragraph onwards, some part of this section is drawn and revised from Park-Kang (2014: 121-122).

<sup>6</sup> Other examples of civil society groups include the Truth and Justice Forum and the Solidarity for Historical Justice's Special Committee on the Past, among others.