

## Social Healing Through Justice: Jeju 4.3 Case\*

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### ABSTRACT

The purpose of this article is to review the current stage of Korean transitional justice by focusing on the Jeju 4.3 Incidents and to consider some recurring key issues as they relate to past atrocities. As we shall see, there are a number of shared characteristics in the process of Korean transitional justice. First, Korean transitional justice did not exclude the option of prosecution and punishment of former wrongdoers, but it was more focused on the reconciliation by giving proper remedies to the victims. Second, the fact-finding activities were conducted in a relatively short time. Third, huge emphasis was placed on reinstating impaired reputations as part of the remedies for the victims. Fourth, transitional justice was made possible not by the judicial branch but by the legislation of special acts. In Jeju case, a couple of distinctive characteristics are also found: First the Jeju Special Act was a result of compromise among political parties in terms of defining the nature of the incidents; Second, in order to avoid ideological conflicts, the fact-finding and compensation activities were limited to “innocent civilians” in the Act; and (3) They did not take any measures against the wrongdoers who had been praised to be “national meritorious persons.” Transitional justice in Korea has always been closely related to the development of democracy and the rule of law. The remedies given to the victims of the Jeju 4.3 Incidents were closely tied to the political situation that prevailed in 2000, when the Special Act was legislated. The change of social climate under the Kim Dae-Jung government also played an important role in advancing transitional justice in Korea. As the iron wall of anti-communism weakened after military dictatorship collapsed, the Jeju victims gathered courage to approach the authorities to seek their redress. The lawmakers, likewise, found it easier to persuade the conservative public when they legislated the Special Act.

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## I. Introduction

Remedies are finally made available for the victims of the Jeju April Third Incidents. The victims of Jeju were offered redress through the adoption of the Special Act on Fact-finding and Reinstatement of the Impaired Reputations of

the Victims of Jeju 4.3 Incidents (hereinafter “Jeju Special Act”) on January 12, 2000. The most dramatic development was the official apology given by President Roh Moo-Hyun in December 2003 in Jeju on behalf of the government. Under the Jeju Special Act, 14,373 persons have registered as victims of the incidents,<sup>1)</sup> and 6,396 of them have been officially identified as victims eligible for compensation as of March 9th, 2004.<sup>2)</sup> In addition, the government has build a Peace Park, memorials, and a museum in Jeju as parts of the remedies for the victims.

The incidents refer to a series of massacres on Jeju Island, South Korea between 1947 and 1954, in which tens of thousands<sup>3)</sup> of innocent people were killed or injured. The South Korean government was reluctant to acknowledge the massacres for decades, because it was afraid of facing so many past atrocities all at once. During the military dictatorship, notions of human rights violations—including the cases of Comfort women, No Gun Ri,<sup>4)</sup> Kukmin Podoyönmaeng,<sup>5)</sup> and other wartime atrocities during the Korean War — were completely suppressed. However, victims

and their families relentlessly fought for redress. After Korea was democratized in the 1980s and 1990s, the government finally began to officially acknowledge the atrocities and offer remedies.

What to call the tragedy itself has been a subject of heated debate, because it carries huge political implications. The disagreements among the relevant parties have not been resolved yet. Some want to label the incidents as a communist rebellion.<sup>6)</sup> Others consider the incidents to be a people’s uprising aimed at the unification of Korea, because the Jeju people were not under the control of the communist party even if some of them were under the communists’ influence.<sup>7)</sup>

The Jeju Special Act chose the term “Jeju 4.3 Incident” to refer to the entire series of uprisings and massacres. April 3, 1948 was the date of a major armed uprising led by local communist groups protesting the general election in South Korea. However, the date was commonly used to name the incidents because it helped neutralize any unintended political implications. This article also uses the term Jeju April Third Incidents in the hope that the expression will help us to maintain objectivity in thinking about remedies for the victims.

The adoption of the Jeju Special Act was a success story for the victims in that they finally got redress after half a century, although some of the victims are still requesting that the compensation scheme be improved. Human rights victims of other tragic incidents in recent Korean history are trying to learn from the experience

1) See the website of the National Commission on the Jeju 4.3 Incidents at <http://www.jeju43.go.kr/dec/index03.html> (Last visited on November 15, 2004).

2) See the news article of Hong, Jung-Pyo, *Jeju 4.3 Hüisaengja Chugasingo 343 Myöng (343 Additional Persons Registered as Jeju 4.3 Victims)*, April 8, 2004, Yonhap News Agency.

3) The numbers of the victims are estimated to be between 25,000 and 30,000 by the National Commission on the Jeju 4.3. Incidents in 2003. See *Jeju 4.3 Sasam Chinsang Chosa Pogosö. (The Report of Jeju April Third Fact-Finding Committee)* (2003) p.367.

4) The incident refers to the killings of several hundreds South Korean refugees at a railroad trestle near the village of No Gun Ri in July 1950. For more information, see Charles J. Hanley et.al., *The Bridge of No Gun Ri* (2002)

5) This case refers to the indiscriminate killings of the innumerable members of Kukmin Podoyönmaeng (national converted leftists’ association) during the Korean War.

6) For example, Kim Jeom-Gon views the Jeju 4.3 Incidents as a rebellion led by the Jeju Workers’ party. See Yang Jeongsim, *Chudoseryökkül Tonghaesö.bon Jeju 4.3 Hangjaengüü Pagyöng (The backgrounds of Jeju 4.3 uprising from the perspective of leading groups)*, JEJU 4.3 YONGU (A RESEARCH ON JEJU 4.3) (1999) [in Korean] p.52.

7) For more information, see *Ibid.* pp.52-3.

of the Jeju survivors.

A monumental watershed in Korean transitional justice occurred when two former presidents, Chun Doo-Hwan and Roh Tae-Woo, were imprisoned and convicted in 1995 and 1996, respectively. They had seized presidential power in 1980, through a military coup, with Roh succeeding Chun in the Blue House through 1992. Their activities were finally found to constitute military rebellion and treason. During the military dictatorship, the authorities suppressed truth-seeking activities harshly, sometimes by imprisonment.<sup>8)</sup> The democratization of an authoritarian regime allowed room for human rights victims to seek redress and remedy packages were finally delivered to victims.

The Committee on the Geochang Massacre was established under the Special Act on the Reinstatement of the Impaired Reputation of the Persons Associated with the Geochang Incident in 1996. Soon after, in 1997, the Act on the Honorable Treatment of the Persons Associated with the Gwangju Democracy Movement was passed by the National Assembly and signed into law. The Act on the Reinstatement of Impaired Reputation and Reparation for the People Associated with the Democracy Movement, and the Special Act on the Fact-finding of the Suspicious Deaths were adopted in 2000. The remedies for Jeju April Third Incidents share the basic characteristics of transitional justice along with these other cases. However, because the influence of communist groups was present in the Jeju case, the government was hesitant to adopt the remedies.

This shows the dilemma that the government faces at the current stage of democratization.

The purpose of this article is to review the current stage of Korean transitional justice by focusing on the Jeju 4.3 Incidents and to consider some recurring key issues as they relate to past atrocities. As we shall see, there are a number of shared characteristics in the process of Korean transitional justice. First, Korean transitional justice did not exclude the option of prosecution and punishment of former wrongdoers, but it was more focused on the reconciliation by giving proper remedies to the victims. Second, the fact-finding activities were conducted in a relatively short time. Third, huge emphasis was placed on reinstating impaired reputations as part of the remedies for the victims. Fourth, transitional justice was made possible not by the judicial branch but by the legislation of special acts. In Jeju case, a couple of distinctive characteristics are also found: First the Jeju Special Act was a result of compromise among political parties in terms of defining the nature of the incidents; Second, in order to avoid ideological conflicts, the fact-finding and compensation activities were limited to “innocent civilians” in the Act; and (3) They did not take any measures against the wrongdoers who had been praised to be “national meritorious persons.”

This article will examine why and how these processes worked by allocating the following operational questions:

- (1) Do the Jeju 4.3 Incidents constitute crimes under international law? If so, what crimes were committed?
- (2) What ethical/legal norms are available for assessing these issues? What are the victims' rights? Who is responsible for compensation and the healing process?

8) Shin Du-Bang, executive director of *Jejusinbo Daily* and students who worked for the investigation of the truth of the Jeju 4.3 Incidents were imprisoned after Park Chung-Hee coup. See Seo Jung-Seok, *Jeju 4.3üi Yöksajök Üimi (The Historical Meanings of Jeju 4.3)*, JEJU 4.3 YONGU (A RESEARCH ON JEJU 4.3) (1999) [in Korean] p. 145.

- (3) Who were the perpetrators? Who were the victims?
- (4) What has been done so far to address the tragedy in Jeju? Were the remedies sufficient?

## II. The Legal Basis of the Remedies for the Jeju 4.3 Incidents

### 1. Historical Background

When Korea was about to be divided into South and North, political tension between leftists and rightists was at its peak. A separate rightist regime was being established in South Korea under the auspices of the United States Army Military Government (hereinafter USAMG), while the majority of the Korean people wanted to see a unified Korea. The North Korean leaders, led by Kim Il Sung, were also moving toward a communist regime in the northern part of the peninsula, supported by the USSR.

The Jeju 4.3 Incidents started on March 1, 1947, when police shot at demonstrators who were protesting the policies of the USAMG. Six people were killed and another six injured, most of them spectators of the demonstration. After the shootings, the political situation in Jeju worsened.

On April 3, 1948, armed groups comprised of around 350 young members, led by the Jeju branch of the *Namrodang*, or South Korean Workers' Party, launched an armed uprising, attacking twelve police stations and several rightist groups' offices. Their objectives were to stop the violent oppression of police and *Söbuk-chöngnyöndan* (Northwest Youth Group), the notorious rightist group that worked closely with the police; to protest the upcoming divided election and separate government in South Korea; and to promote the establishment of a unified Korean

government.<sup>9)</sup> The USAMG tried to suppress the resistance following an aborted earlystage effort to resolve the problem through negotiations. The USAMG tried to quell the uprising by arresting more than six thousand people.<sup>10)</sup> However, Jeju was the only province in South Korea in which the general election for a separate government on May 10, 1948 was not successful, because less than the half of the population participated.

Cornel Brown, the commander in charge of Jeju Province for the U.S. Army, directed the suppression activities in May 1948 in cooperation with the regimental commander of the 9th regiment of the newly established Korean military. After the USAMG was succeeded by the newly established Syngman Rhee regime on August 15, 1948, the suppression became harsher. The 9th regimental commander in Jeju promulgated a decree on October 17, announcing "All of the people who pass around the inner-mountain areas of Jeju farther than 5km from the seashore after October 20, 1948 will be regarded as rebels and shall be shot to death."<sup>11)</sup> Subsequently, martial law was proclaimed on November 17, 1948 which represented a death warrant for many Jeju people; suppression turned into annihilation, and police and military forces committed massacres against innocent people, labeling them Communists or enemy sympathizers. The massacres continued beyond the end of the Korean War until the military operations in Halla Mountain officially ended on September 21, 1954. In its 2003 report, the National Commission on the Jeju 4.3 Incident assessed the number of total victims to be 25,000-30,000<sup>12)</sup>, in the effort to suppress

9) *Jeju 4.3 Sasam Chinsang Chosa Pogosö (The Report of Jeju April Third Fact-Finding Committee)* (2003), p.534.

10) Seo, p.139.

11) Ibid. p.138.

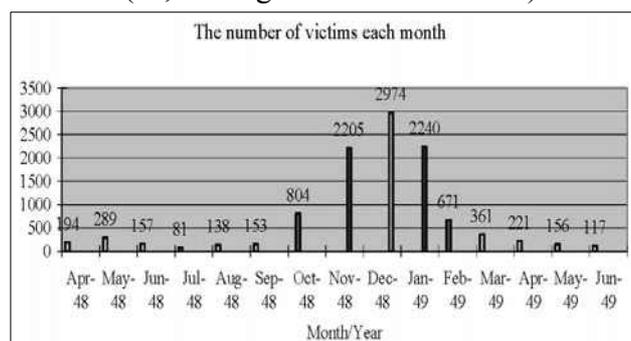
and eliminate approximately 500 poorly equipped armed guerrillas.<sup>13)</sup> The leftist armed groups were not exempt from the killings of the rightists. However, most victims killed by leftists had been given redress by the government under the rationale of treating such victims as patriots who fought against communism.

[Table 1] The numbers of victims each year (14,028 registered victims total)

	1947 or before	1948	1949	1950	After 1951	Etc.
Total	101	7,443	4,802	1,100	326	256
Ratio (%)	0.7	53.1	34.2	7.8	2.3	1.8

[Source: The Report of the National Commission on Jeju 4.3 (2003) p.371]

[Chart] The number of victims each month (14,028 registered victims total)



[Source: The Report of the National Commission on Jeju 4.3 (2003) p.371]

The following table and chart, which break down the 14,028 registered casualties (as of May 30, 2001) year by year,<sup>14)</sup> shows how the tragic

events developed and continued until 1954.

The Report of the National Commission on the Jeju 4.3 Incident (2003) states that 78.1 percent of the perpetrators in the 14,028 registered cases were committed by *Toboldae* or governmental suppression groups, and that 12.6 percent were committed by *Mujandae* or armed resistance groups.<sup>15)</sup>

[Table 2] The Perpetrators reported out of 14,028 registered victims

	(Governmental suppression groups)	(Armed resistance groups)	Etc.	No answer
Total	10,955	1,764	43	1,266
Ratio (%)	78.1	12.6	0.3	9.0

[Source: The Report of the National Commission on Jeju 4.3 (2003) p.371]

In light of such tragic data, it is inevitable to ask what crimes were committed in the killings.

## 2. What crimes were committed during the Jeju 4.3 Incident, and by whom?

The Charter of the Nuremberg Tribunals supplies the classic definition of three major crimes under international law: (a) crimes against peace, (b) war crimes, (c) crimes against humanity.<sup>16)</sup> The Rome Statute for an International Criminal Court, adopted in 1998, categorizes international crimes in a slightly different way: (a) the crime

number of victims of the Jeju 4.3 Incidents rose to 14,373. Of these, 6,396 were officially identified as victims eligible for compensation.

12) *Jeju 4.3 Sasam Chinsang Chosa Pogoso* (The Report of Jeju April Third Fact-Finding Committee) (2003), p.537.

13) Regarding their equipment of armory, see *Jeju 4.3 Sasam Chinsang Chosa Pogoso* (The Report of Jeju April Third Fact-Finding Committee) (2003), pp.174-81.

14) As stated above, as of March 9<sup>th</sup> 2004, the registered

15) *Jeju 4.3 Sasam Chinsang Chosa Pogoso* (The Report of Jeju April Third Fact-finding Committee) (2003), p.537.

16) Charter of the International Military Tribunal, August 8, 1947, article 6 in 1 INTERNATIONAL MILITARY TRIBUNAL: TRIAL OF THE MAJOR WAR CRIMINALS 11 (1947).

of genocide, (b) crimes against humanity, (c) war crimes, and (d) the crime of aggression.<sup>17)</sup>

Were crimes against humanity committed during the Jeju 4.3 Incident? Undoubtedly yes. The Rome Statute states that “Crimes against humanity [are crimes] committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>18)</sup> Murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian population in a widespread or systematic way fall into this category. The case of Jeon Yong-Chul on February 1949, detailed in the Report of the National Commission on the Jeju 4.3 Incident, stands out as an especially cruel example of this type of crime. Koh Bong-Su testified that a police officer inserted the heated muzzle of his gun into a pregnant woman’s vagina, and then burned her with oil to death. The woman’s name was Kim Jin-Ok; she had been arrested because police believed that her husband had joined the guerrillas in the mountains.<sup>19)</sup> There are innumerable examples of crimes against humanity, including the indiscriminate killings of whole villages of women and children. The killing of tens of thousands of people while trying to hunt down fewer than five hundred guerrillas can only be defined as a crime against humanity. A range of groups committed the crimes: the USAMG, the South Korean Government and rightist groups, leftist groups (such as the members of the South Korean Workers’ Party, or *Namrodang*), and the *Inminyugyökdæ* guerrilla groups.

Was the crime of genocide committed during the Jeju 4.3 Incidents? It is hard to say yes. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, provides that “In the present Convention, genocide means . . . acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group·····.”<sup>20)</sup> Article 6 of the Rome Statute of the International Criminal Court (ICC) adopts the same definition. Genocide is mass killings for genetic reasons—a combination of the words “genetics” and “homicide.” Even if the “Red hunt” that happened in Jeju is similar to genocide in that some people from the mainland looked down on the island dwellers as a race to be eradicated, the Jeju 4.3 Incidents do not fit the definition of genocide that requires the intent to destroy a “national, ethnical, racial, or religious group.” It might be possible to call the incidents symbolically as ideological genocide because the hatred toward the Reds created an atmosphere to justify the killings of Jeju civilians as if all of them were communists.

Were war crimes committed during the Jeju 4.3 Incidents? The answer is yes. War crimes are defined in the Rome Statute as “grave breaches of the Geneva Conventions of August 12, 1949,” or “other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.”<sup>21)</sup> Unlike crimes against humanity, war crimes have a close relationship to war.<sup>22)</sup> Between 1945 and

17) See Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9, art. 5(1) (1998).

18) *Ibid.*, article 7(1).

19) *Jeju 4.3 Sasam Chinsang Chosa Pogosö. (The Report of Jeju April Third Fact-Finding Committee)* (2003), p.419.

20) 1 U.N. GAOR Res. 96, 11 December 1946, 78 U.N.T.S. 277. Korea acceded this treaty on October 14, 1950; the United States signed on December 11, 1948, and ratified on November 25, 1988.

21) *Ibid.*, article 8(2).

22) A crime committed in time of war will not automatically be a war crime if it does not have a close relationship to the war. Crimes committed by soldiers

August 1948, the United States occupied Korean territory to disarm Japan and establish a new, peaceful regime, which means that Koreans were protected by humanitarian law. After the Korean War broke out in June 1950, the Koreans were again under the protection of humanitarian law in the context of war among the South, North, and the United States.

The Geneva Conventions were entered into force on October 21, 1950. South Korea was not a signatory to the 1949 Geneva Conventions until 1966, and the United States ratified the Conventions in August 1955. Therefore, the Conventions did not legally protect the victims of the Jeju 4.3 Incidents retroactively. Further, because the primary aim of the Geneva Conventions was to protect enemy civilians and prisoners of war,<sup>23)</sup> they could not be cited as a source of law to protect domestic victims. However, the Martens Clause of the Hague Conventions, an antecedent set of humanitarian laws, protects the victims of war crimes against an ally's civilians.<sup>24)</sup> The massacres committed under the USAMG between 1947 and 1948, and the war crimes committed after the outbreak of the Korean War under the Syngman Rhee regime such as the incidents of *Kukmin Podoyŏnmaeng* (or "national converted leftists' association") were covered by the Hague Conventions.

The USAMG's accountability in these crimes requires further examination. The United States was at war with Japan during World War II,

and the U.S. army occupied South Korea after the war to "execute the provisions of the instrument of surrender and to protect the human rights and religious rights of Koreans."<sup>25)</sup> The problem started because the USAMG did not limit its activities to Japan's disarmament and to maintaining the public order. Instead, it used its power to strengthen the rightist political factions while cracking down on leftist groups such as the Chosun Communist Party and the *Namrodang* or South Korean Workers' Party. The USAMG declared the People's Committee and other left-leaning organizations to be illegal, while the rightist police and private military groups employed by the USAMG were granted the power to crack down on the activities of people in Jeju. This was the root of the problem in Jeju. The aggravated situation following the shootings on March 1, 1947 and the governmental responses toward the Jeju people were far beyond the amount of force necessary to pacify the situation. Even if the crueler massacres had been committed under the Martial Decree of Syngman Rhee regime, the USAMG's responsibility prior to that period should not be denied.

### 3. *The obligations of the government and the rights of victims and society as a whole*

What is the legal basis for the victims' claims? Article 8 of the Universal Declaration of Human Rights stipulates that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Article

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and related in nature to the war will be considered war crimes.

23) In fact, the Optional Protocol to the Geneva Conventions was adopted in 1977 to extend the protection to the civilian population in an internal conflict.

24) For further information, see Tae-Ung Baik, *A War Crime against an Ally's Civilians: The No Gun Ri Massacre*, NOTRE DAME JOURNAL OF LAW, ETHICS & PUBLIC POLICY Vol.15, Issue No.2 (2001).

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25) MacArthur, Decree number 1, recited from Kim Seok-Joon, MI KUNJŎNG SIDAEŬI KUKKAWA HAENGJŎNG (STATE AND ADMINISTRATION DURING THE PERIOD OF RULE OF THE US ARMY MILITARY GOVERNMENT) (1996) p.213.

2(3) of the International Covenant on Civil and Political Rights also provides that each state party shall ensure an effective remedy, the right to develop the possibilities of judicial remedy, and shall enforce such remedies when granted.

The government's duty is twofold: First, the government should be held accountable for the violations of their citizens' rights, according to humanitarian laws such as the Hague Conventions and the Geneva Conventions. Second, the government bears responsibility to provide redress to victims according to human rights laws such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture, and other international legal instruments to which it is a party.

International human rights law requires that the state not only refrain from committing certain acts against the individual but also that it carries out duties of an affirmative kind. Specifically, the state must give each person the right to seek remedial action for all violations of that person's rights under the relevant treaties.<sup>26)</sup> As José Zalaquett noted, a policy dealing with past human rights abuses has two overall objectives: to prevent the recurrence of such abuses and to repair the damage they caused, to the extent that is possible.<sup>27)</sup> The latter responsibility is to victims, and the former obligation is to the future: to ensure that dictatorship never returns.<sup>28)</sup> Compensations and reinstatements of impaired reputations are the victims' vested right. The government is obliged to compensate and to

give redress to the victims for human rights violations they have suffered.

Since the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the UN General Assembly in 1985<sup>29)</sup>, the efforts to codify victims' rights have continued to evolve. Theo van Boven, a special rapporteur, deliberated the right of reparation for victims of gross violations of human rights in the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1994.<sup>30)</sup> In 1997, Special Rapporteur Joinet proposed three rights in the final report on the question of the impunity of perpetrators of Human Rights violations: (1) the right to know, (2) the right to justice, and (3) the right to reparation.<sup>31)</sup> The Commission on Human Rights has worked on the principles and guidelines form more than 10 years by now.<sup>32)</sup> In the sixtieth meeting in 2004, the Commission not only reiterated that "victims of grave violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation" but requested that consideration of this question be continued.<sup>33)</sup> The process has proceeded slowly, but the concept of right to remedy is now considered an indispensable element of the

26) Juan E. Méndez, *Accountability for the Past Abuses*, 19 HUM. RTS. Q. 255 (1997).

27) José Zalaquett, Esq, *Confronting Human Rights Violations by Former Governments*, p. 29.

28) Tina Rosenberg, *HAUNTED LAND: FACING EUROPE'S GHOSTS AFTER COMMUNISM* (1996) p. 397.

29) Diane F. Orentlicher, *Addressing Gross Human Rights Abuses: Punishment and Victim Compensation*, in L. Henkin and J.L. Hargrove, (eds.), *Human Rights: An Agenda for the Next Century* (1994), p. 452.

30) See Theo van Boven, *The Draft Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and International Humanitarian Law*, U.N. Doc.

31) See Louis Joinet, *The Administration of Justice and the Human Rights of Detainees*, 59 LAW & CONTEMP. PROBS. 249 (1996).

32) There are academic activities to broaden the concept of rights of victims. See Juan E. Méndez, *Accountability for the Past Abuses*, 19 HUM. RTS. Q. 255 (1997) p.261.

33) See Commission on Human Rights Resolution: 2004/34, U.N. Doc. E/CN.4/RES/2004/34.

rule of law. Accordingly, the draft Principles and Guidelines<sup>34)</sup> being considered in the Commission on Human Rights has significant influence, being widely cited by international institutions such as the Inter-American Court of Human Rights.<sup>35)</sup>

#### 4. What rights do the victims of the Jeju 4.3 Incidents have?

The remedies given to the victims of the Jeju 4.3 Incidents are not “gifts for nothing.” The victims were entitled to receive them, because the government is accountable for “gross violations of international law, and serious violations of international humanitarian law”. The draft Principles and Guidelines states in Paragraph 1 that each State are obliged to to respect for international human rights and humanitarian law applicable to it.<sup>36)</sup> Each State also bears the duty to (a) take appropriate measures to prevent violations; (b) investigate violations; (c) provide the victims with access to justice; and (d) afford remedies to victims.<sup>37)</sup> Korean government is obliged to ensure remedies for the victims of the Jeju 4.3 Incidents.

The *Special Act on the Fact-finding and Reinstatement of the Impaired Reputation of the Victims of the Jeju 4.3 Incidents* provides the

following remedies to the victims:

- (1) Art 5. Anyone can testify about the Jeju 4.3 Incidents at liberty. The victims and the victims’ families shall not be subjected to discriminatory treatment.
- (2) Art 6. To collect and to analyze the data pertaining to the Jeju 4.3 Incidents obtained domestically and internationally within two years.
- (3) Art 7. To publish the report on the Jeju 4.3 Incidents within six months of the analysis.
- (4) Art 8. To assist, within governmental budgetary limits, the establishment of a memorial cemetery, memorial tower, the 4.3 museum, memorial park, and other memorial activities.
- (5) Art. 9 To award medical assistance or living expense assistance to the victims.

Pursuant to the Special Act, the National Commission on the Jeju 4.3 Incidents was established on August 28, 2003. Registration of the victims was conducted twice, between June 8, 2000 and January 4, 2001, and again between January 1, 2004 and March 31, 2004,; 14,373 cases were registered (dead: 10,949; missing: 3,248; and aftereffect: 176).<sup>38)</sup> According to the rules of Jeju Province, 78 people are receiving medical or living expense aid from the government. A memorial park was built in Jeju. The National Commission on the Jeju 4.3 Incidents adopted and published its final report on October 15, 2003.

34) See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of [Gross] Violations of International Human Rights Law and [Serious] Violations of International Humanitarian Law (October 2003) U.N.Doc. E/CN.4/2004/57.

35) See Inter-American Court of Human Rights, *Bámaca Velásquez vs. Guatemala*, Reparations, judgment of 22 February 2002.

36) Paragraph 1, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of [Gross] Violations of International Human Rights Law and [Serious] Violations of International Humanitarian Law (October 2003) U.N.Doc. E/CN.4/2004/57.

37) *Ibid.*, Paragraph 3.

38) See the website of the National Commission on the Jeju 4.3. Incidents at <http://www.jeju43.go.kr/dec/index03.html> (Last visited on November 15, 2004).

### III. Jeju 4.3 and Transitional Justice in Korea

#### 1. Korean transition as part of the "Third Wave"

The Korean transition from military dictatorship to democracy was not an isolated case when viewed from the perspective of international history. Transitional justice, defined as "the principles and mechanisms that can guarantee justice during a transition from an authoritarian regime or internal conflict to democratic rule", is a worldwide phenomenon. Many countries around the world have moved from military governments to more democratic regimes, beginning with Portugal in 1974, which Samuel Huntington labeled as "The Third Wave." During the approximately twenty years, over thirty countries began the transition to democracy.<sup>39)</sup> One of the toughest questions concerning transitional justice is whether to "forgive and forget" or to "prosecute and punish" to cure problems of the past.<sup>40)</sup>

The paths taken to handle past atrocities in each state were not identical. In Argentina, the new democratic government in 1983 sought the indictments of thousands of soldiers, along with other government actions intended to punish the armed forces. However, after four military rebellions, they halted the prosecutions.<sup>41)</sup>

Chilean President Patricio Aylwin chose to establish the National Commission for Truth and Reconciliation after the Pinochet regime. An

investigation on the human rights violations that occurred between 1973 and 1990 has gone on, but the newly established government was unable to prosecute those who had committed gross violations of human rights during military rule because the military still commanded considerable authority.<sup>42)</sup>

South Africa rejected strategies focused on prosecution, and chose a creative strategy in establishing its own Truth and Reconciliation Commission.<sup>43)</sup> They now face another challenge, because certain perpetrators who could be prosecuted under the scheme have refused to confess their crimes as a condition of their proposed amnesty.

In Germany, the transitional justice mechanism for the Holocaust victims during the Nazi regime was based on the precedent of the Nuremberg tribunal, which punished war criminals and provided compensation for victims.

The Incident of 2.28 occurred in Taiwan on February 28, 1947 was treated by the Taiwanese government by an official apology announced on February 28, 1995 with an acknowledgement that between 18,000 and 28,000 innocent people had been killed during the atrocities. No criminal prosecution has been initiated regarding the incident.

To some extent, Korea's transition from military dictatorship to democracy resembles transitional justice in other countries. However, two key distinct factors are found in the process. First, the existence of North Korea has been a significant variable in South Korea's political changes. During the period of authoritarian governments

39) See Terence Roehrig, *THE PROSECUTION OF FORMER MILITARY LEADERS IN NEWLY DEMOCRATIC NATIONS* (2002) p. 13.

40) *Ibid.*, p. 195.

41) *Ibid.*, p. 1. Recently, President Nestor Kirchner sought to reinstate some prosecutions, with some success and amidst renewed controversy.

42) That is why former Chilean dictator General Augusto Pinochet was able to remain in office until he was arrested by a UK prosecutor.

43) Paul van Zyl, *Dilemmas of Transitional Justice: The Case of South Africa's Truth and Reconciliation Commission* (<http://jia.sipa.columbia.edu/media/vanzyl.pdf>).

in South Korea, repressive regimes justified their existence by claiming that only a strong military-style regime could counter the North Korean threat. Even after democratization in the 1980s and 1990s, the influence of conservative rhetoric regarding communist North Korea has not disappeared, nor have the devastating effects of North Korean threats dissipated. Campaigns relying on the so-called “red complex”—in which South Korea’s political conservatives attack progressives—are commonplace. The transitional justice now being achieved in South Korea is particularly momentous, since it represents the culmination of a process to alleviate the abuse of anticommunist ideology that has prevailed in South Korean politics for decades.

Second, it is important to remember that the former rulers and governmental staff members who served authoritarian regimes and manipulated the public using conservative anticommunist propaganda were not completely defeated in the transition. Their networks remain strong, and their connections are active. At times, the conservative networks have enough political and economic power to shift the direction of the country’s social agenda. In addition, many of the public officials maintained in the same positions through the transition, regardless of their involvement with human rights violations. This explains why transitional justice in South Korea has been such a delicate process, and why the remedies for human rights victims remain somewhat elusive.

Inevitably, Korea’s transition was not a revolution, but an evolution. Each measure of transitional justice reflected a particular stage in the democratization process. In most cases, the remedies emerged from political compromises made between conservatives and liberal members of civil society.

## 2. *Combining retributive justice with restorative justice*

In Korea, transitional justice combined retributive justice with restorative justice. Retributive justice is found in the punishments of former presidents Chun Doo-Hwan and Roh Tae-Woo, who were prosecuted after legislators passed the Special Act on the 5.18 Democracy Movement in 1995. President Chun was sentenced to life imprisonment, and president Roh received a seventeen year sentence. Later they were given amnesty, but the bold approach constituted the foundation of broad compensation for the victims.

The compensation schemes for the victims are divided into two categories: (1) compensation and benefits for national meritorious persons; and (2) compensation for human rights victims. The first scheme is administered by the Ministry of Patriots and Veterans Affairs (hereinafter MPVA) of the South Korean Government. The second scheme is administered by special committees established by each special act.

Currently, the MPVA provides compensation and benefits to patriots, to veterans with service-related disabilities, to bereaved families members, to veterans with war service and longterm service who are eligible for limited benefits, and to civilians who sacrificed themselves in the Gwangju Democratization Movement in May 1980. Interestingly, the MPVA is dealing with the victims of the 4.19 Revolution and of the Gwangju Democratization movement because those events are now considered national meritorious activities.

*The Special Act on the Reinstatement of the Impaired Reputation for the People Associated with the Geochang Incident* was adopted on January 6, 1996. The Geochang incident is a well-known tragedy in which the ROK military

massacred 719 innocent civilians in February 1951, having labeled them “pro-guerrilla civilians” (“*Tongbibunja*”). The Special Act on Geochang was the first law in South Korean history to introduce the remedy of reinstating the impaired reputations of victims of the Korean War. The focus of the Act was to repair the impaired reputations by a variety of means, including acknowledging the victims’ innocence, maintaining their graveyard, opening an official memorial ceremony, and building a memorial monument. The act does not mention compensation or monetary aids to the victims or to their families. The limited nature of these remedies became clear when compared with other special acts that the country later adopted.

*The Special Act on the Reparation for the People Associated with the Gwangju Democracy Movement* was adopted on December 17, 1997. It facilitates compensation and reinstatement of the impaired reputations of victims and their families. The Gwangju uprising in May 1980 was a heroic resistance against the Chun Doo-Hwan military regime’s seizure of power. Since the military activities were defined as a rebellion, the Special Act had more generous compensation packages for the victims. The Act redefined the uprising as a “democracy movement”, thereby erasing its previous derogatory name of “Gwangju turbulence” or “disturbance.” The Special Act on the Gwangju Democracy Movement was more progressive than the Act on the Geochang Incident owing to the change in Korea’s political atmosphere. Notably, *the Act on the Reinstatement of Impaired Reputation and Reparation for the People Associated with the Democracy Movement*, which was adopted on May 13, 2000, included the same compensation scheme as the Gwangju Special Act.

*The Special Act on the Fact-finding of the*

*Suspicious Deaths* (January 15, 2000) provides a remedy, via special investigation, to family members of victims of the democracy movement whose deaths were deemed suspicious. Once a death is identified as related to the democracy movement, it is referred to the committee under the Act on the Democracy Movement and becomes eligible for compensation.

The Jeju Special Act adopted on January 12, 2000, differed in interesting ways from the other Acts, indicating a significant change in the political atmosphere on promoting transitional justice. The purpose of the Jeju Special Act is to secure “fact-finding and reinstatement of the impaired reputations of the victims and their families”,<sup>44)</sup> which is exactly the same as in the Geochang Special Act. However, the definition of the incidents differs between the two laws. Article 2 of the Jeju Special Act provides that “The Jeju 4.3 Incidents means the incidents in which civilian populations were victimized during the turbulence that broke out on April 3rd, 1948, during the armed conflicts, and during the suppression operations continued in Jeju island from March 1, 1947 to September 21, 1954.” This description makes it clear that remedies shall be provided for damages incurred during the whole period between 1947 and 1954. Further, the language in Article 2 was deliberately chosen to avoid the mainstream designation of the incidents as a Communist-led revolt. In the Geochang Special Act, the definition of the incidents makes reference to “the suppression of the communist guerrillas.” In the Jeju Special Act, the legislators refused to refer to “communist guerrillas”—a great step forward for ensuring a neutral fact-finding procedure. Because of

44) Article 1, *The Special Act on the Fact-finding and Reinstatement of the Impaired Reputation of the Victims of Jeju 4.3 Incidents*, 2000.

Article 2, compensation could be offered even for victims who were involved in the demonstration, unless they were communist leaders of the armed uprising. Moreover, all of the human rights violations committed during the period either by the government, or by *Inminyugyökdæ* (the armed guerrilla groups) could be covered under the Act. Another distinctive feature of the Jeju Special Act is that it provides monetary compensation to victims.

After Roh Moo-Hyun was elected president in 2003, his administration followed the policy of the Kim Dae-Jung administration by emphasizing transitional justice in Korea. Transitional justice had expanded to reinvestigation of the activities of collaborators during Japanese colonial rule, and, during this process of transition, South Korea has adopted as many as eighteen truth commissions since 1996 in pursuit of transitional justice.

### 3. The characteristics of Korean transitional justice

Several components of the mode and process of Korean transitional justice are embedded in its culture and historical experience. First, transitional justice in Korea did not exclude prosecution and punishment. Even former presidents could not avoid prosecution in Korea's newly flourishing civil society. The Koreans have been influenced by Confucian culture, which emphasizes correctness (*Jöng*, 正), public cause (*Myöng*, 名) and justice (*Üi*, 義). Even a king could not justify his reign once the dynasty loses its legitimacy. It was not unusual to see a rebellion becoming a patriotic activity after revolutionary changes in the dynasty. Confucian culture was not an exhaustive list of the culture that influenced the transitional justice. Buddhist concepts such as *Sa-pil-gui-jöng* (Right

will prevail in the end) and *In-gua-üing-bo* (Rewards shall be given in accordance with deeds) may be also cited as a cultural and ethical basis for correcting past wrongs. However the punishment was limited to the top-level perpetrators and more emphasis has been put on the reconciliation by giving proper remedies to the victims.

Second, the investigation of the facts in Korea has been conducted in a relatively short time. In the case of Jeju, the committee released its final report after three years. The problem, was that the truth-seeking and fact-finding procedures were insufficient. The report does no more than narrate historical incidents. In-depth analysis of the cause and consequence of incidents was missing. Because of this, the requests for punishment of wrongdoers are often neglected except when the case pertains to the leaders or the most notorious perpetrators.

Third, even if monetary compensation for dead or disabled persons was pursued, most of the remedies were focused on the reinstatement of impaired reputations.<sup>45)</sup> This is partly because the people involved suffered from political discrimination under the Cold War atmosphere. Political reevaluation of their role as patriots or as innocent civilians was treasured as much as monetary compensation.<sup>46)</sup> In fact, the most important remedy given to the people in Geochang

45) An example of the Jeju victims' redress requests was given when they registered their cases to the Jeju 4.3 Incidents Special Committee, established by the Jeju Municipal Assembly between February 7, 1994 and May 11, 1995. See Yu Chul-In, *4.3üi Hyönjaejök Üimiwa Saeroun Yöksa Mandülgirosöüi 4.3 Kongwon (The Contemporary Meanings of Jeju 4.3, and "he 4.3 Park" as a New History Building Process)*, available in Korean at [http://www.cheju43.org/Library/thesis/95Sympo\\_02.html#quot1](http://www.cheju43.org/Library/thesis/95Sympo_02.html#quot1) (Last visited on December 1, 2004).

46) For more information, see Yu Chul-In, *ibid.*

and Jeju was the title of “innocent civilians.”

It is worth mentioning that Korean transitional justice successfully mitigated the continued victimization of people whose rights had been violated. Some of the persons whose human rights were violated feel their self-esteem was impaired, and they don't want to remain as victims but request to be identified as freedom fighters. The reinstatement of impaired reputations of the participants in the April revolution and of the Gwangju democracy movement transformed their status from passive victims to active contributors to a democratized society, which is a noteworthy achievement of Korean transitional justice.

Fourth, most of the remedying processes began with a special act, and not on the results of individual lawsuits. This means that Korean legal institutions were not neutral enough to be used as channels to transitional justice, despite the rapid development of the rule of law. Fortunately, since Minjok Daily Jo Yong-Soo's case in 2006, there have been several cases where the victims or their families were successful in a retrial relying on the recommendation of the Korean Truth and Reconciliation Commission. There have been some barriers that hindered the full operation of international principles and guidelines for transitional justice. North Korea's existence was one of the serious hurdles; its presence sustained the influence of anticommunist ideology and the chilling effect of the decades-old National Security Act. Tensions still persist between the democracy movement groups and the conservative networks in Korean society.

In order to avoid any awkwardness in its relationship with the United States or with Japan, the Government did not pursue a brand of transitional justice that traced back to Japanese colonial rule and the presence of the USAMG in Korea. The transitional justice measures taken

in Korea occurred by dint of the shift of political will in Korean society nourished by the democracy movement.<sup>47)</sup> Though full consensus was not built in the process, democratization and the growth of civil society compelled Koreans to adopt at least some measures to correct past wrongdoings. The four forms of reparations to the victims—restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition—<sup>48)</sup> were greatly cited in various documents in Korea, which was an example how the developing international human rights norms strengthened the normative basis. The principle of the rule of law has been reinforced by the transitional justice, and the legal landscape in Korea is gradually changing accordingly.

#### IV. Why is the justice incomplete?

The remedies being given to the victims of the Jeju 4.3 Incidents would have been unimaginable just a decade ago. However, the remedies are by no means perfect. Justice for the victims was incomplete because the analysis of the incidents, the violence, the perpetrator's identities and crimes, and the victims' characteristics were not sufficient. There are also problems in the compensation scheme.

##### 1. Analysis of the incidents was incomplete

First, even if the characterization of the incidents

47) Much of the credit should be given to the pivotal roles played by NGOs (such as Mingahyup) and other organizations of human rights victims' families in relentlessly fighting for redress.

48) Theo van Boven, *The Draft Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and International Humanitarian Law*, U.N. Doc. E/CN.4/Sub.2/1993/8.

in the Jeju Special Act was a compromise among political parties, the final report of the National Commission on the Jeju 4.3 Incidents should have given a better clarification so that the victims could secure redress free from political considerations. However, it provided no concrete definition.

The Report stated that the armed groups, with around 350 members led by the Jeju branch of the *Namrodang* (South Korean Workers' Party) launched the uprising on April 3, 1948 "to resist the violent oppression of *Söbukchöngnyöndan* (Northwest Youth Group) and to fight against a divided election, and a divided government in South Korea."<sup>49</sup>) It implied that not all of the people who were victimized during the suppression of the uprising were rebels. Most of the victims were innocent civilians, and the report showed the needs that the impaired reputation of the victims should be restored.

The objective description of the report is an improvement in that it did not portray the Jeju 4.3 Incidents as a communist revolt. However, the report's narration of the Jeju 4.3 Incidents is still problematic, because it supports the conservative conclusion that members of leftist groups not be given any remedies. Rightist violators are still being praised as patriots—not as offenders against human rights—and their acts are being justified as a fight to establish a South Korea free from communism. On the other hand, the *Mujangdae* was regarded as a communist-led, armed guerilla group, although the report emphasized that the group did not number more than 500. By contrast, Gwangju was reevaluated as a "democracy movement" based on this new definition, compensation for the movement's partici-

pants and victims of the movement became fully possible. The activities mere participants in Jeju were not reassessed as a patriotic movement because communist groups had influenced them. Moreover, the report did not make it clear that the human rights of the members of or participants to the leftist groups should also be protected. Consequently, the good faith activities of sympathizers to the armed groups could not be protected at all under the interpretation. Considering the historical context under the USAMG—then the communist party, and later the South Korean Workers' party, were legal and socialist ideas were equally popular among the people—the report could be criticized for its anti-communist ideology. The report could not assess the historical meaning of the mass movement in Jeju, and the sincere efforts of the ordinary people who were involved were completely discounted.

## 2. *The analysis of the violations, the perpetrators' identities, and their crimes was insufficient.*

The remedies for the Jeju 4.3 Incidents are incomplete in that the analysis of the violations, the perpetrators' identities, and their crimes is far from sufficient. Accordingly, the issue of prosecuting or punishing the perpetrators has completely vanished.

International humanitarian laws and International human rights law criminalizes mass killings of civilians. In the case of such crimes, the government bears an obligation to ensure the victims' rights, including the rights to remedy.

Four groups of actors were responsible for the crimes committed in the Jeju 4.3 Incidents: (1) the USAMG; (2) the South Korean government; (3) the armed resistance groups (the so-called

49) *Jeju 4.3 Sasam Chinsang Chosa Pogosö* (The Report of Jeju April Third Fact-finding Committee) (2003) p. 534.

*Mujangdae* or *Inminyugyökdæ*); and (4) individuals acting in a time of turbulence.

The atrocities committed by the police and *Söbukchöngnyöndan* (Northwest Youth Group) under the auspices of the USAMG and the South Korean Government constitute crimes against humanity and war crimes. The government's decision to whitewash the wrongdoings of the military, the police, and *Söbukchöngnyöndan* amount to a serious violation of the victims' rights. To characterize their human rights violations as patriotic national meritorious activities is again in violation of the victims' rights. The military and police who violated the victims' rights during the operation have been protected and praised because of the government's anti-communist policy. This ideological approach toward the incidents no longer suffices. If punishing the perpetrators and withdrawing the decorations and awards given to them is not possible, other reconciliatory measures should be taken.

What about the killings done by the *Mujangdae* (the armed resistance group)? The report did not define the nature of the armed group. Was the group a belligerent group under humanitarian laws such as the Hague Conventions or the Geneva Conventions? If so, the combatants' activities against the police station and other public offices might be considered part of warfare activities. To qualify as belligerents, the armed group should meet the following conditions according to the Hague Conventions: (1) to be commanded by a person responsible for his subordinates; (2) to have a fixed distinctive emblem recognizable at a distance; (3) to carry arms openly; and (4) to conduct their operations in accordance with the laws and customs of war.<sup>50)</sup> Although the *Mujangdae* had its commandeering system, and military-like organizational

scheme, it is obvious that they were not conducting their operation in accordance with the customs of war. The killings and attacks against the public offices were not warfare activities, and should be considered as extended political activities. Therefore, the government bears the responsibility to protect the civilian population from the attack of the armed groups.

The Special Act itself mentions nothing about the punishment of perpetrators of human rights violations. This inevitably makes the Act seem a gracious gift, or *Sihye* from the government, and not a legitimate remedy for the victims who are entitled to it.

The lack of investigation into the identities of the perpetrators constitutes a serious flaw in Korea's transitional justice. In this respect, the Korean situation mirrors that in Chile, when in 1996, the Inter-American Commission decided that the "Chilean Truth Commission was an inadequate response to the violations that took place during the Pinochet regime" because of two serious defects: "firstly, it had failed specifically to identify the perpetrators, which made it virtually impossible for the victims to establish responsibility before civil courts; secondly, the state failed to take any punitive action against the perpetrators."<sup>51)</sup>

### 3. *The analysis of the characteristics of victims is incomplete*

Victims are categorized into two groups: the so-called innocent civilian victims, and those who had been involved either with the rightist or the leftist groups. There is no difficulty in identifying the innocent civilians killed or injured

50) Article 1 of the Hague Convention (IV).

51) Dinah Shelton, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* (1999). p.324.

as victims entitled to compensation. With respect to the rightist activists killed or injured during their work as members of the police, the military, or the *Söbukchöngnyöndan* (Northwest Youth Group), the government awarded benefits on the basis of their “eritorious activities.” However, leftists who had been involved in the Jeju 4.3 Incidents, or ordinary citizens who had some relationship to the activist groups, and who were subsequently killed or disabled may be excluded under the Act from the definition of victim. The Constitutional Court decided in 2001 that “he ring-leader of the communist armed military group or mid-level leader who had resisted the suppression, the leaders of *Namrodang* or S. Korea Workers’ Party who were responsible for the Jeju incidents etc. will not be considered victims under the Jeju Special Act.”<sup>52)</sup> Even after research showed that the vast majority of the human rights violations were committed by members of the military forces, police, and *Söbukchöngnyöndan* (Northwest Youth Group), the real violators of human rights are still being given benefits as national meritorious persons. However, many of the victims who had been killed, disabled, or unfairly treated though abusive government forces are excluded from their designation of victims.

Even if the *Mujangdae* should be held responsible for the damage that they caused to civilians, the government’ illegal activities committed against leftist groups during the suppression should also be acknowledged and compensated.

#### 4. *The compensation scheme is incomplete*

The compensation schemes for the victims are too narrowly described and incompletely defined. The award of monetary compensation under the Jeju Special Act is limited to cases of medical aid and living expense aid when the government finds it appropriate.<sup>53)</sup> As a result, only seventy-eight people are currently eligible to receive benefits. The *Gwangju Special Act* and the *Democracy Movement Special Act* made it clear that the movements were meritorious for the development of Korean democracy, and the acts legitimately enumerated compensation and broad assistance for the victims. By comparison, the discriminatory treatment against the victims of the Jeju 4.3 Incidents seems to be based on the interpretation of the incident itself. However, the compensation in the Act for the victims is not enough. Even if the victims were not reassessed for their meritorious activities, they should still possess survival and wrongful death claims against the government. The Jeju Special Act completely neglected these legitimate claims, even though the Act was intended to promote human rights. The limited monetary aid awarded took the form of gifts from the government for those victims living in extreme poverty or with serious disability. The compensation schemes also failed to allow any legal basis for the victims’ families.

## V. Conclusion

Korean transitional justice followed neither of the extreme paths it might have taken: to forgive

52) See the Constitutional Court’ decision on the Special Act on Fact-finding and Reinstatement of the Impaired Reputations of the Victims of Jeju 4.3 Incidents, 2000Heon-Ma238 decided on September 27, 2001.

53) Article 9, *The Special Act on the Fact-finding and Reinstatement of the Impaired Reputation of the Victims of Jeju 4.3 Incidents*, 2000.

and forget, or to prosecute and punish. In the Gwangju case, the worst perpetrators were prosecuted and convicted, and several remedy packages subsequently ensued for the victims. In the Jeju case, no prosecution was sought because half a century had elapsed since the incidents, but truth-seeking activities started based on the successful argument that real forgiveness and reconciliation are possible only when the truth is found, and when appropriate remedies are offered. Remedies were awarded to the victims in the form of restored reputations, through various memorial activities, and with some limited monetary compensation.

It would be unfair to denounce all the efforts and progress that were made for the Jeju 4.3 Incidents victims. Even if the Jeju Special Act and final report of the National Commission on the Jeju 4.3 Incidents are problematic, they are important cornerstones in achieving transitional justice in Korea.

Transitional justice in Korea has always been closely related to the development of democracy and the rule of law. The remedies given to the victims of the Jeju 4.3 Incidents were closely tied to the political situation that prevailed in 2000, when the Special Act was legislated. The change of social climate under the Kim Dae-Jung government also played an important role in advancing transitional justice in Korea. As the iron wall of anti-communism weakened after military dictatorship collapsed, the Jeju victims gathered courage to approach the authorities to seek their redress. The lawmakers, likewise, found it easier to persuade the conservative public when they legislated the Special Act.

In a clear compromise, however, remedies for human rights violations did not demolish the rationale of anti-communism. The remedies were not awarded to the people who had actively

initiated communist activities, or who had worked for North Korea. The human rights of leftists remain a sensitive issue. In the same vein, the hundreds of thousands of innocent civilians massacred by South Korea and the USAMG during the Korean War—acts justified by labeling the victims as communist-sympathizers—have not been compensated, with the exception of victims of the well known No Gun Ri incident.<sup>54)</sup>

There are many civilian victims or families of those who were killed or injured before, during and after the Korean War. The suppression of the Yeosu-Suncheon incidents were one of the example, and their families have worked hard to raise their case in the National Assembly. The incident was another military uprising that broke out after the Jeju 4.3 Incidents, in which the military who refused to go to Jeju as a repression army staged their resistance against the government on October 17, 1948. In the rebellion, many innocent civilians were killed, but the case could not draw enough attention, because it was publicly perceived as a communist-led armed uprising. Victims killed or injured by the South Korean police or military or the USAMG found it difficult to secure redress even if they campaigned for it.

Fortunately, the Uri Party, then ruling party of Korea, decided to introduce a bill for the Basic Act for Truth and Reconciliation on October 17, 2004, which included the Yeosu-Suncheon incidents. After long debates and discussions in the National Assembly, the Grand National Party (then conservative opposition party) agreed to pass the “Basic Act on the Investigation of

54) The No Gun Ri case became known to the world through a 1999 Associated Press report, and the No Gun Ri victims were finally given their remedies in September 2004, based on the *Special Act on the Investigation and Reinstatement of Impaired Reputation of No Gun Ri Victims* (2004).

Past Incidents for Truth and Reconciliation.”<sup>55)</sup> The Act legislated on May 31, 2005, and the Truth and Reconciliation Commission of Korea (TRCK) was established.<sup>56)</sup> By the activities of TRCK, more massacres of civilian victims, who were formerly labeled as communists or reds during the Korean War, were discovered, and some compensation was offered for them.<sup>57)</sup> South Korea has continuously seen political contention concerning the issue of dealing with the past during the Lee Myung-bak government (2008-2013). The new president-elect, Park Geun-hye, the daughter of former dictator Park Chung-hee, will not be free from the discussion. Korean democracy and human rights system will be fully consolidated only when they take full measures to overcome the debates on the war-time massacres and other human rights violations.

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55) Framework Act on Clearing up Past Incidents for Truth and Reconciliation, Act No. 7542, Ma y 31, 2005 [hereinafter Framework Act].

56) *Id.* art 3.

57) For more recent developments in the transitional justice issues in South Korea, see Tae-Ung Baik, *Fairness in Transitional Justice Initiatives: The Case of South Korea*, THE BUFFALO HUMAN RIGHTS LAW REVIEW (forthcoming, 2013).