



[ADRN Online Seminar] Democracy Cooperation Series 14: History of Human Rights Violations in Asia

Healing Wounds of Historical Atrocities: Transitional Justice Measures in Asia

East Asia Institute (EAI)

I. Overview

Many countries in Asia have faced similar experiences of being under authoritarian rule in the past. During this rule, there were many cases of human rights violations. With the introduction and implementation of democracy, states have tried to bring justice to the victims and their families. Efforts include, but are not limited to, official apologies, recognition of the past, reparation, and punishing the perpetrators. However, many challenges exist in achieving full justice and reconciliation.

The Asia Democracy Research Network (ADRN) gathered experts from South Korea, Sri Lanka, and Taiwan to exchange ideas and expertise on transitional justice and reconciliation measures that were taken in each respective country. During this webinar, experts gave a brief background on the human rights violations that occurred in the past, explained the different transitional justice measures the government implemented and outlined the challenges that exist today.

II. Case Studies: Sri Lanka, Taiwan, South Korea

Sri Lanka

The Sri Lankan civil war ended with the military defeat of the Liberation Tigers for Tamil Eelam (LTTE) by the forces of the Government of Sri Lanka. The previous attempt at a political settlement was ushered in following the Indo-Sri Lanka Accord in 1987. Transitional justice for the alleged war crimes and crimes against humanity that were committed by both sides is part of the current regime's attempts at constitutional reform. In 2009, Sri Lanka pledged to investigate allegations of war crimes and violations of international humanitarian law. However, as this did not happen, the UN Secretary-General established a Panel of Experts on Accountability in Sri Lanka. The panel found that there was evidence to further investigate this issue. The Consultative Task Force (CTF) conducted hearings throughout Sri Lanka to ascertain public views on the four transitional justice mechanisms introduced in Geneva. This brought on domestic criticism on the grounds that this was a violation of Sri Lanka's sovereignty. Despite initial suspicion and distrust that the CTF was yet another government body to seek public support, the response improved over time. The government issued Certificates of Absence (COA) to the families of disappeared people. This has not been welcomed by the families because the COA could constitute acceptance that their loved ones are no longer



on this earth. An additional concern for the appointment of individuals to the Office due to their past associations.

The key mechanism that aroused the most amount of uproar and outrage was the provision for the proactive participation of international judges and prosecutors. The objection was framed based on the violation of national sovereignty. In order to hold their Sinhala Buddhist constituency together, the Rajapaksas, a politically prominent family in Sri Lanka, have taken a hardline stance. However, Sri Lanka still remains on the agenda of the UNHRC. Another key measure was that the Prevention of Terrorism Act of 43 years was to be amended. Critics and other states pointed out that the proposed amendments did not go to the heart of the draconian legislation.

There are several reasons for the impediments to transitional justice in Sri Lanka. Some have already been mentioned such as the Rajapaksa family's identification with the Sinhala Buddhist nation that defeated the LTTE. The Sri Lankan government and security forces have also refused to accept the possibility of accountability for war crimes. The argument is that accountability will only rake up old wounds and be divisive when the overarching objective is to heal and reconcile. Another obstacle is the cultural issue of whether full confession will be possible in a society based more on shame than guilt. Sri Lankan demand confronts the barrier of impunity that has been erected over the years and cloaked in a notion of narrow patriotism and nationalism. The Human Rights Council is the only forum in which arguments for transitional justice are taken seriously and, if possible, advanced in terms of implementation.

Taiwan

It can be said that relations between the local people and the Kuomintang (KMT) government were extremely tense in 1947. A prominent issue called the "228 Incident" was triggered by the mishandling of a cigarette-smuggling case by police officers which led some Taipei citizens to go out to the streets and protest on February 28, 1947. Taipei City was the epicenter of this political storm but this movement spread to almost all counties. The number of victims has never been accurately counted but the estimated range is from 1,000 to 100,000 people. Though the 228 Incident, lasted only for a short period, another incident called the White Terror lasted 38 years.

Taiwan's transitional justice mainly began after the lifting of martial law in 1987. In response to the demands from social movements, President Lee Teng-hui pushed for a series of reforms. The Lee Teng-hui era can be characterized as the transition period from an authoritarian regime to full democracy in Taiwan. In response to the pressures from civil society, he launched a transitional justice measure for White Terror victims. It was only toward the later stage of his tenure that he apologized to the political victims of this incident. During Ma Ying-jeou's administration, there were several important developments in Taiwan's transitional justice. In 2009, the government expressed its willingness to re-open the investigation into the Lin I-hsiung's Family Massacre case and the Dr. Chen Wen-cheng's Murder case. The former President repeatedly apologized on behalf of the KMT for the 228 Incident and the White Terror victims. In 2015, the



NTU officially approved the name of the campus square to the "Dr. Chen Wen-chen Incident Memorial Square." Taiwan's Transitional Justice Commission was officially launched in May 2018. In July 2019, the Legislative Yuan passed the Political Archives Act. President Tsai Ing-wen proposed the next three tasks for Taiwan's transitional justice. This included investigating political archives, disclosing historical truth, and making institutional corrections.

Though the initiation of transitional justice efforts can be said to have started in 1987, it was not until May 18, 1992, that two laws that define political crimes, the "Betrayers Punishment Act" and "Article 100 of the Criminal Law" were officially abolished. This move ushered in the end of the White Terror and ushered in the agenda for transitional justice. However, challenges still existed in the implementation of fair measures. The Democratic Progressive Party (DPP) government chose to prioritize holding institutional perpetrators accountable and postponed pursuing individual perpetrators to avoid social unrest. In 2018 the DPP government set up the Transition Justice Commission to deal with the transitional justice issue. However, in the case of individuals, the authoritarian strongmen have long passed away and their descendants do not participate in politics. Additionally, the high-ranking officials who are acclaimed for stringing economic development are less relevant to the two political events and have also passed away. It should also be noted that in the 1990s and 2000s, the idea of transitional justice did not resonate strongly with many people. Chen Shui-bian's transitional justice plan did not receive much political and social support. In the future, the legacy of authoritarian rule such as monuments, organizations, symbols and will face greater pressure to be demolished or transformed.

It is also crucial that the international political context be part of the conversation. The White Terror took place during the Cold War. In the 1950s, the political and military threats posed by communist China were immense and imminent. However, after the 1960s, the tension between the communist camp and the non-communist camp was less severe. The necessity of imposing political repressions to ensure the security of Taiwan was reduced. In short, when pursuing transitional justice, the levels of external threats Taiwan faced in different periods should be taken into account.

South Korea

The modern history of South Korea follows the periods of liberation from Japanese colonialism (1910-1945), rule of the US Army Military Government in Korea (1945-1948), the Korean War (1950-1953), Rhee Syngman regime (1948-1960), the Second Republic after the April 19 Revolution (1960-1961), the assassination of President Park Chung-hee by his subordinates and Seoul Spring (1979), December 12 Military Coup of Chun Doo-hwan and Roh Tae-woo, June Democratic Struggle in 1987 and finally, democratization. Throughout this period, there have been innumerable cases of human rights violations such as torture, disappearance, arbitrary detention, and extrajudicial killing. In 1919 a nationwide independence movement led to 7,500 Koreans killed, 16,000 wounded, and 47,000 arrested. The Japanese forces brutally killed innocent civilians and burned down their homes and churches. Thousands of Korean women were



forced to work as sex slaves for the Japanese military and some 140,000 men and women were victims of forced labor.

The Committee for Investigation of Pro-Japanese Collaborators' Property was established by Special Act 7769 in 2004. The Commission investigated 168 collaborators and ordered them to return 1,114 square meters of property worth 211 billion KRW. In 2010, the Committee published its twenty-five volume report naming 1,005 collaborators; many of the former collaborators were already deceased by the time the report was published. The Committee to Support the Victims of Overseas Forced Mobilization and Investigation of Forced Labor under the Japanese Rule was set up by Special Act 10143 in 2010.

Jeju 4.3 Incident and Yeosu-Suncheon. Incidents are the most representative cases of human rights violations that occurred after liberation and during the U.S. Army Military Government in Korea. More than 80 percent of the human rights violations were committed by the military, police, or right-wing organizations such as the Seobuk Cheongnyeondan (Northwest Youth League). Massacres of civilians were committed on both sides of the 38th parallel by North Korean, South Korean, and American armies. Although the Jeju 4.3 Incident lasted only two days, a proper investigation did not take place due to a claim about the statute of limitations. The Geochang Massacre was the only case in which a joint investigation committee was formed by the National Assembly, Ministry of Home Security, and the Ministry of Justice. This led to the formation of a general court-martial five months after the incident, which sentenced military officials Oh Ik-gyeong, Han Dong-seok, and Kim Jong-won on the charges of participating in the massacre of civilians and concealment of the truth. The three convicted were pardoned by President Rhee Syngman but this did not stop the association from excavating the site of the slaughter, which was located based on the testimonies of the military and police personnel at the time. As a result of the continuous effort, the Special Investigation Committee for Civilian Massacres was established at the 4th National Assembly. However, the bereaved suffered disappointment as the Special Committee carried out poor investigations and disbanded without any accomplishments.

During his presidential campaign, Kim Young-sam pledged for an investigation to provide truth and the restoration of honor for the Geochang Massacre. However, bereaved families were hesitant to push forward their agenda and it was only after the year 2000 that bereaved families were able to form a National Bereaved Family Association. In Korea, the dictatorial and authoritarian states committed various violations of human rights. The most symbolic case is the 1980 May 18 Gwangju Democratic Uprising which left 223 killed, 5,928 wounded, and 2,146 detained. The numbers also included deaths under suspicious circumstances, disappearance, torture, collective detention, and extrajudicial killing. Throughout Korean history, the different administrations created different organizations for truth-seeking but improvement still needs to be made. ■



Speaker Biographies

■ **Chin-en Wu** is an associate research fellow at the Institute of Political Science at Academia Sinica, Taiwan. He received his Ph.D. degree from the University of Michigan. His main research interest includes the impact of economic development on political regime dynamics and how regime type influences economic performance.

■ **Hun Joon Kim** is a professor of Political Science and International Relations at Korea University. His publications relevant to this field include *The Massacres at Mt. Halla: Sixty Years of Truth-Seeking in South Korea* (2014), *Transitional Justice in the Asia Pacific* (ed. 2014), “Are UN Investigations into Human Rights Violations a Viable Solution? An Assessment of UN Commissions of Inquiry” (2019), and “The Prospect of Human Rights in US-China Relations: A Constructive Understanding (2020).”

■ **Paikiasothy Saravanamuttu** is the founding Executive Director of the Centre for Policy Alternatives. He was the Secretary of the Consultation Task Force on Reconciliation Mechanisms and the first winner of the Citizens Peace Award presented by the National Peace Council of Sri Lanka. He was a founder of the Transparency International Sri Lanka Chapter and has been nominated for numerous peace awards. He is quoted widely in the local and international media on Sri Lanka.



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For inquiries:

JinkyungBaek, Director of the Research Department

Tel. 82 2 2277 1683 (ext. 209) j.baek@eai.or.kr

The East Asia Institute

Sajik-dong 261, Jongro-gu,

Seoul 03028, Republic of Korea

Tel. 82 2 2277 1683

Fax 82 2 2277 1684

Email eai@eai.or.kr

Website www.eai.or.kr