

KOREA'S TRUTH AND RECONCILIATION COMMISSION: AN OVERVIEW AND ASSESSMENT

*Kim Dong-Choon**

INTRODUCTION

The Truth and Reconciliation Commission of South Korea (hereinafter “TRCK”) was established in 2005 by the South Korean National Assembly as an independent body to investigate human rights violations in Korea from 1910 through 1987, including massacres, incidents of death, injury or disappearance, politically fabricated trials, and the killing of unarmed civilians and political prisoners before and during the Korean War. Created by the Framework Act on Clearing up Past Incidents for Truth and Reconciliation,¹ the TRCK is a product of South Korea’s decades-long democratization movement and the liberal government it produced.² Its findings and recommendations may accordingly be seen as a tool for breaking open the politics of denial that have been maintained in South Korea for the past sixty years. At the same time, its work can help to set straight the distorted history of South Korea and to rewrite the Northeast Asian Cold War history. The TRCK’s work thus not only clarifies important aspects of Korea’s past and its interconnections with neighboring big powers, but likewise has implications for Korea’s future reunification and for the maintenance of peaceful relations in Northeast Asia.

The TRCK’s effectiveness was nevertheless significantly hampered by a number of factors, including its limited legal authority, firm resistance from entrenched and defensive government bureaucracies, and continuous contestation from conservative political forces. It was likewise faced with

* Professor of Sociology, Sungkonghoe University (Korea). Professor Kim served as a Standing Commissioner of the Truth and Reconciliation Commission of Korea, Republic of Korea (TRCK) from its establishment in December 2005 until December 2009, one year prior to its close in December 2010. The author thanks Tara Melish, Mark Nathan and Errol Meidinger for their careful editorial review of this article.

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

2. See Kim Dong-Choon, *The Long Road Toward Truth and Reconciliation*, 42 *CRITICAL ASIAN STUD.* 525 (2010) (tracing the genealogy of the TRCK and victim-centered activism for redressing the past back to the 1960s, while recognizing that full-fledged activism started only in 1987 after the demise of military rule).

the steady ascendance of the neo-liberal economic discourse over the human rights discourse over its lifetime, the latter having provided the social foundations for the TRCK's emergence in the first place. As a consequence, while the TRCK was able to document many historical cases of human rights abuse, it was not able to document adequately the conditions that led to those abuses or to facilitate true reconciliation among the many segments of Korean society that both carried out and suffered those abuses.

This Article provides an overview of the TRCK's work and its recommendations as well as an assessment of its accomplishments and the significant road that lies ahead in ensuring the full implementation of the TRCK's historic recommendations. Part I describes the TRCK's genesis, social context, and mandate, while Part II analyzes its statutory powers and what I view as the limitations built into its jurisdictional authority. Parts III and IV then turn to the TRCK's actual work. Part III describes the Commission's achievements and the specific recommendations it issued to the government and government institutions. Part IV then assesses the record of, and prospects for, the implementation of those recommendations. The Article concludes with lessons learned from the TRCK experience and an enumeration of specific measures the South Korean government will need to take to ensure the TRCK's efforts meet with lasting success.

I. GENESIS AND MANDATE

The TRCK's genesis can be traced to two primary developments in Korea. On the one hand, it can be seen as the outcome of the long struggle for justice that Korea's democratization movements and civil society have strenuously waged for decades. That process began in the 1960s, reaching maturity in the late 1980s with democratic elections and the demise of military rule. Unlike other truth commissions in post-dictatorship countries, it was nevertheless not until the democratic transition was largely consolidated in 2005 that the TRCK was established. Pressed by civil society activists, the Korean government only then sought to address questions of long-delayed justice.

On the other hand, the TRCK was the first comprehensive truth commission in South Korea and in Northeast Asia more generally. The necessity of a commission mandated to address the full range of past human rights violations, not just particular incidents, became apparent after several narrower efforts to deal with separate past incidents had been attempted. The TRCK thus built on several earlier laws. In particular, over the opposition of right-wing forces, Korea's civilian governments under Presidents Kim Young Sam (1993-1998) and Kim Dae Jung (1998-2003) passed a number of special laws between 1995 and 2000 to settle certain unresolved

historical cases. These included the Gwangju Special Act of 1995, which focused on punishing former military leaders who killed civilians in Gwangju in 1980,³ and the Guchang Special Act of 1996, which aimed to restore the honor of civilian victims massacred in 1951.⁴ These specialized laws were followed in 2000 by the Jeju 4.3 Special Act for Investigating the Jeju April 3 Incident and Recovering the Honor of Victims⁵ as well as the establishment that same year of the Presidential Truth Commission on Suspicious Deaths of the Republic of Korea (PTCSD).⁶ The creation of this latter Commission was an important step toward the settling of human rights violations under military rule.⁷

Yet, the limited nature of these historical inquiries raised dilemmas for both the Roh Moo-hyun government and civil rights activists. In particular, they were concerned that if the numerous past incidents of human rights abuse were settled individually, many individual laws would have to be legislated and victims could demand increasingly expansive settlements, triggering a never-ending process of expanding reparations packages depending on the special law created to investigate the incident at issue. They therefore concluded that a better alternative was to pursue one single com-

3. Special Act Concerning the 18 May Democratization Movement, Act. No. 5029, Dec. 21, 1995. On August 25, 1995, 30,565 professors from seventy-eight universities signed the petition demanding the special law. At the same time, members of 300 trade unions marched in Seoul demanding justice for Gwangju. By November, more than 700,000 signatures were gathered. On November 24, 1995 Kim Young-sam ordered the special law to be drafted.

4. Special Measures Act for Recovering the Dignity of the Victims of Guchang and other Incidents, Act. No. 5148, Jan. 15, 1996.

5. The Jeju April 3 Incident was a series of events in which thousands of islanders were killed as a result of clashes between guerilla and government forces. The Jeju branch of the South Korean Labor Party organized uprisings against the American-sponsored Rhee Syngman groups. They began protesting the general election that the divided government would be built on in 1948. Confronted with a government suppression policy, the guerrillas were forced to hide on Halla Mountain. During the suppression operations, nearly thirty-thousand civilians were known to have been killed by the National Police, Northwest Youth, and National Guard. Since the incident occurred during the U.S. military government's occupation, this operation, which resulted in numerous civilian deaths, was conducted under the sponsorship of U.S. forces. See Hunjoon Kim, *Seeking Truth after 50 Years: The National Committee for Investigation of the Truth about the Jeju 4.3 Events*, 3 INT'L J. OF TRANSITIONAL JUSTICE 406-423 (2009).

6. The Commission was established in the Special Act to Find the Truth on Suspicious Deaths, Act. No. 6123, Jan. 12, 2000.

7. A more complete list of key events can be found in TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA, TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS 10-12 (2009) [hereinafter TRCK 2009 REPORT].

prehensive settlement. On August 15, 2004, President Roh Moo-hyun spoke of the necessity for such a comprehensive past settlement, which in turn encouraged activists and bereaved family members to campaign for such legislation.⁸

The resulting Framework Act established the TRCK with a broad purpose and expansive investigatory mandate. Its purpose was defined as fostering national legitimacy and reconciling the past for the sake of national unity, which it was to do by honoring those who had participated in anti-Japanese movements and investigating human rights abuses from Japanese colonialism to the present, especially during the nation's authoritarian regimes.⁹ The investigative scope of the Commission was thus extremely broad. It covered three broad areas representing three distinct historical periods: (1) anti-colonial movements during the Japanese occupation, (2) massacres before and during the Korean War, and (3) human rights abuses during Korea's democratization period.¹⁰ This range of events, covering the span of almost a century, might be the most extensive and wide-ranging among the TRCs that have existed in the world.

The TRCK was accordingly given authority to investigate matters within this mandate, to take decisions on such matters, and to recommend

8. For the full text of President Roh Moo-hyun's speech (in Korean), see *No-cut News*, Aug. 15, 2004, available at <http://media.daum.net/politics/others/newsview?newsid=20040815121821746>.

9. Framework Act, *supra* note 1, art. 1.

10. TRCK 2009 REPORT, *supra* note 7, at 5. A more detailed breakdown is included in the Framework Act itself, which includes:

1. Anti-Japanese movements during the period of Japanese colonial rule starting in 1910 and in the early years following Korea's liberation on August 15, 1945;
2. Efforts by exiled or overseas Koreans to uphold Korea's sovereignty and enhance Korea's national prestige from the Japanese occupation to the enforcement date of this Act;
3. Massacres from August 15, 1945 to the Korean War;
4. Incidents of death, injury or disappearance, and other major acts of human rights violations, including politically fabricated trials, committed through the illegal or seriously unjust exercise of state power, such as the violation of the constitutional order, from August 15, 1945 to the end of the authoritarian regimes (1987);
5. Terrorist acts, human rights violations, violence, massacres and suspicious deaths by parties that denied the legitimacy or were hostile towards the Republic of Korea from August 15, 1945 to the end of the authoritarian regimes (1987);
6. Incidents that are historically important and incidents that the Commission deems necessary.

Framework Act, *supra* note 1, art. 2.

measures for promoting reconciliation.¹¹ Its establishment signaled a dramatic change from the silence imposed by past anticommunist regimes in South Korea, especially with regard to the mass killings committed by U.S. forces as well as the South Korean police and military before and during the Korean War. However, the TRCK was destined to face serious hurdles from the very beginning due to the persistence of the Cold War in East Asia. Indeed, the continued division of the Korean peninsula meant that South Korea was still ruled by anticommunist governments, which had long refused to admit the history of state violence against those accused of being communists. Nonetheless, in terms of its objective to document and redress the massacres and grave human right violations committed by the victims' own government, the TRCK was the first effort of its kind in Northeast Asia.

Like other TRCs established in different parts of the world during the 1990s, the TRCK selected a "truth-and-reconciliation model" for dealing with past incidents, rather than a "punishment-and-compensation" approach. This was done primarily for political reasons given the Korean context, even as some activists argued that a "punishment-and-compensation" approach was needed to achieve justice. These activists were upset that the TRCK was not granted the right to prosecute those who committed atrocities. Rather, its legal mandate was limited to uncovering the truth for the record, recommending corrections to textbooks and other records, and aiding reconciliation through compensation or services for the victims.

The decision to pursue a "truth-and-reconciliation model" reflects a number of factors. On one level, it reflects the fact that much of the TRCK's work was to focus on verifying the truth of petitions filed with it concerning incidents that took place over fifty years ago, particularly concerning mass killings during the Korean War. Given that many witnesses have already passed away and documentation has been destroyed, the possibility of prosecuting perpetrators was remote. At the same time, alleged perpetrators of killings had often already been honored as national heroes of the Korean War; thus the very findings thereof and the victims' statements contradicted official versions of the history of the Korean War. As a result, the comprehensive past-dealing project of the Roh Moo-hyun government and the civil activists adopted a politically acceptable strategy: the 'truth-and-reconciliation' model, instead of the 'punishment-and-compensation' model accepted in other political terrain.¹²

11. Framework Act, *supra* note 1, art. 3(2).

12. Sidestepping the issue of punishment and compensation has affected the investigations of the TRCK, raising doubts about whether truth can be achieved without punishment.

That decision also reflected the cumulative experience of numerous past-dealing processes within South Korea, some of which had experimented with compensation for victims. In particular, there had been an experiment of reparatory justice when the South Korean government compensated individual victims of the Gwangju Democratization Movement, where several hundred civilians were killed by government troops in May 1980. Although financial compensation had been seen as the most effective way to placate victims, many activists viewed it as a mere political means for calming the dissatisfaction, not as means for serving justice.¹³ In this respect, while the title, Truth and Reconciliation Commission, was seemingly adopted in light of the experience of TRCs like those of Chile and South Africa, the TRCK's mandate and purpose are somewhat different. This is especially so with regard to South Africa's TRC, in which individual victim reparation was central and amnesty from prosecution was offered only to those who fully testified about their participation in past crimes before the TRC.¹⁴

Although "reconciliation" is the second part of the TRCK's title, the Framework Act did not specify how and with whom the TRCK is to promote reconciliation.¹⁵ This has led the TRCK to focus on establishing truth as a way to promote reconciliation, following the model of reconciliation through truth. Given the existing government has stubbornly denied the very existence of state-sponsored mass killings, torture and human rights

13. This sentiment was expressed not only by victims and activists of the Gwangju Democratization movements, but also by Gwangju citizens in general, who tended to view such measures as unacceptable and unjust. They believed that no reparatory measures could be executed in the absence of a truth-finding process. The bill designed by the Roh Tae-woo government only vaguely defined the historical significance and precise timeframe of the incident, and it defined the beneficiaries of the bill as those who were "related to" the Gwangju Democratization Movement without specifying what "related to" meant. See Shin Il-sup, *The Politico-social Meaning of Gwangju Compensation Act*, in 5.18 PEOPLES' RESISTANCE AND LEGAL STUDIES 173-204 (5.18 Memorial Foundation ed., 2006).

14. South Africa's Truth and Reconciliation Commission (TRC) was a court-like body assembled in South Africa after the abolition of apartheid. Witnesses who were identified as victims of gross human rights violations were invited to give statements about their experiences, and some were selected for public hearings. Perpetrators of violence could also give testimony and request amnesty from both civil and criminal prosecution. See generally TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, vol. 1 (1998), <http://www.justice.gov.za/trc/report>.

15. The Framework Act allows the Commission to recommend that immunity be granted to perpetrators actively cooperating with the Commission by confessing his/her crime during the investigation. See Framework Act, *supra* note 1, art. 38.

violations in the name of anticommunism, settlement of the past, it was concluded, should be accomplished primarily through fact-finding.

II. THE TRCK'S WORK

A. *Jurisdictional and Investigative Powers*

The Commission was authorized to investigate petitions for four years, with a possible two-year extension if needed.¹⁶ For the first the two years, it functioned under the Roh administration, which had championed it. However, the election of the conservative politician Lee Myung-bak to the presidency in 2008 shunted the discourse of justice and human rights, which had come to be highly valued over two decades, and gave rise to one emphasizing efficiency and competitiveness. With this power shift, the TRCK found itself in increasingly troubled waters.

The TRCK had a staff of about 240, including eighty-four seconded from central and local governments. Its budget in 2008 was approximately 19.7 billion Korean won (or just over \$14 million US), roughly half of which went to personnel and half to operating expenses¹⁷ The TRCK was composed of fifteen commissioners: eight recommended by the National Assembly, four appointed by the President, and three nominated by the Chief Justice of the Supreme Court.¹⁸ Four of these fifteen commissioners were designated standing commissioners (two recommended by the National Assembly and two nominated by the President). This designation referred to their status as full-time bureaucrats at the level of deputy prime minister in the Korean government. Their main role was to direct the investigations and preside over all affairs of the Commission, while one of them, the chairperson, managed the Commission's Executive Office. Although the TRCK could have requested a two year extension in its mandate,¹⁹ the Commission ended its mission in December 2010, after its initial term expired and only a six-month renewal was requested by the Commission and authorized by the conservative government of Lee Myong-bak.

Under the "Framework Act," the Commission was empowered to investigate incidents not only on its own authority, but also based on petitions received from victims, victims' families and other concerned persons that have specific facts regarding an issue to be investigated.²⁰ Following the

16. *Id.* art. 25.

17. TRCK 2009 REPORT, *supra* note 7, at 15.

18. Framework Act, *supra* note 1, art. 4.

19. *Id.* art. 25.

20. *Id.* arts. 19, 22(3).

year allowed for acceptance of such petitions,²¹ about ten thousand incidents were finally filed for investigation, eighty percent of which were related to Korean War massacres.²² In investigating these incidents, the Commission's staff investigators would review known written documentation and then look for related documents that were believed to be preserved in police, military or Korean Central Intelligence Agency (KCIA) files. Based on the survivors' statements and the documents that were obtained, the investigators would reconstruct full stories of the incidents through which the ruling narratives could be falsified or new facts could be built. The draft of the investigators' report was then submitted to the Commission for a decision.

In deciding whether to accept or reject a petition-related report, a majority of the fifteen commissioners would need to vote in favor of it.²³ Majority decision-making was privileged over a deliberative process that might promote consensus, and even within the Commission there was often a lack of effort to seek reconciliation among the commissioners. Since the commissioners were appointed by the three separate branches of the government and had either liberal or conservative backgrounds, their ability to reach consensus was not as good as one might have wished.

The Commission could likewise decide to investigate some important incidents on its own authority, provided it had sufficient support to admit it as an "historically important event considered critical to identifying the truth."²⁴ Nonetheless, because the Commission was given only four years (with a possible two year extension if needed) to investigate the over 10,000 individual petitions submitted to it, it faced significant difficulties in pursuing these other historically important incidents and clarifying systems or linkages of command in the perpetration of grave human rights violations. The decision as to how to balance these conflicting objectives—pursuing the truth of individual incidents versus systems of abuse—presented constant challenges to the commissioners.

Once an investigation was complete and a decision taken, the TRCK immediately provided notification of its decision to concerned persons, including the petitioners and respondents or their descendants, as well as ref-

21. *Id.* art. 19(2).

22. Specifically, 7,922 out of the 10,860 petitions submitted to the TRCK involved incidents related to Korean War massacres. TRCK 2009 REPORT, *supra* note 7, at 20.

23. According to the Framework Act, the Commission shall reject a petition if it does not fall within the subject matter of the Commission's investigatory authority, if its contents are deemed evidently false or ill-founded, or if it contains identical facts to a previously dismissed petition. *See* Framework Act, *supra* note 1, art. 21.

24. *Id.* art. 22(3).

erence witnesses, allowing them the opportunity to raise a written objection.²⁵ These individual decisions and recommendations were then submitted in a biannual report to the President and National Assembly with the goal of publicizing the information that was gathered and creating public consensus.²⁶ These reports could then provide the basis for further governmental policies, including possible reconciliatory or restorative measures (e.g., admitting past wrongdoing), restoring the honor of the victims, or taking other steps to prevent the recurrence of similar incidents.²⁷ Indeed, the TRCK was authorized under the Framework Act to offer specific recommendations to the government to reinstate the honor of victims and mediate reconciliation between confessed perpetrators and their victims, to revise policies in order to prevent the reoccurrence of any similar atrocities, and to establish truth-finding research institutes.²⁸

B. *Built-In Limitations*

Despite the historic nature of the TRCK and its extensive mandate, it faced multiple limitations in pursuing its mandate to expose the truth of the past. These limitations grew in large part from the Framework Act's origin as a political compromise between the conservative and liberal parties in the National Assembly in May 2005. The conservative Grand National Party (GNP), which generally represented the offenders' position and interests, fiercely opposed the bill when it was introduced, and thus the liberal Uri Party had to agree to the creation of the TRCK with a restricted mandate in order to secure enough votes to pass the Assembly. In other words, the conservatives, who had directly or indirectly benefited from the past authoritarian rule and thus could potentially suffer negative consequences from the TRCK's work, opposed the Framework Act itself and forced a deep compromise on the ruling Uri Party. This compromise was likewise reflected in the selection and composition of the commissioners.

Like most other truth commissions in the world established after democratization, the TRCK also had to contend with the fact that many of the main offenders and perpetrators of the violations being investigated still occupied important posts in state institutions. The ideology that had been used to justify the human rights violations, anticommunism, was also still operative. The influence of past perpetrators who remained in certain power

25. *Id.* art. 28. Responses to written objections were required to be made within sixty days of their receipt. *Id.* art. 28(5).

26. *Id.* art. 32.

27. *Id.*

28. *Id.*

blocs forced the TRCK to work with a markedly limited mandate and latitude.

At the same time, despite the fact that the TRCK had the power to recommend reconciliatory or restorative measures, its recommendations were not legally binding. It had no authority to punish perpetrators, even when they were positively identified and their wrongdoing plainly established. Nor was it empowered to offer immunity to alleged perpetrators in exchange for their testimony or confessions, as had been done in the case of South Africa's TRC.²⁹ Under this limited legal mandate, the TRCK, after concluding its investigation, proposed recommendations to rectify damages, restore honor, and promote reconciliation between victims and offenders. The recommendations, however, could be rejected by the state institutions that might hold some responsibility for perpetrating the wrongs of the past, including grave human rights abuses and massacres. This limitation in the Framework Act eliminated an important avenue of reconciliation that the TRCK might have been able to promote.

The mandate and resources of the Commission further curtailed the character and the quality of the "truth" that the TRCK was expected to reach. When we define truth with regard to the TRC, it must include the long-term, structural conditions that often serve as underlying causes for gross human rights abuse and other related incidents. The number of deaths, the character of suffering, and the identification of the perpetrators and final commanders must also be ascertained. The Commission must verify who did what to whom, when and where, and the causes and consequences of these events. But the incidents that the TRCK was scheduled to investigate, from isolated human rights abuses to mass killings from long ago, were too broad and complex to tackle. Because the Framework Act granted the TRCK authority only to establish truth in the narrow sense of "forensic truth," the investigators were ordered to end their work when the minimum quantity of data was collected to verify the truth of a specific event. At the same time, although a different method and process should be applied when investigating massacres during war-time as opposed to human rights abuses under authoritarian regimes, accommodations to deal with these differences were not fully reflected in the Framework Act.

29. It was able to *recommend* that perpetrators who actively cooperated with the Commission by confessing their crimes during the investigation be granted immunity from criminal prosecution or investigation, that their punishment be mitigated or that, if already convicted, that they be pardoned. *See id.* art. 38(1). State institutions were not, however, required to follow such recommendations, even though the Framework Act suggested that they "shall" respect the TRCK's decisions and recommendations. *Id.* art. 38(2).

The most notable limitation of the TRCK's mandate, however, can be found in the authority it was granted for investigation. While one of its main missions was to establish the factual or objective truth about a complaint filed by victims, its investigative authority as a temporary fact-finding body was curtailed by the law, which did not provide conditions to facilitate victims' testimony. In particular, the Framework Act lacked provisions authorizing the Commission to force perpetrators to testify or to offer immunity for their testimonies. Accordingly, few veterans have been willing to come forward. Many victims have likewise stayed away, unwilling to open old wounds between neighbors caught up in the political and ideological struggle of decades ago. Indeed, even after democratization, both the perpetrators of state violence and victims' families have been reluctant to come forward to speak for both legal and social reasons.

The TRCK, it may be noted, did have the power to summon reference witnesses. However, if those witnesses refused the summons, the Commission had limited legal recourse to punish them or compel their cooperation.³⁰ More importantly, the TRCK had no legal power to obtain the necessary documents from concerned state institutions if those in charge of the institutions determined that the documents included sensitive material.³¹ Therefore, relevant state institutions that received a request for documents from the Commission could reject that request on the grounds of a nebulously defined national security objection.³² The TRCK was viewed from the beginning as a nagging or inconvenient organization by the entities that were allegedly responsible for past human rights violations, including the Korea Central Intelligence Agency (KCIA), the Bureau of Police, and the Ministry of Defense. The dilemma was that their cooperation and former

30. If the reference witness refuses to appear, the TRC can issue an order of accompanying for the person. *See id.* art. 24. If that order is rejected without reasonable grounds, the person subject to the warrant of accompanying shall be fined up to \$10,000. *Id.* art. 47. This enforcement provision is nonetheless largely symbolic on two levels. On the one hand, perpetrators and reference witnesses may prefer to pay the fine rather than confess their past misdeeds and live with the corresponding dishonor. On the other, the TRCK only rarely issued an order of accompanying and never in fact fined anyone who refused to appear.

31. Although the Framework Act requires that parties receiving requests for materials for TRCK investigations "should not reject such submission without reasonable ground[s]," it allows an exception where the appropriate minister in charge of the relevant institution submits an explanation within five days stating that the information is "classified information regarding the military, diplomacy, or North Korean relations, and the release of such material would endanger national security." *See id.* art. 23(8).

32. They would nonetheless be required to submit the requested information to the TRCK for its exclusive inspection by the commissioners, "provided that the Commission shall not release the articles or materials to the public." *Id.* art. 28(9).

agents' testimony were essential for the TRCK to obtain the necessary documents associated with past wrongdoing in order to conduct investigations.

At the same time, the persistence of strong anticommunist sentiments combined with the continued presence of ultra-rightists in South Korea has meant that even this legal mandate was not sufficiently implemented. For now, Korean citizens remain deeply divided over the group's work. Seventy-seven year old Lee Soon-chang, for example, who had a role in wartime killings that he feels were justified, complained recently that the commission vilified the military "while turning Communists into patriots."³³ He explained, "They say these people were executed without trial. But what trial? It was wartime."³⁴ Mainstream conservative newspapers occasionally criticized the TRCK's work as a left-leaning plot intended to impair the legitimacy of South Korean state.³⁵ Struggling with this type of unwillingness to cooperate, the TRCK faced the diminishing prospects of getting a two-year extension, especially after President Roh was replaced by Lee Myong-bak following a new election.

Therefore, it was not just the TRCK's legal authority per se that empowered its work. Political conditions in the society at large facilitated its work and, indeed, its very existence. The political will of President Roh Moo-hyun and the strong support from civil society groups forced cooperation from traditionally oppressive Korean institutions. The under-institutionalized, political nature of the TRCK's authority also meant that its ability to conduct investigations could be radically curtailed by a change in politics or by a drop in civil society's attention or capacity, which proved to be the case under President Lee Myung-bak's administration. Ever since its inauguration in 2008, the Lee Myung-bak administration has sought to merge and abolish the nation's truth commissions. During the 2007 presidential campaign, members of President Lee's party said the group's activities threatened social harmony in the South and could strain South Korea's alliance with the United States. Bills submitted to the National Assembly in December 2008 by the Grand National Party's Shin Ji-ho and thirteen other Assembly members proposed combining the functions of the fourteen truth

33. Choe Sang-Hun, *Korea Investigates Atrocities in Race against Time*, N.Y. TIMES, Sept. 3, 2009.

34. *Id.* Summary executions were widely conducted by South Korean forces against suspected communists during the Korean War. They were believed to be inevitable and justifiable in the civil war. See DONG-CHOON KIM, *THE UNENDING KOREAN WAR: A SOCIAL HISTORY* 143-212 (Sung-ok Kim trans., 2009).

35. See, e.g., Editorial CHOSUN ILBO, Mar. 15, 2007 (arguing that the TRCK's forthcoming report is destined "to be another Korean history textbook like those written by leftists before").

commissions into one Truth and Reconciliation Commission.³⁶ In view of the striking differences in the missions, mandates, and work of these organizations, the policy may be understood as a design to block the functioning of the commissions. The possibility that the TRCK could ultimately survive still existed. But when the President in 2008 nominated a new chairperson and commissioners, who were mostly conservative and opposed to the kinds of activities that had been carried out before, the TRCK was plunged into disarray. Other state institutions also became uncooperative with the Commission following these political changes.³⁷

President Lee Myung-bak's intention to halt the TRCK's work or force it to merge with other investigative bodies failed. But the new presidentially-appointed chairperson was unwilling to finish the TRCK's work in accordance with the former chairperson's plan. While the Commission's leadership from the outset was divided among standing commissioners representing liberal and conservative views, the conservatives clearly dominated following the February 2008 inauguration of President Lee Myung-bak.

The disadvantageous socio-economic conditions when the TRCK was created must also be considered in assessing its effectiveness. The public's concern with the work of the TRCK waned with the onset of the economic crisis of 2008. While some media coverage was generated by the TRCK's press releases, people generally did not see the kind of intense public outrage that accompanied the prosecution in the 1990s of the former presidents, Chun Doo Hwan and Roh Tae Woo, for their part in the 1980 Gwangju Massacre. The big three conservative newspapers in Korea, *Chosun Ilbo*, *Donga Ilbo* and *Hankook Ilbo*, were uniformly hostile and provided little coverage, except to point out the Commission's errors. Television stations, notably KBS and MBC, which were initially favorable to the Commission during the Roh Moo-hyun presidency, shifted following the election of Lee Myung-bak and ceased to cover the TRCK's work. Only the *Hankyoreh* and *Kyunghyang Daily*, which represent the progressive media, consistently followed the Commission's work.³⁸

These conditions help to explain the Korean public's sense of fatigue about repeated efforts to uncover the past, a fatigue encouraged by the con-

36. These bills were not passed. They nonetheless intended to abolish all of the past-dealing commissions still in operation.

37. The police and the National Intelligence Service under the current Lee Myung-bak administration are uncooperative, a sharp contrast to the TRCK's work with them during the previous Roh Mu-hyun administration.

38. For a list of the primary media coverage of the TRCK, see TRCK 2009 REPORT, *supra* note 7, at 133-37.

servative press. Ideally documentaries, educational materials, scholarly publications, artistic and cultural productions should have been created as a way of coming to terms with the truth of past events uncovered by the TRCK, but unfortunately that has not occurred.

III. ACHIEVEMENTS AND RECOMMENDATIONS

The TRCK was tasked with the responsibility of verifying the truth of the past and thereby fostering reconciliation between the victims and perpetrators. In this respect, although the TRCK was successful in documenting a number of previously hidden atrocities and abuses, it has largely failed to identify the root causes of those events or to achieve the conditions necessary for reconciliation. In terms of fact-finding, it failed to reveal the final top-level commander of the Korean War massacres and the fabricated espionage cases. Moreover, since the mandate to punish the responsible parties for these incidents was denied, it can be said that the TRCK also failed to build an institutional device to block the recurrence of similar incidents.

Despite these apparent shortcomings, the TRCK has had some significant achievements. It succeeded in uncovering some long-concealed truths and restoring justice, particularly in cases involving the judiciary as the perpetrator of injustice. Some of the TRCK's findings, based on newly discovered testimony and documents about the human rights abuses and mass killings committed by South Korean authorities, were notable achievements in the context of setting the Korean historical record straight for the first time, especially with regard to the mass killings of National Guidance League members (*Bodo yeonmang*), collaborators with North Korea's peoples' committees, political prisoners, and the civilians who served the leftist guerrillas.³⁹

The operations of the intelligence organizations and the United States' bombing of South Korean civilians demand a review of the dominant narrative of Cold War history in Korea since the 1950s. During the Korean War, some American bombings resulted in the deaths of thousands of civilians.⁴⁰

39. See TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA, COMPREHENSIVE REPORT, vol. 1, pt. 1 (2010) [hereinafter TRCK COMPREHENSIVE REPORT].

40. The TRCK found, for example, that in August 1950, sixty-nine civilians were killed in the Uiryeong region by U.S. bombings. The TRCK also found that between August 2 and September 26, 1950, civilians in the Haman region of Gyeongnam Province were killed by U.S. military aerial bombings and strafing fire, and that between January and February 1950, U.S. Air Force bombings and machine gun assaults killed at least forty-seven civilians in the Gyeonggi region. Significantly, of the 1,222 incidents classified as massacres by the TRCK., 215 were found to have been committed by the United States military. See TRCK 2009 REPORT, *supra* note 7, at 41. See also

Nevertheless, these U.S. bombing incidents against innocent South Korean civilians have never been raised as a political issue, even after the conclusion of the TRCK's work. Under the geopolitical circumstances of the Cold War in South Korea, where criticizing the U.S. meant running the risk of being branded a communist or a North Korean sympathizer, discussing or even mentioning any U.S. war crimes was regarded as "taboo" in Korea. The appearance of the TRCK was itself a symbolic step toward breaking the taboo, but much more remains to be done.

Most of the cases of human rights abuse investigated by the Commission took place during times of political unrest in the 1950s and 60s, after the May 16th Military Coup (1961), during the Yushin period (1972-79), and during the 1980s. In particular, in most of the cases that received confirmed rulings, the prosecutors and the court acknowledged falsified confessions attained through illegal detention and torture. The espionage falsification cases in the 1960s and 1980s involved abducted fishermen, people who crossed into the South from the North, those who had relatives in North Korea, and the Korean-Japanese.

In addition to truth-finding investigations, exhumation and fieldwork was conducted through a service contractor to find the necessary evidence and to build a foundation for reconciliation. The exhumations related to the illegal massacres from the Korean War were significant in that they were the first government-led effort in fifty years and represent a response to the bereaved families' demands for such activities. As the TRCK's 2009 report documents, "In December 2006, the Commission conducted on-site examinations and field surveys for 168 of the most probable locations of massacres (14 sites were examined independently by the Commission and 154 sites were examined through subcontracted agencies) and chose 39 sites for initial excavation."⁴¹ By 2009, exhumations were underway in 13 locations: Bunteogol and Jigyeonggol in Cheongwon; the cobalt mines in Gyeongsan; Maegok-dong, Suncheon in Jeonnam Province; Galmyeongdo, Gujado-ri, Uisin-myeon in Jindo; and Won-ri and Oegong-ri in Sicheon-myeon, Sancheong-gun, Gyeongnam Province.⁴²

Charles J. Hanley, *No Gun Ri: Official Narrative and Inconvenient Truths*, 42 *CRITICAL ASIAN STUD.* 589 (2010); Suh Hee-Kyung, *Atrocities Before and During the Korean War: Civilian Killings by South Korean & U.S. Forces*, 42 *CRITICAL ASIAN STUD.* 553 (2010); Kim Tae-woo, *A Study of the Aerial Bombing by the United States Air Force During the Korean war* (2008) (unpublished Ph.D thesis, Seoul National University).

41. TRCK 2009 REPORT, *supra* note 7, at 35-36.

42. *See id.* at 35-38. Beginning with Bongseong Mountain in Gurye, Jeonnam Province in June 2007, a total of approximately 400 bodies were found, and in the cobalt mines in Gyeongsan Province, 240 bodies and 1,085 artifacts, including bullet casings, seals, and nametags were discovered. In addition, 110 bodies were found at

Based on these findings, the TRCK made a number of non-binding recommendations to the South Korean government. These were, in the TRCK's words, expected to "contribute greatly to national solidarity and the growth of democracy by restoring the honor of the victims and their families, preventing reoccurrences, and fostering reconciliation between the offenders and victims."⁴³ The TRCK's recommendations, made with respect to each petition it decided, included "official state apologies, correction of the Family Registry, reexamination, memorial services, the correction of historical records, archiving of historical files, legislation for relief of damages, restoration of damages, peace and human rights education, indemnity of damages, and treatment of aftereffects."⁴⁴ Ultimately, the TRCK made 8,691 separate recommendations based on individual incidents in addition to a set of comprehensive recommendations before finishing its' mission in December 2010.⁴⁵

IV. IMPLEMENTATION

To ensure that the TRCK's recommendations were properly executed, a Recommendations Follow-Up Board was established in 2007 under the Office of the Prime Minister.⁴⁶ In 2008 this institution was incorporated into the Ministry of Public Administration and Security following a cabinet reorganization. The Recommendations Follow-Up Board is mandated to help implement the recommendations the TRCK issues under article 34 of the Framework Act. That provision requires the State to endeavor to repair injuries and restore the honor of victims, "to take measures of appropriate legal/political reconciliation, and to take necessary measures to reconcile and unify the nation."⁴⁷ At the same time, a Reconciliation Committee was established within the TRCK on June 19, 2007 "to administer reconciliation and memorial efforts, establish a road-map for settling the past, investigate psychological damages and development of review programs for reconcilia-

Cheongwon Bunteogol; 34 bodies were found at Gollyeonggol in Daejeon; and 13 bodies were found at Bongseong Mountain in Gurye. *Id.*

43. *Id.* at 106.

44. *Id.* at 107.

45. See TRCK COMPREHENSIVE REPORT, *supra* note 39, at 199; *Final Recommendations of the Truth and Reconciliation Commission, Republic of Korea*, 19 BUFF. HUM. RTS. L. REV. ___ (2012) (Mark Nathan & Eon Joo Park, trans.) [hereinafter *TRCK Final Recommendations*].

46. Regulations on the Establishment and Operation of the Recommendations Follow-Up Board, Presidential Decree No. 195, Aug. 27, 2007.

47. Framework Act, *supra* note 1, art. 34.

tion, and to search for methods to improve recommendations for each individual case.”⁴⁸

Despite the creation of these new institutions, implementation of the TRCK’s recommendations has been slow and highly uneven. Relatively easy measures, such the correction of the Family Registry, have largely been accepted and implemented, but politically sensitive or financially burdensome recommendations remain untouched: revision of historical records, legislation for relief of damages, compensation of damages, and peace and human rights education. Given the lack of administrative and political will since Lee Myung-bak’s inauguration, certain crucial recommendations, including apology of the responsible governmental bureaus, relief of damages, and revision of historical records, have never even been considered by government for possible implementation. This inaction has been enabled by the TRCK’s weak mandate to force implementation of the recommendations. The following sections discuss what has been done to date to implement the TRCK’s various recommendations.

A. *Recovering the Dignity of the Victims*

Most of the Korean War-related victims’ suffering came from the discriminatory treatment they or their families experienced as second-class citizens after being branded as ‘traitors’ or anti-state criminals. In some cases their property was confiscated or their educational opportunities were blocked, while in other cases people were ostracized as “Reds.” For thirty to forty years after the Korean War, these survivors and their family members suffered as a result of guilt-by-association. The official investigation and decision by the Commission was approximately equivalent to the recognition that the victims were killed by authorities without legal grounds. Those who were victimized by false espionage charges or grave human rights violations also recovered their human dignity by the TRCK’s fact-finding and conclusions, which established that they were fabricated as espionage by illegal torture or detention.

While the TRCK’s reports provided official confirmation of illegal killings, other steps were needed to fulfill the objectives of recovering the victims’ full dignity: governmental acknowledgment, apology, new decisions by courts, rewriting history textbooks, and the like. Among these, some measures have been implemented. When a case was resolved, the TRCK organized an official memorial service involving the bereaved,

48. TRCK 2009 REPORT, *supra* note 7, at 107.

which was held at the county seat.⁴⁹ Memorial ceremonies funded by the government were tantamount to the government's official recognition of the regrettable deaths. In addition to these efforts, the chairperson, standing commissioners, and members of the Commission consoled the victims' families by participating in joint regional memorial and prayer services in Jeju, Hampyeong, Goyang, Yeosu, Mungyeong, Ulsan, Sancheong, Gochang, Gyeongsan, Haenam, and Ganghwa.⁵⁰

Such services have been conducted with the involvement of the Governor, the local military commander, the local police chief and other officials, together with the victims' families. In addition, a monument was erected to consecrate the victims. But the type of action taken depended very much on the political circumstances of the region where the atrocities or abuses occurred. In areas such as Jeolla, where more than a third of the petitions submitted to the TRCK originated and where local politics were supportive of the TRCK's activities, the victims have recovered their dignity through these types of official ceremony. But in areas like Gyeongsang where local leaders are generally hostile to the Commission's work, the effectiveness has been quite limited.

The most important results in terms of recovering the dignity of the victims have been seen in the changing views regarding past tragedies that have occurred in many local communities and neighborhoods. These changing views have assisted victims' families in feeling that their "full-citizenship" has been restored. This was partly a result of the fact that local media often covered the TRCK's findings extensively regarding past government wrongdoings and the pent-up grievances of victims.

B. *Official State Apology*

Following the TRCK's recommendation, President Roh Mu-hyun publicly apologized for the government's illegal exercise of state power during the Korean War.⁵¹ On January 24, 2008, President Roh expressed the

49. See Kim Dong Choon & Mark Selden, *South Korea's Embattled Truth and Reconciliation Commission*, ASIA-PACIFIC J.: JAPAN FOCUS (Mar. 1, 2010), available at http://www.japanfocus.org/-Kim-Dong_choon/3313.

50. See *Newsletter Issue 8*, TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA, Sept. 30, 2009, available at http://www.jinsil.go.kr/English/Information/general/news_08/news_08.asp.

51. President Roh Mu-hyun officially apologized for the abuses perpetrated by the previous government and expressed his condolences to the Jeju April 3 victims. The report changed the existing name of the incident, April 3 Jeju Rebellion Incident, to the Jeju April 3 Incident. This change has raised serious disputes over which name should be used. The Korean government's official recognition of the existence of the Jeju April

government's position regarding the settlement of historical issues and offered an official comprehensive apology regarding the illegal exercise of power by past regimes in accordance with the TRCK's recommendation. Through a videotaped message, President Roh made an official apology to the victims and the bereaved families of the Ulsan National Guidance League massacre, although he extended his apology to all Korean War victims. In his words:

*I also offer words of apology to all victims, including their families, who were abused by state power. We should take this as a lesson so as to prevent this kind of incident from happening again.*⁵²

This apology might constitute a signal of responding to the work of TRCK, which was created through his political will at the special proclamation in August 15, 2004. However, other concerned government officials did not follow the President's lead. The head of the KCIA intelligence service, the National Police Chief and the Secretary of Defense never issued any official apologies concerning the wrongs committed by those institutions. Their inaction meant that those state organizations did not fully accept the TRCK's decision nor even acknowledge its new findings of state atrocities.

Instead of issuing official apologies, they sent their local commanders to the memorial services as a minimum expression of condolence. Sometimes, however, local officials have demonstrated remorse or offered apologies. For the Goyang Geumjeong Cave and Naju Dongbakguljae cases, the local police commissioner and police chiefs participated in the memorial services and expressed deep regret. At other memorial services, local military commanders participated and also expressed their regrets.

C. Reexamination in Court

The TRCK made a number of recommendations to the government concerning the review of trials in which rulings were made based on the Emergency Measures instituted under the Park Chung Hee's Yushin regime (1972-1979).⁵³ In addition, it recommended separate legislative measures to resolve past human rights infringements brought about by the Yushin Re-

³ Incident's civilian victims is a crucial step on the road of historical settlement of Korean War massacres.

⁵² TRCK 2009 REPORT, *supra* note 7, at 108.

⁵³ The Yushin Regime, the final era of the Park Presidency, was notorious for oppressing dissidents and committing grave human rights violations, torture, espionage-fabrication and disappearance of main political opponents. The Emergency Measures functioned as all-mighty laws in oppressing the dissidents.

gime. Finally, in reviewing a newly tried case, Korea's Supreme Court determined in 2010 that the Emergency Measures were unconstitutional, a ruling that symbolizes a key act of restitution for those victimized under the Emergency Measures.⁵⁴

The Korean courts have re-examined and ultimately reversed the original decisions in several controversial petitions on human rights abuses that the TRCK had verified. The courts have generally accepted the TRCK's investigation as trustworthy findings. In about twenty cases, after retrials, the courts have delivered findings declaring people's innocence, ordering that charges be dropped, and awarding compensation to the petitioners.⁵⁵

For example, in January 2008, the Commission referred the case of Jo Yong-su, a newspaper editor of the daily *Minjok Ilbo* who was summarily executed in 1961 on charges of treason, to the courts, asking for a retrial.⁵⁶ Consequently, forty-seven years after his trial and execution, Jo was found innocent in a court of law.⁵⁷ Thus far, the Korean courts have consistently

54. See Supreme Court [S. Ct.], 2010Do5986, Dec. 16, 2010. This decision, reached on December 17, 2010, was grounded directly in the TRCK's finding that the use of the "Emergency Measures" by Park Chung-hee's administration in the 1970s constituted a grave infringement of citizens' constitutionally guaranteed basic rights. This finding marked the first time a state commission had stated that all of the Emergency Measures represented the illegal and improper exercise of public authority. See *State Commission Finds all Emergency Measures Violated Basic Rights: Truth and Reconciliation Commission Pushes for a Constitutional Court Ruling on Park Chung-hee Administration's Emergency Measures*, THE HANKYOREH Sept. 2, 2009, available at http://www.hani.co.kr/arti/english_edition/e_national/374461.html.

55. By July of 2010, the TRCK had recommended forty-two cases to the courts for re-examination. The most well-known of these cases is that of Gang Ki-Hoon. In 2007, all charges were dropped against Gang Ki-hoon after sixteen years, three years of which he had spent in prison. He had been charged under the government of former President Roh Tae Woo in 1991 with forging the will and testament of his friend and fellow activist, Kim Ki-sul (who burned himself to death in May of that year in protest against the military government). The Roh Tae Woo government alleged that activists were encouraging people to kill themselves and were even prepared to ghost write their wills, with the case developing into a Korean version of the Dreyfus affair. It ended only in 2007 with the release of the results of a fresh investigation by the National Institute of Scientific Investigation, or NISI, confirming that the will had indeed been written by Kim. See generally Gavan McCormack & Kim Dong-Choon, *Grappling with Cold War History: Korea's Embattled Truth and Reconciliation Commission*, ASIA-PACIFIC J.: JAPAN FOCUS (Feb. 21, 2009), available at http://japanfocus.org/-Kim-Dong_choon/3056.

56. See generally TRCK 2009 REPORT, *supra* note 7, at 100 (referencing case, verified by Commission on Nov. 28, 2006).

57. Editorial, *The Historic Acquittal of Jo Yong-su*, THE HANKYOREH, Jan. 17, 2008, available at http://english.hani.co.kr/arti/english_edition/e_editorial/263784.html.

accepted the results of the TRCK's findings as true and have reversed numerous past decisions. South Korea's Supreme Court also acquitted a left-leaning party leader who was charged with subversion and espionage, fifty-one years after he was executed by South Korea's first president, Syngman Rhee.⁵⁸ The case was reopened after the TRCK concluded in 2007 that it was based on flimsy evidence and flawed testimony.⁵⁹

Many newly verified incidents by the TRCK are now under the re-examination process in the courts.

D. Restorative Measures and Compensation for Victims

On August 21, 2009, the TRCK officially recommended that the government should enact a special law for compensating victims of civilian massacres, including payment of medical bills in cases where mass victimization was verified.⁶⁰ However, the National Assembly and Lee Myung-bak government have ignored this recommendation.

As noted above, the reexamination by courts of human rights violation cases has been relatively successful. Nevertheless, there has been some controversy over the desirability of re-examining all such cases one by one. The TRCK recommended that some human rights violation cases, such as those involving the application of the Emergency Measures between 1974 and 1979, should be settled by a decision of the Constitutional Court on the Measures' constitutionality.⁶¹ It has thus suggested that the Emergency Measure cases can be solved by nullifying the law, much the same way Germany carried out the de-Nazification process.⁶²

Recently, Korean War-related victims received welcome news from the South Korean Supreme Court. It reversed the lower court's decision on the Ulsan's National Guidance League (*Bodo yeonmang*) case, stipulating that the government must not apply the statute of limitations to the victims

58. See Editorial, *Cho Bong-am and Judicial Homicide*, THE HANKYOREH, Jan. 21, 2011, available at http://english.hani.co.kr/arti/english_edition/e_editorial/459921.html.

59. See TRCK 2009 REPORT, *supra* note 7, at 98 (referencing Jo Bong-am case).

60. See TRCK COMPREHENSIVE REPORT, *supra* note 39, at 35; TRCK Final Recommendations, *supra* note 45, at ____.

61. See *Human Rights Abuses by the Emergency Decrees of the Yushin*, TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA (Sept. 18, 2009), available at http://www.jinsil.go.kr/English/Information/notice/read.asp?num=442&pageno=1&stye=title&sval=human%20rights&data_years=2012&data_month=.

62. See Lee Jae-Seung, *The Korean National Assembly Must Settle the Tie of the Emergency Measures*, THE HANKYOREH, Feb. 1, 2007.

or their family's petitions for compensation.⁶³ This decision may affect other pending trials in higher courts. But these separate trials also raise doubts about the reparatory measures and whether they should be resolved through individual lawsuits filed by victims. It might be much more efficient and effective to conduct a large, comprehensive administrative process. Indeed, the necessity for enacting a special law for compensating all Korean War related victims has only grown clearer with these recent judicial developments.

E. *Reconciliation for Communities*

With respect to "reconciliation," the TRCK has accomplished little of note because neither a single perpetrator nor any responsible state institutions has ever apologized for past misdeeds. The TRCK has been less successful in those objectives than in verifying the facts of specific incidents primarily because it is not empowered to take any measures, beyond making nonbinding recommendations, against individuals or institutions that refuse or fail to fully comply with its recommendations. In order for Korean society to achieve true reconciliation, those institutions most responsible for human rights violations, specifically the KCIA, Ministry of Defense, and the National Police, must officially and openly acknowledge their misdeeds and ask for forgiveness from the victims. Nonetheless, the persistence of Cold War politics in South Korea has allowed these institutions to avoid acknowledging their misdeeds.

The Korean War and state terrorism plunged many villages across the country into ideological strife and mutual distrust. In order for reconciliation to occur, social healing must take place within communities, a process that the government must sponsor or encourage. The work of villagers in Gurim, where about 300 people were killed in the months leading up to the outbreak of the Korean War in 1950, provides an important model of what might be encouraged. There, long before the appearance of TRCK, villagers initiated the process of healing by holding a joint mourning service for all those killed on both sides of the war's divide and by raising money for a memorial.⁶⁴

63. See Kim Rahn, *Compensation Claim Period Limitless for Inhumane State Crimes*, THE KOREA TIMES (Sept. 8, 2011), http://www.koreatimes.co.kr/www/news/nation/2011/09/117_94525.html.

64. See Choe Sang-Hun, *From a Brutal Past, a South Korean Village Strives for Reconciliation*, N.Y. TIMES Feb. 17, 2008, available at <http://www.nytimes.com/2008/02/17/world/asia/17iht-village.2.10113473.html?pagewanted=all>.

F. *Publicization of TRCK's Findings and Recommendations*

Although the TRCK's official report and documents are important to recover the dignity of victims and their family members, it is also imperative to reveal this history to Korean citizens through public education in order to begin healing society's ills. Under the pressure of dealing with victim petitions, the TRCK had little time or budget to publicize its findings. The conservative media, for its part, has almost completely ignored the new facts and documents that the TRCK uncovered and released, choosing instead to reinforce the official versions of history that have been put forward in the past. As a result, the TRCK's work has attracted little attention from ordinary Koreans and has left much to be done in publicizing its findings and achievements.

At the same time, the situation has deteriorated in important respects. The Lee Myung-bak government has gone so far as to assert that some current history textbooks are so liberal or left-oriented that they should be revised. In response, Korea's ministry of education released updated authorization standards for new textbooks, in which a description of the Gwangju 5.18 democracy movement was omitted.⁶⁵ In this environment, the newly discovered historical truths of the TRCK have had little chance to be publicized in readable form.

Applicable laws and systems must therefore be supplemented so that all documented reports from the TRCK's investigations can be systematically categorized, filed, and stored at an archival institute independent from the National Archives. The existing documents have been moved to the National Archives and are now being processed. These special documents must nonetheless be preserved in separate institutions as well so that the peoples' right to know can be fulfilled.

G. *Settlement of U.S.-Related Incidents*

A large number of U.S.-related incidents remain unresolved. In 2001, before the establishment of the TRCK, the Pentagon acknowledged that American soldiers shot and killed unarmed civilians near the South Korean hamlet of No Gun Ri in 1950.⁶⁶ However, the official report attributed the deaths to confusion and even fear on the part of the soldiers rather than to an order to fire upon refugees. This was the U.S. government's reason for

65. See Editorial, *Depoliticizing History Textbooks*, The Hankyoreh Nov. 19, 2011, available at http://english.hani.co.kr/arti/english_edition/e_editorial/506208.html.

66. See Norman Kempster, *Clinton 'Regrets,' Doesn't Apologize for, No Gun Ri*, L.A. TIMES, Jan. 12, 2001, available at <http://articles.latimes.com/2001/jan/12/news/mn-11517>.

rejecting the No Gun Ri survivors' demand for an apology and compensation based on the report by the joint investigation with its Korean counterpart, which decided that the No Gun Ri Killings were not 'deliberate' or carried out under orders.⁶⁷

The TRCK has also uncovered many cases of civilian massacres committed by American forces during the Korean War, and it recommended that the South Korean government negotiate their settlement with the United States.⁶⁸ The American government must conduct additional investigations and provide redress concerning such crimes. The TRCK's recommendations correspondingly included the need for an official state apology and the holding of a memorial event, as well as measures to compensate the victims through negotiations with the U.S. government.⁶⁹ However, the TRCK did not receive any answer from either the South Korean or the U.S. government. The primary responsibility to press the issue lies with the Korean government, but it appears that Korea's Ministry of Defense might never convey the recommendation to the U.S. government. In an interview with the *New York Times*, Lt. Col. Almarah Belk, a Pentagon spokeswoman in Washington, said she did not "have any information on investigations into new findings as it relates to deaths of Koreans during the Korean War by U.S. military action."⁷⁰ The U.S. Embassy has stated that no government agencies or officials in Seoul had approached it concerning compensation for victims.⁷¹ Spokesman Aron Taver also said that the Embassy had not been monitoring the Commission's findings.⁷²

Absent an official request from the Korean government, the U.S. government may feel no need to respond to the TRCK's findings and recom-

67. American historian Sahr Conway-Lanz has said that the No Gun Ri report omitted the declassified letter of Ambassador Muccio, which referenced a policy decision taken at the high-level U.S.-South Korean meeting regarding permission to fire on refugees. See Sahr Conway-Lanz, *Beyond No Gun Ri: Refugees and the United States Military in the Korean War*, 29 *DIPLOMATIC HISTORY* 49 (2005). In its 2001 report, the U.S. investigation team said it had learned of the other civilian killings by U.S. forces, but it indicated that they would not be investigated. See DEPARTMENT OF THE ARMY INSPECTOR GENERAL, *NO GUN RI REVIEW* (2001), available at <http://www.pbs.org/news-hour/media/nogunri/summary.pdf>.

68. *TRCK Final Recommendations*, *supra* note 45, at ____.

69. See *id.* at ____.

70. Choe Sang-Hun, *Unearthing War's Horrors Years Later in South Korea*, *N.Y. TIMES*, Dec. 3, 2007, available at <http://www.nytimes.com/2007/12/03/world/asia/03korea.html?pagewanted=all>.

71. See Charles J. Hanley & Jae-Soon Chang, *Commission Seeks U.S. Compensation for War Crimes*, *THE SUN*, Aug. 4, 2008, available at <http://www.nysun.com/foreign/commission-seeks-us-compensation-for-war-crimes/83083/>.

72. See *id.*

mendations. To achieve truth and reconciliation, however, the U.S. government must address this issue by responding to an official request, and the South Korean and U.S. governments should establish a joint investigation team to fully resolve this problem.⁷³

H. *Exhumations and National Memorial Sites for Burial*

Korea also needs to plan the enshrinement of victims' remains and future exhumation work by issuing applicable regulations or laws and by securing the necessary finance and procurement measures.⁷⁴ For a period of six months starting from December 2006, the TRCK investigated an estimated 154 burial grounds scattered across the nation, and immediately began exhumations at thirty-nine locations. During its time, the TRCK could only exhume about twenty percent of the probable sites, focusing on those that were expected to be the largest burial sites. It was hampered, however, even with respect to some of the most probable sites, like Daegon, given its lack of legal authority to conduct exhumations on private property.

In order to sustain the exhumation of the remaining sites, the legal groundwork must be prepared. This will depend both on favorable public opinion and the political will of government. The TRCK also recommended that the National Assembly and the government enact a special law mandating exhumation of all remaining burial grounds and establishing permanent burial sites,⁷⁵ but no response from the authorities concerning this recommendation has been received to date.

I. *Preventative Measures and Education*

Some say that no measures short of punishment are effective in preventing the possible recurrence of state violence, but in the process of enacting the Framework Act it was generally assumed that any move to enact a special law to prosecute individuals for these atrocities was likely to set off strong protests among conservatives in Korea. Any such law would also require the removal of the statute of limitations on human rights cases, which the current majority of Korean lawmakers is opposed to abolishing. The probability of punishing perpetrators may thus depend on future politi-

73. There is an outcry of U.S.-related victims. See Ashley Rowland & Yoo Kyong Chang, *Former Residents of Island Seek Reparations for Incheon Assault*, STRIPES AND STRIPES, Apr. 23, 2011, available at <http://www.stripes.com/news/pacific/korea/former-residents-of-island-seek-reparations-for-incheon-assault-1.141782>.

74. See *TRCK Final Recommendations*, *supra* note 45, at ____

75. *Id.* at __.

cal transformation and the strength of people's supportive opinion on this issue.

At the same time, changes in the law are crucial. The majority of petitions submitted to the Commission involved illegal acts conducted by state power. These illegal acts have long been legitimized in the name of anticommunism under such laws as the National Security Act. Such laws must be reformed or abolished in order to prevent further state violence. Strong public abolitionist movements to this end emerged in the 1990s under the Roh Moo-hyun government, but eventually failed under stalwart conservative party opposition.

It is therefore critical to prepare appropriate judicial reforms to prevent the reoccurrence of similar incidents in the future, and to reform the nation's laws that justify abusive state power on grounds of anticommunism. At the same time, educational measures must be taken to spread awareness of the Commission's work so as to foster an accurate understanding of the past.

J. *Permanent Foundation for Research, Education and Memory*

As suggested in the Framework Act, a permanent memorial and research foundation should be established for the purpose of continuing to memorialize and clear up past incidents, especially through research and education.⁷⁶ Nonetheless, no progress has been made with regard to establishing memorials and monuments, establishing and managing the memorial archives, and completing the overall plan to found a research center to house the archives and preserve the historical legacies introduced through the TRCK's findings.

K. *Establishing a Healing Center for Suffering Victims*

The TRCK was not able to investigate how many of the victims or their families are still suffering from physical or psychological problems caused by state violence. The TRCK conducted a study on such problems by collecting information on 514 people who petitioned the TRCK. It has been reported that 38.9 percent of the massacre-related victims and 48.8 percent of the human right violation related victims suffered from PTSD symptoms.⁷⁷ Therefore, a government administered healing center should be established for those victims.

76. Framework Act, *supra* note 1, art. 40.

77. TRCK COMPREHENSIVE REPORT, *supra* note 39, at 156-57.

V. LESSONS AND NEXT STEPS

The TRCK closed its doors in December 2010 without seeing its recommendations fully implemented. Most petitioners, especially the families of victims who died in massacres, feel relieved that the TRCK has finally paid attention to their grievances for the first time in Korean history. The TRCK's investigation and the judiciary's acknowledgement, not to mention its awarding of compensation to the victims or their families, have gone a long way toward promoting reconciliation between the state and its victims. Unfortunately, the nonbinding recommendations that the TRCK gave to other concerned governmental organizations faced opposition and have not been sufficiently implemented. Faced with an unfavourable political environment after 2008, the TRCK could only carry out its minimal function of investigating all cases for which it had received petitions.

The TRCK experience offers many lessons, even as its implementation process continues. The most important of these is perhaps that political support for transitional processes is variable and must be taken into consideration when undertaking reconciliation efforts. Since the inauguration of the conservative President Lee Myung-bak in 2008, concerns for justice and human rights, which constituted the dominant discourse in the prior liberal administrations of Kim Dae Jung and Roh Mu-hyun and which provided a facilitating environment for the TRCK's establishment and operation, have faced challenges from the rise of neoliberal discourse and a new authoritarianism.

Within this context, many Koreans have raised daunting question about whether the TRCK contributed to preventing the recurrence of human rights abuses or achieving judicial justice. Many also doubt the effectiveness of any organization that has no mandate to punish perpetrators. The effectiveness of the TRCK must thus continue to be studied closely as the implementation process proceeds. At the same time, in watching the new government's nullification of the TRCK's past-dealing project, it has become apparent that government-sponsored justice can face serious distortions. Indeed, there is the perverse possibility that a state-led justice initiative may re-legitimate state apparatuses and their authority. As such, the final goal of Truth Commissions should be empowering civil society to take forward the justice project. This can be done by revising the laws, ideologies and institutions that have enabled human rights violations in the past. It will also require the establishment of permanent foundation that can carry forward the Commission's work. In this way, the TRCK's work should be connected to continuous political change that may bring about a more advanced stage of justice, with the TRCK seen as part of a long struggle for justice, not its end. As Yoneyama argues, the "insufficiency of the

TRC's mission demands not just a single but rather ceaseless regime change."⁷⁸

In the face of such challenges, civic groups and organizations of bereaved families have already taken steps to move beyond relying exclusively on governmental institutions for historical redress. They are poised to emerge yet again as the leading force for past-dealing activities in their ever successful but never complete quest for truth and reconciliation. Korea's efforts to realize "the transformative potential of historical redress" thus continue.⁷⁹

The South Korean government can nevertheless take several specific measures to help ensure the TRCK's efforts meet with lasting success. Perhaps most importantly, it should revise the Framework Act to give victims another opportunity to bring petitions for investigation and historical clarification. In the year statutorily allowed for such purposes by the original act, about ten thousand petitions were submitted and investigated by the TRCK. It is nonetheless reasonable to presume that many of the wartime victims were reluctant to apply because of the long-held fear of additional reprisals from the government. This would mean an extension of the TRCK's investigative mandate or the creation of a permanent post in government that would serve the same function.

At the same time, the South Korean government should authorize compensation and other restorative measures for citizens, such as official apologies by the heads of key government bureaucracies and other forms of assistance for suffering victims. Incidents of abuse by U.S. forces, insufficiently investigated by the TRCK, should also be addressed. Finally, the government must establish mechanisms for broadly disseminating and preserving information on the history of human rights abuses in Korea. In sum, much remains to be done and it will not be easy to accomplish.

78. Lisa Yoneyama, *Politicizing Justice: Post-Cold War Redress and the Truth and Reconciliation Commission*, 42 *CRITICAL ASIAN STUDIES* 653 (2010).

79. *Id.*