

A circular collage of blue icons representing various aspects of democracy, including voting, communication, justice, and community. The word "DEMOCRACY." is prominently displayed in the center.

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Korea Democracy Foundation is a public institution under the Ministry of the Interior and Safety, established to “contribute to the development of democracy by commemorating the democratic movement and leading projects to inherit its spirit.”

Institute for Korean Democracy

The Institute for Korean Democracy is a research institute within the Korea Democracy Foundation, established with the aim to contribute to the development of democracy by commemorating and inheriting the democratic movement. Taking pride in the democratization process of South Korea, the Institute for Korean Democracy seeks to understand the tasks of democracy faced by Korea and the world and to inherit and further develop the spirit of democracy movements and provide insights on the prospects of democracy.

PREFACE

This year, the Korea Democracy Foundation presents its third annual report on South Korean democracy. Once again, the immense and continued global interest in Korean democracy has reminded me of the importance of providing a proper evaluation of Korean democracy.

The year 2020, which began with the emergence of COVID-19, was a year when the topic of democracy was more important than ever. South Korea's quarantine and control measures brought a re-evaluation of the country's democracy worldwide for successfully controlling the spread of the coronavirus without enforcing lockdowns, thereby minimizing the damage to democracy and maintaining a balance between quarantine measures and economic activities. That we owe this positive assessment to the dedication of medical personnel and the voluntary cooperation of the people reminds us of the underlying strength of Korean democracy.

However, behind this success, the problems of South Korea's public medical system also became clearly visible, as seen in the doctors' strike. Amid the difficulties faced by all, the economically underprivileged, small business owners, temporary workers, medical personnel, delivery workers, caregivers, and the youth and women who take on these roles more than others, were forced to endure greater hardships and sacrifice. This year, we also more prominently saw the discrimination and hatred against minority groups based on race, region, and sexual identity.

Many pertinent issues were awaiting us in 2020, such as the April 15 general election, prosecution reform, and the legislation of the Framework Act on Clearing up Past Incidents for Truth and Reconciliation. Important progress has been made in some areas, but in other areas, which are larger in number, the assessment is that the developments have not met expectations. The amendment of the Truth and Reconciliation Act, which has been a long-awaited demand of bereaved families and civic groups, was a significant milestone that has allowed the efforts for transitional justice to continue. Another critical step forward made this year was the establishment of the special unit for the criminal investigation of high-ranking officials (Gongsuchoe), answering to the long-cherished wish of civil society and enabling independent investigations of high-ranking public officials and judicial authorities that have so far wielded omnipotent powers.

However, the new election system introduced in the April 15 general election, unlike its original intention, did not lead to the greater participation of minority parties in the National Assembly but resulted in the birth of abnormal satellite parties that served the dominant political parties. Little progress was seen in the conglomerate (chaebol) reform, and public confidence in the South Korean media continued to remain at the bottom. Major public officials have been charged for sexual harassment, and as in previous years, the conflict between the ruling and opposition parties continued to persist based on ideological camp logic. Although there was active civic participation even amid the spread of COVID-19, major reforms were made based on the opinions of a small number of elites, and the people's will was barely reflected in the process.

Our annual report suggests that although democracy in South Korea has progressed to some extent this year, there is still a long way to go. It is hoped that South Korean society will continue to develop the value of democracy the country has built through numerous efforts and sacrifices without showing signs of regression. I hope this report will contribute to this end in its little way.

Jisun
President of the Korea Democracy Foundation

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2020 Korean Democracy Annual Report

General Overview

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Introduction

In 2020, the whole world met a great crisis almost equivalent to war – the COVID-19 pandemic. The V-Dem Institute of the University of Gothenburg, Sweden, pointed out that in 2020, each country declared various emergency measures that temporarily restricted individual freedoms and weakened the checks and balances of the government, and many national leaders voiced concerns about how these measures could be used to establish and maintain dictatorships.¹⁾ Compared to 2009, the proportion of people living under dictatorships has increased from 6% to 34%, and the proportion of countries experiencing democratic opposition against authoritarian rule arose also increased from 27% to 44%.²⁾ The Freedom House's Freedom in the World 2020 report, diagnosed that democracy and pluralism are facing a serious crisis, assessing that the decline of democracy has intensified due to the pandemic.³⁾ In fact, populism has been gaining strength in various advanced capitalist countries, such as those in Western Europe, due to the economic recession and distrust of the government and political parties, and hate crimes based on race and ethnicity have been spreading.

Meanwhile, in the United States, Brazil, India, and Turkey, etc., where the extreme right-wing neoliberal groups have come into power, democratic human rights and trust in the government or public institutions have retreated greatly. The COVID-19 pandemic had the biggest impact on these countries.⁴⁾ The crisis brought by COVID-19 dramatically revealed the fragility of public welfare and the serious inequalities existing in society by revealing the dramatic differences in health, safety, and the likelihood of death among social classes, races, and ethnic groups.⁵⁾ In the United States and the United Kingdom, essential workers engaging in face-to-face work were the ones exposed to highest risk, and the main victims of COVID-19 have been reported to be low-income and minority groups.⁶⁾ Meanwhile, it seemed that many new democratic countries, where democratic institutions and norms are still fragile, were giving up attempting to contain the spread of infections and treat patients.

1) V-Dem Institute. 2020. "Pandemic Backsliding" (<https://www.v-dem.net/en/our-work/research-projects/pandemic-back-sliding/>)

2) https://www.v-dem.net/media/filer_public/de/39/de39af54-0bc5-4421-89ae-fb20dcc53dba/democracy_report.pdf

3) Freedom House, "Freedom in the World 2020", 2020.

4) It is still too early to diagnose the correlation between the number of deaths from COVID-19 and the level of democracy in each country. However, it should be noted that the deaths from COVID-19 are the largest in the U.S., Brazil, and India, where the president or prime minister advocated extreme right-wing neoliberal policies, lowered social trust, and claimed COVID-19 infection is as dangerous as the common cold. As of December 15, 2020, the deaths from COVID-19 in these three countries exceeded 300,000, 180,000, and 140,000, respectively.

5) For a diagnose on the massive deaths from COVID-19 in Italy, see Jason Horowitz, "Italy's Health Care System Groans Under Coronavirus — a Warning to the World", The New York Times, March 12, 2020.

6) Lazaro Gamio, "The Workers Who Face the Greatest Coronavirus Risk", The New York Times, March 15, 2020; Michael Marmot, "Covid exposed massive inequality. Britain cannot return to 'normal'", The Guardian, Dec. 15, 2020

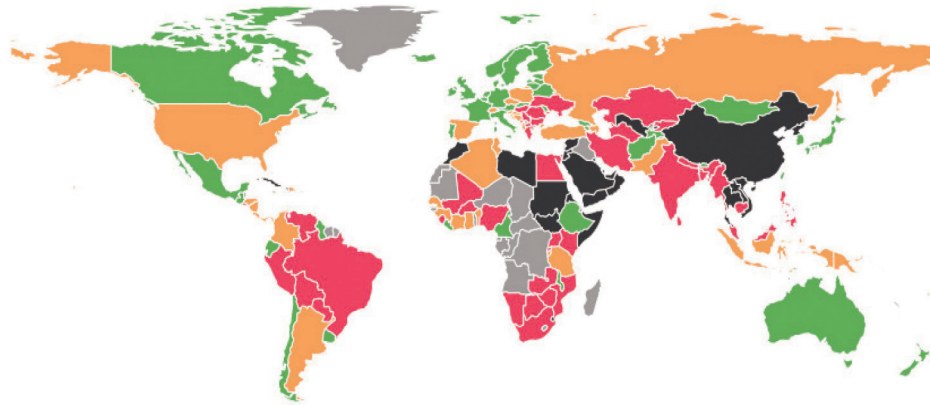
In all countries, including Korea, the COVID-19 pandemic put the disabled and the elderly living in closed spaces, such as nursing homes, at risk. Earlier in 2020, it was mainly these places that deaths from COVID-19 occurred in the United States, Europe, and South Korea's Daegu City. On the other hand, the lockdowns enforced to control the spread of the virus and the restrictions on trade and population movement between countries paralyzed economic activity. These measures resulted in the collapse of self-employed business owners, mass unemployment, and job insecurity and loss of income among irregular workers. So, for unemployed persons, irregular or migrant workers, self-employed business owners, and minority groups in all parts of the world, the year 2020 will be remembered as a nightmare. The COVID-19 pandemic is an unprecedented experience for everyone living in the world today that profoundly impacted on all areas of politics, economy, society, and culture, and made us look back on the everyday life we had enjoyed so far. In this way, the COVID-19 pandemic shook the survival of the socially underprivileged classes and the social and political order in each country while also raising serious questions about the sustainability of human civilization.

Amid the rise in unemployment, job insecurity, and poverty caused by the pandemic, it was easy to stomp the voices opposing the distribution of disaster relief funds for all people through emergency fiscal expenditures, which were usually exercised during wartime or under a command economy system in the past. As trade between countries, particularly the movement of population and food, became restricted with several countries taking measures to block their borders, some even diagnosed the end of the globalization era and anticipated a return to the era of nations. The idea that COVID-19 had emerged as a result of humans' excessive destruction of the natural ecosystem raised voices of self-reflection on the over-pursuit of developmentalism and growthism, and the arguments advocating the creation of a symbiosis between humanity and nature by ending carbon society gained greater support.⁷⁾

South Korea received recognition as a country that has succeeded in coping with COVID-19. The V-Dem Institute mentioned above classified South Korea as a country showing no violations of democracy and a low risk of democratic regression due to the pandemic. Taiwan was also incredibly successful in dealing with COVID-19. The countries that received such positive assessment, other than South Korea, were Taiwan, Japan, Australia, Canada, and several countries located in Western, Northern, and Central Europe (see Figure 1 below).

7) Jo Hyo-Jae, *The End of Carbon Society – Reading the Climate Crisis and the COVID-19 Pandemic Through the Eyes of a Human Rights Activist*, Book 21, 2020

Figure 1. Pandemic Violations of Democratic Standards Index



Source: V-Dem Institute. 2020. "Pandemic Backsliding: Does Covid-19 Put Democracy at Risk?", Policy Brief, p. 1.
Note: Green = Low risk, Red = High risk, Grey = No data, Yellow = Medium risk, Black = Dictatorships

In fact, South Korea was able to prevent the sudden spread of COVID-19 through early diagnosis and tracking of confirmed cases and kept the number of infected patients and deaths at one of the lowest levels in the world by suitably balancing quarantine measures and economic activities. Thus, the South Korean economy was less hit by the pandemic compared to other countries. The country was positively assessed for avoiding a serious economic crisis or mass unemployment, such as those experienced during the 1997 financial crisis, through the central and local governments' measures to prevent layoffs and job insecurity and two rounds of emergency disaster relief funds. However, South Korea's phenomenal success was not because the country's good public health system is advanced, but because of the medical personnel's dedication and the people's cooperation in government policies despite various vulnerabilities. As such, if the medical system and infrastructure become over-burdened, as was the case during the third wave of the pandemic in the winter season, there is a high possibility that the number of deaths will rise in South Korea as well. In fact, it is possible that South Korea may experience the aftermath of the pandemic in full swing after 2021, such as the effects of the deepened economic crisis and negative impacts on politics and society, since many employees have been put under de facto unemployment and experienced cuts in income, and many self-employed have virtually ceased to operate their businesses.

Just as the Black Death in the late Middle Ages became the turning point causing the feudal system to collapse, COVID-19 is likely to act as a crucial event that would

shake the foundations of the capitalist political and economic system and the carbon economy. How should democracy in South Korea operate in face of this future danger to ensure the survival of the young generation or the generation that has yet to be born?



Evaluating South Korea's democracy in 2020

According to the Constitution, the Republic of Korea is a democratic republic whose sovereignty resides in the people. This declaration includes the principle of democracy that stipulates the people's representatives elected by the people to represent and reflect the needs and interests of the people in governing the nation, and that this governance should realize public interests and harmony. It would be difficult to call a country a democratic republic if the elected powers represent the interests of 'special people' and not 'all people,' if unelected powers overwhelm the elected powers at times, or if the political sphere, the government, and the judiciary do not listen and answer to the desperate demands of the majority.

Almost every country in the world today calls themselves liberal democracies that officially adhere to the fundamental principles of democracy, that is, popular sovereignty, the separation of powers, representative government, judicial independence, party politics, freedom to express political opinions, checks and balances of the government, and periodic elections and regime change. However, just because a country guarantees these institutions and principles of liberal democracy through its constitution or various legal institutions does not mean that these principles of democracy are actually kept in practice. The freedom of expression and election processes are often severely refracted, and the elected powers commonly ignore or betray the will of the voters. Unelected powers, such as large corporations, public security agencies, the prosecution and judiciary, the media, etc., often dominate over the elected powers, block civic participation, and distort the media and press. In particular, today's capitalist democracies have made de facto plutocracy and oligarchy a common feature, thus limiting or neutralizing civic participation.

The neoliberal economic order, which has continued for more than 30 years, has deepened economic inequality to an unprecedented level, weakened the various civil and human rights that mankind has fought over for the past two to three centuries, and made it difficult for socially vulnerable groups to participate in politics. As a result, party politics and representative democracy have become seriously undermined. Streeck viewed that the crisis of today's democracy lies in uncontrolled global financial

capitalism and emphasized that the crisis is not a matter of technology; the low growth rates and high unemployment rates are the results of the investment strike by capital owners.⁸⁾ The COVID-19 pandemic has exacerbated this trend. Moreover, the global environmental crisis now threatens the survival of mankind due to the selfishness of rich nations, thus putting at risk the operation of political democracy that does not assume the sustainability of global civilization. This global crisis of democracy makes it necessary for us to re-examine the criteria or definition of democracy.

The theory and ideology of liberal democracy are characterized by the freedom of expression, the transparent election of representatives, leaders, and governments, the separation of powers (legislative, judicial, and administrative powers), and checks and balances. These characteristics eclectically reflect the Enlightenment of the modern Western world and the values the working class fought for in their protests against the contradictions brought by capitalism. The “primitive” liberal democratic values and institutions, which reflect the historical experience of the modern Western world, were extremely unstable, but they survived beyond the 20th century. Democracy, meaning “rule of the people,” coexists uneasily with the capitalist market economy, and the people are composed of stakeholders with different economic interests that conflict or collide with one another. So it is not easy to distinguish what democracy is, that is, what is the people’s rule and what is not. As a result, numerous adjectives have been continuously added to democracy, such as people’s democracy, national democracy, social democracy, participatory democracy, etc.

This is why many have argued for viewing democracy not as a “value” or a political system but rather minimally as a procedure or method, mainly in terms of the operation of election processes, procedural legitimacy and transparency of elections, the provision of conditions for the public to make proper choices in the election process, the fairness and legitimacy of law enforcement, etc. Schumpeter suggests that democracy should be merely a procedure or method of electing leaders based on the premise that the principle of majority rule can distort the people’s will.⁹⁾ Keane argued that democracy should act as a watch-dog (i.e., monitory democracy) that monitors and checks power and blocks the possibility of absolute power to be truly universal, rather than defining democracy as an institution that has become an undeniable postulate, such as

8) Wolfgang Streeck, Kim Hee-sang, trans., *How Will Capitalism End?: Essays on a Failing System*, Dolbegae, 2015.
9) Joseph Schumpeter, Lee Sang-gu, trans., *Capitalism, Socialism, and Democracy*, Samsung Publishing Company, 1981, pp. 368

representative democracy or liberal democracy.¹⁰⁾

However, democratic procedures and devices will just be an inoperative shell unless the majority of the people have the freedom to express their opinions as sovereigns who are conscious of their rights and interests, unless the conditions for their direct participation and action in the political process are provided, unless they are given opportunity to develop the capacity to act as sovereigns and engage with companies, families, and local communities that decisively influence their lives, and unless there are conditions allowing the people to mutually coordinate or deliberate on their opinions and interests and realize the results of such coordination or deliberation.¹¹⁾

To properly elect a leader and ensure the “rule of the people,” the groups constituting the people and the conflicts of interests among these groups must be socially recognized, and institutional devices must be put in place so that those interests could not be proclaimed or interpreted coercively or unilaterally in the name of the state, order, or any other cause.

Therefore, it is not only that the members of society must not be subject to discrimination based on their status, race, or gender, but they must also be free from poverty and economic inequalities to some extent. Even if the separation of powers, the freedom of the press, and the possibility of regime change through elections are stipulated by law, it is still a very difficult challenge to make democracy operate properly.¹²⁾ For this very reason, we are observing the crisis of liberal democracy even in the countries that gave birth to the concept amid the expansion of corporate powers,¹³⁾ the monopoly of power by the elitist class, growing social inequalities and political indifference, and increased hatred and terrorism against foreigners and minority groups, at a time when these democratic institutions have become a global standard.

The “original” institutions or procedures for democracy were developed in the United States and some of the Western European countries. However, in the case of the United States, democracy has collapsed to such an extent that President Trump refused to accept the final election result and take any responsibility for the

10) John Keane, *ibid.*

11) Kim Dong- Choon, “Beyond the illusion called democratization,” *Hwanghae Munhwa*, Issue 49, Winter 2005, pp. 20-38

12) Bernard Manin, Gwak Jun-hyeok, trans., *The Principles of Representative Government*, Humanitas, 2004.

13) Veblen saw a company’s threat to withdraw from production as a strategic sabotage. Thorstein Veblen, *Absentee Ownership and Business Enterprise in Recent Times*, B.W. Huebsch, Inc. 1923

inept responses to COVID-19 despite more than 300,000 deaths from the virus. There were many cases where the president's arbitrary or illegal exercise of power was not checked or monitored. The medias are not only seriously biased but has become the producer of fake news to obstruct the formation of public opinions, and political parties have become agents that represent huge interest groups, such as large corporations. Although some countries practice direct democracy by holding several elections a year, such as Switzerland, the opportunities for the people to participate in various political processes are still limited, apart from elections, even in advanced democracies based on representative democracy. At the same time, it has become difficult for young people, the lower classes, and women to have the will or interest to participate in elections. Xi Jinping's China, which has engaged in the competition over global hegemony with the United States, laughs and looks down at Western democracy, but China is also criticized for returning to authoritarian rule in the name of "China-specific socialism."

So, Alain Touraine argues that democracy is achieved through the struggle against oppression, totalitarianism, and intolerance and, instead of defining democracy in a weak sense (e.g., free elections, representative government, etc.), calls for a "stronger definition" of democracy is needed. Touraine viewed that democracy works properly only when basic human rights, representation, and citizenship are guaranteed.¹⁴⁾ Charles Tilly also emphasized the guarantee of citizenship as a criterion for democracy. In Tilly's view, a country is more democratic when the groups that could exercise their powers as citizens are larger in size, have greater equality and better protection from the state's arbitrary actions (better guarantee of freedoms), and a higher degree of binding mutual dialogues.¹⁵⁾ Thus, David Held defined democracy as the people's control over collective decision-making and equality among citizens.¹⁶⁾

In other words, the existence of freedom, the rule of law, transparent and fair elections, and institutional devices for checking and balancing power cannot be the judge of whether liberal democracy is in operation. The people's control over unelected powers such as the judiciary, the administration, and market powers, the freedom of association that allows citizens to play their role as sovereigns, and socio-economic equality should be considered as key indicators of the formation and level of democracy in a country.

14) Alain Touraine, (David Mercy trans.), *What is Democracy*, Westview Press, 1997, pp. 10.

15) Charles Tilly, *Democracy*, Cambridge University Press, 2007, pp. 23-27.

16) See David Held, *Models of Democracy*, Humanitas, 2007 (Korean translation).

Of course, there is also skepticism about whether even a minimal level of freedom or democracy can be preserved when a country or society faces internal and external political and economic crises, especially in situations where the lives and survival of the people are at risk, as in the case of the COVID-19 pandemic in 2020. Indeed, in Germany, France, and Spain, protests demanding the guarantee of individual freedoms continued against government measures enforcing economic blockades and restrictions on population movement. In this case, can we justify such blockades as measures to ensure the survival of the whole political community? Or are the freedoms granted to individuals more important? In other words, safety, trust, and social integration are also critical conditions for democracy to work.



Overview of South Korea's democracy in 2020

This report contains an assessment of South Korea's democracy in 2020 across nine areas. Like any other country in the world, the COVID-19 pandemic dominated all political and social agendas in South Korea in 2020 (Democracy and Public Health). To deal with the disaster situation caused by COVID-19, the government exerted control over the people's lives, and in the process, unilateral sacrifices were imposed on economically vulnerable groups, thereby exacerbating the financial difficulties of small self-employed business owners and temporary and daily wage workers. The social role of essential workers (medical personnel, delivery workers, caregivers, etc.) became more prominent, but the institutions and conditions for recognizing and rewarding their commitment and sacrifice have not been established yet.

The restrictions on economic activities caused by the pandemic led to a significant loss in income for self-employed business owners, irregular workers, and freelancers, etc. The provision of untact school education went relatively smoothly compared to other countries, but untact education requiring internet access made it difficult for students of low-class families to participate, which likely widened the educational gap among social classes. In addition, the pandemic showed that people's health, lives, and the right to health are not equal in South Korean society. Furthermore, it highlighted the absolute shortage of public health infrastructure and revealed the limitations arising from the dependence on private hospitals to supply medical services.

In South Korea, as in many countries around the world, emergency measures such as restrictions on basic rights, control over population movement, economic blockades, and restrictions on businesses were implemented to prevent the spread of COVID-19

(Participatory Democracy). Amendments were made to the Infectious Diseases Prevention and Control Act so that persons interfering with quarantine measures or failing to comply with the orders of quarantine authorities could be punished with imprisonment or fines. The interruption of face-to-face meetings in the workplace or community created difficulties for the socially vulnerable who depended on in-person communication and exchange activities or group gatherings to engage in social solidarity and participation. Due to the spread of COVID-19, many organizations had to suspend or reduce their usual projects. In particular, organizations whose budgets are small, consisted mostly of private funds, or whose history is relatively short have been facing increasing difficulties in terms of finances and carrying out projects.

However, like other East Asian countries with strong statist or nationalist traditions, protests or demonstrations against this kind of state control did not occur in South Korea. Rather, protests were frequently led by conservative Christians in the name of religious freedom, and right-wing organizations who opposed the government. So, in 2020, not only was there a rise in the frequency of direct collective actions, such as assemblies and demonstrations, but also more lively participation in voicing opinions on political and social matters through other channels, such as the expression of opinions online, submitting petitions/civic complaints/pleas, participation in signature-collecting campaigns and boycotts, and the expression of opinions to the government and media.

The two most important issues in South Korean democracy in 2020 were the April 15 general election and prosecution reform. The April 15 general election was the first election to apply the quasi-mixed-member proportional representation (quasi-MMP) system (Representative Democracy). However, this system, which was intended to advance the quality of South Korean democracy by giving an advantage to minority parties, failed to rise to the expectations as the giant ruling and opposition parties showed little will to amend the election law from the beginning, knowing that electoral reform would work against them. As a result, the ruling Democratic Party gained 180 seats in the National Assembly, while the minority parties suffered a disadvantage because of the very system that was introduced to expand their participation in the parliament. At the same time, the existing problems of the simple majoritarian system for small local districts remained intact. Although the Moon Jae-in administration's relative success in coping with COVID-19 delivered an unprecedented landslide victory to the ruling party, from the perspective of Korean democracy, the April 15 general election evidenced a regression in democracy.

The outcomes of the April 15 general election were significant in that several members of the National Assembly advocating Cold War conservatism lost the election, resulting in the old-fashioned conservatives' loss of position within the opposition People Power Party. After 30 years since the end of the Cold War, South Korea's political sphere has finally begun to move beyond the Cold War era. However, it is difficult to say that the conservatives, represented by the People Power Party, have weakened decisively when looking at the total number of votes won at local districts by the two giant ruling and opposition parties, especially those won by the satellite parties these giant parties created for proportional representation. Moreover, the assets owned by the elected members of the giant ruling and opposition parties and their occupations brought criticism that they only represent the top 10% of the Korean population. According to the Citizens' Coalition for Economic Justice (CCEJ), the average amount of assets owned by elected public officials is 2.18 billion Korean won, which is more than five times the national average of 430 million Korean won.¹⁷⁾ In terms of the occupations of elected public officials, 46 assemblymen were legal professionals in the 20th National Assembly and 45 in the 21st National Assembly. That is, while legal professionals account for less than 0.1% of the total voters, 15% of the seats in the parliament were held by legal professionals. On the other hand, there were 9 assemblymen who worked in blue-collar or white-collar jobs in the 20th National Assembly, and 13 in the 21st National Assembly, including three members of the Justice Party. These working-class members mainly came from the white-collar labor unions of the Korean Confederation of Trade Unions. This is to say that the path to becoming a member of parliament is extremely narrow, and institutional politics in South Korea creates an extremely distorted representation of the diverse occupations and social classes existing in South Korean society.¹⁸⁾ Ultimately, although the Democratic Party won an overwhelming victory, these innate limitations made it difficult to expect that socioeconomic reforms will be pursued in earnest. These expectations (or the lack thereof) became a reality after the election.

17) "CCEJ, 'Assets Declared by Members of the 21st National Assembly Averages 2.18 Billion Won, Five Times the National Average'", The Hankyoreh, June 4, 2020

18) Kim Dong-Choon, "The April 15 General Election and Korea's Democracy Amid COVID-19 – The State, Political Parties, and Civil Society", Memory & Vision, 2020 Summer Issue (No. 42).

The next important issue was the reforms of the judiciary, the prosecution, and the police, which are non-elected powers (Non-elected Powers and Democracy). Much of the reforms proposed for these institutions were made into political agendas and were pursued in their own way. However, in the case of judiciary reform, the reform failed to set a proper direction and, as a result, fizzled out without even building an effective framework for discussion. The misuse of judicial powers during the past administration shook the foundations of South Korea's judiciary and rule by law by revealing how the Chief Justice of the Supreme Court intervened in trials using the judicial administration system and exerted unfair external pressure on the judges. However, the persons who were involved in the misuse of judicial powers were not punished, and judicial independence was used as a justification for refusing democratic control over judicial administration.

Prosecution reform was not only demanded by the candlelight rallies in 2016 and 2017 but was also the most important task from the viewpoint of South Korea's path of democratization. It is very significant and meaningful that, after many conflicts and heated discussions within the National Assembly, investigation rights were adjusted between the prosecution and the police, and a special office for investigating corruption among high-ranking public officials (Gongsucho) was established. It became possible to conduct independent investigations into crimes by high-ranking government officials, judges, and prosecutors from 2021. However, the tasks to separate investigation rights and indictment rights, which are currently monopolized by the prosecution, and correct the prosecution's politically biased indictment remain untouched. In particular, the agenda for prosecution reform unraveled as a confrontation between the President-appointed Justice Minister Choo Mi-ae and Prosecutor General Yoon Seok-yeol and political conflicts between the ruling and opposition parties. The Minister of Justice ordered disciplinary action on the Prosecutor General while having invoked the authority to command an investigation, which is unprecedented in the history of the prosecution.

The police gained investigation rights from the prosecution and the power to collect domestic information and national security investigation rights, centered on crimes involving national security, from the National Intelligence Service. The powers pertaining to maintaining domestic public security, which had been dispersed among the prosecution, intelligence agencies, etc. even under authoritarian governments, became concentrated in the mammoth organization that is the police under the name of reform, thereby regressing the reform itself.

Compared to the excessive energy placed by the Moon Jae-in government and the ruling party on prosecution reform, the various tasks for economic reform, including chaebol reform, and strengthening democracy in labor issues were left in a state of stagnation or even showed retreat. The ruling party showed a passive attitude toward the bills containing proposals for economic reforms (the so-called “Three Laws on Fair Economy”), and the bills met with strong opposition from businesses and the opposition party, especially concerning the abolishment of the Fair Trade Commission’s exclusive right to accuse. Eventually, the bills were modified in a significantly retreated form (Economic Democracy). The laws on collective labor relations, such as the laws concerning labor unions, were amended to allow dismissed workers to join unions and persons in special-type work to join the employment insurance system, etc., but several provisions that weakened the organization and protesting power of workers also became added, such as the extension of the effective duration of collective agreements and expansion of flexible working hour system, etc. Meanwhile, a bill was proposed to reduce the number of deaths caused by industrial accidents among subcontracted workers and place companies responsible for such accidents was pushed to the bottom of the list of priorities despite being strongly advocated by civil society and the Justice Party, and bills that could reduce bureaucratic control over education and expand democracy (e.g., amendments to the Private School Act, establishing a National Education Committee, support for democratic citizenship programs, etc.) were not properly discussed (Social Equality and Democracy: Labor Issues).

In particular, the Moon Jae-in administration did not make any efforts to abolish or even amend the National Security Act, which has structurally restricted the freedom of speech and thought, the freedom of association, and democracy in South Korea, or even just the highly-controversial Article 7 criminalizing the praising, inciting, or propagation of the activities of an anti-government organization. However, the bill to establish the second Truth and Reconciliation Committee, long-demanded by the bereaved families of victims and social groups throughout the 20th National Assembly, was legislated, thus expanding the path to transitional justice. President Moon Jae-in attended the commemorative ceremonies held for the Jeju 4·3 Incident and the May 18 Democratization Movement, and the representative of the conservative party visited Gwangju to apologize for the party’s passive response to the May 18 Democratization Movement and the thoughtless comments made by some of its members. Also, some progress was seen in the purging of the past, such as the Democratic Party’s pledge to make an effort to pass the Jeju 4·3 Incident Special Act Amendment Bill, etc.

The public's dissatisfaction with the mainstream media's biased reports and fake news has peaked more than ever (Media Democracy). In 2020, the trust in South Korean media was ranked 40th out of 40 countries surveyed. South Korean media has been producing and disseminating news reports that are extremely politically biased, barely contributing to the promotion of rational and democratic decision-making by politicians or the government, which it is charged to do so by creating healthy public discourses and forming and gathering public opinions. Nevertheless, the government showed a very passive attitude, such as stopping at issuing warnings to composite cable channels that produce and broadcast news programs containing news reports that are subversive and goes against public interests.

Meanwhile, the year 2020 was a year when the issue of gender democracy became one of the hottest agendas due to allegations of sexual misconduct by major public officials (Gender Democracy). Women in their 20s and 30s with higher gender consciousness continued to clash with the unchanging patriarchal behavior of male supervisors in their 50s and 60s in their organizations. The agenda of gender democracy will continue to be of importance in the Seoul and Busan mayoral by-elections in 2021.

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Transitional Justice

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Assessment Criteria and Items

1) Assessment Criteria

The year 2020 commemorated the 70th anniversary of the Korean War. Major events in 2020 concerning the “purging of the past,” or the “liquidation of Past Incidents” in South Korean society were the amendment to the Framework Act on Clearing up Past Incidents for Truth and Reconciliation (hereinafter, the “Truth Reconciliation Act”), the launching of the second Truth and Reconciliation Commission of the Republic of Korea (hereinafter, the “TRCK”) and the May 18 Democratization Movement Truth Commission (hereinafter, the “May 18 Commission”), and the enactment of the three laws concerning the May 18 Democratic Movement. Like all other areas, the activities to liquidate past incidents were affected by the COVID-19 pandemic, but it could be assessed that Korean society has now moved onto the second phase of realizing transitional justice, in other words, the stage of “Transitional Justice 2.0.”

The “purging of the past” refers to the actions to realize justice amid political changes to heal the negligences of past dictatorships, that is, the process of realizing transitional justice. A democratic society is not built in one day but developed through constant changes within the flow of history. In this sense, the purging of the past for transitional justice is an essential task for South Korea’s democracy to develop and mature.

A number of events require investigation of transitional justice in South Korea ranging from those under Japanese colonization to the recent social disasters. This chapter reviews the major events and issues of 2020 in the fields of (1) the civilian massacres before and during the Korean War (1945-1953; hereinafter, “Civilian Massacres”), and (2) the human rights abuses during the authoritarian rule (1954-onwards; hereinafter, “Human Rights Abuses”).

2) Assessment Items

The roadmap for transitional justice in countries around the world generally consists of four areas: 1) truth-finding; 2) reparation, compensation, and vindication of victims; 3) punishment of perpetrators and systematic prevention of recurrence; and 4) reconciliation and historization. Therefore, as in 2019, this chapter sets these four areas as the items for evaluating South Korea’s efforts to liquidate Past Incidents in 2020.



Detailed Assessment of Items

1) Truth-finding

○ Outline

Truth-finding is the starting point for realizing transitional justice and is expressed through the establishment of truth-finding institutions that will pursue relevant activities. The most significant event related to truth-finding in 2020 was the amendment of the Truth Reconciliation Act in May and the launch of the second TRCK on December 10. Also, following the amendment of the Special Act on Investigating the Truth of the May 18 Democratic Movement (2018) on October 31, 2019, the May 18 Commission was launched in January. On December 9, the so-called “Three Laws concerning the May 18 Movement” were put in place, which included partial amendments to the Special Act on the May 18 Democratization Movement, etc. and the Act on the Honorable Treatment of Persons of Distinguished Service to the May 18 Democratization Movement. In particular, the amendment to the Special Act on Investigating the Truth of the May 18 Democratic Movement extended the definition, scope, term of office, capacity, and duration of the May 18 Commission. This chapter presents the current issues concerning truth-finding with a focus on the amendment to the Truth Reconciliation Act and the launch of the second TRCK.

○ Current issues and demands

The proposed amendments to the Truth Reconciliation Act were pending for several years even after the 20th National Assembly came in place due to the inability of the ruling and opposition parties to reach an agreement on the bill. However, the amendment bill gained momentum and was passed dramatically on May 20, 2020 after Choi Seungwoo, a surviving victim of the Brothers Home (Hyeongje Welfare Institution) human rights abuse, held a one-man strike on the roof of the exit of the National Assembly subway station after the April 15 general election. Accordingly, the second TRCK was officially launched to begin its activities for liquidating Past Incidents. It could be said that the second TRCK came to fruit through the decade-long efforts of the victims, survivors, and civic groups who longed for the TRCK to resume its activities after the first TRCK’s end of term in December 2010. Unlike the first term, the second TRCK was actively promoted by local governments and the groups representing the victims, such as associations of bereaved families, and many people visited the public service offices of the TRCK and local governments to apply for truth-finding investigations on their cases from the very first day of inauguration. The first application for truth-finding received by the second

TRCK was submitted by the representative of the Brother Home victims.

However, it is still unclear whether or not the second TRCK will be able to operate normally. The Truth Reconciliation Act requires the President to appoint a chairman, and for the ruling and opposition parties to recommend four commissioners each. President Moon Jae-in nominated Professor Jung Geun-sik as the chairman of the second TRCK, and the ruling party recommended four members, including Professor Lee Jae-Seung, on schedule, but the opposition party has not made their recommendations by the end of 2020. Also, the TRCK's activities may be neutralized if the opposition party appoints individuals who lack understanding of past-purging efforts and the will or ability to realize the spirit of the Truth Reconciliation Act.

The newly-launched TRCK was given additional powers that complemented the areas found insufficient during the first TRCK, such as the ability to hold closed hearings and request personal information from the relevant agencies as necessary during the truth-finding process. However, with a smaller number of commissioners (reduced from 15 to 9) and shortened investigation period (a maximum of 6 years to a maximum of 4 years), it could be said that the second TRCK was launched in a smaller scale than the first TRCK. In addition, the legislated bill did not contain the provision related to compensation for victims which was in the original bill proposal, sparking criticism from the victims and bereaved family members that the second TRCK "is created based on a rag bill that retreated from the bill which launched the first TRCK in the name of the 'consensus between the ruling and opposition parties.'"

The second TRCK is tasked with handling cases that were not registered to or investigated by the first TRCK. First, concerning Civilian Massacres, there are currently about 4,000 members registered at associations of bereaved families nationwide, excluding the Jeju region, but it is estimated that there are additionally thousands of bereaved family members who are not members but participate in these associations' activities that have not submitted their applications to the TRCK. It is expected that the second TRCK will be receiving applications from not only these bereaved families but also the bereaved families who have not been participating in the bereaved family associations.

Secondly, there are also many victims of Human Rights Abuses who have not submitted their applications during the first TRCK. For example, it is estimated that only 20-30% of the victims of false espionage charges have been acquitted through the first

TRCK's decision to "verify the truth" and the courts' retrials. In addition, there are the victims of human rights violations involving forced detention and labor, the Brother Home being a representative case. It is reported that from 1975 to 1987, 18,000 citizens were forcefully detained and imprisoned at the Brother Home to be placed under forced labor, beatings, and abuses, even resulting in 513 deaths. If also accounting for victims of other human rights violations, such as the Seongam Academy and Seosan Developing Group cases, the number of victims in this area is estimated to reach tens of thousands, and some of them are expected to file applications for the TRCK's truth-finding investigation.

Thirdly, the second TRCK is also handed with the major task of revisiting some of the cases that the first TRCK decided as "unverified" or "dismissed," such as the massacres by the US military during the Korean War and suspicious deaths under authoritarian rule. This task is stipulated in Article 6 of the Truth Reconciliation Act's Addenda. The second TRCK must also handle the cases concerning the damages claimed by surviving injured victims of Civilian Massacres, the infringement of property rights in the Seosan Development Group case, etc., and the cases concerning the damages caused by state violence regardless of whether they received final and conclusive judgments in the court of law. Furthermore, the second TRCK is required to revise and supplement the comprehensive report submitted by the first TRCK, which was assessed to be insufficient, as a part of historical truth-finding work.

○ Future tasks

Many difficulties are foreseen in the second TRCK's activities. First, like the first TRCK, the second TRCK does not have investigative powers, so it is limited in its legal authority to pursue investigations. Second, in the case of Civilian Massacres, 70 years have passed since the events took place, which means that most of the first-generation bereaved family members, witnesses, and perpetrators who had been alive during the first TRCK have passed away. This presents immense difficulties in the truth-finding activities for those cases. Third, the first TRCK's efforts brought attention to the reparation and compensation for victims as a social issue, so the second TRCK face a rush of applications from victims who want truth-finding and reparations by the state but have not applied to the first TRCK for an investigation. If this happens, the TRCK, which is a temporary organization, could be reduced to a simple civil service processing agency that is pressed to urgently process applications. Furthermore, the second TRCK may find itself short on time in bringing forth tangible results and making progress in the enactment

of a special law on the reparation and compensation desperately hoped for by state violence victims before the next presidential election approaches. Fourth, depending on the political disposition of the newly elected commissioners, the second TRCK may face disruptions in truth-finding processes or internal or external attempts leading to historical distortions and retrogression in the efforts to liquidate Past Incidents.

Even so, the second TRCK must overcome these difficulties, as state-led truth-finding is the most elemental starting point for liquidating Past Incidents. Since the second TRCK is only active for a maximum of four years, it needs to keep in mind the short amount of time it has and discuss realistic goals. To enable follow-up measures broadly and comprehensively, such as the enactment of a special law on the reparation and compensation of victims, the TRCK needs to form strategies in the early stages of its activities. The second TRCK should closely analyze the first TRCK's recommendations and review the progress made over the past decade to suggest effective guidelines. Also, it should make preparations and build the legal basis for establishing the 'Past Affairs Research Foundation' during the 21st National Assembly so that additional projects for truth-finding, the unearthing of victims' remains, and memorial and commemoration, as well as research, investigation, and education, can be conducted even after the TRCK terminates its activities at the end of its term.

For the second TRCK to move forward toward its goal to realize the "complete purging of the past," it must adhere to the principle of liquidating Past Incidents from the victims' perspective. Moreover, it should establish gender equality-based principles for realizing transitional justice. The victims of gender violence perpetrated and facilitated by the state in modern Korean history are estimated to reach hundreds of thousands in number. Of the state-perpetrated gender violence, the Japanese military "comfort women" issue has been raised as a social agenda through avid campaigns led by the victims and civil society, but little attention has been given so far to the gender violence that had occurred during the Korean War and under authoritarian rule. Although social interest in gender violence has been increasing in recent years, state-perpetrated gender violence has not yet been given a clear classification in the field of transitional justice. The state should be put responsible for any gender-based violence committed and facilitated by the past governments, and gender violence by the state needs to be investigated by the state organization, not a private unit, because the reality can only be revealed when the state organization comes forward and investigates the truth. Thus, the second TRCK should pursue truth-finding investigations related to this type of gender violence.

To overcome these many issues, it is necessary to establish a “truth-finding governance” that could allow the internal and external competencies of the TRCK to operate efficiently. There also requires strategies to enable victim groups, local civic groups, and local governments in each region to utilize their power actively and make use of the research data accumulated by researchers and activists.

2) Reparation, compensation, and vindication of victims

○ Outline

Victims of state violence have the fundamental right to claim reparation and compensation from the state. The reparation and compensation for state violence victims is not simply a matter of money. It is an act of offering reconciliation for the damages caused by the violations of the victims’ human dignity and the state’s denial of their citizenship, and an effort to restore the victims’ rights. The victims may not be able to recover completely from the damage they have suffered for decades, but the reparations may serve at least as the state’s indirect acknowledgment of its past wrongdoings on the victims.

Since the South Korean government has refrained from legislating a uniform measure for the reparation and compensation for state violence victims, the victims have relied so far on individual lawsuits for retrial and claims for damages against the state. However, as lawsuits are heavily dependent on the judgment of individual judiciary authorities, they entail the problems of inconsistency and inequity, as well as placing the burden of time and cost to pursue legal proceedings on the victims. Therefore, it is necessary to enact a special law and establish an exclusive body to deal with this issue in a uniform manner so that all victims are provided with equal remedies. This section reviews the current state of the lawsuits filed by victims of state violence and the movement to enact and amend related laws in 2020.

○ Current issues and demands

Until now, the reparation and compensation process for victims of state violence has not been smooth. In May 2013 during the Park Geun-hye administration, the Supreme Court changed its policy for handling cases related to Past Incidents and shortened the extinctive prescription from 3 years to 6 months, then used these changes as reasons

to dismiss many of the cases. After the Moon Jae-in administration came into power, it was revealed that the Supreme Court's policy changes were implemented through the misuse of judicial powers by former Supreme Court Chief Yang Seung-tae, and in December 2017, the Justice and Prosecution Reform Committee recommended the Ministry of Justice to eliminate the extinctive prescription on the state liability cases surrounding the reparation and compensation for Past Incidents. In August 2018, the Constitutional Court ruled that it is unconstitutional to apply the extinctive prescription to victims of Past Incidents. Amid such developments, the court ruled in favor of a few cases that were formerly dismissed based on the extinctive prescription, etc. in 2019.

This trend continued in 2020. In relation to Civilian Massacres, victims of the Yeosu-Suncheon Incident (Yeosun-sageon) and the Masan and Busan Bodo League Massacres (Bodoyeonmaeng-sageon) were found innocent in retrials. Also, the 18 surviving prisoners and 21 bereaved families of the Jeju 4·3 Uprising and Massacre (hereinafter, Jeju 4·3 Incident) initiated their first lawsuit to claim damages against the state. Concerning Human Rights Abuses, an appeals court ruling recognized that the extinctive prescription should be three years (as opposed to the shortened six months) for the lawsuit filed by victims of Yushin-era emergency measures, and the four victims of state-fabricated espionage charges involving Korean-Japanese businessmen were found innocent in the retrial held after 43 years since they were convicted. In addition, 364 victims and their bereaved family members of the Guro Farmland Incident partially won the lawsuit they filed against the state for damages and received compensation from the government.

However, court decisions often turn out differently depending on the judicial authority in charge, and lower court trials on the reparation and compensation of state violence victims still tend to adhere to the six-month extinctive prescription placed by the Supreme Court decision in 2013. Moreover, the victims who had lost their trials due to Yang Seung-tae's misuse of judicial powers have no way to revoke the final and conclusive judgments made on their cases. For example, a victim of the National Federation of Democratic Youth and Students (Mincheong Haklyon) Incident and Yushin-era emergency measures was found not guilty in a retrial but lost the lawsuit for damages based on the six-month extinctive prescription. In November, the Constitutional Court rejected the constitutional complaint filed by the victim and made the final and conclusive judgment in favor of the court's previous decision. Meanwhile, the victims of the massacres committed by the U.S. military lost all the lawsuits they had filed for reparation and compensation, except for the lawsuit on the Pohang Hwanyeo-

dong Incident, so their cases are not even placed on the discussion table.

It is not that no attempts have been made to enact a special law to provide uniform compensation to victims of state violence. The amendments to the Truth Reconciliation Act enacted in 2020 had originally included a clause on the government's obligation to compensate the victims in the bill proposal submitted to the National Assembly. However, the Ministry of Strategy and Finance and the opposition party opposed the inclusion of the clause for reasons of budgetary concerns, so the clause was excluded in the final amendment that was legislated. Consequently, several bills with provisions related to the reparation and compensation of victims have been proposed in relation to individual cases.

In relation to Civilian Massacres, the following bills contain prescriptions for providing reparation, compensation, welfare, and medical support to the victims or bereaved family members: the "Bill on the Full Amendment of the Special Act on Discovering the Truth of the Jeju 4·3 Incident and the Restoration of Honor of Victims" (hereinafter, the "Jeju 4·3 Incident Special Act Amendment Bill"); the "Bill on the Special Act on Discovering the Truth of the Yeosu-Suncheon Incident and the Restoration of Honor of Victims" (hereinafter, the "Yeo-sun Incident Special Act Bill"); the "Bill on the Special Act on the Compensation of the Persons Involved in the Geochang Incident"; and the "Bill on the Full Amendment of the Special Act on Examination and Honor Restoration of Victims Involved in the Nogeun-ri Incident," etc.

Concerning Human Rights Abuses, the "Bill on the Compensation and Restoration of Honor of Victims by Emergency Measures Clauses in the Yushin Constitution" and the "Bill on the Honorable Treatment of Persons of Distinguished Service to the October 16 Pusan-Masan Democratization Uprising" have been submitted to the legislative committee. Meanwhile, partial amendments to the laws concerning the compensation, etc. for persons involved in the May 18 Democratization Movement were legislated at the National Assembly's plenary session on December 9. The "Bill on the Prevention of Torture and Relief and Support for Torture Victims, etc.," which had been proposed at the 19th, 20th, and 21st sessions of the National Assembly, also includes a clause stipulating reparations and compensations to the torture victims and their bereaved families. Also, civic groups have been demanding the enactment of the Act on Honorable Treatment of Persons of Distinguished Service to the Democratization Movement, which is intended to remember the people who sacrificed themselves for the development of South Korea's democracy and to provide support to their bereaved families.

○ Future tasks

At the memorial ceremony for the victims of the Jeju 4·3 Incident in April 2020, commemorating the 72nd anniversary of the tragic event, President Moon Jae-in promised to urge the National Assembly to legislate the Jeju 4·3 Incident Special Act Amendment Bill as soon as possible and make efforts to realize the reparation and compensation for victims and their bereaved families. On November 25, the Ministry of Justice announced that it recognized the special circumstances of the Jeju 4·3 Incident victims for a retrial and that it proposed a set of amendments to the Jeju 4·3 Incident Special Act to grant jurisdiction to the Jeju District Court so that the prosecutors could collectively make an ex officio retrial petition. If this amendment bill passes at the National Assembly, the Jeju 4·3 Incident victims and their bereaved family members will not have to petition for a retrial individually, and not only the victims of military trials but also those of the regular trials will be given a retrial. The victims and their bereaved families viewed the Ministry of Justice's measures as a positive signal for the legislation of amendments to the Jeju 4·3 Special Act and are currently holding picket demonstrations throughout Jeju to urge the enactment of the bill within the year.

Meanwhile, regarding the Yeosu-Suncheon Incident Special Act Bill, the National Assembly Secretariat's review report stated that it is desirable for the TRCK to investigate the truth of the Yeosu-Suncheon Incident considering the equity with other Past Incidents. The Ministry of the Interior and Safety has also voiced its opinion that the decision on the bill should be made after the TRCK completes its truth-finding investigations on the case, rather than legislating the bill separately. On December 7th, the National Assembly's Public Administration and Security Committee held a public hearing on the legislation of the Yeosu-Suncheon Rebellion Special Act Bill based on the consensus made between the ruling and opposition parties. Since this was the first time a public hearing was held for this bill, despite being proposed five times from the 16th National Assembly to the 21st National Assembly, the victims, survivors, bereaved families, and local communities have high expectations for the bill's legislation.

On the other hand, the victims and survivors of other Civilian Massacres or Human Rights Abuses who have not yet received reparation or compensation from the state are feeling discouraged by the deem prospects for claiming damages even if the second TRCK conducts truth-findings investigations on their cases. That is, even if individual bills on the reparation and compensation for Past Incidents are legislated, it is difficult to ensure fairness and consistency across the separate laws. This issue necessitates the

enactment of a special act on the reparation and compensation for all Past Incidents by the 21st National Assembly, including the cases dismissed by Yang Seung-tae's misuse of judicial powers.

3) Punishment of perpetrators and systematic prevention of recurrence

○ Outline

Little progress in realizing transitional justice has been made in relation to the punishment of perpetrators. Since the efforts to liquidate Past Incidents are being pursued while South Korean civil society is still limited in capacity, it is not easy to punish the perpetrators of Past Incidents. For example, in the cases of wrongful espionage charges, the terminal and direct perpetrators are the military and police inspectors who captured ordinary citizens and accused them of espionage. However, these military and police inspectors, such as Lee Geun-an, have avoided criminal penalties for the reason that the statute of limitations in related cases has passed. The May 18 Commission, which was launched in January, and the second TRCK, which was launched in December, do not have judicial powers, such as the authority to investigate or prosecute the perpetrators. In a social climate that places little importance on the punishment or condemnation of past wrongdoings by the state, the perpetrators have been left free from the responsibility to reflect on and apologize for their actions.

As a complementary measure, a campaign to claim the right to indemnity against those who are responsible has been underway by the victims and civil society since 2019. State violence perpetrators include the military and police inspectors who tortured the victims of false espionage charges, the prosecutors in charge of the cases, and the judges who indicted the victims. The campaign seeks to condemn the perpetrators by demanding the government to cancel the special promotion if the perpetrator is in office and make the perpetrators responsible for paying the victim's compensation. Another ongoing campaign seeks to cancel the benefits arising from the decorations conferred to former and current state violence perpetrators. Meanwhile, the Research Team to Publish the Biographical Anthologies of Those Who Destroyed the Constitution (hereinafter, the "Research Team on Constitutional Destroyers"), comprised of private researchers, has been researching and compiling the records on the acts committed by state violence perpetrators for several years.

Meanwhile, in May, civic groups such as the Korean Teachers and Education Workers Union (KTU) gathered to launch the Citizens' Solidarity for the Abolition of Article 7 of the National Security Act. In October, a bill to partially amend the National Security Act was proposed at the 21st National Assembly. And in November, former President Chun Doo-hwan, indicted for slandering the deceased witness of the May 18 helicopter shootings, was sentenced to eight months in prison suspended for two years. This ruling provided the occasion to point out the need to build a public consensus on eradicating the linking of the May 18 Democratization Movement to a specific region or debasement of the Movement. On December 9, the Amendments to the Special Act on the May 18 Democratization Movement, etc. (hereinafter, "May 18 History Distortion Punishment Act") was legislated at the National Assembly plenary session.

This section looks at the current issues of the following areas: 1) The right to claim indemnity against state violence perpetrators and the revocation of decorations; 2) Investigation of state violence perpetrators' records; 3) Campaign to abolish the National Security Act; and 4) Enactment of the May 18 History Distortion Punishment Act.

○ Current issues and demands

(1) The right to claim indemnity against state violence perpetrators and the revocation of decorations

Until now, there have been few attempts at the government level to claim indemnity against state violence perpetrators. However, at the personnel hearing held to examine the National Police Commissioner General candidate Kim Chang-ryong in July, attention was brought to the need to cancel the accelerated promotion given to state violence perpetrators by changing the regulations on the special promotion system under the Police Officials Act. At the time, candidate Kim responded that he will come up with measures to deal with this issue, but no specific measures have actually been implemented.

Regarding the revocation of decorations and awards given to state violence perpetrators, when victims and civic groups began the campaign to bring attention to this issue, the government revoked 707 decorations following the Awards and Decorations Act. The most common reason given for revoking the decorations was prison sentences for three years or more, followed by false achievements, and involvement in the suppression of the May 18 Democratization Movement. However, there are many cases where the medal is not returned even after the revocation. Former President

Roh Tae-woo, whose decorations were revoked in 2006 in relation to the December 12 Military Insurrection and the May 18 Democratization Movement, has not returned the medals he had received for 14 years despite the legal obligation to return them. Like the medals unreturned by former President Roh Tae-woo, a total of 523 medals remain unreturned, which account for more than 70% of all medals required to be returned. In response to the public demand to disclose the list of the people who have not turned over their medals, the government revised the Awards and Decorations Act in November 2019 so that the list could be disclosed. However, the government has yet to establish an enforcement standard for the list's disclosure.

(2) Investigation of state violence perpetrators' records

The Research Team on Constitutional Destroyers, launched in 2015, has been compiling the records of the actors who destroyed the values and spirit of South Korea's Constitution since the establishment of the government of the Republic of Korea. Constitutional Destroyers committed insurrections, unfair elections, massacres, torturing and falsely charging innocent citizens, and various human rights violations through the mobilization of state powers. These actors include perpetrators of civilian massacres around the time of the Korean War, torture and false accusations during the authoritarian era, human rights violations such as the Brother Home case, and unfair trials. The Research Team announced a list of 405 Constitutional Destroyers in February 2017 and is continuing its work to publish its research outcomes.

However, since this Research Team is a group of private researchers funded by voluntary donations from citizens, it has limitations in terms of budget, data collection, and investigative authority. Investigating and recording the actions of state violence perpetrators is an essential part of truth-finding activities and the punishment of the perpetrators. Such an important task should not be carried out solely by a private group but in collaboration with a government agency.

(3) Campaign to abolish the National Security Act

The National Security Act is the epitome of an evil law which has structurally restricted South Korea's democracy for 72 years since it was enacted in 1948 as a means of governance under the anti-communist regime during the Cold War era. In particular, Article 7 of the National Security Act, which criminalizes the praising, inciting, or propagation of the activities of an anti-government organization, grossly violates the constitutional rights of the people, such as freedom of expression, thought, and conscience. Past governments have arbitrarily applied this article to their advantage,

rendering many victims of such misuse. President Moon Jae-in also stated in an interview in 2012 that the National Security Act has problems such as censoring human thought, judging criminality based on motive rather than actions, having ambiguous criteria for what constitutes a crime, restricting the rights of the suspects in criminal procedure, and strengthening the atmosphere of public security throughout society.

There have been steady attempts to abolish the National Security Act. Internationally, the United Nations has recommended South Korea to abolish Article 7 of the National Security Act four times since 1992. In South Korea, the Participatory Government under former President Roh Moo-hyun sought to abolish the National Security Act at the government level in 2004 but was blocked by the fierce opposition of the Grand National Party. In the succeeding conservative administrations, discussions on the National Security Act saw little progress. However, as the general election on April 15 this year turned out in favor of the ruling Democratic Party with an outright majority, the discussions on abolishing the National Security Law were reignited after 16 years.

Currently, the eighth lawsuit on whether Article 7 of the National Security Act is unconstitutional is underway at the Constitutional Court. Civil society organizations such as Citizens' Solidarity have been holding one-person protests, etc. to urge the Constitutional Court to make an early decision. Press conferences and public debates were also held nationwide before and after December 1, which marked the 72nd anniversary of the National Security Act's enactment, and a petition for the law's abolishment has been registered on the National Petition of South Korea website. With the bill to amend to the National Security Act awaiting the National Assembly's decision, stronger demands are being made for the 21st National Assembly to not only abolish the anachronistic Article 7 of the National Security Act, which was used by past dictatorships as a tool to oppress the people, but to abolish the National Security Act altogether.

(4) Enactment of the May 18 History Distortion Punishment Act

The May 18 Democratization Movement has been continuously subjected to malicious distortion, disparagement, and dissemination of false information for the past 40 years. The "May 18 History Distortion Punishment Act" Bill, initiated in October 2020 and passed at the National Assembly's plenary session in December, stipulated criminal penalties for these acts. Prior to this bill, a bill to prohibit and punish acts of denying, significantly reducing or distorting historical facts, or disseminating false information related to not only the May 18 Democratization Movement but also the other events such as war crimes under the Japanese occupation or the April 16 Sewol Ferry Disaster,

etc. (“History Distortion Prohibition Act Bill”) was proposed in June, but this bill was not legislated.

Civil society showed mixed reactions to the May 18 History Distortion Punishment Act. Some agree that this Act will be a device to eradicate the behavior of linking the May 18 Democratization Movement with a specific region or defaming the Movement, while others oppose it from the concern that the Act has the potential to infringe the people’s basic rights. This problem is related to the overflowing expressions of contempt and disgust toward the disaster victims and the social minority as well as the victims of state violence currently observed in South Korean society. The movement to regulate such expression of hatred is also related to the “Anti-Discrimination Act” Bill proposed to the National Assembly and the discussions surrounding the Hate Speech Law, which has not been proposed as a bill yet but is being discussed by some groups in civil society.

This kind of hate speech against the May 18 Democratization Movement and the April 16 Sewol Ferry Disaster, etc. has been intentionally created and disseminated mainly by the forces facing a crisis in maintaining the existing hegemony against the change in political landscape. The lack of social awareness about how hate speech constitutes a serious human rights violation and the lack of relevant regulative mechanisms have also contributed significantly to the spread of history distortion. State-level devices to control and regulate the distortion of historical facts need to be established to prevent and rectify the damages incurred by such distortion.

○ Future tasks

For the prevention of state violence, it is necessary to hold the perpetrators accountable and abolish the evil laws that enabled such violence while reorganizing related laws. These measures represent the government’s efforts to take practical responsibility for the state violence committed by past regimes, and the establishment of such measures will have a significant impact on guaranteeing the protection of human rights in the present and future. In this sense, straightening out historical facts and making state violence perpetrators at least partially accountable for their past actions by investigating their records, revoking their decorations, and claiming indemnity for the damages they have incurred, etc. are imperative measures for preventing the recurrence of similar incidents. Furthermore, the abolition of evil laws such as the National Security Act is an essential task for the Moon Jae-in government to complete, considering that the government came into power through the support of the people’s candlelight

movements to “clear out deep-rooted evils.” At the minimum, revising or abolishing the National Security Act could be realized if the Moon Jae-in government and the ruling party are determined to push the agenda forward.

Regarding the punishment of state violence perpetrators, President Moon Jae-in mentioned the “South African Truth and Reconciliation (TRC) model,” which entails forgiveness and pardoning of state violence perpetrators if they confess truthfully about their actions, at the commemorative ceremony for the 40th anniversary of the May 18 Democratization Movement held in Gwangju on May 18. The South African TRC model is a model of transitional justice that focuses on truth-finding and bringing reconciliation by eliminating the statute of limitations on state violence perpetrators but giving amnesty to perpetrators if they fully disclose their criminal actions.

However, this model should not be understood as one which gives amnesty to the perpetrators unconditionally. President Moon Jae-in’s remarks at the commemorative ceremony should be seen as an expression of his determination to pursue the investigation of the actual command and order system behind the suppression of the May 18 Democratization Movement and who the final commander was behind the order to fire at citizens. Determining the final commander of the firing order in the May 18 Democratization Movement could lead to the further identification of the command and order system and the final commanders of various state violence cases in South Korea’s modern history, including the civilian massacres during the Korean War.

4) Reconciliation and historization (state-issued apologies, memorials and commemoration, social healing, etc.)

○ Outline

In the process of liquidating Past Incidents, if the reparation and compensation for victims are about providing relief and vindication financially, reconciliation and historicalization are related to socio-political recognition of the victims and restoring their rights. For the process of realizing transitional justice to move toward “reconciliation and historicalization,” there requires official state-issued apologies for past wrongdoings, along with the society’s acknowledgment and empathy of the damages experienced by the victims and the construction of a new social truth in the public sphere. This process not only paves the way toward healing and recovery for the victims but also the nation

and civil society.

The specific process for reconciliation and historicalization includes the issuance of official apologies by the state, memorial services and commemorative movements, and healing projects. In 2020, President Moon Jae-in attended the Jeju 4·3 Incident Memorial Ceremony and the May 18 Democratization Movement Commemorative Ceremony, and the Chief of Staff of the Republic of Korea Army made an apology for the military's violent suppression of the May 18 Democratization Movement. Also, the Conservative Party representative visited Gwangju and apologized for the party's passive response to the May 18 Democratization Movement and the disparaging remarks made by some politicians.

Memorial projects, such as the memorial services, events, and meetings held by victims, survivors, and civil society, have taken place in a non-face-to-face manner due to the COVID-19 pandemic situation. At the same time, there has been a tide of documentaries and media reports on Past Incidents as well as films and novels, as the year 2020 marked the 70th anniversary of the Korean War and passageway to the stage of "Transitional Justice 2.0."

This section presents the current progress in the following areas, which have been undertaken consistently since the preceding year: 1) Unearthing the remains of civilian massacre victims, 2) Construction of memorials, and 3) Healing and support for state violence victims.

○ Current issues and demands

(1) Unearthing the remains of civilian massacre victims

After the dissolution of the first TRCK, exhumations of civilian massacre victims' remains were mainly carried out by citizens. In 2014, the Joint Investigation Group for the Exhumation of Remains from Civilian Massacres during the Korean War (hereinafter, "Joint Investigation Group"), formed by several civil society organizations, worked with local bereaved families associations and civic groups to exhume the remains buried in various places across the country. This project was conducted without the support of the central and local governments until 2017 but began to receive support from local governments starting in 2018. In 2020, exhumation projects were conducted at sites in Goeun-ri, Namil-myeon, Sangdang-gu, Cheongju-si (the Jigyeonggol Fox Cave) and Agok-ri, Boeun-gun during the first half of the year, and the site in the Nangwol-dong

area of Dong-gu, Daejeon-si (Gollyeonggol, Sannae-myeon) during the second half. At least 1,800 to a maximum of 7,000 people are thought to have been massacred and buried at Daejeon's Gollyeonggol site, including the inmates of the Daejeon Prison and members of the Bodo League who were killed around the time of the Korean War.

(2) Construction of memorials

In memory of Civilian Massacres, a national-level memorial is in construction at Daejeon's Gollyeonggol site in the form of an ecological peace park. Here, the central and local governments plan to build a 100,000m²-sized historical park by 2024, tentatively named the "Truth and Reconciliation Forest (Sannae Peace Park)," that will serve as a place for memorial services and commemoration, remembrance, and education.

In relation to Human Rights Abuses, the Democracy and Human Rights Memorial Hall has been newly constructed and is in operation in Yongsan-gu, Seoul. The site of the Memorial Hall was formerly that of the Namyong-dong Anti-communist Investigation Office of the National Security Headquarters, which was a notorious torture facility during the 1970s and 1980s. At present, the Korea Democracy Foundation is in charge of its management and operation. The Hall is temporarily in operation with the help of civil society with the plans to open officially in 2022.

Meanwhile, on June 25, 43 civic groups held a press conference criticizing the purpose of the War Memorial of Korea and its exhibitions. The criticism is that the War Memorial of Korea, which is located in Yongsan-dong, Yongsan-gu, Seoul and is operated by the War Commemoration Service Association under the Ministry of National Defense, continues to display exhibits that distort historical facts and glorify state violence. The press conference was held on the occasion of the 70th anniversary of the Korean War to emphasize that the War Memorial should not be a place to commemorate war but a place for spreading the value of human rights and peace.

(3) Healing and support for state violence victims

Efforts to heal and support the victims of state violence have been mainly conducted at the civil society level by civic groups and organizations, such as the Gwangju Trauma Center, Institute of Medicine and Human Rights (the Kim Gun-tae Memorial Healing Center 'Soom'), Saram Maeum, Warak, Jigeum Yeogjae, the Truth Foundation, and the Peace Museum (Construction Committee), etc. The Gwangju Trauma Center is under the umbrella of the Gwangju Metropolitan City, while the rest are purely non-governmental organizations.

Up to now, there were no healing programs for victims of state violence provided by the government nor even a legal basis for the provision of such services. Recently, the government has been pursuing the construction of a National Trauma Center in Gwangju. To establish this center by 2023, Gwangju City has secured the site for construction in an empty lot next to the former site of the Gwangju Military Hospital in Hwajung-dong, Seo-gu, and the budget for the architectural design has also been secured from the central government for 2021. Furthermore, the “Act on the Establishment and Operation of the National Trauma Center” Bill has been proposed and submitted to the relevant committee.

In Jeju, the 4·3 Trauma Center opened in May 2020. The Center was piloted by the Jeju 4·3 Peace Foundation. As of October, 6,336 people visited and participated in the various programs offered by the Center. The Center offers healing programs not only for the victims and bereaved families of the Jeju 4·3 Incident but also for the residents of Gangjeong village, who have been suffering from their prolonged campaigning against the naval base construction. The third stage of the Jeju 4·3 Peace Park construction project, which will add a complex equipped with a nursing room and a physical therapy room to the Jeju 4·3 Peace Park, will be undertaken from 2021 to provide support and healing to state violence victims.

○ Future tasks

Concerning the exhumation of remains from Civilian Massacres, there are 64 sites nationwide where victims are believed to have been buried, in addition to the sites that have been exhumed and investigated by the Joint Investigation Group so far. Recently, the DNA extracted from one of the exhumed remains was successfully used to confirm the identity of the victim, which brought attention to the new task of using DNA profiling for the identification of the remains. The victims and bereaved families are demanding state agencies, such as the second TRCK, to engage in exhumation and site preservation projects and to build memorials.

Healing victims of state violence requires not only psychological and psychiatric care but also social and community healing processes. Therefore, the projects concerning the ‘hardware’ aspect of healing, such as constructing healing centers, should be accompanied by the ‘software’ aspect from the perspective of social healing, such as setting healing strategies, training of healing professionals, and forming solidarity with relevant civil society groups.

In 2020, unlike the previous year, some progress has been seen in bringing out local governments' participation in the various aspects of transitional justice. City and provincial councils have been more active in enacting related ordinances. In other words, historicization efforts, such as memorial projects for liquidating Past Incidents, are being gradually institutionalized at the local government level. In this context, it is important to build a "governance of transitional justice" at the local and regional levels by combining local youth movements, civic movements, and cultural and educational movements. These ties will help prevent local government projects from being subjected to inadequate administrative management as well as link the achievements in this area with the educational and cultural practices of local communities. Also important is the fostering of new actors that could transfer the practices to the next generation.



Summary

1) Truth finding

The year 2020 marking the 70th anniversary of the Korean War saw clear signs of progress in this area, such as the legislation to amend the Truth Reconciliation Act and the three laws concerning the May 18 Democratic Movement that launched the second TRCK and extended the May 18 Commission's activities. However, difficulties may await depending on the political dispositions of the newly-elected commissioners, such as disruption or attempts to neutralize the commissions' activities to retrogress the efforts toward transitional justice.

2) Reparation, compensation, and vindication of victims

Bills to enact new laws or amend existing laws related to the reparation and compensation for individual cases, such as the Jeju 4·3 Incident, have been proposed, and amendments were made to the laws related to the May 18 Democratization Movement. However, even if bills on the reparation and compensation for individual cases are legislated, the 21st National Assembly needs to enact a special act on the reparation and compensation for all Past Incidents to ensure equity and consistency in remedying the damages incurred to the victims. Also, the victims of Past Incident cases that were affected by Yang Seung-tae's misuse of judicial powers should be reconsidered for reparation and compensation.

3) Punishment of perpetrators and systematic prevention of recurrence

Civil society led campaigns to claim indemnity from state violence perpetrators and cancel the decorations conferred to them, as well as conducting research and investigations on the records of the perpetrators and leading campaigns to abolish the National Security Act. There is a need for the government to take proper action and cooperate with civil society in these areas. Regarding the punishment of state violence perpetrators, President Moon Jae-in referred to the “South African TRC model,” which could be understood as an expression of his determination to investigate the actual command and order system behind state violence, rather than give unconditional amnesty to the perpetrators.

4) Reconciliation and historicalization

The projects in this area have been largely led by civic groups and associations of victims and bereaved families so far. However, in 2020, there have been more cooperation and systemized efforts from the central and local governments. The projects to exhume civilian massacre victims’ remains need to be carried out by state agencies such as the second TRCK. Also, healing and support for state violence victims should involve measures that address the ‘software’ aspect of social healing in addition to the ‘hardware’ aspect of healing (e.g., constructing healing centers).

These issues necessitate the establishment of a proper “truth-finding governance” or “governance of transitional justice” under which civil society and state institutions could forge strong cooperation. The COVID-19 pandemic and controversies surrounding the Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan has dealt a double blow on civil society organizations in 2020. The COVID-19 pandemic has raised concerns about how civil society activities could be conducted in the prolonged pandemic era. Meanwhile, the Korean Council for Justice and Remembrance controversy provided an opportunity for civil society to reflect on the boundaries and roles between civil society campaigns and self-advocacy movements and the importance of communication among the three actors of civic movements (civic groups, citizens-donors, and the government). In particular, the controversy has revealed the need to contemplate more deeply on how to define the relationship between the experts/spokespeople and the victims in the movements to liquidate Past Incidents.

Even so, civil society has been and is the key driver behind the grassroots efforts for the purging of the past. Until now, the victims and civic groups have been the ones to initiate the amendments to the laws related to Past Incidents as well as leading the projects to exhume civilian massacre victims' remains and provide healing and support for state violence victims. The legislation to amend the Truth Reconciliation Act this year, which commemorated the 70th anniversary of the Korean War, was indeed a significant milestone. The energetic launching of the second TRCK spearheaded the way to the stage of "Transitional Justice 2.0," charged with the tasks of legislating a special law on the reparation and compensation of victims, etc. To build a new "governance of transitional justice" in this stage, the victims, civil society, and the central and local governments must communicate and forge solidarity with one another.

In the institutionalization of transitional justice, victims and civil society organizations need to become active actors that cooperate with and monitor state agencies, rather than remaining as civil petitioners or mobilized forces. The governance of transitional justice needs to be built at the local and regional levels also so that the related projects by the central or local governments are not subjected to inadequate administrative management. Meanwhile, the success of those projects should be linked with the educational and cultural practices of local communities, while fostering new actors to transfer the practices to the next generation. Furthermore, collective remembrance movements should expand their framework beyond the dimension of memorial and commemoration to become the medium for connecting and uniting the liquidation of Past Incidents to human rights movements.

2020 Korean Democracy Annual Report

Representative Democracy

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Assessment Criteria and Items

1) Assessment Criteria

As in the 2019 report, the assessment of representative democracy was conducted with a focus on whether the principles of representation and democracy have operated properly in the areas of parliament, elections, and party politics. The current constitution is based on the principle of free mandate, with the National Assembly members acting on behalf of the people for the benefit of the whole nation. The National Assembly is the most important political body in a representative democracy, capable of preventing monopolies of power and increasing representation through majority participation. Its members are appointed through elections, during which political parties present their political agendas and ideals to gain power and realize those pledges through parliamentary politics.

Since it is necessary to provide an assessment criteria for reviewing the status of the present representative democratic system and identifying its problems, representativeness and democracy were evaluated using different criterions for convenience. Although representativeness and democracy are not clearly separate concepts, representativeness was evaluated based on the participation of diverse factions (openness), the prevention of under or over-representation (fairness), and the degree to which social opinion and public sentiment are reflected (trust). Democracy was assessed based on the importance placed on democratic procedures and processes, such as debates and compromises, in resolving various conflicts (efficiency), the realization of a pluralistic democracy as opposed to simple majority vote (plurality), and the pursuit of social integration that embraces minorities (inclusiveness).

2) Assessment Items

The assessment items were the same as those set in the 2019 report, which included the parliament, elections, and political parties, etc. However, the detailed assessment made in this chapter centered on the following three keywords reflecting the most pertinent issues in 2020: the general election, COVID-19 pandemic, and prosecution reform. Specifically, the important issues concerning the assessment items were the introduction and effectiveness of the quasi mixed-member proportional representation (quasi-MMP) system in the April 15 general election and the changing alignment of political parties before and after the election, COVID-19 response policies of the parliament and political parties, and the conflicts surrounding prosecution reform, such

as the establishment of the special unit for the criminal investigation of high-ranking officials (Gongsuchoe) and the conflict between Minister of Justice Choo Mi-ae and Prosecutor General Yoon Seok-yeol (the so-called “Choo-Yoon conflict”).



Detailed Assessment of Items

1) The 21st general election and the effectiveness of the quasi mixed-member proportional representation election system

The quasi-MMP system was newly introduced to the 21st general election held on April 15, 2020. Since electing the people’s representatives play a key function in representative democracy, the democracy and fairness of elections are the most basic measure for determining a country’s level of democracy. Since the country’s democratization, South Korea has complied with the four principles of procedural democracy and guaranteed free and fair elections.

The quasi-MMP electoral reform was a move to go one step further toward a qualitative improvement that goes beyond the establishment of procedural democracy. The electoral system provides the rules on how the representatives elected by the people become a member of the parliament, and as such, the principles of democracy and representation are fundamentally important. The one-person-two-votes list proportional representation system, implemented from the 17th general election, applies a simple majority representation system to single-member constituencies for the election of 253 local district representatives and the list proportional representation system for the election of 47 proportional representatives to guarantee the fairness of opportunity to minority parties.

The advantage of this system based on majoritarian democracy is that it is relatively easier to hold elections and contributes to political stability by facilitating a two-party system. However, this winner-takes-all democracy electing one majority vote candidate per electoral district has led people to question the legitimacy of representatives elected by a small number of votes and resulting in a large number of wasted votes. Under this system, more people have been voting strategically for the party that is likely to get the most votes rather than their preferred party. Furthermore, there arose the problem of disproportional representation where large parties became overrepresented and minority parties were underrepresented in the parliament, overriding the number of votes the representatives received by the voters in the actual election. These problems

open the possibility of distorting the people's will and for giant political parties to continue taking control of the parliament. Under this system, it is difficult to expect a sudden rise of new parties even if there are more voters who want to see a new party in the parliament. Moreover, the system has also contributed to the fixation of regionalism in South Korea's elections.

Introducing the MMP system emerged as the most sensitive agenda for political reform to resolve these problems. Under the MMP system, parliament seats are distributed based on the votes earned by the parties, making it difficult for one party to monopolize the seats of a specific region. Thus, it is unlikely for regionalist politics to be maintained under this system. Also, since the voters' support for individual parties is directly translated to the number of parliament seats, the system can reduce wasted votes and reflect the diverse wills of voters, thereby allowing different political actors to hold seats in the parliament. Despite the warnings that the introduction of the MMP system may lead to political instability by creating a multiparty parliament and a coalition government, more people began to sympathize with the need for more pluralistic and consensus-based democracy.

Meanwhile, despite feeling the need for electoral reform, political circles have not treated the MMP system as an important agenda, as this election system favors minority parties rather than the majority parties. The Liberty Korea Party has fiercely opposed the discussions over this system from the very beginning, from the fear that it will reduce the status of larger political parties and force them to let go of their vested interests. The Democratic Party was also concerned about giant parties' potential loss of status, so it took a year of disruptions at the National Assembly before introducing the quasi-MMP system was finally decided on December 27.

The quasi-MMP system implemented in the 21st general election maintains the 253 parliament seats for local district representation and 47 seats for proportional representation, but the system changes the way the seats are distributed. The parallel-vote seats (17 seats) are allocated using the existing method, while the 30 quasi-MMP seats (30 seats) are allocated based on the following equation: $[(\text{Party support rate} \times 300 \text{ seats}) - \text{Number of local constituency representatives seats}] / 2$. The quasi-MMP system is not as effective as a full MMP system, but expectations were that it will bring positive effects compared to the existing system since it guarantees at least half of the voter support rate to minority parties that are not competitive in local districts.

However, as can be seen from the outcomes of the 21st general election shown in <Table 1>, the changes made to the Public Official Election Act were completely ineffective. First, the amendments to the election law were not favorable to the minority party. According to the proportion of votes earned by each party announced by the National Election Commission, the votes for proportional representatives earned by the Justice Party was 2,697,956 votes (9.67%), which is an increase of around 970,000 votes (2.44%p) from the 2016 general election. In all of the 17 metropolitan cities and provinces across the country, the Justice Party won a greater proportion of votes. However, the proportional representative seats gained by the Justice Party in the 21st general election were 5 seats, and when adding the one seat they won from local constituencies, the Justice Party won a total of 6 seats at the National Assembly, which is the same number of seats they had been occupying already. Compared to the 2012 general election, when the Justice Party recorded the largest number of seats (13 seats), their number of seats was cut in half.

Table 1. The outcomes of the 21st general election

	Ratio of votes gained by party (%)	Proportional representatives		Number of seats for proportional representatives	Number of seats for local constituency representatives	Total number of seats
		MMP1	Parallel			
Democratic Party of Korea					163	163
Citizens' Party of Korea	33.35	11	6	17		17
United Future Party					84	84
Future Korea Party	33.84	12	7	19		19
Justice Party	9.67	3	2	5	1	6
People's Party	6.79	2	1	3		3
Open Democratic Party	5.42	2	1	3		3
Unaffiliated					5	5
Total	89.07	30	17	47	253	300

1) The 30 seats that follow the quasi-MMP system were distributed according to the following equation: [(Party support rate X (The 300 seats at the National Assembly - The number of unaffiliated local constituency representatives) - Number of local constituency representative seats)/2. According to this equation, 49 seats go to the Democratic Party, 49 seats to the Citizens' Party, 50 seats to the Future Korea Party, 13 seats to the Justice Party, 10 seats to the People's Party, and 8 seats to the Open Democratic Party - this makes a total of 130 seats (the number of local constituency representative seats were subtracted only for the Justice Party). In this case, if the number of MMP seats exceeds 30, the following equation for adjusting the number of seats is applied: [The number of MMP seats won by the party X 30 seats]/Total number of MMP seats.

The outcomes of the 21st general election came out contrary to the intention behind introducing the quasi-MMP system. The largest reason behind such outcomes is the giant parties' creation of satellite parties for proportional representative seats. Fearing that the quasi-MMP system will be a disadvantage to them in the general election, the Liberty Korea Party created a satellite party to secure the proportional representative seats. In 2019, Liberty Korea Party floor leader Shim Jae-chul had mentioned that they

need to create a separate party for proportional representative seats if the MMP system is implemented, and the party actually did so by dividing its members. On February 5, 2020, the Liberty Korea Party officially formed the Future Korea Party and won 19 seats in the 21st general election.

The Democratic Party violently criticized the Liberty Korea Party for creating a satellite party, calling it a coup d'état against the National Assembly and an outrage. However, the Democratic Party also created a satellite party for proportional representative seats on the grounds that they need to prevent such a cheating party from gaining the most seats in the National Assembly. To differentiate itself from the Liberty Korea Party, the Democratic Party formed the Citizen's Party on March 18, 2020, as a coalition party formed among the parties aligned with the Democratic Party (e.g., the Basic Income Party), but this was also an electoral alliance made solely for proportional representative seats. Another proportional representation-only party called the Open Democratic Party was also formed by the parties aligned with the Democratic Party.¹⁹⁾

There had been concerns prior to the election that introducing the MMP system may lead to the creation of parties formed specifically targeting proportional representative seats as a side-effect, and this concern was validated in the actual election. The satellite parties for proportional representative seats, created specifically to win the election, were merged with their parent parties after the election. These satellite parties will be cited as an example of the regression in South Korea's democracy. The United Future Party created by the Liberty Korea Party and the conservative members of the Barunmirae Party just before the elections was also a reenactment of the meeting and parting of parties, which is a chronic problem in South Korea's party politics history.²⁰⁾ Ultimately, the quasi-MMP system, which was intended to strengthen the democracy and representation of elections and favor the minority parties, was misused to benefit the two giant parties of South Korean politics.

Second, the electoral reform failed to resolve the shortcomings of the simple majoritarian system applied to small local district elections. The Democratic Party won nearly double the seats (163 seats) won by the United Future Party (84 seats) in the

19) On February 28, 2020, former Assemblyman Chung Bong-ju of the Unified Democratic Party declared the founding of the Open Democratic Party. He stated that the Open Democratic Party will not appoint candidates for local constituencies in the general election and that the party will seek to win voters by presenting policies that are more competitive than those proposed by the Democratic Party of Korea.

20) Afterward, the United Future Party renamed the party to People's Power Party on September 2.

21st general election, so it could be said that the Democratic Party won the election by a landslide, but in actuality, the people's sentiments toward the two parties do not show a big difference. According to the National Election Commission, the proportions of votes earned by the parties from the 253 districts across the country show that the Democratic Party of Korea and the United Future Party earned 49.9% and 41.5%, respectively, making a difference of only 8.4%p. Moreover, the number of seats in the Seoul Metropolitan Area gained by the Democratic Party and the United Future Party were 103 and 16, respectively, but in terms of the proportion of votes, the Democratic Party and the United Future Party earned 53.5% and 41.9%, respectively, which is a difference of only 11.6%p.

Finally, as shown in <Table 2>, concerns over possible political turmoil due to the emergence of too many parties that the introduction of the quasi-MMP system may bring became a reality. Thirty-five political parties have listed themselves on the ballot for proportional representatives. Most of them either failed to secure the 3% of votes or 5 local constituency representative seats required to enter the National Assembly. As shown in the table, five political parties - the Future Korea Party, the Citizen's Party, the Justice Party, the People's Party, and the Open Democratic Party - gained seats in the National Assembly. Since the two giant parties took up most of the seats in the 21st National Assembly with the remainder of seats shared by minority parties, there is less worry over potential political instability, but the MMP system's potential to bring the emergence of too many parties was confirmed.

Table 2. The proportion of votes gained by party (%)

Party for People's Livelihoods (2.71)	People's Party (6.79)	People's New Party (0.04)	Great Korea Party (0.01)	Liberty Party (0.07)
Future Korea Party (33.84)	Pro-Park New Party (0.51)	New National Participation Party (0.05)	Republic of Korea Party (0.06)	Dawn of Liberty Party (0.36)
Citizens' Party of Korea (33.35)	Open Democratic Party (5.42)	Christian Liberal Unification Party (1.83)	Our Future (0.25)	Small and Medium-sized Businesses and Self-employed Peoples' Party (0.06)
Justice Party (9.67)	Korea Party (0.12)	Awakened Civic Solidarity Party (0.05)	Future Democratic Party (0.25)	Future of Chungcheong Party (0.03)
Our Republican Party (0.74)	Let's Go! Peace and Human Rights (0.03)	Unification Party of North and South (0.03)	Saenuri Party (0.28)	Unification Democratic Party (0.06)
People's Democratic Party (1.05)	Let's Go! Environmental Party (0.03)	Labor Party (0.12)	Women's Party (0.74)	Korea Welfare Party (0.06)
Korea Economic Party (0.17)	National Revolutionary Dividends Party (0.71)	Green Party (0.21)	Uri Party (0.02)	Hongik Party (0.08)

Source: National Election Commission website

Elections, which are considered the core of representative democracy, should reflect the people's will properly, but the new election system resulted in maintaining the shortcomings of the previous election system while erasing its strengths. Despite the numerous advantages of the MMP system, only a few countries, such as Germany and New Zealand, have implemented this system for its elections. This is not to say that we shouldn't do what other countries have not. However, since few insights can be obtained from the experiences of other countries, there require sufficient in-depth discussions to realize an institutional reform that fits South Korea's situation.

2) Issues related to COVID-19 response policies

The parliament is where representatives of various backgrounds, such as region, age group, race, gender, occupation, and social class, gather to practice the democratic ideal of the "rule by the people." It has been steadily argued that this ideal is impossible to realize, and it is true that even countries with a long history of democracy still struggle to put this ideal into practice. The COVID-19 virus which surfaced in China at the end of 2019, spread not only in the Asian region to countries such as Korea and Japan but globally from early 2020. The responses to COVID-19 seen in each country are clear examples of how difficult it is to realize the "rule by the people." We witnessed the devastating spread of COVID-19 in Europe and the United States, which are considered model countries for democratic politics, resulting in an enormous number of infected people as well as deaths. People around the world criticized and reproached the failure of democratic politics to come up with effective countermeasures against COVID-19, and thus failing to protect the lives, freedoms, and properties of the people, which is the purpose of their existence.

Compared to other democratic countries, South Korea has weaker national power and a relatively short thirty-year history of democracy. However, South Korea was able to "democratically" respond to COVID-19 without restricting the people's movement, controlling the media, or enforcing lockdowns of neighborhoods and cities. South Korea's COVID-19 response was termed "K-quarantine" and became a model for countries worldwide. In the case of South Korea, after the discovery of the first COVID-19 patient in January, the virus spread rapidly on a large scale in February centering on believers of the Shincheonji Church in Daegu. There was huge criticism of the initial government response to this spread, and citizens quickly conveyed their opinions to the political sphere in various ways. The government, in turn, responded sensitively to

public opinion and prepared countermeasures.

For example, the government made an apology when they found out that, contrary to their promise, they could not supply enough face-masks to all citizens, and revised the policy for face-mask distribution and purchasing, such as implementing a face-mask rationing system. Citizens also did their part in resolving face-mask shortages, such as running a campaign to give their ration of face-masks to patients and medical staff who need them the most. In sum, the government's COVID-19 responses were coupled with the dedication of the medical staff and the voluntary cooperation of the civil society to create positive synergy.

Then, how did the parliament, composed of the people's representatives, respond to the COVID-19 situation? The 20th National Assembly, which was demeaned as being plant-like or animal-like and considered the worst National Assembly in history, was a turmoil of conflict between the ruling and opposition parties. It took mounting pressures from the public for the National Assembly to legislate the three bills related to COVID-19 containing amendments to the Infectious Disease Prevention and Control Act on February 26. The government decided to pay emergency disaster relief funds between late April to early May to support people who were facing economic difficulties due to the spread of COVID-19, but the conflict between the ruling and opposition parties within the National Assembly over the demand for budgetary revision intensified. That is, despite that the 20th National Assembly had little time left in its term after the 21st general election, the bill for additional budgeting became adrift as the ruling and opposition parties battled over who was to be responsible. It was only when public opinion worsened that the National Assembly finally passed the additional budget bill on April 29. The general public highly criticized the National Assembly's late decision, saying that the funds were not "emergency" relief but "delayed" relief.

Was the 21st National Assembly, with members who were newly-elected in the April 15th general election, any different? As the spread of COVID-19 became more under control in April, positive public sentiment toward the government's COVID-19 response acted as a variable in the general election. The Democratic Party won an overwhelming victory, gaining 180 seats in the National Assembly, as the public showed their support for the government and the ruling party for their success in the so-called "K-quarantine." Starting from May, the number of confirmed COVID-19 patients rose and fell irregularly, and in August, the number of confirmed cases increased rapidly to mark the second wave of COVID-19 as the virus spread among conservative groups that had held a mass

demonstration on the Liberation Day and the members of the Sarang Jeil Church.

On August 26, the Democratic Party and the United Future Party agreed to prioritize COVID-19-related bills and to legislate them without having an examination period at the standing committee in light of their urgency.²¹⁾ Based on this agreement, amendments to the Infectious Disease Prevention and Control Act (which enforced punishments of imprisonment or fines on those who interfere with quarantine efforts or fail to comply with the instructions of the quarantine authorities) and the Framework Act on the Management of Disasters and Safety (which provided the legal basis to punish those who violate the orders prohibiting the enter and use of areas or facilities with disaster-related risks) were quickly decided on by each committee and legislated.

With the implementation of stronger social distancing, etc., the second wave of COVID-19 seemed to quiet down, but the situation turned again into a crisis in November. Unlike the first and second waves that were driven by large-scale infections in specific groups, this third wave was characterized by small-scale infections occurring daily, mostly among the younger generation in the most populous Seoul Metropolitan Area. As it was the time of year with large events such as the National University Entrance Exam and Christmas as well as many year-end gatherings, it was expected that the crisis will worsen, so the government formally announced the arrival of the third wave on November 24 and raised the social distancing level in the Seoul Metropolitan Area to Level 2.²²⁾

In response to the third wave of COVID-19, the ruling and opposition parties in the parliament also began discussing the third round of emergency disaster relief funds. The first disaster relief funds, which were paid before the general election in April, was distributed to all registered population, and the conservative opposition party criticized the government and the Democratic Party for “handing out cash to win the general election.” The second disaster relief funds were selectively paid to small business

21) According to Article 59 of the National Assembly Act, a bill cannot be presented at the National Assembly unless a certain period of time, the so-called “examination period,” has passed from the date it is referred to the standing committee, but this period may be omitted if the committee passes a resolution on grounds of urgency or inevitability.

22) The Korean Confederation of Trade Unions (KCTU) carried out a general strike on December 25, and the government and the ruling party warned the KCTU that mass demonstrations potentially threatening the safety of the people and disrupt quarantine efforts will be dealt with a strong hand with zero tolerance, as was done in the case of the Liberation Day rally held by conservative groups. From the standpoint of fairness, the government’s opposition to mass assemblies regardless of the group’s political stance was appropriate, but there was some dispute over whether these measures were violating the freedom of assembly. As this topic is more relevant to the assessment of civil society, it is not dealt with in this chapter.

owners before the Chuseok holidays, but some pointed out that it brought few economic effects. Therefore, discussions began on how and to whom the third relief funds should be paid.

The opposition parties first insisted on including the third disaster relief fund in the next year's budget considering how this relief fund variable will impact the by-election scheduled to be held in April 2021. The Democratic Party initially held the position that it would be difficult to include the disaster relief funds in the main budget for 2021, but it accepted the position of the opposition parties, including the People Power Party. Accordingly, three trillion Korean won for disaster relief and a budget for COVID-19 vaccines were included in the main budget for 2021. The last time the budget proposal was passed at the National Assembly through concessions and agreements between the ruling and opposition parties within the deadline was six years ago. Apart from 2014, which was the first year of the National Assembly Advancement Act, the National Assembly had failed to comply with the legal deadline for approving the budget bill for five consecutive years from 2015 to 2019.²³⁾

Reviewing how parliamentary politics responded to COVID-19, it could be said that this year's 21st National Assembly attentively listened to the demands and criticism of the public and prepared measures, such as financial support for small and self-employed business owners and marginalized groups who were negatively impacted by the pandemic, budget allocation for public welfare, and developing COVID-19 treatments and securing vaccines. It may be said that the institutional device of "election" had a significant influence in bringing out such positive countermeasures to the pandemic situation. The COVID-19 variable worked in favor of the government and the ruling party in the 2020 general election. However, prolongation of the COVID-19 pandemic, intensifying economic recession, and the delayed progress and criticism of government measures for developing treatments and securing vaccines, etc. make it difficult to know how this variable will affect the Seoul and Busan by-elections next year.

3) Issues surrounding prosecution reform

23) The National Assembly Advancement Act was legislated in the National Assembly in May 2012 as an amendment to some of the provisions in the National Assembly Act, intended to prevent violence and physical struggles in the National Assembly by mandating filibusters as a legal method to obstruct parliamentary proceedings and curbing the authority of the house speaker to bring a bill which was not reported from the committee to the floor.

Prosecution reform was one of the most important topics of contention in the 20th National Assembly. The National Assembly fell adrift for a long period as the Liberal Korea Party, which opposed the proposed reforms, boycotted National Assembly sessions and held protests outside the National Assembly, and the floor became a venue of battles between political parties, rife with extremist speech and action and physical violence. It was difficult to see constructive discussions and concessions made among the lawmakers nor a show of respect toward minority opinions during the legislative process. As such, the 20th National Assembly could not avoid criticism for regressing parliamentary democracy.

Was the 21st National Assembly any better? Discussions on the Act on the Establishment and Operation of the Corruption Investigation Office for High-ranking Officials (the Gongsuchoe Act), which was the contending issue in 2020, began in 1996 when the National Congress for New Politics (Saejeongchigungminhoe'ui), which was the opposition party at the time, proposed the "Anti-Corruption Act" Bill. Since then, civil society's demand for prosecution reform grew steadily to emerge as an important keyword for institutional reform at the candlelight rallies for the impeachment of President Park Geun-hye. Reflecting public opinion, the Gongsuchoe Act was legislated by the National Assembly on December 30, 2019, with 159 votes in favor, 14 against, and 3 abstentions out of the 176 assemblypersons present at the session, in the absence of the Liberal Korea Party members.

However, the Corruption Investigation Office for High-ranking Officials (Gongsuchoe) was not launched in 2020. In the April 15 general election, the ruling party pledged that it will launch the Gongsuchoe, while the opposition party pledged to stop the government from launching it. After facing defeat in the general election, the United Future Party petitioned the Constitutional Court to review the legality of the Gongsuchoe Act. The nomination of candidates to head the Gongsuchoe continued to stall even after the enforcement date of the Gongsuchoe Act (July 15). On August 4, the Democratic Party passed the three laws related to the Gongsuchoe, which allowed the National Assembly Speaker to organize a committee for nominating the candidates to head the Gongsuchoe, thereby officially launching the candidate nomination committee.

The candidate nomination committee ended its activities on November 19 without completing its mission to select candidates due to the conflict between the ruling and opposition parties. The People Power Party insisted that preventing the appointment of the Gongsuchoe head, who would become a minion of the Democratic Party, is an effort

to create a proper corruption investigation office. The Democratic Party refuted that the People Power Party was just opposing the establishment of the corruption investigation office itself. Eventually, an amendment to the Gongsuchoe Act was enacted on December 10 without the People Power Party's consent. The Gongsuchoe was finally launched, but since the head of the office was decided unilaterally without an agreement between the ruling and opposition parties, the collision between political parties will likely intensify as they dispute over fairness and political neutrality.

The conflict between Justice Minister Choo Mi-ae and Prosecutor General Yoon Seok-yeol (the "Choo-Yoon conflict") was also an issue related to the prosecution reform on which the ruling and opposition parties collided head-on. Last year's report provided a close illustration of the intense conflict between the ruling and opposition parties over prosecution reform that had persisted since the appointment of former Justice Minister Cho Kuk to his resignation. The clash between the newly-appointed Justice Minister Choo Mi-ae and Prosecutor General Yoon Seok-yeol continued into 2020, which amplified the conflict between the ruling and opposition parties.

The Choo-Yoon conflict rose to the surface after Yoon made remarks such as "Choo's initiation of criminal investigation rights is illegal" and "I am not a subordinate of the Minister of Justice" during the National Assembly's internal inspection of the Supreme Prosecutors' Office on October 22. Choo responded promptly, saying that "The Prosecutor General is a public official who is legally under the command and supervision of the Minister of Justice" and stressed that Yoon is responsible for the unreliable investigations. Then, Choo ordered the Ministry of Justice and the Inspection Department in charge of checking the Supreme Prosecutors' Office to pursue a joint inspection on any illegality or concealment of prosecutors' activities or unreliable investigation of opposition party politicians by the prosecution in relation to the Lime Asset Management Fund fraud case.

On November 25, Choo ordered disciplinary action against and suspension of Yoon from his role as Prosecutor General citing reasons such as the prosecution's illegal surveillance of judges.²⁴⁾ Yoon petitioned the Administrative Court to halt the execution of Choo's order to suspend him from his office. The dispute over the legality of Choo's

24) In February 2020, the Investigative Intelligence Division of the Supreme Prosecutors' Office prepared and submitted a report on the reputation, personal hobbies, and criticisms, etc. of the judges handling major cases, such as the Ulsan case. Prosecutor General Yoon is accused of violating his duties by instructing the report to be passed onto the Anti-corruption & Organized Crime Department.

order and each of the charges made against the Prosecution Office began, and the prosecution collectively and fiercely protested against Choo's decision. In early December, the court ruled in favor of Yoon, and he returned to his office. Meanwhile, disciplinary action was made against Yoon in mid-December, and Yoon filed a lawsuit to halt its execution.

The confrontation of the ruling and opposition parties over the Choo-Yoon conflict was not as extreme as what was observed last year, but it still revealed the division over political issues. As Yoon showed his will to confront the decisions of the current administration, ironically, the People Power Party, which had opposed his appointment as Prosecutor General, stood alongside Yoon and expressed their support for him. On November 27, 110 members of the opposition-party coalition, including those of the People Power Party, submitted a request for an internal inspection on both Yoon and Choo. About 40 first-time assemblypersons took turns holding a one-person protest in front of the Blue House from November 27, demanding President Moon to explain in person why Yoon was suspended from his office and subjected to disciplinary action.

Furthermore, the People Power Party issued statements through media outlets that the Choo-Yoon conflict was an attempt to bring down the Prosecutor General who is disobedient to the President and undermine judiciary independence. The Choo-Yoon conflict resulted in the emergence of Yoon as the most likely presidential candidate for right-wing opposition parties, including the People Power Party, in the 2022 presidential election. President Moon's approval rating fell to the 30% level for the first time since he came into power, and the approval rating of the Democratic Party and the People Power Party became reversed as well.

As the clash between the ruling and opposition parties over prosecution reform prolonged, e.g., over the Gongsucho Act and the Choo-Yoon conflict, discussions about why and how prosecution reform must be pursued disappeared from view. In other words, logical and rational deliberation and compromise were omitted from the process of reaching political and social consensus on the content and method of prosecution reform. In the case of the Gongsucho Act, the Democratic Party used their majority seat in the National Assembly to push forward its legislation, and the People Power Party, the largest opposition party, consistently opposed the establishment of the Gongsucho based on the fact that the Gongsucho Act was passed single-handedly.

Prosecution reform is a major task of our era that answers the long-awaited desire of

the people, and as such, it should be pursued by a parliament made up of the people's representatives. The critical point here is for the parliament to be a place where the representatives from various backgrounds gather and resolve the conflicts arising from their different ideas and interests by forming a consensus. This value of parliamentary politics is what placed greater importance on consensual democracy than majoritarian democracy in the 21st century. When the issue on hand prompts a greater amount of resistance from opposition parties, as in the case of prosecution reform, the democratic process of reaching an agreement through dialogues, persuasion, and compromise becomes even more important. To realize true prosecution reform, efforts must be made to reach an agreement through sufficient discussion, even if it takes time, and this agreement must receive approval and support from the majority of the people.



Summary

This chapter assessed the democracy and efficiency of South Korea's representative democracy focusing on the three largest issues in South Korean politics in 2020, specifically, the general election, COVID-19, and prosecution reform. The assessment revealed the following. The electoral reform introducing the quasi-MMP system to the general election did not rise to the expectations that it will increase the proportionality and democracy of the election. Compared to the last general election, the Justice Party clearly won a larger number of votes nationwide, but the number of seats the party secured in the parliament decreased. The quasi-MMP system, implemented with the intention to enhance the participation of minority parties in the parliament, ended up as a disadvantage to minority parties, while the problems of the simple majoritarian system for small local districts remained unresolved.

Regarding the COVID-19 pandemic, the 21st National Assembly performed better overall compared to the 20th National Assembly. The 20th National Assembly not only recorded the lowest bill processing rate but was also crippled by boycotts and conflicts to end up passing bills without substantial deliberation. The 20th National Assembly also failed to properly fulfill its role to review the government budget on behalf of the taxpayers due to the aforementioned reasons. In contrast, the 21st National Assembly prepared policies that were inclusive of marginalized groups, revised the laws related to COVID-19 in ways that reflected public opinion, and passed the budget for 2021 within the deadline based on a peaceful agreement between the ruling and opposition parties. As such, it is possible to give a positive assessment of the democracy and representativeness of the 21st National Assembly.

Unlike the policy responses to COVID-19, the conflict over prosecution reform between the ruling and opposition parties in the National Assembly, which had flared in the previous year, continued into this year. The battle over the Gongsuchoe and the Choo-Yoon conflict left people questioning the purity of the pursuit to reform the prosecution, essentially losing sight of its original intention and leaving only the fight over image-making among politicians and political parties. There lacked democratic communication processes for resolving conflicts, such as deliberations, dialogues, discussions, compromises, agreements, and concessions, compared to the outward expression of contestation between the ruling and opposition parties.

The positive sides of 2020 were the attempts made to reform the prosecution for a fairer and just society and the introduction of a pluralistic and inclusive democratic election system. However, it was a year that revealed the need for proper reforms rather than great achievements. The biggest task in the democratic implementation of reforms is to bring the opposition into the negotiation process, instead of excluding them, and to communicate, persuade, and compromise with them as much as possible. Even if this process takes up a lot of time and costs, reforms completed based on fair procedures and social consensus face little opposition about their outcomes.

Furthermore, social consensus and public empathy need to be formed on the major issues involved in the reforms, since democracies place importance on the people's will and capacity, as opposed to rule by a small number of elites. Prosecution or electoral reform is a rather complicated and difficult issue, so it may be hard for the general public to understand all the details. But if the people do not have a sufficient understanding of the issues involved, they could easily be swayed by political incitement. Therefore, it is necessary to give enough time to allow the people's desire for reform to move into the political sphere. It is necessary to remember that the people's support and consent for reforms are what gives legitimacy to elected representatives and their actions and provides the foundation for parliamentary democracy.

2020 Korean Democracy Annual Report

Non-elected Powers and Democracy

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Assessment Criteria and Items

In a democratic society, the reform of law enforcement agencies (which broadly refers to the judiciary, the prosecution, and the police) aims to realize three values: rationality (efficiency), legitimacy and autonomy (independence), and democracy. In the case of South Korea, these agencies have been operating based on a thoroughly bureaucratic system, which placed emphasis only on efficiency and largely neglected the other two aims of realizing autonomy and democracy. Thus, since the country's democratization, civil society has periodically (especially near and during presidential elections) demanded the reform of these institutions.

So far in the process of South Korea's democratization, the major focus was placed on ensuring the independence of these institutions. That is, efforts were made to revamp these institutions into guardians of law and justice, independent from political powers and objectively enforcing the law to stand on the side of the people, protect the socially and economically vulnerable, and eradicate corruption. However, these efforts have not turned out to our satisfaction. Violent law enforcement by the powerful agencies of past regimes, such as the former Central Intelligence Agency and Defence Security Command, were curbed, but their powers were transferred to the present law enforcement agencies, thereby practically maintaining the total amount of state power exerted on the people's lives. Voices were raised to criticize how the country has become a "Prosecutors' Republic," and the power of bureaucratic judges in the courts is also increasing by the day in conjunction with the "judicialization of politics." The police that created bus walls to block demonstrations and fatally injured the late farmer Baek Nam-gi during the past administration not only continues to wield tremendous police power but has also dominated intelligence power, building a castle of their own.

The candlelight demonstrations represented the civic resistance against this coalition of the powers of law enforcement. The misuse of powers by the prosecution, represented by the Woo Byung-woo scandal, the tyranny of the police in violently suppressing the citizens' voices, and the distorted faces of the court that continued to reverse the rulings on the liquidation of Past Incidents and voluntarily dilapidated into political power – the course of these events repressed South Korean society like a kind of reaction to the people's struggles. The people's struggles and sacrifices to democratize the country endowed autonomy to these institutions so that they could become guardians of law and justice. However, this autonomy became a weapon to wield power over the people. The candlelight demonstrations were roars demanding a fast transition from such a system. The people had begun to recognize the urgency of securing democratic and civil control mechanisms through reforms to be even greater than guaranteeing the

independence of law enforcement agencies.

However, this assessment of the so-called “Candlelight administration” and its efforts toward reforming non-elected powers over the past four years is primarily pessimistic. A large part of the proposals made by civil society to reform the law enforcement agencies were organized into political agendas and put through the process of implementation. However, it was either the case that the path of the reforms were not properly set, making it difficult to establish even an effective framework for discussion (in the case of judiciary reform), or the targets for reform were incorrectly identified, blurred by ideological camp logic (in the case of prosecution reform), or the reform itself fell in danger of regressing and creating a mammoth organization with concentrated powers (in the case of police reform). Of course, the reforms are still underway, and there is still time and room to bring different outcomes if efforts are made in the right direction.

This report evaluates three law enforcement agencies – the Judiciary, the Prosecution, and the Police – focusing on the legitimacy of these non-elected powers and their limitations as of 2020. In addition, as these institutions have different characteristics and functions, specific criteria and items will be set for assessing each institution.



Detailed Assessment of Items

1) The Judiciary

○ Assessment Criteria and Items

(1) Assessment Criteria

The Court is the last fortress for guaranteeing the freedom and rights of the people in a country that follows the rule of law. The Court intervenes in specific social issues to determine which party obeyed or violated the law and declare the just share each party deserves. Therefore, the Court’s judgment must always be made in accordance with the law, and no other considerations, apart from the law, must intervene. For this reason, judiciary independence, that is, the autonomy of the court and trials, is defined as the most important virtue in the judicial system. Judges must make decisions independently based on the law and their conscience without being influenced or intervened by anyone. Of course, there may be those who seek to influence the judges or the trials, such as political powers hoping to cover up their corruption or chaebol corporate executives hoping take the chairman’s seat without paying the inheritance

tax. Moreover, those sitting in high-ranked positions in the judiciary who wield the power to decide the judges' careers could act as another dominant power that can undermine judicial independence. The series of processes involved in training judges who are expected to serve as judges for life, that is, the ladder of promotion extending from the lowest-level of judges (usually called an associate judge) to a senior judge, a senior judge of the high court, and, if lucky, a judge of the supreme court, end up taming them to take away the constitutionally-mandated autonomous power of the court and judges. The roar of civil society demanding judicial reform directly targeted this ladder by placing the independence of judges at the core of the judicial reform.

However, there is also the concern that the independence of the judges may end up as the "rule by the judges." In representative democracies, the National Assembly, made up of the people's representatives, make the laws, and the court interprets and applies those laws to affect the people's lives in very specific ways. So, for the rule of law to operate properly, it is not only necessary for the National Assembly to make good laws through proper deliberations, but the judges also must apply the law in a way that does not deviate from the legal sentiment of the people and the legal consciousness of the times. This principle is what directs the demands to democratize the judiciary. If the court becomes a league of their own, if judges disregard the legal sentiment of the people and use only their own dogma in ruling trials, and if the outcomes of the trials are not subject to any civic monitoring or supervision, then it is not the rule of the law but that of the court or judges (the so-called Juristocracy) which will lead to yet another aristocracy.

Thus, the most important keywords for evaluating the operations of the court or the judiciary today are judicial independence and democratization of the court. Citizens cannot directly influence trials as this will violate judicial independence, but establishing mechanisms for evaluating trial decisions or for citizens or the National Assembly, who represent the citizens, to intervene in the process of judicial administration to monitor, check, and make the court accountable for its decisions has become a global trend.

(2) Assessment Items

Based on the assessment criteria explained above, the assessment items must 1) address the extent to which the misuse of judicial powers that violated the independence of judges, as in the case of last year's controversial events, have been dealt with, considering that the liquidation of past wrongdoings and the act of self-reflection is the starting point and foundation for future innovation. Also, 2) a series of

institutional reforms must inevitably accompany this process of liquidation to prevent the recurrence of such corruption. In addition, 3) the democratization of justice, that is, the establishment of mechanisms that enable citizens (or their representatives) to monitor the judicial system, needs to be set as an agenda for judicial reform to correct the domination of judiciary authorities over the people, which has become noticeably stronger recently, and to create a judiciary that serves the people. This is because judicial independence is, strictly speaking, the autonomy of a democratic judiciary.

○ Detailed Assessment of Items

(1) The distant prospect of dealing with the aftermath of the Supreme Court Chief Justice's misuse of judicial powers

The misuse of judicial powers that took place during the last government shook the bedrock of the democratic republic. The functions of the judiciary became impaired as the chief justice of the Supreme Court, who should be the bastion of judicial independence, surveilled and controlled the judges and intervened in court trials, thereby undermining the foundations of the Constitution that upholds constitutional democracy. The Supreme Court Chief Justice and the National Court Administration led the surveillance of judges and the creation of blacklists to control them, while disrupting research groups that were critical of the judiciary, intervening and influencing trials, and making trial bargains, etc. These actions swayed the foundations of the judiciary and the rule of law. However, the measures taken to deal with this misuse of judicial powers continue to be engrossed in formal legalities, consistently showing a regression by judging those involved 'not guilty' and not even taking one step in the forward direction. Twenty-three judges were referred to disciplinary action on two occasions in 2019, and after two years of investigation, fifteen people, including former Supreme Court Chief Justice Yang Sung-tae and former Vice Minister of the National Court Administration Im Jong-heon, were prosecuted and tried in court. But only eight judges were subjected to a relatively light disciplinary action of a maximum six-month suspension, and five judges were dismissed from the charges. The list of the ten judges who were referred for disciplinary action in the second round and the decisions that were made have been kept secret, leaving the public in the dark. Still, in any case, some measures were taken by the judiciary under Supreme Court Chief Justice Kim Myeong-soo regarding the misuse of judicial powers.

However, in 2020, even those few measures have disappeared from sight. In January, the former Supreme Court Chief Research Judge Yoo Hae-yong was found not guilty

in the first trial, followed by senior judges Lim Seong-geun, Shin Kwang-yeol, Cho Eui-yeon, Sung Chang-ho, etc. in February, and former Seoul Western District Court Chief Judge Lee Tae-jong in September. From the recognition of the facts to the application of the law on the abuse of authority, the Court's unfaltering narrow-mindedness resulted in conservative rulings stating that the charges cannot be punished under the current law, despite the clear evidence of trial interventions "directing the contents or rulings on specific cases and interfered with trial proceedings, etc." which constituted "unconstitutional actions infringing the independence of judges." Of course, the prosecution appealed to this ruling, and the trials are ongoing. However, if the skewed logic used to deny the infringement of the judges' autonomy by any interventions or interference in trials by interpreting the constitutional order on judicial autonomy as a factual judgment on whether the judges had the independent authority to make decisions, is to be overturned at the appeals court, a number of court battles would need to take place once again.

The trials of the remaining nine defendants have also been delayed to continue into the next year. In particular, there have already been more than one hundred court sessions held for the cases of former Supreme Court Chief Justice Yang Sung-tae, Park Byoung-dae, and former National Court Administration Chief Koh Young-han, etc., and this delay strategy has worked to dilute the factual truth behind the misuse of judicial powers committed by these officials. In the midst of such delay in punishing the abuse of power, the three-year statute of limitations on disciplinary actions against judges has elapsed, thereby eliminating the possibility of further punishing them. Meanwhile, Park Byoung-dae, Koh Young-han, Im Jong-heon, Lee Kyu-jin, Lee Min-Kul, and Lim Seong-geun, etc. who were accomplices of the judicial power misuse have retired or gave up re-appointment, and many of them started businesses as lawyers without any sanctions. At least so far, no judges have been legally punished for their involvement in the misuse of judicial powers, other than five judges who have been suspended for less than six months, which is an extremely light punishment for their actions.

This misuse of judicial powers was a case in which persons abused the existing judicial administration system to intervene in trials and exert influence on the judges. As such, it is not easy to condemn the perpetrators based on current criminal laws and norms. In particular, most of the charges concern the abuse of authority, which is using one's authority to force other judges to do something they are not obligated to do. Judgments on the abuse of authority are generally made based on a very narrow interpretation of the law, so, indeed, it is not easy to apply these charges to the judicial power misuse

committed in accordance with the legal framework of judicial administration. This is why, from the beginning, civil society demanded that the judiciary uncover the truth and begin the procedures for internal disciplinary actions openly, independently from the trials for punishing the persons involved in the case. However, Supreme Court Chief Justice Kim Myeong-soo and the National Court Administration, who were in charge of this task, kept the internal proceedings confidential and consistently responded passively to the demands. Now, even the statute of limitations on disciplinary actions has elapsed, making any further action impossible.

The people's demand that the National Assembly impeach the judges involved in the misuse of judicial powers was a cry of desperation. Impeachment is the most effective device for controlling judges as their status and positions are otherwise strictly protected, and the practical purpose of impeachments is to control the judges in other countries as well. In March 2018, the then-floor leader of the Democratic Party Hong Young-pyo responded to the demand and even made a pledge to impeach the judges. However, although the Democratic Party secured an absolute majority in the National Assembly by winning 173 seats in 2020, the impeachment of judges was not even set as an official political agenda. There were intermittent attempts at impeachment proceedings against the judges who are currently in office by members of the National Assembly, such as Lee Tan-hee and Lee Soo-jin, etc., who continue to assert the need to impose strong punishments on the persons involved in the serious violation of the constitutional order. But these attempts saw no further progress, and no further progress seems to be awaiting in the future.

In short, this incident of judicial power abuse was a violation of the Constitution and a distortion of judicial independence won through the people's fight for democratization, committed by the very hands of the Judiciary. In normative terms, this situation deserves to be compared to or given even more meaning than the misuse of political powers committed by the Park Geun-hye administration, but little amends have been made in the four years since the incident became known. If establishing the rule of law and the liquidation of past wrongdoings lie at the core of democratization, properly dealing with the misuse of judicial powers, in which these two tasks overlap, should be considered as a top priority in the national agenda. However, this case is gradually becoming forgotten as an event of the past due to the Court's passive attitude, the National Assembly's lukewarm position, and the government's indifferent delegation of all responsibilities to handle this incident to the Court and the National Assembly.

(2) Strengthening the Judiciary's accountability: Insufficient reform of the judicial administration system

The main cause behind the misuse of judicial powers lies in the pyramid structure of the court administration system, which places all judges in a hierarchical order with the Supreme Court Chief Justice sitting at the peak to arbitrarily exercise omnipotent authority. The narrowing ladder of promotion and the fierce competition among judges created a structure in which the Supreme Court Chief Justice and the National Court Administration under the Chief Justice could wield control over all judges, and coupled with a closed system that rejects any external supervision or checks, the Judiciary became a system under the imperialistic rule of the Supreme Court Chief Justice. The serious misuse of judicial powers resulted from the transformation of the lifelong appointment system guaranteeing the status of judges into a means to control the judges by leveraging the fierce competition for promotions as well as the distortion of the constitutional demand for judicial independence into the judicial administration's "One Ring to rule them all" outside the supervision or monitoring of any other entity.

This is why the demand for judicial independence and the democratization of justice connects to the demand for institutional reforms that will democratize judicial administration or strengthen its accountability. For judges to remain autonomous even from the internal pressures of the judicial system, they must be freed from the pressures of Supreme Court Chief Justice (or the National Court Administration) sitting at the peak of judicial administration. In other words, democratic control over judicial administration and the decentralization of its authority were considered absolutely necessary to control the Supreme Court Chief Justice, who commands judicial administration and exerts an emperor-like authority.

The series of events since 2018, starting with the establishment of the "Judicial Development Committee with the People under the Supreme Court," followed by the "Follow-up Committee for Realizing the Proposals of the Judicial Development Committee," initiated the discussions to introduce a judicial administration committee with the aim to establish democratic control over the judicial administration system. However, all of these efforts ended in vain due to the incompetence of the "Special Committee on Judicial Reform" established by the National Assembly at the time and the lukewarm attitude of the Judiciary under Supreme Court Chief Justice Kim Myeong-soo. At the 21st National Assembly also, representatives led by Lee Tan-hee proposed a bill proposing amendments to the Court Organization Act to introduce the Judicial Administrative Committee system that can democratically control judicial

administration, but this also met with stubborn opposition from the National Court Administration and came to a stall. The measures to make institutional improvements to amend not only the misuse of judicial powers but also reverse the judiciary's reign over the people into a judiciary for the people and by the people have been met with indifference not only from the National Assembly, which is the legislative body, but also the current, so-called "Candlelight" government, to become thwarted without even securing an opportunity for meaningful discussions.

In this situation, Supreme Court Chief Justice Kim Myeong-soo set up a Judicial Administration Advisory Council, which only has an advisory role, in September 2019 in the attempt to bypass the civil society's demands for the democratization of justice. The Judicial Administration Advisory Council is an organization limited to the role of advising on matters that were placed on the agenda by the Supreme Court Chief Justice, who is the chair of the Council. As for the members, two judges are recommended by the National Court Chiefs' Meeting, three judges are recommended by the National Conference of Judiciary Representatives, and four members recommended for their academic achievements and virtue (the presidents of the Korea Bar Association, the Korea Law Professors Association, and the Korean Association of Law Schools recommend one person each, and the Supreme Court Chief Justice appoints the remaining one person). This advisory council can have subcommittees, and so far, subcommittees on finances and facilities, the trial system, the judicial system, etc. have been established. Also, a special committee on the personnel evaluation system of judges to review the possibility of introducing performance evaluations by lawyers and a special committee on improving the appeal system were formed. Of course, there exists a separate subcommittee on the personnel management of judges, but only judges can participate in this committee. The Judicial Administration Advisory Council submitted recommendations on regular personnel appointments of judges to the Supreme Court Chief Justice in February 2020 and proposed measures to improve the judicial system, such as the disclosure of unconcluded rulings and introducing a long-term service system, in September.

Representatively, the disclosure of rulings was demanded in relation to judicial reform because it enables civil society to monitor court trials. However, only the rulings of civil court cases are made public, and the National Assembly revised the Civil Procedure Act during the last regular session so that unconcluded rulings would be made available in PDF format from 2023. Concerning the long-term service system, the hometown judgeship system, which existed in the past for certain regions (although Yang Sung-tae

abolished the system to place all judges under his control), was modified so that judges could work long-term if they wish in the 43 courts nationwide, which were divided into the Seoul courts, Gyeonggi-Incheon courts, and Regional courts for long-term services up to 5, 7, and 7 to 10 years, respectively. The purpose of the long-term service system is to radically reform the judiciary personnel management system, which circulated the judges every two to three years, to reduce the possibility of control over judges using their future appointment prospects as leverage.

Of course, such institutional improvements have some significance in that they contribute to the development of judicial administration. However, this level of change alone is insufficient to replace the demands of the times to secure democratic control over judicial administration. First of all, as this advisory council literally only has an advisory function, it cannot reform the emperor-like authority of Supreme Court Chief Justice, which is based on the position's overall control over judicial administration. Also, an advisory council centered mainly on high-ranking judges, such as the chief justice of the Supreme Court and court chiefs, and the associations of law school professors who are not representatives of the larger society cannot possibly meet the various demands of the civil society concerning judicial administration. The judiciary under Supreme Court Chief Justice Kim Myeong-soo uses the proposition of judicial independence as a justification for rejecting democratic control. However, given that true judicial independence is not the rule by judges but something which is only possible when based on the rule of the law that gains legitimacy from the people, it could be said that the demand for the democratization of justice in 2020 is still far away.

2) The Prosecution

○ Assessment Criteria and Items

(1) Assessment Criteria

Criminal judicial power is the most representative and typical power available to the state to control the daily lives of the people. The state could regulate the actions of individuals using crime as an excuse, thereby controlling the society itself, and arrest people or take away their property through investigations and punishment. This is why, even for the state, criminal judicial power needs to be subjected to strict control, and why it is regarded as an area that most urgently requires active civic monitoring and checks. The principle of “no penalty without a law” is a representative example of controlling

criminal judicial power. In the case of South Korean law, the demand to control criminal judicial power is directed mostly on the Prosecution. Since the prosecution has uncontrolled power over almost all stages of criminal justice, from investigation rights to indictment rights, as well as the right to prosecute, the Prosecution is prescribed as the part of the state that must be reformed first and most intensively in the process of democratization.

There are limitations to the degree of democratic control possible over the Prosecution, as in the case of the judiciary, which are delineated by the autonomy it is endowed. The Prosecution must be guaranteed its independence as a law enforcement agency, since it must act separate from politics. The problem is that the Prosecution has been sacrificing its autonomy voluntarily by cooperating with the political powers and serving as an important means of governance. Recently, concerns have been raised that the Prosecution may have become a political actor itself to exert more power than the authority it is given, thereby possibly becoming another case where a legal institution rules over the people. Therefore, the important task of prosecution reform today is to secure the independence of the prosecution from political powers, while, at the same time, determining how and to what extent democratic control devices need to be secured for this purpose.

(2) Assessment Items

The assessment of the prosecution based on the criteria above can be largely divided into two. The first assessment item is the efforts made to reform the institutions and systems related to judicial affairs and the prosecution, and the other item is the purging of past wrongdoings and personnel. The agendas for the former are: 1) what efforts were made to prevent and correct the politicization of the prosecution and the outcomes of those efforts; 2) how the highly-concentrated and immense powers of the prosecution will be distributed and controlled, and what measures are proposed and implemented to improve this area; and 3) how the civic monitoring system for curbing the prosecution's power is being established. For the latter, assessments will be made on 4) how the prosecution's past wrongdoings, committed during its rule over the people, is being liquidated, and 5) how the subgroups that resist the reform process and attempt to return to past institutions or practices from the other side of the reform are being dealt with.

○ Detailed Assessment of Items

(1) The loss of direction in the process of judicial affairs and prosecutorial reforms

There were two major turning points in the reforms of judicial affairs and the prosecution system in 2020: the launch of the second Judicial Affairs and Prosecutorial Reform Committee and the appointment of Choo Mi-ae as Justice Minister. First of all, the second Judicial Affairs and Prosecutorial Reform Committee, which was launched on September 30, 2019, proposed six reform agendas to be tackled during its one-year term. Those agendas were: 1) reducing the direct investigations led by the prosecution and strengthening the criminal affairs and trial divisions; 2) establishing a consensus body to determine the distribution of the prosecution's desk work and cases; 3) abolishing the information collection (intelligence) function of the Supreme Prosecutors' Office, 4) changing the practice of having prisoners of correctional facilities to go to the prosecutor's office for investigations; 5) improving the prosecution's personnel management system for the fair exercise of prosecutorial power; and 6) abolishing the prosecutor general's authority to command investigations and distributing this right to the high prosecutors.

These agendas for improvement began to be implemented in earnest with the appointment of Choo Mi-ae as the new Minister of Justice in January 2020. Regarding the first agenda to change the organizational structure of the prosecution, the Ministry of Justice revised the Regulations on the Prosecutors' Offices in October 2019, and abolished four special divisions (including the Incheon Prosecutors' Office) and other special divisions, such as the Seoul District Prosecutors' Office, were reorganized into the anti-corruption investigation division. The Justice Ministry further announced that it will close down 37 additional special divisions of the prosecution by the end of 2020. In addition, Choo abolished 13 direct investigation divisions by reducing the four anti-corruption investigation divisions of the Seoul Central District Prosecutors' Office to two and the two public investigation divisions to one, and restructured ten of the divisions into criminal affairs divisions and three into the trial division. Meanwhile, the prosecution's direct investigation powers were greatly reduced by requiring prosecutors to obtain prior approval from the Minister of Justice when establishing a special investigation team.

Regarding the third agenda, the Supreme Prosecutors' Office's Investigative Intelligence Division was abolished or reduced and changed into the position of Investigative Information Officer in August. In the case of the fourth agenda, a task force team for protecting human rights during investigations was established in June. Based on a field survey, the task force team presented a plan to improve the human rights situation during investigations, such as prohibiting prosecutors from requesting prisoners' attendance at prosecutor's offices for the purpose of collecting information

and in the case of summons as witnesses, leaving attendance to the decision of the prisoner. Also, it was suggested to film the interview with the prisoners in principle when prosecutors conduct direct investigations.

However, despite these improvements, other than the first agenda, most of the measures did not touch upon the core aspects of the prosecution reform and had only microscopic or limited meaning. This was where the limitations lay in the Judicial Affairs and Prosecutorial Reform Committee as an advisory body for the Minister of Justice. In particular, matters that pertained to the core of prosecutorial powers, such as ways to ensure objectivity and fairness in the prosecution's distribution of deskwork and cases, reforming the prosecution's personnel management system, or adjusting the prosecutor general's right to command the investigation, were left as suggestions without yielding any specific results.

The Justice Minister's right to command an investigation was invoked for the first time in the prosecution's history in October 2005. Fifteen years later in 2020, Minister Choo Mi-ae invoked the right to command an investigation against the Prosecutor General twice in June and July. These measures, combined with the Judicial Affairs and Prosecutorial Reform Committee's third agenda concerning the abolition of the Prosecutor General's authority to command investigations, reminded of the fundamental problem concerning the allocations of roles between the Justice Minister as a political institution and the Prosecutor General as a law enforcement agency and the relationship between the two. In other words, there seemed a desperate need for a plan that could harmoniously and reasonably satisfy the demands that the Ministry of Justice exert political checks over prosecutorial powers and those for the independence of the Prosecution from politics. In the past, when the high-ranking prosecutors took seats as major actors within the Ministry of Justice, the conflict between the Ministry of Justice and the Prosecution was not so severe and could be handled appropriately. However, this overlap of personnel, which used to act as a buffer between the two institutions, no longer existed, and their mechanism for handling conflicts also disappeared, while the Ministry of Justice continued with its plan to reduce prosecutorial powers. In this situation, the Minister of Justice's two-time invocation of the right to command the investigation, which was initiated rapidly without any social discussion process, changed the relationship between the two into one of sharp hostility, instead of seeking mediation. As a result, rather than becoming a stepping stone for the reform of judicial affairs and prosecution service, this situation visibly turned into a personal confrontation between the Justice Minister and the Prosecutor General and eventually resulted in aggravating the people's

fatigue of the reforms. As the constitutional demands to exert both law-based (ensuring the prosecution's independence and neutrality) and democratic over the criminal justice system were answered through hasty actions without any social discussion or consensus process, the agendas for judicial affairs and prosecution service reform lost their power.

(2) Controversy over the adjustment of investigation rights between the Prosecution and the Police and the establishment of the Corruption Investigation Office for High-ranking Officials

Attention should be given at this point to two major events that occurred in 2020: the adjustment of the investigation rights between the Prosecution and the Police and the establishment of a special office for the criminal investigation of high-ranking officials (Gongsuchoe).

Adjusting investigation rights held by the Prosecution and the Police by significantly reducing the Prosecution's direct investigations and entrusting the right to initiate and terminate investigations to the Police as a principle were an epochal change in the 70-year history of the prosecution. Following the fast-track legislation of the Criminal Procedure Act and the amendments to the Prosecutor's Office Act by the National Assembly in 2019, the Prosecution and the Police went through a long process of discussion to finalize and announce a related enforcement decree in September 2020. According to the enforcement decree, which is to come into force from January 2021, the scope of the prosecution's direct investigations will be limited to six areas, which are corruption, economy, public officials, elections, defense industries, and major disasters and catastrophes. The prosecution's investigation rights for drug-related crimes and cybercrimes and investigations that acquired a warrant for search and seizure were recognized as well. At the same time, a one-time limit was placed on the prosecutors' right to request a re-investigation to the police. As far as the prosecutor's direct investigation rights are concerned, the changes do not seem much different from the scope and authority exerted at present, but this adjustment of the investigation rights had been long-demanded of the criminal justice system, so the fact that this reform has overcome critical obstacles to be implemented at last could be viewed as considerable progress.

However, even though these adjustments, which will cause a significant change in the prosecution and judicial police's investigations and investigative practices, are scheduled to be implemented soon, concerns are raised about the lack of specific

practical guidelines or relevant education and training. All institutional reforms are usually accompanied by trial and error, but these fundamental changes in the criminal justice system could have a significant impact on the lives of the people, so this lack of faithful preparations deserves severe criticism.

The discussions and actions surrounding the establishment of the Corruption Investigation Office for High-ranking Officials are still ongoing. As was the case with the law adjusting the prosecution's investigation rights, the bill to establish this corruption investigation office was also fast-tracked at the National Assembly. However, even though six months have passed from its scheduled launch, the corruption investigation office is still in the dark due to being unable to organize a candidate nomination committee for appointing the head of the office. Originally proposed as an anti-corruption agency to combat power-based corruption among high-ranking public officials, this agenda was transformed into an agenda for prosecution reform after the Moon Jae-in administration took office. As a result, the establishment of the corruption investigation office became an axis of the fierce battle over prosecution reform between ideological camps, and in this process, the opposition party, which had been opposed to the office's establishment from the beginning, engaged in aggressive tactics to obstruct any progress in this agenda.

The Act on the Establishment and Operation of the Corruption Investigation Office for High-ranking Officials (Corruption Investigation Office Act) stipulates that the head of the office be appointed by the President based on the recommendations of a candidate nomination committee to ensure the neutrality of its investigations. However, the Act also sets the quorum of consultation and decision at the candidate nomination committee to six members out of the seven members in total, thus recognizing the practical veto rights of the opposition party (or its member on the candidate nomination committee). The April 15 general election had handed the ruling party the majority seat in the National Assembly, which created a situation where the People Power Party was the only other parliamentary group. As such, the People Power Party was given the right to nominate two members for the candidate nomination committee, and these two committee members gained the power to veto the decisions of the committee at any time. Eventually, the candidate nomination committee, which was launched in November 2020, failed to nominate two candidates even after four rounds of meetings. Accordingly, in December 2020, the ruling party revised the Act and adjusted the quorum to five or more committee members. On December 28th, two candidates were nominated without the attendance of the two committee members representing the opposition party, and two days later, President Moon chose Kim Jin-wook, a senior

research judge at the Constitutional Court, to head the office. The candidate is scheduled for a confirmation hearing at the National Assembly.

The corruption investigation office is a system that emerged from the adjustment or dispersion of prosecutorial rights, as it is given exceptional powers to investigate and indict. Due to its exceptional nature, the establishment and operation of the corruption investigation office must be founded upon the people's trust. However, by reversing the promise to guarantee the opposition party's veto power, which was made at the time of the Corruption Investigation Office Act was legislated, by amending the relevant law, there arose a risk that the objectivity and neutrality in appointing the office head and establishing the office may seem questionable, at least apparently. Thus, the highest priority right now is to ensure that the remaining personnel appointment procedures, from the head of the office to the prosecutors, etc., are carried out in a way that seems fair and flawless to everyone, so as to secure a wide range of public trust for the office's launch.

(3) The prosecution's liquidation of past wrongdoings that ended in vain and the renewal of personnel which only amplified conflicts

One of the biggest flaws of South Korea's prosecution system is that its wrongdoings while serving the past authoritarian governments were not liquidated properly. As such, it was natural for the "Candlelight administration" to establish the "Special Committee on Past Wrongdoings by the Prosecution" to resolve the accumulated evils within the prosecution. However, the committee, which had set out to liquidate 15 cases of Past Incidents, failed to achieve satisfactory results due to the prosecution's non-cooperation and the limitations of time and resources, before ending its term in June 2019, with Prosecutor General Moon Moo-il apologizing for the meager outcomes. In October 2010, the Criminal Affairs Division 1 of the Seoul High Court found former Vice Minister of Justice Kim Hak-eui guilty of bribery charges and arrested him. This ruling showed the naked reality of the prosecution's liquidation of past wrongdoings. The court did not even deal with the allegations of receiving sexual favors (sexual violence charges), which was the most problematic among the charges placed on Kim Hak-eui, due to the statute of limitations, and investigations on the deep-rooted evils within the prosecution that protected Kim Hak-eui over the years were not properly conducted. It was in this state that the efforts to liquidate the prosecution's past wrongdoings, which was a feat to begin in the first place, were coming to a conclusion.

The conflict between the Justice Minister and the Prosecutor General, which took

place under the slogan of prosecution reform, gives a glimpse into another dark cloud in the judicial affairs and prosecutorial reform in 2020. In general, any reforms of public authority agencies are conducted through institutional changes and revamping personnel. However, the year-long conflict between Minister Choo and Prosecutor General Yoon Seok-yeol dominated all the regular agendas of prosecution reform without providing any meaningful direction. The Prosecution's two-rounds of personnel appointments in January and August were positively viewed for breaking the custom to preferentially treat the so-called "special power-based crime prosecutors (teuksutong)" and strengthening the criminal affairs and trial divisions, but at the same time, some suspected that the appointments were made to obstruct the investigations of cases involving members of the ruling party and voiced their condemnation. The alleged prosecution-media collusion, where a reporter of a broadcasting company and a prosecutor tried to collect evidence to incriminate a member of the ruling party by threatening a criminal suspect, led the Justice Minister's invocation of investigation command rights, but the investigation conducted under the command of the Justice Minister became interlaced with peripheral cases (e.g., the unusual transference of the high-ranking prosecutor who was a suspect, the assault between prosecutors during a search-and-seizure operation, etc.) which were irrelevant to uncovering the factual truth, to end up dominating the immediate agendas of prosecution reform. The situation reached its peak when, for the first time in the history of the constitutional government, the Minister of Justice requested disciplinary action against the Prosecutor General, and the agendas of prosecution reform, which had already begun to diminish gradually in the second half of 2020, ended up completely disappearing from sight. On December 15, 2020, the Justice Ministry's Disciplinary Committee decided on a two-month suspension of Prosecutor General Yoon, which is a heavy disciplinary action, and the President executed the disciplinary action. However, on December 24, the administrative court ruled in favor of Yoon and temporarily suspended the disciplinary action, putting an end to the situation for the time, and transferred the matter to the court's judicial review process. Thus, ultimately, the attempt to enforce disciplinary action on Yoon merely caused confusion in judicial affairs and prosecution service, and it does not seem an easy task to restore prosecution reform's presence, which became lost in this process, as an agenda demanded by this era.

(4) Sub-conclusion

Prosecution reform, as an epochal task of our time, began to materialize from the citizens' diagnosis of the judicial affairs and prosecutor service management conducted during the Kim Dae-jung administration and finally came to fruit in 2020. The adjustment

of investigation rights between the prosecution and the police, which was the most meaningful task, was completed, and by establishing the Corruption Investigation Office for High-ranking Officials, there soon will be a system that disperses the authority to investigate and prosecute special crimes that had been monopolized by the prosecution. Also, as the Ministry of Justice gained momentum in reducing the scope of prosecutorial powers, the relationship between the Justice Ministry and the Prosecution arose as an issue of conflict between the Justice Minister and the Prosecutor General. However, the importance of these judicial affairs and prosecutorial reforms is such that requires coordination and implementation even through such trial and error.

However, the biggest flaw in this course of events is that all these processes have been pursued and handled without the involvement of civil society. Today, the discourse of democratization lies at the center of reform agendas, that is, democratization is both the goal and process of reforms. The judicial affairs and prosecutorial reforms carried out so far have lost grip of both aspects. The main agendas of the reforms were focused on deciding which agency the state-given authority of criminal judicial power should be given, without any discussions on how to transfer this power to the people or civil society. Moreover, the reform process unraveled amid the confrontations between the Ministry of Justice and the Prosecutors' Office without any processes to gather public opinions from various social groups or engage representatives of the diverse areas of civil society. Rather, unilateral decisions and divisive actions that took advantage of political factions, forcing the agreement of others under the slogan of prosecution reform without any social discussion or consensus process, ended up dominating the reform agendas themselves.

3) Police reform

The reform of the Police is an area that has not been addressed in this report so far, but it should be briefly mentioned as an extension of prosecution reform. The Police has been considered as a target of reform due to the abuse of the information police force, the actions of the public police force during assemblies and demonstrations, and the issue of the security police force in relation to the National Security Act. As investigation rights became adjusted between the Prosecution and the Police to reinforce the judicial police's right to investigate, there has been a sudden rise in social demands for a drastic change in the current police organization.

As of 2019, the South Korean police comprised of almost 130,000 officers, which translates to one police officer in charge of public security for every 422 citizens. The police organization has a military-style top-down governance structure with the Commissioner General at its peak. In this situation, the Police will be gaining investigation rights from the Prosecution and the power to collect domestic information and national security investigation rights, centered on crimes involving national security, from the National Intelligence Service. In addition, the public police force, whose powers were abused in the name of guarding facilities and personnel, continues to maintain its authority to exert operational control over the public. Even under an authoritarian system, the powers for maintaining domestic public security had been dispersed across the prosecution and intelligence agencies (e.g., the Central Intelligence Agency, National Security Planning Agency, or National Intelligence Service), but the present situation is that all of these powers became concentrated in the mammoth organization of the police in the name of reform.

In response, the current government, the ruling party, and the police are planning to amend the Police Act in December 2020 to establish a decentralized police system, such as implementing the autonomous local and municipal police system from 2021 and launching the National Investigation Headquarters. These measures aim to divide the increased powers of the police in two ways: vertically decentralizing the police system by separating the national police force and the local and municipal police force, and horizontally dividing the roles of maintaining general public security and investigative police activities between the administrative police and the judicial police (National Investigation Headquarters), respectively. Nevertheless, the problem remains that such division of police power is not very meaningful.

The biggest problem is the fact that despite such organizational decentralization, all police powers converge to one point: the Commissioner General. In other words, all police officers are subject to the command of the Commissioner General. Of course, in the case of the autonomous local and municipal police, the heads of the local governments will intervene, but as the powers to appoint personnel and provide administrative support are under the control of the national police force, the term “autonomous” could easily be rendered meaningless. Furthermore, the police continue to maintain its practice of collecting domestic information that is not related to public security. Despite that the separation of investigation and information is the fundamental proposition for police reform, the information police force, now supplied with the power to collect domestic information formerly endowed to the National Intelligence Service, can collect, produce,

and process all kinds of domestic information in a way that befits the regime in power without being subjected to any control or supervision. Not only has the police secured the room to distort the state's policy process, but it also gained the opportunity to expand the total amount of police powers infinitely just by being endowed with the right to collect domestic information and further by using it in conjunction with investigation rights.

However, despite the demands of the civil society and minority political parties opposing the expansion of the police power to pursue a more suitable form of police reforms, the government and the ruling party excluded their participation and legislated the amendments to the Police Act which reflected only the interests of stakeholders, such as the police. While prosecution reform lost sight of its agendas to become only a slogan, in the case of the police, the efforts were devoted to making changes for the worse under the slogan of police reform.



Summary

As of 2020, South Korea's non-elected powers remain at the rear end of democratization. If the core of democratization is to constitute a society ruled by the law of citizens, law enforcement agencies, such as the judiciary, the prosecution, and the police, still stand far away from the framework of civic participation and checks. Voices were raised high in demanding the reform of these agencies that have directly or indirectly contributed to the abuse of judicial and state powers in recent years, and in some part, the reform agendas have been materialized and implemented in practice. However, most of the reform agendas either came to a failure, were concluded insufficiently, or were consistently omitted or ignored. This is especially true of the events in 2020, when these reforms were scheduled to be completed. The Court tried to replace all discussions on judicial reform with the establishment of the Judicial Administration Advisory Council, which is just a show of formality, and all of the judicial affairs and prosecutorial reform agendas were obscured by the conflict between the Minister of Justice and the Prosecutor General. Police reform, which is the only area where relatively substantial changes were made, ended up concentrating powers rather than distributing them, thereby going against the reform itself. And in all of these processes, civil society lost its voice. The reform agendas stopped at considering the distribution of powers among the institutions, and concerns and worries over the reforms had to be put aside due to the lack of time for discussions. Ultimately, the people's candlelight demonstrations were victorious, but no rewards for the hard-fought battle were collected by 2020, leaving no choice but to return to our gloomy daily lives.

2020 Korean Democracy Annual Report

Economic Democracy

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Assessment Criteria and Items

1) Assessment Criteria

The assessment of democracy from the economic perspective was conducted based on the so-called “provision on the condition of economic democracy” stipulated in Article 119, Paragraph 2 of the Constitution, which reads as follows:

Article 119

- (1) The economic order of the Republic of Korea shall be based on a respect for the freedom and creative initiative of enterprises and individuals in economic affairs.
- (2) The State may regulate and coordinate economic affairs in order to maintain the balanced growth and stability of the national economy, to ensure proper distribution of income, to prevent the dominance of the market and the abuse of economic power and to democratize the economy through harmony among the economic agents.

2) Assessment Items

Based on the stipulations of Article 119, Paragraph 2 of the Constitution, the items for the specific assessment of economic democracy were set as follows: “the concentration of economic power” and “corporate governance” for “preventing the dominance of the market and the abuse of economic power”; “the relationship between large companies and small-to-medium enterprises (SMEs)” and “the status of self-employed businesses” for “maintaining the balanced growth and stability of the national economy”; and the “inequality in household income” for “ensuring proper distribution of income.”



Detailed Assessment of Items

1) Preventing the domination of the market and the abuse of economic power

○ The concentration of economic power

The progressive movement in the early 20th-century United States first brought to attention the problems lying in the concentration of economic power by defining the existence of economic power as “a situation in which someone’s economic future depends on her pleasing a particular gatekeeper.”²⁵⁾ The concentration of economic

25) Becht, M. and J. B. DeLong. (2005). “Why Has There Been So Little Block Holding in America?” In: Morck, Randall K. (Ed), A History of Corporate Governance Around the World (pp. 613-666), Chicago: University of Chicago Press.

power occurs when a particular individual or family controls a significant portion of a country's economic resources, in which case political, judicial, and policy-wise decision-making can be distorted for the private interests of this individual or family. In this sense, the concentration of economic power poses a fundamental threat to pluralist democracy and market economy. Therefore, this chapter reviews the cases in which the chaebol conglomerates have exerted excessive influence in South Korea to distort judicial, legislative, and administrative decision-making.

South Korea's judiciary has been notorious for its lenient rulings toward chaebol families, known as the 3-5 rule, that is, giving out three-year prison sentences with five-year probation (a suspended sentence) regardless of the type or nature of the crime. However, in August 2020, the Supreme Court overturned the Appeals Court ruling and recognized the relevancy of the father-to-son transfer of Samsung's managerial power, which increased the amount of bribery and embezzlement charged against Samsung Electronics Vice Chairman Lee Jae-yong to 8.6 billion Korean won. Under the Act on the Aggravated Punishment, etc. for Specific Economic Crimes, the punishment for embezzlement exceeding 5 billion Korean won is a prison sentence of five years or more. Yet, in the appeals court trial following up the Supreme Court decision, the judicial authority expressed that its decision on the charges against Lee Jae-yong would take into consideration how Samsung operates its Compliance Committee, increasing the likelihood that the court will decide on a suspended sentence. The judiciary's 'special treatment of the chaebols' continues to be intact, as can be seen from the same court's decision to reduce the sentence given to Booyoung Group Chairman Lee Joong-keun on January 22, 2020 based on Booyoung Group's operation of a compliance committee, and the suspended sentence given to Hyosung Group Chairman Cho Hyun-joon, who was charged with bribery and embezzlement, in the second trial on November 25, overturning the prison sentence ruled by the lower court.

The seriousness of the chaebols' economic influence had been recognized and set as a political agenda from the 2012 presidential elections. President Moon Jae-in also pledged to reform the chaebols in the 2017 presidential election, but after taking office, the Moon Jae-in administration has been consistently passive toward reducing the concentration of economic powers on chaebol conglomerates. However, after the ruling Democratic Party won the 21st general elections by a landslide, the government and the ruling party legislated the so-called "Three Laws on Fair Economy" at the extraordinary session of the National Assembly in December, which included a full amendment of the Fair Trade Act, amendments to the Commercial Act, and the Financial Group Supervision

Act. Regrettably, however, the full amendment of the Fair Trade Act not only did not include any devices to relieve the concentration of economic power on existing chaebols but also omitted the clause on abolishing the ‘exclusive right to accuse’ hardcore cartels, which was originally included in the government-proposed draft.

In this regard, it may be said that the Moon Jae-in administration is simultaneously pushing forward pro-chaebol legislation. In 2018, the administration enacted the Act on Special Cases Concerning Establishment and Operation of Internet-only Banks, which impaired the principle of separation of banking and commerce. In 2020, the revisions made to the Fair Trade Act included clauses that allowed holding companies to own corporate venture capital, which has the potential to debilitate the regulations on holding companies. Furthermore, the administration issued a government proposal following the Cabinet Meeting resolution made on December 22 that proposes the introduction of multiple voting shares (dual class shares), which is highly likely to be abused in chaebol families’ managerial succession. On the other hand, the bill to amend the Insurance Business Act, which was proposed to prevent preferential treatment of the Samsung Group, is not even being discussed properly by the National Assembly’s Standing Committee. It is necessary to remind ourselves how, in 2007, close to the Participatory Government’s end of term, the practical abolition of the ceiling on total equity investment and deregulations of the holding company’s equity investment procedures led to a notably higher concentration of economic power on chaebol conglomerates. The present situation requires vigilance in ensuring that the Moon Jae-in government does not repeat the reversal of direction in checking the economic powers of the conglomerates seen during the Participatory Government.

○ Corporate governance

Corporate governance can be viewed as a norm and legal device to prevent major shareholders and managers from infringing on the interests of minority shareholders and from privatizing the company. However, under the South Korean chaebol system, this kind of corporate governance mechanism has not been working properly, creating the term “emperor management” in reference to corporate management.

The ruling party pushed forward the amendments to the Commercial Act as one of the Three Laws on Fair Economy at the 21st National Assembly. The core content of this amendment is the separate election of one or more audit committee members. The first government-proposed draft required a listed company to hold separate elections for

general board of directors and the board member who will become the auditor and to limit the voting rights to 3% of major shareholders and specially-related persons and 3% of general shareholders in the separate election. However, the revised Commercial Act legislated by the National Assembly extended the voting rights of major shareholders in the separate election to 3% (as opposed to the 3% allocation given to the major shareholders and specially-related persons group).

The illegal profit-taking practices by chaebol families through imperialistic management usually happens through contracting their subsidiaries. Article 23, Paragraph 2 of the Fair Trade Law was introduced in 2013 to prevent the favoring of subsidiaries for illegal profit-taking, but due to the incompleteness of the provisions, such illicit profit-taking has not been eradicated yet. The full amendment to the Fair Trade Act extends the application of Article 23, Paragraph 2 to listed companies whose shares directly held by the owner family amount to 20% or more, and their subsidiaries whose majority share (50% or more) is held by the parent company. However, regarding Hanjin Group's subsidiary contracts, the Seoul High Court ruled that the judgment should be made based on an assessment on whether such actions contribute to the concentration of economic power through "unfair profits."²⁶⁾ Should the Supreme Court cite this ruling, the regulation prohibiting the owner's family members from pursuing private interests can lose its power. There was a chance to resolve this problem by repositioning this regulation on the unfair profiting by specific parties as a regulation for checking large business groups through the full amendment of the Fair Trade Act, but the full amendment passed by the National Assembly did not contain any such strategy.

Meanwhile, in July 2018, the National Pension Service (NPS) introduced the stewardship code in July 2018 to adhere to its fiduciary duties to prevent institutional investors' conflicts of interest and actively exercise its shareholder rights. It was hoped that the NPS' faithful implementation of the stewardship code would bring about substantial improvements in corporate governance by keeping the conglomerates' imperialistic management in check. However, few positive changes are seen in 2020, as was the case in 2019, and not only that, the progress on implementing the stewardship code according to the roadmap has been falling behind schedule.

In addition to the election of independent outside directors, introducing the Majority

26) Seoul High Court ruling on September 1, 2017. Ruling number 2017 Nu 36153.

of Minority (MoM) rule (which makes the majority consent of minority shareholders a mandatory requirement for decisions on the wages and compensations of owner family members as board members or executives, and any intra-group transactions above a certain size) to the Commercial Law or stock exchange listing rules could substantially improve corporate governance structures. For instance, India implemented the MoM rule for intra-group transactions of a certain size under its Company Act and stock exchange listing rules,²⁷⁾ and Israel incorporated the MoM rule in its Company Act for transactions that may implicate conflicts of interest with the owner's family, including the wages and compensations of owner family executives.²⁸⁾ However, discussions on implementing the MoM rule are not being actively pursued yet in South Korea.

2) Maintaining the balanced growth and stability of the national economy

○ The relationship between large companies and small-to-medium enterprises (SMEs)

The relationship between large companies and SMEs in South Korea continues to be assessed as being dependent and exploitative rather than being equal and cooperative. The Fair Trade Commission regulates unfair trade practices by companies holding dominant positions in their industries through the laws on fair transactions in subcontracting, franchise businesses, large retail businesses, and agencies. However, it has been pointed out that the Fair Trade Commission's ineffective regulatory efforts and judicial sanctions have led to the persistence of technological appropriation and violations of the subcontracting law over the years. Likewise, effective regulations have not been implemented for distribution businesses and affiliate business and agency transactions.

The Ministry of Justice's bill proposal to partially revise the Commercial Code, which includes fundamental solutions to resolve this chronic problem in the relationship between large firms and SMEs, was a significant change made in this aspect. The Ministry of Justice decided to introduce the punitive damages system to the Commercial Code,

27) Fried, J. M., Kamar, E. and Y. Yafeh. 2018. "The Effect of Minority Veto Rights on Controller Tunneling", ECGI Law Working Paper No. 385, 2018.

28) Li, N. "Do Greater Shareholder Voting Rights Reduce Expropriation? Evidence from Related Party Transactions", Columbia Business School Working Paper, 2018.

which places business persons responsible for punitive damages that do not exceed five times the amount of the actual damages in the case that damages are inflicted on others by intention or gross negligence. Currently, around twenty individual laws include clauses on punitive damages, but what this proposal does is introduce an overarching punitive damages system. However, this system places a strict limit on the total amount of claimable punitive damages and does not include special provisions included in the Class Action Act that minimize the burden of proof on the part of the plaintiffs during the case and pre-trial procedures. For the punitive damages system to prevent the infliction of damage to others by intention or gross negligence, these problems, i.e., the limit on total punitive damages and the lack of special provisions on pre-trial and litigation procedures, need to be addressed. However, even the proposed partial amendment bill has not yet been finalized as a government proposal.

○ Status of self-employed businesses

According to Statistics Korea's supplementary survey on non-salaried workers among the economically-active population and economically-inactive population released on November 4, the total number of non-salaried workers as of August 2020 was 6,639,000 people, which is a decrease of 161,000 people year-on-year. Non-salaried workers refer to self-employed business owners with or without paid employees and unpaid family workers who help in family businesses or farms.

In the previous year, the number of non-salaried workers declined by 62,000 year-on-year. In comparison, this year, this number showed a greater drop by 100,000 people. In particular, the number of self-employed business owners with paid employees was 1,363,000 people, which is a decrease of 172,000 people year-on-year. Based on the annual statistics for August, this marked the largest decline in the number of self-employed business owners with paid employees since 1998 (when the number decreased by 296,000 people) when the aftermath of the financial crisis was in full swing. On the other hand, the number of self-employed business owners without paid employees, who manage their business alone or with the help of their families, increased by 66,000 year-on-year to 4,193,000 people. Meanwhile, the number of unpaid family workers was 1,083,000 people, which is a decrease of 54,000 people year-on-year. The number of self-employed business owners with paid employees and unpaid family workers had also declined in the previous year, but the rate of decrease in 2020 was much greater (compared to the drop in the previous year by 116,000 people and 43,000 people, respectively). The number of self-employed business owners without paid

employees also increased like last year, but the rate of increase was smaller (compared to the previous year's increase of 97,000 people). These trends show that the COVID-19 pandemic has intensified the contraction of self-employed businesses.

The number of self-employed business owners with paid employees decreased in all age groups, and the number of self-employed business owners without paid employees in their 30s or younger increased, while the number of those in their 40s and 50s decreased. There was a slight increase in the number of unpaid family workers who are between 15 and 29 and those in their 40s, but this number dropped in all other age groups. Notably, the number of self-employed business owners without paid employees who are in their 60s or older without employees increased by 111,000 year-on-year. As in the previous year, this growth is attributed to the fact that more people in this age group end up working in agriculture, forestry and fishing.

3) Ensuring proper distribution of income

According to the Household Income and Expenditure Survey for the 3rd Quarter of 2020 released by Statistics Korea, the average monthly earned household income (wage, salary, business) showed a decline year-on-year, but there was a significant increase in transfer income, resulting in a 1.6% increase in nominal household income compared to the previous year. It could be said that the spread of COVID-19 has contracted earned income, but the government's policy response has led to a significant increase in transfer income. A more detailed look into the numbers shows that wages increased slightly, but the large drop in employment caused a decline in wage and salary income. Meanwhile, the sluggish economy and decrease in self-employed business owners brought a drop in business income. On the other hand, transfer income increased significantly due to the increase in basic pension from January 2020 and the fourth supplementary budget that was paid to pandemic-affected social groups before Chuseok (which was at the end of September in 2020).

However, in terms of income quintile, the incomes of the lower 20% (1st quintile) households declined, while those of the top 20% (5th quintile) households increased. Accordingly, the income quintile share ratio was 4.88, up 0.22p year-on-year. More specifically, the transfer income of the first quintile increased significantly (+9.6%), but their total income decreased slightly (-1.1%) due to the decrease in earned income (-10.7%). The drop in earned income was caused by the drop in employment, especially

among temporary daily workers, bringing a sharp decline in wage and salary income and stagnating food services and lodging businesses, etc., which worsened business income. The large increase in public transfer income (+15.8%), such as the Emergency Employment Stability Subsidy and the New Hope Fund for small business owners, contributed greatly to relieving the drop in total income. On the other hand, in the fifth quintile, total income increased (+2.9%) with the growth in business and transfer income despite the drop in earned income. This growth in business income is due to increased production in the manufacturing industry and the improvements in the business conditions for some industries. In addition, public transfer income, such as public pension and social benefits, increased significantly (+40.3%), as well as private transfer income, such as transfers between households (+9.2%).



Summary

This chapter assessed five specific areas - the concentration of economic power, corporate governance, the relationship between large companies and SMEs, the status of self-employed businesses, and inequality in household income - to evaluate South Korea's economic democracy in 2020. Concerning the concentration of economic power, the most notable issue in 2020 was the ongoing appeals court trial that will decide the sentence for Samsung Electronics Vice Chairman Lee Jae-yong. The Supreme Court ruling on Park Geun-hye and Choi Soon-sil's misuse of powers increased the total amount of bribery and embezzlement charged against Lee Jae-yong to 8.6 billion Korean won. The judiciary authority of Lee Jae-yong's trial at the appeals court stated that it will consider the progress in Samsung's Compliance Committee in its decision on the charges against Lee Jae-yong, increasing the likelihood that the court will decide on a suspended sentence. If Lee Jae-yong is given a suspended sentence, it would be a regression to the judiciary's preferential treatment of chaebol families.

The Moon Jae-in administration was consistently passive toward making structural reforms that could relieve the concentration of economic power on the chaebols. However, the 21st National Assembly enacted the so-called "Three Laws on Fair Economy" consisting of a full amendment of the Fair Trade Act, amendments to the Commercial Act, and the Financial Group Supervision Act -- although not in their original form due to the ruling party's passive attitude. The Three Laws on Fair Economy are far from sufficient as an institutional basis for realizing a fair economy, but it is appreciable progress compared to the previous years that had passed by with no legislative outcomes. However, along with the legislation of these laws, the government and the

ruling party have been showing contradictory attitudes, such as inserting clauses to the Fair Trade Act that allows holding companies to own corporate venture capital, which could potentially debilitate the regulations on holding companies, and actively pursuing the introduction of multiple voting shares (dual class shares), which could be abused in chaebol families' managerial succession.

Meanwhile, the Ministry of Justice's bill proposal to amend the Commercial Act was a significant step toward providing a more fundamental solution to the chronic issues in the relations between large firms and SMEs. The core of the amendment is the introduction of a punitive damages system to the commercial code, which places business persons responsible for punitive damages in the case that damages are inflicted on others by intention or gross negligence. However, the proposed amendment contains problems, such as the limitation on punitive damages (up to five times the amount of actual damages) and the lack of special provisions minimizing the burden of proof on the part of the plaintiffs during the case and pre-trial procedures that are included in the Class Action Act. Moreover, even the proposed partial amendment bill has not yet been finalized as a government proposal.

The COVID-19 pandemic further intensified income polarization and the contraction of self-employed businesses. According to Statistics Korea's supplementary survey on non-salaried workers among the economically-active population and economically-inactive population released on November 4, the total number of non-salaried workers as of August 2020 was 6,639,000 people, which is a decrease of 161,000 people year-on-year. Meanwhile, the Household Income and Expenditure Survey for the 3rd Quarter of 2020 released by Statistics Korea showed that the incomes of the lower 20% (1st quintile) households declined, while those of the top 20% (5th quintile) households increased. Accordingly, the income quintile share ratio was 4.88, up 0.22p year-on-year. In particular, the transfer income of the first quintile increased significantly, but their total income still decreased slightly due to the decrease in earned income. This is a result of the drop in employment, especially among temporary daily workers, which brought a sharp decline in wage and salary income, and the stagnation of food services and lodging businesses, etc., which worsened business income. The large increase in public transfer income, such as the Emergency Employment Stability Subsidy and the New Hope Fund for small business owners, contributed greatly to relieving the drop in total income. On the other hand, in the fifth quintile, total income increased with the growth in business and transfer income despite the drop in earned income.

2020 Korean Democracy Annual Report

Participatory Democracy

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Assessment Criteria and Items

1) Assessment Criteria

The participation of citizens is an essential condition for improving the quality of democracy and realizing lively democratic politics. The mere existence of democratic institutions is not enough for democracy to take place, as it is people who operate those institutions. If the roles of the government and the members of political parties are important in the sphere of institutional politics, what brings democracy alive and endows power to democratic political actors in the sphere of society is the participation of citizens who are deeply interested and knowledgeable about politics and value and understand democracy.

Civic participation in a democratic society takes place in three main ways. The first and most visible way is through the expression of opinions through direct collective action such as demonstrations and rallies. The second way is by expressing their discontent and demands through various other ways, such as petitions, civil complaints, signature-collecting campaigns, and writing their opinions on online platforms. The third way is by forming or participating in various civil society organizations, such as civic groups, labor unions, interest groups, and local community groups, etc. The scale and method of participation, related issues, and the demographics of the participants engaging in each of these ways will be used as the assessment criteria for participatory democracy.

2) Assessment Items

The first assessment item is the status and trends of direct participatory action, such as assembly and demonstration. This section first reviews the number of rallies and demonstrations held in South Korea in recent years and the frequency of illegal and violent demonstrations, including the number of police injuries, then assesses the trends in assembly and demonstration in the 2000s. Next, to shed light on the most pertinent issue of 2020, that is, the COVID-19 pandemic, the section looks at the clash between the emphasis on quarantine and control measures and the freedom of assembly and demonstration.

The second assessment item concerns various other civic participation activities apart from assembly and demonstration. First, the section presents the degree of civic participation in various activities, such as conversations with others about pending political and social issues; participation in online discussions; involvement in petitions,

civil complaints, and appeals; and participation in campaigns, such as signature-collecting campaigns and boycotts. Then, the international evaluations of South Korean citizens' participatory activities and the impact of COVID-19 are reviewed from a comparative perspective.

The third assessment item is related to civil society organizations. The section first presents the number and annual growth rate of non-profit non-governmental organizations (NGOs) in recent years, and the changes in the contribution of these NGOs in supplying goods and services to households, etc. Then, a discussion is provided on the situation surrounding civil society organizations after COVID-19 and the areas for improvement.



Detailed Assessment of Items

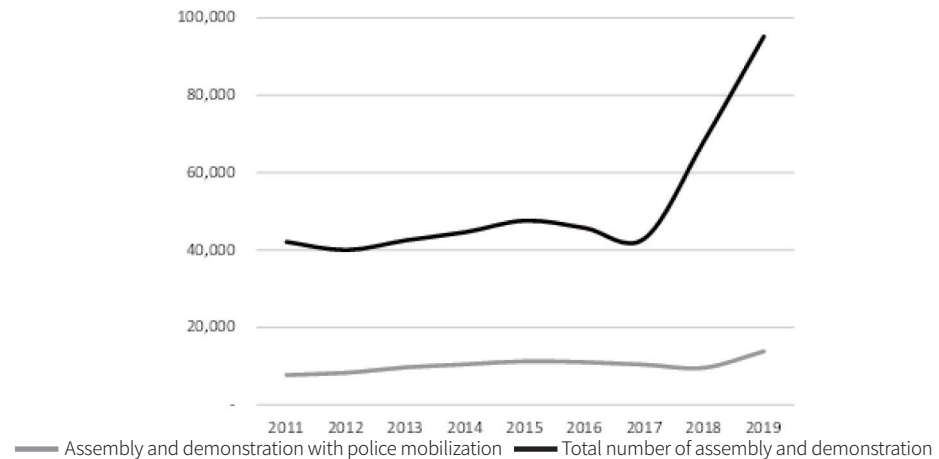
1) Direct actions such as assembly and demonstration

○ The frequency of assembly and demonstration and the overall trends in protest actions

The annual number of assemblies and demonstrations in South Korea increased significantly for two consecutive years in 2018 and 2019. A total of 68,262 assemblies and demonstrations were held in 2018, which was an increase of 22,245 cases from the previous year. In 2019, a total of 95,258 assemblies and demonstrations were held, further recording an increase of 26,943 cases from 2018. The number of assembly and demonstration for which the police force was mobilized was 9,627 cases in 2018, which was a similar level to the numbers in the previous few years. In 2019, there were 13,864 assemblies and demonstrations that mobilized police forces, increasing 44% from the previous year (see Figure 1).

The frequency of assembly and demonstration and the scale of police mobilization rose significantly in 2018 and 2019, but the number of police injuries at these events has been decreasing according to the Korea National Police Agency White Paper (116 people in 2017, 84 people in 2018, and 78 people in 2019). The trends seen from 2018 to 2019 show that the frequency and scale of direct actions in the form of assembly and demonstration have been growing, but the participants have been showing a greater respect for law and order and the principle of non-violence.

Figure 1. The changes in the annual number of assembly and demonstration, 2011-2019 (Unit: cases)



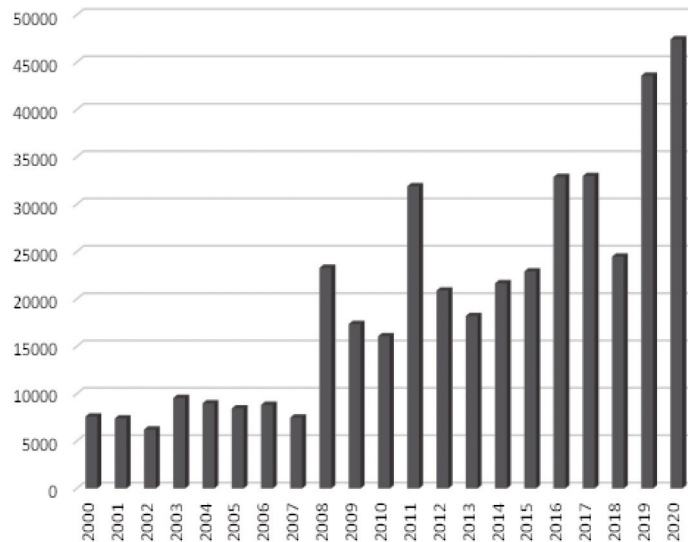
Source: National Police Agency, “Status of Assembly Registration and Convention” (<https://www.data.go.kr/data/15045212/fileData.do>); National Police Agency, “Status of Assembly and Demonstration with Police Mobilization” (<https://www.police.go.kr/www/open/public/public0206.jsp>). Accessed on December 1, 2020.

In 2019, large-scale Gwanghwamun “Taegeukgi rallies” consisting of older conservatives were held several times to protest against Justice Minister Cho Kuk, while the pro-Cho Kuk side held demonstrations in Seocho-dong. The two sides competed with each other in holding rallies, but they were not what caused the drastic increase in assembly and demonstration seen in 2019. According to the National Police Agency’s statistics on the number of assemblies and demonstrations convened by field in 2019, the number of assemblies and demonstrations held in relation to “economic issues” showed the most notable increase compared to the previous year. Specifically, 20,642 of the 22,245 additional assemblies held in 2019 compared to 2018 were about economic issues.

○ COVID-19 quarantine and control measures and the freedom of assembly

From the beginning of 2020, the emergence and spread of the COVID-19 virus considerably limited the freedom of assembly throughout the year. Nevertheless, interestingly, South Korea’s major news agencies reported far more news about assemblies and demonstrations during this year than in the previous year. A search on the number of newspaper articles including the keywords “assembly” or “demonstration” using the news search program BigKinds resulted in a total of 47,413 articles published in the 19 national and business newspapers in 2020, recording the highest frequency since the 2000s (see Figure 2).

Figure 2. Number of articles on assembly and demonstration published by 19 national and business newspapers, 2000-2020



Source: News Search Program BigKinds (Keywords; assembly OR demonstration (in Korean); News agency: 11 national newspapers and 8 business newspapers; Search period: January 1, 2000 – November 30, 2020; Accessed on December 1, 2020).

To find out why newspaper articles on the topic of assembly and demonstration increased significantly in 2020, the keyword association analysis tool provided by BigKinds was used to analyze the major keywords associated with the articles. The results showed that seven out of the ten most highly associated words were related to the restriction of assembly and demonstration as a part of the COVID-19 quarantine and control measures and the rallies held by conservative groups in protest of this restriction of freedom, specifically, “conservative group,” “COVID-19,” “new coronavirus infectious disease,” “drive-through,” “National Police Agency,” “total blockage,” and “Hangul Day.”

This trend in news reports seems to reflect the deep conflict of opinions in South Korean society over the restriction and freedom of assembly in the COVID-19 era. On the one hand, some emphasize the protection of the people’s right to health through the control of infectious diseases, while others argue against this view, saying that the freedom of assembly is a fundamental right that should not be infringed.

The event symbolizing this disagreement was the rally on the National Liberation Day held on August 15, 2020. Conservative groups filed requests to suspend the execution of the Seoul city government’s prohibition of outdoor assemblies, and the Seoul Administrative Court partially approved some of them. However, the actual

demonstration was held on a far larger scale than what was registered and permitted and ultimately contributed to the spread of COVID-19 to incite huge social criticism.

With the prolongation of the COVID-19 situation, contention remains over the justifiable conditions and extent that the freedom of assembly could be limited as a means to curb the spread of infectious diseases. The severe restrictions posed on the expression of political opinions and demands, which are applied not only to conservative groups who wish to hold rallies but also to workers and the lower classes who are facing a serious crisis in their livelihood due to COVID-19, is a reality that requires social deliberation.

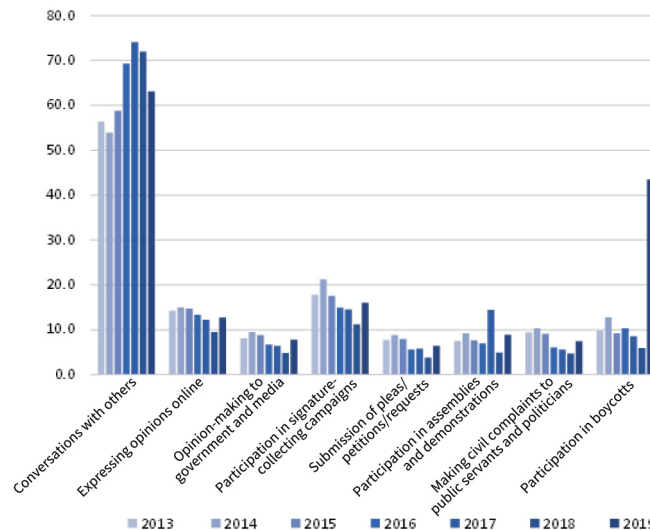
2) Civic participation activities

○ Status of the diverse types of civic participation

In addition to assemblies and demonstrations, there are also many other types of civic participation, including the expression of opinions online, civil complaints, petitions, signature-collecting campaigns, boycotts, and opinion-making to the government and media, etc. Even after analyzing each of these diverse ways of participation, it was possible to confirm that civic participation has become more lively in 2019 compared to the previous year. According to the Korea Social Integration Survey conducted annually by the Korea Institute of Public Administration, the percentage of respondents who had expressed their opinions on political social issues at least once during the year showed a clear difference in 2019 compared to the trends found in the past few years (see Figure 3).

The percentage of respondents who had conversed with others on political and social issues or participated in assemblies and demonstrations was highest in 2017, which is the year when the impeachment of former President Park Geun-hye and the presidential election took place. The percentage of respondents who had participated in assemblies and demonstrations declined in 2018 and then rose significantly in 2019. From 2014 to 2018, the percentage of respondents who had experience in civic participation continued to show a trend of decline for all other channels (expressing opinions online, opinion-making to the government and media, participating in signature-collecting campaigns, submitting pleas/petitions/requests, making civil complaints, participating in boycotts, etc.), but the trend reversed to show an increase in civic participation through all channels from 2019.

Figure 3. Experience in expressing opinions on political and social issues (Unit:%)



Source: Korea Institute of Public Administration, Korea Social Integration Survey.

It is difficult to attribute the changes illustrated above to a single event. The surge in the participation in boycotts seems to be due to the nationwide campaign to boycott Japanese goods held in response to the diplomatic conflicts between South Korea and Japan, while the rise in expressing opinions online or participating in assemblies and demonstrations may be related to heated contention over former Justice Minister Cho Kuk. However, it is unlikely that the increased experience in opinion-making to the government and the media, participating in signature-collecting campaigns, submitting pleas/petitions/requests, and making civil complaints to public servants and politicians are all due to just one or two major issues. In any case, the year 2019 saw an exceptionally active expression of political opinions by citizens on political and social issues.

○ International comparison of civic participation and the effect of COVID-19

This section reviews the evaluations of South Korea's civic participation and participatory democracy in 2020 by internationally-renowned organizations from a global comparative perspective. In the annual Global State of Democracy Indices report issued for 2020 by the International Institute for Democracy and Electoral Assistance (IDEA), South Korea received the lowest score for "participatory engagement." This annual report is comprised of assessments on 1) representative government, 2) fundamental rights, 3) checks on government, 4) impartial administration, and 5) participatory engagement, and the fifth area of participatory engagement is composed

of four indicators – 1) civil society participation, 2) electoral participation, 3) direct democracy, and 4) local democracy.

In 2020, South Korea was assessed to have high levels of democracy in most of the areas, apart from participatory engagement for which the country received a low score for some of the indicators. Specifically, South Korea was evaluated to have high electoral participation and local democracy, which are related to national and local elections, respectively, but only a medium level of civil society participation and low direct democracy. This assessment, more than anything, is attributable to the significant restriction placed on citizens' group activities to suppress the spread of COVID-19.

Since the COVID-19 pandemic has affected all countries worldwide, it is possible to make a global comparison of how South Korea fared compared to other countries. Although South Korea received a very low score of 0.04 for the indicator of direct democracy, almost all countries in the world recorded low scores that are not much different from Korea. However, what is notable is that South Korea received a score of 0.61 for civil society participation, which was considerably lower than most European and North American countries. When comparing to the countries in the East Asian region, this score is the same as Japan (0.61) but lower than Taiwan (0.74)

According to the 7th World Value Survey (2017-2020), South Korean citizens' experience or willingness to participate in political and social issues, such as their interest in politics, communication with the government, donations to various organizations, and participating in peaceful demonstrations, petitions, etc., is not lower than the citizens in other politically-advanced countries. However, it is clear that the activities of civil society organizations were greatly reduced in 2020 amid the COVID-19 pandemic, requiring strategies to prevent healthy civil society organizations from disappearing or the diversity of the civil society ecosystem from weakening as the pandemic drags out.

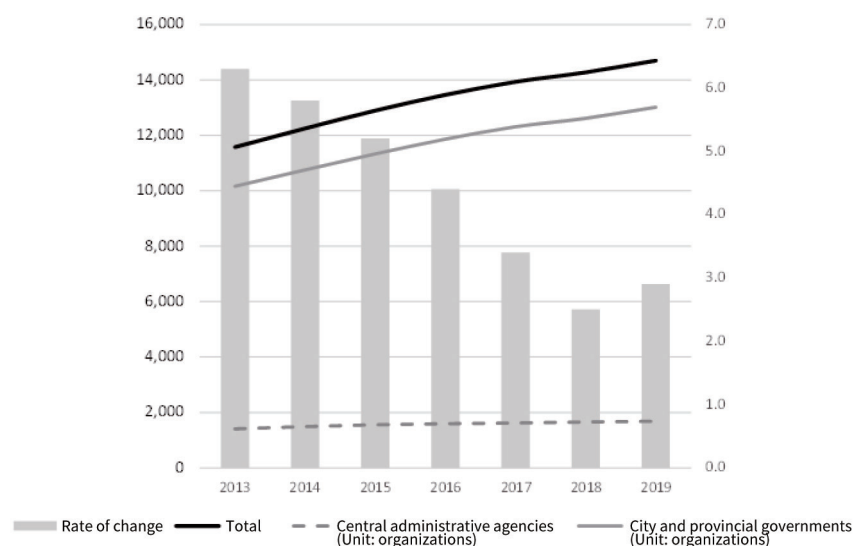
3) Civil society organizations

○ Overall trends in the number of non-profit NGOs

The number of non-profit NGOs once again showed an increase in 2019 by 2.9%p compared to the previous year, continuing the growth trend observed since the 2000s.

Separate from the growth trend in the number of NGOs, the year-on-year increase rate showed a general decline in the 2010s, but in 2019, even the annual increase rate was also higher than the previous year. Meanwhile, while the number of non-profit organizations registered at central administrative agencies remained at the same level, the number of non-profit organizations registered at the city and provincial governments continued to increase in 2019, revealing that the activities of local-based civil society organizations are becoming more important in South Korean society (see Figure 4).

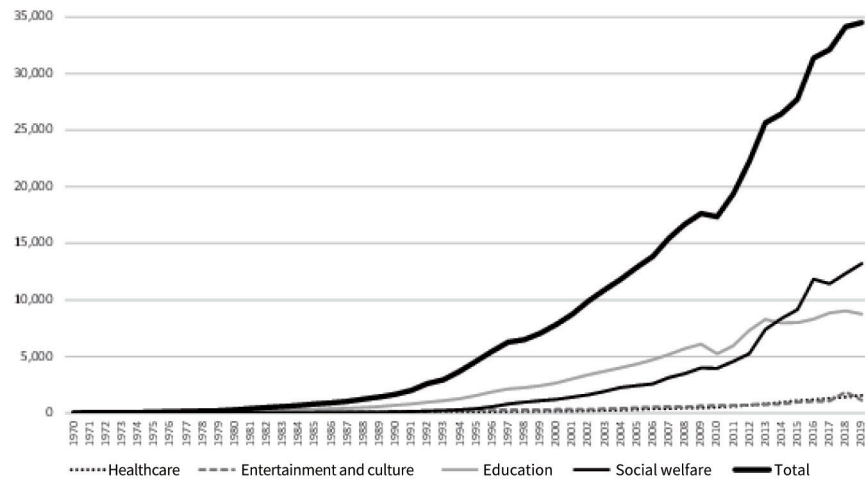
Figure 4. The trend in the number of registered non-profit organizations, 2013-2019



Source: Ministry of the Interior and Safety.

While there was notable quantitative growth in non-profit organizations related to political and economic reform, peace and reunification, and the environment, etc. from the 1990s to the early 2000s, the sector that showed the highest growth from the 2000s was welfare, especially the social services. The number of non-profit institutions serving households (NPISH) that engage in social transfers by providing goods or services to households for free or at economically meaningless prices increased rapidly in the 2000s, and this trend continued in 2019 to record a total final consumption and expenditure of 34.5 trillion Korean won. In particular, the social welfare sector has been showing the most remarkable growth over the past few years, and this pattern continued in 2018-2019 (see Figure 5).

Figure 5. Changes in the final consumption and expenditure of non-profit institutions serving households (NPISH) by area, 1970-2019 (Unit: billion Korean won)



Source: The Bank of Korea, National Accounts

COVID-19 and civil society organizations

According to the survey of 147 non-profit organizations nationwide conducted by The Beautiful Foundation in May 2020 on the impact of COVID-19 and the organizations' current status and expectations of future difficulties, 78% of South Korea's non-profit organizations stopped or reduced their usual programs due to COVID-19 (The Beautiful Foundation Research Project Team, "Survey on the Perceived Impact of COVID-19 on Non-profit Organizations," July 1, 2020). Also, regarding expected future difficulties related to COVID-19, the respondents showed the highest concern in the order of the decrease in donations, decrease in income from reducing programs, delay in subsidy payments, reduction in human resources, reduced ability to make rental and loan payments, and delay in payment of expenses for government-commissioned projects, etc. In particular, the concern that there will be a decrease in donations reached 96.9%, since this problem translates to decreases in the budgets for public interest projects and human resources at non-profit organizations.

It is worthwhile to examine which non-profit organizations have been particularly affected by COVID-19. The survey found that non-profit organizations that 1) have smaller budgets, 2) have budgets coming largely from private funds, 3) are young in terms of the established year, felt more concerned and pressured about future drops in income and growing financial difficulties in the COVID-19 era. That is, small, self-reliant, and start-up organizations are more likely to find themselves facing more hardships over time. As for the support necessary for non-profit organizations to overcome the

COVID-19 crisis, organizations with large budgets and long histories placed the highest priority on stronger support from companies and individuals, but small and new organizations desperately looked toward stronger support from the government and funding organizations (see Table 1).

Table 1. The most urgent support non-profit organizations need in the COVID-19 situation

Years since establishment	Highest priority	Total expenditure in 2019 (KRW)	Highest priority	Rank of respondent	Highest priority
Less than 5 years	Additional financial support from government (71.4%)	Under 100 million	More support from funding organizations, Human resources management support (61.5%)	Frontline staff	Modification of financial management guidelines (64%)
5 to under 10 years	More corporate donations (56.5%) More support for funding organizations (56.5%)	100 million to under 500 million	Private donations (62.9%)	Mid-level supervisor	Technical support, Human resources management support, Additional governmental support (54.4%)
10 years and above	Board of Trustees' provision of emergency response guidelines (61.7%)	500 million and above	Board of Trustees' provision of emergency response directives (85.7%)	CEO	More corporate donations (70.2%)



Summary

The frequency of direct civic participation, such as assemblies and demonstrations, has increased significantly in recent years, and the number of large-scale assemblies that mobilized the police force has also been on the rise. However, illegal and violent demonstrations and the number of police injuries during those demonstrations have decreased significantly in the same period. This trend shows that, regardless of the characteristics of participants and their issues and demands, the culture of holding legal and non-violent assemblies and demonstrations is taking root. However, in 2020, the central and local governments have strongly restricted the convention of groups to suppress the spread of COVID-19, which came into conflict with citizens who emphasize the fundamental freedom of assembly.

Demands are being made by not only the conservatives but also various civil society organizations, including labor associations, youth groups, and disabled people's organizations, to guarantee the freedom of assembly as much as possible within the boundaries required to prevent the spread of COVID-19. As such, there is an urgent need to find an alternative solution that will guarantee both public health and the freedom of assembly.

Over the recent years, there has been increased frequency of direct collective actions such as assembly and demonstration as well as more active expressions of political opinions by citizens through other channels, including the expression of opinions online, submission of pleas/petitions/requests, participation in signature-collecting campaigns and boycotts, opinion-making to the government and media, etc. The overall growth in civic participation seems to have been caused by various factors, including the controversy surrounding former Justice Minister Cho Kuk and the large-scale boycott of Japanese products in the context of worsening Korea-Japan relations in 2019, however, it is difficult to specify the reason behind the rise in civic participation through diverse channels. Citizens have been more active in voicing their political opinions in general, and what is needed now is for South Korean society to make efforts toward ensuring that such activism embodies democratic tolerance, moderation, and awareness of the public good.

Meanwhile, in terms of civil society organizations, the growth trend in the number of non-profit NGOs observed since the 2000s has continued in recent years as well. In particular, non-profit organizations registered at the city and province levels have been leading the overall quantitative growth. Moreover, although the rate of increase in the number of non-profit organizations has been gradually declining in the 2010s, in 2020, even the annual increase rate became higher than previous years. Also, the goods and services supplied by NPISH free of cost or for marginal fees also increased significantly in recent years.

The COVID-19 pandemic has been negatively impacting civil society organizations as a whole in 2020. Many organizations have had to suspend or reduce their usual programs. Especially for non-profit organizations that have smaller budgets, rely mainly on private funding, or were recently established, there is increasing concern that the prolongation of the COVID-19 situation will bring further difficulties in their program operation and financial conditions.

Given that an abundant civil society is a prerequisite for a healthy democracy, more attention should be given to the difficulties faced by civil society in the governmental and societal discussions over COVID-19 responses. Above all, more support should be given to small local organizations in the form of public funds and by funding organizations. At the same time, strategies should be sought to prevent these organizations from becoming too dependent on government funding.

2020 Korean Democracy Annual Report

Media Democracy

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Assessment Criteria and Items

For democracy to function properly, citizens need to foster their ability to exercise their powers as sovereigns. Even if there is a formal consolidation of democracy, the democratic system is only completed when those holding sovereign powers – the citizens – properly exercise his/her authority. For citizens to properly exercise their powers, they must have access to accurate information and a variety of perspectives and opinions. This is why media democracy is the basis of democracy in a society.

The freedom of the media or press is important because, for the media to function properly as a democratic mechanism, it must not be dominated by or respond to certain powers. Journalism must not only be free from the influence of the government and other political powers but also from the power of large capital. In particular, the influence of capital on journalism has been found to grow as political and social democratization progresses. In general, increased freedom of the press leads to an increase in the trust in the media, that is, freedom and credibility of the press are linked together. This is because freedom in the press makes it more likely for the press to perform its original function of monitoring the various powers in action in society. However, this is not necessarily always the case. The credibility of the media may fall if the media becomes a power itself through partisanship or focuses on commercial activities. South Korean society is an example of such phenomena, showing a peculiar pattern in which the freedom and credibility of the press are not proportional. However, if the sovereign citizens do not trust the press, the press cannot function properly as a democratic mechanism to result in the regression of social and political democracy. The weakened ability of the press to convey the truth could lead to the domination of social prejudice. The polarization of South Korean society due to “confirmation bias” and “filter bubbles” and the disappearance of democratic communication are closely related to the decline of trust in the media.

Thus, it is possible to set “press freedom” and “trust in the media” as the indicators for measuring the level of democracy in the media. This chapter will look at various indicators representing the freedom and credibility of the South Korean media and present cases that illustrate the current status to examine the reasons lying in the background.



Detailed Assessment of Items

1) Freedom of the press

Freedom of the press can be divided into external freedom and internal freedom. External freedom refers to the absence of undue pressures from political powers and other third parties. The press's external freedom could be constricted by the influence of political powers, including public broadcasts, or large capital, such as advertisers. The political regime could intervene in the appointment of public broadcasting (press) executives, through whom it could exert influence on the contents of reports and programs. Meanwhile, executives of public media dominated by political power, large shareholders owning the press and the management appointed by them, and press executives seeking to maximize profits could interfere with the pursuit of truth by journalists in the field for their respective purposes. Therefore, the press needs to be guaranteed not only freedom from external pressures but also freedom from pressures within the organization, which is called internal freedom.

○ External freedom

1) Freedom from political power

Many organizations worldwide publish indices on the freedom of the press. South Korean scholars have most often cited the Freedom in the World Index published by the Freedom House, while the Press Freedom Index published by the Reporters Without Borders has been gaining increasing attention recently.²⁹⁾

Freedom House gave South Korea 3 points on a scale of 4 for 2020 for the existence of free and independent media categorized under “Freedom of Expression and Belief.”³⁰⁾ South Korean press was assessed as having the freedom to point out the problems in government policies or the government itself. However, since the Criminal Act includes provisions on charges of defamation that can result in a sentence of up to 7 years in prison, it was pointed out that South Korea has an institutional problem that can cause ‘self-censorship.’ Also, it was noted that there were some cases where reporters of major media agencies were pressured by the management or the government. The South Korean government’s persistent declarations that it will actively deal with “fake news” was also assessed as a point of concern.

29) The data used by Freedom House and Reporters Without Borders were released in 2020, but the assessments are for 2019. Their assessments on the status of freedom in 2020 have not yet been released. It is still worthwhile to use their indices as a reference for understanding the situation of the press in 2020.

30) <https://freedomhouse.org/country/south-korea/freedom-world/2020>

First of all, it is important to take note of the point made by Freedom House that, although freedom of the press is generally guaranteed in South Korea, there are laws that could potentially infringe the freedom of speech, such as the provisions on defamation and the National Security Act. The Moon Jae-in administration deserves criticism for not discussing the abolition of the law punishing persons who defame public officials or at least Article 7 of the National Security Act, if not the entire Act itself.³¹⁾ The concern over the South Korean government's pressuring of reporters refers to the ruling Democratic Party's issue-raising over a Bloomberg reporter's article calling President Moon "Kim Jong Un's Top Spokesman at UN" and the statements released by the foreign press regarding this issue. However, paradoxically, that the foreign press club released a strong statement against the Moon Jae-in government's criticism of the expression used by reporter Lee Youkyung may evidence the greater freedom of speech and the press compared to the previous Park Geun-hye administration, during which the foreign press club more cautiously expressed their concerns in the form of a letter regarding the travel ban placed on Tatsuya Kato, Seoul bureau chief of Japan's Sankei Shimbun. Rather, despite the lack of a legal basis, the South Korean government's repeated mention of punishing the creation and distribution of fake news and ensuing legislative debates seem a more persuasive point of concern in terms of the potential violation of press freedom (and freedom of speech). In 2020, assemblyman Chung Cheong-rae, etc., proposed a bill to partially amend the Act on Press Arbitration and Remedies, etc. for Damage caused by Press Reports by including the so-called "punitive compensation system," which will allow the court to determine the compensation for damages up to three times the actual amount of damage for 'malicious' infringements of personal rights.³²⁾ A more appropriate countermeasure for fake news that respects the value of press freedom would be to strengthen fact checks or build a more trustworthy press, rather than legislating laws that could raise various contentions from defining the concept of fake news to the effectiveness of any such law.

Table 1. World Press Freedom Index (Reporters Without Borders, out of 180 countries surveyed)

Year	2013	2014	2015	2016	2017	2018	2019	2020
Ranking	50	57	60	70	63	43	41	42

<https://rsf.org/en/south-korea>

31) Freedom House, while giving South Korea 4 out of 4 points in terms of individual freedom of expression without fear or unlawful interference, expressed concerns over the existence of the National Security Act, which could punish favorable comments about North Korea. Although the law was not enforced by the current administration, the concern is that the law could be abused if a regime that is hostile to North Korea comes into power.

32) https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_L2C0R0U6B0K9L1J4V4U4D2F7S5Y5C1

Meanwhile, in the World Press Freedom Index published by Reporters Without Borders, South Korea fell one rank from 41 in 2019 to 42 in 2020. It is difficult to endow much meaning to this one rank difference. However, as could be seen in Table 1, it is meaningful that South Korea's ranking, which has been steadily falling since 2013, rose sharply since the Moon Jae-in administration and continues to maintain its position. Obviously, the freedom of the press has been expanded compared to the previous regime. The Reporters Without Borders praised the Moon Jae-in administration for ending the conflicts in public broadcasting stations (KBS and MBC) caused by previous governments' suppression of the media over the past decade and reinstating the reporters who have been fired from the public broadcasters. Nevertheless, it was pointed out that no institutional changes have been made to the executives' appointment system in the direction that guarantees the independence of public broadcasting. In addition, the Reporters Without Borders also pointed out the defamation law, which could sentence the accused to up to 7 years in prison, and the National Security Law, which prohibits expressions in favor of North Korea, are problematic, similarly to the Freedom House. Overall, the Reporters Without Borders assessed that the Moon Jae-in administration is more democratic than the previous administration, including the guarantee of press freedom, but clearly underscores the lack of efforts shown towards reforming the institutional and legal systems that may potentially infringe on press freedom.

Under the Moon Jae-in administration, there no longer existed interventions of public broadcasting in the form of government-appointed executives. Both KBS and MBC elected their presidents through public verification processes, such as public presidential debates. In the case of KBS, citizen advisors participated in the public presidential debate, which was held twice, and posed questions and evaluated the candidates. These processes essentially blocked the possibility of government interventions. In 2020 also, the president of MBC was elected through a public verification process (e.g., public presidential debate). However, the Reporters Without Borders pointed out again in 2020 that these processes were not institutionalized. A proposal for reforming the system for electing the presidents of public broadcasting stations had already been submitted in the 20th National Assembly by Lee Jae-jung, etc.,³³⁾ but the bill was discarded without even being discussed before the 20th National Assembly's end of term.

33) http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_S1T8E0D4L0W5X1Q4V2X0A5G9E2H8W3

There have not been any proposals made under the current government to improve the public broadcasters' executives' appointment system. It is for this reason that potential future risks continue to be reflected in the evaluations of press freedom.

In response to the government's lukewarm attitude, the civil society formed the Media Reform Citizens' Network (Media Citizen Net) in 2019 to push for the government's media reform. Their demand is for the government to form an agency for media innovation, which was one of the pledges made by President Moon Jae-in during the presidential election, so as to implement media reforms that strengthen the media's role as a public good through social dialogues. Media Citizen Net was launched as a coalition of 28 civic groups (later 31 civic groups) on July 23, 2019, after meetings and discussions following the proposal of the Citizens' Coalition for Democratic Media (CCDM), a civic media movement group, at a meeting of the Broadcast Independence Citizen Act. Media Citizen Net formed a policy committee, which is composed of the Citizen/User Division, Content Division, Platform Network Division, Policy Body System Division, and Media Labor Subdivision, and released its final report on October 12, 2020.³⁴⁾ Media Citizen Net proposed a concept of citizen communication rights that moves beyond the existing concept of public good and places greater emphasis on the initiative of citizens and comprehensively suggested solutions for the issues related to the media from viewpoint of sovereign citizens. Above all, Media Citizen Net urged the government to establish a Media Reform Committee (tentative name), which will act as the body for social dialogues, through which proposals for media reform could be drawn up for implementation. However, while the government and the ruling Democratic Party talked about establishing a task force team for media innovation, few actions have been made towards this end. The government's lukewarm attitude toward establishing systems for securing press independence, such as the executives' appointment system for public broadcasters, and also toward establishing a body for social dialogues that could lead the formation of social consensus on the major issues surrounding media democracy, such as freedom from capital powers, internal freedom, and building more trust in press (which will be explained below) is very unfortunate from the perspective of media democracy. The concerns of the Freedom House and Reporters Without Borders about the lack of institutional measures in their assessments of South Korea's press freedom stems from this lukewarm attitude of the government.

34) Media Reform Citizens' Network, Media Policy Report for Reinforcing Citizens' Communication Rights, 2020.

2) Freedom from capital

During the Lee Myung-bak and Park Geun-hye administrations, the focus was placed on the political aspects of press freedom due to the interference of political powers in the media. As a result, the press missed the opportunity to respond to the changes in the media environment. Most of the media agencies in South Korea, whose finances are mainly based on advertisements, have lost their competitiveness and become a declining industry due to the shift to mobile platforms and the emergence of powerful global media, such as YouTube, various social networking services (SNS), and Netflix. Consequently, traditional media have become vulnerable to giant capital. A representative example is the issue of sponsorship and liaised programming. The business log entries of an MBN Marketing Department employee, which became known through an article in the Sunday Journal published in the United States in 2015 called “Ugly Back Transactions Revealed by the Leakage of X-Files on the Composite Cable Channel Advertising Industry” was shocking. The entries showed that sponsorship contracts for advertiser and product exposure in programs included not only the first broadcast but also re-runs. Sponsored programs expose the sponsors and their products on TV in exchange for providing goods necessary for production, so, customarily, such sponsorships are not applied to re-runs, only program advertisements. However, it was revealed that sponsorship transactions were made for re-runs also, because the purpose of those sponsorships was not the exposure in the programs but to promote the sales of sponsored products on home shopping channels during or before and after they were introduced in the programs. In other words, TV programs are used to boost sales on home shopping channels, and program re-runs were scheduled to fall in the same time slots as the product sales on home shopping channels. Moreover, the business log entries showed that even news programs were used to promote sponsored products. That is, news reports were abused for advertising sales. MBN privatized journalism, which is supposed to perform a public function. The business log entries further detailed how reporters went out to bring in advertisements and the pressure from advertisers, etc.

Considering the contents of the business log revealed in 2015, the Korea Communications Commission, which is South Korea’s regulatory body for broadcasting contents, could have canceled MBN’s business permit for deceiving their audience (the consumers) by broadcasting programs that advertise products as if they are general programs and for privatizing journalism by using news reports for advertisements. If it was difficult to revoke MBN’s business permit, the Commission should have at least canceled MBN Media Lab’s business permit, instead of MBN, for their deceitful

actions. However, the Korea Communications Commission only decided to impose a small penalty on MBN Media Lab. The soft-handed measures caused this kind of underhanded advertisement sales attempted by composite cable channels to spread to terrestrial television channels, rather than putting it to a stop. During the Moon Jae-in administration, the Korea Communications Commission realized the severity of this problem after monitoring the broadcasting of liaised programs. As a result, the Commission demanded the programs that dealt with sponsored health-related products to clearly notify the audience of the sponsorship as a condition for renewing business permits to composite cable channel companies in 2020. It turned out that the health information programs on composite cable channels, which were now obligated to notify the audience about sponsorships, were mostly filled with sponsored products. Broadcasting in 2020 has become vulnerable to economic factors, that is, the pressure from advertisers. There may be differences in the degree of vulnerability, but terrestrial television channels are no exception. According to a survey on liaised programming conducted by the Korea Communications Commission for three months from November 2019 to January 2020, liaised programs were broadcasted even more often on SBS (127 times) and MBC (49 times) than Channel A (25 times) and JTBC (37 times).³⁵⁾ Now, people in broadcasting even argue that authorities should take into consideration the recession in the broadcasting industry to some extent, rather than try to regulate liaised programming. This trend evidences the increasing pressures from economic powers faced by the media, although the pressures from political powers have been lifted.

Television programs are not the only area in the media with this problem. Newspapers are also mostly dependent on advertising revenue and have been giving up their journalistic function to increase revenue. At the time of the Youtubers' back advertisement controversy, when it became known that famous YouTubers used and evaluated sponsored products as if they bought the products themselves or without notifying the audience that they were sponsored, newspapers remained surprisingly quiet. This is because newspapers are no exception to such behavior. Readers have now become used to article-type advertisements, that is, articles that are actually advertisements but published as if they are news articles. Still, legally, newspapers are required to place a clear notice that those articles are advertisements (this provision was abolished during the Lee Myung-bak administration in 2009). A more serious concern is the articles that play the role of advertisements. These articles are not advertisements

35) <http://www.mediatoday.co.kr/news/articleView.html?idxno=209438>

but actual articles, with the reporter's name printed at the end of the article. However, they are actually written to advertise products. If reporters faithfully summarized corporate press releases and wrote up articles in the past, these days, companies put out press releases that are written up in the form of articles for the convenience of reporters, and newspapers simply publish them on their pages and websites as articles. Sometimes, the name of the person working at the company issuing the press release is given where the reporter's name should be. This kind of article is obviously a scam. In 2018, Hankyoreh reporter Jo Yoon-young released an interview to news agencies, pretending to be a CEO of a company.³⁶⁾ This interview was posted on the websites and portals of daily newspapers and their subsidiaries. In this way, PR companies promoted products, and the newspaper lent them their space. This system remains intact in 2020. Also, as MBC's investigative program Straight revealed, short promotional articles are produced to push out unfavorable articles from the Internet search rankings.³⁷⁾

The reality of the press is that the press is inevitably weak against the pressures of capital, which ultimately undermines its freedom. This is also a factor that lowers the credibility of the press, which will be discussed below.

○ Internal freedom

Guaranteeing the freedom of the press involves not only freedom from external pressures but also undue pressures from within. External pressure does not manifest directly on on-site reporters or producers but through management and executives. Also, even if there is no external pressure, executives or other high-ranked managers within the organization could exert their powers to distort media reports. These pressures may stop articles criticizing media owners or their companies from getting published or coerce the production of articles that are in the interests of the owners. Therefore, there needs an institutional device that can block the channels of external pressures or allow journalists in the field to reject unjust demands from their organizations or affiliations. Here, the institutional device could be systems such as editorial rights or autonomy in programming.

For newspapers, there exists a legal provision on independent editorial rights, but

36) http://h21.hani.co.kr/arti/cover/cover_general/46327.html

37) MBC Straight, Episode 92, Stories from behind the stage of investigative journalism (<https://www.youtube.com/watch?v=mG7Exj0065o>).

since it is an optional clause, its effect is limited. The Act on the Freedom of Newspapers, etc. and Guarantee of Their Functions, which was enacted during the Roh Moo-hyun administration, originally contained provisions stipulating the establishment of editorial codes and conventions and an editorial board, but the provisions were changed to recommendations due to the opposition from the Grand National Party, the opposition party at the time. Therefore, the degree of internal freedom guaranteed for newspapers varies depending on the media agency. Each newspaper agency has implemented different devices for appointing the chief editor – the Hankyoreh appoints the editor-in-chief through an election, while other newspaper agencies make the appointment based on internal consensus. In the majority of newspaper agencies, the chief editor is appointed by the president of the company. Also, even though editorial boards exist, most of them do not perform their proper functions. Thus, the internal freedom of the press at South Korean newspaper agencies is very low. This reality, combined with the tendency of newspapers to become a medium that operates according to the media owner's management direction, journalists have little guarantee of internal freedom. The failure to establish the practice of guaranteeing the journalists' internal freedom or a system to compensate or supplement the situation during the development of newspapers led to an intensification of political bias in newspaper reports, resulting in lowering the trust in the press.

The institutional devices for internal press freedom are relatively better established for television broadcasting than newspapers. The Broadcasting Act, which defines the freedom and independence of broadcast programming, stipulates that “the freedom and independence of broadcast programming shall be guaranteed” (Article 4, Paragraph 1) and that “A broadcasting business entity engaged in general programming or specialized programming of news reports shall, in order to guarantee an autonomy in the production of broadcast programs, institute a covenant on broadcast programming, reflecting the opinions of the persons engaged in data collection and production, and shall publicly announce it” (Article 4, Paragraph 4). In addition, Article 106, Paragraph 1 of the Broadcasting Act stipulates that “a person who fails to establish or publicly announce a covenant on broadcast programming, in violation of Article 4 (4)” shall be subject to imprisonment for not more than one year, or by a fine not exceeding thirty million won, thereby enforcing a system for guaranteeing the internal freedom of the press. However, as could be seen from the regulations, the provisions require broadcasting business entities to reflect the opinions of the people in broadcasting when instituting codes and conventions guaranteeing the autonomy of broadcast programs but do not delineate specific plans to ensure the effectiveness of those codes and conventions. Therefore,

despite the institutional devices implemented for television broadcasting, the degree of internal freedom is dependent on the circumstances at each company. Broadcasters such as KBS, MBC, EBS, SBS, YTN, etc., introduced executives' appointment systems based on consensus to their news report and production departments, and KBS and MBC further instituted specific mechanisms to ensure their internal freedom, such as programming rules agreed upon by internal members. However, the mechanisms at other broadcasters could be viewed as being merely a formality. Therefore, although there is some difference in degree, the guarantee of internal freedom remains at a low level in the broadcasting area as well.

Stronger institutional arrangements are required to further guarantee the internal freedom of the press. The composition and specific functions of programming committees consisting of an equal number of representatives from the labor and management sides to guarantee the independence of programming rights, as well as mechanisms for distributing power, such as elections and consensus systems for appointing directors and executives and an interim evaluation system, etc., should be clearly defined by law. As mentioned above, such institutional changes could be derived from discussions on media reform for guaranteeing the function of media as a public good or the sovereignty of citizens, but the current government has yet to begin concrete discussions or other activities to bring about these changes up to 2020.

A notable incident related to the guarantee of inner freedom is the conflict between Hoban Construction Company, which is the third-largest shareholder of the Seoul Shinmun, and Seoul Shinmun's staff. On June 25, 2019, Hoban Construction purchased all the shares of the Seoul Shinmun owned by POSCO (19.4%) and became the third-largest shareholder. The largest shareholders of Seoul Shinmun were the Ministry of Strategy and Finance (30.49%), employee stock ownership (29.01%), and POSCO. Employees of Seoul Shinmun felt alarmed that the company's stocks were being purchased by a private construction company and ran a campaign to buy more than 1.5% of company stocks so that employee stock ownership could become the number one shareholder. The conflict between Hoban Construction and Seoul Shinmun's Employee Stock Ownership Union came to an end on February 20, 2020, through the exchange of a memorandum of understanding stating that Hoban Construction will strive to sell its shares in the Seoul Shinmun while refraining from acquiring additional shares without the consent of the Employee Stock Ownership Union.³⁸⁾ The vigilant

38) <http://www.journalist.or.kr/news/article.html?no=47244>

reaction of the Seoul Shinmun employees over the acquirement of company shares by Hoban Construction, who is already the largest shareholder of Kwangju Broadcasting Corporation, came from the awareness of how construction companies actively entered the local media to use it as a shield for their parent companies, as well as the concern that Hoban Construction may have become a major shareholder of Seoul Shinmun to use the company's real estate, only to sell off its shares afterward. However, at a time when the media world responded sensitively to acquisitions of media agencies' stocks by private companies, there arose a rumor that the Ministry of Strategy and Finance was going to sell the shares of YTN held by public companies and the Ministry's shares of Seoul Shinmun to the private sector in July. In October, the Minister of Strategy and Finance Hong Nam-ki stated at the National Assembly that the YTN shares held by public companies (Korea Electric Power Corporation KDN and Korea Racing Authority) will not be sold, but that the Ministry's Seoul Shinmun stocks will be sold. That is, the Ministry denied the intention to sell YTN shares due to the growing opposition from employees, but it intended to sell the "government" shares in Seoul Shinmun using the justification that it was inappropriate for the government to hold shares in a newspaper. However, the entities that will end up purchasing the government's shares are inevitably private companies, and if a private company becomes the largest shareholder, then it will just be a repetition of the Hoban Construction situation. It is clear which action will further undermine the Seoul Shinmun's independence – the government retaining its shares in the newspaper without intervening in the newspaper's activities, or selling the shares to a private company. The suspicions over the government's intentions became amplified when the government showed a lukewarm attitude to the Seoul Shinmun Employee Stock Ownership Union's proposal to take over the shares held by the government.

Considering the above, the government's will to guarantee the internal freedom of the press could not but receive a low evaluation.

2) Trust in the media

Trust in the media is generally thought to be proportional to the freedom of the press because guaranteeing the freedom of the press creates conditions for the press to perform its true functions better, which is expected to increase the people's trust in the media. The audience's active consumption of the media based on this trust leads to a higher likelihood that the press will function as a mechanism of democracy. This is why we look at the trust in the media as an indicator of media democracy.

However, in 2019, although South Korea's ranking for press freedom rose, the trust in the press was given the lowest rank among the surveyed countries. According to Media Today's article, the status is the same in 2020.³⁹⁾ There was no significant change in South Korea's ranking for freedom of the press assessed by Freedom House, while the trust in the press was once again ranked 40th out of 40 countries as shown in Table 2.

Table 2. South Korea's ranking for media credibility
(The Reuters Institute for the Study of Journalism at the University of Oxford)

Year	2013	2014	2015	2016	2017
Ranking	25 out of 26	36 out of 36	38 out of 38	38 out of 38	40 out of 40

As pointed out in 2019, the naked truth is that South Korean media has become excessively commercialized. In 2020, articles that try to lure viewers by wordings such as "exclusive" and "inside scoop" have not shown signs of decrease, and as mentioned above, article-type advertisements and promotional articles continue to be a common feature. It is difficult to expect audiences to trust the media when they have seen how the exposure of biased programming on composite cable channels has not stopped such behavior but rather led to the infiltration of biased programming on terrestrial television. This problem can only be solved by creating a market where reliable media and press producing quality content are chosen by consumers. It is necessary to build a structure that allows public television and press, which have stable financial resources, or press agencies whose competitiveness comes from their reputation could lead the market with high-quality content. The media and press must be able to act as a mechanism for democracy based on the audience's trust.

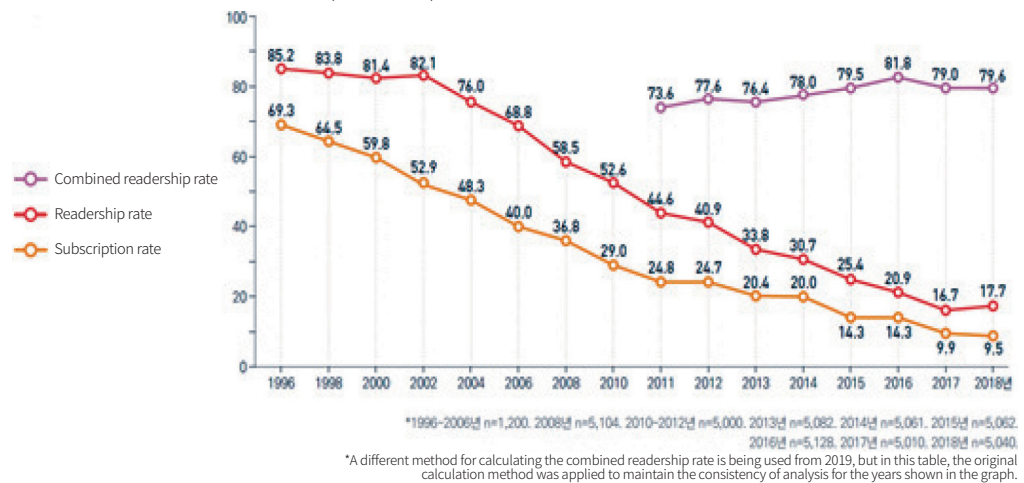
However, as illustrated, the reality is that public television and press have failed to respond to market changes due to political conflicts, or newspapers have lost credibility by becoming partisan. Neither has the ability to lead the market. The reality of South Korean newspapers is especially bleak.⁴⁰⁾ As shown in Figure 1, the household newspaper subscription rate fell to 9.5% in 2018. In 2019, this rate declined further to 6.4%.⁴¹⁾ Of course, it cannot be denied that the changes in the media environment are also at play here. However, the sharp drop in the subscription rate, compared to Western countries, is not irrelevant to the decline in the credibility of South Korean newspapers.

39) <http://www.mediatoday.co.kr/news/articleView.html?idxno=210122>

40) Korea Press Foundation, Korea Press Yearbook 2019, 2019.

41) Korea Press Foundation, 2019 Media Audience Awareness Survey, 2019.

Figure 1. The trends in the subscription, readership, and combined readership rates of paper newspapers (1996-2018) - Korea Press Yearbook 2019



Source: Korea Press Foundation (2018), 2018 Media Audience Awareness Survey, pp. 67

Therefore, for South Korean newspapers to perform their innate function as press, they must be provided with the conditions to survive in the market. Among the various types of media, newspapers specialize in producing and distributing news reports, so the potential newspapers have as a mechanism for democracy cannot be ignored. The European Union and its member countries gather every year to discuss the policy for supporting newspapers because they recognize the importance of newspapers as a democratic mechanism. However, considering the decline in the trust in South Korean newspapers, any policy for supporting newspapers should be specifically aimed at “restoring journalism,” as any support that does not contribute to the restoration of the trust in newspapers would only maintain the scanty existence of the newspaper industry. However, despite the need for policies geared toward restoring the journalism of newspapers, the current government has not shown any efforts toward media reform as illustrated above. South Korea’s media democracy is in stagnation.

It is also important to restore the credibility of terrestrial and composite cable television, as well as broadcasters that specialize in news reports. Under the control of the Lee Myung-bak and Park Geun-hye governments, the trust in terrestrial public broadcasters fell sharply. KBS, which used to exert the largest influence in terms of credibility during the Roh Moo-hyun administration, was pushed out of the rankings during the Park Geun-hye administration. The fact that KBS recovered its credibility to hold second place in 2020⁴²⁾ shows that the political environment surrounding public media agencies has been restored from the perspective of democracy. Specifically, the lifting of governmental interventions brought a higher trust in public broadcasting.

Despite such changes, however, Koreans continue to hold very little trust in the media and press, as could be seen from the survey by the Reuters Institute for the Study of Journalism. Low credibility is a crisis in the press and a crisis in democracy. From a media democracy viewpoint, restoring media credibility is a very important task.

The reason why the overall trust in the press remains low even though some media agencies have recovered their credibility is that there are too many others that are partisan and unjust. The existence of such media and press has caused citizens to continue their distrust in the media as a whole. Channel A reporter Lee Dong-jae's prisoner blackmailing incident, which first became known through a report broadcasted by MBC on March 31, 2020, is a representative case that lowered the trust in the press. Lee was charged with allegations of blackmail and brought to trial after making a show of how close he is with a high-ranking official in the prosecution and hinting to the imprisoned former CEO of Value Investment Korea (VIK) that his prison sentence and charges against his family could change depending on how much he cooperates to the interview. Whether the allegations are true will be revealed through the trial, but this incident raised suspicions about how a reporter may have engaged in investigative journalism for the benefit of certain political factions and served as a basis for confirming the need to distrust partisan media.

The root cause behind the low trust in the media is the media's unjust behavior, but the lukewarm attitude of regulators, failing to respond properly to such behavior of the media, contributed to the fall in credibility as well. The amendments to the Broadcasting Act, which were legislated without proper discussions at the National Assembly during the Lee Myung-bak government, paved the path for large newspapers to enter the broadcasting market. As a result, composite cable television channels were born, whose major shareholders were Chosun Ilbo, JoongAng Ilbo, Dong-A Ilbo, and Maeil Economic Daily. These composite cable broadcasters were criticized for being politically biased and for lowering the quality of the television programs. For instance, TV Chosun was criticized for not only its biased news reports, but also for the unfiltered expressions, partisanship, and incorrect news shown on lengthy daily current affairs programs that lowered the quality of broadcasting. For this reason, TV Chosun received an overall failing score in the re-approval review for renewing its broadcasting business permit in the 2017 and a failing score in the public responsibility category in the re-approval

42) <http://www.mediatoday.co.kr/news/articleView.html?idxno=210802> In the annual Media Awards held by the Media & Future Institute, JTBC ranked 1st and KBS 2nd in the credibility category. The media rankings of the Media Awards are based on a survey conducted on professors and researchers in media-related fields. In 2020, the survey was completed by 369 respondents.

review in 2020. TV Chosun's broadcasting business permit should have been revoked in 2017, but the commissioners of the Korea Communications Commission appointed by the Park Geun-hye government decided to renew TV Chosun's permit on a conditional basis. The current Korea Communications Commission, which was formed under the Moon Jae-in administration, had stated that broadcasting business permits may be revoked if broadcasters receive failing scores in major categories, such as public responsibility, in the re-approval review in 2020. However, the Korea Communications Commission decided to renew TV Chosun's permit on a conditional basis, using reasons that the conditions are stronger than those imposed in 2017. In other words, the Korea Communications Commission chose not to exercise the authority it is granted by law and renewed the permit of a broadcaster that was deemed dysfunctional by the review committee twice. By retaining a broadcaster that is not trusted by the audience, the Korea Communications Commission exacerbated the distrust in the media.

TV Chosun is not the only case of this kind. MBN was not ousted after the aforementioned MBN business log leak incident, and even in 2020, despite the discovery of a sufficient reason to invalidate the initial business permit given to MBN, the broadcaster's permit was not revoked. At the time of the initial permit, MBN had difficulties pulling together the required capital, so it borrowed 60 billion Korean won in the name of the company and borrowed the name of an employee to set up stocks, whose certificates were, of course, kept in the company safe. These facts were confirmed in court trials and meant that MBN had interfered with the execution of official duties through misinformation, which is a sufficient reason for invalidating the initial permit. Nevertheless, the Korea Communications Commission only took an administrative disciplinary action and suspended MBN's business for six months after a six-month grace period. MBN filed an administrative lawsuit to cancel the disciplinary action during the six-month grace period it was granted, thereby opening the possibility of virtually canceling the business suspension. Moreover, in the subsequent re-approval review, MBN received a failing score of 640.5, but the Korea Communications Commission decided to conditionally re-approve MBN's permit anyway. In fact, MBN was given a conditional re-approval in 2017 as well, after receiving a failing score of 625.13 in the re-approval review.

The Korea Communications Commission helped to accelerate the distrust in the media and the dismissal of the press by creating a reality where unqualified broadcasters continued their businesses despite mounting complaints from citizens. Media regulators need to recognize that the decline in media credibility stems not only from the mistakes of the media but their failure to improve the media environment.



Summary

As with all phenomena, the indicators of South Korea's media democracy do not all move in the same direction. Like 2019, political powers did not directly intervene in the media in 2020, which is a positive sign from a media democracy perspective. However, since the freedom of the press from governmental pressures is not guaranteed systematically, external governmental pressures remain as a future risk factor. Moreover, South Korean media is becoming increasingly vulnerable to capital. Although this vulnerability to capital is inevitable in some aspects due to changes in the media environment, the government's neglect or even encouragement of large capital's media involvement deserves criticism. The Ministry of Strategy and Finance selling its shares in the Seoul Shinmun and the rumors that it will sell the shares of YTN held by public corporations is a case of irresponsible behavior that overlook the dangers of large capital gaining control over the media.

Partisan and commercial media lowered the credibility of the press despite the expansion of press freedom. The government should consider and strive to institutionalize the conditions which could help reliable media agencies to survive, but the current government has yet to come up with a comprehensive media policy. The few policies suggested by the government related to the media industry did not include any considerations of the media's function as a democratic mechanism.

Civil society and the academia formed the Media Citizen Net to examine the agendas for media reform and presented the main agendas and their possible solutions in a report. In doing so, Media Citizen Net presented a concept of citizens' communication rights that places citizens as the actors, as opposed to beneficiaries, of the media reform, moving beyond the existing concept of media as a public good in business-centered discussions. Their demand is for media reform to be centered on citizens and also for the government and the political sphere to establish a body that will lead the social dialogues on media reform. However, the government and the ruling party, who are responsible for establishing this body for social dialogues, has shown lukewarm response, even though President Moon had pledged to create a similar body during the presidential election. The current government receives a positive assessment in its guarantee of press freedom, but its lukewarm attitude in pursuing reforms to help the media and press to overcome the growing influence of capital and the serious fall in media credibility warrants a negative evaluation. Even if media democracy has improved compared to the previous governments, it is still insufficient.

2020 Korean Democracy Annual Report

Social Equality and Democracy: Labor Issues

Kim Keun-Ju | Korea Labor Institute



Assessment Criteria and Items

1) Assessment Criteria

Under the political system of democracy, labor relations have evolved through politics, through which institutions that ensure democracy in labor issues were established. Unlike the European countries that have already implemented this virtuous cycle, in South Korea, with its long-term dictatorship experience, labor relations have mainly been centralized, that is, controlled based on laws established by the ruling power.

Against this background, the government's labor policies become an important measure of democracy in labor. The assessment of the government's labor policy from the point of view of democracy must be conducted comprehensively to examine the alignment of the intention behind the regulations and systems with democratic order and the adherence to democratic principles in a practical sense, such as guaranteeing universal human rights and labor rights, with the reflection of procedural democracy, such as the social deliberation structure moderating labor-management conflicts in the policy-developing process. This chapter evaluates the level of democracy focusing on the process through which different interests are represented in South Korea's labor policies and the laws and regulations on labor issues that have been instituted as a result.

2) Assessment Items

Labor relations are traditionally and broadly classified into collective and individual labor relations. Accordingly, labor laws are also divided into laws on collective labor relations and individual labor relations. Since the establishment of the 1987 Constitution, the sphere of labor has gradually expanded with the emphasis on the guarantee of employment opportunities. As a result, the regulations on labor have also been expanding beyond collective and individual labor relations to regulate the labor market itself. South Korea's current labor policies are required to regulate individual labor relations based on the principle of 'protection' and collective labor relations founded upon the idea of 'autonomy,' while also playing the role of controlling the labor market in a reasonable way. If labor relations are largely categorized into these three as above, different points need to be examined for each category for the assessment of democracy in terms of labor issues.

Among the various elements of politics, economy, and society, collective labor relations characteristically enable the practical assessment of a country's level of procedural democracy. In South Korea, there exist many institutional mechanisms that facilitate labor-management negotiations and agreements not only at the national level, such as the framework for social dialogue among labor, management, and society centered on the Economic, Social and Labor Council (ESLC), but also at regional, industrial, and corporate levels. The assessment of democracy in terms of collective labor relations will look at whether national policies are expanding the basic institutions for guaranteeing democracy in labor-management relations and what progress has been made based on tripartite (labor (people), management, and the government) or labor-management agreements.

Concerning individual labor relations and the labor market, the focus is placed on how the ideals of democracy, specifically “equality” and “humanitarian values,” have been realized from the viewpoint of labor. While there exist various viewpoints on this subject, this chapter will refer to the elements covered by the International Labor Organization (ILO) Framework on the Measurement of Decent Work (fundamental principles and rights at work; combining work, family and personal life; equal opportunity and treatment in employment, particularly gender equality; social security; and safe work environment) to measure whether South Korea has seen progress in enhancing the protection of workers. Especially in 2020, the crisis brought by the COVID-19 pandemic calls for a special attention to policies that have been implemented to protect the vulnerable social classes in the segmented labor market.



Detailed Assessment of Items

1) Collective labor relations

○ COVID-19 and social dialogue: Attempts made to overcome crisis through social dialogue and their partial outcomes

The COVID-19 pandemic has caused rapid changes in socioeconomic conditions both domestically and internationally. Particularly in terms of the economy, both the export and domestic market have shrunk, and the shock of such economic decline has been concentrated on small business owners, small and medium-sized enterprises (SMEs) characterized by a large proportion of non-regular workers and subcontractors, and vulnerable social groups including persons in special types of employment. In

the aspect of labor-management relations, the social climate enforcing non-face-to-face interaction has reduced collective action, which has continued to limit the social awareness of the demands made by labor groups.

In this situation, the Korean Confederation of Trade Unions (KCTU), which had not been a part of the ESLC, suggested holding a “United Social Dialogue related to COVID-19.” The Tripartite Representatives Meeting, which was launched on May 20, was meaningful in that it marked the first time a national social dialogue with both the KCTU and the Federation of Korean Trade Unions (FKTU) present was held since the financial crisis. However, after forty some-odd days of discussions, internal conflict over the details of the agreement led to the KCTU’s withdrawal. The “Tripartite Agreement to Overcome the COVID-19 Crisis,” announced on July 28 by the Tripartite Representatives Meeting in the absence of the KCTU, presented a comprehensive list of measures consisting of 4 sections, 22 articles, and 63 items including: employment retention including the expansion of the employment retention support system; assisting the survival of companies through effective liquidity support; expanding the social safety net including the introduction of national employment insurance; and expanding the infrastructure for infectious disease quarantine/control and healthcare, such as enhancing the work environment and number of healthcare workers. However, in light of the fact that the KCTU, the largest organization representing labor, did not participate and that the agreement mainly requires the government to follow through with its policies, the agreement has been criticized as merely a formality under the guise of autonomous consensus.

Around the time of the United Social Dialogue, the ESLC, which is the legal body for social dialogues, drew up various agreements through its agenda and industry-specific committees. However, these agreements were also centered on policy demands to the government rather than autonomous labor-management efforts, so the role of the government is critical in the implementation of the agreements’ contents.

Ultimately, it may be said that collective labor relations in 2020 were successful in deriving various “formal” outcomes related to the COVID-19 crisis in terms of social dialogues, but it is difficult to say that remarkable achievements were made, considering that the social dialogues were largely government-led and confined to the existing framework of institutional social dialogues.

Table 1. Details of the agreements made by the ESLC and its committees in 2020

No.	Committee	Date of Announcement	Details
1	Committee for Marine Transportation	Feb 20, 2020	Agreement on Marine Transportation for Sustainable Development of Maritime Industry and Seafarer Job Creation
2	Economic, Social and Labor Council	Mar 5, 2020	Agreement to Overcome Crisis Caused by Spread of Coronavirus 19
3	Healthcare Sector Committee	Mar 19, 2020	Agreement to Overcome the Crisis caused by Coronavirus 19 Spread and Protect Healthcare Workers
4	Occupational Safety and Health Committee for Safer Workplaces	Apr 27, 2020	Tripartite Agreement on Occupational Safety and Health to Create Safer Workplaces
5	Committee for Digital Transition and the Future World of Work	May 13, 2020	Agreement on Supporting the Platform Economy and Its Workers: Focusing on the Field of IT-SW Development
6	Economic, Social and Labor Council	Jul 28, 2020	Tripartite Agreement to Overcome the COVID-19 Crisis
7	Committee for Tourism Industry	Aug 18, 2020	Agreement (Plan for Employment Stability in the Tourism Industry)
8	Sub-committee for Digital Platform and Delivery Industry Workers	Sep 8, 2020	Tripartite Agreement on Resolving the Blind Spots in the Industrial Accident Compensation Insurance for Delivery Workers
9	Committee for the Improvement of Laws, Measures, and Practices for Labor Relations Development	Oct 16, 2020	Tripartite Agreement on Improvement of Worker's Representative System
10	Healthcare Sector Committee	Oct 27, 2020	Recommendations of the Members of Public Interest under the Healthcare Sector Committee

○ Government's finalization of the amendments to the Trade Union and Labor Relations Adjustment Act: The final stage of long-held discussions, the persistence of conflict structures

From the time of the 2017 presidential election, President Moon Jae-in promised to ratify the ILO Core Conventions as a part of the efforts to guarantee labor rights. The five-year policy roadmap proposed by the administration at the beginning of its term proposed to “guarantee basic labor rights through the ratification of the ILO Core Convention” (63-f). The developments in the ratification of the ILO Core Conventions, which have been in progress since 2017, has led to the government's proposal of partial amendments to the Trade Union and Labor Relations Adjustment Act in 2019 and the Act on the Establishment, Operation, etc., of Trade Unions for Teachers and the Act on the Establishment, Operation, etc., of Public Officials' Trade Unions in 2020.

The proposed amendment to the Act on the Establishment, Operation, etc., of Trade Unions for Teachers seeks to expand the scope of membership in Teachers' Unions to

those who have been appointed and worked as teachers that meet the requirements prescribed by the Trade Union Regulations. Meanwhile, the proposed amendment to the Act on the Establishment, Operation, etc., of Public Officials' Trade Unions mainly consists of the following revisions: 1) eliminating the limitation on the eligibility for union membership based on rank (current law limits the eligibility to public officials of grade six or below); 2) including firefighters to the category of special public officials eligible for union membership; and 3) allowing the trade unions to set the membership requirements for retired public officials. These amendments are consistent with the ILO's principle of allowing trade unions to autonomously determine who can join them by reducing the restrictions on the freedom of association in the existing laws. As such, they can be evaluated as a step forward in terms of democracy.

On December 10, 2020, the so-called "Three Amendment Bills related to the ILO" toward ratifying the ILO Core Conventions proposed by the government was legislated at the National Assembly's plenary session. However, the provisions on "prohibiting non-employee union members from entering the workplace" were omitted during the National Assembly's legislation process, causing the management side to protest that the legislation sided too heavily with labor using international standards as an excuse, while the labor side criticized the amendments for falling short of the ILO Core Conventions.

2) Individual labor relations and labor market policies

○ Lack of policies to improve individual labor relations: The disappearance of the policies on minimum wage and reducing work hours

The core of the Moon Jae-in administration's individual labor relations policy can be summarized into the reform of traditional working conditions, that is, wages and working hours. In other words, the policy sought to increase the minimum wage and reduce working hours to relieve workers from working too long. However, the 'speed adjustments' in policy implementation, which began in 2019, became more prominent in the crisis caused by COVID-19 to seem to some as the disappearance or retreat of related policies.

Under the current government, the minimum wage rose 16.4% in 2017 (implemented in 2018) and 10.9% in 2018 (implemented in 2019) but only 2.87% in 2019 (implemented

in 2020). In 2020, the minimum wage was set to KRW 8,720/hour, a rise of only 1.5%. Unlike the situation in 2019, when serious labor-management conflicts had erupted over the minimum wage, the decision on the minimum wage was facilitated in 2020 as the livelihood of small businesses and self-employed business owners became threatened due to COVID-19.

On the other hand, according to the revised Labor Standards Act stipulating the reduction of working hours enacted in 2018, the maximum 52-hour workweek was to be implemented at businesses with 50 to 299 employees in 2020, but the grace period (with supervision) was extended for one more year at the end of 2019.⁴³⁾

Table 2. Enforcement of the amendment to the Labor Standards Act to reduce working hours

Amendments		2018	2019	2020	2021	2022
52 hours/ week limit	Public sector/ businesses with more than 300 employees					
	(21 business types, excluding those that are specially exempted)					
	50-299 employees				Deferred	
	5-49 employees					
	(5-29 employees)				Special overtime work allowed (July 2021–December 2022)	
Reduction of special exemptions (business types)	Reduction of special exemptions (26 →5 business types)	From July				
	Guarantee of consecutive break time at businesses that are specially exempted	From September				
Governmental and public institutions Public holidays Private enterprises Paid holidays	More than 300 employees				Enforced	
	30-299 employees				From January	
	5-29 employees					From January
Minors under 18 years old	Reduction of working hour standards (40→35 hours/week)	From July				
	Reduction of overwork time (6→5 hours/week)	From July				

43) In relation, on November 30, Minister of Employment and Labor Lee Jae-gap announced the end of the grace period for the 52-hour workweek granted to workplaces with 50 to 299 employees for one year from January, which notified the enforcement of reduced working hours from January of the following year. The opposition People Power Party and the management side have demanded for the grace period to be extended once again, saying that the financial difficulties faced by businesses brought by COVID-19 have made it impossible to apply the 52-hour workweek right away.

Furthermore, the government revised the special overtime work authorization system to allow overtime work at businesses as necessary from the end of January when COVID-19 first emerged. The special overtime work system allows the employer, with the consent of the employee, to gain the approval of the Minister of Employment and Labor for overtime work beyond the 52-hour workweek due to special circumstances. Up to this point, special overtime work was approved only for the recovery from accidents such as disasters and calamities, but the scope of special circumstances was extended from January 31, 2020, to reasons of business management (unexpected situations, a significant increase in workload, etc.) for overtime work of up to 90 days per year.⁴⁴⁾

The COVID-19 situation was the main reason behind this retreat in the implementation of higher minimum wage and reduction of working hours lies. However, loosening the labor policy to relieve the difficulties faced by small and self-employed business owners and SMEs is an approach that involves a high risk of creating the perception of the regulations for promoting workers' "human rights" as a "control" over companies. Also, the way the special overtime work system was expanded to permit overtime work just by gaining consent from individual workers is not only a retreat of practical labor protection but also expands government intervention in working hours (i.e., requiring permission of the Ministry of Employment and Labor), which cannot but invite negative assessment.

Meanwhile, the realities of labor conditions were strongly felt from the fifteen deaths caused by overwork among delivery workers as of the end of November 2020 since the emergence of COVID-19, which has boosted the use of online commerce to increase the workload and working hours of delivery workers. The government announced measures to prevent overwork among delivery workers on November 12 and is trying to change the long and high-intensity working hours and the harsh work conditions of delivery package sorting jobs. However, these efforts have reconfirmed how the status of delivery workers as self-employed business owners who are outside the traditional scope of labor protection has placed them in the blind spot of the company-based working hour reduction policy.

○ Protection of the vulnerable working class: Discussions over introducing the National Employment Insurance and injury and sickness benefits

44) Furthermore, on July 14, 2020, the Ministry of Employment and Labor temporarily adjusted the number of days allowed for special overtime work to an additional 90 days for the second half of the year, regardless of the number of special overtime working days used in the first half (January 31 to June 30).

After the spread of COVID-19, measures to deal with unemployment emerged as the most important issue in labor market policy. Under the directive to “lay the foundation for a National Employment Insurance system from which all employed persons could benefit,” the government proposed the following measures: 1) have low-wage and non-regular workers, who are eligible for employment insurance but do not have coverage yet, to join the employment insurance system; 2) quickly resolve the blind spots in the employment insurance system, such as the coverage for persons in special types of work, platform workers, freelancers, artists, etc.; and 3) gradually expand the employment insurance to self-employed business owners based on a consensus formed through social dialogue.

The Moon administration had included measures to strengthen the employment safety net as one of the national tasks when it came to power in 2017. The National Employment Insurance is based on the administration’s measures for strengthening the employment safety net, such as expanding the eligibility and coverage of the current employment insurance system and introducing a Korean-style unemployment benefits system (the current national employment assistance services). As more emphasis is made on protecting the socially vulnerable class, the 20th National Assembly passed the previously proposed bill to extend the eligibility of employment insurance to artists and the enforcement decree on the National Employment Assistance System (Act on the Employment Assistance and Livelihood Stability Support for Job Seekers). Thus, the government put in place a basic framework for building a multi-layered employment safety net.

Meanwhile, COVID-19 has revealed several weak links in our society, one of which is that South Korean society does not allow people to rest even if they are sick. The spread of COVID-19 has raised the social awareness of the “right to rest when sick.” Group infections have occurred at workplaces, such as distribution centers and call centers, and with the shock of COVID-19 shaking the whole society to a greater degree than any other infectious diseases that have hit South Korea in recent years, there emerged voices calling for the introduction of sick leave and injuries and sickness benefits systems so as to create a society where people can rest in case of sickness. Specifically, the Committee for Civil Society Measures to Respond to the COVID-19 Socio-economic Crisis, created by civil society organizations including the KCTU, the Korea Alliance for Progressive Movement, the People's Solidarity for Participatory Democracy, and the Citizens’Coalition for Economic Justice, demanded the legislation of an injury and sickness benefits system in light of the COVID-19 situation. The government responded

to the demands by proposing a Korean-style injury and sickness benefits system as part of the plan to strengthen the employment social safety net and build an inclusive social safety net for all people in the Korean New Deal blueprint announced on July 14.

The expansion of employment insurance and the introduction of injuries and sickness benefits were not issues of interest for the already-organized public sector and the labor and management of large corporations. However, with the rising need to protect socially vulnerable groups from the crisis met by society, the fact that this agenda is prioritized over any other labor agenda can be seen as reflecting the South Korean government and society's higher level of awareness on the need to reduce inequality.



Summary

The COVID-19 crisis has brought to face several pending issues in terms of labor policies. However, the need to respond quickly to rapid social changes in such a period makes it difficult to adhere to the principle of holding social dialogues to resolve conflicts through deliberation and debate based on mutual respect among the tripartite parties. Also, it is easy to become engrossed with individual issues that demand urgent attention, impeding the coherent execution of labor policies within the direction set by the overall framework.

Even considering these points, the fact that multilevel social dialogues in collective labor relations were not conducted as a practical discussion among the labor, management, and government, but formally within the framework of a governmental organization (i.e., the ESLC), cannot but receive a negative evaluation in terms of labor democracy. In terms of the specific developments in collective labor relations, labor-management conflicts continued over some of the proposed amendments to the Trade Union and Labor Relations Adjustment Act, but the deletion of the provisions restricting the right to organize from the laws on teachers' and public officials' unions not only rose to the international standards of the ILO but also respected the freedom of association, which could be assessed as a step forward from the perspective of democracy.

Meanwhile, since the spread of COVID-19, the policies on individual labor relations have shown noticeable retreat. Since the beginning of the Moon administration, achieving a 10,000 KRW minimum wage and reducing weekly working hours have been the core policy direction, but it seems as though the government has lost sight of its original direction since COVID-19. On the other hand, it is positive that the government

is pursuing discussions on introducing National Employment Insurance and injury and sickness benefits, and wider protection of socially vulnerable workers as these agendas target the blind spots of existing labor policies. Since these agendas lie outside the interests of the public sector and large corporations, the attention shed on them is particularly meaningful considering the deepening polarization of South Korea's labor market.

Lastly, there are many voices of concern over the lack of tangible results, or in other words, "talking the talk" but not "walking the walk," as labor-related bills proposed based on numerous labor policy discussions have once again been left adrift in the National Assembly in 2020. Moreover, in the case of the "Three Amendment Bills related to the ILO," even though the National Assembly passed the bills, both labor and management have been voicing their oppositions to their contents. The blurring of boundaries between the political forces representing the labor and capital spheres during the long dictatorship era continues to remain a problem of South Korean politics to hold back progress in labor issues. Since the specifics of most labor policies are set during the legislative process, coordinating the interests of the workers and management through the National Assembly is the most essential procedure in the realization of democracy in labor. With various labor-related bills adrift at the National Assembly, it is time to think about how to reflect the results of social dialogues, represented by the ESLC, and how to trigger in-depth discussions in the National Assembly on labor legislation.

2020 Korean Democracy Annual Report

Social Equality and Democracy: Gender Issues

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Assessment Criteria and Items

1) Assessment Criteria

In 2020, the whole world suffered from the unprecedented pandemic caused by COVID-19. South Korea was no exception. The COVID-19 outbreak in South Korea first occurred in mid-January 2020 and began to spread rapidly in February. In March, schools and daycare centers were closed, and many companies made the shift to working-from-home. COVID-19 seriously impacted the lives of all Koreans, but from a gender perspective, the lives of women were impacted differently from those of men.

Therefore, to assess South Korea's gender democracy in 2020, it is necessary to set guidelines that could reveal the peculiarities of the situation brought by COVID-19 in addition to considering the universal indicators of gender equality. Attention must be given on the inequalities in gender relations which have newly risen to the surface in the face of social crisis while comprehensively examining the aspects dealt in the 2019 Korea Democracy Annual Report, such as the gender-related indicators of the United Nations Development Program (UNDP), the indicators of gender equality set by state-run research institutes, and the women's right to survive. It is necessary to analyze the persistence, contraction, or expansion of gender gaps amid the pandemic situation that halted the daily operation of society as a whole.

The issue of gender minorities (i.e., the Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) community) also emerged as a social issue in 2020. The gender perspective is a viewpoint that attempts to break away from the dichotomy of male and female to view the human sex as a broad spectrum of social genders. Therefore, the issues surrounding the LGBTQ people should also be included in the analysis of gender democracy, since a social system that guarantees the fundamental human rights of LGBTQ people and protects them from expressions of hate and discrimination is also an important element of democracy.

2) Assessment Items

The assessment items for 2020 consist of three categories.

The first category analyzes the changes and persistence of gender inequality since the emergence of COVID-19. 1) The gender gap in the labor market, especially the fluctuations in the unemployment rate and the rate of employees on leave will be

analyzed. The suspension of economic activities due to COVID-19 has increased the number of people who are unemployed or on leave, and this analysis will examine how these numbers are distributed in terms of gender. 2) The situation of caregivers will be studied. Nursing homes and homes for the elderly have been hit the hardest by COVID-19, and the poor conditions faced by senior caregivers have been raised as a social issue. This aspect will be investigated in detail.

The second category deals with gender-based violence. This section will examine the status and issues of sexual violence, and the changes in relevant legislation and institutions. This analysis will also look at the heightened social interest in sexual violence since the #MeToo Movement, as well as new forms of online sexual violence and the accusations and social responses to power-based sexual violence.

The third category concerns the human rights of gender minorities. This section will highlight the events that sparked social debate and examine the position of LGBTQ people from the perspective of gender democracy.



Detailed Assessment of Items

1) Gender inequality in the era of COVID-19

○ The decrease in the female employment rate and the increase in the female unemployment rate and of female workers on temporary leave

Like any other economic crisis, the COVID-19 pandemic negatively affected female workers than male workers in terms of employment rate, the number of employed persons, hiring rate, and the number of workers on temporary leave. As shown in Figure 1, the employment rate by gender in 2020 began to show a trend of decline from April, and the decrease in employment rate is consistently larger for female workers up to September.

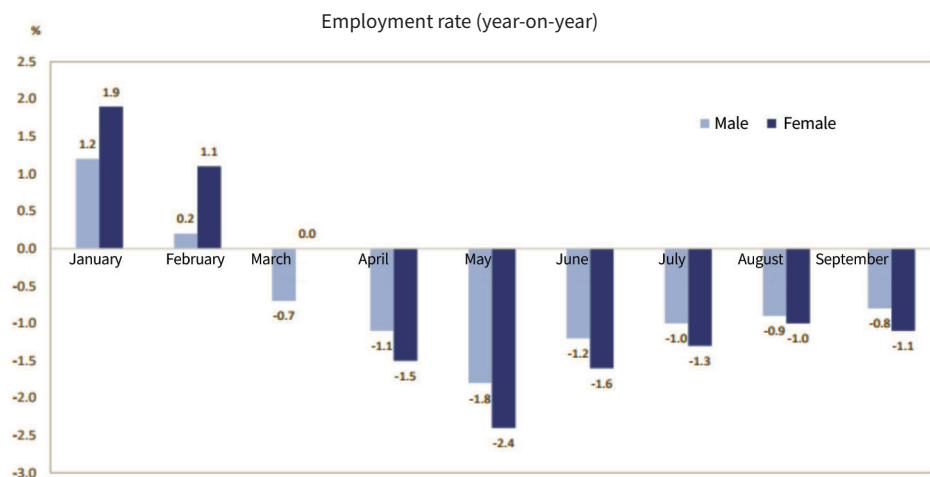
As can be seen from Figure 2, the unemployment rate changes to an increasing trend starting in March, where the increase rate is much larger for female unemployment. Figure 3, which shows the number of employed persons, reveals how this number steadily declines from March, with the number of employed women dropping more steeply. Also, as shown in Figure 4 showing the number of workers on leave, the number of female workers on temporary leave is consistently higher than that of men, and

this number increased explosively in March and April when economic activities were temporarily suspended as COVID-19 began to spread.

These figures show that women in the labor market are more exposed to job insecurity, such as unemployment or temporary leave, during an economic crisis. A combination of factors caused women to face a greater negative impact from the COVID-19 crisis, such as the larger portion of female workers in face-to-face jobs in food, hospitality, and personal services industries, etc., the number of female workers who are hired on an irregular basis, and the gender discrimination in employment.

However, there was no specific mention of ‘women’ in the government’s response to employment instability spearheaded by the Ministry of Employment and Labor in 2020. The government introduced measures to support irregular workers, such as specially employed workers and freelancers, but there was no consideration of the increased job vulnerability in female-concentrated sectors or the layoffs of female workers based on their gender. Employment and labor policies lacking a gender perspective served to maintain the gender gap in the labor market.

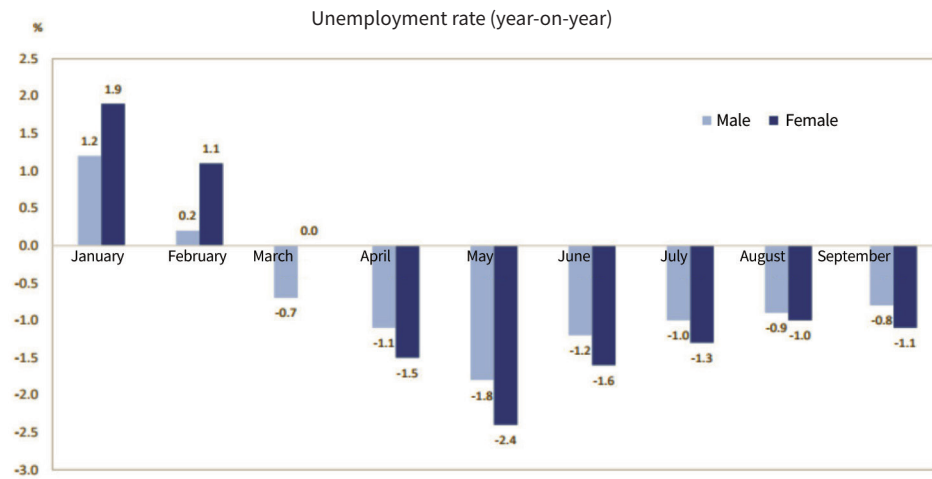
Figure 1. Changes in the employment rate by gender in 2020



Data source: Korean Statistical Information Service, kosis.kr

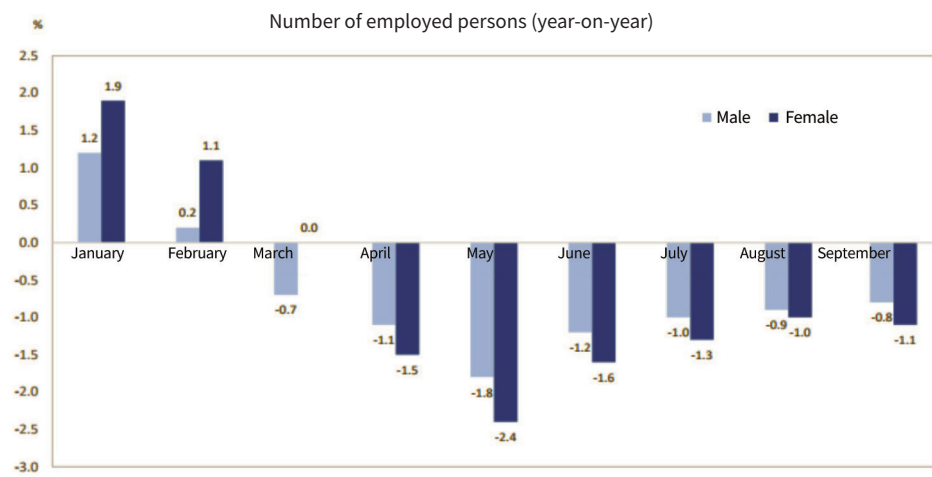
Source: Kim Nan-joo (2020), "Covid-19 and Women's Work: Challenges and Policy Response," 50th death anniversary of Chun Tae-il, International Forum: 50 years after Chun Tae-il, the future of labor to think together, November 10, 2020, Chun Tae-il Foundation.

Figure 2. Changes in the unemployment rate by gender



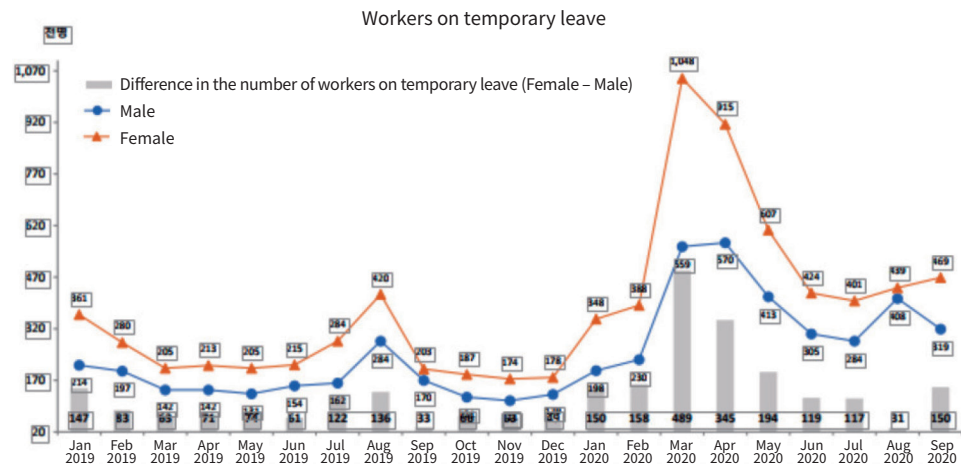
Data source / Source: Same as Figure 1

Figure 3. Changes in the number of employed persons by gender in 2020



Data source / Source: Same as Figure 1

Figure 4. Changes in the number of workers on temporary leave by gender in 2020



Data source / Source: Same as Figure 1

○ Caregivers' exposure to risks

In March 2020, a caregiver working in the mental ward of Daenam Hospital in Cheongdo-gun, Gyeongsangbuk-do became infected with COVID-19 through a patient and passed away. At the time, the Korean Confederation of Trade Unions (KCTU)'s Medical Solidarity Headquarters accused the hospital of paying less than the minimum wage and not even distributing facemasks to the caregivers that work there, including the deceased. Caregivers were not provided with facemasks, which were difficult to obtain at the time, because they were not considered hospital staff. Also, when the government announced the provision of emergency daycare/after-school classes, for some time, the caregivers put to the job were not even given a manual while being asked to expose themselves to the risk of infection.

Caregivers refer to professionals who specialize in caregiving (professions related to social welfare, such as social workers and childcare teachers), workers who provide caregiving services (caregiving and health service workers, such as senior caregivers, hospital caregivers, and afterschool caregivers), and caregiving laborers (workers that help with housework or childcare, such as household assistants, day housekeeper, babysitters, etc.). As of 2019, 92.5% of caregivers are women, and 56.9% of them are more than 50 years old. Also, 22.2% of caregivers are considered low-wage workers (who are paid less than two-thirds of the median wage), so two out of 10 caregivers find it difficult to make a living solely by providing caregiving services.⁴⁵⁾

Caregiving work has traditionally been devalued as woman's work. However, considering the reality of large-scale infectious diseases such as COVID-19 as well as the rapidly increasing social demand for elderly care brought by the aging society, it is necessary to seek a completely new approach to caregiving work. Guaranteeing appropriate wages for caregivers and strengthening the system for the professionalization of caregiving work have risen as important tasks in South Korean society in the COVID-19 era.

2) Sexual violence

○ Digital sexual violence and sexual exploitation: the Nth room case

South Korean society went abuzz over the Nth room case in early 2020. The Nth room case refers to the digital sexual violence and sexual exploitation perpetrated by Cho Joo-bin and Moon Hyung-wook, etc. from the second half of 2018 to March 2020 using messenger apps such as Telegram, Discord, and Line. The perpetrators lured victims by advertising themselves as recruiters of sponsored part-time jobs, then threatened and blackmailed the victims to take explicit photographs and videos, which were distributed in chatrooms. The victims included dozens of minors, including elementary and junior high school students, and it is estimated that tens of thousands of chatroom members purchased these sexually exploitive contents.

This case led to the amendments to the Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes (enforcing punishments of imprisonment and fines on the possession, purchase, storage, and viewing of illegally filmed sexual materials), the Criminal Law (the age of consent raised from 13 to 16 for statutory rape), the Act on Regulation and Punishment of Criminal Proceeds Concealment (burden of proof lowered for digital sex crime) and the Act on the Protection of Children and Juveniles against Sexual Abuse (children and adolescents subjected to sex trafficking specified as 'victims,' etc.).

However, in comparison to Cho Joo-bin, who was sentenced to 40 years in prison in the first trial, Son Jong-woo, who was arrested in 2018 for operating the world's largest

45) Kim Wonjung and Lim Yeongyu, "The current status of caregivers in the wake of COVID-19: Focusing on the number and wages of caregivers from 2008 to 2019," KWDI Brief No. 57, Korea Women's Development Institute, 2020.

child pornography website “Welcome to Video,” was released after serving 1 year and 6 months in prison, and the court denied the request made by the United States to extradite him. Although the Judiciary’s sentencing standards for sexual crimes are changing, the sentences are still relatively light compared to other countries, and the room for discretion left to the judges is large, making it an urgent task to enhance the gender sensitivity within the courts.

○ **Power-based sex crimes: Sexual violence using authority committed by former Mayor of Seoul Park Won-soon and former Mayor of Busan Oh Geo-don**

In April 2020, it was revealed that Busan Mayor Oh Geo-don sexually harassed a female public official in his office. Oh resigned from his position and was charged with sexual harassment. In July, Seoul Mayor Park Won-soon took his own life shortly after being charged for sexually harassing a female secretary.⁴⁶⁾ As of December 2020, Oh’s trial is ongoing, but the Prosecution has no right to prosecute Park’s case due to Park’s decease, so the National Human Rights Commission of Korea is currently conducting an ex-officio investigation.

These two incidents caused a significant ripple in that they occurred in South Korea’s two largest cities, one of which is the capital. In particular, the charges of sexual misconduct against Park sparked serious social conflict as the details were publicized through media reports after the mayor’s death. First, there was a conflict over whether Park’s sexual harassment should be acknowledged as a fact. Even after the charges filed against Park by the victim became known, the Seoul City Hall held the Park’s funeral as a mayoral funeral. Second, the Democratic Party, which is the ruling party and the political party to which Park belonged, referred to the victim as the “alleged victim,” expressing their reluctance in acknowledging the sexual harassment Park perpetrated on the victim. Third, although the victim’s side held a press conference, people continued to dig up the victim’s personal information and attack her on YouTube and Facebook. The victim’s written statement from her consultation with a lawyer was disseminated, and her name, photograph, and handwritten letters were also made public. Accusations and hate speech against the victim continued. This secondary damage continued because this incident was not simply a case of sexual violence but involved complex political interests.

46) The charges against former Seoul Mayor Park Won-soon filed by the victim, who was a female public official acting as Park’s secretary, are allegations of sexual harassment using force, indecent acts through the abuse of occupational authority, and obscenity through communication media to the victim who worked as his secretary for four years.

Park Won-soon was a citizen activist who devoted himself to the democratization movement. As a human rights lawyer, he also contributed to the promotion of women's rights, and after he was elected as mayor, he supported the grassroots democracy movement. Because of his achievements, there were expectations that he may become the Democratic Party's next presidential candidate. Due to this background, his supporters refused to believe the sexual harassment charges against him. Moreover, they doubted the credibility of the victim's statement for the reason that the victim's lawyer served as a high-ranking government official during the Park Geun-hye administration. Among the political actors of the 1980s democratization movement, those aligned with the Democratic Party denied Park's power-based sexual misconduct, and the feminist anti-sexual violence activists interpreted this stance as being based on the logic of ideological camps, that they are refusing to admit the charges as a fact because it is damaging to their faction.

As of December 2020, this ongoing case is being defined as "sexual violence using authority," along with the former Chungnam Governor Ahn Hee-jung's sexual assault case. Article 10, Paragraph 1 of the Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes stipulates the punishment for "Indecent Acts through Abuse of Occupational Authority." This authority refers to tangible and intangible forces sufficient to overwhelm the victim's free will and includes the use of social, economic, and political status or authority. In other words, using the political status as mayor or provincial governor to psychologically subdue and sexually harass the victims is considered a crime.

The circumstances surrounding the case is unfolding as a serious confrontation between the progressive camp politicians and the feminists over the power-based sexual misconducts committed by officials of the progressive camp. The feminists have put out the slogan that "gender-equal democracy is the final form of democracy" and argued that true democracy is impossible without realizing gender equality. In this context, the unraveling of events surrounding the charges of power-based sexual violence committed by progressive politicians will reveal the level of democracy in South Korean society and, at the same time, the progressiveness of the political actors of the 1987 democratic movement.

3) Human rights of gender minorities

○ The controversy over a transgender woman entering Sookmyung Women's University and the forced discharge of a transgender soldier from the military

A transgender woman who had undergone sex reassignment surgery from male to female was accepted by Sookmyung Women's University for the 2020 academic year but ended up withdrawing her enrollment. The “Task Force Team X Opposing the Enrollment of Transgender Men at Sookmyung Women's University,” composed of radical feminist groups at women’s universities in Seoul, stated that they do not acknowledge sex reassignment through surgery and demanded the university to only admit women who are biological female by birth. Responding to the criticism that this incident reveals the hate and discrimination against transgender people, they refuted that dismissing their movement to protect women’s space and rights as hate and discrimination is equivalent to stigmatizing women.”

Against the radical feminists, various groups showed their support for the transgender student’s admission. Within Sookmyung Women’s University, the Student and Minority Human Rights Committee and Law Professor Hong Sung Soo declared their support, while from outside the campus, dozens of organizations, such as the Rainbow Action Against Sexual Minority Discrimination, and feminists including feminist scholar Kwon Kim Hyun-young expressed their solidarity. However, with the school remaining silent, the transgender student withdrew her enrollment, saying, “Although I stop here, I believe others will be able to go further in the future.”

Before this controversy, a transgender soldier, Sergeant Byun Hee-soo, was forcibly discharged from the South Korean army. Sergeant Byun received a sex reassignment surgery in November 2019 while serving as a noncommissioned officer of the South Korean army since 2017, and applied to the court for permission to change her gender in official records and petitioned to continue her military service as a woman. The court allowed Sergeant Byun’s gender to be corrected from “male” to “female,” but the South Korean Army judged her circumstances to be a reason for discharge based on the provisions of relevant laws and regulations, such as the Military Personnel Management Act, and decided to discharge her from the military.

Regarding this case, the National Human Rights Commission of Korea issued a statement that there are no specific legislation or precedent for soldiers who have

undergone sex reassignment surgery during their military service, and the acts of viewing the sex reassignment surgery as a physical disability and referring Byun's case to the review committee present grounds for seeing the case as discrimination based on gender identity. However, the military hospital convened an investigation committee to conduct a physical check-up on Byun and judged the loss of male genitalia as a third-grade mental and physical disability.

These cases raise two questions regarding South Korea's gender democracy. First, where do the gender minorities stand in South Korean society? The citizenship of gender minorities, including transgender people, is not institutionally or culturally recognized, and they continue to be targets of hate and discrimination. Second, concerning the transgender student's withdrawal of enrollment from Sookmyung Women's University, feminist Kim Eun-sil raised the question of who women are, emphasizing that the feminist classification of who women are is not founded upon the biology of the body but that new "women" have emerged, as the gender structure became interlocked with other governance structures in society.⁴⁷⁾ Obsession with the biological concept of women could end up essentializing and biologically reducing the category of women. Rather, the idea of women, as a problematic point, could be constructed and defined within the multilayered hierarchies and discrimination that exist within a society. These cases confirmed that transgender people, and gender minorities, are still subject to hatred and discrimination in spaces, such as universities and the military.



Summary

From the perspective of gender democracy, it could be said that the year 2020 was a year of long-standing but recently emerging problems. That is, problems that have been pointed out for a long time in the history of gender equality have been emerged in a somewhat different way than in the past.

First, more women lost their jobs as the unexpected global COVID-19 pandemic emerged and threatened the whole society. The pandemic brought a massive unemployment of women, which is reminiscent of how women were forced to leave their jobs first during South Korea's industrial restructuring in the late 1980s, the financial crisis in the late 1990s, and the U.S. economic crisis in 2008. In the unfamiliar

47) Kim Eun-sil, "Am I Not A Woman?: The Feminist Dispute Over the Classification of 'Women,'" *Feminism in the Age of COVID-19*, Humanist Books, 2020.

era of COVID-19, women are again being driven out of their jobs.

Second, digital sexual violence and sexual violence using authority may also seem unfamiliar, but these crimes are not new. Online sexual violence and sexual exploitation are no different from those acts committed offline, which have been around for a long time. The sexual misconduct through abuse of authority reminds us of the long history of how men with political, economic, social, and cultural powers have sexually abused women who are of lower status and age.

Third, the cases where transgender women were driven out of their place at a university and the military brought South Korean society's long-held sentiments of hatred and discrimination to the surface. That the act of sexual reassignment, which is even recognized by law, is censured at the university (which purports to be a space of freedom) and the military (which is a state institution) shows the extent to which South Korean society is insensitive to the protection of the LGBTQ rights.

Among the efforts to resolve these problems, the most urgent task is for the mainstream groups with political, economic, social, and cultural powers in South Korean society to be more aware of the need to realize gender democracy. Criticism has been raised that the present ruling powers, who were the political actors of the 1987 democratization movement, are confining the idea of what is progressive within their self-made framework. The #MeToo, anti-sexual violence, and LGBT movements are not driven by interest groups that represent the private goals of a certain social class and the handful of people around them. The criticism that the mainstream actors of South Korea's democratization movement are now blocking the growth of new movements by circumscribing the women's movement within the New Social Movement framework, which is not so new anymore, provides clues about the obstacles and tasks to realizing a gender-equal democracy.⁴⁸⁾ To resolve this issue, it is necessary to enact a comprehensive anti-discrimination law that prohibits not only the discrimination of women but also any discrimination based on human differences such as gender identity, sexual orientation, age, marital status, nationality, race, and disability.

48) Kwon Myung-ah (2020), "The Negation of Sexual Violence and Korea's Political Structure," Collective Action on the Authority-based Sexual Violence Committed by the Mayor of Seoul, Collection of Materials from the Panel Discussion to Demand Substantial Truth and Accountability

2020 Korean Democracy Annual Report

Democracy and Public Health

Woo Seok-gyun | Korean Federation of Medical Activist Groups
for Health Rights



Assessment Criteria and Items

Representative indicators for measuring and evaluating national health or healthcare are those used by the Organization for Economic Cooperation and Development (OECD) or the World Health Organization (WHO). The OECD indicators examine the areas of health status, risk factors, access to care, quality of care, and health care resources, where health care resources include health spending, health care facilities, health workforce, and aging and long-term care, etc, and indicators are used to measure the status and performance in each area.⁴⁹⁾

The relationship between a society's democracy and public health or the right to health has been studied extensively. Many studies have shown the positive impact of political democracy on public health, independently from the gross national product, but the relationship between democracy and health cannot be simply defined as a linear relationship. In the case of Cuba and the United States, for example, although politically, Cuba is assessed as having a barely democratic system, the country's infant mortality rate is lower, and the health gap is much smaller when compared to the United States. In this way, understanding which country protects its people's right to health is not a simple question to answer.

The right to health doesn't just refer to the right to access appropriate medical treatments, that is, access to health care. The Ottawa Declaration, which understood health as a mobilizable resource, led to the concept of health as "a state in which a person can reach his/her full potential." This concept was further developed in the Rio Political Declaration on Social Determinants of Health. In 2008, the World Health Organization established a Commission on Social Determinants of Health to publish reports on the social factors leading to poor health and health inequalities. According to their research, socio-economic and political contexts stratify society to endow people with social positions, and a person's exposure and vulnerability to harmful environments differ based on their social position. Here, the health care system functions as a social determinant that moderates this effect.⁵⁰⁾

To achieve health equality, the final report of the Commission on Social Determinants of Health⁵¹⁾ recommends to 1) improve daily living conditions, 2) tackle the inequitable distribution of power, money, and resources, and 3) measure and understand the problem and assess the impact of action. In other words, the achievement of the health or right to health in a society is understood as overcoming health inequality in a society as much as possible. From this view, the report sets the elimination of inequality in various social factors that determine health as the goal of social policies.

This view provides a larger context for understanding the rights of patients. The concept of patients' rights originated from the need to protect vulnerable patients from medical institutions or medical personnel, but the concept broadened its scope to become the right to health with the development of the national health insurance system as a part of social security. The recent advances in information technology further expanded this right to include and specify information-related rights, such as the right to delete information. Following the ratification of the Declaration on the Promotion of Patients' Rights in Europe in 1994,⁵²⁾ the rights of patients are comprehensively defined in the European Charter of Patients' Rights, which was declared in Rome in 2002,⁵³⁾ etc. The European Charter of Patients' Rights explains the fundamental rights of patients, the fourteen patients' rights, the rights of active citizenship, and guidelines for implementing the Charter. Here, the fourteen rights of patients comprehensively include various rights, such as the right to preventive measures, the right to access necessary health services, the right to information, the right to consent and free choice, and the right to avoid suffering and pain. In South Korea, the Korea Health Promotion Institute measures various health indicators as well as assessing the health gap and comparing Koreans' level of health to other countries in accordance with the recommendations and guidelines of the WHO. However, these indicators tend to generalize the public health situation and consist mainly of indicators concerning the status of health. As such, they are limited in revealing the progress or retreat of "democracy" in terms of healthcare or the right to health. Accordingly, the present assessment of public health and healthcare in 2020 will group the events surrounding the agendas that have been raised in this year to evaluate them in terms of healthcare as a public good, the right to health, legal and institutional reforms, and the rights of patients (e.g., right to access, right to information, the rights of active citizenship, etc.), and health inequalities, and discuss future challenges and tasks.

49) Health at a Glance 2019. OECD Indicators. May 2020 OECD. <https://www.oecd-ilibrary.org>

50) Cho Sung-Il. Health Equity. J Korean Med Assoc. 2015 Dec; 58(12):1104-1107.

51) Closing the gap in a generation: health equity through action on the social determinants of health - Final report of the commission on social determinants of health. Aug 28, 2018.

52) WHO, A Declaration on the Promotion of Patients' Rights in Europe, 1994.

53) European Charter of Patients' Rights: Basis Document, November 2002



Detailed Assessment of Items

It is no exaggeration to say that everything about 2020 was defined by the COVID-19 pandemic. Since COVID-19 impacted all areas of society, it is not easy to analyze public health and healthcare alone, independently from other areas. For the purpose of this chapter, the progress and retreat of democracy in public health and healthcare and its details will be discussed focusing on three topics, but some overlap with other fields is inevitable in the process.

1) Did K-quarantine protect citizens' health and right to health?

Quarantine and control may be the term that was most mentioned in 2020, which shows how quarantine and control became the norm that defined daily life in 2020. All existing norms were re-evaluated in terms of whether they are helpful for COVID-19 quarantine and control. This phenomenon occurred worldwide. Emphasis was placed on the role of the state in preventing the spread of COVID-19 and control its damages, and people's daily lives were regulated accordingly. In other words, quarantine and control became the norm of everyday life. Of course, the way this norm took shape differed from country to country, but in South Korea, the role of the state was extremely emphasized, and civil society conformed to the norm seemingly voluntarily, without participating in shaping the norm itself.

○ Digital surveillance, tracking, and isolation

The so-called K-quarantine is said to consist of the Three Ts, which are Test, Trace, and Treatment. This three-step process was developed based on South Korea's experience of the Middle East Respiratory Syndrome (MERS) epidemic in 2015. The method of identifying and isolating patients by tests, extensive tracking, and treating them in quarantine has been attempted since the beginning of 2020 and was widely used during the outbreak of regional infections in the Daegu-Gyeongbuk region. Based on the success in effectively preventing the spread of local infections several times, this method became the model for K-quarantine.

The introduction of COVID-19 to South Korea, supposedly from China, caused great social fear, which culminated in the wake of the large-scale outbreak in the Daegu-Gyeongbuk region, later known as the first wave of COVID-19 in South Korea. The 31st COVID-19 patient identified as the origin of the Daegu-Gyeongbuk outbreak was found to be a member of the Shincheonji Church and that this patient spread the virus widely

among church members. As a result, the members of the Shincheonji Church were tracked and isolated.

The tracking of infected persons and their contacts was done through digital/technological surveillance. Once a confirmed case was identified, anyone who came into contact or was suspected to have come into contact with him/her was obligated to receive an epidemiologic investigation and the COVID-19 test. Contacts were identified through the patient's cell phone call logs, cell phone location tracking, credit card usage log, and CCTV information. This investigation was allowed based on the Infectious Disease Prevention and Control Act. Personal information was provided to the epidemiological investigator within 10 minutes after a patient was confirmed, and public officials (at public health centers and district offices) tracked the contacts under the supervision of the epidemiological investigator.⁵⁴⁾ Individuals were not able to refuse the epidemiological investigation and test.

Digital/technological surveillance was not the only means used in epidemiological investigations. When the 31st patient in Daegu was confirmed to be a member of Shincheonji Church, all members of the Church's nationwide branches had to undergo COVID-19 tests. Local governments, the ruling party, and the media criticized the Shincheonji Church for not submitting the full list of Church members, and Daegu City and Gyeonggi Province filed charges against the Church. However, the Central Disaster and Safety Countermeasures Headquarters (CDSCH) stated that there was no difference between the list the Church had submitted voluntarily to them and the list obtained by Daegu City and Gyeonggi Province and that there was no need for search and seizure.⁵⁵⁾

Shincheonji Church was searched and seized by the Prosecution in May on charges of interfering with epidemiological investigations, and Pastor Lee of Shincheonji Church was arrested. It is questionable whether the Church had indeed interfered with epidemiological investigations when there was no substantial difference between the voluntarily submitted list and the obtained list. In fact, Shincheonji Church protested that they sincerely responded to all (epidemiological) investigations, and they were sacrificed for political purposes.⁵⁶⁾

54) Interview with an epidemiological investigator, May 24, 2020.

55) "Supreme Prosecutors' Office visits the Central Disaster and Safety Countermeasures Headquarters to discuss search and seizure of the Shincheonji Church, the CDSCH responds 'unnecessary,'" JoongAng Ilbo, March 2, 2020.

56) "Five Reasons for the Moon Jae-in Administration to Be Grateful to Shincheonji," Cheonji Ilbo, March 13, 2020.

This kind of digital/technological surveillance and forceful epidemiological investigations and COVID-19 tests on confirmed patients, suspected close contacts, or suspected groups have resulted in socially stigmatizing them, regardless of whether this was intended or not. This situation at the early stage of COVID-19's spread is not irrelevant to the social situation that treats infected persons as criminals. In the early stage, the patients' routes were publicized indiscriminately regardless of the risk of infection, spreading the perception that having one's routes revealed to the public is even scarier than getting infected.⁵⁷⁾

South Korea is one of the countries whose COVID-19 infection rate (prevalence) and fatality rate are considerably lower than those of other countries. While China achieved the same through authoritarian control, South Korea was able to do this without infringing on the daily lives of citizens. South Korean society did not enforce any lockdowns until December. Even when Europe and the United States saw thousands to tens of thousands of confirmed cases every day, South Korea was able to suppress COVID-19 to a few hundred confirmed cases per day up to the large-scale outbreak in winter. It cannot be denied that South Korea's quarantine and control efforts protected people's health and lives well.

However, the digital/technological surveillance engaged in the process placed a higher priority on public health, that is, the protection of the greater population's health and life, than the protection of privacy. The minority groups were stigmatized, and infected persons and patients were treated as if they were criminals who violated the values of public health. Shincheonji church members were the first to be subjected to the social criminalization and stigmatization of minority groups, but the target of social condemnation moved to gender minorities when the outbreak in the Seoul Metropolitan Area originating from Itaewon club emerged. During the second wave of COVID-19 in August, right-wing groups and the Korean Confederation of Trade Unions (KCTU), who held the rallies on Liberation Day, became the next target.

Before the Itaewon club outbreak that spread in the Seoul Metropolitan Area, the fact is that the government lifted the restrictions on the opening of clubs. Also, while the right-wing Liberation Day rallies did not strictly adhere to the rules of social distancing or facemask-wearing, there were already hundreds of infected cases daily even before

57) This indiscriminate exposure of the infected persons' routes was partially corrected later, but the local governments' exposure of infected persons' routes remains a problem.

August 15 due to the government's lifting of the ban on small church gatherings and promotion of domestic traveling in late July. Thus, the Liberation Day rallies simply amplified the second wave, rather than being its only cause. Meanwhile, the KCTU rally followed the government's guidelines on assembly and demonstration, so it had nothing to do with the second wave of COVID-19.

○ Social distancing and inequality

Another important part of K-quarantine is social distancing and wearing facemasks. Since COVID-19 is primarily transmitted from person-to-person through respiratory droplets, social distancing became an essential rule for all citizens. The government enforced social distancing in the form of executive orders based on the level of quarantine and control. It has become a virtue and duty of all citizens to maintain a distance of 2 meters between themselves and others at all times, and wearing facemasks was enforced by law. Furthermore, the opening of businesses, including opening hours and the number of customers allowed within the premises, was set for each level of quarantine and control.

In a capitalist society, space is money. Social distancing requires society to be responsible for distancing, but in reality, all the burden and responsibility arising from social distancing was placed on individuals, resulting in deeper social inequality.

Workers who could not adhere to social distancing were one of the first to become victims of COVID-19. Starting with the Guro call center outbreak, many call center workers became infected. The same occurred at logistics centers. The working conditions at logistics centers, such as the Coupang logistics center, involved excessive labor which disallowed the enforcement of social distancing, even under normal circumstances without the fear of COVID-19. These difficulties were revealed through the repeated group infections at logistics centers. As online shopping replaced a large proportion of offline shopping due to the enforcement of social distancing, logistics companies saw a change in their profits, but the logistics and delivery workers were put under a higher risk of overwork and COVID-19 infection. Despite the continuous reports of deaths due to overwork among delivery workers and group infections at logistics centers, little to no improvements have been made in their working conditions. Moreover, as workers became obligated to wear facemasks, facemasks became a symbol of how the responsibility of quarantine and control is on individuals. However, the company management responsible for creating the very conditions of group infection and

overwork, that is, the working conditions that made social distancing impossible, were not punished. While workers were told to take leaves if they are sick, paid leaves and injury and sickness benefits were not introduced, nor was paid caregiving leave for parents when their children had to stay at home.

Another victim of social distancing is workers at businesses subjected to restrictions and self-employed business owners. K-quarantine's social distancing measures were not applied to the core production chains of manufacturing and distribution industries but were enforced strictly on non-production and non-core industries.⁵⁸⁾ Buses and subways that are packed during commuting hours are representative examples of the Three Cs (closed spaces, crowded places, and close-contact settings), but they were set aside. Even the epidemiological investigations excluded means of transportation other than taxis. Also, even during the large-scale outbreaks in winter, when there was an increase of infections whose origins could not be traced, the government only enforced the wearing of facemasks without any serious attempts at enforcing social distancing in transportation. It was the owners of small and self-employed businesses and their workers that received the brunt of these quarantine measures. Since the workers at small and self-employed businesses are predominantly non-regular workers, they could not receive unemployment benefits or other financial support, apart from the first round of emergency disaster relief funds. Unemployment among women and young people increased dramatically. Self-employed business owners could fire their workers, but they still needed to pay the rent. Although the government forced businesses to face losses by placing restrictions for quarantine and control, no measures were implemented to freeze or lower the rents, and financial compensations were also very limited; the budget set aside for emergency disaster relief funds was less than half of that set by other countries' governments. The government's executive orders restricting businesses, resulting in losses without compensation, undermined the basic principles of the capitalist market system, but this was rationalized in the name of quarantine and control. Compensation for losses, job security, and protection of the right to rest in case of sickness are also essential considerations for quarantine and control because citizens without stable livelihoods cannot stay at home and keep social distance as the quarantine and control guidelines tell them to do. In other words, resolving the inequalities in social conditions is the way to protect the health of the whole society and the people's right to health.

58) Woo Seok-gyun, "COVID-19, Environmental Crisis, and Capitalism," Green Review No. 172, May 1, 2020.

Therefore, even when the value of public health takes precedence, the infringement of personal rights should be minimized. Also, violations of privacy or human rights should be limited to inevitable cases during outbreaks of infectious diseases. The Infectious Disease Prevention and Control Act or related laws should specify the state's obligation to immediately remedy any unnecessary damages to a citizen's human dignity and pay compensation for the damages. The state should also be placed responsible for preserving any losses caused by quarantine and control measures or measures necessary for public health through social security systems or other methods. Legal provisions should also make it mandatory for the state to guarantee housing rights and employment. Paid leave, injury and sickness benefits, and paid caregiving leave systems should be introduced. Dismissing workers during infectious disease outbreaks should be prohibited by law.

2) Medical response and public health, and private hospitals as a public good

The medical response during the large-scale outbreak in the Daegu-Gyeongbuk region, that is, the first wave of COVID-19 in South Korea, was mainly based on public healthcare. As has been the case with the H1N1 flu and MERS outbreaks, the government has mobilized public healthcare facilities, such as public hospitals and public health centers. However, despite the existence of approximately 40,000 hospital beds in the hospitals in the Daegu-Gyeongbuk region, the only hospital beds that could be used immediately were the 500 beds in the Daegu Medical Center. Initially, 2,300 out of the 4,000 infected patients had to wait at home, and about 23% of the 75 patients who passed away during this period met their death without receiving in-hospital treatment.⁵⁹⁾ The medical response system for infectious diseases in the Daegu-Gyeongbuk region had collapsed.

Even afterward, the shortage of hospital beds in the Daegu-Gyeongbuk region continued. Eventually, all public hospitals in the Daegu-Gyeongbuk region, including Armed Forces Daegu Hospital, Veterans Health Service (VHS) Hospital, Kyungpook National University Hospital, Industrial Accident Hospital, and Gyeongsangbuk-do Pohang Medical Hospital, as well as Busan Medical Center, Masan Medical Center in

59) Woo Seok-gyun, "In defense of Professor Kim Yoon, who was referred to the Disciplinary Committee of the Medical Association," The Hankyoreh, May 18, 2020.

Gyeongnam, Masan National Tuberculosis Hospital, etc., vacated patients and became dedicated to COVID-19 treatment. Ultimately, public hospitals nationwide such as the Chungnam, Chungbuk, and Chonnam National University Hospitals, Seoul Medical Center, National Medical Center, and Seoul National University Hospital had to be mobilized to accommodate patients.

On the other hand, in the private hospitals in the Daegu-Gyeongbuk region, the 200 beds (later 400 beds) of Keimyung University Dongsan Hospital (which were the only beds in operation as the hospital had recently moved its main facilities to Seongseo area and thus were designated as secondary beds)⁶⁰⁾ and 100 beds each in Yeungnam University Hospital and Daegu Catholic University Hospital (which were mobilized after 2-3 weeks) were the only hospital beds that were mobilized. In other words, it was mostly only the hospital beds of all public hospitals in the Daegu-Gyeongbuk region, which account for only 5% of 40,000 beds in the region, and those of public hospitals nationwide, which are only about 10% of all hospital beds, that were mobilized for the COVID-19 patients.⁶¹⁾

In South Korea, public hospitals account for only 9.6% of all hospital beds and 5.6% of all medical institutions, which is only 1/7 of the OECD average for the share of hospital beds in public hospitals (73.1%). This is a very small share even compared to the United States (25%) and Japan (30%), which are countries with the least share of public hospitals.⁶²⁾ The higher share of private hospitals is a remnant of the period under Japanese rule, which was exacerbated by the strict dependence on the private sector to supply medical care even amid the rapid increase in healthcare demand after the introduction of health insurance in the late 1970s. This situation persisted even after the National Health Insurance System was established in 1989. Large conglomerate-owned hospitals, such as Asan Medical Center and Samsung Medical Center, and private university hospitals filled the gap between supply and demand.

During the Kim Dae-jung and Roh Moo-hyun administrations, the National Health Insurance System was continuously expanded to offer more than 60% coverage of medical costs, but the Democratic Party governments were unable to keep their pledges to increase the number of public hospitals. During the Kim Dae-jung administration, the

60) Since the hospital had 1,000 beds, the ward building remained empty.

61) Even hospitals in Gangwon-do dispersed their patients to receive COVID-19 patients.

62) Statistics of public hospitals in 2019. Center for Public Healthcare, National Medical Center, October 2020.

social welfare system in South Korea was completed in form but still quite incomplete in its contents, which caused the persistent absence of social rights despite the establishment of procedural democracy in the country. The incomplete social welfare system was what also maintained the dependence on private hospitals to supply of healthcare and medical services. The reason why the coverage offered by the National Health Insurance System is maintained at the 60% level is also largely due to the inability to limit private hospitals, which account for 90% of all hospitals, from pursuing profit-making.⁶³⁾

The Moon Jae-in administration also pledged to establish public hospitals that will serve as the bases for regional public healthcare and a hospital dedicated to infectious diseases as one of the top 100 policy commitments, but this pledge was realized by 2019. Moreover, despite the widespread public awareness on the necessity of public hospitals, which grew even more as the lack of public hospitals in the Daegu-Gyeongbuk region became a problem, the government did not set a budget for building new public hospitals in the national budget for 2020, confirming the lack of will to reform the public hospital situation.

The absolute shortage of public hospitals raised to surface the difficulties in mobilizing private hospitals during national disaster situations. In preparation for the next wave of COVID-19 expected in the winter season, civil society organizations demanded that the government prepare a hospital bed mobilization system. The government failed to do so, which eventually led to a shortage of hospital beds when the number of confirmed cases increased sharply in December. In addition, the shortage in the education and training of nurses, who are essential workers for combating COVID-19, remained unresolved, leading to a problem in supplying nursing staff. The nationwide shortage of hospital beds could only be solved by mobilizing the beds and intensive care units in private hospitals (and national university hospitals). Despite the government's request for cooperation, private hospitals responded by demanding the government to establish regional hospital centers concentrating on public hospitals and sabotaging the government's efforts, which worsened the situation caused by the government's lack of preparation. The government belatedly issued an executive order to mobilize 1% of the hospital beds in 42 tertiary hospitals, however, the shortage in hospital beds is expected to continue as the beds in general wards were not mobilized and the number is too small to begin with. The shortage of hospital beds ultimately results in the deaths of treatable

63) Leo Panitch, Colin Leys, ed. *Morbid Symptoms: Health Under Capitalism*. Center for Health and Social Change, trans. Seoul: Humanitas, 2018.

patients, and most of such deaths are expected to come from those in the low-income classes residing in poor areas, including elderly patients in long-term care hospitals and nursing homes. K-quarantine was relatively successful, but K-healthcare failed due to the absolute shortage of public hospitals, the government's lukewarm mobilization of private hospital beds, and the private hospitals' refusal to cooperate.

On December 13, when the shortage of hospital beds became a reality to cause a rapid negative turn of public opinion, the government proposed a plan to expand public hospitals. However, the plan proposed to build three new regional medical centers, move and reconstruct six existing regional medical centers, build extensions to 11 existing hospitals, improve the preliminary feasibility study, and increase the government subsidy rate from 50% to 60% by 2025,⁶⁴⁾ which fell below the demands of civil society and was a retreat from the Moon Jae-in administration's initial pledge.⁶⁵⁾ Civil society organizations, such as the Korean Federation of Medical Activist Groups for Health Rights, have previously demanded the government to expand public hospitals to meet, at least, the lowest level among OECD countries and to implement a phased expansion of hospital beds by 40,000 beds, which is about 20% of the acute care beds in South Korea.⁶⁶⁾

The government should immediately construct two or more new public hospitals with at least 400 beds per city and province and announce a plan to increase 40,000 public hospital beds so that the number of available beds could reach 20% of acute care beds by 2025. Private hospitals are financed by the National Health Insurance System. As such, they are obligated to play a public role in responding to national disasters, such as infectious disease outbreaks, and the government is charged with the duty to enforce this obligation. The government should immediately mobilize 5-10% of tertiary hospital beds, including those in private hospitals, for COVID-19 patient treatment and establish a transparent and fair hospital bed mobilization system tailored to the situation.

3) Doctors' strikes, shortage of nurses, and the public good and suitability of nursing hospitals

64) Press release, "5,000 hospital beds to be increased in regional public hospital beds to respond to infectious diseases," Ministry of Health and Welfare, December 13, 2020.

65) Korean Federation of Medical Activist Groups for Health Rights, "The government's plan to strengthen public healthcare is very late and inadequate," December 14, 2020.

66) Committee for Civil Society Measures to Respond to the COVID-19 Socio-economic Crisis, Address at the Inaugural Press Conference, April 28, 2020

○ Doctors' strikes and the education and training programs for medical doctors as a public good

In July 2020, the Democratic Party and the government announced the plan to increase the capacity of medical schools by 10% over 10 years and to establish a public medical school.⁶⁷⁾ The capacity of existing medical schools is set to 3,100 students per year, but the plan will temporarily increase this number by 400 for 10 years, of which 300 students will be admitted under a regional doctor scheme, which will impose 10 years of compulsory medical service at regional hospitals, and 40 students to be admitted to the now-closed Seonam Medical School, which will be reopened as an officers training school-style public medical staff training institution. This plan was met with strong opposition from doctors.

The Korean Medical Association (KMA), the Korean Intern Resident Association (KIRA), and the Korea Medical Student Association (KMSA) opposed this plan and showed their veto of the plan through two rounds of doctors' strikes led by the KMA, 18 days of doctors' strikes led by the KIRA (August 21 to September 8), and medical school students' temporary withdrawal from school and 4th-year students' refusal to take the medical licensing examination led by the KMSA. Facing such fierce opposition, the government made compromises by accepting most of the demands made by the doctors' side even though the public opinion was largely against the doctors' strikes. The considerations that were behind the compromises were: 1) the second wave of COVID-19 was strong at the time in August, 2) hospital treatments were crippled nationwide due to the absence of doctors who are essential staff at hospitals, and 3) even medical school professors were showing signs of joining the collective action.⁶⁸⁾

The public opinion against the doctors' strike ran high. The strikes were viewed negatively because, although the doctors opposed the increase in medical school capacity, the number of doctors per person in South Korea is only 60% of the OECD average, and the rate of increase in this number is low. In other words, the opposition was not based on facts but fake news.⁶⁹⁾ Also, doctors were perceived to be enjoying high

67) "The number of medical students to be increased by 400 from 2022... 4,000 people to be trained over 10 years". Medical Times, July 23, 2020

68) University hospital professors issued statements one after another, and a strike movement started to form, including partial suspensions of outpatient appointments at Seoul National University Hospital among professors of internal medicine.

69) "[Fact Check] Regarding the allegations raised by the KMA doctors' strike," Association of Physicians for Humanism, August 26, 2020.

income and status in the eyes of the public, so opposing the policy to increase doctors in regional cities by just 10% of the existing medical school capacity every year seemed an excessive selfishness that went against the people's right to health. Moreover, the way the doctors' strikes were held, that is, withdrawing from emergency rooms, delivery rooms, and intensive care units, were a direct threat to people's health, which caused the death of a patient on the very first day of the strikes. The elitism of doctors, who boast that they were the smartest students,⁷⁰⁾ and their arrogant attitudes, etc. also directly contributed to the negative public opinion.

As a result, the doctors' strikes during the second wave of COVID-19 conversely raised the issue of medical education and training as a public good and medical ethics. The doctors' strikes showed that doctors could be a threat to society when essential medical personnel is brought up by private universities, and when doctors perceive their status as their privilege, rather than something that is granted by society. There formed a consensus that discussions on the specific issues in this area, such as the establishment of a public medical school and increasing medical school capacity, should not be conducted solely between the doctors and the government, but must be resolved through social dialogues as demanded by civil society. Also, there were also voices demanding that the 4th-year medical school students who refused to take the medical licensing examination to be prohibited from retaking the exam.

○ Resolving the absolute shortage and poor working conditions of the nursing staff

One of the problems faced by the medical response for COVID-19, especially during the large-scale outbreaks in winter, was the shortage of nursing staff. The OECD average for the number of nursing staff per 1,000 people is 8.9, whereas that of South Korea is 7.9. Also, in most OECD countries, only about 20% of the nursing staff are nursing assistants, but in South Korea, about 50% are nursing assistants, which means that excluding nursing assistants, the average number of nurses per 1,000 people is 3.7.⁷¹⁾ On the other hand, where South Korea's number of hospital beds per person is more than twice the OECD average, which naturally places South Korea at the bottom among the OECD countries in terms of the number of nursing staff per hospital bed. This problem is directly related to the poor working conditions of female workers and caregivers.

70) "Choose a doctor who was the top student at his/her school? Promotional material made by KMA's Research Institute adds to the trouble," September 2, 2020. The Hankyoreh Newspaper 7b01ac57c992a2954a92.

71) "Clinical doctors and nurses ranked bottom among OECD countries," For Nurse, July 23, 2020.

Due to the shortage of nursing staff, the average duration of employment among nurses working at medical institutions is only 7 years and 8 months, and among nursing assistants, 5 years.⁷²⁾ The probability of a new nurse retiring within 1 year is 45.5%. The working conditions of the nursing staff are very poor, and the poor working conditions have caused more licensed nurses to choose to leave their licenses in the closet, further exacerbating the situation. The nursing staff of university hospitals has taken on a strange structure where there are only newly-licensed nurses and nurses with more than ten years of experience. For hospital management, this employee structure could reduce the overall wages to be paid, but it is a nightmare for the nursing staff and makes it hard to guarantee that patients will receive quality medical care.

This problem has made it a norm for family members or caregivers to stay and live in hospitals as if they are “essential personnel.” Family taking care of their sick family members is not a caregiving ‘culture’ that is particular to South Korea but a structural problem created by the lack of nursing staff. This shortage of nursing staff was exposed nakedly at the COVID-19-dedicated hospitals and wards, where family members or private caregivers were not allowed to enter due to the risk of infection.

○ **The inhumane conditions of nursing hospitals and nursing homes for the elderly and the disabled revealed by COVID-19 and ways for improvement**

The problems surrounding nursing hospitals for the elderly and nursing homes for the mentally impaired were also dramatically revealed in the wake of the COVID-19 pandemic. Caregiving for the elderly in South Korea mainly takes the form of admission into large-scale facilities, rather than local community-based small-scale residential care. Nursing homes are social welfare nursing facilities and nursing hospitals are a type of medical institution, but in South Korean society, they are the same in that they are caregiving facilities for the elderly with the only difference being the size of economic burden. In fact, these facilities could be thought of as a “modernized Goryeojang (abandonment of elderly after they have reached a certain age)” in that elderly people are hospitalized at these facilities until they pass away. The average term of hospitalization being 2.2 years at nursing homes and 1.5 years at nursing hospitals. Since the cost for staying at nursing homes and nursing hospitals is rated flat per day, the spaces at these facilities are allocated ‘economically,’ that is, as narrow as possible per person. For this

72) Hospital Nurses Association, 2019 Survey on the Status of Nursing Personnel in Hospitals, February 7, 2020.

reason, the spaces at nursing hospitals and nursing homes are closed, crowded, and close contact. Caregiving work is absolutely necessary at these facilities because they house many elderly people with reduced mobility as well as bedridden patients, but certified nursing assistants and caregivers are hired at a minimum to reduce expenses, and 8 to 20 elderly people are allocated per caregiver.⁷³⁾

It is no wonder that the COVID-19 spread widely in these nursing homes and nursing hospitals densely housing with numerous elderly people in closed spaces. Adding to the problem, the shortage of hospital beds prevented the COVID-19-infected elderly people in these facilities from being transferred to the general ward. The so-called “cohort quarantine” in nursing homes and nursing hospitals is the same as abandoning patients without treatment and caused the proportion of deaths in these facilities to rise dramatically. What has happened in these caregiving facilities for the elderly in the wake of COVID-19 clearly revealed South Korean society’s inhumane treatment of elderly people who await the last day of their lives.

The Cheongdo Daenam Hospital outbreak, which happened earlier this year, showed that caregiving facilities for the disabled are no different. There were 102 patients in the psychiatric ward on the 5th floor (actually the 4th floor) of Cheongdo Daenam Hospital. These patients were so completely reclusive that patients on the third floor were not aware of their existence, and they were living in clusters of eight or more without beds to accommodate as many people as possible in one room. Many of these 102 patients had been tossed about from one mental care facility to another since they were young, but in the end, all of them were left abandoned to be infected with COVID-19.

The situation at the Cheongdo Daenam Hospital was so poor that five of the first seven deaths during the Daegu-Gyeongbuk outbreak occurred there, but the government decided to keep the patients in cohort quarantine, a decision which resulted in more deaths. Protests from civic groups, etc. pushed the government to change the decision and transfer the patients to another hospital, but it took two weeks for all of them to be transferred, and there was no choice but to move them to national mental health centers in Seoul and Gyeonggi-do as no other hospitals would accept them. In this way, the inhumane conditions of long-term care facilities for the mentally impaired were also revealed by COVID-19.

73) Woo Seok-gyun, “Gazing at the Pandemic from a World of Inequalities,” Post-COVID-19 Society, Geulhangari. 2020.

The process of educating medical personnel should be made into a public good, so that public healthcare could meet the needs of local communities. For example, the capacity of national medical schools could be increased by 50% with full student scholarships in return for a mandatory ten-year service at public medical institutions, excluding the training period. As for the nursing staff, the minimum requirement of nurses should be stipulated by law so that the number of nursing staff per patient could be increased. To this end, the nurses' work conditions must be dramatically improved, and an integrated nursing and caregiving system should be introduced quickly. In the case of nursing homes, nursing hospitals, and medical institutions for the mentally impaired, first of all, the living spaces for the elderly should be at least doubled in size, and additional caregivers should be guaranteed for nursing hospitals through the social security system to minimize the cost burden on the families. Nursing homes, which are mostly private, should be run as public facilities. Nursing homes, nursing hospitals, and mental health centers should secure enough space for their patients and become public goods. At the same time, caregiving facilities should be transformed gradually from large-scale facilities to local community-based small-scale residential care.



Summary

The COVID-19 pandemic was a kind of stress test on the right to health and healthcare in South Korean society. The pandemic showed that health, life, and the right to health are not equal for all people. Also, the social distancing and quarantine measures put in place by the government in response to COVID-19, and the government's policies for compensating for the losses caused by the response measures, policies on housing and employment, as well as the emergency disaster relief funds, etc., were unfair and unequal, and placed the social burden on workers and the working class. These areas need to be addressed and corrected. The right to rest in case of sickness should be institutionally guaranteed to workers, and above all, employment should be guaranteed. Citizens should be guaranteed housing and given compensation for any losses due to the restrictions placed by quarantine and control measures. Without these arrangements, quarantine and control efforts could not be effective.

COVID-19 also highlighted the absolute shortage of public healthcare in South Korea and showed the distinct limitations brought by the over-dependence on private hospitals to supply medical services. The doctors' strikes amid the COVID-19 pandemic clearly revealed the need to educate and train doctors through public programs so that their services could meet the needs of the people. Similarly, the shortage of nursing staff

and their poor working conditions need to be addressed as well. Solving these issues will pave the path for securing the people's right to health. The COVID-19 pandemic also exposed the profit-seeking nature and inhumane conditions of long-term care facilities for the elderly and the disabled, calling for a reform of such an unjust caregiving system into a public system that is based on local communities and local demands.

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