

WHAT JEJU 4.3 SURVIVORS AND FAMILIES CAN LEARN FROM THE GLOBAL SOUTH IN SEEKING JUSTICE FROM AN EMPIRE

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Discovered by the soldiers, I was dragged out into the street, and the sky was filled with smoke as the village burned. Bang, bang, bang, I heard gunshots, and the heads I saw were gone. I wish I could forget the sin, but I remember when I close my eyes as if it was yesterday. An 8-year-old girl has become an 80-year-old woman, who still has not achieved her dream: that the U.S. government join us and help us discover the truth.

– Ko Wan-soon, 80-year-old Jeju 4.3 survivor¹

I. INTRODUCTION

In the field of transitional justice, South Korea stands out as a helpful paradox. It is a good example of how political will and public pressure have made possible a transitional justice process that includes “at least ten truth commissions,”² the prosecution of two former military dictators, and the offer of apologies and some forms of reparation to thousands of Korean victims of various episodes of political violence and conflict in the history of

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1. Ko Wan-soon, now 80-year-old, is a Jeju survivor who witnessed the massacre when she was a child and recalled her traumatic memories at the United Nations Symposium in New York on June 20, 2019. See Int’l Ctr. for Transitional Just., *Jeju 4:3 A Dark Chapter in Korean History Revealed at UN*, MEDIUM (July 1, 2019), <https://medium.com/@ICTJ/jeju-4-3-holds-historic-event-at-un-3c6c9976273a> [<https://perma.cc/M3R3-NEBE>].

2. Hun Joon Kim, *Truth Commissions in South Korea: Lessons Learned*, MIDDLE E. INST. (Dec. 20, 2013), <https://www.mei.edu/publications/truth-commissions-south-korea-lessons-learned> [<https://perma.cc/B3UQ-3LFL>].

the Korean people.³ But the same Korean society that made these transitional justice measures happen is also the same country that maintains a military alliance with the imperial power that armed and backed Korea's ex-dictators and took part in war-time massacres of Koreans while casting itself as their ally. This is the context in which the question that matters most to the survivors of Jeju 4.3 may be answered: will the American empire, which regards itself as above accountability, acknowledge and repair the harms caused by its role in the atrocities committed against the victims of this episode in Korean history?

I will not attempt to answer that question comprehensively. Professor Eric Yamamoto's excellent book does that and the earlier work of Korean scholars and non-Korean advocates he cites offer more than adequate responses.⁴ But I will offer some insights from relevant comparative transitional justice examples in which the United States, or some other empire or colonizer implicated in atrocities during conflict or under authoritarian rule, was asked to respond to victims' demands for acknowledgement and reparations. These insights are not only possible because of lessons from experiences elsewhere, but also guided by what the survivors, victims' families, and advocates of Jeju 4.3 reparations have taught those who work in the field of transitional justice.

II. SEEKING SUPPORT FOR SURVIVORS' NEEDS WHILE DEMANDING REPARATIONS

The U.S. has not acknowledged, apologized, or offered reparations for the millions of civilian deaths, injuries, and the immeasurable harms and damage it caused in its war against Vietnam,⁵ its invasion of Iraq,⁶ occupation of Afghanistan,⁷ or in any of the other countries where it has intervened

3. See Associated Press, *Widow of South Korea's Last Military Dictator Issues Apology Over Brutal Rule*, NBC NEWS (Nov. 28, 2021, 2:47 AM), <https://www.nbcnews.com/news/world/widow-chun-doo-hwan-south-korean-last-military-dictator-issues-apology-rcna6861> [<https://perma.cc/39TV-D396>].

4. See generally ERIC K. YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY* (2021).

5. See Bruno Jantti, *No Apologies: U.S. Aggression Against Vietnam*, TELESUR (Nov. 10, 2014), <https://www.telesurenglish.net/opinion/No-Apologies-U.S.-Aggression-Against-Vietnam-20141110-0065.html> [<https://perma.cc/FR7H-QG38>].

6. See CJ Werleman, *Why the US Will Never Say Sorry for Destroying Iraq*, MIDDLE E. EYE (Apr. 11, 2018), <https://www.middleeasteye.net/opinion/why-us-will-never-say-sorry-destroying-iraq> [<https://perma.cc/C87K-D2UQ>].

7. See Azeezah Kanji, *Opinion, Reparations in Reverse: Afghanistan Pays, Vatican Prays, US Preys*, AL JAZEERA (Apr. 22, 2022), <https://www.aljazeera.com/opinions/2022/4/22/reverse-reparations-afghanistan-pays-vatican-prays-us-preys> [<https://perma.cc/PD28-6LF6>].

militarily. Instead, the U.S. has offered so-called “condolence payments” that deny legal responsibility for human rights and humanitarian law violations by U.S. military forces against Afghan and Iraqi civilian victims.⁸ But in Vietnam, the U.S. has offered long-term forms and significant amounts of assistance,⁹ which suggests that it is possible for a foreign state to help survivors receive some of their most urgent or specialized needs—even when that state refuses to acknowledge its obligation to repair and simply not help.

Between 1961 and 1973 (or during a war that America started just less than twenty years after Jeju 4.3), the U.S. military “dropped Agent Orange and similar chemical weapons on 5.6 million acres of Vietnamese land.”¹⁰ Sixty-one years later, over three million Vietnamese victims of America’s use of the defoliant Agent Orange still suffer from sickness and disabilities caused by the chemical.¹¹ The Vietnamese government, along with a victims’ organization known as the Vietnam Association of Victims of AO/Dioxin (VAVA), provide health insurance and free medical services for victims, while those with serious disabilities “have received orthopedic surgeries and functional rehabilitation.”¹² By providing these services to its citizens, Vietnam is fulfilling its obligations under various international human rights conventions, particularly the United Nations (UN) International Covenant on Economic, Social and Cultural Rights,¹³ the Convention on the Rights of Persons with Disabilities,¹⁴ and the Convention on the Rights of the Child.¹⁵ These services cannot be regarded as reparations because they are not provided by the state responsible for the harm.

8. Peshia Magid, *No Apologies: The U.S. Military Often Kills Civilians—and Rarely Offers Compensation*, Intercept (Sept. 21, 2021, 7:30 AM), <https://theintercept.com/2021/09/21/civilian-casualties-military-compensation/> [<https://perma.cc/9EV8-Z6G6>].

9. *Vietnam War Legacies and Reconciliation Initiative*, U.S. INST. OF PEACE, <https://www.usip.org/programs/vietnam-war-legacies-and-reconciliation-initiative> [<https://perma.cc/7MRF-HSX3>].

10. Amiad Horowitz, *Vietnam Marks 61 Years Since U.S. Military’s Agent Orange Attacks*, PEOPLE’S WORLD (Aug. 15, 2022, 1:02 AM), <https://www.peoplesworld.org/article/vietnam-marks-61-years-since-u-s-militarys-agent-orange-attacks/> [<https://perma.cc/3BT8-AQ9J>].

11. *See Agent Orange Day 2022 Statement by Viet Nam Union of Friendship Organizations*, VIETNAM AGENT ORANGE RELIEF & RESPONSIBILITY CAMPAIGN (Aug. 9, 2022), <https://vn-agentorange.org/agent-orange-day-2022-statement-by-viet-nam-union-of-friendship-organizations/> [<https://perma.cc/853L-SJGR>] [hereinafter *Agent Orange Day*].

12. *Id.*

13. *See* U.N.G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

14. *See* U.N.G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities (Dec. 13, 2006).

15. *See* U.N.G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989).

On the other hand, aside from assisting its own veterans suffering from the effects of Agent Orange, the U.S. has offered what it variously calls “assistance” or “support” for Vietnamese victims. Between 2007 and 2021, the U.S. appropriated about \$390 million to address the environmental and health harm caused by “Agent Orange during the Vietnam War.”¹⁶ This includes funding for cleanup near former U.S. military bases in Vietnam as well as funding for health care programs for persons with disabilities living nearby.¹⁷ According to VAVA, from 2016 to 2020 the U.S. spent \$21 million on victim aid programs and will spend \$65 million between 2021 and 2025 for “some provinces hit hard by toxic chemicals.”¹⁸ The U.S. and Vietnamese governments have reached an agreement on the “hot spots” to be cleaned.¹⁹

While there is clearly a *legal* distinction between assistance, reparations, and a state’s fulfillment of its economic and social rights obligations, they can overlap in the material forms they take. Vietnamese government programs for Vietnamese victims of Agent Orange are not a substitute for American acknowledgement and reparations for Vietnamese victims. But Vietnam’s experience with U.S. assistance for Vietnamese victims suggests that it is possible to work toward or even prioritize funding and providing for the needs of victims and their communities without forcing a conclusion on issues of acknowledgement and reparations. This will necessitate a balance between the unconditional importance of accountability with the needs of victims, as well as a consideration of the political leverage and financial capacity of the states involved. When the powers of the states involved are grossly unequal—such as between the U.S. and Vietnam—meeting the health care and other social needs of the most vulnerable victims may become the more urgent goal.

This does not mean that reparation demands should be abandoned. In this case, even if “[t]he U.S. government has made it clear that it does not intend to finance the medical treatment and care”²⁰ for all Vietnamese Agent

16. MICHAEL F. MARTIN, CONG. RESEARCH SERV., R44268, U.S. AGENT ORANGE/DIOXIN ASSISTANCE TO VIETNAM 22 (2021).

17. *Id.* at 33.

18. See *Agent Orange Day*, *supra* note 11.

19. See George Black, *50 Years Later, a Daunting Cleanup of the Vietnam War’s Toxic Legacy Continues*, PBS NEWS HOUR (May 29, 2019, 1:54 PM), <https://www.pbs.org/newshour/science/fifty-years-later-a-daunting-cleanup-of-the-vietnam-wars-toxic-legacy-continues> [<https://perma.cc/6DES-HNPY>]; see also Amruta Byatnal, *USAID Begins New Round of Agent Orange Cleanup in Vietnam*, DEVEX (Jan. 8, 2020), <https://www.devex.com/news/usaids-begins-new-round-of-agent-orange-cleanup-in-vietnam-96222> [<https://perma.cc/SQ2T-ATBW>].

20. MARTIN, *supra* note 16, at 33.

Orange victims, a future U.S. acknowledgment or apology cannot be ruled out. Since 2007, the U.S. has continuously given assistance by appropriating money,²¹ which demonstrates the extent of Congress's commitment. In a 2016 visit to Laos, then U.S. President Barack Obama did not apologize for the U.S. atrocities against Laos and Vietnam. However, he came close by "acknowledging the suffering and sacrifices on all sides of that conflict" and recognizing that "the United States has a moral obligation to help Laos heal."²²

III. SEQUENCING AND TIMING DEMANDS FOR ASSISTANCE AND ACKNOWLEDGEMENT

As Yamamoto points out, the survivors and families of victims of Jeju 4.3 have made it clear that "responsibility for the mass slaughter of Jeju residents lies with the Rhee Syng-man administration and the U.S."²³ "[I]t is time," they said, "for [the United States] to admit and officially apologize" for its role in the atrocities committed during Jeju 4.3.²⁴ But demanding acknowledgement, including an apology, is only one step in the long road to accountability. Uncertain is the United States' willingness to walk alongside South Korea and the people of Jeju.

The U.S. has seldom acknowledged, let alone unconditionally apologized or offered reparations, for atrocities it has committed or been complicit in, particularly where those atrocities were committed by the U.S. in and against other countries as a colonizing, occupying, or military-intervening state. Domestically, the U.S. "has no general program of reparations for Native Americans and no prospects for adopting one."²⁵ While the Black Lives Matter movement has resulted in a renewed push for slavery reparations, the U.S. government has failed "to take this relatively modest step on reparations, the creation of a commission" that would study how it can be done.²⁶

21. *Id.* at 3.

22. Jasmina Yap, *In Laos, Obama Seeks to Move Past Vietnam War Fallout*, LAOTIAN TIMES (Sept. 6, 2016), <https://laotiantimes.com/2016/09/06/in-laos-obama-seeks-to-move-past-vietnam-war-fallout/> [<https://perma.cc/522R-QFAY>].

23. YAMAMOTO, *supra* note 4, at 225.

24. *Id.*

25. David Williams, *Don't Worry, Be Guilty*, CULTURAL SURVIVAL (Sept. 2007), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/dont-worry-be-guilty> [<https://perma.cc/8Z99-GZLL>].

26. See "Why We Can't Wait" Coalition Statement on US Failure to Establish H.R. 40 / S. 40 Commission, HUM. RTS. WATCH (Aug. 23, 2022, 9:00 AM), <https://www.hrw.org/news/2022/08/23/why-we-cant-wait-coalition-statement-us-failure-establish-hr-40/s-40-commission> [<https://perma.cc/5BMT-S67X>].

Even when a U.S. president or its Congress has formally acknowledged or apologized for specific U.S. government-sponsored human rights violations, the process of translating that symbolic form of reparation into comprehensive and material forms of reparation is often protracted and politically fraught. An often-cited example of official American acknowledgement and reparations is the series of apologies and reparation measures offered by the U.S. to surviving Japanese-Americans forced into concentration camps during World War II.²⁷ The 2005 UN General Assembly Basic Principles and Guidelines on the Right to a Remedy and Reparations call for reparations to be “prompt and appropriate.”²⁸ However, it took the U.S. thirty-five years after the U.S. concentration camps were closed to offer reparations and apologies to Japanese-Americans.²⁹ In contrast, it took the then Federal Republic of Germany only seven years to sign the 1952 Luxembourg Treaty that offered reparations to victims of the Holocaust.³⁰

This is not to say that Germany has consistently been exemplary in acknowledging and repairing the historic injustices it has committed. While Germany formally acknowledged and apologized for the genocide its colonial government committed against Namibia’s Herero and Nama people in 2021,³¹ it has refused to give them material reparations.³² Germany has instead proposed “\$1.3 billion, for reconstruction and development projects,”³³ which leaders of the victim communities have rejected.³⁴ Similarly, the United Kingdom and other European colonizers, such as

27. See Helen Yoshida, *Redress and Reparations for Japanese American Incarceration*, NAT’L WWII MUSEUM (Aug. 13, 2021), <https://www.nationalww2museum.org/war/articles/redress-and-reparations-japanese-american-incarceration> [<https://perma.cc/9Q4N-2QTQ>].

28. U.N.G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, at ¶ 2(c) (Dec. 16, 2005).

29. Mitchell T. Maki, *How Japanese Americans Fought for—and Won—Redress for WWII Incarceration*, HISTORY (Apr. 29, 2022), <https://www.history.com/news/japanese-american-wwii-incarceration-camps-redress> [<https://perma.cc/NHP9-7TJR>].

30. Agreement Between the State of Israel and the Federal Republic of Germany, Sept. 10, 1952, 206 U.N.T.S. 2137.

31. *Germany Apologizes for Colonial-Era Genocide in Namibia*, REUTERS (May 28, 2021, 8:10 AM), <https://www.reuters.com/world/africa/germany-officially-calls-colonial-era-killings-namibia-genocide-2021-05-28/> [<https://perma.cc/J6ZC-QF5U>].

32. *Id.*

33. Gabriele Steinhauser, *Germany Recognizes Colonial Genocide in Namibia, to Pay \$1.3 Billion*, WALL ST. J. (May 28, 2021, 9:28 AM), <https://www.wsj.com/articles/germany-recognizes-colonial-genocide-in-namibia-to-pay-1-3-billion-11622208538> [<https://perma.cc/KWM5-ZATW>].

34. *Namibia Chiefs Reject “Insulting” German Aid Offer Over Colonial Killings*, DEUTSCHE WELLE (May 31, 2021), <https://www.dw.com/en/namibia-chiefs-reject-insulting-german-aid-offer-over-colonial-killings/a-57731356> [<https://perma.cc/P9FK-FHPK>].

France and Belgium, have refused to discuss demands for reparations by their former colonies.³⁵

While it is difficult to extract acknowledgement, reparations and apologies from former colonizing or occupying empires, it is not impossible. Veterans of Kenya's anti-colonial Land and Freedom Army (whom British colonizers called the "Mau Mau") have shown that it is possible.³⁶ Thousands of Mau Mau fighters, along with civilians, were detained and tortured (with some castrated) by colonial British troops in the 1950s.³⁷ In 2009, a handful of veterans who survived torture sued the United Kingdom (U.K.) for reparations in a London court.³⁸ The decisive factor that made this case possible was the forensic archival research done by a British historian in both British and Kenyan archives.³⁹ The legal advocacy of the victims' U.K. lawyers helped as well.⁴⁰ While working for the International Center on Transitional Justice (ICTJ), I was asked to assist in the settlement discussions between the veterans' representatives and the U.K.⁴¹ Four years later, the U.K. settled with the Mau Mau veterans.⁴² It offered over 5,000 survivors £19.9 million in costs and compensation, an official apology from the British Government (which was delivered by the then U.K. Foreign

35. See Rokhaya Diallo, Opinion, *Europe Has a Long Way to Go on Reparations and Making Amends for Colonialism*, WASH. POST (July 21, 2021, 12:38 PM), <https://www.washingtonpost.com/opinions/2021/07/21/europe-reparations-colonialism-france-senegal-benin-germany-namibia-britain/> [https://perma.cc/WMF5-KTAR]; see also Nosmot Gbadamosi, *Belgium Offers Regret—but No Reparations—to Congo*, FOREIGN POL'Y (June 15, 2022, 1:00 AM), <https://foreignpolicy.com/2022/06/15/belgium-congo-king-philippe-colonialism-tshisekedi/> [https://perma.cc/B8VT-NHU4].

36. See generally DONALD L. BARNETT & KARARI NJAMA, *MAU MAU FROM WITHIN: THE STORY OF THE KENYA LAND AND FREEDOM ARMY* (Daraja Press 2021) (1966) (detailing the story on the struggles experienced by the Kenya Land and Freedom Army, referred to by British colonizers as the "Mau Mau Rebellion").

37. *The Mau Mau Claims*, LEIGH DAY, <https://www.leighday.co.uk/latest-updates/cases-and-testimonials/cases/the-mau-mau-claims/> [https://perma.cc/8JM3-ZYRE].

38. See *Kenyan Mau Mau Fighters Intend to Sue British Government*, VOICE OF AMERICA (Oct. 31, 2009, 4:12 PM), <https://www.voanews.com/a/a-13-2006-10-05-voa48/321389.html> [https://perma.cc/FV5D-DT8V]; see also Alex Wessely, *The Mau Mau Case – Five Years On*, LEIGH DAY (Oct. 6, 2017), <https://www.leighday.co.uk/latest-updates/blog/2017-blogs/the-mau-mau-case-five-years-on/> [https://perma.cc/4T74-TS2B].

39. See Marc Parry, *Uncovering the Brutal Truth About the British Empire*, THE GUARDIAN (Aug. 18, 2016, 1:00 AM), <https://www.theguardian.com/news/2016/aug/18/uncovering-truth-british-empire-caroline-elkins-mau-mau> [https://perma.cc/MV9Z-BEBW].

40. See Ian Cobain et al., *Mau Mau Veterans Win Right to Sue British Government*, THE GUARDIAN (Oct. 5, 2012), <https://www.theguardian.com/world/2012/oct/05/maumau-court-colonial-compensation-torture> [https://perma.cc/2S72-FXMN].

41. *Decision in Mau Mau Case Strengthens the Right to Reparations of All Victims of Torture*, INT'L CTR. FOR TRANSITIONAL JUST. (Oct. 5, 2012), <https://www.ictj.org/news/decision-mau-mau-case-strengthens-right-reparations-all-victims-torture> [https://perma.cc/5FRX-9TBK].

42. See Wessely, *supra* note 38.

Secretary),⁴³ and funding for the construction of a memorial in Nairobi honoring men and women Mau Mau fighters.⁴⁴

It may be more challenging for Jeju 4.3 victims to open another path to reparations through U.S. courts, but again, not impossible. But litigation is not the only reason to have U.S. archives opened. As Yamamoto has pointed out, the opening of archives by itself can lead to truth-seeking, which in turn is a step toward acknowledgement.⁴⁵ As seen in the Vietnam example, acknowledgement short of recognizing legal responsibility can also be a way to obtain U.S. funding and technical assistance for survivors and families of Jeju 4.3 victims in the meantime. While the U.S. has ignored demands for opening its own Jeju 4.3-related archives,⁴⁶ this cannot be precluded in the future. While visiting Argentina in 2016 on the anniversary of the coup that led to the 1976-1983 military junta's repressive rule, former U.S. President Obama announced that the U.S. would declassify records on the coup and the events that followed.⁴⁷ Contrary to expectations, the right-wing Trump administration continued that process.⁴⁸

Obtaining an apology is a different and often more difficult step forward. An apology is a form of reparation. For an apology to follow negotiations for assistance and discrete measures of acknowledgement, it requires strategic sequencing and often opportunity-dependent timing. An example from Chile suggests that forcing the U.S. political elite to take the step might become counterproductive. Like South Korea, Chile has had more than one truth commission and is implementing a comprehensive reparations program.⁴⁹ Chile's 1990 truth commission was one of the first truth

43. See *id.*; see also Mark Caldwell, *UK Compensates Mau Mau Veterans*, DEUTSCHE WELLE (Jun. 6, 2013), <https://www.dw.com/en/uk-compensates-mau-mau-veterans/a-16863967> [<https://perma.cc/MKC9-N8ZR>].

44. Wessely, *supra* note 38; *Kenya Mau Mau Memorial Funded by UK Unveiled*, WASH. INFORMER (Sept. 15, 2015), <https://www.washingtoninformer.com/kenya-mau-mau-memorial-funded-by-uk-unveiled/> [<https://perma.cc/9A3X-KMEE>].

45. See YAMAMOTO, *supra* note 4, at 17-18, 146.

46. See Anthony Kuhn, *Survivors of a Massacre in South Korea Are Still Seeking an Apology From the U.S.*, NPR MORNING EDITION (Sept. 7, 2022, 5:10 AM), <https://www.npr.org/2022/09/07/1121427407/survivors-of-a-massacre-in-south-korea-are-still-seeking-an-apology-from-the-u-s> [<https://perma.cc/L5UM-PR23>].

47. Press Release, Office of the Press Sec'y, White House, FACT SHEET: Argentina Declassification Project (Dec. 12, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/12/12/fact-sheet-argentina-declassification-project> [<https://perma.cc/4RVA-H98V>].

48. *Trump Continues U.S. Declassified Diplomacy with Argentina*, NAT'L SEC. ARCHIVE (Apr. 27, 2017), <https://nsarchive.gwu.edu/briefing-book/southern-cone/2017-04-27/trump-continues-us-declassified-diplomacy-argentina> [<https://perma.cc/J4F7-3GG8>].

49. *Committee on Enforced Disappearances Examines the Report of Chile*, U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS. (Apr. 10, 2019), <https://www.ohchr.org/en/news/2019/04/committee-enforced-disappearances-examines-report-chile> [<https://perma.cc/DXX3-RAAJ>].

commissions in the world to explicitly call out American military and political intervention during the Cold War.⁵⁰ But when a U.S. official in 1977 apologized for the U.S. role in backing Chilean dictator Augusto Pinochet, then U.S. President Carter disavowed that apology.⁵¹ Visiting Chile in 2011, former U.S. President Obama also declined to apologize.⁵²

On the other hand, American rhetoric against apologies does not always mean there will not be an acknowledgement of moral, if not legal, responsibility. After the U.S. military shot down an Iranian passenger plane in 1988 and killed 290 civilians, then President George H.W. Bush said, “I will never apologize for the United States—I don’t care what the facts are.”⁵³ Eight years later, a U.S. government spokesman acknowledged that “regardless of the cause . . . we have an obligation to compensate families who lost fathers and sons and sisters and mothers,” and paid up to \$300,000 to each Iranian family that lost a family member.⁵⁴ Why did the U.S. settle with Iran? An obvious reason is that the U.S. was avoiding a binding judgment in the case filed by Iran at the International Court of Justice, which included a demand for compensation.⁵⁵

To extract a U.S. acknowledgement involving Jeju 4.3, the South Korean government must use all the security and political leverage it has with American policymakers. Even if they might have opposing domestic agendas, Korean activists must work with their government toward this goal. Otherwise, it will be business-as-usual. During a visit to South Korea in 2022, U.S. President Joseph Biden was urged to visit Jeju’s peace memorial to the events of 4.3, and a Korean-American academic argued that such a visit, “[m]ore than any official statements, [would be] an act of humility and

50. See U.S. INST. OF PEACE, REPORT OF THE CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION 64, 67 (Oct. 4, 2022), https://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf [<https://perma.cc/Y3KW-QRXQ>].

51. Dan Griffin, *Envoy is Disavowed After Apology for U.S. Role in Chile*, WASH. POST (Mar. 9, 1977), <https://www.washingtonpost.com/archive/politics/1977/03/09/envoy-is-disavowed-after-apology-for-us-role-in-chile/c5a0e252-1f0f-4818-967c-3c7181be6caf/> [<https://perma.cc/3W9F-LX8N>].

52. Josh Gerstein, *Obama Not Apologizing for Pinochet*, POLITICO (Mar. 21, 2011, 10:10 PM), <https://www.politico.com/story/2011/03/obama-not-apologizing-for-pinochet-051707> [<https://perma.cc/D4PN-277F>].

53. Marty Steinberg, *‘Kinder, Gentler’ and Other George HW Bush Quotes*, CNBC (Dec. 1, 2018, 12:00 AM), <https://www.cnn.com/2018/12/01/george-hw-bush-quotations.html> [<https://perma.cc/33GH-WVB4>].

54. *U.S. and Iran Settle Financial Claims*, WASH. POST (Feb. 23, 1996), <https://www.washingtonpost.com/archive/politics/1996/02/23/us-and-iran-settle-financial-claims/800d7cda-c906-44fa-aeda-e710bfc1867f/> [<https://perma.cc/MN8J-6KFL>].

55. *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)*, INT’L CT. OF JUST., <https://www.icj-cij.org/case/79> [<https://perma.cc/44R4-EVE7>].

respect [that] would show the world that the bilateral alliance is, in fact, ironclad.”⁵⁶ President Biden did not visit Jeju. He focused instead on the military alliance with South Korea, which is precisely the kind of leverage that should be used to advance the U.S. cooperation on Jeju 4.3 issues. Korean civil society can also benefit from the American public’s growing cultural familiarity with Korea,⁵⁷ including with Korean political history that has sometimes been embedded in the pop culture that Korea exports to the world.⁵⁸ The UN should consciously link security issues in Korea with concerns raised by its own transitional justice expert, Fabián Salvioli, who included a reference to reparations for Jeju 4.3 in his report.⁵⁹

IV. ACCOUNTABILITY AND IMPERIALISM

One can argue that with the passage of time, there has been greater willingness among former colonizers, occupiers, and empires to acknowledge and even apologize for past atrocities elsewhere. Some examples include the United Kingdom’s apology to Kenyans,⁶⁰ Germany’s apology to Namibians,⁶¹ or even the Belgian king’s “expression of regret”—but not an apology—for Belgian depredations in what is now the Democratic Republic of Congo.⁶² But this willingness did not come from the benevolence of European ruling elites, but rather from the “tireless struggle

56. Sung-Yoon Lee, Opinion, *Biden Should Visit South Korea’s Jeju April 3rd Peace Park*, THE HILL (Apr. 6, 2022, 10:30 AM), <https://thehill.com/opinion/international/3258230-biden-should-visit-south-koreas-jeju-april-3rd-peace-park/> [<https://perma.cc/DZ8A-W2JW>].

57. See Jason Bartlett, *Domestic and Global Political Impacts of K-Pop: BoA, BTS, and Beyond*, THE DIPLOMAT (June 28, 2022), <https://thediplomat.com/2022/06/domestic-and-global-political-impacts-of-k-pop-boa-bts-and-beyond/> [<https://perma.cc/X89M-VR34>].

58. See Oh Yeon-seo, *BTS Fans Learn About Gwangju Democratization Movement Through Lyrics*, HANKYOREH (May 19, 2019), https://english.hani.co.kr/arti/english_edition/e_entertainment/894499.html [<https://perma.cc/FJZ9-E3PM>].

59. *Preliminary Observations from the Official Visit to the Republic of Korea by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Fabián Salvioli (8 to 15 June 2022)*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. (June 14, 2022), <https://www.ohchr.org/en/statements/2022/06/preliminary-observations-official-visit-republic-korea-special-rapporteur> [<https://perma.cc/Z2QA-GFEQ>].

60. Gregory Warner, *Britain Apologizes for Colonial-Era Torture of Kenyan Rebels*, NPR (June 9, 2013, 4:19 PM), <https://www.npr.org/2013/06/09/189968998/britain-apologizes-for-colonial-era-torture-of-kenyan-rebels> [<https://perma.cc/3AVF-PS4R>].

61. Roberto Hitchcock & Melinda Kelly, *Reconciliation Between Germany and Namibia: Towards Reparation of the First Genocide of the 20th Century*, INT’L WORK GRP. FOR INDIGENOUS AFFS. (Oct. 12, 2021), <https://www.iwgia.org/en/news/4538-reconciliation-between-germany-and-namibia-towards-reparation-of-the-first-genocide-of-the-20th-century.html> [<https://perma.cc/2A3K-MY3U>].

62. See Tafi Mhaka, Opinion, *Colonialism Is Not Dead, Your Royal Highness*, AL JAZEERA (June 16, 2022), <https://www.aljazeera.com/opinions/2022/6/16/colonialism-is-not-dead-your-royal-highness> [<https://perma.cc/D6TQ-35WH>].

of social movements that refuse to let Europe silence their history.”⁶³ And for every apology that it has led to, that struggle has often been far longer and frustrating for many others, as the Jeju 4.3 advocates for American acknowledgement painfully know.

The willingness to assist, acknowledge, and even apologize often stops before it becomes a willingness to offer reparations. The obvious reason is the fear that “offering reparations for one colonial-era abuse could establish a legal responsibility for all of them.”⁶⁴ But with the U.S., it is not only the fear of setting a legal precedent that prevents America from apologizing. What makes the pursuit of reparations *in* the U.S. and *from* the U.S. extremely difficult, is American exceptionalism. A right-wing U.S. congressman argues, for example, that offering slavery reparations “is not the American way [because] [w]e’re not racist people.”⁶⁵ That congressman is African-American.⁶⁶ However, there are some Democrats in the U.S. Congress with a more liberal view of reparations and even a progressive perspective on formally ending the Korean War.⁶⁷ It is this view within the U.S. political elite that Jeju 4.3 advocates should cultivate, including among Korean-American legislators, whose numbers have grown. Without discounting the value of South Korea’s truth commission findings, including those involving Jeju that implicate the U.S., it will likely not be enough to break through the exceptionalism that prevents the U.S. from taking demands for reparation seriously. At an ICTJ event on reparations in 2017, Ford Foundation President Darren Walker pointed out one reason why: “Our exceptionalism impairs our capacity to do the truth telling.”⁶⁸

In 2016, soon after “South Korean and Japanese politicians shook hands behind closed doors in late December to resolve a long-standing dispute over

63. Priya Sippy, *Is the Tide Turning on Reparations to Africa?*, QUARTZ AFR. (June 8, 2021), <https://qz.com/africa/2017834/namibia-genocide-can-germanys-apology-spark-africa-reparations/> [https://perma.cc/SM8R-K83P].

64. Max Fisher, *The Long Road Ahead for Colonial Reparations*, N.Y. TIMES (Aug. 27, 2022), <https://www.nytimes.com/2022/08/27/world/americas/colonial-reparations.html> [https://perma.cc/U6HM-MB3J].

65. Juana Summers, *A Bill to Study Reparations for Slavery Had Momentum in Congress, But Still No Vote*, NPR (Nov. 12, 2021, 5:00 AM), <https://www.npr.org/2021/11/12/1054889820/a-bill-to-study-reparations-for-slavery-had-momentum-in-congress-but-still-no-vo> [https://perma.cc/PW4U-Y3LJ].

66. *Id.*

67. See Lee Cheol-ho, *51 US Congressmen Support Resolution to Ending Korean War*, HANKYOREH (Oct. 28, 2020, 6:23 PM), https://english.hani.co.kr/arti/english_edition/e_international/967634.html [https://perma.cc/3GT4-VRSK].

68. Sherrilyn Ifill ‘87 and Darren Walker Discuss Transitional Justice and the Legacy of Slavery in the US, N.Y.U. L. NEWS (Nov. 22, 2017), <https://www.law.nyu.edu/news/Sherrilyn-Ifill-Darren-Walker-Emilio-Mignone-Lecture-CHRGJ-ICTJ> [https://perma.cc/6UZ3-76V8].

Japan's abuse of 'comfort women' during the 1930s and '40s,'⁶⁹ the ICTJ issued a critique of that meeting's outcome,⁷⁰ a critique that I helped draft. At about the same time, the ICTJ also released a report on how apologies as a form of reparation and acknowledgement can be made meaningful.⁷¹ Using the ICTJ apologies report, the ICTJ criticized the lack of involvement of survivors and their families in the South Korean-Japanese negotiations.⁷² More importantly, the ICTJ noted that Japan's "attempt at an apology" was driven by U.S. political and military interests, and "was motivated less, if at all, by a desire to render justice to comfort women but by a need to ease tensions between Japan and South Korea."⁷³ In his book, Yamamoto quotes me while making a similar point: "Carranza further posited that the United States would not participate in [a joint U.S.-South Korea] truth-seeking process unless South Korea links that participation to U.S. national security interests or the American populace pressures its government to acknowledge its enabling of human rights violations abroad."⁷⁴

Implicating America's national security interests in the Korean peninsula, or even Jeju's value in its military alliance with South Korea (a naval base was built on the island despite resistance by many Jeju residents),⁷⁵ is clearly not the most ideal basis for a reparations-seeking strategy. But it may be the most realistic one. The U.S. empire remains the most powerful nation in the world. However, it faces competition in Asia from China, a country with as much influence as the U.S. over security on the Korean peninsula.⁷⁶ The U.S. could see acknowledging its role in Jeju 4.3 as a strategy to maintain Korean public support. The liberal and progressive part of the U.S. ruling elite might even see the gesture as a helpful argument for pressing domestic slavery reparations forward. It is also one

69. Michelle Chen, Opinion, 'Comfort Women' Shunted for Geopolitical Gain, AL JAZEERA AMERICA (Jan. 5, 2016, 2:00 AM), <http://america.aljazeera.com/opinions/2016/1/comfort-women-shunted-for-geopolitical-gain.html> [<https://perma.cc/T253-N2X5>].

70. David Tolbert, *Japan's Apology to South Korea Shows What Public Apologies Should (Not) Do*, HUFFPOST (Jan. 29, 2016), https://www.huffpost.com/entry/japans-apology-to-south-k_b_9111566 [<https://perma.cc/PD92-CVSH>].

71. See Ruben Carranza et al., *More Than Words: Apologies as a Form of Reparation*, INT'L CTR. FOR TRANSITIONAL JUST. (Dec. 2015), <https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf> [<https://perma.cc/ASY5-KLHP>].

72. See Tolbert, *supra* note 70.

73. *Id.*

74. YAMAMOTO, *supra* note 4, at 190-91 n.45.

75. Christine Ahn, *Naval Base Tears Apart Korean Village*, FOREIGN POL'Y IN FOCUS (Aug. 19, 2011), https://fpif.org/naval_base_tears_apart_korean_village/ [<https://perma.cc/UWP6-T4VV>].

76. See Abraham Denmark, *U.S.-China Competition and Implications for the Korean Peninsula*, WILSON CTR. (Oct. 31, 2018), <https://www.wilsoncenter.org/article/us-china-competition-and-implications-for-the-korean-peninsula> [<https://perma.cc/KN3H-8MLY>].

that will not challenge American exceptionalism directly and can yield intermediate gains—possible assistance for old survivors, the opening of U.S. archives, and even support for more meaningful historical tourism on Jeju—even if it will not lead to an apology and reparations sooner.

V. A FINAL NOTE ON IDEOLOGY AND TRANSITIONAL JUSTICE

Those seeking recognition for Jeju 4.3 victims occasionally (though unintentionally) adopt a defensive tone whenever the ideological beliefs and political affiliations of some or many of those victims are mentioned. For example, Yamamoto refers to the need for a “definitive rejection of the ‘Island of Reds’ branding and generation of an accurate depiction of Jeju 4.3 people and communities” as one of the goals of obtaining an apology from the U.S.⁷⁷ The demand to dissociate Jeju’s victims from the sweeping label of “communist” is understandable because it is untrue and unfair. That label is also clearly meant to trigger fear cultivated by decades of anti-communist propaganda by South Korean conservatives and the U.S.⁷⁸ However, when Jeju 4.3 advocates challenge the “communist” label but leave unchallenged the premise that communism is inherently “wrong” or that there is shame in being a communist or espousing left-wing ideas, the unintended consequence is to reinforce the same right-wing disinformation and propaganda that allowed Jeju 4.3 to happen.

In Peru, the reparations law for victims of the conflict with Maoist and Marxist-Leninist rebels “contained a provision not part of [the Peru Truth Commission’s] recommendations that excluded ‘members of subversive organizations’ from being defined as victims and receiving benefits, even if they had been tortured or suffered other serious crimes.”⁷⁹ This exclusion has led to transitional justice and reparations being weaponized ideologically: “[t]he public’s negative view of anyone who was associated with the [Maoist] Shining Path or the [Marxist-Leninist] MRTA [*Movimiento Revolucionario Túpac Amaru*] makes it difficult for most people to accept that [Maoists or Marxist-Leninists] who were tortured or disappeared should be recognized as victims of human rights violations and entitled to

77. YAMAMOTO, *supra* note 4, at 217.

78. See generally Dong-Choon Kim, *The Social Grounds of Anticommunism in South Korea—Crisis of the Ruling Class and Anticommunist Reaction*, 2 ASIAN J. GER. EUR. STUD. 1 (2017) (focusing on how domestic social grounds for anticommunism were intertwined with external factors such as U.S. occupation, divided state-building, and the Korean War).

79. Cristián Correa, *Reparations in Peru: From Recommendations to Implementation*, INT’L CTR. FOR TRANSITIONAL JUST. (June 2013), https://www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf [<https://perma.cc/N8X2-4E5M>].

reparation.”⁸⁰ It also made it easier for right-wing politicians, including the political dynasty of ousted leader Alberto Fujimori, to rely on anti-communist disinformation to question the truth commission’s findings and to later campaign to regain power and impunity.

It is important for transitional justice advocates to reflect on the field’s ideological assumptions. We must ask whether our ideas about institutional reforms, guarantees of non-recurrence, or even “reconciliation” rest on the assumption that a state transitioning from conflict or dictatorship should necessarily be built on a capitalist economic order and governed through conceptually liberal-democratic political arrangements, no matter how unequal power is distributed in that society and how deep the root causes that led to conflict or repression still are. For a long time, the field of transitional justice looked at economic conditions and social inequality as “background”⁸¹ while privileging accountability for violations of physical integrity and civil and political rights in the design or mandates of truth commissions, tribunals, reparations programs, and institutional reforms. The idea that communists and other leftists are entitled to reparations when they are killed or harmed, or when their freedoms of speech and assembly are denied, would not be hard for liberals and Global North donors to accept.

This acceptance does not extend to the ideology and progressive views represented by those left-wing victims and survivors. This was the case in Argentina when a post-dictatorship government adopted the so-called ‘two evils’ view. They inserted a new prologue that was never in the original 1984 Truth Commission report and stated that both the right-wing junta and leftists who resisted it were equally wrong.⁸² The mandate of the Truth Commission and World Bank-funded interim relief program in Nepal exclude grievances over land, despite these grievances being the driver of the Maoist insurgency that led to the monarchy’s overthrow.⁸³

80. *Id.*

81. Zinaida Miller, *Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice*, 2 INT’L J. OF TRANSITIONAL JUST. 266, 272-74 (2008).

82. See Oliver Galack, *Controversy Over the Prologue Added to the Report “Never Again,”* LA NACION (May 19, 2006), <https://www.lanacion.com.ar/politica/controversia-por-el-prologo-agregado-al-informe-nunca-mas-nid807208/> [<https://perma.cc/ZV49-4CYN>]. The first sentence of the inserted prologue says (my translation in English): ““During the 1970s, Argentina was convulsed by a terror that came from both the extreme right and the extreme left.”” *Id.*

83. For a general discussion on how root causes of the conflict were dealt with or excluded in Nepal, see Ruben Carranza, *Relief, Reparations, and the Root Causes of Conflict in Nepal*, INT’L CTR. FOR TRANSITIONAL JUST. (Oct. 2012), <https://www.ictj.org/sites/default/files/ICTJ-Nepal-Reparations-2012-English.pdf> [<https://perma.cc/Y4P6-SHC9>].

The U.N.-administered Extraordinary Chambers in the Courts of Cambodia (ECCC) is heavily funded by Japan, Australia and the U.S.⁸⁴ It only prosecutes Khmer Rouge leaders, not American officials, such as Henry Kissinger, who were instrumental in the massive bombings leading to civilian deaths in Cambodia covered by the court's temporal mandate.⁸⁵ To do so would have exposed the ideological tension between seeking truth and accountability and maintaining American (as well as Chinese) impunity.⁸⁶

But this ideological liberal and often anti-left bias within transitional justice has been shifting. The marginalization and corruption in post-Arab Spring countries tied to neoliberal capitalist social and economic policies promoted by the U.S. and European leadership of the World Bank and the International Monetary Fund respectively were incorporated in Tunisia's transitional justice processes.⁸⁷ The racial justice movements that have gained strength in the Global North and the renewed demands in the Global South for reparations from former colonizers and foreign occupiers have transformed the design of transitional justice processes and the ideological assumptions of the field itself.⁸⁸ In pursuing reparations and truth from the United States, Jeju 4.3 justice advocates must find allies in these movements and offer their own lessons from South Korea. The history of many unrepaired atrocities and unacknowledged abuses against colonized people and occupied countries is in many instances the history of United States imperialism. This makes it even more important for the people of Jeju to teach what they have learned about seeking truth from the American empire, and to learn as much as they can from the Global North and Global South movements now seeking reparations for long-ignored historical injustices committed in and by the United States.

84. *Summary of Contributions to Date by Donors*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA, (Feb. 28, 2022), <https://www.eccc.gov.kh/sites/default/files/Summary%20of%20Contributions%20by%20Donors.pdf> [<https://perma.cc/Z26J-YM8F>].

85. *See About ECCC*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA, <https://www.eccc.gov.kh/en/about-eccc> [<https://perma.cc/AER6-EWJB>].

86. *See* Inter Press Service, *Khmer Rouge Trials May Expose US, China*, COMMON DREAMS (Mar. 30, 2009), <https://www.commondreams.org/news/2009/03/30/khmer-rouge-trials-may-expose-us-china> [<https://perma.cc/3CP6-EJTQ>].

87. *See* Ruben Carranza & Mohamed Azer Zouari, *Work, Freedom, Dignity*, INT'L CTR. FOR TRANSITIONAL JUST. (Feb. 2020), https://www.ictj.org/sites/default/files/ICTJ_Briefing_Tunisia_Youth_Corruption_Web.pdf [<https://perma.cc/EGV6-BWFL>].

88. *See Reparations*, M4BL, <https://m4bl.org/policy-platforms/reparations/> [<https://perma.cc/7HCR-BTYT>].