

# **The roles and responsibilities of non-state actors in transitional justice processes**

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## **1. A non-state actor in defense of his country: the An Chunggun Case<sup>1</sup>**

### **The Incident:**

In order to preserve the independence of Imperial Korea, as a Lieutenant General of the Voluntary Corp, non-state military engaged in military operations against the Japanese Empire, the Korean citizen An Chunggun arrived at Harbin Station at nine in the morning on 26 October 1909, where he fired three pistol shots and killed Count Itō Hirobumi, President of the Privy Council of Japan and former Supervisor-General of Korea (TOKAN), who was there to inspect the Russian security forces.

### **Public Trial:**

In accordance with the Japanese constitution, in assumption of a citizen of the colonial land under the protectorate of the Japanese Empire, An was tried at the Kanto District Court and convicted of homicide (along with three accomplices) in a trial lasting four days from 7 to 10 February 1910. At the trial, the court not only refused to allow any action by the lawyers designated by An Chunggun, but also failed to comply with the laws of the Korean Empire, instead following those of the Japanese Empire. The court also ignored international law with regard to An's status as a POW and proceeded to trial with no consideration at all, whether any war crimes committed by An, who wished the court to find if any. In the judiciary process, the Japanese government instructed the court as to what "verdict" should be handed down.

### **The Verdict:**

Judge Manabe Jūzō, on 14 February 1910, declared the judgment of the court that according to Japanese Criminal Code Art. 199, An was found guilty of

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<sup>1</sup> TOTSUKA, Etsuro, *The An Chunggun Trial and Peace in the East*, in Yi Tae-Jin et al. (ed.) *Peace in the East: An Chunggun's Vision for Asia in the Age of Japanese Imperialism*, Lexington Books, 2017, pp. 85-109.

homicide and ordered the most extreme punishment, that of death. Choosing the hour exactly five months after Itō's death, the execution of An was carried out at 10 AM on March 26, 1910.

## 2. Illegal Nature of the An Chunggŭn Trial

### Did The Court Have Jurisdiction?

#### 2-1. Judgment of the Court

Judge Manabe handed down the judgment in favor of the prosecution as follows.

Article One of **Nikkan Kyoyaku** (Japan-Korea Protectorate Treaty of 17 November 1905) should be interpreted such that for a Japanese government Consulate General to protect the Korean citizenry the laws apply such that Korean citizens should have the same status as Imperial (Japanese) citizens, and it must be concluded that the thrust of the treaty is that Imperial (Japanese) law applies equally to the crimes committed by Koreans.

Therefore, the Court decided to apply Imperial Japanese Law to the crimes in this incident rather than using Korean law.

#### 2-2. Illegality of **Nikkan Kyoyaku** of 17 November 1905

Totsuka researched into this issue and published several papers including an article in *Japan Focus*<sup>2</sup>, in which he found that it was *null and void ab initio*. No original treaty document of **Nikkan Kyoyaku** (日韓協約) of 17 November 1905 exists; if it had been concluded, it took no effect due to personal coercion by Ito and his military force on Korean ministers; and no ratification was made by the Korean Emperor Kojeon.

## 3. Recommendations

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<sup>2</sup> TOTSUKA, Etsuro, Japan's Colonization of Korea in Light of International Law, *The Asia-Pacific Journal | Japan Focus* Volume 9 | Issue 9 | Number 1 | Article ID 3493 | Feb 28, 2011, pp.1-15. <https://apjif.org/-Totsuka-Etsuro/3493/article.pdf>

Any responsible authorities of the Republic of Korea such as National Human Rights Commission be recommended to find the truth of the An Chunggun case as follows:

3-1. Truth about the An Chunggun case;

3-2. Whether the An Chunggun trial was lawful; and

3-3. Recommendations for prevention of further occurrence, including the followings.

Declaration of illegality of the trial due to lack of jurisdiction.

Status of a POW should be given to a non-state actor for voluntary corp in defense of his/her homeland in accordance with the 1899 and 1907 Hague Rules of land warfare.

Recommendations for any future trial of a non-state actor to be guaranteed a fair trial by a competent court with lawful jurisdiction, the independence of judiciary free from the government pressure and the right to be assisted by lawyers of his/her own choosing.

Abolishment of death penalty.