



## *Law-making and accountability in responding to COVID-19: The case of South Korea*

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After the first case was reported on 20 January 2020, South Korea had the second-largest number of confirmed cases behind China in the early days of the COVID-19 outbreak. Currently, however, South Korea has “flattened the curve” and is known globally as one of the countries which effectively responded to the pandemic.<sup>1</sup>

**What were the main mechanisms used to handle the COVID 19 challenges, both health and economic, in your country? How well did they work for the purpose?**

In South Korea, from the initial stage of the epidemic, COVID-19 was categorized as a Class 1 disease, the highest level of seriousness according to the *Infectious Disease Control and Prevention Act* (hereinafter, Infectious Disease Act) and treated as a disaster according to Article 3 of the *Framework Act on Disaster and Safety Control* (hereinafter, Disaster Act). The Disaster Act authorizes the Minister of Interior and Safety to take charge of managing a national disaster, in principle. But, from the experiences of tackling the SARS in 2003 and the MERS in 2015, it was generally recognized that a uniform government-wide response is needed to prevent and confine the spread of infection. Based on reflections from the response to the Sewol ferry disaster in 2014, the Disaster Act was already amended to assign the Prime Minister to manage a larger scale disaster, which necessarily requires whole-of-government responses and inter-governmental cooperation.

Since the Crisis Alert Level was raised to the highest (Level 4) on 23 February 2020, in terms of managing the disaster, the Prime Minister has taken charge of leading the Central Disaster and Safety Countermeasures Headquarters according to Article 14(3) of the Disaster Act. At the same time, in terms of responding to the infectious disease, the Central Disease Control Headquarters (headed by the Director of the Korea Center for Disease Control & Prevention (CDCP)<sup>2</sup>) serves as a control tower, supported by the Ministry of Health and Welfare, which assists with disease control and treatment of patients, and the Ministry of Interior and Safety, which provides pan-government assistance and facilitates cooperation between central and local governments. Each local government establishes a Local Disaster and Safety Management Headquarters led by the heads of the local governments, to which the central Government provides necessary resources and personnel. The whole-of-government response to COVID-19 has been carried out intensively under this system.

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<sup>1</sup> As of 12 am on August 23, 2020, it is reported that the cumulative number of confirmed cases is 17,399 and the death toll is 309 in South Korea. See the official website on COVID-19 updates, which is run by the Ministry of Health and Welfare <<http://ncov.mohw.go.kr/en/>>

<sup>2</sup> Very recently, to increase the responsiveness to emerging infectious diseases, the *Korea Centers for Disease Control & Prevention* was raised to the status of ‘Agency’, therethrough it will be allowed to take enforceable measures to control the infectious diseases.

One notable point is that, despite activating the full-scale disaster control system, a state of emergency was not declared, and the presidential emergency power stipulated in the Constitution was not executed. It appears that this was because the statutes and governmental response system already in place were relatively well-prepared prior to the pandemic and the National Assembly (the legislative body of South Korea) was able to assemble normally to enact or amend the laws during the pandemic. Also, the Government is explicitly orientated towards liberal democracy.

### ***Response to the health crisis***

The South Korean government basically implemented a confinement strategy, not a mitigation strategy, from the beginning. In practice, this aimed to identify the infection as early as possible and to strictly prevent the spread through contact tracing.

For early detection and containment, the Government set up as many screening test stations as possible to increase individual access to testing. To conduct fast and wide testing, the Government also built Drive-Thru stations and Walk-Thru stations. The Government also reduced the cost so that people would not avoid the testing; except for the symptomless people taking test at their will, every testing and treatment costs are free. When a person tested positive, the central and local governments traced the source of infection through a thorough epidemiological investigation; identifying the whereabouts of the confirmed cases through interview, but also using mobile GPS, CCTV footage, credit card records, etc. The authority then publicly notified this information and contacted everybody who stayed with or contacted the infected person. When a churchgoer tested positive in February, the authorities requested the complete list of names of the believers of the church and forced them to get tested. The Government also established an automatic system (called the '*Corona-19 epidemiological investigation support system*') to collect and verify the information of the confirmed cases and let the Korea CDCP use this information. For instance, when a massive infection occurred because of a large rally in the centre of Seoul on 15 August, the Government collected the information of people who were there through tracing mobile GPS and then called every single person to get tested – thousands of people. Although it proved an effective way of tracing, at the same time it was concerning that citizens would be under the Omni-surveillance this way.

For the prevention of infection, various kinds of compulsory measures have been taken by the central and local governments according to the *Infectious Disease Act*.<sup>3</sup> The measures, which are issued in a form of 'administrative order' by the Minister for Health and Welfare and each head of a local government, are implemented and enforced with the help of the National Police Agency and local administrative powers. The National Assembly strengthened the legal grounds for these necessary measures by amending relevant statutes; for instance, the Assembly passed amendments to the *Infectious Disease Act*, the *Medical Service Act* and the *Quarantine Act* on 26 February, to fill the gap.

### ***Economic response***

The power to formulate the national budget bill<sup>4</sup> is granted to the Executive and the National Assembly has to deliberate and decide on it.<sup>5</sup> When it is necessary to revise the budget, the Executive may formulate a supplementary revised budget bill and submit it to the National Assembly.<sup>6</sup>

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<sup>3</sup> The *Infectious Disease Act* prescribes necessary measures to prevent the occurrence and spread of infectious diseases and entitles the state authority to manage and control thereof, and assigns the duties to the local governments to execute compulsory measures and to cooperate with the central government.

<sup>4</sup> Art. 54 (2) of the Constitution.

<sup>5</sup> Art. 54 (1) of the Constitution.

<sup>6</sup> Art. 56 of the Constitution.

Since the COVID-19 pandemic caused huge economic damages to individuals and industry, with related social risks, the Government had to increase the public expenditure to respond. The Government modified the existing budget spending plan, as well as submitting supplementary and revised budget bills to the National Assembly three times<sup>7</sup> during the pandemic. The Assembly passed the bills and amended the relevant laws to implement the necessary measures. Based on that, the Government supported individuals and industry in various ways to cover their economic losses due to the pandemic. For citizens, various kinds of funding policy have been implemented, such as an emergency disaster relief fund, emergency living allowances, an emergency unemployment fund, living cost loans, special loans for the artists, reduction of social insurance costs and welfare benefits for the weak groups. For industry, from small businesses to large companies and even to the leading conglomerate, emergency funding measures have been implemented respectively.

### To what extent were responses to the pandemic influenced by the parliamentary/presidential/semi-presidential structure of your country?

South Korea runs a presidential system by which a great deal of power is concentrated in the President. Presidential power is strong in institutional design and practice. South Korea is also a centralized unitary state. The Central Government, which has concentrated power and budget, is superior to local governments.

The Korean presidential system has some distinctive features different from the original form of the presidential system:

- First, there is no Vice President; instead a Prime Minister appointed by the President with the consent of the National Assembly assists the President and directs the Executive Ministries under order of the President.<sup>8</sup>
- Second, members of the National Assembly are allowed to hold another position in the Executive; in the Cabinet as Ministers or the Prime Minister, and even as senior presidential secretaries. The President can appoint a member of the National Assembly from the ruling party as a Minister; currently, 6 out of 18 Ministries have Ministers who were appointed while incumbent lawmakers. Even though parliamentary members, as representatives of the people, ought to exercise checks and controls over the executive in the structure of the presidential system, the members of the National Assembly from the ruling party generally act like a subordinate of the President. Moreover, the ruling party got a landslide victory at the national election which was held amidst the pandemic (see below for more). The ruling party gained 176 seats, but once 17 seats gained by similar parties are added, 183 out of 300 seats were counted as pro-government. This huge victory was largely attributable to the Government's effective response to the pandemic crisis. It was also the consequence of electoral system reform; a mixed-member proportional representation system was introduced for the first time. Satellite parties, made from the major parties shortly before the election, absorbed the votes that would usually have gone to minor parties. It has now opened up the possibilities for the ruling party to pass emergency legislation or budget bills, if necessary, regardless of the opposition's objection or non-cooperation.
- Thirdly, the Executive, as well as the legislature, has the right to submit a bill for enactment. So, the current composition of the National Assembly and the relationship between the two branches may help make/amend a law which is required promptly and effectively. Under this institutional design, the Korean governmental system could cope with the crisis more effectively, as long as the President does not abuse these crisis management powers for political interests. This system, however, is hard to be controlled virtually.

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<sup>7</sup> For the details, see below.

<sup>8</sup> Art. 86 of the Constitution.

## If elections were due during the emergency period, were they held or postponed? If they were held, what concessions were made to the emergency conditions?

South Korea was reported to be the first country which held nationwide election since the pandemic began. The 21<sup>st</sup> National Election was held on 15 April 2020, as planned, and the election resulted in the ruling party's landslide win. Since the mass infection that occurred in February and March was in a specific area (Daegu city and near areas), the Government enhanced social distancing strategies for two weeks from mid-March and was worried about the spread of infection at the voting places. However, the election was held under intensive COVID-19 instructions: voting booths were disinfected; voters had to stand at least one metre apart in a queue, clean their hands with sanitiser, wear face masks and plastic disposable gloves on both hands, and have their temperatures taken to cast ballots; as voters left the voting station, they had to discard their gloves in a designated box. During the voting hours from 6 am to 6 pm on election day, ordinary voters had to vote until 5 pm, and then people under self-quarantine were permitted to vote from 5pm to 6 pm. Before that, some voters cast their votes by post or at early voting stations a few days before the election day.

In terms of the pandemic, the election result was remarkable in two ways. First, voter turnout marked the highest (66.2%) in 28 years, including the highest (26.69%) early voter turnout. Second, no mass infection caused by the election was reported afterwards. Overseas residents in some countries, however, were not able to vote due to the suspension of election affairs at overseas Embassy offices.<sup>9</sup>

## Were there departures from usual practice in how the legislative functions of law-making, representation and holding the government to account were managed during this time?

### **Regular meetings**

The National Assembly is a permanent organization, but meetings are organized according to the Constitution and the procedures of the *National Assembly Act*. Under Article 47 of the Constitution and Articles 4 and 5 of the Act, one Regular Session is convened on the first day of September each year, and several temporary Special Sessions are convened when the President or members of the parliament request. Up to now, the National Assembly has not been suspended but as kept the annual meeting plan. During the time of the pandemic, Members gathered and followed the normal legislative proceedings such as preliminary deliberation by standing committees, discussion, deliberation and approval at the plenary session and approving budget bills. In terms of parliamentary oversight, the National Assembly still held interpellation sessions and personal hearings. They did not change the rules for decision-making procedures. Members were only required to wear face masks to enter sessions and had to follow strict hygiene instructions. For instance, some seats in the public gallery were left empty. But, when an infected person was identified as having participated in the events at the National Assembly or some Members were found to have contacted an infected person, the meeting schedule was temporarily postponed and the entrance to the building was closed for disinfection for a couple of hours or a few days.

A Regular Session has not been convened since COVID-19 outbreak, but Special Sessions were organised 6 times; each Session lasted one month respectively. During the Special Sessions, plenary sessions were held 32 times.<sup>10</sup> In doing so, the National Assembly amended laws and passed the

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<sup>9</sup> The National Election Commission was ready to deal with overseas vote, but residents in some countries were placed under strict restrictions such as stay-at-home orders. The NEC stopped their election activities in those countries.

<sup>10</sup> For the legislative schedule, see <[https://korea.assembly.go.kr:447/wha/who\\_list.jsp](https://korea.assembly.go.kr:447/wha/who_list.jsp)>

supplementary revised budget bills to respond to COVID-19 promptly. They also considered setting up the “untact” meeting system<sup>11</sup> and investigated the case of the UK virtual parliament.<sup>12</sup> As a result, a budget of 450 million won was included in the supplementary budget bill submitted in July for the establishment of the “untact” meeting system for Standing Committees. Relevant statutes will also be amended to set up the system for the upcoming Regular Session this September.

### ***Delegating legislative power?***

The general framework of legislative power and procedures remains as it was. The National Assembly has not enacted a special law, such as the ‘enabling act’ used in 1933 in Germany and in 2020 in Hungary, which transfers the legislature’s authority to make a law to the executive entirely. It has also not comprehensively delegated powers to the Executive. The presidential emergency order under Article 76 (1)<sup>13</sup> of the Constitution, which has the effect of an Act, was not used.

More importantly, the Infectious Disease Act provides the grounds for the administrative orders – literally called ‘order’, but its nature is closer to a legal disposition – which enable the Minister of Health and Welfare and the mayors/governors/heads of the local governments to take any necessary measures against the epidemic. The Act provides a wide-ranging list of enforceable measures under the provisions which states that they “...shall take all or some of the following measures.” If a person violates the measures, they can receive a criminal penalty. During the pandemic, the National Assembly amended the Act to add new measures (i.e. Article 40-3 which was an export ban on drugs and medical supplies, including face masks) and to increase penalties. It is constitutionally contestable and could be disputed later, because various measures directly restricting basic rights have been taken in the form of an administrative order made by the national and local administration.

### ***Budgeting and controlling spending***

The Executive must submit the national Budget Bill to the National Assembly 90 days prior to the start date of the fiscal year. The National Assembly may deliberate and approve it by a simple majority. Extra spending due to the COVID-19 outbreak was needed to cover a range of economic damages and to support countermeasures. The Executive submitted the first supplementary revised budget bill (amounts to 11.7 trillion won) to the National Assembly on 10 March 2020, the bill was examined and passed by the *Special Committee on Budget & Accounts* (hereinafter, Budget Committee) and then finally approved by the plenary session on 17 March 2020.

The Executive submitted a second supplementary revised budget bill on 16 April to support distributions from the ‘emergency disaster relief fund’. It was preliminarily discussed in the relevant Standing Committees of the Assembly and sent to the Budget Committee. While the budget bill drafted by the Executive intended to give the fund to 70% of the people (which amounts to 9.7 trillion won), an alternative which gives the fund to everyone regardless of income and property (which amounts to 14.3 trillion won) was also discussed. The Budget Committee presented a careful opinion

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<sup>11</sup> “untact” is a new term coined in South Korea by combining the prefix “un,” which expresses the opposite state of an adjective that it precedes, and “tact”, which was borrowed from the English word “contact”: see [https://www.koreatimes.co.kr/www/biz/2020/04/175\\_287141.html](https://www.koreatimes.co.kr/www/biz/2020/04/175_287141.html)

<sup>12</sup> National Assembly Research Service, [NARS Analysis] COVID-19: How We Are Handling the Outbreak (2d ed. May 30, 2020), 76-81.

<sup>13</sup> “In the time of internal turmoil, external menace, natural calamity or a grave financial or economic crisis, the President may take in respect to them the minimum necessary financial and economic actions or issue orders having the effect of Act, only when it is required to take urgent measures for the maintenance of national security or public peace and order, and there is no time to await the convocation of the National Assembly.”

considering various aspects such as financial viability, fiscal sustainability, aftereffects, the potential for grants to boost customers' consumption, equitable treatment between groups, possible double payment by local governments, and the need for establishing the legal grounds for further payments;<sup>14</sup> eventually, an amended budget bill to pay funds to *everyone* was passed on 30 April.

The Executive, for a third time, submitted a supplementary revised budget bill (amounting to 35.3 trillion won) in June, to support banking, employment, and the so-called 'Korean New Deal project' to boost industry. It was the first budget bill submitted to the newly elected National Assembly. The deliberation and approval by the relevant standing committees and by the Budget Committee were completed in only 5 days. Although it was the largest supplementary budget bill in Korean history, the Budget Committee gave a positive assessment. At the plenary session which was held on 3 July at 10 pm, with no presence of the biggest opposition party, the final bill of 35.1 trillion won was passed; 179 votes for and 1 vote against the bill, while 7 abstained among the 187 present. The Opposition parties highly criticized the whole process, arguing they were excluded from deliberations.

**Overall, what has been the effect of the pandemic on the balance between the authority of the legislature and the executive? Do you expect it to have long-term consequences?**

The balance of power between the legislature and the executive in South Korea is uneven; the executive power is stronger and concentrated. During the pandemic, the citizens were listening to daily briefings from *Central Disease Control Headquarters* and were forced to follow the strict instructions made by the Executive. Promptly updated guidelines by the Executive were immediately implemented in the national and local level. Governors and mayors of local governments took measures depending on the situation. Along the way, the National Assembly became almost invisible to citizens. Due to the ruling party's win at the April election amidst the pandemic, the role of the parliament to check and control the Government became questionable. Since the pro-government parties comprise the supermajority of the National Assembly, the opposition party's influence on decision-making and on holding the Government to account is assumed to shrink in South Korea now. In short, the pandemic is undermining the balance between the legislature and the executive.

Very recently, doctors decided to go on a large-scale strike against the Government's new plan for public health services, which aimed to increase the enrollment in medical schools and establish a public medical school.<sup>15</sup> The Government warned it would impose a strict response to confront an untimely strike amidst the critical health crisis. However, doctors claim that during the pandemic the Government has taken advantage of pushing ahead a policy which doctors, backed by the Korean Medical Association, have consistently opposed. They also point out that the Government did not give notice or hear the voices of doctors before the announcement of the new policy. The Government and doctors are confronting each other by leveraging the critical pandemic situation and public fear. Members of the National Assembly from the ruling party and the President both strongly condemn the strike, whereas the mass media and civil society are watching their struggle with critical eyes.

In short, in the name of the response to COVID-19, the use of the executive power has been easily justified and is expanding. What is most worrying, in post-corona terms, is the 'resilience' of the

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<sup>14</sup> The Special Committee of Budget and Accounts, Review Report on the Second Supplementary Revised Budget Bill of the Year 2020, April 2020. Available at <<https://budget.na.go.kr:444/budget/reference/reference01.do>>.

<sup>15</sup> See <<https://en.yna.co.kr/view/AEN20200813004352320>>

democratic system and of individuals' minds which have become gradually accustomed to the aggrandized Executive power and supporting legal practices.

### What positive or negative lessons can be taken from this experience in your country for the role and procedures of the legislature during an emergency of this kind?

Some lessons from the interplay between the legislative and the executive during COVID-19 pandemic in South Korea are:

- It is not necessarily required to declare a state of emergency or employ an emergency power, or make a special kind of enabling act to cope with the pandemic. Without changing legislative procedures, the legislature can deal with the pandemic, if there is an effective cooperation mechanism in place.
- Even in times of crisis, decision-making that ignores due process can cause more harmful effects. Even if there is a demand for quick and effective legislation and policy-making, and such a demand is based on the public interest (i.e. public health), minimum requirements of decision-making procedure should be observed. As seen in the case of South Korea, when the Government or law-makers proceed with their plan without listening to interested parties' voice, it can intensify conflicts between interested parties and cause harm to the crisis response.
- The role of the Opposition in parliament is crucial. Institutionally, South Korea is a multi-party system, but the political reality is different. There is strong partisanship between two major parties. The result of the recent national election, in which the ruling party won by a wide margin, has strengthened the ruling party and intensified the confrontation between the major parties. Under this circumstance, it is expected that the opposition party will criticize and dispute over the boosted government policy. Currently, the Opposition party and the mass media are checking and criticizing the acts of the Government and the ruling party. In this regard, under the structure of the strong presidential system, it is important to keep the power balance between the political parties 'in the parliament'. In this regard, the electoral system design is significant even in the crisis where the executive power is inevitably expanding.

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**Biography:** Jeong-In Yun is Research Professor and leads the party democracy research department of Party Law Research Center at Korea University in Seoul, Korea. She teaches, researches and writes on constitutional law, fundamental rights, comparative constitutional law, constitutional amendment, democracy, and constitutional education. She has been working on a 3-year project on pathologic problems of populist parties in Korea, and currently working on a 5-year project on constitutional design for new democracy model, funded by National Research Foundation of Korea. She was granted a Laureate Visiting Fellowship in Constitutional Law at Melbourne Law School.