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## NOTE & COMMENT

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# Protecting Victim Rights: The Role of the National Human Rights Commission of Korea

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*Since its establishment in the year 2001, the National Human Rights Commission of Korea has assumed the role of primary governmental entity addressing human rights issues in the country. In addition to investigating complaints of human rights violations and discrimination, the NHRCK has a policy advisory function, and engages in research, education, and publicizing of human rights issues. This article examines the role of the NHRCK, which came into being in part due to the advocacy of victim rights groups, in promoting and protecting victim rights. It addresses both the rights of crime victims and the rights of victims of human rights abuses. The article analyzes the different ways in which the NHRCK has addressed victim issues, while offering concluding observations as to how the NHRCK can more effectively promote and protect victim rights in the future.*

**Keywords:**

Korea, Victim Rights, National Human Rights Commission, Restitution, Compensation, Counseling

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## 1. Background

Over the last fifteen years, National Human Rights Institutions (“NHRIs”) have emerged in more than a hundred countries around the world.<sup>1</sup> NHRIs can be characterized as independent administrative organizations established by governments to protect and promote human rights.<sup>2</sup> Within the Asia-Pacific region, there are now fourteen NHRIs that are full members of the Asia Pacific Forum, a regional association of NHRIs.<sup>3</sup> While the specific mandates of Asian NHRIs vary widely, in general they have broad-based mandates based on universal human rights standards, and have the power to both advise their governments on human rights issues and investigate allegations of human rights violations. These institutions are seen as particularly important to human rights protection in Asia due to the lack of a regional human rights mechanism.<sup>4</sup>

Within the advocacy community, there has been hope that these new human rights institutions could be effective in promoting victim rights.<sup>5</sup> Over the past few decades, there has been an increased recognition that victim rights are encompassed within the broad scope of the international human rights framework.<sup>6</sup> International standards for victim rights are contained most prominently in the 1985 United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (“U.N. Declaration”).<sup>7</sup> In this Declaration, the U.N. member states provided for broad assurances to victims in the areas of access to justice and fair treatment, restitution, compensation, and victim assistance.<sup>8</sup> More recently, the U.N. has issued a

<sup>1</sup> According to one count, there are currently a total of 119 NHRIs in the world. See National Human Rights Institutions Forum, available at <http://www.nhri.net/nationaldatalist.asp> (last visited on Aug. 23, 2009).

<sup>2</sup> Asia Pacific Forum, What is an NHRI?, available at <http://www.asiapacificforum.net/members/what-is-an-nhri> (last visited on Aug. 23, 2009).

<sup>3</sup> Asia Pacific Forum, Members, available at <http://www.asiapacificforum.net/members> (last visited on July 20, 2009). These include institutions in Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, Republic of Korea, Sri Lanka, Thailand, and Timor Leste. Asia Pacific Forum, List of Full Members, available at <http://www.asiapacificforum.net/members/apf-member-categories/full-members> (last visited on July 20, 2009). Compliance with the United Nations’ Paris Principles is required as a condition for full membership. *Id.*

<sup>4</sup> ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS, 2008 REPORT ON THE PERFORMANCE AND ESTABLISHMENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ASIA 22 (2008); BRIAN BURDEKIN, NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE ASIA-PACIFIC REGION 4-5 (2007).

<sup>5</sup> In Korea, victim support groups were instrumental in the Commission’s founding. Cho Hyo-Je, *Human Rights as a Qualifier and a Catalyst for Korea’s Democracy*, Human Rights Program at Harvard Law School Working Paper (2007) at 186, available at <http://www.law.harvard.edu/programs/hrp/WorkingPaper2.pdf> (last visited on July 20, 2009).

<sup>6</sup> Sam Garkawe, *The (Human)Rights of Crime Victims do not Necessarily Infringe the Rights of Accused and Convicted Persons*, in SUPPORT FOR VICTIMS OF CRIME IN ASIA 51, 57 (2007).

<sup>7</sup> G.A. Res. 40/34, See U.N. Doc. A/40/53 (1985).

<sup>8</sup> *Id.*

Handbook on Justice for Victims and Guide for Policy Makers to aid in implementation.<sup>9</sup> Some Asian countries have accepted the U.N. Declaration as an explicit guide for victim rights legislation.<sup>10</sup> However, in general, state practice has lagged behind the normative assurances provided in the Declaration, as is unfortunately often the case with international human rights instruments.<sup>11</sup>

In fact, in a number of countries, including Korea,<sup>12</sup> Mongolia,<sup>13</sup> New Zealand,<sup>14</sup> and India,<sup>15</sup> NHRIs have indeed played a proactive role in the national debate over the protection of victim rights. However, while there have been a number of general studies evaluating the work of various NHRIs over the years,<sup>16</sup> there has not yet been

- <sup>9</sup> UNITED NATIONS, GUIDE FOR POLICY MAKERS (United Nations Office for Drug Control and Crime Prevention, 1999); UNITED NATIONS, HANDBOOK ON JUSTICE FOR VICTIMS (United Nations Office for Drug Control and Crime Prevention, 1999).
- <sup>10</sup> See Irvin Waller, *International Standards for Victims in SUPPORT FOR VICTIMS OF CRIME IN ASIA* 11, 18 (2007) (discussing Japanese legislation on fundamental principles for victims).
- <sup>11</sup> Presentation by K. Chockalingam, "Victim Rights and UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power," Mito, Japan (Aug. 18, 2009).
- <sup>12</sup> See *infra*.
- <sup>13</sup> ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS (2008). See *supra* note 4, at 118 (noting that the Mongolia Human Rights Commission organized an Assembly on Rights of Victims in 2007).
- <sup>14</sup> New Zealand Human Rights Commission, *Commission Calls for Legal Recognition of Victims Rights* (July 9, 2006), available at <http://www.hrc.co.nz/home/hrc/newsandissues/commissioncallsforlegalrecognitionofvictimsrights.php> (last visited on Sept. 21, 2009) (discussing New Zealand Human Rights Commission submission to the Inquiry into the Place of Victims in the Criminal Justice System, which argued that the rights of victims would be improved if there was a more cohesive legislative framework dealing with victims' rights; victims' access to necessary services was ensured; there was a more equitable system for payment of compensation by the State and restitution by the individual, and restorative justice programs were promoted); New Zealand Human Rights Commission, *Commission Supports Victims Rights to Speak before Parole Board* (July 5, 2007), available at <http://www.hrc.co.nz/home/hrc/newsandissues/commissionsupportsvictimstospeakbeforeparoleboard.php> (last visited on Sept. 21, 2009) (reporting New Zealand Human Rights Commission recommendation that proposed law comply with a provision in the Commonwealth Best Practice Guidelines on the rights of victims stating that "[v]ictims must have the right to be heard in private at parole or similar hearings"); Govt. "should pay victims of violence," *TIMARU HERALD*, Sept. 3, 2007, 2007 WLNR 17168502 (citing Human Rights Commission opinion that victims should get cash compensation from the government).
- <sup>15</sup> See *Protection of Riot Victims' Rights NHRC's Achievement*, *THE HINDU*, Jan. 1, 2003, available at <http://www.hindu.com/thehindu/2003/01/01/stories/2003010101881300.htm> (last visited on Sept. 21, 2009) (noting that the Indian Human Rights Commission considered its biggest achievement of 2002 to be the protection of the rights of victims of rioting in Gujarat); *NHRC Recommends Victims' Relief Fund*, *THE HINDU*, Oct. 10, 2005, available at <http://www.hindu.com/2005/10/10/stories/2005101001530200.htm> (last visited on Sept. 21, 2009) (describing recommendation by Indian Human Rights Commission to Indian government to set up a fund to compensate victims of violence and human rights violations irrespective of the outcome of the cases filed by them or on their behalf).
- <sup>16</sup> For multi-country studies of NHRIs, see e.g., ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS (2008), *supra* note 4; INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, PERFORMANCE AND LEGITIMACY: NATIONAL HUMAN RIGHTS INSTITUTIONS (2nd ed. 2004). For English language studies of the work of the NHRCK in particular, see e.g., Kim Man Heum, *Human Rights in Korea and the Human Rights Commission of Korea*, 2005 Gwangju Asian Human Rights Forum Papers, available at <http://www.scribd.com/doc/7800359/2005-Gwangju-Asian-Human-Rights-Forum-Papers> (last

significant scholarship regarding whether and how NHRIs specifically address victim rights issues. This paper attempts to begin to fill that gap by presenting a study of the role of the National Human Rights Commission of Korea (“NHRCK” or “Commission”) in protecting victim rights. Korea presents an attractive candidate for a case study as it has one of the world’s more vigorous and powerful NHRIs, one that plays a leadership role on the international level and is sometimes used as a model in the rest of Asia.<sup>17</sup> Thus, it is my hope that an in depth analysis of how the NHRCK has contributed to the protection and promotion of victim rights field can provide guidance for other countries as to the different ways in which their NHRIs can play a productive role on victim rights issues, in addition to highlighting possible avenues for Korean victim rights advocates to press the NHRCK to address victim rights issues more effectively.

The outline of this paper is as follows. First, it provides a summary of the composition and function of the NHRCK, as background. Then, after a brief overview of the current framework for protection of victim rights in Korea, the paper discusses the actions that the NHRCK has taken so far to ensure that the Korean Ministry of Justice protects the rights of crime victims. The paper will next discuss the NHRC’s own policies regarding victims of human rights abuses who are able to petition the Commission directly. Lastly, the article will review the other actions that the NHRC has taken to promote victim rights by working with private sector organizations.

The article will concentrate throughout on six main areas of victim rights that have been highlighted in current discussions of victimology, namely: (1) the right to receive support and assistance; (2) the right to receive information related to the victim’s case; (3) the right to receive protection in appropriate circumstances; (4) the right to participate in proceedings related to the victim’s case; (5) the right to restitution or compensation, and (6) the right to freedom from discrimination in the exercise of these rights.<sup>18</sup> These areas are also among those addressed most prominently in the U.N. Declaration.<sup>19</sup>

This article will address the NHRCK’s policies regarding the rights of both ordinary

visited on July 20, 2009); Asia Pacific Human Rights Network, National Human Rights Commission of Korea: Miles to Go, HRF/105/04, Sept. 20, 2004, available at <http://www.hrdc.net/sahrdc/hrfeatures/HRF105.htm> (last visited on July 20, 2009); Kwak Nohyun, The National Human Rights Commission of Korea: Assessment After One Year, 1 ARTICLE 2 6, at 38, available at <http://www.article2.org/pdf/v01n06.pdf> (last visited on July 20, 2009).

<sup>17</sup> The NHRCK has received an “A” accreditation (the highest possible level) by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (“ICC”). Asia Pacific Forum, APF Members Retain ICC Accreditation Standing, available at <http://www.asiapacificforum.net/news/apf-members-retain-icc-accreditation-standing.html> (last visited on July 20, 2009).

<sup>18</sup> See LORRAINE WOLHUNTER, NEIL OLLEY AND DAVID DENHAM, VICTIMOLOGY: VICTIMISATION AND VICTIMS’ RIGHTS 119-120 (2008).

<sup>19</sup> *Supra* note 7.

crime victims and victims of human rights violations. The scope of the article is thus consistent with the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which in addition to covering crime victims, also explicitly applies to individuals who “have suffered harm [...] through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.”<sup>20</sup> Section 6 will deal with the rights of victims of human rights abuses, while the remainder of the article will concentrate on the rights of crime victims.

## 2. Introduction to the NHRCK: A Comparative Perspective

The NHRCK was established in 2001 pursuant to the National Human Rights Commission Act<sup>21</sup> as the most important body in Korea dealing with human rights issues. The Commission was one of several national human rights institutions founded in Asia during the decade between 1993 and 2003 in the wake of the 1993 Vienna World Conference on Human Rights and the adoption of the Principles Relating to the Status of National Institutions (“Paris Principles”) by the United Nations General Assembly in that same year. These institutions include, among others, the National Human Rights Commission of India (founded 1993), the Indonesian National Commission on Human Rights (founded 1993), the Human Rights Commission of Malaysia (founded 1999), the National Human Rights Commission of Thailand (founded 1999), and the National Human Rights Commission of Mongolia (founded 2001).<sup>22</sup> The establishment of the NHRCK was an important milestone in the development of a human rights culture in Korea, and was the result of years of lobbying by human rights activists (including victim support groups), academics and lawyers.<sup>23</sup>

The Commission is composed of 11 members, including a Chairperson, three Standing Commissioners and seven Non-Standing Commissioners.<sup>24</sup> While all members are appointed by the President of Korea, four of the Commissioners (including two Standing Commissioners) are nominated by the National Assembly, three Non-standing Commissioners are nominated by the Supreme Court, and the remaining four members (including the Commission’s Chairperson and one Standing Commissioner) are nominated by the President of Korea.<sup>25</sup> The Members are supported

<sup>20</sup> *Id.* at § 18.

<sup>21</sup> National Human Rights Commission Act of Republic of Korea - Act No. 6481, May 24, 2001 (“NHRCK Act”).

<sup>22</sup> Asia Pacific Forum, Members, available at <http://www.asiapacificforum.net/members> (last visited on July 20, 2009).

<sup>23</sup> Cho Hyo-Je, *supra* note 5, at 186.

<sup>24</sup> National Human Rights Commission of Korea, Biography of the Commissioners, available at [http://www.humanrights.go.kr/english/about\\_nhrck/commissioners.jsp](http://www.humanrights.go.kr/english/about_nhrck/commissioners.jsp) (last visited on July 20, 2009).

<sup>25</sup> Kwak Nohyun, *supra* note 16 at 42.

by a 164-person strong Secretariat.<sup>26</sup> Prior to April, 2009, there was a staff of 208, but the President recently slashed the number of employees at the Commission, despite protests from the Commission itself as well as domestic and international human rights advocates.<sup>27</sup>

The Commission's tasks include: analysis, research and issuance of recommendations on human rights statutes and bills, legal and judicial systems, policies and practices; investigation of allegations by individuals of discriminatory acts and human rights violations and recommendations of remedies; implementation of human rights education and awareness programs; issuance of proposals and guideline recommendations for various categories of human rights violations, determination standards, and preventive measures; issuance of recommendations or opinions with respect to the ratification and/or implementation of international human rights treaties to which Korea is a party, and cooperation with domestic and overseas human rights organizations and institutions.<sup>28</sup> Among these tasks, this article will concentrate on the Commission's advisory role and the Commission's investigation of complaints as they pertain to victim rights issues, and will review in lesser detail some of the other functions of the Commission to the extent that they impact victim rights issues.<sup>29</sup>

The Commission operates independently of other branches of government<sup>30</sup> and has, over the course of the past eight years, come to play a relatively prominent role in Korean society. Although there have been (and continue to be) occasional challenges to

<sup>26</sup> See National Human Rights Commission of Korea, *Organizational Chart*, available at [http://www.humanrights.go.kr/05\\_sub/body05.jsp](http://www.humanrights.go.kr/05_sub/body05.jsp) (last visited on July 29, 2009).

<sup>27</sup> See Asia Forum for Human Rights and Development, South Korea Government to Minimize the Ability of Human Rights Commission (Mar. 18, 2009), available at [http://www.forum-asia.org/index2.php?option=com\\_content&do\\_pdf=1&id=2107](http://www.forum-asia.org/index2.php?option=com_content&do_pdf=1&id=2107) (last visited on July 29, 2009); ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS, 2009 REPORT ON THE PERFORMANCE AND ESTABLISHMENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ASIA 184 (2009).

<sup>28</sup> National Human Rights Commission of Korea, *Mandate and Jurisdiction*, available at [http://www.humanrights.go.kr/english/about\\_nhrck/mandate\\_01.jsp](http://www.humanrights.go.kr/english/about_nhrck/mandate_01.jsp) (last visited on July 20, 2009).

<sup>29</sup> While advising other branches of government on matters related to human rights and involvement with human rights promotion activities are standard activities for NHRIs, investigation of human rights complaints from individuals is somewhat less common on a global basis and is not considered a minimum requirement under the Paris Principles. See ANNA-ELINA POHJOLAINE, *THE EVOLUTION OF NATIONAL HUMAN RIGHTS INSTITUTIONS - THE ROLE OF THE UNITED NATIONS 17-19* (2006) (noting that NHRIs following the "advisory committee" model and "human right institute" model usually do not have the authority to investigate individual complaints). Nevertheless, all of the national human rights institutions in the Asia-Pacific Forum do have the power to hear petitions alleging human rights violations, although they vary in the efficiency and effectiveness with which they handle such complaints. ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS (2009), *supra* note 27 at 16.

<sup>30</sup> Article 3 of the National Human Rights Commission of Korea Act states: "The Commission conducts its authorized activities independently." NHRCK Act, *supra* note 21, at art. 3. However, the Commission's budget is regulated by the Ministry of Planning and Budget, the Ministry of Governmental and Home Affairs, and the Civil Service Commission. ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS (2008). See *supra* note 4, at 16.

the Commission's independence<sup>31</sup> and its opinions are not always heeded by other branches of government, few would deny that it has carved out an important role as the "conscience of the state" by highlighting areas where human rights improvement is needed and providing an outlet for victims of human rights abuses. According to a 2008 analysis, the NHRCK was one of only two NHRIs in Asia to enjoy a "fair amount of independence and autonomy from government interference," with the Indonesian Komnas HAM being the other one.<sup>32</sup>

One aspect of the Commission's work that is worth stressing is that in both its policy advisory role and its investigatory role, the NHRCK is unable to issue decisions with binding power, and can only recommend particular courses of action, such as discontinuing human rights violations; providing compensatory payment of damages; implementing measures for the prevention of the same or similar human rights violations in the future; and rectifying or improving regulations, systems, policies, and practices. The lack of power to issue binding recommendations is a trait that the NHRCK shares with other NHRIs in Asia: none of the NHRIs in the Asia-Pacific region have the power to make binding decisions.<sup>33</sup> However, the NHRCK's non-binding "recommendations" have traditionally had considerable impact. As of November, 2006, the Commission had issued 437 recommendations stemming from complaints of human rights violations; out of these recommendations, 267 were accepted in full, eighteen recommendations were partly accepted, alternative measures were accepted in four cases, and in only seven cases were recommendations wholly rejected.<sup>34</sup> Thus, the total acceptance rate by the parties at the time reached 97.6%.<sup>35</sup> In addition, between 2001 and 2008, the government accepted the NHRCK's recommendations on policy matters roughly 85% of the time.<sup>36</sup> However, since a change of administration, the government has been less willing to accept the NHRCK's recommendations in both areas.<sup>37</sup>

The Commission's human rights mandate is quite broad, and encompasses victim rights. The general purpose of the NHRCK is described as the "protection of the

<sup>31</sup> For example, in early 2008, the Lee administration proposed placing the NHRCK under the control of the presidency as a sub-agency; in the end this reorganization was not carried out. ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS (2009), *supra* note 27 at 184.

<sup>32</sup> ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS (2008), *supra* note 4, at 15. However, it should be noted that this was written prior to the recent cut in the NHRCK's staff level.

<sup>33</sup> Carolyn M. Evans, Human Rights Commissions and Religion Conflict in the Asia-Pacific Region, 53 INT'L & COMP. L. Q. 713, 719 (2004).

<sup>34</sup> Press Release, *National Human Rights Commission of Korea, Commemorating the 5th anniversary of the establishment of the Human Rights Commission* (Nov. 22, 2006) (on file with author).

<sup>35</sup> *Id.*

<sup>36</sup> NATIONAL HUMAN RIGHTS COMMISSION OF KOREA, DIGNITY FOR ALL (2009).

<sup>37</sup> Presentation by Jung Yunkul, *National Human Rights Commission of Korea* (July 22, 2009).



inviolable and fundamental human rights of all individuals and the promotion of the standards of human rights,”<sup>38</sup> while ‘human rights’ are defined as “any rights and freedoms, including human dignity and worth, guaranteed by the Constitution and Acts of the Republic of Korea, recognized by international human rights treaties entered into and ratified by the Republic of Korea, or protected under international customary law.”<sup>39</sup> Thus, the NHRCK has the responsibility to focus on a number of specific victim rights provided for in Articles 27 and 30 of the Korean Constitution, along with all victim rights statutes, including the Crime Victims Protection Act,<sup>40</sup> the Crime Victim Aid Act,<sup>41</sup> and the Act on the Punishment of Sexual Crimes and Protection of Victims Thereof,<sup>42</sup> among others. Such a broad definition of “human rights” is in fact the norm among NHRIs in the Asia-Pacific. For example, the Protection of Human Rights Act of India, which establishes the mandate of the Indian National Human Rights Commission, defines human rights as “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”<sup>43</sup>

### 3. Rights of Crime Victims in the Republic of Korea

In this section, I will briefly describe the current framework for protecting the rights of crime victims in Korea, while highlighting criticisms of the system that have been made in the past by victim rights advocates and that could potentially be addressed by the NHRCK. The following section will analyze the ways in which the Human Rights Commission has contributed and can continue to contribute to the development of that framework.

The primary locus for protection of victim rights within the Republic of Korea lies with the Ministry of Justice. More specifically, victim rights policies are developed and refined within the Division of Human Rights Support in the Ministry’s Human Rights Bureau.<sup>44</sup> The policies are then implemented both via the court system and through the operations of 57 victim support centers that have been established around the country to provide counseling and support to crime victims.<sup>45</sup> These support centers are run by a

<sup>38</sup> NHRCK Act, Art 1.

<sup>39</sup> *Id.* art. 2(1).

<sup>40</sup> Act No. 7731 (2005).

<sup>41</sup> Act No. 3969 (1987).

<sup>42</sup> Act No. 4702 (1994).

<sup>43</sup> Protection of Human Rights Act (1993). Act No. 10 of 1994, art. 2(1)(e).

<sup>44</sup> Interview with Baek Jongwo, Manager of Human Rights Support Division, Republic of Korea Ministry of Justice in Seoul, Korea (July 10, 2009).

<sup>45</sup> *Id.*

non-governmental association, but receive funding from the government and in all but two cases are physically located in Prosecutor's Offices.<sup>46</sup> The support centers provide counseling, legal aid, protection (for example by accompanying victims to court) and financial assistance.<sup>47</sup> Evidently, the police forces also play an important role in protecting victim rights. In 2004, the National Police Agency established a Victim Support Office and more recently, each regional police headquarters appointed 'victim support officials' to establish victim support schemes within their jurisdictions.<sup>48</sup>

Certain victims' rights in the Republic of Korea are protected in Article 27(5) of the Korean Constitution,<sup>49</sup> which entitles crime victims to make statements at trial, and Article 30 of the Constitution,<sup>50</sup> which guarantees that a person injured by a criminal act may receive aid from the State as provided by statute. These constitutional protections, while narrow, are unusual by global standards - only a handful of other countries around the world provide constitutional protections for victim rights.<sup>51</sup> Nevertheless, these constitutional obligations were for many years implemented by a patchwork of somewhat ineffective statutes. This began to change with the 2005 passage of the Crime Victims Protection Act,<sup>52</sup> which specified a fundamental principle and policy for victim support and obliges the enactment of victim support policies at the national and local levels.<sup>53</sup> In addition, it guarantees victims the right to make impact statements at trial and provides a framework for establishing the aforementioned 57 victim support centers.<sup>54</sup>

Availability of compensation has for some time been one of the more contentious issues in the Korean victim rights system. As is the case in many countries, compensation for crime victims in Korea can come from both defendants and governmental sources. Korea's civil action system for crime victim restitution from defendants is centered on Article 25 of the 1981 Act on Special Cases Concerning Expedition, etc. of Legal Proceedings.<sup>55</sup> According to the terms of this law, criminal

<sup>46</sup> Interview with Lee Yong-Woo, Chairman of the Korean Crime Victims Support Center in Seoul, Korea (July 21, 2009).

<sup>47</sup> *Id.*

<sup>48</sup> Tatsuya Ota, *The Development of Victim Support and Victim Rights in Asia*, in SUPPORT FOR VICTIMS OF CRIME IN ASIA 113, 126 (2007).

<sup>49</sup> REPUBLIC OF KOREA CONSTITUTION, art. 27.5.

<sup>50</sup> *Id.*, art. 30.

<sup>51</sup> Presentation by Cho Kyoong-seok, "Victim Support and Victim Rights in Korea," Mito, Japan (Aug. 25, 2009). Other jurisdictions with constitutional protections for victim rights include Thailand and most U.S. states (although not the U.S. Constitution). Garkawe, *supra* note 6 at 63.

<sup>52</sup> Act No. 7731 (2005).

<sup>53</sup> Ota, *supra* note 48, at 140.

<sup>54</sup> *Id.*, at 141.

<sup>55</sup> Act No. 3361 (1981; as amended in 2005).

courts may order defendants to pay for damages based either upon a claim by the victim or on their own motion.<sup>56</sup> However, while the Korean restitution system is relied on to a greater extent than in most other Asian countries,<sup>57</sup> there is evidence that the restitution system is still being underutilized. According to one study, the average number of applications by victims for criminal restitution per year (from 1981 to 2007) is 1,900, which represents between 2% and 4% of the crimes for which restitution is legally available.<sup>58</sup> The approval rate for these applications was just 32%.<sup>59</sup> In addition, Korean courts have been extremely reluctant to exercise their authority to award restitution on their own motion - between 1998 and 2007, this has only occurred on 33 occasions.<sup>60</sup>

With regard to compensation from the State, in 1987 Korea enacted the Crime Victim Aid Act,<sup>61</sup> which provides financial aid to people who suffer serious disabilities due to crime and the families of those who have died as the result of a criminal act. Funding from the Crime Victim Aid Act is available when the culprit of a crime is either not found or is indigent. Korea is one of seven Asian nations that have implemented some form of State-sponsored compensation scheme for crime victims, the others being Hong Kong, Japan, the Philippines, Taiwan, Thailand, and India, which has a statewide compensation scheme in place in Tamil Nadu.<sup>62</sup> Thailand's state compensation program is particularly notable for addressing both victims of crime and victims of abuse of power or miscarriage of justice through applications to an inter-agency Victim Compensation and Restitution Board.<sup>63</sup>

One particular concern regarding Korea's compensation program is the lack of funds in its crime victim compensation program - the amount of money available for families of murder victims was 10 million won (\$7600) for many years.<sup>64</sup> This was widely seen as insufficient: according to Justice Ministry data released for 2008, the ministry allocated a total of only 1.8 billion won (\$1,368,000) annually to compensate all crime victims.<sup>65</sup> This

<sup>56</sup> Ota, *supra* note 48, at 117.

<sup>57</sup> According to one scholar, civil actions for restitution are most widely used in Korea and Taiwan, compared to other Asian jurisdictions. *Id.*

<sup>58</sup> Lee Cheon Hyun, Restitution System, 20 KOREAN CRIMINOLOGY REV. 1146, 1147 (2009).

<sup>59</sup> *Id.* at 1148.

<sup>60</sup> *Id.* at 1157.

<sup>61</sup> Act No. 3969 (1987).

<sup>62</sup> Garkawe, *supra* note 6, at 57.

<sup>63</sup> Prathan Watanavanich, *Emergence of Victims' Rights in Thailand: Twenty Years after the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, in SIMON CORNELL, THE USE AND APPLICATION OF THE UNITED NATIONS DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER - TWENTY YEARS AFTER ITS ADOPTION 3,19 (UNAFEI Resource Material Series No. 70, 2006).

<sup>64</sup> Cho Kyo-on-seok, *Assistance for Victims of Crime in Korea*, in SUPPORT FOR VICTIMS OF CRIME IN ASIA 178, 182 (2007).

<sup>65</sup> Jung Hyo-Sik, Families of Murder Victims Destitute, Joongang Daily, Dec. 27, 2008, available at <http://joongangdaily.joins.com/article/view.asp?aid=2899111> (last visited on July 20, 2009).

problem has recently been at least partially addressed, however, as in April, 2009, the Justice ministry raised the compensation limit for murder victims to 30 million won (\$22,500), and within five years, it hopes to raise the compensation limit once more up to 100 million won (\$75,000).<sup>66</sup> However, this amount still would be inferior to the amount of compensation in Japan, where compensation of up to 15,730,000 yen (\$131,000) is available to the family of murder victims and benefits of up to 18,492,000 yen (\$154,000) are available to individuals suffering injuries due to criminal activity.<sup>67</sup>

The availability of protection for crime victims has also been expanded in recent years. According to the Act on Special Cases Concerning the Punishment of Specific Violent Crimes,<sup>68</sup> the victims of certain violent crimes such as homicide and armed robbery may receive personal safety measures such as police patrols or escorts to and from court.<sup>69</sup> Recent revisions have also enhanced the privacy of victim statements given at trial, as a means of ensuring the personal safety of victims.<sup>70</sup>

These general protections are supplemented by a number of specific protections provided by the court system for victims of sexual crimes, sex trafficking, and domestic violence. For sexual crimes, the Act on the Punishment of Sexual Assault Crimes and Protection of Victims<sup>71</sup> provides for personal safety measures, the provision of counseling, and a prohibition on disclosing the victim's identity, among other privacy measures.<sup>72</sup> For crimes of domestic violence, the Special Act for the Punishment of Domestic Violence<sup>73</sup> also provides for personal safety measures, including evacuation and denial of access, along with counseling and privacy measures such as a closed trial.<sup>74</sup> For crimes of sexual trafficking, the Act on the Punishment of Acts of Arranging Sexual Trafficking<sup>75</sup> permits the presence of a person having a fiduciary relationship

<sup>66</sup> Interview with Baek Jongwo, *supra* note 44.

<sup>67</sup> Ota, *supra* note 48 at 142.

<sup>68</sup> Act No. 4295 (1990).

<sup>69</sup> Cho Kyoons-seok, *supra* note 64 at 184.

<sup>70</sup> Cho Kuk, The 2007 Revision of the Korean Criminal Procedure Code, 8 J. KOREAN L. 1, 22 (2008) (citing Criminal Procedure Code, art. 294-3(1)).

<sup>71</sup> Act No. 8059 (2006).

<sup>72</sup> Cho Kyoons-seok, *supra* note 64 at 184. Revisions to the law in 2007 added a number of protections, including the right of and allowing for a person with a "reasonable relationship" with the crime victim to sit with the victim during trial in cases where the victim would feel considerable anxiety or tension when questioned as a witness and providing for using closed circuit television to question vulnerable crime victims (such as underaged sex crime victims). Cho Kuk, *supra* note 70 at 21 (citing Korean Criminal Procedure Code (Law No. 341, Sept. 23, 1954, last revised Dec. 21, 2007 as Law no. 8730). Korea does not currently have a "rape shield" law to limit admissibility of evidence relating to the victim's prior sexual conduct, although there have been calls for one. See Cho Kuk, *The Under-Protection of Women under Korean Criminal Law*, 22 COLUM. J. ASIAN L. 119, 134-135 (2008).

<sup>73</sup> Act No. 5436 (1997).

<sup>74</sup> Cho Kyoons-seok, *supra* note 64 at 184.

<sup>75</sup> Act No. 7196 (2004).

with the victim during investigation and testimony and provides for counseling, protective facilities, and closing of the trial to the public.<sup>76</sup> While the Justice Ministry plays the primary role in protecting the rights of sexual crime victims, the Ministry of Gender Equality plays an important role in providing support and counseling, as it is responsible for the establishment and management of sexual victim relief projects such as counseling facilities, vocational training, medical and legal assistance, treatment and recovery programs, rehabilitation assistance in brothels, credit recovery support, and enterprise support.<sup>77</sup>

There have also been important recent developments in assuring victims the right to receive information about trial proceedings and participate in those proceedings should they so desire. In 2002, the Supreme Prosecutor's Office set up an 'interim notification system that requires prosecutors to account for the progress of any criminal investigation not finished within three months of the date the complaint was lodged.<sup>78</sup> In 2006, the Criminal Procedure Code was amended to require prosecutors to notify victims of the prosecution, trial schedule, sentencing, and confinement of offenders.<sup>79</sup> As previously mentioned, crime victims are assured the right to give victim impact statements at trial by the Korean Constitution. In addition, the designated prosecutor in charge of victim support is now required to conduct a thorough examination of the victim's circumstances and send these results to the investigating prosecutor or the court.<sup>80</sup>

While Korea's victim rights policies are currently experiencing what has been characterized as a "renaissance"<sup>81</sup> and are among the most advanced in Asia in terms of the scope and number of reforms made,<sup>82</sup> there have been complaints that although these provisions for victim support may look good on paper, they may not always function effectively in the real world.<sup>83</sup> For example, in one investigative report from 2008, when 43 Sexual Assault Injury Consultation Centers in Seoul and Busan were contacted regarding their facilities, 21 of them reported that they did not have rape kits

<sup>76</sup> *Id.* at 185.

<sup>77</sup> NATIONAL HUMAN RIGHTS COMMISSION OF KOREA, SUBMISSION TO THE PROFESSIONAL WORKING GROUP OF THE COMMITTEE ON THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE REPUBLIC OF KOREA'S IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON THE ECONOMIC, SOCIAL, AND CULTURAL RIGHTS 28 (2008), available at [http://www2.ohchr.org/english/bodies/cescr/docs/ngos/NHRCK\\_RoK\\_41.doc](http://www2.ohchr.org/english/bodies/cescr/docs/ngos/NHRCK_RoK_41.doc) (last visited on July 22, 2009).

<sup>78</sup> Ota, *supra* note 48, at 123.

<sup>79</sup> *Id.* at 123-24.

<sup>80</sup> Cho Kyo-on-seok, *supra* note 64 at 187.

<sup>81</sup> *Id.* at 174.

<sup>82</sup> Wing-Cheong Chan, *Introduction* in SUPPORT FOR VICTIMS OF CRIME IN ASIA 1-2 (2007).

<sup>83</sup> Cho Byung-In, *Victim Protection Mechanism of Korea: Legal Aspect and Reality*, in VICTIMS AND CRIMINAL JUSTICE: ASIAN PERSPECTIVE 181-182 (2003) (noting lack of financial resources, poor social consensus and unwillingness of victims to have their victimization known by others).

on site. Fifteen of the centers reported that they were not even aware that they had been designated as Consultation Centers.<sup>84</sup>

Some have also contended that Korea's current victim support system does not adequately protect foreigners who are victimized.<sup>85</sup> Foreign nationals are permitted to access the victim support centers and in fact, according to the Chairman of the organization that runs the support centers, they make up roughly 30% of the Centers' clients.<sup>86</sup> Foreigners are also covered by Korea's victim rights legislation, with the exception that under the Crime Victim Aid Act, foreigners are only allowed to receive compensation from the Korean government if Korean nationals are allowed to receive compensation should they be victims of crime in the foreigner's home state.<sup>87</sup> However, the language barriers to foreign victims asserting their rights can be a problem. Many migrant workers do not speak Korean, so that as a practical matter information that is solely in Korean is not accessible to them. Although there has been some progress in availability of material in English, many immigrants do not speak English either, so there is a particular need for materials translated into Chinese, Vietnamese, Tagalog, and Mongolian. In addition, the location of victim support centers in prosecutor offices may discourage illegal immigrants from accessing their services and may even intimidate legal immigrants who would like to access victim services but do not want to file charges or otherwise involve the prosecutor's office in a matter.

#### 4. Policy and Legislative Recommendations

One way in which the National Human Rights Commission has been able to influence the victim rights discourse is by reviewing and commenting on proposed legislation and policy plans involving victim rights, which they have in fact done on a number of occasions. For example, in 2004, the Commission recommended measures to protect

<sup>84</sup> Park Sujin, *Designation of Specialized Hospitals for Sexual Harassment is Ineffective*, HANKYOREH, Mar. 7, 2008, available at <http://news.naver.com/main/read.nhn?mode=LS2D&mid=sec&sid1=102&sid2=255&oid=036&aid=0000017049>.

<sup>85</sup> See e.g., ROK Drop Weblog, *The Double Victims of Sexual Assaults in Korea* (Nov. 29, 2007), available at <http://rokdrops.com/2007/11/29/the-double-victims-of-sexual-assaults-in-korea/> (last visited on July 22, 2009); Press Release of the Asian Human Rights Commission, *Fire Kills and Injures 55 Migrant Workers in Foreigner Detention Centre* (Mar. 19, 2007), available at <http://www.ahrchk.net/ua/mainfile.php/2007/2279> (last visited on July 22, 2009); Choi Chang-hyun, *Female foreigners put in legal blind spot*, CHOSUN ILBO (Jul. 22, 2009) available at [http://news.chosun.com/site/data/html\\_dir/2009/07/22/2009072201418.html](http://news.chosun.com/site/data/html_dir/2009/07/22/2009072201418.html) (last visited on July 28, 2009).

<sup>86</sup> Interview with Lee Yong-Woo, *supra* note 46.

<sup>87</sup> Crime Victim Aid Act, *supra* note 41 at art. 10. This can be contrasted with the situation in Japan, where all foreign victims domiciled in Japan are eligible for compensation, although tourists and business travelers are excluded. Tatsuya Ota, *New Trends in Victim Support Scheme in Japan*, in VICTIMS AND CRIMINAL JUSTICE: ASIAN PERSPECTIVE 181-182 (2003).

child victims of sexual violence by ensuring the effective operation of emergency medical facilities and cooperation from medical staff in sex crime cases; these recommendations were accepted in part by the concerned government ministries.<sup>88</sup> In 2005, the Commission issued recommendations to the Ministry of Justice and National Police Agency regarding the Amendments to the Act on Remedies for Victims of Crime; this was one of the few of the Commission's recommendations that was not accepted, even in part.<sup>89</sup> In 2007, the Commission provided comments on the Full Amendment to the Act on Youth Protection from Sexual Abuses and the Special Bill on Assistance for Land Mine Victims, agreeing in each case to the Justice Ministry's insertion of victim rights provisions.<sup>90</sup>

An important instance of the Commission's involvement in victim rights policy was its establishment of a task force in 2006 to review the legislative shortcomings of the Justice Ministry's proposed Crime Victims Protection Act<sup>91</sup> and produce a proposal for revisions. At the end of 2006, the Commission changed the task force's mandate to reviewing the Justice Ministry's Master Plan for the Protection of and Support for Victims of Crime,<sup>92</sup> which had recently been announced, and which covered the main points of contention identified by the task force in the Crime Victim Protection Act.

Although the Commission task force's final report emphasized that the Justice Ministry's Master Plan was a positive step, it also expressed a number of concerns; namely that in drafting the plan, the Ministry had failed to collect a broad enough range of opinions from the public, including crime victims, and that the Master Plan should have given more specific definitions of who should pursue each policy task, and that the Plan should have contained timelines and schedules for each tasks' completion.<sup>93</sup>

When the NHRCK has commented on more general (non-victim specific) policies or laws, it has also been able to use the opportunity to ensure that victim rights issues are given due attention and not forgotten amongst other important policy priorities. For example, between 2003 and 2006, the Commission worked on comprehensive recommendations to the government regarding Korea's proposed 5-year National Action Plan for the Promotion and Protection of Human Rights, which was eventually

<sup>88</sup> NATIONAL HUMAN RIGHTS COMMISSION OF KOREA, ANNUAL REPORT 2004, at 26.

<sup>89</sup> *Id.* at 27.

<sup>90</sup> *Id.* at 30.

<sup>91</sup> Act No. 7731 (2005).

<sup>92</sup> The drafting of Korea's basic plan was an important development that reflects the influence of earlier basic victim policy documents in other Asian jurisdictions such as Japan (Basic Policy Concerning Assistance for Crime Victim) and Hong Kong (Victim's Charter). Tatsuya Ota, *The Development of Victimology and Victim Support in Asia*, in *supra* note 83, at 1, 22.

<sup>93</sup> Press Release of the National Human Rights Commission of Korea, *NHRCK Expresses its Opinion on the Ministry of Justice's Master Plan for the Protection of and Support for Victims of Crime* (Nov. 8, 2007) (on file with author).

finalized and published by the Justice Ministry on May 22, 2007.<sup>94</sup> The Plan ended up with a section on victim rights, which concentrated on establishing remedies for crime victims, establishing institutions to protect the human rights of crime victims, and strengthening provisions for physical protection of crime victims.<sup>95</sup> There was a separate section that dealt with victims of human trafficking and sex crimes.<sup>96</sup> These sections reflect some of the concerns expressed in the NHRCK comments, which stated among other things, that Korea should “[i]mprove protection of crime victims to a level satisfying international standards by raising the state’s maximum compensation limit for crime victims, expanding the scope of such compensation and devising measures to protect victims from and against offenders.”<sup>97</sup>

Of course, it is difficult to know whether the Commission’s victim rights recommendations had any impact on the National Action Plan, or whether they simply coincided with the existing concerns of the Justice Ministry. In general, scholars have concluded that the government of Korea seriously considers policy recommendations from the NHRCK.<sup>98</sup> However, with respect to victim rights issues, it is certainly debatable as to whether the Commission’s policy recommendations have a particularly large influence on the Justice Ministry. Within the Justice Ministry, the NHRCK is not always seen as an organization that cares about the rights of crime victims.<sup>99</sup> In addition, there are many governmental, quasi-governmental, and non-governmental institutions that comment on legislative proposals and criminal justice policy, so the NHRCK’s recommendations are competing for attention with those of other groups.

Despite the Commission’s issuance of recommendations in the past on victim issues, based on interviews with government officials, there does not appear to be ongoing formal or informal coordination with the Ministry of Justice or the victim support centers on victim rights issues.<sup>100</sup> Improving lines of communications with both the Ministry of Justice and the Victim Support Center networks would clearly assist the Commission in having more of an impact on victim rights issues outside of the formal legislative consultation process.

<sup>94</sup> REPUBLIC OF KOREA MINISTRY OF JUSTICE, NATIONAL ACTION PLAN FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (pub. no. 11-1270000-000463-01) (2007).

<sup>95</sup> *Id.* at 180.

<sup>96</sup> *Id.* at 155.

<sup>97</sup> National Human Rights Commission of Korea, *Recommendation Proposal on National Action Plan for the Promotion and Protection of Human Rights* (2007), at 99, available at [http://www.humanrights.go.kr/english/nap\\_01.jsp](http://www.humanrights.go.kr/english/nap_01.jsp) (last visited on July 29, 2009).

<sup>98</sup> ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS (2008), *supra* note 4, at 19.

<sup>99</sup> Interview with Baek Jongwo, *supra* note 44.

<sup>100</sup> *Id.* Interview with Lee Yong-Woo, *supra* note 46.



## 5. Complaint Recommendations

Another way in which the Commission has been able to impact the rights of crime victims is by issuing recommendations on victim rights issues that arise in petitions to the Commission. According to Article 19(2) of the National Human Rights Commission Act, the NHRCK is vested with the competence to investigate and recommend remedies for cases of discriminatory acts or human rights violations by the government.<sup>101</sup>

While victim rights cases do not constitute a significant percentage of the Commission's case load, there have been some cases over the years. For example, in 2007, the NHRCK accepted a petition from a domestic violence victim alleging that the police had failed to charge the assailant or provide protection to the individual who had been a victim of severe assault and death threats.<sup>102</sup> The Commission recommended that the Commissioner General of the Police Agency and Police Station Chief be cautioned and the police officers involved be disciplined. It also recommended human rights education for the police involved and requested that the Korean Bar Association file a remedial action on behalf of the victims' family.<sup>103</sup>

Another victim rights case arose that same year when the Commission investigated allegations that a police officer had humiliated the victim of a crime of sexual violence while investigating the crime.<sup>104</sup> While counseling the victim, he made inappropriate remarks such as that he "would not live with such a woman [who was sexually assaulted]" and that "the mother [of a sexual violence victim] is disgraced before her son-in-law."<sup>105</sup> The Commission ended up recommending that the head of the police station issue a warning to the relevant police officer.<sup>106</sup>

Victim rights cases can also lead to the Commission's issuance of more general policy recommendations. After a May 2003 petition filed by "Family Members of Child Victims of Sexual Violence" charged that child sexual abuse victims were subject to additional human rights violations in the course of the investigation and trial process, including that government officers incessantly summon doctors to court and hearings, thereby incurring doctors' refusal to treat child victims; that detectives investigating child sex crimes have inadequate expertise, and that child victims are not entitled to information about the investigation and trial of the perpetrators.<sup>107</sup> The commission

<sup>101</sup> NHRCK Act, *supra* note 21, art. 19(2).

<sup>102</sup> National Human Rights Commission of Korea, Decision on Personal Protection (Sept. 17, 2007).

<sup>103</sup> *Id.* at 1.

<sup>104</sup> Press release, National Human Rights Commission of Korea, Human Rights Abuses Still Committed in Counseling and Investigation of Sexual Violence Victims (July 28, 2007) (on file with author).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Press release, National Human Rights Commission of Korea, Need for Policy to Protect Child Sexual Abuse Victims and Safeguard their Rights (July 8, 2007) (on file with author).

responded after a year of study by issuing three sweeping recommendations. First, the NHRCK recommended that the Minister of Justice reform institutions so as to secure the right of the victim, the victim's guardian or other trusted persons to concrete information about the victim's case during the investigation and trial process, and to stipulate in the "Guidelines on the Victim Protection while Participating in the Investigation and Prosecution of Sexual Crimes" (which was then in draft form) that doctor's written testimony be given priority during investigation. Second, the NHRCK recommended that the National Police Agency place police officers with expertise on child sexual abuse at each police station, and provide them with periodic training, and to stipulate in the "Regulation on Protection of Crime Victims" that crime victims and their guardians be guaranteed all their rights and that the agencies assisting such crime victims be notified by the investigating authorities. And, finally, the NHRCK recommended that the Minister of Gender Equality undertake plans for the effective administration of emergency medical centers and medical institutions responsible for treating victims of sexual abuse.<sup>108</sup>

While the Commission does accept petitions alleging victim rights violations, it should be noted that by far the largest proportion of petitions to the NHRCK over the years has come from those suspected or convicted of crimes: from 2001 to the end of 2007, 43.2% of human rights violation complaints were filed against detention facilities.<sup>109</sup> An additional 22% were filed against the police.<sup>110</sup> This has led to the natural perception among some in Korean society that the NHRCK is a criminal or prisoner rights protection organization. While these are obviously an important component of the Commission's mandate, the potential for protecting victim rights through the petitions system should not be overlooked.<sup>111</sup>

Perhaps the greatest barrier to the Commission's use of petitions to drive change in the victim rights arena is the fact that the jurisdiction of the NHRCK is quite narrowly restricted when it comes to hearing petitions claiming violations of victim rights. This is because the Commission may only hear petitions alleging violations of Articles 10 through 22 of the Constitution or discriminatory acts.<sup>112</sup> However, as discussed earlier, the Constitutional clauses dealing expressly with victim rights are Articles 27 (right of victim to make statements at trial) and 30 (right of victim to receive aid from the State).

<sup>108</sup> *Id.*

<sup>109</sup> *Supra* note 90, at 51.

<sup>110</sup> *Id.* This figure includes complaints from victims but is presumably dominated by complaints from suspected or convicted criminals.

<sup>111</sup> In general, there is no contradiction between upholding victim rights and the rights of accused and convicted persons. Garkawe, *supra* note 6.

<sup>112</sup> NHRCK Act, *supra* note 21, art. 30.

Therefore, when the Human Rights Commission investigates cases of human rights abuses of crime victims, they have based their jurisdiction on allegations of other types of constitutional rights violations, such as Article 10 (assuring the dignity of all human beings), in the victim protection and domestic violence investigations described above.<sup>113</sup>

## 6. Rights of Victims of Human Rights Abuses and the NHRCK Investigation Process

In addition to ensuring that the Ministry of Justice respects the rights of crime victims, the NHRCK, as an investigatory institution, also deals directly with victims of human rights violations and discrimination in its own investigations of complaints from individuals.<sup>114</sup> According to the Commission, while investigation of a petition may lead to prosecution of the respondent, its purpose is to “recover the victims’ rights and obtain remedies to damages by conducting reconciliation between the parties, and other appropriate measures as dictated by the legal system.”<sup>115</sup> Commission investigations are intended to offer a “faster, cheaper, and more approachable” alternative to the criminal justice system.<sup>116</sup> In 2007, the Human Rights Violation Rectification Department investigated 2,859 cases, taking up an average of 127 days to investigate each of them.<sup>117</sup>

As is appropriate for a victim-centered process, there are certain legal protections available for victims of discrimination and human rights abuses. Per the terms of the NHRCK Act, the Commission may request that the Korea Legal Aid Corporation or any other legal institution render legal aid to victims, if the victim so desires.<sup>118</sup> Also, while third parties may file petitions on behalf of human rights or discrimination victims, the Commission will cease investigation if the victim makes clear that he or she does not want the investigation to move forward.<sup>119</sup> Article 55 of the NHRCK Act aims at

<sup>113</sup> See Decision on Personal Protection, *supra* note 102; Human Rights Abuses Still Committed in Counseling and Investigation of Sexual Violence Victims. See *supra* note 104.

<sup>114</sup> This principle has been emphasized in “best practice” guides for NHRIs. See AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL’S RECOMMENDATIONS ON NATIONAL HUMAN RIGHTS INSTITUTIONS, AI Index: IOR 40/007/2001(2001), at 4.C.3 (“Keeping the interests of victims at the centre of the process”).

<sup>114</sup> National Human Rights Commission of Korea, FAQ: *How is the investigation by the Commission different from investigations conducted by the police or the prosecution office?* (Oct. 27, 2003), available at [http://www.humanrights.go.kr/english/search\\_view\\_detail.jsp](http://www.humanrights.go.kr/english/search_view_detail.jsp) (last visited on July 23, 2009).

<sup>115</sup> National Human Rights Commission of Korea, FAQ: *How is the investigation by the Commission different from investigations conducted by the police or the prosecution office?* (Oct. 27, 2003), available at [http://www.humanrights.go.kr/english/search\\_view\\_detail.jsp](http://www.humanrights.go.kr/english/search_view_detail.jsp) (last visited on July 23, 2009).

<sup>116</sup> *Id.*

<sup>117</sup> ASIAN NGOS NETWORK ON NATIONAL INSTITUTIONS (2008), *supra* note 4, at 155.

<sup>118</sup> NHRCK Act, *supra* note 21, art. 47.

<sup>119</sup> *Id.* art. 32(1)&(3).

preventing retaliation against victims (and witnesses) by prohibiting “removal from his/her office, transfer to another position, disciplinary action and unjust treatment, or other unfavorable measures in status or treatment on account of his/her petition”<sup>120</sup> and aims at encouraging petitions by pledging to give “any necessary support or reward to a person who either reveals the fact of any human rights violation or discriminatory act, or finds and presents evidence or materials.”<sup>121</sup> Further protections have been decreed for victims petitioning the Commission from detention or protective facilities.<sup>122</sup>

In addition, the NHRCK has, since its founding in 2002, operated a Human Rights Counseling Center to provide counseling services to victims of human rights abuses and discrimination, as well as others.<sup>123</sup> The Center provides advice on legal and institutional options for human rights victims to receive support, justice and compensation, in addition to help recovering from their pain and suffering. In particular, the Center advises victims on the scope of investigations conducted by the Commission and the effectiveness of available remedies. In 2008, the Counseling Center provided 16,301 counseling sessions.<sup>124</sup> However, the NHRCK’s budgetary expenditure for human rights counseling remains relatively small.<sup>125</sup>

The Counseling Center is located in Seoul, and is accessible by telephone, the internet, and in-person visits. In recent years, the NHRCK has also provided victim counseling, along with other services, through branch offices in Busan, Daegu, and Gwangju,<sup>126</sup> and the Commission has implemented programs to provide on-site counseling to disabled individuals, migrant workers, and adolescents who are marginalized and cannot easily obtain counseling services.<sup>127</sup> Roughly half of the counseling sessions are related to civil rights violations or discrimination,<sup>128</sup> with the other half related to issues outside the Commission’s jurisdiction, including property

<sup>120</sup> *Id.* art. 55.

<sup>121</sup> *Id.*

<sup>122</sup> Enforcement Decree of the National Human Rights Commission of Korea Act, art. 5 (Presidential Decree No. 17517, Feb. 9, 2002, as amended by Presidential Decree No. 18317, Mar. 17, 2004).

<sup>123</sup> NATIONAL HUMAN RIGHTS COMMISSION OF KOREA, ANNUAL REPORT 2008, at 58.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 156 (In 2008, the NHRCK spent 4.969 billion won on Major Projects, of which 235 million won were spent on human rights counseling. By comparison, 181 million won were spent on media relations and 483 million won on international exchanges and cooperation.)

<sup>126</sup> The Busan and Gwangju offices opened in 2005, and the Daegu office opened in 2007. Press release, National Human Rights Commission of Korea, NHRCK Regional Office Opens in Daegu (July 7, 2007) (on file with author). In 2008, the Busan, Gwangju, and Daegu offices provided 2,224, 1,674, and 763 counseling sections, respectively. See *supra* note 123, at 128-130.

<sup>127</sup> *Supra* note 123, at 57.

<sup>128</sup> *Id.*

rights, interpersonal rights violations, legislative matters, trial issues, and legal consultation.<sup>129</sup> Counseling is provided in these other cases as well, when possible. As is the case with the Justice Ministry's victim support centers, there has been criticism that the Human Rights Commission's counseling and petition services are inaccessible to foreigners due to language barriers.<sup>130</sup> Also, while the current counseling offerings would appear to comply with Amnesty International's recommendation that a National Human Rights Institution should in appropriate circumstances provide regional offices and ensure effective communications with victims,<sup>131</sup> the level of service could suffer if the NHRCK's regional offices are forced to close due to budget cuts.<sup>132</sup>

## 7. Promotion of Victim Rights

Outside of government, victim rights are also promoted by a number of important advocacy and support groups in the private sector<sup>133</sup> and there is considerable research in the field by Korean academics.<sup>134</sup> As is the case to greater or lesser extents with other Human Rights Commissions across Asia,<sup>135</sup> the NHRCK has strong ties to private sector organizations and advocates, and therefore has the opportunity to encourage the work of groups that concentrate on victim rights issues.

One way in which the NHRCK could potentially improve victim rights protections would be by providing support to non-governmental organizations that work on the issue. However, victim rights groups do not appear to be a high priority for receiving financial support from the Commission. Between 2005 and 2009, the Commission funded 148 private sector projects related to human rights and discrimination.<sup>136</sup> A survey of these projects found only three which were directly related to victim rights. These projects were as follows:

1. The 2007 "Ask Crime Victims" project led by the Busan Support Center for Crime Victims. This project involved sending "human rights keepers" to the

<sup>129</sup> *Id.* at 58-59. Since its inception, 40.5% of counseling sessions have been for civil rights violations, and 10.3% of sessions have been related to discrimination cases.

<sup>130</sup> Asia Pacific Human Rights Network, *supra* note 16.

<sup>131</sup> AMNESTY INTERNATIONAL, *supra* note 114 at 9.1 and 9.3.

<sup>132</sup> Asia Forum for Human Rights and Development, *supra* note 27.

<sup>133</sup> In addition to the Korea Crime Victims Support Center (which runs the 57 victim support centers across the country), other NGOs that support victims include the Korea Sexual Violence Relief Center and the Korea Legal Aid Center.

<sup>134</sup> Ota, *supra* note 48 at 115. There is an academic association in the field (the Korean Association of Victimology) which publishes the Korean Journal of Victimology.

<sup>135</sup> *See generally*, BURDEKIN, *supra* note 4, at 60-62.

<sup>136</sup> NATIONAL HUMAN RIGHTS COMMISSION OF KOREA, RESULTS OF COOPERATION PROJECT FUNDING DECISIONS (2005-2009). All reports on file with the author.

prosecutor's office, police station and courts together with crime victims in order to monitor judicial procedure, understand the difficulties of crime victims, help the victims to prepare petitions, and publicize victim rights violations. The Commission also assisted in the planning and implementation of the project for a one-year period.<sup>137</sup>

2. A 2008 project to support a treatment program for developmentally disabled females who were victims of sexual abuse. This project was led by an organization associated with a counseling center for disabled female victims of sexual abuse.
3. In 2008, the Commission provided financial support to the Korea Counseling Center Against Sexual Violence for convening a conference on "Support for victims of Sexual Harassment in the Workplace"

There are other ways in which the Commission can help promote private sector work on victim rights issues. Sponsoring academic research is one method. Another technique is to organize conferences in order to bring different parties from inside and outside of government together to share ideas. In 2007, the Commission organized a conference entitled "Current Issues and Critical Points of the Protection of Human Rights for Victims of Crime: Discussion of Protection of Human Rights of Crime Victims."<sup>138</sup> There were attendees and speakers from private sector victim rights groups as well as the Justice Ministry and victim support centers.

The Commission can also act as a facilitator or mouthpiece for private sector victim rights groups to express their concern to other branches of government that may not themselves have strong lines of communication with the private sector. The Commission has prioritized open communication with private groups by organizing policy discussions to discuss and gather opinions on the Commission's major projects.<sup>139</sup> These interactions may be less frequent in other branches of government.<sup>140</sup> However, by formally commenting in reference to the Justice Ministry's Master Plan for

<sup>137</sup> Telephone interview with Choi Mirae, Manager of Busan Support Center for Crime Victims, Busan, Korea (Sept. 22, 2009). According to the Center's manager, the funding was beneficial for the project, but one weak point was that NHRCK funding is in principle available only for a one-year period, and it would be useful if longer-term funding was available for on-going or long-term projects such as this one. *Id.*

<sup>138</sup> See National Human Rights Commission of Korea, *Current Issues and Critical Points of the Protection of Human Rights for Victims of Crime: Discussion of Protection of Human Rights of Crime Victims*, available at [www.humanrights.go.kr/common/fildn\\_new.jsp?fn=07\\_08.pdf](http://www.humanrights.go.kr/common/fildn_new.jsp?fn=07_08.pdf) (last visited on July 24, 2009). The following year, the Justice Ministry itself organized a conference on victim rights.

<sup>139</sup> NATIONAL HUMAN RIGHTS COMMISSION OF KOREA, ANNUAL REPORT 2006, at 87. Sixty-nine organizations participated in these sessions during 2006.

<sup>140</sup> Critics have noted that other branches of government tend to monitor, intervene and control victim rights NGOs in a hierarchical rather than partnership relationship. See Lee Mikyung, Secretary General of Korea Sexual Violence Relief Center, *Support for Crime Victims' Physical and Mental Recovery*, A paper presented at Conference on Human Right Protection of Crime Victims: Current issues and critical points, Seoul (Mar. 27, 2007).

the Protection of and Support for Victims of Crime that victim rights groups should be given more input in the policy development process, the Commission is encouraging the development of closer relationships between victim rights groups and other branches of government.

## 8. Conclusion

Victim rights issues in the Republic of Korea are dealt with most directly by the Ministry of Justice. However, victim rights issues can also be considered legitimate human rights concerns, and therefore are appropriately dealt with by the NHRCK as well. The NHRCK has proved over the past seven years that it can also play a role in promoting and protecting victim rights by (1) issuing policy recommendations to other parts of the Korean government; (2) investigating and recommending remedies where appropriate in cases involving the government's violation of the human rights of crime victims; (3) ensuring that victim rights are respected in its own petition procedure, and (4) promoting private sector and academic activities in the victim rights arena.

One can fairly question whether the NHRCK has played a sufficiently vigorous role in the victim rights arena, or whether, as many believe, the Commission should instead be giving victims issues greater priority. It is not the intention of this article to attempt an answer to that question, which would be dependent on one's general attitudes towards the victim rights movement as well as analysis of the NHRCK's competing priorities and institutional competency. The article does suggest possible avenues for victim rights groups to advocate for further action by the Commission, however. There is a constitutional revision upcoming which could naturally lead to changes in the Commission's mandate; victim groups could lobby for the explicit inclusion of victim rights provisions such as Articles 27 and 30 among the constitutional clauses the violation of which permits the Commission to assert jurisdiction over petitions. Victim rights advocates can plausibly make the argument that NGOs that deal with victim issues are not receiving their fair share of grants from the Commission and that a greater portion of the budget should be allocated to the NHRCK's human rights counseling activities (including the preservation of counseling activities outside of Seoul). Advocates can encourage the Commission to follow up its formal recommendations to the Ministry of Justice with more ongoing informal communications and to open up lines of communication with the 57 victim support centers. Advocates can encourage the Commission to comment on pending legislation or planning documents such as, for example, the pending bill to establish a Crime Victim Protection Fund. They can lobby the Commission to prioritize victim rights by, for example, explicitly including victim issues among its annual list of priorities and hiring specialists in the field.

One can also fairly question whether the NHRCK has placed too large an emphasis on improving the rights of a few particular types of victims, including victims of human trafficking or sexual crimes as compared to addressing victim issues from a more holistic perspective. It is similarly not the intention of this article to take a stance on this question, which would be answered differently by different segments of the advocacy community. Rather, this article simply intends to demonstrate that despite their reputations in some quarters for only caring about the rights of the accused or the rights of criminals, in fact National Human Rights Institutions such as the NHRCK can and do play a productive role in promoting and protecting victim rights in a number of different ways, and should not be overlooked by victims or victim rights groups.



