

NOTE & COMMENT

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

Andrew Wolman*

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

* Assistant Professor of Human Rights and International Law, Graduate School of International Area Studies, Hankuk University of Foreign Studies, Seoul, Korea. B.A.(Princeton), J.D.(N.Y.U.), LL.M.(George Washington). I would like to thank Hyojin Jeon and Yuna Shin for their invaluable research assistance. This article is a revised version of a paper presented at the World Institute of Victimology 13th International Symposium on Victimology, organized by the Tokiwa International Victimology Institute, Tokiwa University, Mito, Japan, on Aug. 23-28, 2009. The paper was supported by the 2009 research fund of the Hankuk University of Foreign Studies. The author may be contacted at: amw247@yahoo.com/Address: HUFVS GSIAS, 270 Imun-dong, Dongdaemun-gu, Seoul 130-791 Korea.

1. Background

Over the last fifteen years, National Human Rights Institutions (“NHRIs”) have emerged in more than a hundred countries around the world.¹ NHRIs can be characterized as independent administrative organizations established by governments to protect and promote human rights.² Within the Asia-Pacific region, there are now fourteen NHRIs that are full members of the Asia Pacific Forum, a regional association of NHRIs.³ 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.⁴

Within the advocacy community, there has been hope that these new human rights institutions could be effective in promoting victim rights.⁵ 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.⁶ 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”).⁷ 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.⁸ More recently, the U.N. has issued a

¹ 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).

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

³ 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.*

⁴ 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).

⁵ 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).

⁶ 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).

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

⁸ *Id.*