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Citation: Wolman, A. (2017). Human Rights between the Local and Global: A Case Study of the Seoul Human Rights Ombudsperson. *Asia-Pacific Journal on Human Rights and the Law*, 18(1), pp. 78-107. doi: 10.1163/15718158-01801004

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Link to published version: <https://doi.org/10.1163/15718158-01801004>

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Human Rights between the Local and Global: A Case Study of the Seoul Human Rights Ombudsperson

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Abstract

Over the last two decades, municipal human rights institutions have proliferated around the world. One of the newest examples of such initiatives is the Seoul Human Rights Ombudsperson Office, which was established in January 2013 as one of the core institutions of human rights protection in Seoul, Korea. This article will present a case study of the operations of the Seoul Human Rights Ombudsperson Office based on interviews and documentary research. It will focus on the question of how this newly established institution fits into the existing human rights regime, and in particular address three distinct issues, namely the degree to which the Seoul Human Rights Ombudsperson Office reflects local versus national or international influences, the types of institutional relationships it has with other human rights actors, and the degree to which it implements local versus national or international human rights norms.

Keywords

Ombudsperson –Seoul – Korea – human rights cities – local human rights

I. Introduction

For much of the history of the human rights movement, norm-development and institution-building have taken place almost exclusively at the national and international levels.¹ Over

This work was supported by Hankuk University of Foreign Studies Research Support Grant of 2016–17.

¹ The most significant historical exception to this statement is the human rights commissions established in many US cities at an early date. However, even these human rights commissions were until recently far more engaged with domestic ‘civil rights’ norms than international ‘human rights’ law: Kenneth L Saunders and Hyo

the last two decades, however, municipalities around the world have become increasingly engaged with human rights, and one manifestation of this has been the establishment of independent municipal bodies to promote and protect human rights. These have included committees, ombudsperson institutions, monitoring centres, and a range of locally developed institutions, sometimes focusing on a particular sub-category of rights, and sometimes tackling the full range of human rights issues. In many cities, especially in the civil law world, human rights ombudspersons – generally defined as ombudsperson institutions that have an explicit mandate to protect human rights – have been the preferred institutional form.² Prominent examples include the Ombudsman de Montreal, Defensor del Pueblo de la Ciudad de Buenos Aires, and the Johannesburg Office of the Ombudsman.

Despite their increasing importance, municipal human rights institutions have received relatively little attention from academics.³ With the exception of a few country or region-specific studies,⁴ the English-language literature has mostly dealt with municipal human rights ombudspersons somewhat tangentially, in articles that either focus more broadly on local human rights implementation or on the development of the national ombudsperson institution in a particular country or region.⁵ To a certain extent, major human rights advocacy organisations have likewise ignored local human rights institutions, preferring to lobby for change in national capitals or international centres.⁶

Eun (April) Bang, 'A Historical Perspective on U.S. Human Rights Commissions' (Executive Session Papers of the Human Rights Commissions and Criminal Justice, Kennedy School of Government of Harvard University June 2007)

<www.hks.harvard.edu/index.php/content/download/67468/1242682/version/1/file/history_of_hrc.pdf> accessed 6 January 2016.

² Linda C Reif, 'Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman' (2011) 31 BC Third World LJ 269, 279.

³ International Council on Human Rights Policy, *Local Rule: Decentralisation and Human Rights* (2002); Noha Shawk, 'Global Norms, Local Implementation – How are Global Norms Translated into Local Practice?' (2011) 26 Globality Studies J 1 <<https://gsj.stonybrook.edu/wp-content/uploads/2011/09/0026Shawki.pdf>> accessed 6 January 2016.

⁴ See eg Predrag Dimitrijević, 'Do We Need Local Ombudsman – Protector of Human Rights' (2005) 3 Facta Universitatis, Series: Law and Politics 25; Germán Cisneros Farías, Jorge Fernández Ruiz and Miguel Alejandro López Olvera (eds), *Ombudsman Local* (Universidad Nacional Autónoma de México 2007).

⁵ See eg Linda C Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Springer 2004); Fredrik Uggla, 'The Ombudsman in Latin America' (2004) 36 J Lat Am Stud 423; Emma Gilligan, 'The Human Rights Ombudsman in Russia: The Evolution of Horizontal Accountability' (2010) 32 Hum Rts Q 575.

⁶ Martha F Davis, 'International Human Rights from the Ground Up: The Potential for Subnational, Human Rights-Based Reproductive Health Advocacy in the United States' in Wendy Chavkin and Ellen Chesler (eds), *Where Human Rights Begin: Health, Sexuality and Women in the New Millennium* (Rutgers University Press 2005) 237 ('international human rights advocacy in the United States has generally centered on the obligations that international agreements impose on the federal government'); International Council on Human Rights Policy (n 3) 42 ('international human rights NGOs rarely focus on local government').

This article will attempt to take a step towards filling this gap in the literature through a case study of the Seoul Human Rights Ombudsperson.⁷ It will focus in particular on how the Seoul Human Rights Ombudsperson Office relates to and fits in with the existing human rights apparatus and norms, an issue that is important for newly established sub-national human rights institutions all around the world, given that they are generally superimposed upon an already existing fabric of domestic, regional and global human rights institutions and norms.⁸ If new sub-national institutions duplicate the functions of existing mechanisms, lead to divergent jurisprudential interpretations, or draw resources away from more effective human rights institutions, then they arguably serve little purpose. On the other hand, if they fill an unmet need, build upon existing institutional strengths, and promote the development of a coherent normative framework, then such institutions can provide a valuable addition to the human rights regime.

Thus, the study will address three particular questions. First, to what extent is the Seoul Human Rights Ombudsperson a product of global or national influences, and to what extent is it the result of local initiatives? Second, what are the institutional relationships that have been forged between the Seoul Human Rights Ombudsperson and the many other existing human rights institutions at the sub-national, national and global human rights bodies? And third, to what extent does the Seoul Human Rights Ombudsperson use existing human rights norms from international or national law, and to what extent does the Ombudsperson

⁷ This article will use the term ‘Seoul Human Rights Ombudsperson Office’ to refer to Seoul City’s human rights ombudsperson institution (시민인권보호관 in Korean). This is the English term that the ombudspersons themselves have used in various forums. See eg Seoul Metropolitan Government Human Rights Division, ‘Seoul, a City Where Human Rights is Alive: Response to the Questionnaire of Human Rights Council Advisory Committee on Local Government and Human Rights’ (4 April 2014) <www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/LocalGvt/Seoul%20Metropolitan%20Government.docx> accessed 6 January 2016. Other English translations are sometimes used, however. For example, the Korea Human Rights Foundation calls the ombudsperson institution the ‘Citizens’ Human Rights Mechanism’ (which is a more literal translation from the Korean): Korea Human Rights Foundation, ‘Report on Local Government and Human Rights 2014’ (August 2014) 225 <www.gwangju.go.kr/boardDown.do?boardId=BD_0000000468&seq=268736&fileLinkTp=F&fileLinkSeq=3> accessed 9 March 2017.

⁸ Analogous questions regarding normative and institutional relationships with existing actors have also been a major focus of research on National Human Rights Institutions. See eg Brian Burdekin and Anne Gallagher, ‘The United Nations and National Human Rights Institutions’ in Gudmundur Alfredsson and others (eds), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH Mholler* (Springer 2001); Sonia Cardenas, ‘Emerging Global Actors: The United Nations and National Human Rights Institutions’ (2003) 9 *Global Governance* 23; Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Hart Publishing 2007); Noha Shawki, ‘A New Actor in Human Rights Politics? Transgovernmental Networks of National Human Rights Institutions’ in Noha Shawki and Michaelene Cox (eds), *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics* (Ashgate Publishing 2009); Chris Sidoti, ‘National Human Rights Institutions and the International Human Rights System’ in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (CUP 2012).

Office serve as a vehicle for developing and elaborating new human rights norms? These questions will be answered largely through a review of materials published by the bodies and commentary on their operations gleaned from conference presentations and local journals, as supplemented by e-mail and in-person interviews with actors directly involved in the operations of the office.

There are a number of reasons why the Seoul Human Rights Ombudsperson Office can be a particularly interesting and important subject for a case study. For one thing, its sheer size makes the city of Seoul an important subject of research. With a population of slightly over 10 million, its human rights policies can affect the well-being of more people than, for example, the total population of Sweden. Second, Seoul is a particularly high-profile municipality in East Asia, and its human rights policies are likely to have an impact on other cities in the region (and indeed, arguably already are, as described below). This impact is likely to be particularly marked because municipal human rights institutions are still relatively rare in Asia, when compared to Europe or the Americas.⁹ Finally, Seoul's establishment of a human rights ombudsperson office (and other human rights institutions) is particularly interesting from a human rights governance perspective because it has emerged on largely virgin ground: unlike many western countries, there was no pre-existing municipal ombudsperson or civil rights commission that over time assumed a human rights competency. Rather, new bodies were designed from scratch, in ways that could potentially allow for the integration of norms and concepts from both local and international sources.

II. Background to Human Rights in Korea

In order to better understand the development of the Seoul Human Rights Ombudsperson Office, this section will first provide contextual background on Korea's engagement with human rights policies and institutions. For much of Korea's modern history, human rights were not well protected by government at any level.¹⁰ From Korea's independence in 1948

⁹ Seoul is one of the first major cities in Asia to establish a human rights ombudsperson office. The only previous examples of municipal human rights ombudspersons in Asia that I am aware of are those of Kawasaki City, Takefu City, and Kawanishi City in Japan (the latter focusing on children): Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (n 5) 31. There are other examples in Asia of local human rights mechanisms that have some similarities to human rights ombudspersons, including Barangay Human Rights Officers in the Philippines, Japan's Human Rights Protectors, and municipal human rights commissions in a few cities, such as Kaohsiung, Taiwan.

¹⁰ Tae Ung Baik, 'Stabilizing Democracy and Human Rights Systems in South Korea' (2013) 35 U Haw L Rev 877, 880.

until its democratisation in 1987, the country was ruled by a series of military and dictatorial leaders who routinely engaged in arbitrary detention, torture, censorship, restrictions on freedom of association and other violations of basic civil and political rights. During this period, and especially after the passage of the authoritarian Yushin constitution in 1972, democratisation protesters nevertheless fought courageously against the regime, often at significant personal cost. Many of these protestors strongly identified with the human rights movement, including most prominently the future president and Nobel Prize winner Kim Dae Jung, who championed ‘human rights’ in speeches as early as 1983, and later publicly defended the human rights movement against the so-called Asian Values challenge that emanated from Singaporean and Malaysian politicians in the early 1990s. Several other democratisation activists were in fact human rights lawyers, including Roh Moo Hyun (who became president from 2003-2008), Park Won-soon (mayor of Seoul as of 2016), and Moon Jae-In (leader of Korea’s main progressive party, the Minjoo Party of Korea, from 2015-2016).

After Korea’s post-1987 democratisation, the country gradually integrated itself into the global human rights system. Korea acceded to the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in 1990, the UN Convention relating to the Status of Refugees in 1992, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1995.¹¹ In 1994, the Ministry of Foreign Affairs established a Human Rights and Social Policy division, and Korea was a member of the UN Commission on Human Rights from 1993 to 1998.¹² It took somewhat longer for Korea to develop strong human rights institutions at the domestic level. While the Ministry of Justice had established a Human Rights Division in 1962, it was viewed as window dressing until the 1990s.¹³ After years of debate, the National Human Rights Commission of Korea (NHRCK) was established in 2001 to promote and protect human rights within the country. Meanwhile, starting in 1996, a series of issue-specific truth commissions were set up to address past human rights abuses, culminating in the establishment of the more broadly mandated Truth and Reconciliation Commission, which operated from 2005 to 2010.¹⁴

¹¹ Office of the United Nations High Commissioner for Human Rights, ‘Status of Ratifications’ <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=141&Lang=EN> accessed 6 January 2016.

¹² Ian Neary, *Human Rights in Japan, South Korea, and Taiwan* (Routledge 2002) 89.

¹³ *ibid.* In 2006, its duties were transferred to a new Human Rights Bureau.

¹⁴ Baik (n 10) 894.

While human rights norms are now firmly entrenched in Korea's domestic and international policies, human rights issues remain politically contentious in contemporary Korea. Since 1987, many of the leaders of Korea's main progressive parties have been former democratisation activists who are quite comfortable with the language and politics of human rights (and, in several cases, self-identify as human rights activists). Conservative leaders, on the other hand, often are identified with the pre-1987 authoritarian leadership, and no one more so than President Park Geun Hye, whose father ruled Korea autocratically from 1961 to 1979. Conservative politicians and their supporters have tended to view the human rights movement with suspicion, at least as applied domestically.¹⁵ According to one commentator, 'The struggle between the conservatives who support authoritarian regimes and the liberals or progressives who want to move ahead to achieve the consolidation of democracy and sound human rights systems is not over yet.'¹⁶

Despite the salience of human rights in Korean political discourse and its increasing institutionalisation at the national level, there was until recently little attention paid to human rights at the local governmental level. In part, this was unsurprising: there is no tradition of local government involvement in human rights institutionalisation in East Asia, and local governments in Korea (whether at the upper or lower level) possess relatively little autonomy, when compared to local governments in larger or more heterogeneous countries.¹⁷

This lack of local rights activity began to change in 2005, when the small southern city of Jinju declared itself a 'human rights city'.¹⁸ Gwangju Metropolitan City, which is a higher-level local administrative entity governing Korea's sixth largest city, followed suit in 2007 with the enactment of a democracy, human rights, and peace development ordinance, and later with its own 'human rights city' declaration and its establishment of a Human

¹⁵ Korean conservatives generally support movements to improve human rights in North Korea, however, while progressives have traditionally been reluctant to integrate human rights objectives into inter-Korean relations: Andrew Wolman, 'South Korea's Response to Human Rights Abuses in North Korea: An Analysis of Policy Options' (2013) 110 *AsiaPacific Issues* 1.

¹⁶ Baik (n 10) 896.

¹⁷ See eg Development Centre of the Organisation for Economic Co-operation and Development, *Industrial Policy and Territorial Development: Lessons from Korea* (OECD Publishing 2012) 82. Korea currently has seventeen upper level sub-national divisions: one special city (Seoul), six metropolitan cities, one special autonomous city, eight provinces, and one special autonomous province: Korea Human Rights Foundation (n 7) 200. As of September 2013, these upper level areas are divided into 225 lower level divisions: 69 autonomous districts (25 of which are in Seoul), 73 autonomous cities and 83 counties.

¹⁸ Korea Human Rights Foundation (n 7) 218. The term 'human rights city' was first used by the NGO The People's Movement for Human Rights Learning; it defined a human rights city as a 'city or a community where people of good will, in government, in organizations and in institutions, try and let a human rights framework guide the development of the life of the community': People's Movement for Human Rights Learning, 'Human Rights Learning and Human Rights Cities: Achievements Report' (March 2007) 3 <www.pdhre.org/achievements-HR-cities-mar-07.pdf> accessed 6 January 2016.

Rights Division (in 2010), a Citizens' Commission on the Promotion of Human Rights (2012), and a Human Rights Ombudsman (2013).¹⁹ Gwangmyeong City, near Seoul, adopted a human rights ordinance in 2011 and set up a human rights council in 2012.²⁰ Dong Gu (borough) of Ulsan Metropolitan City also passed a human rights promotion ordinance in 2011, and established a human rights commission in 2012.²¹ While these early local initiatives reflected the influence of the global movement towards 'human rights cities', they were also inspired by local histories. In the case of Gwangju, human rights and democratisation was particularly important because Gwangju was the site of a brutal massacre of democratisation protestors in 1980. Jinju city leaders were inspired by the Hyeongpyeong Movement, a movement for the abolition of status-based discrimination that started in Jinju in the 1920s, and Ulsan Dong Gu's declaration emphasised workers' rights because the locality has long been one of the centres of the Korean labour movement.²² In the few years following these early movers and the passage of the Seoul Human Rights Ordinance (discussed below), local human rights initiatives have become increasingly widespread: as of February 2015, 15 out of 17 first-level sub-national administrative divisions in Korea have passed human rights ordinances, as have 55 out of 227 second-level administrative divisions.²³ In addition to Seoul, 19 sub-national jurisdictions in Korea have created sub-national human rights institutions (at the provincial, city and neighbourhood levels).²⁴

III. Legal Framework for the Seoul Human Rights Ombudsperson

It was in this context of growing local governmental human rights activity that Park Won-soon ran for the Seoul Mayor position in 2011. Park was at the time known as one of the country's most prominent human rights lawyers. After attaining prominence as the defender of torture victim Kwon In Sook, Park co-founded and served as Secretary General of the Peoples' Society of Participatory Democracy in 1994. In the following years, he helped

¹⁹ Korea Human Rights Foundation (n 7) 219-20.

²⁰ *ibid* 230.

²¹ *ibid* 228.

²² *ibid* 206.

²³ Sung Soo Hong, 'A Review of Human Rights Commissions in Local Authorities - A case of the Seoul Human Rights Commission' (2015) 26 *Chungnam L Rev* 93, 96 (the two first-level divisions that lack human rights ordinances are Incheon and Jeju).

²⁴ Korea Human Rights Foundation (n 7) 218-19 (this figure includes human rights centres, offices, commissions and ombudsperson institutions).

found the Korea Human Rights Foundation and later established the Beautiful Foundation, one of the country's largest charities.²⁵ It was not a complete surprise when Park proclaimed the Seoul Citizens' Human Rights Declaration on 19 October 2011, as one of his highest profile campaign commitments.²⁶ The Declaration consisted of ten articles which largely focused on traditional economic, social and cultural rights (articles 3 and 6 to 10), but also protected the right to participate in and access information about city government (article 1), right to free assembly (article 2), right to life (article 4), right to access the city (article 5) and contained a non-discrimination commitment (preamble).²⁷ Within a week of his election in November 2011, Park adopted the Declaration as the framework for his human rights policy, along with a plan to establish a human rights ombudsperson institution in the city.²⁸

During the following months, the legal framework for the Seoul Human Rights Ombudsperson Office, along with other core elements of Park's human rights policy, was drafted and enacted on September 28 as the Seoul Human Rights Framework Ordinance.²⁹ According to the Framework Ordinance, the Mayor is authorised to appoint up to five human rights ombudspersons, who must have human rights expertise and either have work experience in government or academia, or be recommended for the position by a civil society human rights organisation.³⁰ These ombudspersons are appointed to renewable two-year terms and are intended to act independently, with protection against dismissal.³¹ The ombudspersons are mandated to investigate any complaint alleging 'human rights infringement' by the Seoul City government, an administrative agency under its jurisdiction, a borough where the infringement is related to affairs delegated by the City, or certain institutions and welfare facilities established by or subsidised by the City.³²

In addition to authorising the establishment of the Seoul Human Rights Ombudsperson Office, the Framework Ordinance also established the Seoul Human Rights

²⁵ Lee Sun-young, 'Park Won-soon: Frustrated Activist Jumps into Politics' *The Korea Herald* (Seoul, 4 October 2011) <www.koreaherald.com/view.php?ud=20111004000869> accessed 6 January 2016. From 2005, Park also served as a Commissioner on Korea's Truth and Reconciliation Commission.

²⁶ Korea Human Rights Foundation (n 7) 224.

²⁷ Seoul City Government, '서울시민권리선언' (Seoul Citizens' Human Rights Declaration) <<http://gov.seoul.go.kr/files/2014/06/5395bb9d73a0b0.65433596.pdf>> accessed 11 March 2017.

²⁸ Joseph Chu, 'New Seoul City Mayor's Actions to Prioritize Human Rights' (*South Korea Human Rights Monitor*, 18 November 2011) <www.humanrightskorea.org/2011/weekly-news-brief-november-1418-2011/> accessed 6 January 2016.

²⁹ Framework Ordinance on Human Rights (Enactment no 5367, 28 September 2012).

³⁰ *ibid* art 18.

³¹ *ibid* art 19.

³² *ibid* art 20(1).

Centre and Seoul Human Rights Committee.³³ The Human Rights Centre engages in a wide range of human rights activities, including human rights research, education, developing programmes to improve human rights, and consulting on human rights infringements.³⁴ It is also specifically mandated to assist the ombudspersons in their work.³⁵ In part, this is done through the establishment of a human rights protection team, which is in charge of counseling petitioners and registering cases to be reported to the Ombudsperson Office.³⁶ In addition, the ombudspersons are able to use the Centre as a type of secretariat, for tasks such as on-site investigations, inspection of documents, and collecting of information or materials.³⁷ Unlike the Ombudsperson Office, however, the Human Rights Centre operates as an administrative division of Seoul City Government and is not designed to be functionally independent.³⁸

The Seoul Human Rights Committee is a 15-member independent advisory board, that is mandated to deliberate and provide advice on the establishment and implementation of the City's human rights plan, laws and policies affecting human rights, the operation of the Human Rights Centre, and other matters brought to the Committee's attention by the Mayor, the Committee Chairperson, or the three committee members.³⁹ Ombudspersons are permitted to attend Committee meetings and provide recommendations.⁴⁰ While the Committee does not participate in the ombudspersons' decision-making process, it has made efforts to secure the institutional independence of the Ombudspersons Office during its establishment and early years.⁴¹ The establishment of separate human rights ombudsperson and human rights committee bodies in the same jurisdiction is somewhat unusual; in most cases around the world, a single body will handle both policy review and complaint handling functions. In Seoul's case the decision to create two separate bodies has been a subject of controversy, and the precise division of workload between them is still a matter of debate.⁴² On the one hand, separating the ombudspersons from the policy monitoring and advisory

³³ The Framework Ordinance also authorised a number of policy initiatives, including the drafting of a Human Rights Plan of Action and compulsory human rights education for Seoul City public officers: *ibid* arts 7 and 10.

³⁴ *ibid* art 11.

³⁵ *ibid*.

³⁶ Korea Human Rights Foundation (n 7) 208.

³⁷ Framework Ordinance on Human Rights (n 29) art 20(3).

³⁸ Interview with Park Dongsuk, Director of Seoul City Human Rights Division (Seoul, Korea, 18 November 2015).

³⁹ Framework Ordinance on Human Rights (n 29) art 14.

⁴⁰ *ibid* art 20(5).

⁴¹ Presentation by Moon Kyungran, Chairperson of the Seoul City Human Rights Commission (World Human Rights Cities Forum 2015, Gwangju, Korea, 15 May 2015) <www.whrcf.org/bbs/board.php?bo_table=announc_eng&wr_id=21&page=2> accessed 6 January 2016.

⁴² Sung Soo Hong, 'A Review of Human Rights Commissions in Local Authorities' (n 23) 128-29.

functions allows them to devote their time exclusively to community complaints while retaining the image of independence that comes with greater separation from the policy-making process. On the other hand, the existence of two bodies creates greater complexity and the potential for jurisprudential conflicts or turf wars.

The Seoul Human Rights Ombudspersons Office, Human Rights Committee and Human Rights Centre are all physically located in the same open-plan office on the second floor of City Hall, and to a large extent can be viewed as different core elements of a single coherent municipal human rights system. However, they are supplemented by other human rights institutions that focus either on a particular issue area or a particular borough of the City. At the Seoul City level, there is a Centre for the Human Rights for Persons with Disabilities and a Committee on the Human Rights of the Child and Youth.⁴³ At the borough level, Seongbukgu, Dongjakgu and Seodaemungu have all passed human rights ordinances.⁴⁴ Seongbukgu's human rights system is most advanced, and provides for the establishment of a human rights administrative office and an independent human rights committee.⁴⁵

IV. Establishment and Operation of the Seoul Human Rights Ombudsperson Office

After a brief period of establishing the office, the Ombudspersons Office became operational in January 2013.⁴⁶ While the Seoul Human Right Framework Ordinance authorises the appointment of up to five ombudspersons, so far only three have served at one time; currently the three ombudspersons are Lee Eun Sang, Jeon Sung Whi, and Yoo Jae Hyeong.⁴⁷ While Ombudsperson Lee has an activist background, Ombudspersons Jeon and Yoo came to the job from national-level commissions, respectively the Anti-Corruption and Civil Rights Commission (ACCRC) and the Commission on Verification and Support for the Victims of Forced Mobilization under Japanese Colonialism in Korea.⁴⁸

⁴³ Seoul Metropolitan Government Ordinance on the Promotion of Human Rights of Persons with Disabilities (Enactment No 5073, 14 July 2011).

⁴⁴ Sung Soo Hong, 'A Review of Human Rights Commissions in Local Authorities' (n 23) 106.

⁴⁵ Kim Jin-Dong, 'Seongbuk: The City of Human Rights, Participation and Cooperation' (Human Rights Cities Forum, Gwangju, Korea, 16 May 2014).

⁴⁶ Moon Kyungran (n 41).

⁴⁷ While Lee Eun Sang was one of the original ombudspersons appointed in 2013 and is now in her second term, Jeon Sung Whi, and Yoo Jae Hyeong replaced Yeom Gyu-hong and Noh Seung Hyun in 2015 when their terms came to an end.

⁴⁸ Email from Lee Eun Sang, Seoul City Human Rights Ombudsperson to author (18 January 2016).

For such a young institution, the Ombudsperson Office has received a relatively significant number of complaints, perhaps illustrating that it is filling a need for local-level human rights complaint resolution. So far, from its establishment in January 2013 through January 2016, the Ombudsperson Office has received 726 complaints, of which it has investigated 326 cases and issued 38 recommendations.⁴⁹ These cases covered a wide range of human rights violations, but workplace harassment (including sexual harassment), discrimination, right to privacy, and rights of the disabled have been particularly common subjects for complaints. All decisions have been taken on a consensus basis, although this has been done by custom rather than requirement, and the Ombudspersons Office has not yet established an official policy as to whether to decide based on majority vote or require unanimity in case of disagreement.⁵⁰ While the Ombudspersons' recommendations are non-binding, as is the norm for ombudsperson institutions around the world, over 90 per cent of Seoul Human Rights Ombudsperson recommendations have so far been followed by the City.⁵¹

One innovative programme that has been put into place to help integrate Seoul residents in the decision-making process is the so-called Citizens' Human Rights Jury. Under this initiative, a group of 150 Seoul residents (above the age of 14) and 50 experts are impaneled, among whom eight residents and four experts can be chosen to form juries to rule on human rights petitions that are expected to have a particularly strong influence on society.⁵² Juries can be formed at the request of the Ombudspersons Office, Human Rights Committee or Mayor, but are only available with the petitioner's permission.⁵³ Verdicts are then approved by a favourable vote of two-thirds of the members, with the jury presided over by a non-voting expert appointed by the Ombudspersons.⁵⁴ So far human rights juries have been established in three cases.⁵⁵ The Ombudspersons can overrule a jury's decision on any particular case, however (and in fact, this has already happened).⁵⁶

In order to illustrate the work of the Ombudsperson Office, along with its potential challenges, three of the most significant cases to be decided so far will be examined in

⁴⁹ *ibid.*

⁵⁰ Interview with Lee Eun Sang, Seoul City Human Rights Ombudsperson (Seoul, Korea, 18 November 2015).

⁵¹ *ibid.*

⁵² Seoul Human Rights Ombudsperson, '서울시 인권제도 운영현황' (Operation Status of Seoul City Human Rights System) (24 February 2015).

⁵³ Seoul City Human Rights Center, '나도 인권배심원!' (I Am a Human Rights Juror, too!) (2015).

⁵⁴ Interview with Lee Eun Sang (n 50).

⁵⁵ *ibid.*

⁵⁶ Seoul Human Rights Ombudsperson Decision, '퇴직자 보안서약서 작성 강요로 인한 인권침해' (Enforcement of security pledge to retirees) (27 August 2015).

greater depth. The first case involved a petition from Lee Chung Heon, in his role as president of the Chinese Residents' Association of Seoul Korea.⁵⁷ Lee alleged that the City of Seoul was engaged in discriminatory treatment of Hwagyo (Chinese nationals) who were residents of Seoul, because Korean nationals over the age of 65 could ride the Seoul public transit system for free and access various sites such as museums and royal tombs for free, while Hwagyo over the age of 65 with permanent residency in Korea were denied such benefits.⁵⁸ According to Lee, this rule was unfair because Hwagyo residents paid full taxes and otherwise fulfilled the duties of citizens, with the exception of military service. The City defended its policy by claiming that they were already running the subway system at a significant deficit, and thus could not afford to change their policies.

On 28 June 2013, the Ombudsperson Office ruled in Lee's favour. The decision stated that Hwagyo can be considered 'Seoul citizens' according to article 2 of the Framework Ordinance,⁵⁹ emphasising that they share virtually equal local rights (with the exception of eligibility for a few local political offices) and local responsibilities with Korean nationals. The Ombudsperson Office then concluded that discrimination against permanent residents living in Seoul with regard to welfare benefits violated their human rights, as defined under article 2 of the National Human Rights Commission Act.⁶⁰ This conclusion was supported by citing a decision of the Constitutional Court, a ruling of the NHRCK on equal rights, and the governments' inclusion of migrant children in a welfare scheme under the Juvenile Welfare Support Act. Finally, the Ombudsperson Office compared Seoul's policy unfavourably with practices in the United States and Europe, and admonished the City that continuing with such discrimination was inconsistent with its goal of becoming a 'human rights city'. The Ombudsperson Office recommended a revision of various Seoul City policies toward foreign national permanent residents (including but not limited to Hwagyo), and specifically their inclusion in the senior citizen free-ride scheme for Seoul public transit.

There was significant tension and political opposition regarding this recommendation from the public transit authorities, who reiterated their financial constraints.⁶¹ Eventually,

⁵⁷ Seoul Human Rights Ombudsperson Decision, '65 세 이상 화교 영주권자에 대한 지하철 복지 혜택 등 차별' (Discriminatory Treatment with Regard to Subway Benefits, etc., against Hwagyo Permanent Residents over 65 Years Old) (Case no 13(7), 28 June 2013).

⁵⁸ This echoed a complaint long-made by other foreign activists in Seoul: Lee Hyo-sik, 'Elderly Foreigners Upset by Discrimination in Free Subway Use' *Korea Times* (12 April 2011) <www.koreatimes.co.kr/www/news/nation/2011/04/117_85083.html> accessed 6 January 2016.

⁵⁹ Framework Ordinance on Human Rights (n 29) art 2 ('The term "citizen" means a person who has domicile or residence, or who stays, in the City and a person who works at a place of business located in the City').

⁶⁰ National Human Rights Commission Act (Act No 6481, 24 May 2001).

⁶¹ Interview with Lee Eun Sang (n 50).

however, the policies on the Seoul bus and subway system towards permanent residents over the age of 65 were liberalised to allow for the withdrawal of one-time free-ride cards with a refundable deposit, and by June 2015, free travel was finally allowed on an entirely non-discriminatory basis.⁶²

A second important migrant rights petition was received in 2014, this time from an unnamed petitioner on behalf of an unregistered migrant from Mongolia.⁶³ The petition alleged that the fact that unregistered migrants were ineligible to participate in Seoul City's provision of free childcare for children under the age of six constituted impermissible discrimination. The petitioner argued that the exclusion of unregistered children from free childcare was inconsistent with the Framework Ordinance, the UN Convention on the Rights of the Child, and a recommendation made by the NHRCK on the right to education of migrant children.

The Ombudsperson Office referred this case to the Citizen Jury, which decided by an eight to four vote that the exclusion of unregistered children from social welfare service constituted a discriminatory policy prohibited by the Korean Constitution, the Convention on the Rights of the Child, the National Human Rights Commission Act, the Infant Care Act, the Seoul Human Rights Ordinance and the Ordinance on the Protection and Promotion of Human Rights of the Child and Youth. The Citizen Jury stressed that the interests of the children should be taken into account first, and recommended that the City take all appropriate administrative measures to guarantee necessary protection and ensure that a system is in place to make childcare subsidies and other benefits available to undocumented children. The Seoul Government's initial reaction has been to state that it would consider the Ombudsperson Office's recommendation.⁶⁴ Specifically, it agreed to launch a study into the number of unregistered immigrants' children currently residing in Seoul, before addressing issues of budgeting and other matters required to bring about a policy change.⁶⁵

A third case that attracted considerable public attention involved a petition alleging that the president of the Seoul Philharmonic Orchestra (Park Hyun-jung) had engaged in sexually and physically abusive behavior toward several of her employees since assuming

⁶² *ibid.*; '65세 이상 영주권자, 서울 지하철 탑승 무료' (Permanent Residents over 65 years old get Free Subway Access in Seoul) *Joongang Ilbo* (20 March 2015) <<http://news.joins.com/article/17395563>> accessed 6 January 2016.

⁶³ Seoul Human Rights Ombudsperson Decision, '미등록 이주민의 자녀에 대한 보육지원 차별' (Discrimination in Childcare Support for Children of Undocumented Migrants) (Case no 13(4), 24 December 2014).

⁶⁴ Claire Lee, 'Seoul to Consider Allowance for Illegal Immigrants' Children' *The Korea Herald* (8 January 2015) <www.koreaherald.com/view.php?ud=20150108001121> accessed 6 January 2016.

⁶⁵ *ibid.*

office in February 2013.⁶⁶ The petition was delivered to the Ombudsperson Office two days after 17 orchestra employees sent a letter detailing the abuse to the media, with the allegations publicly refuted by Park. Unlike the cases previously discussed, this case was not involved with the question of whether a law or policy was appropriate, but rather whether an individual in fact engaged in sexual harassment and workplace bullying, and if so whether these specific actions could be considered infringements on personal rights.

After completing a fact-finding investigation, the Ombudsperson Office found that sexually humiliating expressions had been used by Park to both male and female employees, and that employees had been subject to insults and extreme expressions that in fact constitute workplace bullying and contravene the personal rights protections in article 10 of the Korean Constitution. The Ombudsperson Office also found that during the course of the investigation, the victims had been forced to work in the same space as the person who inflicted harm on them, which caused them further damage. The Ombudsperson Office therefore recommended to the Mayor that Park be subject to disciplinary measures and receive human rights education, and that the Orchestra should implement measures to prevent workplace bullying. Furthermore, it recommended that paid holidays and psychotherapy be provided to the victims, and that Seoul-affiliated organisations (like the Orchestra) should follow the Seoul City Guidelines on the Prevention of Recurrence of Sexual Harassment and Verbal Abuse.

In the immediate aftermath of the ombudsperson recommendation, Park offered her resignation, which was accepted.⁶⁷ This was not the end of the story, however. A police investigation soon cleared Park of the charges against her and, following a police raid on the orchestra's office and network administrator, 10 of the 17 original petitioners were booked on charges of false accusation.⁶⁸ Eventually the wife of the orchestra's conductor was also indicted on charges of defaming Park, and the orchestra's conductor stepped down amid accusations of embezzlement.⁶⁹ Beyond the ongoing drama and still-disputed facts, this case brings up interesting questions regarding the power of Seoul's Ombudsperson Office and its place within the spectrum of justice institutions. At the end of the day, the ombudsperson's investigatory conclusions were ignored and in fact directly contradicted by the parallel work

⁶⁶ Seoul Human Rights Ombudsperson Decision, '출연기관 대표에 의한 성희롱 및 폭언' (Sexual Harassment and Verbal Abuse by the Head of a Performance Institution) (Case no 14(151), 19 December 2014).

⁶⁷ 'Seoul Phil Accepts Chief's Resignation Over Alleged Abuse' *The Korea Herald* (30 December 2014) <www.koreaherald.com/view.php?ud=20141230000905> accessed 6 January 2016.

⁶⁸ Yim Seung-hye, 'Harassment Claims at Orchestra Said to be Lies' *Korea Joongang Daily* (29 December 2015) <<http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3013310>> accessed 6 January 2016; Kwon Ji-youn, 'Chung Myung-whun Steps Down from Seoul Phil' *The Korea Times* (30 December 2015) <www.koreatimes.co.kr/www/news/culture/2015/12/143_194263.html> accessed 6 January 2016.

⁶⁹ Kwon Ji-youn (n 68).

of police investigators who possessed greater authority and resources, and whose work could lead to the formal filing of criminal charges. In this case, the ombudsperson investigation could be seen as a waste of civic resources at best, and at worst as a way for the orchestra employees to gain credibility for their defamation of Park by choosing a forum that was perhaps more inclined to believe their claims of harassment while less able (compared to police investigators) to thoroughly examine counter-claims.

V. Seoul Human Rights Ombudsperson Office and the Broader Human Rights Regime

This section will address in some more detail the question of how the Seoul Human Rights Ombudsperson Office fits into the broader international human rights regime. It will contextualise these questions with reference to the existing body of research into the relationship of National Human Rights Institutions (NHRIs) and sub-national human rights institutions with other human rights actors and norms.

A. Local and Global Factors in the Establishment of the Seoul Human Rights Ombudsperson

As a starting point, it is important to examine the role of other human rights actors in the establishment of the Seoul Human Rights Ombudsperson. To what extent was its creation a result of influences from existing forces or a reaction to local concerns? At the national level, there is a considerable body of research into the establishment of NHRIs, including ombudsperson institutions.⁷⁰ Some of this research highlights the importance of the United Nations and other major international actors such as the Council of Europe and the Commonwealth in the proliferation of NHRIs during the 1990s and 2000s.⁷¹ Pegram also

⁷⁰ See eg Jeong-Woo Koo and Francisco Ramirez, 'National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966-2004' (2009) 87 *Social Forces* 1321; Thomas Pegram, 'Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions' (2010) 32 *Hum Rts Q* 729; Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (U of Pennsylvania Press 2014).

⁷¹ Anne Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28 *Hum Rts Q* 904; Pegram (n 70). Cardenas specifically cites the importance of the UN role in standard setting, capacity building, network facilitating, and membership granting; Cardenas, 'Emerging Global Actors' (n 8) 23.

notes the importance of contagion from regional peers,⁷² while other commentators have highlighted the importance of regional and global NHRI networks in encouraging the establishment of new bodies.⁷³ In a few instances, NHRIs have been imposed by coercive external agencies, generally in the context of a peace agreement ending civil war or communal tensions.⁷⁴ Reif claims that the forces responsible for human rights ombudspersons' proliferation include 'democratization, public institution building, comparative law influences, limited state resources, international and regional movements to establish national human rights institutions, [and the adoption of treaties] that rely on NHRIs, for domestic implementation of international human rights obligations'.⁷⁵

While there has been less research into the factors accounting for the emergence of sub-national human rights ombudspersons, there are a few patterns that stand out. For example, it seems common for sub-national ombudspersons to be established in polities where there is also a human rights ombudsperson at the national level, examples being Spain, Mexico, Argentina and Russia.⁷⁶ In some of these cases, the establishment of sub-national human rights ombudspersons (or commissions) was either encouraged or otherwise supported by the national institution.⁷⁷ There has also been some research into the proliferation of 'human rights cities', some of which have also established human rights ombudspersons. According to Oomen and Baumgärtel, the establishment of human rights cities was sometimes a civil society-driven initiative, but more frequently occurred at the initiative of local authorities who wanted to increase engagement with the human rights framework.⁷⁸

⁷² Pegram (n 70) 737.

⁷³ Catherine Renshaw and Kieren Fitzpatrick, 'National Human Rights Institutions in the Asia Pacific Region: Change Agents under Conditions of Uncertainty' in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance and Social Change: Assessing National Human Rights Institutions* (CUP 2012) 155-56.

⁷⁴ Pegram (n 70) 746.

⁷⁵ Reif, 'Transplantation and Adaptation' (n 2) 272.

⁷⁶ It should be noted however, that the national government was not necessarily the first mover in these countries. In Spain, the national defensor del pueblo was the first in the country to be established: Defensor del Pueblo de España, *The Book of the Ombudsman* (Defensor del Pueblo de España 2003) 188. In Argentina, however, the national defensor del pueblo institution (1993) postdates the establishment of the municipal defensor del pueblo in Buenos Aires (1985): *ibid* 189. This was also the case in Mexico, where the state of Aguascalientes established the first defensor del pueblo in 1988: Jodi Finkel, 'Explaining the Failure of Mexico's National Commission on Human Rights (Ombudsman's Office) after Democratization: Elections, Incentives, and Unaccountability in the Mexican Senate' (2012) 13 *Human Rights Rev* 473, 481.

⁷⁷ The Indian National Human Rights Commission, for example, has encouraged the formation of State Human Rights Commissions: Arun Ray, *National Human Rights Commission of India: Formation, Functioning and Future Prospects* (2nd edn, Khama Publishers 2004) 509. The Russian human rights ombudsperson has similarly encouraged the establishment of regional human rights ombudsperson institutions in Russia: Natella Boltanskaya, 'Interview with Ombudsman Vladimir Lukin on Ekho Moskvi' (16 February 2004) <http://eng.yabloko.ru/Publ/2004/radio/040213_ekho.html> accessed 6 January 2016.

⁷⁸ Charlotte Berends and others (eds), *Human Rights Cities: Motivations, Mechanisms, Implications* (U College Roosevelt 2013) 11.

Some of the external factors that have been instrumental in the establishment of other NHRIs and sub-national human rights ombudspersons have clearly not played an important role in the establishment of the Seoul Human Rights Ombudsperson. International organisations such as the UN have so far been relatively silent regarding the promotion of local human rights ombudsperson institutions, in Korea or elsewhere,⁷⁹ as have regional organisations, at least outside of their own member states.⁸⁰ Trans-governmental networks of municipal human rights ombudspersons are weak and largely unable to influence the development of new institutions.⁸¹ The Seoul Human Rights Ombudsperson was not imposed by outside forces pursuant to any peace accords. It is also difficult to credit a contagion effect from regional peers because the Seoul Human Rights Ombudsperson is the first of its type in Korea, and indeed appears to be one of the first of its type anywhere in East Asia (with the exception of a few municipal human rights ombudspersons in mid-sized Japanese cities).⁸²

This is not to say that international actors were entirely irrelevant to the establishment of the Seoul Human Rights Ombudsperson. Norms of local human rights institutionalisation that had developed mainly in Europe (especially those associated with the Right to the City, made popular by Henri Lefebvre and David Harvey) clearly had made their way to the Korean peninsula by 2011, most notably at the 2011 World Human Rights Cities Forum in Gwangju. This major conference, which is now repeated annually in Gwangju, hosted delegates from many cities around the world with experience in human rights implementation, and concluded by urging the development of local human rights institutions.⁸³ As a

⁷⁹ There have been a few exceptional statements from UN sources that have mentioned local mechanisms, generally as supplements to national human rights institutions. See eg United Nations General Assembly, 'Resolution 67/163, The Role of the Ombudsman, Mediator, and other National Human Rights Institutions in the Promotion and Protection of Human Rights' (UN Doc A/RES/67/163, 2013) <www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/163> accessed 10 March 2017 (encouraging member states to 'consider the creation or the strengthening of independent and autonomous ombudsman, mediator and other national human rights institutions at the national and, where applicable, the local level').

⁸⁰ The Council of Europe has been active in promoting local human rights ombudsmen within its borders: Council of Europe Congress of Local and Regional Authorities, 'On the Role of Local and Regional Mediators/Ombudsmen in Defending Citizen's Rights' (Recommendation 61, 17 June 1999) <<https://wcd.coe.int/ViewDoc.jsp?p=&id=848103&direct=true>> accessed 10 March 2017.

⁸¹ Andrew Wolman, 'Sub-National Human Rights Institutions and Transgovernmental Networks' (2015) 33 *Nordic J of Human Rights* 110, 127-28.

⁸² Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (n 5) 31. While the Seoul Human Rights Ombudsperson may not be a product of regional contagion, there is some evidence that it has produced a contagion effect, as other sub-national governments in Korea such as Gwangju and Gangwon-do have established human rights ombudsperson institutions in following years: Seoul Metropolitan Government Human Rights Division (n 7) 9. In some of these cases, the political dynamic has also mirrored that of Seoul, namely a progressive local leader (like Ahn Hee-jung in Chungcheongnamdo) with a background as a human rights activist has established institutions upon winning political office, in the background of continued conservative leadership at the national level.

⁸³ 2011 World Human Rights Cities Forum, 'Gwangju Declaration on Human Rights City' (16-17 May 2011) <www.uclg-

prominent human rights lawyer, Park Won-soon would have been exposed to these international developments; reportedly he modeled his Seoul Citizens' Human Rights Declaration in part on documents drafted in other 'human rights cities' around the world including Montreal, Barcelona, and Eugene, Oregon.⁸⁴

Within this context of awareness of the importance of the international trends in local rights implementation in Korean human rights circles by 2011 to 2012, two other local factors also appear of critical importance for the Seoul Human Rights Ombudsperson's establishment: first, the importance of human rights (and their institutionalisation) to Park Won-soon and others on the Korean political left, and second, the complex contribution of the NHRCK to the Ombudsperson Office's founding.

In discussions with a current ombudsperson and the head of the Seoul Human Rights Division, both stressed the overwhelming importance of Mayor Park Won-soon's vision in the establishment of Seoul's human rights institutions.⁸⁵ Clearly, the creation of the Ombudsperson Office was a direct reflection of his longstanding embrace of the human rights movement (and association with it). While Park's importance to the Office's founding is unquestionable, it is important to emphasise that his proposals were consistent with a long-standing idea in Korean left-wing politics that civil society human rights activists should be integrated into government as the best way to ensure progressive governance.⁸⁶ The apex of this trend occurred during the progressive Roh Moo Hyun administration, when, according to one study, 158 government positions were filled by current or former members of People's Society for Participatory Democracy (a human rights and social justice organisation of which Park was one time the Secretary-General).⁸⁷ In a sense, the establishment of a human rights ombudsperson office is a continuation of this strategy of making a place for human rights in governance institutions, and the development of a local human rights system was always likely to follow the election of Park to the mayoralty.⁸⁸ Moreover, Park's successful utilisation of human rights institutionalisation as a major campaign plank demonstrates that

cisdp.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524_2_0.pdf> accessed 11 March 2017.

⁸⁴ Korea Human Rights Foundation (n 7) 206.

⁸⁵ Interview with Lee Eun Sang (n 50); Interview with Park Dongsuk (n 38).

⁸⁶ See generally Joon Seok Hong, 'From the Streets to the Courts: PSPD's Legal Strategy and the Institutionalization of Social Movements' in Gi-Wook Shin and Paul Chang (eds), *South Korean Social Movements: From Democracy to Civil Society* (Routledge 2011).

⁸⁷ Seok-Choon Lew and Hye-Suk Wang, 'PSPD Report' (Non-Governmental Organization Series, Center for Free Enterprise 2006) 93.

⁸⁸ The fact that the Seoul Human Rights Ombudsperson is so much connected to one man may, of course, eventually be detrimental; it is not a foregone conclusion that the Seoul Human Rights Ombudsperson will survive the election of a new mayor, especially one that is from the conservative Saeneuri party.

human rights concepts already had a certain saliency among Seoul residents due to their long association with heroes of the political left such as Kim Dae Jung and Roh Moo Hyun.

Secondly, the NHRCK was a more complex factor in the background of the Seoul Human Rights Ombudsperson's founding. In early 2008, the NHRCK started a campaign to encourage Korean municipalities to enact local human rights ordinances, and organised meetings for that purpose in Gwangju.⁸⁹ This campaign culminated in the issuance of a recommendation in April 2012 on the establishment of human rights cities, along with a model local human rights ordinance.⁹⁰ In 2010, however, there were significant changes at the NHRCK, when conservative president Lee Myung Bak appointed a new chairperson, Hyun Byung-chul, who had no human rights experience and was widely perceived to be a weak human rights supporter.⁹¹ At this point, the NHRCK gradually stopped being trusted by many progressives and human rights advocates.⁹² This weakness, in turn, became a justification for why it might be necessary to have other governmental institutions that could promote and protect human rights while staying out of the control of the now-conservative national leaders. In short, because the NHRCK could no longer be trusted as a strong independent voice for human rights, progressive local leaders were incentivised to create their own institutions.⁹³ Ombudsperson Lee more diplomatically stated that the NHRCK's inability to quickly respond to all the petitions that it received opened space for the Seoul Human Rights Ombudsperson to more promptly respond to inquiries regarding Seoul City government.⁹⁴

B. Seoul Human Rights Ombudsperson and Relationships with Existing Human Rights Institutions

⁸⁹ Jean Ahn, 'Korea's City of Human Rights: Gwangju' (2010) 59 FOCUS <www.hurights.or.jp/archives/focus/section2/2010/03/koreas-city-of-human-rights-gwangju.html> accessed 6 January 2016.

⁹⁰ Anselmo Lee, 'Local Government and Human Rights' (World Human Right Cities Forum, Gwangju, Korea, 18 September 2015).

⁹¹ Bae Hyun-Jung, 'Human Rights Activist Slams Chief Hyun', *The Korea Herald* (16 July 2012) <www.koreaherald.com/view.php?ud=20120716000966> accessed 6 January 2016.

⁹² Kim Hyeong-wan, 'An Open Letter to Human Rights Commission Chairperson Hyun Byung-chul' *The Hankyoreh* (9 November 2010) <www.hani.co.kr/arti/english_edition/e_editorial/447824.html> accessed 6 January 2016.

⁹³ Hong makes a similar argument that the waning of national government concern for human rights in part accounts for the post-2008 rise of local attention to human rights: Sung Soo Hong, 'Institutionalization of Human Rights within Local Authorities of Korea: History and Challenges' (World Human Rights Forum, Gwangju, Korea, 16 May 2013) 56-57.

⁹⁴ Interview with Lee Eun Sang (n 50).

When the Seoul Human Rights Ombudsperson commenced its operations in 2013, it did not occupy a human rights vacuum; on the contrary, as discussed earlier Korea was already well-integrated into the international human rights regime at the time, and a variety of governmental and non-governmental actors in Seoul were and are engaged in promoting and protecting human rights. The question thus arises: how does the Seoul Human Rights Ombudsperson interact with these other institutions? In other contexts, sub-national human rights ombudsperson institutions around the world have developed a range of different relationships. Some collaborate with their country's national human rights ombudsperson institution, as is the case for example in Argentina, where there are formal collaboration agreements between the national human rights ombudsman and all provincial and municipal human rights ombudsmen in the country.⁹⁵ Some have networked with their peers in other localities, whether on a formal or informal basis.⁹⁶ A few ombudsperson institutions have participated in UN or regional human rights mechanisms, for example through contributing to periodic reports to UN treaty bodies, acting as Preventive Mechanisms under the Optional Protocol for the Convention against Torture or meeting with UN Special Rapporteurs.⁹⁷

In the case of the Seoul Human Rights Ombudsperson, there appears to be relatively little contact between local human rights institutions and actors at the national, regional, or global level. There have been no meetings or cooperation between the Seoul Human Rights Ombudsperson and the national government.⁹⁸ There has been no formal coordination between the NHRCK and the Seoul Human Rights Ombudsperson Office, although there are informal contacts when needed, for example to discuss cases that are pending in both institutions, and NHRCK decisions have been cited on occasion.⁹⁹ Nor are there formal meetings with the national-level ACCRC, although informal contacts exist, as one of the current ombudspersons worked for the ACCRC.¹⁰⁰ Similarly, the Seoul Human Rights

⁹⁵ Jorge Luis Maiorano, 'Argentina: The Defensor del Pueblo de la Nación' in Roy Gregory and Philip Giddings (eds), *Righting Wrongs, the Ombudsman in Six Continents* (IOS Press 2000) 70.

⁹⁶ Wolman, 'Sub-National Human Rights Institutions and Transgovernmental Networks' (n 81) 126-27.

⁹⁷ Andrew Wolman, 'Welcoming a New International Human Rights Actor?: The Participation of Sub-National Human Rights Institutions at the United Nations' (2014) 20 *Global Governance* 437, 443-47.

⁹⁸ Interview with Park Dongsuk (n 38).

⁹⁹ Interview with Lee Eun Sang (n 50). Because the NHRCK has a broad complaint resolution mandate that covers human rights abuses committed by local government entities, all (or at least the vast majority) of complaints that come before the Seoul Human Rights Ombudsperson Office could also potentially be filed before the NHRCK. So far there are no formal rules regulating which institution will hear a complaint if in fact one is filed at both institutions: *ibid.*

¹⁰⁰ *ibid.* The ACCRC functions as an ombudsperson institution at the national level, although its organic act provides for the establishment of local government ombudspersons as well. Although the ACCRC lacks an explicit human rights mandate, many of the cases brought before the Seoul City Ombudsperson could presumably also be brought before it: Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission (Act No 8878, 29 February 2008).

Ombudsperson has not had any interactions with international institutions, with the minor exception of contributions to a UN Human Rights Council questionnaire response regarding Seoul human rights initiatives.¹⁰¹ Given the fact that the Seoul Human Rights Ombudsperson Office was established at the initiative of Mayor Park Won-soon and without the active support of the national government or international figures, this lack of formal cooperation is perhaps unsurprising. Whether or not this low level of institutional integration is a significant problem is of course a more difficult question. In general, however, there are good reasons to favour stronger relationships between sub-national human rights institutions and their national or international counterparts. Sub-national human rights institutions can provide valuable information and perspectives on local human rights issues to national or international monitoring bodies, while at the same time benefitting from the exposure to new norms and human rights expertise developed at the national or international levels.¹⁰² Sub-national human rights institutions can also benefit politically from support by more powerful national bodies to ensure that their recommendations are carried out without undue delay; the ombudsperson's recommendation in the Hwagyo case, for example, might have been carried out more promptly if the Seoul Human Rights Ombudsperson Office had been more successful in enlisting political backing from potential national-level allies.

While the Seoul Human Rights Ombudsperson Office has had few interactions with national or international human rights actors, it has made a concerted effort to interact with local citizens and civil society groups. The Seoul Human Rights Ombudsperson has held twice a year meetings with civil society representatives and operates a hotline for feedback from the community.¹⁰³ It also accepts complaints from civil society organisations (as well as individuals), and has had several important cases submitted by associations, including the Hwagyo case discussed above. On at least one occasion, the Ombudsperson Office has also consulted with a representative of a civil society organisation (Amnesty International Korea) for advice in deciding a case.¹⁰⁴ In addition to this openness to dialogue with civil society organisations, Seoul human rights institutions have made a number of efforts at involving individual private citizens in its work. For example, the Seoul Human Rights Ombudspersons Office sometimes holds briefings for civil society representatives to attend when they are

¹⁰¹ Interview with Lee Eun Sang (n 50).

¹⁰² Wolman, 'Welcoming a New International Human Rights Actor?' (n 97) 448-49.

¹⁰³ *ibid.*

¹⁰⁴ Seoul Human Rights Ombudsperson Decision, '녕마공동체 인권침해 사건' (Human Rights Violations against Neongma Community) (Case no 2012-1, 28 December 2012).

releasing a particularly noteworthy recommendation.¹⁰⁵ Perhaps the Citizens' Human Rights Jury program described above represents the most concerted effort to solicit the input of private citizens.

The Seoul Human Rights Ombudsperson Office (along with its sister institutions) has also been proactive in interacting with other peer sub-national human rights institutions in Korea. For example, in March 2015, the Seoul Human Rights Committee and the Chungcheongnamdo (province) Human Rights Promotion Committee signed a formal cooperation agreement, and the Seoul Human Rights Division has also recently hosted a workshop targeted at 17 different local human rights offices to discuss best practices and ongoing initiatives.¹⁰⁶ Separately, the Seoul Human Rights Ombudspersons have also met with their peers in cities such as Gwangju and Suwon on a mostly informal basis, and have been involved in trying to set up an official network of Korean human rights ombudspersons.¹⁰⁷ Given Seoul's position as the largest (by far) municipality in Korea, it is not particularly surprising that it is playing a leadership role with regards to other Korean local areas' development of human rights institutions.

C. Seoul Human Rights Ombudsperson and Types of Human Rights Norms Used

Finally, it is worth examining the types of norms used. There is already a small body of research examining the types of human rights norms that are used by sub-national human rights institutions.¹⁰⁸ Fundamentally, one can point to three types of normative sources. First, some sub-national human rights institutions are explicitly mandated to implement one or more forms of international human rights norms. In a few notable cases, this has even led to municipalities embracing a wider range of human rights treaties than are accepted at the national level by their home country.¹⁰⁹ Second, some sub-national human rights institutions are mandated to implement human rights norms contained elsewhere in the national-level laws or jurisprudence of the country where the sub-national institution is located. Third, local

¹⁰⁵ Interview with Park Dongsuk (n 38).

¹⁰⁶ *ibid.*

¹⁰⁷ Interview with Lee Eun Sang (n 50).

¹⁰⁸ Lesley Wexler, 'The Promise and Limits of Local Human Rights Internationalism' (2010) 37 *Fordham Urb LJ* 599; Risa Kaufman, 'State and Local Commissions as Sites for Domestic Human Rights Implementation' in Shareen Hertel and Kathryn Libal (eds), *Human Rights in the United States: Beyond Exceptionalism* (CUP 2011); Andrew Wolman, 'Sub-National Human Rights Institutions and the Domestication of International Human Rights Law' (2015) 33 *NQHR* 224.

¹⁰⁹ Wolman, 'Sub-National Human Rights Institutions and the Domestication of International Human Rights Law' (n 108) 228-34.

normative sources can be developed by, for example, the passage of a human rights charter. This may allow for the development of new human rights norms or divergent interpretations of existing norms that reflect local values and interests.

In the case of the Seoul Human Rights Ombudsperson, the ombudspersons are mandated by the Framework Ordinance to investigate petitions of human rights infringements, with the term ‘human rights’ defined as ‘any of human dignity, self-worth, liberty and rights, which are prescribed by the Constitution and statutes, or acknowledged by international human rights treaties signed or ratified by the Republic of Korea and by customary international laws’.¹¹⁰ In practice, the ombudspersons have clearly made a point of employing a wide variety of norms. National-level norms have been most commonly cited. Out of 21 published decisions from the period of December 2012 to March 2015, 17 decisions cite national statutes, including on several occasions the National Human Rights Commission Act, the Act on the Prohibition of Discrimination of Disabled Persons, and the Framework Act on Women’s Development.¹¹¹ In addition, 18 decisions cite the Korean Constitution, most commonly article 10, which protects the right to dignity and the pursuit of happiness.¹¹²

Interestingly, however, the ombudspersons have also proved very willing to refer to international treaty norms, and even to take into account findings from other countries’ laws and jurisprudence. For example, the Ombudsperson Office has cited UN human rights treaties in eight out of 21 published cases.¹¹³ In several other cases, a broad range of international norms have been cited from outside the UN treaty system. For example in a 16 October 2014 decision, the Ombudsperson Office cited an International Labour Organisation Resolution, a UN Declaration, and a case from the US Equal Employment Opportunity Commission.¹¹⁴ The following month, the Ombudsperson Office cited the European Framework Agreement on Harassment and Violence at Work as well as relevant laws in

¹¹⁰ Framework Ordinance on Human Rights (n 29) art 2.

¹¹¹ The 21 published decisions examined here make up the entirety of the cases published online, at <http://gov.seoul.go.kr/archives/category/human/guard_human/guard_human-n1> accessed 6 January 2016.

¹¹² Constitution of the Republic of Korea (1948) art 10 (‘All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals’). It is worth noting that this provision provides very broadly worded rights protection, potentially allowing the Ombudspersons more room to address situations which are not specifically protected by other clauses.

¹¹³ UN treaties cited include the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities.

¹¹⁴ Seoul Human Rights Ombudsperson Decision, ‘사업소 직원 간 성희롱 등’ (Sexual Harassment among Employees at a Roadwork Site, etc) (Case no 14(107), 16 October 2014).

Sweden, France and Japan.¹¹⁵ Three decisions have cited the Universal Declaration of Human Rights. Oftentimes, these international norms are cited in conjunction with relevant local or national norms, as was the case in the Childcare Support for Unregistered Migrants case reviewed above.

Meanwhile, relatively few human rights norms from local (Seoul) sources have been used to determine the scope of rights protection, the notable exceptions being the Seoul Metropolitan Government Guidelines for the Prevention of Sexual Harassment, which was cited as a source in four of the 21 published cases,¹¹⁶ and the Seoul Ordinance on the Protection and Promotion of Human Rights of the Child and Youth, which was cited on three occasions.¹¹⁷ In fact, there have been efforts by Mayor Park and the Seoul Human Rights Centre to draft a distinctive human rights charter for Seoul, but these efforts have so far been unsuccessful. Consistent with the human rights plan laid out in Park's campaign declaration, in 2014 the Human Rights Centre selected a committee of 150 ordinary citizens and 30 human rights experts to draft a charter that could be adopted by Seoul City.¹¹⁸ The end result was a draft document called the Seoul Citizens' Human Rights Charter, which consisted of 50 articles protecting a wide range of rights, including several economic, social, and cultural rights as well as rights regarding political participation and transparency. While the document in many ways reflects classic human rights norms, it also includes several clauses which are peculiarly suited to the urban context,¹¹⁹ and some that seem particularly consistent with Korean concerns, one example being the article 12 right to be protected from disasters and

¹¹⁵ Seoul Human Rights Ombudsperson Decision, '사업소 용역업체 직원에 대한 성추행 등' (Sexual Harassment against an Employee of a Contractor, etc) (Case no 14(123) (Consolidated), 21 November 2014).

¹¹⁶ Seoul Human Rights Ombudsperson Decision, '서울시 위탁업체 내 직원 간 성폭력 1' (Sexual Violence among Employees at a Seoul City Contractor) (Case no 13(5), 7 June 2013); Seoul Human Rights Ombudsperson Decision, 'Sexual Harassment among Employees at a Roadwork Site (n 114); Seoul Human Rights Ombudsperson Decision, '자원봉사자에 의한 성희롱' (Sexual Harassment by a Volunteer) (Case no 15(18), 18 March 2015).

¹¹⁷ Seoul Human Rights Ombudsperson Decision, '비인가 대안교육기관에 대한 급식 및 교육비 지원 차별' (Discrimination against Alternative Schools with Regard to the Provision of School Meals and Educational Expenditure) (Case no 13(16) (Consolidated), 31 October 2013); Seoul Human Rights Ombudsperson Decision, '서울지방공사의 비인가 대안교육기관 취학자녀를 둔 직원에 대한 학자금 지급 차별' (Discrimination against Employees with Children Attending Unauthorised Alternative School, with Regard to the Payment of Tuition Support) (Case no 13(18), 9 December 2013); Seoul Human Rights Ombudsperson Decision, 'Discrimination in Childcare Support for Children of Undocumented Migrants' (n 63).

¹¹⁸ Interview with Park Dongsuk (n 38).

¹¹⁹ This is perhaps most evident in articles 31-33 on the right to live in a pleasant environment, which discusses the need for more parks, protection from noise, and access to transit passes. The Draft Seoul Citizens' Human Rights Charter is reprinted at Kang Min Su, '폐기위기 '서울시민 인권헌장', 직접 보고판단하세요' (Seoul Citizens' 'Human Rights Charter' in Danger of Being Discarded! See and Judge for Yourself) (2 December 2014) <www.ohmynews.com/NWS_Web/view/at_pg.aspx?CNTN_CD=A0002058611> accessed 6 January 2016.

accidents, which reflects Korea's widespread revulsion at lax enforcement of safety standards in the wake of the April 2014 Sewol ferry disaster.¹²⁰

When Mayor Park attempted to adopt the Seoul Citizens' Human Rights Charter, however, these various clauses were all overshadowed by a controversy centred on the fact that the anti-discrimination clause (article 4) protected sexual minorities (among many other groups), and the right to be protected from social violence (article 15) also specifically noted sexual minorities as an at-risk group.¹²¹ Conservative elements (particularly associated with certain Christian groups) fiercely protested the inclusion of these clauses, while criticising Park for going beyond the appropriate role of a local official in order to gain publicity for a potential presidential run.¹²² In the end Park decided not to adopt the Charter because of the lack of a social consensus on the issue.¹²³ This decision was in turn harshly criticised by progressive activists who felt that Park had not stood up firmly for their rights.¹²⁴ According to both Mayor Park and the head of the Seoul Human Rights Centre, the passage of the Charter will be at some point revisited, and it remains an important policy goal for the administration.¹²⁵

Finally it should be noted that there have been other interesting attempts to develop new human rights norms at the borough level in Seoul. Seongbuk-Gu, for example, has promulgated a Human Rights Charter, despite the objections of anti-LGBT rights protesters.¹²⁶ In addition to those clauses commonly seen in human rights documents, the Seongbuk-Gu Charter also provides specific protection for senior citizens, marriage migrants, sexual minorities, the homeless, persons with infectious diseases, refugees, and North Korean refugees.¹²⁷

¹²⁰ *ibid* art 12.

¹²¹ *ibid* arts 4 and 15.

¹²² 'Special Human Rights Charter of Mayor Park Won-soon' *The Donga Ilbo* (21 November 2014) <<http://english.donga.com/srv/service.php3?biid=2014112157568>> accessed 6 January 2016.

¹²³ Kim Bong-Moon, 'Seoul Calls Off Human Rights Charter' *Korea Joongang Daily* (1 December 2014) <<http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=2997941>> accessed 6 January 2016.

¹²⁴ Claire Lee, 'Seoul Mayor Blasted for Human Rights Hold-Up' *The Korea Herald* (4 December 2014) <www.koreaherald.com/view.php?ud=20141204001173> accessed 6 January 2016.

¹²⁵ Interview with Park Dongsuk (n 38).

¹²⁶ In the end, the Charter's drafters decided to withdraw a clause promoting better acceptance of sexual minorities, while retaining a provision prohibiting anti-LGBT discrimination: Chang Hyun Ahn, '성북구 '주민인권선언' 10 일 발표하지만...성소수자 관련 문구는 논란끝 후퇴' (Seongbuk-Gu to Announce 'Residents Human Rights Charter' on 10th, but Step Back from the Controversial Statement Regarding Sexual Minorities) *Hankyoreh* (9 December 2013) <www.hani.co.kr/arti/society/area/614701.html> accessed 6 January 2016.

¹²⁷ Kim Jin-Dong (n 45) 103-04.

VI. Conclusion

In this case study, I have examined the operations of the Seoul Human Rights Ombudsperson Office, one of the first examples of a local human rights ombudsperson institution to be established in East Asia. In particular, I have explored the connections between the Seoul Human Rights Ombudsperson and other governmental and civil society actors, both inside and outside of Korea. In short, my findings show that the establishment of the Seoul Human Rights Ombudsperson was largely the result of local political initiatives grounded in a national political landscape where human rights discourse has taken on a particularly strong relevance. The Ombudsperson Office has accordingly developed fairly independently, with few institutional links to the outside world, although it borrows liberally from human rights norms developed at the national and international levels.

What can we learn from this case study about local human rights implementation in Asia? Firstly, it is clear that given the existence of human rights-friendly leadership, there is room for local human rights mechanisms to make a real difference in peoples' lives, and especially to encourage political actors to take into account the voices of the powerless, such as non-citizens in the discriminatory treatment of Hwagyo and the unregistered migrant childcare cases. These local mechanisms are not necessarily imposed from above or developed according to international standards. Rather, the Seoul Human Rights Ombudsperson shows how a local politician can develop a local human rights system as a result of personal conviction and constituent expectations without significant support from other actors, and in fact can position the office as a response to a perceived weakness in national-level human rights policies. This dynamic is resonant of certain local initiatives in the West, for example the decision by the San Francisco Human Rights Commission to (successfully) promote municipal adherence to the Convention on the Elimination of all forms of Discrimination Against Women, even though the treaty has not been ratified by the US. Local commissions can thus usher in stronger human rights policies in localities that are more progressive than the rest of the country in which they are located.¹²⁸

However, this case study also shows that more work needs to be done to integrate such institutions into a coherent human rights regime. Where there are multiple bodies capable of investigating the same complaint, there should be coordination to ensure that

¹²⁸ Columbia Law School Human Rights Institute, 'Implementing Recommendations from the Universal Periodic Review: A Toolkit for State and Local Human Rights and Human Relations Commissions' (2011) <web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit_0.pdf> accessed 10 March 2017.

forum shopping opportunities are kept to a minimum, and that a consistent human rights jurisprudence can develop among the different concerned entities. While the risk of parallel investigations was perhaps made most clear in the aftermath of the Seoul Philharmonic Orchestra harassment case, the lack of formal guidelines regulating jurisdictional overlap with the NHRCK and ACCRC may in the long run create greater risks of duplicative investigations or forum shopping.

Finally, this case study demonstrates that opportunities exist for local human rights institutions to work towards the implementation and jurisprudential development of both local norms and international norms such as UN treaties and declarations. This normative mix may provide a good opportunity for local human rights institutions to engage in the localisation of human rights norms, meaning, according to one definition, ‘the active construction [of new norms] through discourse, framing, grafting, and cultural selection of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices.’¹²⁹ This process can facilitate the integration of local voices into the norm-development process and can perhaps produce new norms in areas such as the rights of the elderly that are particularly resonant in East Asian traditions but have been neglected at the global level.¹³⁰ Critics might argue that this could lead to a certain degree of fragmentation of international human rights law, but this is not necessarily a bad thing; proponents of localisation accept that a degree of pluralism is both inevitable and welcome in today’s world.¹³¹

Despite the potential benefits of greater local attention to the evolution of human rights norms, it is equally clear from the failed attempt to promulgate a Seoul Citizens’ Human Rights Charter that the process of implementing international norms or developing new norms at the local level can be fraught with political risks and the potential for conflict, just as it often is at the national or international levels. Smaller polities do not necessarily provide for a homogeneity of opinions. As local human rights mechanisms mature in Seoul and elsewhere, further research will be necessary to examine the substantive effects of moving the contested process of rights development to the realm of municipal institutions.

¹²⁹ Amitav Acharya, ‘How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism’ (2004) 58 *Int’l Org* 239, 245.

¹³⁰ Frédéric Mégret, ‘The Human Rights of Older Persons: A Growing Challenge’ (2011) 11 *H R L Rev* 37, 37.

¹³¹ Koen de Feyter, ‘Localizing Human Rights’ (University of Antwerp Institute of Development Policy and Management Discussion Paper 2006/02, January 2006) 23 <<https://core.ac.uk/download/pdf/6698800.pdf>> accessed 10 March 2017.