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# Human Rights Institutionalisation at the Local Level: A Case Study of Sub-National Human Rights Commissions in Korea

## Abstract:

Over the past decade, all upper-level (regional) Korean sub-national governments and a large number of lower-level (municipal) governments have passed ordinances mandating the establishment of local human rights commissions. Many of these commissions have now been set up and operating for several years. In this case study, we critically examine the development and work of these commissions, with a particular focus on six aspects: personnel; functions; norms; independence; level of activity, and relationships with other relevant actors. These areas were chosen for analysis because they correspond to institutional aspects that have widely been viewed as important for determining the effectiveness of human rights institutions at the national level, and we argue that they are likely to be of similar importance at the sub-national level. For each of these areas, we examine the choices made and the major challenges faced, and contextualise within the standards established for national human rights institutions and experiences in other jurisdictions. The case study is based primarily on examination of a mix of primary source documents and secondary Korean-language research on the topic.

Keywords: Korea; Sub-National Human Rights Institutions; Local Government; Human Rights Commissions; Human Rights Ordinances

## 1. Introduction

In recent years, there has been considerable research into the work of national human rights institutions ('NHRIs'), the term used to designate those independent governmental human rights commissions, human rights ombudsman offices, and human rights institutes that now exist at the national level in well over a hundred nations (Welch, 2017). Compared to the abundant literature on NHRIs, relatively few studies have focused on sub-national human rights institutions, which can be defined as 'independent non-judicial governmental institutions that possess a sub-national mandate, and whose mission includes the implementation of human rights norms' (Wolman, 2018). This is perhaps a reflection of the general reluctance to study local administrative organs, which are sometimes seen as less important than national or international actors. Nevertheless, sub-national human rights institutions have proliferated in recent years, and many hundreds of human rights commissions, ombudsmen, *defensores del pueblo*, and similar institutions are now active at different administrative levels all around the world (Wolman, 2018). They represent an increasingly important institutional focus for the global human rights movement.

By presenting a case study of Korea's experience with sub-national human rights commissions, this article intends to contribute to filling this gap. Local human rights implementation in Korea (and indeed Asia more broadly) has yet to be the subject of significant English-language research. In particular, the study will focus on examining six aspects of sub-national commissions: personnel; functions; norms; independence; level of activity, and relationships with other relevant actors. These areas were chosen as focal points for this research because they are widely seen as important for the evaluation of human rights institutions at the national level. Although there is little research into methodologies for sub-national case studies, one would expect (largely) similar issues to arise at both the national and sub-national administrative levels. While there are often important differences between NHRIs and sub-national human rights institutions – in scale, funding, and relationship with international institutions – they share common goals of human rights promotion and protection along with an independence from executive bodies.

For each of the six topical areas, we will first briefly outline the standards and best practices laid out by the Paris Principles (1993), the General Observations of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions ('GANHRI') (2018), and the Amnesty International Guidelines (2001), in order to justify our attention to particular aspects of the work of Korean sub-national human rights commissions.<sup>1</sup> We will then discuss the results of our study of Korean institutions, with reference to the aforementioned standards and, where relevant, the experiences of local human rights actors in other countries.

The case study is mainly based on primary and secondary documentary research. Primary document sources included ordinances establishing local commissions, reports, action plans, and commission meeting minutes.<sup>2</sup> Documents were examined from a range of jurisdictions at different

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<sup>1</sup> The Paris Principles are a set of guidelines for NHRIS that was promulgated by the UN General Assembly in 1993. They are today considered the most widely accepted means for assessing NHRI effectiveness (Mertus 2012: 76-8). GANHRI uses the Paris Principles for accrediting national institutions, and has accordingly elaborated upon the Paris Principle standards by issuing General Observations. The Amnesty Guidelines provide a separate set of guidelines for NHRI effectiveness from the perspective of a major non-governmental human rights organisation.

<sup>2</sup> In particular, we reviewed minutes from the meetings of the human rights commissions of Chungcheongbuk-do, Daejeon Metropolitan City, Gijang-gun, Goyang City, Gwangmyeong City, Gwangju Metropolitan City, Gwangju Buk-gu, Gyeonggi-do, Seoul Metropolitan City, Seoul Dobong-

administrative levels and from different regions of Korea, in order to reflect the broad spectrum of local human rights institutionalisation in the country. In some cases, these documents were easily accessible on local authority websites.<sup>3</sup> In addition, the website of the Institute for Human Rights Cities was a very useful source for primary documents.<sup>4</sup> Amongst a range of other reports and opinions from local human rights commissions, its website includes a database of 674 local human rights ordinances from around Korea, including separate sections on general human rights ordinances, ordinances on the rights of the disabled, ordinances on the rights of women, and ordinances on the rights of children and migrants.

Secondary sources include academic and policy reports on local human rights governance. Although there is little English-language research on Korean local human rights governance, there have been a number of Korean-language academic studies on the topic, including those by Young-sun Chung (2013), Jongcheol Kim (2014), and Sung-Soo Hong (2015) which provide helpful commentary on local commissions. There have also been a few reports and presentations issued by local governments themselves (Gang et al 2013; Gwangju City 2018). Perhaps the most thorough recent review has come in a report issued by the National Human Rights Commission of Korea ('NHRCK') (2016). This report included survey data from 259 local human rights officers and commissioners, providing a helpful snapshot of the state of local commissions at that point in time. These documentary sources were supplemented by written responses received pursuant to a list of interview questions on local human rights commissions that were e-mailed to an NHRCK policy officer working on the issue of local human rights implementation.

## **2. Background**

### ***2.1 Human Rights Development in Korea***

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gu, Seoul Dongdaemun-gu, Seoul Eunpyeong-gu, Seoul Gangbuk-gu, Seoul Jongno-gu, Seoul Seodaemun-gu, Seoul Seongbuk-gu, Seoul Yeongdeungpo-gu, Ulsan Metropolitan City, and Ulsan Dong-gu.

<sup>3</sup> For example, the websites of Seoul Metropolitan City ([www.seoul.go.kr/](http://www.seoul.go.kr/)) and Seongbukgu ([www.sb.go.kr](http://www.sb.go.kr)) had particularly helpful sections dedicated to the work of their human rights committees.

<sup>4</sup> See Institute for Human Rights Cities website at <http://hrcity.or.kr/>.

Over the past two decades, human rights discourse has come to play a peculiarly prominent role in the Korean political arena. In the wake of the transition from military rule to democracy in 1987, progressive politics has been dominated by a series of former democratisation activists conversant in human rights language and concepts. These include Kim Dae Jung (president from 1998-2003), who championed human rights in speeches and writings as early as 1983, along with three prominent human rights lawyers: Roh Moo Hyun (president from 2003–2008), Moon Jae-In (president from 2017 to present) and Park Won-soon (Seoul mayor from 2011 to present). Human rights law and principles are often used to frame the historical political conflict with Japan, while also being touted as an important tool for addressing North Korean atrocities.

During this same period, the institutionalisation of human rights has proceeded within Korean government, albeit fitfully, with new initiatives often introduced during periods of progressive control only to stagnate or be undermined during conservative rule. The most important of these institutional developments has been the 2001 establishment of the NHRCK. The NHRCK has engaged in a full range of human rights promotion and education activities, as well as monitoring government laws and policies and responding to complaints from members of the public. In 2008, the Anti-Corruption and Civil Rights Commission was created to supplement the work of the NHRCK in the arena of public administration. A range of other independent commissions have also been established to address past human rights abuses, including most notably the Korean Truth and Reconciliation Commission (active from 2005-2010). As discussed below, local human rights institutions have more recently become widespread as well.

## ***2.2 Local Human Rights Institutionalisation***

In Korea, local governments are divided into high-level regional governments (Gwangyeog Jibang Jachi Danche) and lower-level local governments (Gicho Jibang Jachi Danche). With the inclusion of Sejong Special Autonomous City in July 2012, the number of regional governments was increased to seventeen.<sup>5</sup> As of January 2020, there are 226 local governments, including 75 cities (Si),

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<sup>5</sup> This includes Seoul Metropolitan City, Sejong City, six metropolitan cities (Busan, Incheon, Daegu, Gwangju, Daejeon, and Ulsan), and nine provinces (Gyeonggi, Gangwon, Chungnam, Chungbuk, Jeonnam, Jeonbuk, Gyeongnam, Gyeongbuk and Jeju Special Self-Governing Province).

82 counties (Gun), and 69 districts (Gu). All local administrations are governed by a chief executive (governor or mayor) and local council, which is a legislative body representing resident interests (Choi et al 2012: 28-9). Article 117 of the Korean Constitution (1948) states that ‘local governments shall deal with administrative matters pertaining to the welfare of local residents, manage properties, and may enact provisions relating to local autonomy, within the limit of Acts and subordinate statutes’. Article 9 of the Local Autonomy Act further specifies that local governments can undertake to promote the welfare of residents, including through, *inter alia*, operation of social welfare facilities, provision of protection and support for the poor, and protection and promotion of the welfare of the elderly, children, persons with mental disorders, juveniles, and women. Thus, it is clear that local governments have a mandate that in many respects may impact the human rights enjoyed by citizens within each jurisdiction, especially with respect to economic and social rights.

Although Jinju City passed the first local human rights ordinance in 2007, local government interest in human rights institutionalisation began in earnest during the presidential term of Lee Myung Bak (2008-2013). As a right-wing leader with strong connections to big business, Lee was widely considered to be a negative influence on national-level human rights policies. Local politicians understood that human rights progress, if it was to be made, must take place in more progressive sub-national jurisdictions (Hong 2012). Thus, Gwangju Metropolitan City established a Human Rights Division in 2010, a Citizens’ Commission on the Promotion of Human Rights in 2012, and a Human Rights Ombudsman in 2013. Gwangmyeong City and Ulsan Dong Gu (borough) passed human rights ordinances in 2011. Gwangmyeong established a human rights council and Ulsan Dong Gu established a human rights commission the following year (Korea Human Rights Foundation 2014).

The key event in the development of local human rights commissions was the NHRCK’s April 2012 recommendation that each local government pass a human rights ordinance. Along with this recommendation, the NHRCK provided a Model Ordinance (2012), which included in article 10 a provision for the establishment of a human rights commission. In the years since their issuance, sub-national jurisdictions have steadily passed new ordinances based largely or entirely on the NHRCK model.

At the regional administrative level, all seventeen governments have now passed human rights ordinances, each of which mandate the formation of a human rights commission, albeit sometimes going by different names (Y Park 2019). However, there have in some cases been delays in actually establishing commissions, and Gyeongsannam-do and Gyeongsanbuk-do (two of the most conservative provinces of the country) have yet to do so. Incheon only established its human rights commission in 2019, after many years of protests from conservative Christian groups worried that a human rights ordinance could promote homosexuality (Korean Society of Law and Policy on Sexual Orientation and Gender Identity 2016).

Meanwhile, according to the written responses to interview questions sent to an NHRCK Policy Officer (17 October 2019), 95 out of 227 lower level governments had passed human rights ordinances as of September 2019. Here also, there was significant regional variation in level of activity – for example, all five local jurisdictions in Gwangju and Ulsan (areas with significant histories of human rights activity) had passed ordinances by 2016, but none of the local jurisdictions in North Chungcheong Province had done so (NHRCK 2016). While these ordinances have normally called for the establishment of human rights commissions, it has sometimes taken many years for commissioners to actually be appointed (Kim 2014). As of October 2016, the NHRCK (2016) reported that 26 local governments had established commissions.

These commissions share many basic elements in common. They tend to have between ten and fifteen commissioners at a time, selected mainly from civil society (NHRCK 2016).<sup>6</sup> They are exclusively or primarily advisory in nature, and are often focused on the development of a local human rights plan. In the following six sections, these commissions will be examined in greater depth, with particular attention to personnel; functions; norms; independence; level of activity, and relationships with other relevant actors.

### **3. Personnel**

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<sup>6</sup> As of 2016, there were a total of 539 commissioners working at 39 regional and municipal commissions (NHRCK 2016).



Evidently, attracting appropriate personnel is critical to the effectiveness and legitimacy of human rights commissions both in Korea and elsewhere. At the national level, the Paris Principles (1993) emphasise the importance of pluralism. Pluralism can be defined as inclusion of ‘representation of all sections of society, including women, ethnic minorities, and people with disabilities’ (Amnesty International 2001: sec. 2.4). The GANHRI General Recommendations (2018: 21) find the ‘pluralistic composition of the NHRI to be fundamentally linked to the requirement of independence, credibility, effectiveness and accessibility’. The International Council on Human Rights Policy (2005: 8) notes in particular that a proper gender balance is ‘vital’. Amnesty International (2001) rightfully adds human rights expertise to the shortlist of desired membership qualities. In the view of the International Council on Human Right Policy (2005: 15), staff ‘need to possess the necessary professional skills, including expertise in human rights’ in order for a NHRI to be effective.

### **3.1 *Pluralism***

In the Korean context, the earliest ordinances either lacked language related to pluralism (Gwangju Metropolitan City 2007; Gyeongsannam-do 2010) or, in the case of Gwangmyeong City (2011: art 8(5)), included only an objective to endeavour to include female and disabled commissioners. The model ordinance propounded by the NHRCK (2012: art 11(4)) signalled a change in this respect, by requiring that at least one third of commissioners be female, a requirement that was echoed in a number of later mandates, including those of Goseong-gun (2012: art 11), Mokpo City (2012: art 11); and Ulsan Metropolitan City (2015: art 9). The ordinance for Wonju City (2012: art 11) specifies that there must be at least four women (out of a maximum of ten members). Hwaseong City (2012: art 11) and Seoul Seongbuk-Gu (2012: art 17) opted for gender-neutral requirements, with Hwaseong City mandating that no more than 60% of commissioners could be of one gender, and Seongbuk-gu specifying that no more than two-thirds of commissioners could be of one gender. The standard that no more than 60% of commissioners could be of one gender was later recommended as best practice in a report on local commissions by the NHRCK (2017).

In practice, gender balance does not appear to be a major challenge. According to the NHRCK (2017), most regional commissions included over 40% women, with the exception of the Gangwondo

commission. Other aspects of diversity (ie race, religion, nationality) have not yet been explicitly included as ordinance requirements.

### ***3.2 Expertise***

It is also important to ensure that Commissioners possess sufficient human rights expertise to effectively advise their governments. Attracting personnel with appropriate human rights expertise can be a particular challenge at local administrative levels, where there might be few residents with prior training or experience in the human rights field. In the Korean context, many commissioners are drawn from civil society organisations, and include advocates who have worked on such issues as gender rights, disability rights, children rights, migrant and refugee protection, and homelessness. Law professors and public interest lawyers are also commonly called upon to serve as commissioners, and in some cases have served as commission chairs. Nevertheless, some have argued that there is a lack of human rights expertise on local commissions, and additional training programmes for commissioners have been strongly advocated (NHRCK 2016).

## **4. Functions**

At the national level, it is widely assumed to be desirable for NHRIs to have a broad mandate (Linos and Pegram 2017). According to the Paris Principles (1993), ‘a national institution shall be given as broad a mandate as possible’.<sup>7</sup> While the Paris Principles do not require NHRIs to have a complaint-handling function, most NHRIs are able to handle complaints from the public, and there is a feeling among some commentators that such a function is desirable, if not essential (Carver 2000).

In general, Korean local human rights commissions have been established as advisory bodies (Y Park 2019). Within this broad model, one can see three particular types of mandate. Most commonly, the organic laws specifically mandate that commissions deliberate on matters concerning development and implementation of a human rights plan, policy promotion according to the human rights plan, and other matters deemed necessary by the mayor or chairman (Gwangju Nam-gu 2012: art 10). These are the functions proposed by the NHRCK Model Ordinance (2012: art 10), but even those ordinances

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<sup>7</sup> Amnesty International (2001: sec 3.1) also claims that ‘NHRIs should enjoy the broadest possible mandate to address human rights concerns’.

passed earlier tend to be limited to deliberative functions (Busan Nam-gu 2011: art 10; Daejeon Metropolitan City 2012: art 7). It should be noted however, that even with this relatively narrow mandate, some commissions have engaged in relatively wide-ranging discussions and provided varied types of advice. For example, in one recent meeting the Gyeonggi-do Human Rights Commission (2018) also discussed and advised upon human rights education practices, resolution of human rights complaints, challenges facing the Gyeonggi-do Human Rights Centre, and the Gyeonggi-do Human Rights Banquet.

Secondly, in some commissions, there are two additional functions that are included in mandates, namely providing advice on the human rights implementations of local laws and policies (Seoul Metropolitan City 2012: art 14) and managing a human rights centre (or providing advice or recommendations with respect to the centre) (Jeollabuk-do 2015: art 9; Seoul Seongbuk-gu 2012: art 16).

Finally, there are a few commissions that possess significantly broader mandates, perhaps in some cases because they predate the standardising effect of the NHRCK recommendations. Thus, in addition to its advisory function, the Gwangmyeong City Civil Rights Commission is also mandated to investigate matters raised by citizens, provide recommendations for investigations, research, ordinance, institutions, policies and practices concerning human rights, and engage in human rights education and promotion (Gwangmyeong City 2011: art 9). The Seongbukgu Commission can provide recommendations on citizen human rights complaints and engage in promotion activities (Seoul Seongbuk-gu 2012: art 16). The Busan Metropolitan City Human Rights Commission and the Jeollabukdo Commission are mandated to engage in human rights protection, promotion and education (Busan Metropolitan City 2015 art 5; Jeollabuk-do 2015: art 9). While the Seoul Human Rights Commission has a mandate focused on advice and deliberation, it has interpreted that to include public-facing activities such as the organisation of seminars and forums (NHRCK 2016). A few commissions also operate sub-commissions to monitor the local human rights action plan or engage in human rights impact assessment (Interview with NHRCK Policy Officer, 17 October 2019).

Clearly this scope of work is limited in comparison to that of national institutions. It is debatable whether that should necessarily be considered a failing, however. For one thing, there are certain areas

where the scope of work of national human rights institutions would naturally be greater than that of local ones. For example, the Paris Principles (1993) require NHRIs to address violations in ‘any part of the country’, which would clearly be inappropriate for a local commission. The Paris Principles also urge NHRIs to encourage state ratification of UN human rights instruments, and encourage NHRI contribution to national reports to UN bodies, which would presumably be less frequently prioritised by institutions that have merely local mandates.<sup>8</sup>

Second, in some jurisdictions there are multiple human rights bodies, some of which engage in other activities. In Seoul and Gwangju, for example, there are human rights ombudsperson offices that are mandated to address complaints from the public and exist alongside commissions (Korea Human Rights Foundation 2014).<sup>9</sup> In several other locations, including Gwangmyeong, Gyeonggi-do, Seoul City, and many boroughs of Seoul, there are human rights centres or human rights teams within local administrations that engage in activities such as developing human rights policies, engaging in human rights promotion and sometimes issuing recommendations on public complaints (Korea Human Rights Foundation 2014). Seongbuk-Gu in Seoul has even established a human rights library to assist in public human rights education.<sup>10</sup>

Third, unlike the United States, Italy, Japan and some other countries, Korea already has a strong national human rights commission with the capacity to hear complaints regarding infringements of human rights by local governments (as well as the national government). Given the generally centralised nature of Korean administration, there is perhaps less need for separate local commissions to resolve complaints than might exist elsewhere.

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<sup>8</sup> It should be noted, however, that some local human rights institutions in other countries have engaged in each of these tasks (Wolman 2015).

<sup>9</sup> In these cases, some coordination may be necessary to avoid conflicts or duplication of tasks. In Seoul, the human rights ombudspersons are able to attend Human Rights Commission meetings and provide recommendations therein (Seoul Metropolitan City 2012: art 20(5)). The Commission may also play a supportive role for other human rights bodies. In Seoul, for example, the City Human Rights Commission helped promote the institutional independence of the Ombudsperson Office during its early years (Moon 2015).

<sup>10</sup> Seongbukgu is a borough in the northwest of Seoul which is the site of several universities and the home of many foreign diplomats and expats; it has been considered the most active lower-level jurisdiction in developing human rights institutions and policies (Korea Human Rights Foundation 2014).

Finally, local commissions in Korea are quite recently established and thus it is perhaps natural that they are mandated to undertake a relatively limited range of activities. There is a hope among at least some activists that with time some commissions will be given more powers, such as the power to respond to complaints from the general public (Y Park 2019).

## **5. Norms**

At the national level, commentators have paid significant attention to both the breadth of norms covered by NHRIs and the source of those norms, each of which will be discussed in turn with respect to Korean local commissions.

### ***5.1 Breadth of Mandate***

At the national level, the Paris Principles (1993) suggest that institutions be given ‘as broad a mandate as possible’, while, the Amnesty International Guidelines (2001: art 3.1) urge that NHRIs possess the power to protect and promote economic and social and cultural rights, as well as civil and political rights. In practice, however institutions vary considerably in breadth, with many NHRIs concentrating on anti-discrimination norms. The same range can be seen globally at the sub-national level, with some local commissions possessing comprehensive normative mandates while others focus on a single issue or type of right (Wolman 2018).

In Korea, local human rights commissions established according to the 2012 NHRCK model have been given non-specific mandates to address any type of human rights issue. In practice, this can lead to commissions discussing quite a range of substantive issues, oftentimes with a focus on the effect of government action on vulnerable groups, such as the disabled, elderly, women and young people. Ensuring that local offices and services are accessible to the disabled has been a particular focus for, commission in, *inter alia*, Daejeon (2019), Gwangju Dong-gu (2019), and Gwangmyeong (2019). Of course, many of the municipal commissions engage with quite small-scale issues from a rights perspective. For example, the Gwangmyeong Human Rights Commission (2019) issued recommendations on pedestrian rights at a local intersection and the Daejeon Human Rights Commission (2019) issued recommendations on the improvement of handicapped access to a local university’s concert hall. Larger jurisdictions have targeted broader issues of equality as well. For example, the Seoul Human Rights Commission has issued recommendations calling for improved

support for single parents (Seoul 2017), the adoption of a human rights management approach by municipal entertainment and investment bodies (Seoul 2018), and non-discrimination against sexual minorities in the use of Seoul Plaza (Seoul 2019).

As has occurred in a number of countries, in many Korean localities there has also been a proliferation of issue-specific rights ordinances in recent years. The most common issues addressed herein are gender discrimination, disability rights and children or students' rights. Many of these provide for the establishment of issue-specific commissions. Thus, for example, the Haenam-gun Gender Equality Basic Ordinance (2016: sec 3) mandated the establishment of a Haenam-gun Gender Equality Commission, to provide advice on gender issues, including the gender equality policy implementation plan, while the Gwangju Metropolitan City Ordinance on Disability Discrimination and Human Rights Protection (2017a: art 14) mandated the establishment of the Gwangju Metropolitan City Disability Discrimination and Human Rights Protection Commission to advise on issues of disability rights. Evidently, where there are multiple active commissions, this brings up issues of potential redundancy, and potential conflict if, for example, a gender equality commission issues recommendations that are inconsistent with those of a human rights commission.

Although Korean commissions have often focused on human rights issues for which there is already a broad societal consensus (ie rights of the elderly, disabled, or children), a robust opposition to commissions has nevertheless emerged from right-wing conservatives focused mainly on a fear of legitimisation of LGBT rights and, to a lesser extent, Islamophobia (Republic of Korea NGO Alternative Report 2018). In 2018, the high point of this opposition came with a successful campaign by conservative Christian groups to repeal the Chungcheongnam-do human rights ordinance (Korean Society of Law and Policy on Sexual Orientation and Gender Identity 2016). Later that year, however there was a change in political control of the Chungcheongnam-do Council due to local elections, with the more left-wing Democratic Party replacing the conservative Liberty Korea Party, and the new majority re-passed the ordinance. The opposition did leave an impact, though, as the new ordinance lacked a provision contained in the original ordinance banning discrimination based on sexual or gender

identity.<sup>11</sup> It also inspired further campaigns elsewhere in the country, with varying levels of success. Local councils in Haeundae-gu and Suyeong-gu ended up deleting reference to discrimination based on sexual orientation from their ordinances (Korean Society of Law and Policy on Sexual Orientation and Gender Identity 2016) while Jeungpyeong-gun abolished its human rights ordinance (Paek 2018).

## ***5.2 Source of Norms***

Human rights norms can be expressed in global or regional treaties and declarations, in national constitutions and statutes, and in local level ordinances. At the national level, the Paris Principles (1993) do not discuss which sources of norms that should be used by NHRIs, but do clearly set forth that institutions should ensure harmonisation of national legislation, regulations and practices with international instruments to which the country is a party. The Amnesty International Guidelines (2001) urge implementation of both international and domestic norms, and also emphasises the importance of NHRI implementation of international human rights norms from UN and regional treaties.

At the local level, the NHRCK Model Ordinance (2012: art 2) defines human rights broadly to include treaty norms, customary international law, national constitutional norms, and leaves open the possibility of creating local norms. So far, however, there seems to be little explicit usage of international law. This is perhaps reflective of Korea's broader legal culture. While Korea's Constitution is clearly monist,<sup>12</sup> in practice human rights treaties are relatively infrequently cited even at the Constitutional Court, which is the court where one might expect to see the greatest engagement with international law (Won 2018: 607). Regional norms evidently would play little role in Korea, unlike most other parts of the world, due to the absence of an East Asian regional human rights system.

Interestingly, there does appear to be a significant number of local norms that have been elaborated at the local level. These include the Gwangju Human Rights Charter, the Ordinance on Preventing Employment Discrimination against the Elders, (Ulsan), the Ordinance on Preventing Discrimination against the Disabled, (Busan, Incheon, Gangwon Province, Sejong City, etc.) and the

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<sup>11</sup> Despite these changes, protest continues in the region, as shown by the violent disruption of a recent meeting (S J Lee 2019).

<sup>12</sup> Art 6.1 of the Korean Constitution (1948) states that "[t]reaties duly concluded and promulgated under the Constitution and generally recognized rules of international law shall have the same force and effect of law as domestic laws of the Republic of Korea."

Ordinance on the Protection of Rights of Emotional Workers in Seoul (NHRCK 2017). It is difficult to gauge the extent to which these local sources are actually being used by local commissions, and the degree to which they would be interpreted differently to international norms.

## **6. Independence**

As is the case at the national level, it is important that sub-national commissions retain their independence from political actors who might want to influence their work. As the Amnesty International Guidelines (2001: sec 1) make clear, formal independence is not enough to ensure that an institution remains free of government control. Some of the factors that can affect an institution's independence include whether government officials are permitted to serve on commissions, the method of appointment for commissioners, the ease of dismissal of commission members, and the security of commission funding. According to the GANHRI General Recommendations (2018: 24). 'government representatives and members of parliament should not be members of, nor participate in, the decision-making of organs of an NHRI'. In addition, security of tenure is essential to the independence of an NHRI (GANHRI 2018: 33).

In Korea, local human rights commissions vary in the extent to which they allow government officials to serve. Many commissions include only private citizens (Hong 2015). However, some include a mix of private citizens and one or two public officers serving *ex officio*, normally including governmental human rights officers and/or the head of local government (Hong 2015; NHRCK 2016). For example, in Gwangju Metropolitan City (2007: art. 15), the deputy mayor acts as *ex officio* chairperson of the City's human rights commission . The presence of government officials in commission meetings may be helpful to ensuring that the commissions actually influence those with the power to make and implement policy. However, there is also a risk that the government officials will dominate meetings and the commission will act with less independence.

Politicians can also affect the independence of human rights commissioners through threats to cut institutional funding, dismiss commissioners or even decommission the institution itself. The use of funding cuts to curb institutional independence was illustrated perhaps most notably in Korea itself, where conservative president Lee Myung Bak slashed the NHRCK budget (after initially threatening to shut it down) as a means of showing his disdain for the institution (S Park 2009). At the local level,



dismissal of commissioners is likely to be rare due to the relatively short terms of office for commissioners (terms of two years are most common).<sup>13</sup> According to the commissions' ordinances, dismissal is normally anticipated in cases of inability or unwillingness to perform duties, publication of secrets, or for reasons of lack of dignity. Threats of funding cuts would no doubt be more commonly used as a cudgel, but in some case such threats may be hollow due to the minimal budgets currently allotted to commissions.

There are conflicting views as to whether, in practice, lack of independence is currently an issue or not for local commissioners. In an interview response, an NHRCK policy officer (17 October 2019), claimed that there have not been any real problems with lack of independence to date, although they could theoretically arise. However, observers have criticised some local commissions for lacking independence (Hong 2012). Perhaps the most serious threat to institutional independence has come from attempts (a few of which were successful, as discussed below), to repeal or revise human rights ordinances, primarily due to objections that they provided protection against discrimination based on sexual orientation or sexual identity. Certainly, this possibility could influence the likelihood of commissioners providing strong support for anti-discrimination policies in those areas

## **7. Activity**

If a human rights commission is to provide more than just window dressing, then it must be actively carrying out its responsibilities. The Paris Principles (1993) specify that national institutions should meet on a regular basis and should receive adequate funding, so as to allow them to have their own staffs. The GANHRI General Recommendations (2018: 27) accordingly consider adequate funding to be an essential requirement for NHRIs. The Amnesty International Guidelines (2001: sec 2.5-2.6) further state that adequate resources are necessary for human rights institutions to complete their work and maintain their independence. Evidently, it is also important that local human rights commissions meet and are sufficiently funded, and carry out the tasks contained in their mandates. With local

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<sup>13</sup> Commission members serve for three years in Seoul, Gyeonggi-do, and Chungcheongnam-do, but elsewhere two years is standard (NHRCK 2012).

commissions having far lower visibility than national institutions, there may be more of a danger of human rights institutions falling into disuse or irrelevance.

In practice, it has often been a challenge to ensure that local commissions in Korea actually do more than just exist on paper. In many cases, commissions have taken a very long time to be established even after local governments were mandated to do so by the passage of a human rights ordinance (NHRCK 2017; Kim 2014). In a few cases, such as in Gyeongsannam-do and Gyeongsanbuk-do, commissions still do not exist, despite the passage of human rights ordinances mandating the establishment of commissions in 2010 and 2013, respectively (NHRCK 2017).

Even when they have been fully established, the level of activity appears to vary quite widely. The NHRCK Model Ordinance (2012: art 13) prescribes that meetings should be held quarterly or upon the request of the mayor or chairman. A number of commissions follow this rule of quarterly meetings (Seoul Metropolitan City 2012: art 16; Jeollabukdo 2015: art 14). However, there is no uniformity among commissions on this issue. The Seongbukgu Human Rights Commission must meet at least every month (Seoul Seongbuk-gu 2012: art 20). A number of ordinances require regular meetings be held twice a year (Goseong-gun 2012: art 12; Gwangju Nam-gu 2012: art 20). Others require that meetings be held once a year (Goheung-gun 2012: art 12; Mokpo City 2012: art 12). Some ordinances do not lay out a schedule for meetings, but simply state that meetings may be convened upon the chairman's request or the request of some proportion of the commission or a political leader (Busan Nam-gu 2011: art 14; Daegu Dalseo-gu 2012: art 13).

While a minimum number of meetings is usually prescribed by ordinance, in some localities it is clear that commissions have been less active than their mandate requires (NHRCK 2017). On the other hand, others exceed their minimum, for example the Seoul human rights commission has been holding meetings six to eight times a year, despite a quarterly requirement (NHRCK 2017). Gwangju, Gwangmyeong and Suwon, also have quite active human rights commissions. Thus, there appears to be a considerable divide between localities with active human rights commissions and others where commissions rarely meet. This has led to a certain amount of scepticism regarding commission effectiveness in those localities where meetings are infrequent (Choi 2018). In some cases, observers

have noted that the commissions are not functioning properly or have little influence on policy matters (NHRCK 2017; Hong 2015).

Even among those commissions that do meet frequently, however, a lack of adequate funding and manpower appears to be a limiting factor on commission activity. For example, local governments do not always provide enough funding for commissioners to take part in relevant meetings (Interview with NHRCK Policy Officer, 17 October 2019). In many cases, funding has not been provided for promotional or implementation activities (NHRCK 2017).

In recent years, a number of commissions have begun to hire permanent workers or create secretariats in order to help engage in programmatic initiatives (Hong 2012). Among other benefits, this would allow local commissions to draft human rights action plans in-house – while the Enpyoung-gu commission in Seoul has drafted its own plan, this is the exception; mainly such plans are written by outside parties, often academics, on the commission’s behalf (Eunpyeong-gu 2016). This move towards building greater capacity has been encouraged by the NHRCK, which has recommended that more people be hired by local commissions to engage in implementation activities (NHRCK 2017; Han 2019).

## **8. Relationships with Other Relevant Actors**

The Paris Principles (1993) state that NHRIs should ‘maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights’ and ‘develop relations with the non-governmental organizations devoted to promoting and protecting human rights’. The GANHRI General Recommendations (2018: 15) further recommend NHRIs to ‘develop, formalize and maintain regular, constructive and systematic working relationships with other domestic [human rights] institutions and actors’ and engage in knowledge-sharing and training activities with them. The importance of effective networking is reinforced by the Amnesty International Guidelines (2001: sec 1.4), which state that an NHRI ‘should be directed to establish effective cooperation with other human rights institutions, whether domestic or from other countries, non-governmental organizations, including human rights organizations, and UN human rights bodies’. The importance of productive interactions with other actors can be analysed in three parts, as relates to the NHRCK, other local human rights institutions, and to non-governmental actors.

### **8.1 *National Human Rights Commission of Korea***

To date, the NHRCK has been the most important external body for the development of local institutions. The NHRCK has consistently exerted pressure on local governments to create human rights commissions. In particular, its Model Ordinance (2012) spurred on the growth of local commissions beyond those few jurisdictions with a pre-existing connection to the human rights movement. In 2016-17, it issued a follow-up report and recommendation, urging the further development of human rights commissions at the local level (NHRCK 2017). The NHRCK is not unique in its interest in establishing local commissions; in Russia and India, also, the NHRIs have successfully pressed for the establishment of local institutions (Wolman 2013).

Once the local commissions have been established, the NHRCK has been involved in providing capacity building and networking services, for example by holding a talk once or twice a year with the chairpersons of the commission of metropolitan cities in Korea and hosting a Human Rights Advocates Conference for local government officials to discuss ways to strengthen local human rights institutions and their roles. The NHRCK has formalized a capacity-building relationship with several provincial commissions through the signing of Memorandum of Understandings (NHRCK 2017). It is currently planning to expand its provision of training programmes to give access to commission members from lower-level local authorities. This capacity building role has also been adopted by NHRIs in Mexico, India, Australia with respect to their sub-national counterparts (Wolman 2013). The NHRCK has also played a supporting role by announcing its opposition to the abolition of the Chungcheongnamdo human rights commission and organising an emergency forum participated in by human rights activists and academic circles to discuss supporting local human rights institutions (NHRCK 2019).

On the other hand, there could in theory be potential for tensions or conflicting opinions on human rights issues between local and national commissions (Y Park 2019). In practice, such conflicts are probably unlikely at the moment because so few local commissions are involved in complaint resolution, which is the area where conflicts have tended to arise between local and national bodies in other countries (Wolman 2013).

### **8.2 *Other Local Human Rights Institutions***

Networking with peers can help local human rights institutions ensure conformity with best practices (Byrnes et al 2008), facilitate exchange of information and coordination (Renshaw 2011), and assist in the development of new institutions (Renshaw and Fitzpatrick 2012). As mentioned, the NHRCK has played a significant role in facilitating networking between peer local institutions. In addition, important networking opportunities have been provided by the Gwangju government. Each year since 2011, Gwangju has hosted a World Human Rights City forum, which provide an opportunity for networking for local commissioners with their peers from around Korea and the world. The Human Rights City Research Institute, which is a think-tank promoting human rights governance at the local level, has also played a valuable role in disseminating news and policies from different localities and encouraging best practices. Finally, it is worth noting that informal networking platforms such as Kakao Talk groups have also been established to exchange information among local and national commissioners (Gyeonggi-do Human Rights Commission 2018).

### **8.3 Civil Society Actors**

There is widespread agreement among both practitioners and academics that civil society actors are vital for ensuring that human rights commission (Y Park 2019). Citizen participation will increase the likelihood of residents' awareness, criticism and involvement in human rights issues (Han 2019). A few jurisdictions have initiated more formal programmes to allow human rights commissions to interact with the public on human rights matters, including the "Human Rights Policy Round" in Gwangju and the "Human Rights Declaration and the Roundtable Conference of Provincial Citizens' Participation Groups" in Chungcheongnam-do (NHRCK 2017). However, local commissions still retain a low profile in most cases, many consider to be the biggest challenge for local commission (NHRCK 2016). This can lead to difficulties obtaining informed and representative community views to inform their advisory work as well as complicating policy promotion.

## **9. Conclusion**

Over the course of roughly a decade, human rights law and policy has gone from being a non-issue for Korean local governments to being the subject of considerable institutionalisation, with over a hundred ordinances and dozens of human rights commissions. As this study has shown, these commissions have faced a number of challenges. Some have had difficulty recruiting independent and

diverse human rights experts to serve as commissioners. In other commissions, meetings have been infrequent and a lack of secretariats or sufficient budget has hampered commission's activity. Civil society actors have not always been sufficiently aware of the local commissions' existence, or of the services that they can provide.

However, several of the commissions have also shown that they can be active and contribute to the local policy discourse. While most commissions are firmly advisory in nature, some of the more ambitious bodies are engaging in training programs and human rights promotion, and, in a few cases, responding to complaints from the public. There is abundant networking between different commissions, and the NHRCK has played a prominent role in encouraging good practices. At least in a handful of larger or more 'human rights-friendly' jurisdictions, commissions are gradually becoming more well-established and active.

This mixed record is perhaps to be expected. In other countries, as well, local-level human rights institutions have shown a quite wide range of functionality and quality. Without an authoritative accreditation mechanism, as exists for NHRIs, it is difficult to ensure that local human rights institutions work as planned. In a number of countries, NHRIs and sub-national institutions have together established domestic associations of human rights institutions, in part as a way to promote best practices among members.<sup>14</sup> In principal, a similar association in Korea could require that local institutions attain a certain level of effectiveness in order to be given full membership, as a way to motivate the relevant local jurisdiction to sufficiently support sub-national human rights bodies. While the NHRCK would likely be integral in setting up such a body, over time such a network could act on its own to accredit new members, as well as engage in other tasks such as helping local jurisdictions set up new commissions and promoting best practices.

As is the case in other local jurisdictions around the world, the effectiveness of Korean local commissions could also be improved through access to greater funding, and more training for commissioners who may not have strong experience with human rights law prior to taking their position.

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<sup>14</sup> Examples of domestic associations include the Australian Council of Human Rights Agencies, Canadian Association of Statutory Human Rights Agencies, Federación Nacional de Personeros de Colombia, and Asociación Defensores del Pueblo de la República Argentina.

Currently, the NHRCK has plans to provide additional human rights training for local commission members (Interview with NHRCK Policy Officer, 17 October 2019); this is a helpful initiative that also highlights the importance of cultivating strong relationships between local and national actors. Strong NHRCK links with sub-national institutions would also be helpful in ensuring that conflicts or tension between local and national policies are handled appropriately, and potentially wasteful redundancy is kept at a minimum.

More fundamentally, some have suggested incorporating secretariats into local commissions or appointing one permanent commission member (Han 2019). These reforms would be useful ways of encouraging competency and effectiveness, but secretariats would involve financial outlays that might prove prohibitive, at least in smaller jurisdictions, while permanent commission members might prove overly dominant in practice. In this respect, accelerated movement away from a one-size-fits-all model based on the NHRCK Model Ordinance would allow larger or more ambitious jurisdictions to develop structures and practices more fitting to their own circumstances (including secretariats where appropriate).

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