

場次九：專題演講

Panel IX: Speech

主持人/Moderator：蘇友辰 律師
(Mr. Yiu-Chen Su)

講者/Speaker：Professor Kyong-Whan Ahn

韓國國家人權委員會：十年的榮耀與失望(2001-2011)

Kyong-Whan Ahn

(前韓國國家人權委員會主持人、首爾大學法律系教授)

壹、前言

1987 年是韓國現代歷史的分水嶺，為後續的執政治民主化提供了重要的基礎。在 1987 年群起民變，為總統民選而奮鬥，在同年六月底獲得勝利，當時對韓國人民來說，人民直選總統是一個象徵性的任務，去彌補軍事獨裁領導下被剝奪的民主價值。民眾的勝利被認為是憲政上的改善，某種程度上，它伴隨著舊有世代多年來的夢想與新起的時代精神。在新的憲法下，總統由人民直選，且一個任期為五年不能連任，新憲法也帶來了新的司法制度，也就是憲法法院。新憲法法院的出現，就像一國嶄新的制度的出現一樣，對其他國家來說，是個重要的參考依據。

人民的勝利沒有因為新制度的建立而停止，真正的勝利在於內在價值的改變：人民漸漸了解自己的主權，也在生活中主張自己的人權價值。現在人民主權這個概念也被具體化，參與式民主的精神也廣為流傳，這種意識逐漸滲透至一般民間、政治、社會、經濟以及文化生活。在社會每個層面中，舊有的實踐不斷用新的標準來檢驗，像是消費者的權利(consumers'rights)、需求導向的政策(demand-driven polices)逐漸變成每天生活中的用語，¹1990 年代非政府組織不斷地成長，也在韓國社會的民主轉變的過程中，提供了新的導航力量。²

在韓國公民社會滿心期待與祝福下，另一項制度在 2001 年 11 月產生，韓國國家人權委員會的建立。其建立要歸功於在這方面投注很多心力的非營利組織。

本文主要概述韓國國家人權委員會這十年的歷史與發展，第二部分是南韓國家人權委員會，發跡起源的過程，第三部分將簡述國際社會上，所理解的韓國人權情況是如何，第四部分則是著重在南韓國家人權委員會的架構和運作機制，第五部分將聚焦在南韓國家人權委員會近 7 年(2001-2007 年)主要的一些活動，第六部分，則是關注在新總統上任(2008 年至今)之後的轉變為何，第七部分則是總結國家人權委員會，未來的一些建議以及需要改善的地方，以便讓國家人

¹ Chang Seung Wha & Lee Chang Hee eds. *Procedural Justice and Rule of Law*, Pakyoungsa Publishing (Seoul, 2003).

² Cho Hee-Yeon, *The Role of NGOs in the Democratic Transition*, 3 ASIA Quarterly 124-144; Eun Jong Park, ed. *NGOs and the Rule of Law*, Pakyoungsa Publishing (Seoul, 2006); Cha Byung Jik, "NGOs and Law", Ewha Womans University Press (Seoul, 2002); Lee Chan Jin, "Remedy through Judicial Process and NGOs: Challenges and Alternatives", EJ Park ed. pp.85-114

權委員會，能為韓國整體建立更好的制度，讓韓國的人權能更受到重視以及提升。

貳、國家人權委員會的起源

韓國是在 1948 年由聯合國的提案下創始的，諷刺的是直到 1991 年才成為聯合國的會員國，該年度聯合國同時接受南韓與北韓為其會員國，不論南、北韓在國際的主權地位如何，南、北韓的國內法皆不承認彼此，南韓憲法仍然維持其為朝鮮半島上唯一具合法性的國家，且其領土包含北韓的部分。

1990 年 3 月，南韓國民大會全體一致通過批准聯合國的人權兩公約（分別是《公民與政治權利國際公約》，簡稱 CESCR；以及《經濟、社會與文化權利國際公約》，簡稱 ICCPR），且同年 7 月份即生效（ICCPR 的批准仍有部分異議）。批准人權兩公約是南韓成為會員國的準備步驟之一，成為聯合國會員國，讓南韓有足以參與國際上有關人權議題的討論，也讓南韓有機會從國際現況與趨勢中學習。

1993 年夏天，來自 171 國超過 7,000 名代表湧入維也納，其中包含 30 多名南韓非政府組織代表及律師，他們對於這項人權保障的議題，提升至國際上的感到有興趣，在此之前，他們對於有關人權的知識、興趣與活動，幾乎無法跨出其國家的界線。特別是他們被“NHRI”這個新名詞所吸引。NHRI（國家人權委員會）代表一種國內對於實踐人權有效的制度。反過來說，這些啟蒙都必須要有新的嘗試，為了建立一個獨立的國家人權委員會，他們組織了非政府組織聯盟。

1993 年維也納的人權宣言，以及一連串保障與提升人權的計畫行動，皆在納同年為聯合國大會接受，且國家人權委員會成為其核心要件。這些南韓先驅者認為，國家人權委員會成為一種對未來人權進步的象徵與期待。

2007 年總統選舉，他們成功地將此議題投入金大中的選戰過程中，金大中身為反對黨的候選人，其勝選對這些先驅者來說是極為榮耀的勝利。然而，選舉勝利並不代表國家人權委員會可以馬上成立，在勝選一段時間後，他們決定發動一連串活動，讓這個議題存在，必須不斷發表聲明，執行糾察任務、靜坐抗議，甚至絕食，其過程是緩慢且冗長的。當然，這些非政府組織聯盟也舉辦一連串公聽會，為委員會的成立進行法案的起草。有許多草案由不同的人來起草，造成民間社會、政黨、和政府的緊張關係。司法部的原始草案原本要讓委員會在司法管轄權之下，然而社會上許多反對的聲音，讓這個草案被撤回。國際社會同時也強烈關注這個過程。許多聯合國的條約機構，也表達他們的期待，期望能依照巴黎原則建立一個獨立的國家人權委員會。行政機關所提的草案撤回後，當時國民大會的執政黨成員，也出自己版本的草案。他們花了三年的時間，直到 2001 年 11 月，韓國國家人權委員會法案（NHRCK Act）僅以些微的票數驚險過關。當時相對保守的反對黨反對這項法案，少數的執政黨成員，也反對此項法案的制定，

這也是韓國史上第一次非政府組織在法案審查的過程中，扮演關鍵、重要的角色，最後在 11 月 25 日，韓國國家人權委員會開始接受民眾的請願書。

在傳統法令上，非政府組織是沒有法定地位的，因此他們的身分對相關利害關係人來說有些尷尬。但是在新的普遍性原則下，他們的行為是可以被接受的。在參與式民主的原則下，公民社會本需要採取許多行動來面對行政、立法和司法機關，韓國許多非政府組織所從事的活動，都值得更深入去分析研究。主要有三種團體，婦女團體、環保團體與身心障礙人士在這方面有顯著的成就，1990 年代左右，這些非政府組織的領導者，也曾加入政府組織擔任決策者。他們將議題帶入政府議程設定中，並挖苦稱自己為「下一個政府官員」(Next Government Officers)、並以「接近政府的組織」(Near Governmental Organization) 來稱呼他們的團體，然而，保守派則是批評這些非政府組織為「左派政府的紅衛兵」(Red Guards of the left-wing government)。

韓國國家人權委員會的誕生，對韓國人民及這些非政府組織來說，是一個明顯的勝利，對前一年 (2000 年) 才獲得諾貝爾和平獎的總統金大中來說，也是極為榮耀的成就。然而，對當時反對黨來說，國家人權委員會的成立，猶如金大中意識型態象徵性的辯護。這是韓國國家人權委員會的原罪。對保守派來說，國家人權委員會的行動，和金大中的意識型態是同一邊。其中一個例子是處理北韓人權的態度。金大中的「陽光政策」(Sunshine Policy) 被保守派李明博政府 (2008 年) 所否定，因此國家人權委員會被要求要參與許多針對北韓政府的活動。

參、南韓目前的人權概況

儘管有些議題仍被國際社會所批評，³南韓致力於公民與政治權利的提升仍有廣泛的共識。民眾對警察和檢察當局改革的抗議，已導致具體制度上的改變，舉例來說，監督機制在調查和法律執行的過程中被強化，許多臨時拘留所的設施和軍營也必須接受固定的監督。因此，像是酷刑等國家權利濫用的事件，在近幾年都已減少。此外，過去 20 年來國際上也見證了南韓經濟起飛，南韓也在 1996 年加入 OECD (經濟合作發展組織)，且成功地克服 1997 年亞洲金風暴的危機，維持平均成長率。

相對於南韓在公民與政治上權利的突破，南韓在社會和經濟上的權利仍顯不足，在所有 OECD 國家中，南韓的社會福利預算是最低的，國家人權委員會提出許多政策，建議國家須提高社會福利預算。

同樣地，平等對待的概念成為現代韓國社會中最被可望的價值。韓國社會中，爭取「平等」，「反歧視」的議題，也因此引起大眾關注。南韓也似乎正進行

³ 南韓過去有關人權議題被批評的地方，在於其保留死刑以及國家安全法 (National Security Law)，以及反對良心者的抵抗 (conscientious objection)，然而這些在 1998 年都尚未實際執行。

一場為了平等戰爭的競選活動。在這樣的背景下，法律上禁止歧視行為，以及不平等對待的情況也被擴大。國家人權委員會法列舉了 19 項被禁止的歧視行為。這些項目有傳統的種族、性別、社會地位，也包含了年齡、個人病史以及個人性向。⁴

當韓國社會快速地轉變，韓國人民對於平等概念的感受，也不斷在轉變。總之，對平等的爭辯在未來幾十年中仍會不斷的爭辯，直到沒有韓國人可以免除徵兵制度。

肆、南韓國家人權委員會的架構與運作機制

韓國國家人權委員會具有對社會上各種人權侵犯與歧視的管轄權。一個國家其民主化的歷史較短，仍缺乏許多保障人權的機制，韓國國家人權委員會包含範圍較廣的系統是較被喜愛的。而且，也會較有效的來設定一致的人權標準。⁵

國家人權委員會創始於令人羨慕的人力和寬裕的預算。在國家人權委員會建立的一年後，已有超過 200 名正職員工，及三個地方辦公室。國家人權委員會由 11 位委員組成，其中包含 1 位委員長，3 位常務委員及 7 位非常務委員。總統、國民大會及最高法院對國家人權委員會組成的人事案，具有合法分配的權力。委員的組成必須合法多元，且至少須有 4 名女性成員。國民大會中的反對黨，亦可選擇 1 位常務委員及非常務委員，由總統任命委員長，以及 1 位常務委員、2 位非常務委員。委員會成員的任命無需經由正式聽證會。⁶

人權委員會成立之初，所有成員從不同的地方招募而來。其中 70% 是公務人員，剩下 30% 則是從各個社會部門，例如非政府組織、研究機構、學術機構所招募。所招募的成員中，公務人員過去接受之訓練，是服從政府而不是提出問題來對抗政府。他們缺乏在人權領域上的專業與經驗。後者則是被訓練經常提出問題，但是他們僅有較少的經驗或興趣去解決問題。若兩個團體間能達到和諧，國家人權委員會便可成為一個理想的機構。典型來說，國家人權委員會的地位，屬於公民社會與政府之間。委員長領導力最關鍵的部分，在於如何在這些團體中，保持維妙的平衡，而不會影響委員會的基本精神。

國家人權委員會的決定僅有諮詢性的作用，並未具有約束力。對於國家人權委員會建議，國家機關有裁量權遵守或是忽視其決定，意即國家人權委員會是處

⁴ Article 2(4) of the National Human Rights Commission Act, Law No. 6481, May 24, 2001, as amended as Law No. 8435, May 17, 2007 provides that the term discriminatory act violating equal rights means committing any of the following without any reasonable ground, on the basis of sex, religion, disability, age, social status, region of origin (referring to place of birth, base area of registration, principal area of residence before reaching maturity, etc.), national origin, ethnicity, physical condition including physical features, marital status such as married, single,

⁵ Nohyun Kwak, The Dilemma and Visions of an All-in One NI: NHRC-Korea's experience, 1-2, Conference Paper, National Human Rights Commission of Korea, (Dec. 4, 2006)

⁶ 本文至此，委員長是否要參與任命聽證案的法律修正案，目前仍懸而未決。

於一種道德上的權威，而非法定的權威。只有當國家從是侵害人權的作為時，國家人權委員會才可進行審查。但是個人從事歧視行為時，國家人權委員會仍可介入調查。

國家人權委員會屬於半國際性主體，它有義務將國際上的規範，帶入國內司法體系。如何建立起國際上的標準和國內的無知與反對的橋梁，是一項艱鉅的工作，國家人權委員會往往很容易陷入這種緊張的關係。這種的緊張關係，是來自於聯合國下的國際標準，和南韓國的國家利益和民眾情感。

國家人權委員會亦被授權對於懸而未決的案子，給予法院（包含憲法法庭）一些意見。韓國保守的司法制度並不習慣於這種新的、性質不同的系統，因此，國家人權委員會也必須克服法院所帶來的敵意。

伍、國家人權委員會的繁榮（2001-2007 年）

近年來許多研究皆顯示，南韓的國家人權委員會在保障與提升人權的行動上，有卓越的表現，⁷其主要的一些成就也被突顯出來。

首先，國家人權委員會的設置，能夠把人權保障機制的優點與功效呈現出來。「控告取代請願」成為一個對抗不人道的高貴標語。公家機關回應人民的請願，在韓國並非新鮮事。但是透過正式的控告挑戰政府的行動在過去屬於司法的領域。國家人權委員會設立之初，每年約有超過 6,000 件正式控訴，並以每年 20% 的比例增加。這些抱怨來自於政府機關的各部門，國家人權委員會都能快速有效地回覆。舉例來說，它藉由一個專責小組團隊，改善了囚犯和被拘留者被拘留時的權利，警方和軍方也是國家人權委員會的受惠對象。南韓社會上也有很高的比例（超過 85%）贊成國家人權委員會的設置。

第二，國家人權委員會已提出超過 170 項有關立法與政府的政策建議。舉例來說，國家人權委員會反對部署部隊到伊拉克，阻止全面性的反恐立法。為了減少性別歧視，國家人權委員會向憲法法院提出建議，傳統韓國家庭戶主制的概念是違憲的。這些政策建議被相關研究文獻所支持。其他主要政策建議包含了某些爭議性的議題，像是不斷被國際社會所批評的廢除死刑制度（2004 年），以及國家安全法修正案（2004.8.12）。2006 年國家人權委員會提出改善人權的行動計畫（2006-2008），為所有國家的行動計畫，建立一個基礎的指導方針（國家行動計畫在 2007 年由司法部完成）。在國家行動計畫下制訂了兩個主要的法案：人權教育法（The Human Rights Education Act）以及反歧視法（Overall Anti-Discrimination Act）。然而國家人權委員會的努力，常常被相關的政府機關的遊說所阻擋。

⁷ Bum Suk Baek, "Human Rights As Medium: National Human Rights Institutions(NHRIs) and Regional Human Rights Institutions (RHRIS) in Asian Human Rights Context," a doctoral dissertation, Cornell University Law School, (2010)

第三，國家人權委員會不斷喚醒國內對人權意識的關注，其選擇大學以前的學校作為標的。建議小學不應寫日記，也不斷地建議相關學校禁止體罰的行為，以及放寬對國高中服裝之限制。國家人權委員會也強烈要求各地方政府，應為學生們的人權制訂相關法令。⁸政府大膽地建立一個全國教育資訊系統（NEIS, 2003.5.12），將學生的相關資訊集結，被國家人權委員會認為，此種作為侵犯隱私而反對。國家人權委員會也力促政府，廢止對聯合國兒童權利協定第 21 條的保留。⁹

就像一般新的制度出現，國家人權委員會往往會走向不妥協的情緒和努力去證明他自己。其積極的行動在社會上歡迎與不滿的聲音都有。簡而言之，無論是盛名或是惡名，在二十一世紀的第一個十年，國家人權委員會已在韓國社會建立起他的地位。

陸、南韓國家人權委員會的蒙羞(2008-2011)

一、重建計畫

2007 年由韓國企業前任 CEO、前首爾市市長李明博贏得總統選舉。國家人權委員會身為一個中立且獨立機關，對於行政權的移轉並不期待會有很大的改變。然而，新政府的行為背離了人民的計畫與期待。

2008 年初政府改革團隊宣布要對政府組織進行改造。根據該計畫的內容，南韓國家人權委員會將和其他委員會合併，並且隸屬於總統管轄權下。很明顯這樣的行動違反了巴黎原則，否定了委員會獨立性的本質。委員會強烈地反對，並發動一場保衛戰爭。許多市民和反對黨和委員會站在同一立場，國際社會也注意到這個警訊，讓聯合國人權事務高級專員辦公室（OHCHR）和國家人權保障機關國際協調委員會（ICC）提出官方申明，並且來信致政府改革團隊及外交部。在部份的國際壓力以及政治妥協下，該項計畫被撤回，國家人權委員會的地位也因此保留下來。但總統府和委員會之間的氣氛卻因此降到冰點，委員會被過度地忽視，在新總統上任之前，委員會也不再像以往，被徵詢是否前往做簡報或概述，其中立的地位也不復以往，最後危機的事件便發生了。

二、燭光遊行（Candlelight Rallies）的夢靨及其餘波

新總統上任後，渡過艱難的三個月，從 2008 年 5 月初，示威群眾聚集在首都，每一晚手裡拿著燭光群聚在市政府前，示威遊行著每晚一起度過午夜 12 點。表面上，他們似乎反對總統對美國牛肉進口的聲明：「從現在起，品質最好的美

⁸ 目前已有兩個地方政府通過有關學生人權法案，另外兩個仍在進行中。

⁹ Ahn Kyong Whan, "the Role of the National Human Rights Commission of Korea in Promoting Human Rights Education- Practical Insights" 299-306 in Global Standards-Local Action- 15 years Neuer Wissenschaftlicher Verlag, Wien (2009)

國牛肉將會以最低的價格供應」，美國牛肉議題似乎是個議題點，但其他像是總統任用親信，或是內閣成員的操守問題，也跟這些議題混在一起。民眾高度期待變成了失望，首爾的夜晚對外國觀光客來說是獨特的景象。

對一個以絕對優勢超過 500 萬票勝選的總統來說，這是相當困窘之事。燭光遊行的抗爭是平和的，雖然警方認定某些非政府組織是共謀者，公平來說，這些群眾的聚集都是自發的，沒有任何組織者。手機是主要的聯絡工具。對大部分參與者來說，包含小學、中學學生，這個示威活動比較像是一個文化上的展現而非政治抗議。早期警方似乎是依法遵守「被動且防衛」的執行原則。然而在幾個有限的事件下，當群眾失去控制時，警方也會攻擊示威者，示威者及旁觀者皆遭受波及而受傷，少數警方也因此受傷。為反制此種情況，抗議者也會以聳動的標語抗議。某些保守媒體因此成為示威者的對象。當集會繼續存在，國際上的非政府組織，便快速地表達其聲明、譴責警方，並要求政府保證言論自由及和平集會。

137 份示威者的請願書堆滿了國家人權委員會，宣稱警方侵害人群，在同年 10 月底徹底的調查後，國家人權委員會經過聽證會和審慎思考，駁回了大部份的訴願書，裁決了部份事件。其認為在這些案件中，警方的確濫用其權力侵害示威者的權利。儘管這些委員是由總統任命，這項決定是以 10 比 1 的票數完成的。這個決定也讓媒體和民眾的意見陷入兩極的看法，主要媒體攻擊這些委員不公正、不負責任的決定，原諒了攻擊正當政府的示威者。但是他們卻沒有注意到委員會並無處理示威者攻擊警察的管轄權。一連串的對委員會報復的行動發生。連審計局也開始對國家人權委員會的帳戶審核特別注意。在國民大會會議中，執政黨成員也不斷用辱罵的字眼攻擊委員會成員及主持人。

在國內的不安全感下，南韓國家人權委員會在 2008 年採取許多行動，來慶祝國際人權宣言 60 周年。舉例來說，將國際間的領導者聚集起來，舉辦國際研討會。研討會中在眾多國家人權委員會的同心協力下，建立保障與促進移民權利指導方針，這些行動有助於韓國保障與提升移民者的權利，並為未來解決爭議性的議題打下基礎。

2009 年 3 月 30 日內閣會議中，通過一項組織改造法令，藉由裁員 21% 的比例，來對國家人權委員會進行組織改組。很明顯的此項報復行動主要來自總統辦公室的指揮。相關政府機關認為國家人權委員會的運作，已經在一個無效率的狀態下運作，管理不當且冗員過多。但從相關證據顯示，國家人權委員會之所以被認為需要改造，是因為他們想要趕走那些來自公民社會的成員。他們在國家人權委員會的工作，比擔任公職人員的工作還要不安全，最後很容易成為裁員的犧牲者（2011 年 10 月，國家人權委員會新增 20 名成員，部分被裁的人數被恢復，但這些人都不是當初被裁員者而重新任用的）。

國家人權委員會透過提出組織爭議請願書給憲法法院，認為總統侵犯了國家人權委員會依法獨立性的地位。法院經過 17 個月，在 2010 年 10 月 26 日因認為缺委員會缺乏合法機構的地位，而否決了該項請願。法院裁定國家人權委員會並

非在憲法架構下的一個特別機關，因此，其缺乏正當的代表性足以提出一項組織爭議的訴願書。

在李明博政府中，國家人權委員會必須承受其他政府機關帶來制度上的羞辱。國家人權委員會具有合法的義務，在總統和國民大會面前定期報告其主要活動。它早已建立一套只要書面要求，總統便可進行會面的傳統。然而，新任總統李明博，卻拒絕聽取國家人權委員會的意見。國家人權委員會不斷要求會面，卻一直無回應，直到被前任總統任命的主持人離開該職位。就此而言，總統似乎顯現出其對國家人權委員會的偏見與敵意。

從 2009 年 7 月起，國家人權委員會的主持人是由現任總統李明博指派，公民社會上強烈反對這位新的主持人，因為其無論在學術或實務上皆沒有相關人權經驗。從就職典禮後，組織成員也都更換，國家人權委員會呈現一種消極無生氣的氛圍。更糟的是，主持人對委員會獨立的本質，認識不多，也缺乏信心。他甚至在國民議會中回答，委員會是行政部門的一部分。

2010 年底兩位常務委員和一位非常務委員，辭去職位以表示對主持人獨斷的領導方式抗議，並認為其行為已違反法律和習慣。兩位常務委員中的其中一位是由國民大會執政黨的票所選出來，這讓社會大眾分化成支持者及反對者，媒體對這件事情的報導也相當兩極。在一次意外事件中，一位高中女生在國家人權委員會所舉辦的徵文比賽中得獎，但這個女學生卻不接受該獎項，且譴責國家人權委員會和其主持人，她公開聲明譴責主持人在委員會中行為失當，2011 年 8 月，一項重大事件也震怒了整個韓國社會，一項大規模的行動，反對國家人權委員會成員不適任。此事件的爆發緣由，是國家人權委員會主持人在其任期屆滿前，解雇一位已簽訂合約的員工，他的同事及工會成立組織，不斷地在各大媒體中，發表文章批評這樣的作為，這些人大部分都曾加入國家人權委員會，其中 11 位職員，被認為身為公務人員卻從事這些失當的行為，因此被懲處減薪。

在 2010 年年度報告中，國家人權委員會提出的低紀錄會議數目，和公民社會的溝通互動令人較不滿意，但整體對國家人權委員會主持人的評量還言之過早，但是國家人權委員會確實歷經大麻煩。主持人也許得到總統及保守勢力的信心，但對外來說，某些程度上已失去民眾及社會的支持。委員會也很少提出政策建議，常常在重大人權議題中保持沉默。以上種種原因，都顯示民眾對委員會的失望與落空。¹⁰

國家人權委員會必須要在兩個地方更加關注，分別是企業和人權，以及北韓人民的人權。在 10 周年紀念日上，國家人權委員會便以上述第一項主題舉辦國際研討會（2011 年 10 月），這個研討會無關政治，也無關種種之前對委員會的傷害。為了處理北韓民眾的人權議題，委員會也加強人員的訓練。

¹⁰The Korea Times, Nov.23, 2011. p.2 "Rights Commission urged to be critical of government."

柒、教訓與建議

就本質與定義來說，人權是超越政治、國界，甚至意識型態的普世價值。然而，在現實中人權很容易和政治糾結在一起，韓國人權委員會就是一個例子，可以看出人民的看法和人權的保護機制，如何隨著政治環境的改變而變動。

傳統人權對話在韓國被視為是屬於政治上進部立場壟斷。保守勢力很少提出有關人權的價值與想法，一旦保守勢力提出對人權議題的看法，其視野通常較狹隘，且具負面的、逃避的、防衛性較強的。保守勢力通常會用的說法，像是「人權通常會抑制經濟成長」，或是「多數人的人權，和少數人的人權一樣重要」，他們往往無法對人權議題有正向積極的認同，保守勢力對人權正向的說法是「我們關心北韓人民的人權」。然而上述這項說法，早已在對抗北韓政治體制中，如同競選活動中不斷被提出來。諷刺的是，那些宣稱關心北韓人權的人，並不關心那些被安置在南韓的北韓流亡者。

在最簡單的層級來說，依據巴黎原則視國家人權委員會作為一個獨立的機關，必須滿足三個基本條件。第一，行政機關首長必須尊重且包容，國家人權委員會身為獨立機關的作為。第二，國家人權委員會成員，要將自己視為人權捍衛者並引以自豪，並且要積極地對抗國家的壓制與介入。第三、最嚴格的是，人民和整體公民社會，也必須捍衛國家人權委員會，以避免其遭受政府機關不當的控制。

以南韓國家人權委員會的例子來說，上述三項不可或缺的要件中，前兩項在前7年已達成，但在後3年中這3項並未完全達成，我們必須省思，未來韓國民眾需要什麼樣的國家人權委員會？這是一個開放式的問題，或許10年的時間也不夠。

The National Human Rights Commission Of Korea: A Decade of Glories and Despair (2001-2011)

Kyong-Whan Ahn

(Former Chairperson, National Human Rights Commission of Korea &
Professor, School of Law, Seoul National University, South Korea)

I. Introduction

The year of 1987 was a watershed in the modern history of Korea, as it provided a monumental foundation for her later journey toward the political democratization. In late June of that year, the nationwide civil revolts finally ended with a monumental victory of the people, who, among others, had fought for the direct election of their President. For the Koreans, direct election of the President had been a symbolic task to retrieve the deprived democracy by the military dictatorship. People's victory was documented with the constitutional amendments, in a manner accommodating both the year-old dream and the newly emerging Zeitgeist. Under the new Constitution, the President is elected by the direct vote of the people, and serves for a single term of five years. The new Constitution also caused the birth of a new judiciary institution, the Constitutional Court. Within a short period, this new Court emerged as a star institution of the nation, and a valuable reference for other countries as well.

The victory of the people did not stop with the changes of the documents and the implementation of the new institutions. The true and real victory was the fundamental changes in their mindsets: People have come to realize their sovereignty and become ready to claim it in their daily lives. Now, the concept of popular sovereignty has been materialized, and the spirit of the participatory democracy has widely spread. Such awakening has permeated into all areas of their civil, political, social, economic, and cultural life. In all cross-sections of the society, old practices have been reviewed with the new standards. Catch phrases such as 'consumers' rights' and 'demand-driven policies' have become a daily terminology.¹¹ The explosive growth of NGOs in the 1990s provided a new driving force for the democratic transformation of Korean society.¹²

¹¹ Chang Seung Wha & Lee Chang Hee eds. *Procedural Justice and Rule of Law*, Pakyoungsa Publishing (Seoul, 2003).

¹² Cho Hee-Yeon, *The Role of NGOs in the Democratic Transition*, 3 ASIA Quarterly 124-144; Eun Jong Park, ed. *NGOs and the Rule of Law*, Pakyoungsa Publishing (Seoul, 2006); Cha Byung Jik,

In November, 2001, another government institution was born in Korea with the blessings and expectations of the people and the civil society. The establishment of the National Human Rights Commission of Korea (NHRCK hereinafter) largely owes to the dedicated efforts of NGOs.

This paper aims to overview the tracks and records that NHRCK had trod for its first ten years in life. In Part 2, the backgrounds how NHRCK was born are observed. Part 3 will brief human rights conditions in Korea as understood in the international society. Part 4 will sketch the structure and working mechanism of NHRCK. Part 5 will highlight some of the major activities of NHRCK for its first seven years (2001-2007). In Part 6 will focus the changes observed after the new President was inaugurated. (2008- Present) Part 7 will conclude with the suggestions for improvements in order for NHRCK, to grow into a well- established institution as an effective government agency responsible for the protection and promotion of human rights in Korea

II. The Birth of NHRCK

The Republic of Korea was born in 1948 by the U.N. initiative. Ironically, however, it was not until 1991 that she finally became a U.N. member state. In that year, U.N. accepted both South Korea (ROK) and North Korea (DPRK) simultaneously as its member states. Regardless of their status as sovereign states in the international arena, however, domestic laws of both Koreas do not grant full recognition each other. The Constitution of South Korea consistently maintains that she is the sole legitimate state on the entire Korean peninsula and her territory includes the northern part occupied by the north as well.

In March, 1990, the National Assembly of South Korea, by unanimous votes of the whole members, passed the resolutions ratifying the two major U.N. Covenants (International Covenant on the Cultural, Social and Economic Rights, CESCR) and (International Covenant on the Civil & Political Rights ICCPR). They became effective as of July, 1990. (The Protocol to ICCPR was also ratified with some reservations.) Ratification of the two major Covenants was a preparatory step for Korea to become a member of the U.N. The entry to U.N. afforded Korean society a momentum to actively engage in international discourses on human rights, and an opportunity to learn of the international currents and trends.

The 1993 Summer of Vienna was filled with passion and zeal produced by over

"NGOs and Law", Ewha Womans University Press (Seoul, 2002); Lee Chan Jin, "Remedy through Judicial Process and NGOs: Challenges and Alternatives", EJ Park ed. pp.85-114

7,000 delegates gathered from 171 countries covering all the corners of the globe. Included were some 30 South Koreans composed of NGO workers and a few lawyers. They were much enlightened with the fresh ideas of the human rights protection on the global level. Up to this moment, their knowledge, interests and activities in human rights hardly crossed over the national border. In particular, they were struck by the new terminology, 'NHRI', which was presented as an effective institution for the future realization of human rights in domestic system of justice. On return, these enlightened few initiated a new experiment. Mobilizing around, they organized the National NGO Coalition for the Establishment of an Independent National Human Rights Commission.

The 1993 Vienna Declaration of Human Rights and Action Plan for the Protection and Promotion of Human Rights were formally adopted by the General Assembly of the United Nations in December of the same year, and 'NHRI' became a core element of this document. In the mindsets of these Koreans pioneers, NHRI now has been enshrined as a symbol and hope for the future progress in the Korean human rights.

In the presidential election of 2007, they successfully put this agenda onto the catalogue of the campaign pledges of Kim Dae Jung, the winning candidate from the Opposition Party. Kim's election was a clear victory for these aspirants. However, victory in election did not guarantee the immediate birth of an NHRI. For a long period thereafter, they had to wage all- out war to keep the issue alive. They had to manifest numerous statements, conduct organized picketings, sit- in demonstrations, and even hunger strikes. The progress was slow and tedious. In the course, the NGOs coalition held a series of public hearings to formulate a draft bill for the creation of the Commission. Many proposals and drafts produced by various actors drew public attention, inviting tensions among civil society, political parties and the government. The original draft by the Ministry of Justice aimed to put the Commission under its jurisdictional control. Faced with ferocious resistance from the civil society, however, the draft had to be withdrawn. International society also paid keen attention to the progress. Many UN Treaty Bodies expressed their wishes and expectations for the birth of a fully independent NRHI in compliance with the Paris Principles. As the administration failed to propose a draft bill, the ruling party in the National Assembly took the initiative to present its own draft bill. It took almost three years until the final enactment of the NHRCK Act, in November, 2001, by a narrow margin at the National Assembly. The conservative Opposition Party officially objected to the bill, and quite a few members of the ruling party did not join either. First time in the history of Korea, NGOs played critical roles throughout the entire process in the actual enactment of a statute. Finally, on November 25, NHRCK officially opened its

doors to receive the first petition from a citizen.

NGOs had no official standing in the conventional regime of the rule of law, and their eminence was somewhat embarrassing to the existing stake-holders. However, their activities have been largely condoned, if not accepted, as a newly fostered universal rule, as epitomized in the practice of the United Nations. Under the principle of participatory democracy, the civil society has taken actions in relation to the legislature, the executive, and the judiciary. Diverse activities of the Korean NGO groups deserve in-depth analysis. At a glance, however, three groups--namely, women, environmentalists, and persons with disabilities--have reaped remarkable achievements. Some of the NGO leaders of 1990s among these groups turned into policy makers in the government. They brought their agenda to the government, gaining a sarcastic nickname, "Next Government Officers." for themselves and "Near Governmental Organization." for their home institutions. Frustrated conservative wings criticized NGOs with derogative terms such as "red guards of the left-wing government."

The birth of NHRCK was a clear victory for the citizens and the NGO activists. It was a monumental achievement of President Kim Dae Jung as well, who had been awarded the Nobel Peace Prize in the previous year (2000). However, in minds of Kim's political opponents, the Commission remained as a symbol institution advocating for Kim's political ideology. This was the original sin of the Commission. To these conservative bents, Commission's activities largely appeared to side with Kim's political ideology and orientation. A clear example is found in the attitude dealing with the human right of North Korea. As Kim's "Sunshine Policy" has been virtually repudiated by the conservative Lee Administration (2008-), the Commission was asked to actively engage in the activities directly targeted on the North Korean government.

III. Overview of the Human Rights Situation of Korea

There seems to be a wide consensus that Korea's efforts for the promotion of civil and political rights deserve a fair credit, although a few issues continue to receive international criticism.¹³ Public outcry for reformation of the police and prosecution has led to some concrete measures with institutional changes. For instance, surveillance mechanisms have been reinforced in the investigation and law

¹³ Korea's human rights records are often discredited due to its retention of death penalty and the National Security Law, and the denial of conscientious objection. However, no actual execution has been done since 1998.

enforcement processes. A number of detention facilities and military camps are now subject to routine scrutiny. As a consequence, incidents of blatant abuse of state power such as torture have been remarkably reduced in recent years. In addition, the world witnessed Korea's economic uprising over the past two decades. Eventually Korea joined the OECD in 1996, and successfully overcame the Asian financial crisis of 1997 with maintaining the average growth rate.

Contrasted with her remarkable improvements in the civil and political rights, Korea's records in social and economic rights remain poor. Among OECD countries Korea stands at the lowest level in her welfare budgets. The National Human Rights Commission has made a number of policy recommendations that would require substantial increase in welfare budgets. The ideological and political debates continue to determine to what extent these social rights should be realized and maintained.

Equal treatment has emerged as the most-craved value in contemporary Korea. On all fronts of the Korean society, battles for equality are underway. As the blatant usurpations of state power have decreased, 'anti-discrimination' has emerged as a new issue of public concern. Korea appears to be undergoing a national campaign for the equality war. Under such backdrop, legal grounds prohibiting discriminatory practice and unequal treatment have been widely broadened. The National Human Rights Commission Act (2001) enumerates 19 grounds on which discriminatory treatment is prohibited. Along with the conventional categories such as race, gender, and social status, included therein are age, medical history and even 'sexual orientation'.¹⁴

As the Korean society is passing through a rapid transformation, cultural elements in the Korean people's perception of equality are also changing. All in all, battles for the equality will be a continuing agenda for decades to come, where no Korean is exempted from conscription.

IV. The Structure and Working Mechanism of NHRCK

The NHRCK was founded with the broadest jurisdiction covering over all types of human rights violations and discrimination. In a country where democracy has short history and therefore, diverse mechanism for protecting human rights are lacking, Korean type all-inclusive system NHRI may be preferable. Also it will be

¹⁴ Article 2(4) of the National Human Rights Commission Act, Law No. 6481, May 24, 2001, as amended as Law No. 8435, May 17, 2007 provides that the term discriminatory act violating equal rights means committing any of the following without any reasonable ground, on the basis of sex, religion, disability, age, social status, region of origin (referring to place of birth, base area of registration, principal area of residence before reaching maturity, etc.), national origin, ethnicity, physical condition including physical features, marital status such as married, single,

more effective in setting up the uniform standards of human rights.¹⁵

NHRCK started with an enviable size and comfortable budget. Within a year after the birth, the Commission was staffed with over 200 full-time employees and three regional offices. The Commission consists of 11 Commissioners, - Chairperson, 3 Standing Commissioners, and 7 non Standing Commissioners. All three branches of the nation (The President, the National Assembly, and the Supreme Court) share the legal power to compose the Commission. Diversity is a legal requirement, and at least four members should be female. Opposition party of the National Assembly can elect one standing and one non-standing commissioner. The President appoints the chairperson, one standing commissioner, and two non-standing commissioners. No formal appointment hearing is required for any of the Commission members.¹⁶

At the inception of the Commission, staffs were recruited from diverse sources. Career civil servants made over seventy percent, but the rest were invited from various sectors of society, such as NGOs, research institutes, and the academic institutions. The former group had been trained to comply with, not raise question against the government. They had little expertise or experience in the field of human rights, which is basically built on the discourses of raising question based on the perspective of the minority. The latter group had been trained to 'raise' question, but they had little experience (or even interest) in 'resolving' the question. If harmony could be achieved and maintained between these groups, the Commission could grow into an ideal institution. Typically NHRI's position stays in between the civil society and the government. A critical part of Chairperson's leadership is how to maintain a delicate balance among these groups, without impairing vitality of the Commission.

A decision of the Commission has only advisory effect, without any binding force. To the Commission's recommendation for remedy, a state agency has full discretion either to comply, or to simply neglect. All in all, the Commission lives on its moral authority rather than legal power. Typically, only human rights violations by the state actions are reviewed by the Commission. But, discrimination by the private parties is also subject to the investigation of the Committee.

The Commission is a semi-international body in that it is obligated to implement the international norms into the domestic system of justice. Bridging the gaps between the international standards and the domestic ignorance and resistance is a hard job, and oftentimes the Commission falls into an easy prey of the unscrupulous patriotism. It is subject to extra tension: between the international standards under the UN.

¹⁵ Nohyun Kwak, The Dilemma and Visions of an All-in One NI: NHRC-Korea's experience, 1-2, Conference Paper, National Human Rights Commission of Korea, (Dec. 4, 2006)

¹⁶ As of this writing, an amendment to the Law on the Appointment Hearings is now pending that would require the Chairperson stand for the hearing.

schemes and Korea's national interest and public sentiment.

Also the Commission is empowered to submit opinion to the courts (including the Constitutional Court) on the pending cases. The conservative Korean judiciary is not been accustomed to such new, alien system, and therefore, the Commission has to overcome the aloofness (and subtle hostility) of the court.

V. Glories of NHRCK (2001- 2007)

A recent study concluded that for the period, Korea was quoted as a good example of how a NHRI can be a prominent actor for the protection and promotion of human rights.¹⁷

Some of its major achievements of the Commission may be highlighted.

First and foremost, the Commission has demonstrated the merits and efficiency of a new mechanism of human rights protection. "Complaints instead of pleas" has become a noble catch phrase in the battle against inhumanity. Public institutions that respond to the citizens' 'pleas' in non-judiciary manner were nothing new to the Koreans. But challenging the validity of state action by filing a formal complaint had belonged to the exclusive domain of the judiciary. For the period, over 6,000 formal complaints were filed yearly with the Commission, with steady increase by around 20 percent. They came from all the sections of state function to which the Commission responded with speed and efficiency. For example, it has dramatically improved the rights of the prisoners and detainees in other detention and protective facilities by operating a special task force team to handle in-person complaints on-site. Police and military also became the prime benefactors of the Commission activities. The extremely high level of approval rates (over 85 percent) signifies the high profile that Commission enjoyed in the Korean society.

Second, for the period, the Commission issued more than 170 policy recommendations in relation with the legislation and government policies. For example, the Commission opposed the deployment of military troops to the Iraqi War (2003. 3.26), and blocked the attempt to legislate an overall anti-terrorism act. To eliminate the discrimination on the ground of gender, the Commission submitted its opinion to the Constitutional Court to review the unconstitutionality of the traditional Family Registry System of Korea(戶主制). Generally, these policy recommendations were supported by the well- documented studies. Other major recommendations

¹⁷ Bum Suk Baek, "Human Rights As Medium: National Human Rights Institutions(NHRIs) and Regional Human Rights Institutions (RHRIS) in Asian Human Rights Context," a doctoral dissertation, Cornell University Law School, (2010)

covered the controversial issues such as the abolition of death penalty (2004), amendment to the National Security Act (2004.8.12) as had been repeatedly criticized by international society. In 2006, NHRCK presented its Action Plan to Promote Human Rights (2006-2008) to provide the founding guidelines for the overall National Action Plan. (NAP was finalized by the Ministry of Justice in 2007.) Under the Plan, two major legislations were to be enacted: The Human Rights Education Act and the Overall Anti-Discrimination Act. However, Commission's hard efforts were blocked by the lobby of the concerned government agencies.

Third, as a long term venture to raise the public awareness of the human rights, the Commission chose the pre-college schools as a target institution. It recommended against the diary writing assignments at the elementary school. The Commission continuously recommended the total prohibition of corporal punishment, and liberalization of strict dress codes in junior and senior high schools. It urged to the provincial governments to legislate ordinances for the students human rights. Ordinance.¹⁸ Government's bold ambition to build up the National Education Information System (NEIS, 2003. 5.12) where detailed information about his students were to be collected was objected by the Commission for their possible invasion of privacy. The Commission also urged the government to abolish the Reservation on Article 21 of the U.N. Convention on the Rights of Children. (CRC).¹⁹

As is often the case for a newly born institution, the Commission was driven by uncompromising passion and strived to prove itself. Unusual activism of the Commission was both welcome and frowned by the general public. In sum, both by fame and notoriety, the Commission has established her position in the Korean society for the first decade of the twenty first century.

VI. Disgraces of NHRCK (2008- 2011)

1. Restructuring Plan

The year 2007 in Korea concluded with the election of Lee Myung Bak, a former business COE and the mayor of the Seoul Special City as the President of the nation. The Commission, a neutral and independent institution, neither hoped nor expected any drastic change by the peaceful transfer of the administration. The action taken by the new administration, however, betrayed all the projections and expectations.

¹⁸ As of this writing, two local provinces passed the Students' Human Rights Ordinance and two are taking process.

¹⁹ Ahn Kyong Whan, "the Role of the National Human Rights Commission of Korea in Promoting Human Rights Education- Practical Insights" 299-306 in Global Standards-Local Action- 15 years Neuer Wissenschaftlicher Verlag, Wien (2009)

In early, 2008, the Transition Team for the President- elect announced its restructuring plan for the government organizations. According to the Plan, NHRC would be merged with a few other commissions and put under the direct control of the President. Categorically that would mean a clear violation of the Paris Principle, denying the independent nature of the Commission. Opposing vehemently, the Commission waged a full- scaled defensive war. Civil society and the opposition parties sided with the Commission. International society was also alert. OHCHR and ICC issued official statements and addressed letters to the Chairperson of the Team and the Ministry of Foreign Affairs. Partly owing to such pressure and largely by a political compromise, the plan was withdrawn and status quo of the Commission was preserved. But the cold and uneasy atmosphere lingered between the president's office and the Commission. The Commission was unduly neglected. It was neither asked nor allowed to brief before the new President, as had been customary in the past. Uncomfortable neutrality did not last long. Suddenly, a critical event broke out.

2. Nightmare of The Candlelight Rallies and The Aftermath

Hardly had three month passed after the new President had been in his office, massive street demonstrations plagued the capital city. Beginning from early May, 2008, almost every night, a huge crowd gathered downtown near the City Hall, with the makeshift candlelights in their hands. The rallies continued well past midnights. On the surface, they seemed to protest against the President's proud announcement that "From now on, the best quality American beef will be available at the lowest prices." Import of American beef was an issue on point. But other causes such as cronyism and low morality of the cabinet members were mingled. A high expectation suddenly turned into a sour disappointment. Nighttime down town Seoul was an unusual treat to the foreign tourists.

Was it more than an embarrassment to the incoming President who earned the position by an unprecedented landslide victory with the margin of five million votes. The rallies were conducted generally in peaceful manners. Although police haphazardly identified a few NGO groups as the conspirators, it would be fair to say that the crowds were gathered spontaneously with no identifiable overall organizers. Mobile phones were major communication tools. To most participants, including students of primary and secondary schools, the rallies meant more like a cultural show than a political protest. In early stages, police seemed to abide with the "passive and defensive" enforcement principle as required by the law and the police guidelines. However, on limited instances, when the crowd went wild and reckless, the riot police brutally attacked the demonstrators. Many demonstrators and bystanders were hurt. A few policemen were hurt as well. As a counter response, the slogans of demonstrators

became stronger. "Down with the 'MB'(President's Lee's initials) Government!" "Occupy The Blue House!" The buildings of a few conservative presses became the targets of the protest as well. Police barricades were attacked by a few reckless rioters. As the rallies persisted, International NGOs rushed in and speedily announced their statements denouncing the police and urged the administration to guarantee the freedom and speech and peaceful assembly.

137 individual petitions were filed with the Commission by the demonstrator citizens, alleging that their human rights were infringed by the police force. In late October, after exhaustive investigation, hearings and deliberations, the Commission dismissed the majority of the petitions, yet, ruled on a few cases. The Commission ruled that in these cases, police did abuse its power to infringe the rights of the petitioners. The decision was made by 10 to 1 votes. Even those commissioners who were appointed by the President ruled against the police. Sharply divided press and public sentiment precipitated the polarization of the national politics. Major press attacked the Commission for its 'unbalanced' and 'irresponsible' decision by condoning or even agitating violence against the legitimate government. They paid no attention to the underlying legal principle that the Commission lacks jurisdiction to deal with the demonstrators' violent acts against the police. (Its' mandates are limited to the petitions filed against but not for the public agencies.) A series of retaliative measures were taken against the Commission. Special audits by the Bureau of Audit were conducted on the Commission. At the meetings of the National Assembly, members of the ruling party bombarded abusive words against the Commission and its Chairperson.

In midst of domestic insecurity, NHRCK reaped the year of 2008. Diverse and extensive activities were done throughout the entire year, in celebration of the 60th anniversary of the Universal Declaration of Human Rights. For example, to solidify its international leadership. It hosted an international Conference on "Human Rights and Multicultural Society-Dignity and Justice for All." The Conference produced the Seoul Guidelines on Cooperation among NHRIs for the Promotion and Protection of Migrants' Rights to lay a ground work for practical actions of the states and NHRIs on the thorny issue.

On March 30, 2009 a Presidential Ordinance passed the Cabinet Meeting, to reorganize the structure of the Commission, by downsizing the Commission by 21 percent. Is it was clearly a retaliative measure orchestrated by the President Office. The rationale proffered by the concerned government offices was that the Commission had functioned in extremely 'ineffective manner', and was grossly mismanaged and overstaffed. However, by many circumstantial evidences it is

suspected that the restructuring was focused to deport the staffs who had been recruited from the civil society. Their job status within Commission was less secure than the career civil service officers, and consequently they fell easy victim of the downsizing. (In October, 2011, the Commission was added some 20 new staffs and a partial restoration of the numerical loss was restored, but none of those who were affected by the downsizing was rehired.)

The Commission immediately challenged the validity of the Ordinance by filing an Organ Dispute Petition to the Constitutional Court, as provided by the Constitution, based on the rational that the President, in formulating the ordinance, infringed the legal powers of the Commission in a manner infringing her independency as guaranteed by the law. The Court avoided a speedy ruling, and after 17 months, On October 26, 2010, by 6 to 3 decision, dismissed the petition for lack of standing. The Court ruled that the Commission is not an organ specifically enumerated in the Constitution itself, therefore it lacks the legal standing to file an organ dispute petition. By this decision, the Court retreated from its earlier position, which granted standing to a non-enumerated public organ.

Under the Lee Administration, the Commission had to suffer institutional humiliations by other government agencies. The Commission has a legal duty to regularly report of its major activities to the President and the Speaker of the National Assembly. It had been well- established tradition that the President meet the Commission on the latter's request. However, the newly elected President Lee refused to hear from the Commission. Continued requests by the Commission remained unanswered, until the Chairperson who was appointed by his predecessor left the office. As such, the President seemed to have manifested bias and hostility against the Commission.

Since July, 2009, The Commission has been headed by a Chairperson appointed by the incumbent President Lee. Civil society strongly protested the appointment of the new Chairperson who had never been exposed to the human rights experience, either in academy or on field. Since his inauguration and following changes of membership, the Commission has shown a clear tendency toward passive inactive. Worse of all, the Chairperson seemed to have little knowledge, much less confidence, in the independent nature of the Commission. He was reported to have uttered, when asked by the National Assembly, that the Commission is a part of the executive branch.

In late, 2010, two standing commissioners (full-time) and one non-standing commissioner, resigned from their offices in protest against the arbitrary managements of the chairperson, in violation of the bylaws and customs. One of the

two standing commissioners had been elected by the National Assembly with a ruling party ticket. The public statements they issued aggravated social divides between the supporters and the opponents. Sixty one "advisors" to the Commission resigned in sympathy of the leaving commissioners. Press coverage on the events was also sharply divided.

A series of public statements and picketing followed, but eventually quieted down. In an incident, the Commission and Chairperson were insulted by a female high school student who refused to accept the prize she won at the essay contest hosted by the Commission. She made an official statement denouncing chairperson's misconducts in running the Commission. In August, 2011, a devastating incident provoked the civil society. Unprecedentedly large scale of disciplinary actions were done against the 'unbecoming' staffs of the Commission. The incident broke out when the Chairperson fired a 'contract employee' before her term expired. Fellow employees and the labor union staged an organized protest- by consecutive picketing and contributing criticizing articles to the press. Most of them had joined the Commission with backgrounds. Eleven staffs were disciplined to suspension to reduction of salaries for the 'unbecoming' acts as public official. Their alleged 'unbecoming acts" were the very ones that the Commission had formally urged other state agencies to allow as they are the guaranteed under the Constitution.

In its annual report 2010, the Commission, in a diplomatic tone, subtly admitted low records of the (whole member) plenary meetings and unsatisfactory level of communication with the civil society. (p.33 The Korean version).

Overall evaluation on the records of the Commission led by the present Chairperson is premature, but it would be fair to say that at the moment the Commission is undergoing a serious trouble. The Chairperson might have gained confidence of the President and some of the conservative community. But seen outwardly, he and his Commission have substantially lost the confidence and support of the civil society and the general public. He has been repeatedly demanded to step down. Independency and political neutrality of the Commission appear to be shaky. A passive attitude seems to prevail in the daily works of the Commission. There has been a sharp decline in the approval rates. The Commission has made very few policy recommendations, and has kept silence on many important human rights issues. All these facts, taken together, indicate the Commission fails to meet the expectation as it once did.²⁰

The two priority areas that the Commission seems to put emphasis may be 'Business and Human Rights' and North Korean Human Rights. In celebration of its

²⁰ The Korea Times, Nov.23, 2011. p.2 "Rights Commission urged to be critical of government."

10th anniversary, the Commission hosted an international Conference on the former topic.(October, 2011) This topic is free of politics and harmless to the Commission. To deal with the human rights of North Korea, the Commission reinforced its staff. Recently, against the customary rule for a NHRI not to directly address to the government of other states, NHRCK issued a statement denouncing the government of North Korea. It was reported that President, in appointing the Chairperson, asked to actively engage in the human rights of North Korea.

VII. Lessons and Suggestions

By nature and definition, human rights are the universal value that transcends politics, national border, and even ideology. However, in reality, they could easily be entangled with politics. The case of NHRICK shows an example how the public perception and protection mechanism of human rights can fluctuate depending on the changes in the political environments.

Traditionally human rights discourses in Korea have been regarded as a political monopoly of the progressive bent. Conservative forces rarely professed the ideas or values of human rights. When they did, their terms were narrow, negative, defensive and evasive. The phrases typical employed by the Conservative forces are such as "human rights are counter- productive to the economic growth." or "human rights of the majority are as important as those of the minority." They tend to fail to positively identify the catalogue and contents of the human rights they profess to care for. The only positive phrase heard from the conservative may be "care for human rights in the North Korea." However, this phrase has been largely used as a political campaign against the North Korean regime itself. Ironically, those who advocate for the human rights of the people of North Korea have paid little attention to the hardened conditions of the North Korean refugees who settled down in South Korea.

At the minimum level, three prerequisites have to be met, for a NHRI to function as an independent state institution as guided by the Paris Principle. First, the chief executive has to willingly honor, or at least tolerate the independent function of a NHRI. Second, the NHRI members should maintain their own pride and devotion as human rights protectors, and be willing to resist against the state suppression and intervention. Third, and most critically, people and civil society have to guard the NHRI against unfair executive control.

In case of NHRCK, at least first two of the three prerequisites were met for the first seven years, but none of the three was met for the last three years. What kind of NHRI do the Korean people would like to have in the future? Still it is a widely open

question. Maybe ten year is not enough.