

Workshop on the Role of National Human Rights Institutions
in the Promotion and Implementation of the Yogyakarta Principles

Yogyakarta, Indonesia

5-7 May 2009

**National Human Rights Commission of Korea (NHRCK)
Activities in relation to Sexual Orientation and Gender Identity**

I. The Emergence of LGBT Issues

LGBT issues are not yet at the forefront of the Korean social conscious. These issues first received large-scale public attention when a young female singer identified herself as transgender. Partially due to both her symbolic act and her advocacy for the legal recognition of transgender persons, South Korea now allows post-operative transgender individuals to change their official documents to reflect their gender identity. Such administrative concessions are, however, confined to transgender persons who have completed gender reassignment surgery.

A 2006 survey launched by a coalition of NGOs showed that transgender people face constant challenges in school and public life, suffer discrimination in recruitment and employment, and experience unstable social and family relationships. Due to their gender identity, many transgender people are subjected to insults (65.4%), sexual harassment (44.9%), and sexual assault (20.5%). Respectively 37.7% and 36.4% of the respondents said that they had endured or ignored such abuses because they wanted to avoid further discrimination or were unwilling to make their gender identity public.

LGBT persons remain “invisible” members of the Korean society. The public has a meager understanding of the difficulties faced by LGBT persons. Groups representing or advocating for LGBT people have also not been as strong as other human rights groups such as disability or women’s organizations in terms of number and activities. Social prejudices against LGBT persons also play big part in discouraging them to make their voices heard. As an example, when the Commission included LGBT groups on a

list of candidates for the 2008 National Human Rights Awards that it submitted to the Ministry of Administration, the Commission was inundated with phone calls in opposition to the inclusion of such groups. This incident reflects that Korea's recognition of LGBT issues is in its infancy, and the National Human Rights Commission thus has much to do in the area of LGBT rights.

II. NHRCK Work on Sexual Orientation and Gender Identity

Legal Framework – National Human Rights Commission Act (2001)

Human rights issues that relate to sexual orientation and gender identity are mainly dealt with by the *Anti-discrimination Investigation Division*. Discrimination that is subject to investigation by the Commission includes acts of favorably or unfavorably treating, excluding, or classifying a person, without just cause, in the context of employment, the supply or use of goods, services, transportation, commercial facilities, land and/or residential facilities, and in the used of educational or vocational training institutions that fit within nineteen categories of discrimination, including gender, religion, disability, age, social status and sexual orientation under Article 2 (4)¹ of the National Human Rights Commission Act.

The Act gave birth to the Commission and was the outcome of constant struggles and conflicts between civil society groups and the government. While civil society groups argued for an independent Commission, the Ministry of Justice wanted the Commission to act as its subsidiary body. Both parties wrote their own draft bills, and these drafts

¹ The term “discriminatory act violating the right to equality means any of the following acts committed without reasonable cause based on gender, religion, disability, age, social status, region of birth (including place of birth, first-registered domicile, one's legal domicile, and major residential district where a minor lives until he/she becomes an adult), national origin, ethnic origin, appearance, marital status (i.e., married, single, separated, divorced, widowed, and de facto married), race, skin color, thoughts or political opinions, family type or family status, pregnancy or birth, criminal record of which effective term of the punishment has expired, sexual orientation, academic background or medical history, etc. If a particular persons (including groups of particular persons) received favorable treatment for the purpose of remedying existing discrimination, and the favorable treatment is excluded from the scope of discriminatory acts by any other Acts, then such favorable treatment shall not be deemed a discriminatory act: (a) any act of favorably treating, excluding, differentiating, or unfavorably treating a particular person in employment (including recruitment, hiring, training, placement, promotion, wages, payment of commodities other than wages, loans, age limit, retirement, and dismissal, etc.); (b) any act of favorably treating, excluding, differentiating, or unfavorably treating a particular person in the supply or use of goods, services, transportation, commercial facilities, land, and residential facilities; (c) any act of favorably treating, excluding, differentiating, or unfavorable treating a particular person in the provision of education and training at or usage of educational facilities or vocational training institutions; and (d) an act of sexual harassment.

were combined into one as a result of negotiations and compromises. The term “sexual orientation,” which can be found in the draft from the NGO groups, survived negotiations without significant objection.

The National Human Rights Commission Act is the legal instrument that guarantees the rights and equal treatment of persons in relation to sexual orientation in an explicit and comprehensive manner. In 2007, the Commission submitted its opinions and recommendations on “Anti-discrimination Bill” to the Prime Minister to be legislated. The recommended bill outlined grounds for discrimination including sexual orientation and provided an article to remedy unreasonable discriminatory practices. Nevertheless, mounting opposition resulted in the term “sexual orientation” being removed from the anti-discrimination bill still pending in the National Assembly.

Human Rights Counseling and Complaints Handling

The Commission has operated the Human Rights Counseling Center which is staffed by approximately 25 officers, including a lawyer, eight professional counselors and one English-speaking counselor. The Center provides counseling services to the public via telephone as well as through the Internet and in-person contact. It not only provides victims of human rights violations with information on legal and institutional solutions but also helps these victims recover from suffering by working to ensure that victims receive effective remedies.

Cases received by the Human Rights Counseling Center				
Year	Complaints	Counseling	Guide/Civil Petition	Total
2008	6,309	16,301	30,043	52,653
2007	6,274	13,387	20,780	40,441
2006	4,187	10,737	19,558	34,482
2005	5,617	9,136	18,684	33,437

Classification of Complaints by Year				
Year	Total	Civil Rights Violation	Discriminatory Act	Others
2008	6,309	4,892 (77.5%)	1,380 (15.3%)	37 (0.6%)
2007	6,274	5,068 (80.7%)	1,158 (18.5%)	48 (0.8%)
2006	4,187	3,332 (79.6%)	826 (19.7%)	29 (0.7%)
2005	5,617	4,199 (74.8%)	1,081 (19.2%)	337 (6.0%)

In accordance with Article 19 (3) of the National Human Rights Commission Act, the Commission conducts investigation and remedial activities concerning discriminatory acts. Pursuant to Article 30 (1)-(2), the Commission investigates discrimination complaints filed by individuals, legal entities, groups or organizations. In addition, Article 30 (3) provides the Commission with the ability to initiate an investigation *sua sponte*, where there is substantial evidence of acts that indicate serious discrimination.

Discrimination Complaints								
Ground/Year	2002	2003	2004	2005	2006	2007	2008	Total
Total	189	358	389	1,081	824	1,159	1,380	5,380 (100%)
Gender	11	34	25	55	44	76	61	305 (5.9%)
Sexual Harassment	2	1	-	62	104	163	152	484 (8.7%)
Religion	6	5	8	11	8	12	12	62 (1.2%)
Disability	33	18	54	121	115	245	635	1,222 (19.4%)
Age	7	24	57	87	69	107	63	414 (8.1%)
Social Status	48	75	64	297	208	117	99	908 (18.3%)
Region of Origin	5	2	6	23	9	8	4	57 (1.2%)
Country of Origin	20	19	10	19	28	37	28	161 (3.0%)
Racial Origin	-	1	-	-	0	1	2	4 (0.1%)
Appearance	2	4	6	45	10	20	15	102 (1.9%)
Marital Status	2	4	7	9	22	3	5	52 (1.0%)
Pregnancy/Childbirth	-	15	4	5	9	16	14	63 (1.1%)
Family Status	1	2	4	15	8	13	10	53 (1.1%)
Ethnicity	1	-	-	1	1	4	7	14 (0.2%)
Skin Color	1	-	-	1	0	1	-	3 (0.1%)
Thoughts	4	7	-	5	2	2	3	23 (0.5%)
Criminal Record	7	3	7	23	12	17	16	85 (1.7%)
Sexual Orientation	4	2	1	5	4	3	3	22 (0.4%)
Medical History	10	16	7	21	30	31	15	130 (2.6%)
Educational Background	-	28	12	48	24	27	23	162 (3.1%)
Others	25	98	117	228	117	256	213	1,054 (20.3%)

* Figures in 2002 include complaints filed from 26 Nov. 2001 to 31 Dec. 2002.

The Commission has increased public awareness of discrimination by actively publishing important recommendations concerning discriminatory practices, persuading respondents to accept its recommendations, and monitoring whether its

recommendations have been fully implemented.

The number of the discrimination complaints that have been filed has steadily increased with the growth of public awareness regarding discrimination and the Commission. Nonetheless, the number of discrimination complaints regarding sexual orientation remains minimal, accounting for only 0.5% of the discrimination complaints received from 2002 to 2007.

Complaint Cases and Recommendations

According to Article 25 of the National Human Rights Commission Act, the Commission is entitled to provide relevant authorities with recommendations regarding improving or rectifying specific policies and practices that were found to violate human rights or would likely be found to violate human rights. The head of each entity shall respect and endeavor to implement received recommendations. Where a recommendation is not followed, the reasons for such failure must be detailed in writing. In this respect, the Commission's function of investigation and recommendation is considered a "soft power" that effects positive change in favor of human rights.

The human rights of homosexual and transgender persons in the military require special attention from the Commission. This need is particularly pronounced given the country's system of compulsory military service, where men are required to serve in the military for roughly two years. In 2006, the Commission heard a human rights violation complaint involving the sexual orientation of a member of the military. The petitioner alleged that officers responsible for the management of personal information had widely disseminated information about his homosexuality throughout the camp. In order for the petitioner to receive an early discharge, a senior officer required him to submit evidence of his homosexuality. The senior officer requested a photograph depicting the petitioner kissing another man. Merely because of his sexual orientation, the petitioner was also subjected to a psychiatric examination and tests for both HIV and syphilis. The petitioner alleged that he experienced constant sexual harassment while he was in the military. In this case, the Commission found that the petitioner's privacy had been violated. The Commission further found that the petitioner was discriminated against based on his sexual orientation. The Commission thus recommended that the Defense Minister formulate human rights guidelines regarding the treatment of homosexual members of the military and provide human rights training in order to prevent sexual harassment in military camps. The Commission surmises that similar discrimination in

the military is likely common but often remains unreported.

In 2002, sexual minority groups filed a complaint against the Chairperson of the National Youth Protection Commission. The petitioners complained that content-based criteria determining media harmful to youth included homosexuality alongside prostitution, incest, and sexual perversion. This inclusion prevented the petitioners from having free Internet access to the websites of some homosexual groups. The NHRCK found that treating media involving homosexuality as harmful and blocking access to websites simply because they deal with homosexual issues violates the constitutional right to pursue happiness along with the rights to equality and freedom of expression. The NHRCK recommended that the National Youth Protection Commission exclude homosexuality from the content-based criteria.

In 2005, a municipal government women's center prevented an activist from participating in a leadership program because the activist was associated with homosexual groups. The Commission found that the denial of admissions to the program violated the activist's equal right to education. The Commission thus recommended that the municipal governor take all necessary measures to prevent repetition of such incidents.

In 2002, a case was brought by homosexual university student groups who urged the National Korean Language Institute and private dictionary publishers to remove degrading words from the definition of "homosexuality" and to replace them with non-discriminatory terms. This case was dismissed because the respondents agreed with and accepted the petitioners' arguments during the complaint handling process.

The Commission has received a few cases involving an inmate's right to privacy and equal treatment with respect to sexual orientation. The cases were found inadmissible due to the statute limitations.²

Seminar on the Human Rights of Transgender Persons

In February 2007, the NHRCK held a seminar on the human rights of transgender persons in order to gather advice from and foster dialogue between experts and

² The Article 32(4) of the National Human Rights Commission Act provides that the Commission may reject a filed complaint if said complaint is filed after one or more years have elapsed since the facts causing the complaint happened.

transgender petitioners who filed complaints requesting that their official documents be changed to reflect their gender identity. The petitioners called for the revision of Supreme Court Administrative Guideline No.716, which only allows people who underwent sexual reassignment surgery, reached legal age and have no children to change their official documentation in order to reflect the sex with which they identify. Transgender persons, including the petitioners, recounted their difficulties and hardships. Experts discussed the documentation issue from social, legal, medical, and human rights perspectives. This seminar laid the ground for both a review of the Supreme Court guidelines and future recommendations in light of constitutional rights.

III. Existing Challenges and Emerging Responses

Like all people, LGBT individuals in South Korea must be granted respect and dignity. This can only be realized through the full recognition and social acceptance of an individual's sexual orientation. A person's gender identity must be recognized in law, administration, policies, and practices.

The National Human Rights Commission of Korea faces several challenges in the promotion and improvement of LGBT human rights. Korea has many social, cultural and traditional barriers that tend to deny transgenderism and homosexuality. The Commission plans to facilitate forums where the voices of the LGBT persons can be heard and public awareness of LGBT issues can be raised through channels including human rights training and education. The Commission also plans to diversify its activities and strategies for advancing the non-discriminatory treatment of LGBT persons, including promoting legal recognition of LGBT persons, their ability to participate in public life, their access to effective remedies and redress for human rights violations.

The NHRCK has attempted to create a world where people live with dignity. The Commission will strive harder so that each person in Korea may enjoy all their human rights.
