

THE CURRENT SITUATION AND CHALLENGES OF MEASURES FOR VICTIMS OF CRIME IN THE KOREAN CRIMINAL JUSTICE SYSTEM

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I. HISTORY AND DEVELOPMENT OF MEASURES FOR VICTIMS OF CRIME

In the Korean criminal justice system, prosecutors hold exclusive authority in investigating and indicting criminal cases. Victims of crime may report the damage done by offences or file a complaint to an investigation agency, but they have no authority to directly indict criminals, nor to initiate formal criminal procedures.¹ Furthermore, the structure of the Korean criminal procedure is such that factors from both the adversarial system of common law countries and the inquisitorial system of civil law countries are combined. However, victims of crime have not been acknowledged as direct parties in their own criminal cases. Rather, they have been treated as either a method of evidence or the object for obtaining evidence. Thus, victims of crime basically become “complainant” in the investigation phase and “witness” in the trial phase, and are otherwise totally excluded from the criminal procedures.

The first special system for protection of, and assistance to, victims of crime (hereafter, measures for victims of crime) introduced in the Korean criminal justice system is the compensation order system. This system allows victims of certain crimes, such as bodily injury, death resulting from bodily injury, crimes inflicting bodily injury and death through negligence, crimes concerning rape and infamous conduct, larceny and robbery, fraud and extortion, and embezzlement and breach of trust, to receive compensation for damages occurring from the defendant’s criminal behaviour as defined by the criminal justice procedure. This compensation order system is stipulated expressly in the text of the *Act on Special Cases concerning Expedition, etc. of Legal Proceedings*, which was enacted on 29 January 1981.

Afterwards, the newly amended *Constitution* of 29 October 1987 guarantees both the right of the victim to testify in court, in Paragraph 5 of Article 27, as a fundamental right, and also the right of the victim to aid, in Article 30, in which a person who has been personally injured by acts of crime may get aid from the State according to what the law provides thereon. In this fashion, the authority of the crime victim’s rights was laid out in the Constitution as influenced by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations on 29 November 1985. In accordance with the provision of Article 30, the *Crime Victim Aid Act* was adopted on 28 November 1987 and was implemented on 1 July 1988. Following the requirement of Paragraph 5 of Article 28, the *Criminal Procedure Act* (CPA) was also amended. The revised CPA defines the right of the victims of crime to testify in court in Article 294-2. Unfortunately, in spite of the constitutional amendment, the rights of victims of crime have not been properly respected nor protected, and in some cases have even been neglected because the criminal justice system places more emphasis on the protection and human rights of offenders.

In the 1990s, non-profit organizations started to support female victims in sexual violence and domestic violence cases. For example, the Korea Sexual Violence Relief Center was established on 13 April 1991 and drew public attention to the protection of human rights for female victims of sexual violence and domestic violence. On 25 April 1992, the Korean Association of Victimology, which initiated active academic research concerning the topic of victimology, was also founded. Consequently, the need for special measures for the victims of certain crimes related to sexual violence and domestic violence became more widely and socially acknowledged. And these needs resulted in the following legislative Acts:

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¹ On the Korean justice system, See www.moj.go.kr/HP/ENG/eng_02/eng_2040.jsp ; UNAFEI(1995), *Criminal Justice Profiles of Asia-Investigation, Prosecution, And Trial*.

THE 144th INTERNATIONAL SENIOR SEMINAR
VISITING EXPERTS' PAPERS

- *Act on Special Cases concerning the Punishment of Specific Violent Crimes* (adopted on 31 December 1990);
- *Act on the Punishment of Sexual Crimes and Protection of Victims Thereof* (adopted on 5 January 1994);
- *Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence* (adopted on 13 December 1997);
- *Act on the Prevention of Domestic Violence and Protection of Victims* (adopted on 31 December 1997);
- *Protection of Informants, etc. of Specific Crimes Act* (adopted on 31 August 1999);
- *Act on the Prevention of Juveniles from Sexual Abuse* (adopted on 3 February);
- *Act on Prevention of Sexual Traffic and Protection of Victims Thereof* (adopted on 22 March 2004);
- *Act on Punishment of Acts of Arranging Sexual Traffic* (adopted on 22 March 2004).

Although the level of protections from this legislation is not yet very thorough, these Acts, nonetheless, guarantee some level of procedural rights to certain groups of crime victims in the criminal justice process. On the other hand, there was rare assistance to victims of violent crimes such as murder and robbery, crimes related to traffic violations, and safety accidents caused by criminal acts.

In this situation, for the first time in Korea, the “Victim Support Center” was established as a civic organization for crime victim assistance in the region of Gimcheon and Gumi on 5 September 2003. The establishment of this centre was sponsored by the Gimcheon Branch of the Daegu District Public Prosecutors’ Office (*author of this article was Chief Prosecutor of the branch at that time*). The founding of this centre led to increased social interest in victims of crime. Consequently, the Ministry of Justice, the Supreme Prosecutors’ Office, and the National Police Agency, respectively, developed their own measures for victims of crime. The Committee on Judicial Reform, led by the Korean Supreme Court, also discussed assistance provided to victims in the legal system and made recommendations in a final report submitted to the President in December 2004.

More than two decades after the initial institutionalization of crime victim assistance, a basic law for victim protections, the *Crime Victim Protection Act*, was finally enacted on 23 December 2005. The *Criminal Procedure Act* was also amended on 1 June 2007, as one part of the Judicial Reform Plan, and enforced from 1 January 2008. The Revised CPA contains new provisions regarding:

- (1) presence of persons with reliable relationship (CPA §163-2, §221y③, §276);
- (2) interrogation of witness through video or other transmission (CPA §165-2);
- (3) notice to victims (CPA §259-2);
- (4) non-disclosure of victim’s statements (CPA §294-3); and
- (5) victims’ inspection and copying of litigation record (CPA §294-4).

The Revised Act also strengthens the victim’s right to make statements in court (CPA §294-2) and extends the purview of the victim’s petition for adjudication (CPA §260). As such, the status of victims of crime in the criminal procedures is strikingly enhanced under the Revised Act. Based on such a recent introduction and re-organization of provisions regarding victim support, it is not an overstatement to say that Korea is now witnessing a renaissance in providing support to victims of crime.

Table 1: History and Development of Measures for Victims of Crime

Date	Contents	Misc
29 January 1981	Compensation Order(<i>Act on Special Cases concerning Expedition, etc. of Legal Proceedings</i>)	
29 October 1987	Amendment of <i>Constitution</i> (§30 right of crime victim aid, §27 right of the victim to testify in court)	
28 November 1987	<i>Crime Victim Aid Act</i>	Enforced 1 July 1988

Date	Contents	Misc
28 November 1987	Amendment of CPA(\$297-2 right of the victim to testify in court)	
5 January 1994	<i>Act on the Punishment of Sexual Crimes and Protection of Victims Thereof.</i>	
13 December 1977	<i>Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence.</i>	
31 December 1997	<i>Act on the Prevention of Domestic Violence and Protection of Victims</i>	
5 September 2003	Establishment of the Gimcheon-Gumi Victim Support Center	
7 June 2004	Establishment of the Office Crime Victim Assistance	National Police Agency
1 September 2004	Announcement of The Comprehensive Plan to Reinforce Protection of, and Assistance to, Victims of Crime	MOJ
1 October 2004	Measures for the Protection of, and Assistance to, Victims of Crime	SPO
14 December 2005	Amendment of <i>Act on Special Cases concerning Expedition, etc. of Legal Proceedings</i> (Expansion of scope of Compensation Order; Reconciliation in Criminal Proceeding)	
23 December 2005	<i>Crime Victims Protection Act</i>	Enforced 24 March 2006
4 December 2006	Confirming The Basic Plan for Protection of, and Assistance to, Victims of Crime (2007 - 2011)	
1 June 2007	Amendment of CPA (Extending the boundaries for victim protection)	Enforced 1 January 2008
3 September 2008	Establishment of the Korean Crime Victim Supporting Association (57 branches nationwide)	
19 November 2008	The First National Meeting for the Human Rights of Korean Crime Victims.	

II. BACKGROUND TO THE DISCUSSION ON MEASURES FOR VICTIMS OF CRIME

A. Increased Sense of Insecurity about Crime

As explained so far, various procedures have been implemented for the protection of, and assistance to, victims of crime in Korea. Several factors have contributed to this recent trend of increased interest in crime victim assistance. Of these factors, a general sense of public insecurity and an increase in the public's fear of crime are the most poignant.

In 2007, the total number of reported crimes was 1,965,977, a 7.5 % increase over 2006 and 3.8 times higher than that of 1978, in which 513,165 crimes were reported. The number of reported criminal offences per 100,000 citizens was 3,987.7, which is 2.9 times higher than that of 1978,² in which 1,388.1 offences per 100,000 citizens were reported. In particular, during the last ten years, the number of criminal offences causing substantial damage to life, body, or property has steadily increased. For example:

- homicide has increased by 16.4% (966 cases → 1,124 cases);
- rape by 72.9% (7,886 cases → 13,634 cases);
- arson by 46.4% (1,157 cases → 1,694 cases); and

² Legal Research and Training Institute of Ministry of Justice. *White Paper on Crime* (2008), p.44, table -2.

- larceny by 141.9% (87,860 cases → 212,530 cases).

Only robbery has somewhat decreased (5,407 cases → 4,470 cases), but the number of robbery cases is still high. As these numbers indicate, Koreans have become aware of a significant level of insecurity in their everyday lives. Another concern of Korean society is a series of terrible disasters caused by criminal acts. For instance, a person who had suffered from a mental disorder and lost all interest in his life deliberately set a fire in the subway in the Daegu area on 18 February 2003. This fire killed 192 innocent persons and injured 147 persons.

This increase in the occurrence of crime and the frequency of large scale accidents has brought about an overall increase in the level of fear of crime throughout Korean society. Furthermore, this increase has also provided Korean society with an opportunity to share in the sorrow, pain, and agony suffered by those victims, their bereaved families and to seriously consider the need to assist them.

B. Recognizing of Victims of Crime and Judicial Authorities' Effort to Regain Public Trust

Although victims of crime commonly suffer great physical, mental, and financial damage—either directly or indirectly—from crime, there has been a general lack of recognition about the extent to which they suffer. In 2006, the Korean Institute of Criminology conducted a survey study of 484 crime victims (243 males and 241 females). According to the results of this study,³ victims indicated very negative emotional conditions immediately after the criminal offence; they reported anger (reported by 80.7% of victims), anxiety (74%), depression (68.8%), and emotional instability (64.3%). Victims also addressed questions regarding the level of victimization they felt. These answers can be summarized in the order of mental damages (reported by 62.1% of victims), property losses (43%), and physical injuries (40.1%). When categorizing victims according to basic personal information (sex, level of education), surrounding life information (marriage, home-owning), and socio-economic information (type of job, amount of income), victims of relatively low social status tended to report a higher level of impact on their lives by the crime, regardless of the type of damages. Other than these direct damages, victims also reported secondary victimization conditions such as insomnia and a feeling of emptiness (87.7%). After the crime, victims also indicated an inconvenience and generally unpleasant experiences in their relationships with employers and colleagues (75.1%), family members (64.5%), friends (58.5%), police officers (42.7%), and media (11.2%).

In particular, victims of crime were not notified of any information while their cases proceeded from the beginning of the investigation to the final verdict, nor of any notice about the release of the alleged offenders. Victims of crime were not given sufficient rights to access and collect information regarding the cases or to participate in the criminal justice proceedings against their offenders. Furthermore, during the investigation or trial phase, the victims' reputations and privacy were often infringed.

As a result, victims of crime generally have negative perceptions of the criminal justice system. For example, many believe that it is useless to report a crime; they may humiliate themselves and be victimized again during the investigation or trial; and recovery of damages in any way is almost impossible. The accumulation of such distrust in judicial authorities has even led to a refusal to co-operate during investigation or at the trial of the offenders. Recently, the judicial authorities have recognized a need to regain the trust of the public. Various policies and measures have therefore been implemented, one of which is to have greater consideration for victims of crime and to have compassion and understanding for their needs. The judicial authorities have now come to the conclusion that the protection of, and assistance to, victims of crime not only serves to enhance public trust, but is also the morally right response to take, especially in view of the fact that anyone can be a victim of crime.

C. Change of Social Conditions which Emphasize Human Rights and Social Welfare

Since the late 1990s, there has been a new atmosphere in Korean society which puts more emphasis on democracy, human rights, and social welfare. While implementing new public programmes, the Korean government has presented policies to meet these goals. As one of new programmes reflecting this policy, the Korean government has developed measures for victims of crime. In other words, the changes in social conditions inevitably provided an opportunity to review human rights and welfare for aliens or minority groups. Following this trend, those issues which affect victims of crime, and which have traditionally been

³ Cho, Kyoong-seok; Choi, Insub; Lee, Soonrae, *Study of Crime Victim in Korea*, 2006.

ignored in the criminal justice system, are now also under review.

D. Capacity Expansion of Civil Organizations Involved with Victims of Crime and Accumulation of Study on Victimology

Another factor that has contributed to the recent active discussion of victims of crime is the capacity of civic, non-profit organizations which conduct public activities for the protection of, and assistance to, victims of crime. The enhanced capacity of scholars to continue their academic research has also led to the recent focus on crime victims. The activities of such scholars and civic organizations have provided a theoretical background to develop new laws and systems which are now in place. In addition, their activities have contributed to the practical execution of these laws and systems.

III. CONTENTS OF THE CRIME VICTIM PROTECTION ACT AS A BASIC LAW

In general, the rights enumerated in the following list are considered the rights of victims of crime:

1. The right to fair treatment;
2. The right to access information;
3. The right to recovery;
4. The right to express their opinions;
5. The right to receive support;
6. The right to be free from re-victimization; and
7. The right to safe and secure living.

The protection of, and assistance to, victims of crime generally indicate the fulfillment of the rights mentioned above. Historically, there has been a progression in the types of assistance rendered to crime victims. In the 1960s, financial assistance to victims of crime started; in the 1970s, the provision of assistance offered by civic organizations flourished; and, in the 1980s and 1990s, systematic and legal assistance began. Currently, the focus has moved towards the social welfare approach, one step forward from criminal justice assistance.

Following the international trend of guaranteeing victims' rights, the *Crime Victim Protection Act* (CVPA) was adopted in Korea on 1 December 2005. This statute was promulgated on 23 December 2005 and came into force on 24 March 2006. The CVPA contains 27 Articles in 5 Chapters.

A. General Provisions (Chapter 1)

Chapter 1 contains Articles on the purpose of the Act, its basic principles, the definition of victims of crime, and the duties of the central and local governments. The basic principles of the Act expressly stipulate:

1. The human right of dignity to recover from damages occurring from a crime;
2. The right to protection of dignity and privacy; and
3. The right to participate in legal procedures.

The Act also reflects the following three elements of protection of, and assistance to victims of crime: efficient recovery from the aftermath of the crime, victims' active participation in the criminal justice system, and the prevention of secondary victimization. The Act extends the boundary of the definition of crime victims as previously provided in various laws. The concept of crime victims in this Act includes a person who has been injured by a criminal act, his or her spouse (including a *de facto* marital relationship), lineal ascendants and descendants, brothers and sisters, as well as a person who was injured while conducting an act of crime prevention or providing aid to the victims.

B. Basic Measures for Protection of, and Assistance to, Victims of Crime (Chapter 2)

In Chapter 2 of the Act, various support measures for recovery are prescribed, such as counselling, medical help, financial assistance, legal assistance and employment support. Victims of crime have the right to consult with investigators or participate in their trial. They also have the right to be informed about results of investigation of their offenders, the trial date, trial result, and sentence imposed on their offenders, etc. In addition, there are provisions regarding the protection of the honour and privacy of crime victims; training and education of personnel working for the protection of and assistance to crime victims; and, the investigation of actual situations of crime victims and the basis for increasing public awareness of the necessity of crime victim support.

Followed by the enforcement of the Act, the Ministry of Justice has implemented the programme of educating persons who work in the area of victim protection and support. In 2009, two education programmes were executed: mentoring education for volunteers and professional education for criminal mediators. In order to bring public awareness to victim support, the Ministry of Justice created the First Crime Victims' Week in November 2007 and held the First Human Rights of Korean Crime Victims Competition on 29 November 2008. The Ministry also appointed a publicity ambassador for crime victims as one way of increasing public awareness of crime victims.

C. The Basic Plan for Protection of, and Assistance to, Victims of Crime (Chapter 3)

Chapter 3 prescribes that the Minister of Justice must develop a basic plan for a systematic national protection and assistance programme every five years. The basic plan is to be discussed by the Crime Victims Protection Committee, which is made up of representatives from the Prosecutors' Office, National Police, Ministry of Gender Equality, Ministry of Education and Human Resources Development, as well as some other experts from non-governmental organizations. Upon the Minister of Justice's adoption of the basic plan decided by the Crime Victims Protection Committee, the Minister and heads of other relevant central and local governmental agencies must prepare and enforce an annual plan for the implementation of the basic plan.

Following the enforcement of the Act, the Ministry of Justice organized the Crime Victim Protection Committee on 30 November 2006 and adopted the Basic Plan for Protection of, and Assistance to, Crime Victims (2007-2011) on 4 December 2006. The Ministry of Justice also continued to try to develop a One-stop System for Victims of Crime with the collaboration of central administrative agencies, local governments, and civic organizations.

D. Corporations by Those Rendering Assistance to Victims of Crime (Chapter 4)

Chapter 4 contains provisions for the establishment of corporations for the specific purpose of protecting and assisting crime victims. According to this chapter, in order to set up such corporations, the fulfillment of several requirements and registration with the Ministry of Justice are necessary. The registered corporations can be supported by subsidies from central and local governments but, in exchange, they must accept certain levels of responsibility and supervision from the government. Crime Victim Support Centers, which have already been established, may register themselves pursuant to this chapter and can receive a subsidy. Currently, 57 Crime Victim Support Centers (CVSC) are registered throughout the country. These centres actively provide a variety of services. In September 2008, the Korean Crime Victim Supporting Association (KCVA) was also established.

IV. CURRENT SITUATION AND ISSUES OF MEASURES FOR VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS

Except for the general measures for victims of crime in the criminal justice process (e.g., complaint, measures of objection to non-prosecution, and the right to testify in court), special measures were initially developed for groups of victims in certain categories of crime and then applied to general victims. This chapter reviews mainly general measures for victims of crime in criminal proceedings, and also refers partially to special support systems for: (1) victims of specific violent crimes,⁴ sexual crimes,⁵ and domestic

⁴ A victim or eyewitness involved in specific violent crimes such as homicide and robbery may receive personal safety measures (§7 of the *Act on Special Cases concerning the Punishment of Specific Violent Crimes*) and his or her identity is also protected from public disclosure (§8).

⁵ For victims of sexual crimes, personal safety measures (§20), prohibition of divulgence of identity and the privacy of the victim (§21), and assistance by a counselling centre and protective facilities (Chapter 3) are provided according to the *Act on the Punishment of Sexual Crimes and Protection of Victims Thereof*. Moreover, the following special provisions are included in the Act:

- a) taking and keeping of videos, etc. (§21-2);
- b) presence of persons having a reliable relationship with the victim during the questioning of the victim as a witness;
- c) questioning of a witness by means of video and relay devices (§§22-4);
- d) closing of the trial to the public (§22); and
- e) getting professional opinions from experts such as a psychiatrist about the mental and psychological state of a victim and his or her statement (§22-2).

violence;⁶ (2) victims as informants of specific crimes;⁷ (3) victims of sexual trafficking;⁸ and (4) juvenile victims of sexual exploitation and maltreatment.

Table 2: Measures for Victims of Crime in Criminal Proceedings

	CPA	SCPSVC	PSCPV	SCPCD	PISCA	PAAST
Presence of persons having a reliable relationship	§163-2 §221 ^③		§22-3			§8
Taking and keeping of videos			§21-2		§10	§6 ^③
Video link	§165-2		§22-4			
Notice to victim	§259-2				§15	
Seeking professional opinions	§294		§22-2			
Victim statement	§294-2			§33 ^②		
Trial and witness not to open to public	§294-3		§22	§32	§11	§9
Identity management					§7, §11	
Inspection and copying of record	§294-4					
Guardian					§6	
Emergent and temporary measures				§29		
Personal safety measures		§7	§20		§13	§6 ^③
Protection from publication, etc.		§8	§20	§18 ^②		
Prohibition of divulgence of identity and privacy			§21	§18 ^①	§8	§6 ^③

Act on Special Cases concerning the Punishment of Specific Violent Crimes (SCPSVC)

Act on the Punishment of Sexual Crimes and Protection of Victims Thereof (PSCPV)

Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence. (SCPCD)

Protection of Informants, etc. of Specific Crime Act (PISCA)

Act on the Punishment of Acts of Arranging Sexual Traffic (PAAST)

⁶ For the victims of domestic violence, emergency measures such as evacuation and denial of access (§ 29), a victim’s right to make a statement (§33), the compensation order (§ 57), and the closing of the trial to the public (§32) are available according to the *Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence*. Furthermore, assistance by a counselling centre and protective facilities are available according to the *Act on the Prevention of Domestic Violence and Protection of Victims*.

⁷ For the informant of specific violent crimes, narcotics crimes and organized crimes, a ‘criminal case guardian’ can be appointed to support the informant during the investigation and trial process (§6) and personal safety measures can be taken (§13) under the *Protection of Informants, etc. of Specific Crime Act*.

⁸ For the victims of sexual trafficking, such as persons who are coerced to be engaged in sexual activities by means of deception, force or other similar means, the presence of a person having reliable relation with the victim (§8), closing of the trial to the public (§9), and assistance by a counselling centre and protective facilities are available according to the *Act on the Punishment of Acts of Arranging Sexual Traffic*.

A. Investigation Stage

1. Complaint

Since private prosecution is not allowed in the Korean criminal justice system, victims of crime can only report their damages from the crime or file a complaint against the alleged criminal offenders. The complaint is defined as a victim's formal expression of reporting the alleged offenders' criminal behaviour to the investigation agency and demanding the punishment of the offenders (CPA §223). The complaint can be filed either in written or oral statements (CPA §237). On the death of the victim, his or her spouse, any of his or her lineal relatives, or his or her siblings may file a complaint, if such complaint is not against the expressed intent of the demised victim (CPA §225).

According to the *Criminal Procedure Act*, as for general offences, victims shall not file a complaint against his or her spouse's lineal ascendants (CPA §224). As for the offences, prosecution of which are subject to victims' complaints, victims must file a complaint within the period of six months from the date on which the identity of the offenders becomes known to the victims (CPA §230①). However, especially as for the sexual crimes and domestic violence cases, victims can file a complaint against her or her spouse's lineal ascendants, because these types of crimes are often committed by persons in special relationships such as family or relatives (*Act on the Punishment of Sexual Crimes and Protection of Victims Thereof* §18, *Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence* §6②). Furthermore, because victims of sexual crimes frequently hesitate to file a complaint, the statute allows a one year period for filing a complaint in these cases. In other words, as for the sexual offences, victims must file a complaint within a period of one year from the date on which the identity of the offenders becomes known to the victims (*Act on the Punishment of Sexual Crimes and Protection of Victims Thereof* §19).

2. Ensuring Victims' Safety and Privacy

The following are systems for ensuring victims' safety and privacy:

1. Permitting the presence of persons with whom the victim has certain reliable relationships;
2. Personal safety measures such as prohibition of access by the offender;
3. Intentional omission of victims' identity in written records;
4. Taking and keeping of videos;
5. Preparing a friendly environment for investigation;
6. Limiting the number of investigations;
7. Prohibition on divulging victims' identity and privacy.

The first measure is applied to victims in general, but the others are applied to specific victims.

Permitting the presence of persons with whom the victim has certain reliable relationships is a measure intended to minimize the psychological burden of victims during criminal proceedings. This measure was initially applied to the victims of sexual crimes, but its application boundaries were extended to victims in general in the Revised *Criminal Procedure Act* on 1 June 2007. A prosecutor or a judicial police officer may, if deemed that the victim is likely to feel severe uneasiness or tension in light of his or her age, physical and mental state, or any other circumstances, allow a person who has a reliable relationship with the victim to sit in company with the victim, *ex officio* or upon a motion of the victim or his or her legal representative (CPA §221③, §163-2①). If a victim of a crime is less than 13 years of age, or incompetent to discern right from wrong or make a decision due to physical or mental disability, a prosecutor or a judicial police officer shall allow a person who has a reliable relationship with the victim to sit in company with the victim, unless such company is likely to cause trouble in the proceeding or there is any inevitable reason otherwise (CPA §230①), §163-2②).

In addition, since 31 August 2005, the police have established One-stop Support Centers throughout the country in collaboration with police hospitals and hospitals annexed to universities. The One-stop Support Centers provide 24-hour-services in medical support, consultation, legal assistance to victims of sexual crimes, school violence, domestic violence, and sexual trafficking. The CARE (Crisis-Intervention, Assistance & Response) team, composed of key agencies trained for psychiatric counselling, was also established. The CARE team provides support services to victims of violent crimes immediately after the occurrence of the crimes. Lastly, the prosecutors' offices and the police set up special video recording investigation rooms in order to protect victims' privacy.

3. Provision of Information for Victims of Crime

In the process of investigation, the police provide information to victims about the general overview of the criminal justice procedure and available measures of assistance (Regulation on Crime Investigation §203). The police also inform victims about the process of the case and the disposition of the case. In order to protect the privacy of victims, the notice of such information is offered to victims in any communications mode that the victims request (e.g., oral statement, telephone communication, surface mail, e-mail, cell phone text message) (Regulation on Crime Investigation §204).

The prosecutors also should send interim notice to the victim if they (the prosecutors) fail to dispose of the complaint and accusations within three months from the date on which the case is filed, or if they fail to transmit the cases taken under direct cognizance within three months from the date on which the cases are cognized by the prosecutors (Ordinance on the Interim Notice in Case of Complaint and Accusation of the SPO, No. 427 adopted February 1, 1981 §3③). Prosecutors may deliver this notice in written statements or cell phone text message (Ordinance of the SPO, No.427 §4). In addition, victims of crime have a right to inspect and make copies of some official documents such as investigation records (Ordinance on the Inspection and Copy of the Case Records of the SPO, No.427 adopted 9 January 2008).

B. Prosecution Stage

1. Measures of Objection to Non-prosecution

(i) *Appeal and Repeal*

Any complainant or accuser who is dissatisfied with the non-prosecution disposition given by a prosecutor may file an appeal with the chief prosecutor of the competent High Public Prosecutors' Office (*Prosecutors' Office Act* §10①). Any appellant (excluding those who are eligible to apply for a ruling under Article 260 of the *Criminal Procedure Act*) may, if he or she is dissatisfied with a disposition of his or her appeal, re-appeal to the Prosecutor General (*Prosecutors' Office Act* §10(2)). According to these rules, victims who file a complaint or make an accusation against the alleged offenders, or victims who officially present their willingness to punish the alleged offenders following Paragraph 4 of Article 27 of the Regulation on the Prosecution Case Work, can appeal and re-appeal within the criminal justice procedure.

(ii) *Petition for Adjudication*

A person who lodged a complaint with a right to such complaint (including those who filed an accusation of crimes under Article 123 (abuse of authority); 124 (unlawful arrest and unlawful confinement); 125 (violence and cruel acts) of the Criminal Act)) may, if he or she receives a notice of non-prosecution from the public prosecutor, file a petition for adjudication, to find whether such disposition is properly made, with the High Court having jurisdiction over the District Public Prosecutors' Office to which the public prosecutor belongs (CPA §260①). The petition for adjudication shall be filed subsequent to an appeal (CPA §260②). Since the Korean criminal justice system is founded on both principles of exclusive indictment by public prosecutors and principles of discretionary indictment, the victim's petition for adjudication is the most important method of controlling prosecutors' unfair exercise of their exclusive indictment power. The victim's petition for adjudication is also very meaningful in terms of guaranteeing the victim's participation in the process of initiating public prosecutions.

In 2007, the revision of *Criminal Procedure Act* allowed victims of all sorts of crimes to file the petition for adjudication. As a result, the relationship between petition for adjudication, re-appeal, and constitutional complaint has become controversial. Some professionals argue that all victims can only file the petition for adjudication and cannot re-appeal to the Prosecutor General. They also claim that victims cannot file a constitutional complaint. The others argue that victims can choose either to petition for adjudication or re-appeal to the Prosecutor General by themselves. Paragraph 3 of Article 10 of the *Prosecutors' Office Act* states that the person who is eligible to apply for the re-appeal is any appellant but excludes those who are eligible to apply for a petition for adjudication pursuant to Article 260 of the *Criminal Procedure Act*. Thus, many can interpret the statute to mean that victims can only file a petition for adjudication. However, I believe that the opportunity to select an appropriate method of appeal should be given to victims. Consequently, I would argue that victims should be allowed to choose from among petitions for adjudication, re-appeal, or even constitutional complaint, as a way of objecting to a prosecutor's decision.

(iii) *Constitutional Complaint*

Any person who claims that his or her basic right, guaranteed by the Constitution, has been violated by an exercise or non-exercise of governmental power may file a constitutional complaint to the Constitutional

Court, except in the judgments of ordinary courts (*Constitutional Court Act* §68①). Therefore, the following group of victims can file a constitutional complaint: (1) victims who do not file a complaint or make an accusation of alleged offenders; (2) victims who make an accusation against offenders but are not eligible to apply for the petition for adjudication; and, (3) victims who officially present their willingness to punish the offenders. However, these victims are eligible only after they apply for other relief processes provided in other laws. In other words, no one may file a constitutional complaint without having exhausted all other processes (*Constitutional Court Act* §68①). The eligibility of other victims who can file a petition for adjudication to apply a constitutional relief has already been discussed above.

2. Criminal Mediation between Victim and Offender

Criminal mediation is a system of calling for reconciliation between victims of crime and offenders, with the assistance of a neutral third-party or trained mediator. Criminal mediation is a relatively new approach to victims of crime and offenders and can be viewed as an alternative to the informal arbitration practices which frequently occur in real criminal justice practice.

In April 2006, by way of example, criminal mediation was implemented in Seoul Southern District Prosecutors' Office and three other local prosecutors' offices. From August 2007, all prosecutors' offices throughout Korea have provided criminal mediation services. Initially, the Criminal Mediation Committee within the Crime Victim Support Center was in charge of criminal mediation. However, some professionals raised questions about the fairness of the results of criminal mediation, since criminal mediation was conducted under the guidance of Victim Support Centers. Therefore, on 10 November 2009, the authority to provide criminal mediation services was given to the District Prosecutors' Offices.

The types of crimes eligible for criminal mediation are virtually limitless, but the representative ones are: (1) property crimes occurring from disputes based on cash transactions between victims and offenders, such as fraud, embezzlement, and breach of trust; and (2) crimes related to private disputes where victims file complaints, such as libel, medical disputes, and employers' delayed payment of wages.

Prosecutors decide whether a case can be referred to criminal mediation by considering the seriousness of the alleged offences and the level of suspicion given to the alleged offenders. Only when both parties - victims and offenders - agree to participate in criminal mediation, can prosecutors transfer the cases to criminal mediation (Ordinance on the Practice of Criminal Mediation of the SPO, No.427 adopted 30 October 2009 §2). Once a case is referred to criminal mediation, three mediators are selected from among the members of the criminal medication committee. The actual practice of criminal mediation is conducted on the mediation date with the presence of both parties. Once both parties reach an agreement through the mediation process, a written decision of the mediation is signed, and the outcome of mediation is informed to the prosecutor who referred the case to criminal mediation. The prosecutor who received the notice of criminal mediation can make a final indictment decision. Even if a victim withdraws his or her complaint as a result of the criminal mediation, the prosecutor can still indict an offender if he or she finds a reasonable evidence to indict. Even in this case, the prosecutor can reduce the degree of penalty against the offender or suspend the indictment by considering the results of the criminal mediation.

Example 1

In November 2006, while complainant A was playing an instrument on a tavern stage, B stepped onto the stage, provoked a quarrel, threw the instrument down, and destroyed the instrument.

As a result of criminal mediation, B agreed to pay A compensation, and A withdrew his complaint.

Example 2

Three brothers - C, D, and E - came into conflict with each other about an inheritance of 58 million won. C and D filed a complaint against E and charged him with fraud and embezzlement.

The three brothers reconciled with each other within the criminal mediation procedure. They even cried when they reached an agreement. They decided to divide both property taxes and rents. The three brothers also agreed that E would continue to manage the contested building and that when the building was sold, they would share the proceeds from the sale.

In 2007, 7,862 cases were referred to criminal mediation and 7,212 cases were completed. Among the 7,212 cases, 3,680 cases were settled, a 51.0% success rate. In 2008, 11,486 cases were referred to criminal mediation, and 10,925 cases were completed. Among the 10,925 cases, 5,632 cases were settled, a 51.6% success rate. From January to July 2009, 8,282 cases were referred to criminal mediation, and 6,614 cases were completed. Of the 6,614 cases, 3,660 cases were settled, representing a 55.3% success rate.

Table 3: Statistics for Criminal Mediation

	Number of cases referred	Number of cases completed	Number of cases settled	Number of cases in process	Successful mediation rate (%)
Period: from January to December 2008	11,496	7,212	5,632	571	51.6
Period: from January to July 2009	8,382	6,614	3,660	1,765	55.3

Criminal mediation is a system developed by the application of restorative justice principles within the criminal phase of prosecution. Some criticize the criminal mediation programme by pointing out its lack of full consideration of restorative justice principles in establishing procedures for criminal mediation. However, the criminal mediation system is generally graded very positively because it provides a timely opportunity to restore the damages caused by the crime. The criminal mediation system also enhances the protection of offenders’ human rights by putting offenders outside of investigation institutions, while at the same time contributing to both the reintegration of offenders into society and the prevention of recidivism. Finally, criminal mediation empowers the community members by promoting private autonomy in resolving criminal cases and, eventually, reducing the number of cases burdening our investigation and judicial institutions. Consequently, the investigation institutions can put more resources towards other criminal cases. As a result, the Ministry of Justice presented the Revised Crime Victim Protection Act, which includes specific procedures for criminal mediation. This Act is currently under the deliberation of the National Assembly.

3. Provision of Information for Victims of Crime

If, in a case in which a complaint or accusation has been lodged, the public prosecutor has decided to or not to institute prosecution, withdrawn prosecution or sent the case to a public prosecutor of another public prosecutor’s office, the public prosecutor shall inform the complaint or accuser in writing, within seven days after such disposition has been made (CPA §258①). In addition, if a disposition not to institute a public prosecution has been made, the public prosecutor shall, upon request of the complainant or accuser, promptly inform them of the reason thereof in writing within seven days (CPA §259). A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his or her legal representative (including the victim’s spouse, lineal relative, or sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of the trial, and the facts about detention, such as whether the suspect or the defendant is detained or released (CPA §259-2).

Enforcement Decree of the Crime Victims Protection Act requires notice to the applicant of the result of case dispositions, such as the prosecutor’s decision of indictment, non-prosecution, stay of indictment, stay by person for reference, and transferring the case (Enforcement Decree §2①i). The Prosecutors’ Offices ensured the process of delivering this notice to victims by enacting the Ordinance on the Protection of, and the Assistance to, the Victims of Crime of SPO, No. 432 on 1 May 2008.

C. Trial Stage

1. Victim’s Right to Express Opinion

The right to express opinion or make a statement allows the victim an opportunity to express an opinion in the court as a witness if he or she requests (CPA §294-2). The previous system of the victim’s right to express opinions in court was not efficient in that there were many grounds on which such right could be rejected. Moreover, while courts allow victims the opportunity to address the issue of proving an alleged criminal act, there have been few cases in the past where victims were allowed to express their opinions about the issue of the penalties handed down by the court.

In order to increase the application of this right, the Revised *Criminal Procedure Act* extends the boundary of persons who can exercise this right, from the victim to his or her legal representative (including the victim's spouse, lineal relative, or sibling, if the victim is dead). In case the victim has already given a sufficient statement in the investigation process, he or she can still request this right and make a statement in court, whereas his or her request to exercise this right was rejected in the former system. Furthermore, the category of issues upon which the victim can express opinions becomes clear - statements on the degree and result of damage, opinions concerning punishment of the defendant, and other matters relating to the case at bar (CPA §294-2). Despite these revisions, the victim still remains a witness and can not be a direct party to the criminal procedure. As a result, it is hard to conclude that the victim's right to express an opinion or make a statement is a sufficient application of the Constitutional spirit to the criminal justice process.

2. Ensuring Victim's Safety and Privacy as a Witness

(i) Trial not Open to the Public

The court may, when it examines a victim of crime as a witness, decide by a ruling to proceed the examination behind closed doors, if it is deemed necessary for the victim's privacy and personal safety, upon a request from the victim or his or her legal representative or the public prosecutor (CPA §294-3①).

(ii) Witness Protection Program for Informants, etc. of Specific Crime

In the case where the witness is the victim of or is an informant of a specific group of criminals, and where there is apprehension that a witness or his or her relatives may be retaliated against, matters relating to the identity of the witness can be concealed in the process of confirmation of the witness's identity, witness oath, and the witness's court testimony (*Protection of Informants, etc. of Specific Crimes Act* §11②,③). A public prosecutor or the head of the competent police station may implement personal safety measures for the witness, such as a police officer's escort for the witness when coming to and returning from the court or the police station (*Protection of Informants, etc. of Specific Crimes Act* §13).

Example 3

In May 2005, A was summoned as a witness in a case where the defendants were the members of a very organized street gang. Since there was considerable concern for A's safety (i.e., retaliation from other members of the gang), a staff member of the prosecutor's office, assisted by a staff member and a volunteer of the Victim Support Center, escorted A to court. This escort service was provided to A from his home to the court and back home again.

3. Minimizing the Burden on Victims in Testifying as a Witness

(i) Presence of Persons having a Reliable Relationship

The court may, if it deems that the victim⁹ as a witness is likely to feel severe uneasiness or tension in light of the age of the victim, his or her physical and mental state, or any other circumstances, allow a person who has a reliable relationship with the victim to sit in company with the victim, *ex officio* or upon a motion of the victim, his or her legal representative, or the prosecutor (CPA §163-2①). If a victim of a crime is less than 13 years of age, or incompetent to discern right from wrong or make a decision due to his or her physical or mental disability, a prosecutor or a judicial police officer shall allow a person who has a reliable relationship with the victim to sit in company with the victim, unless such company is likely to cause a trouble in the proceeding or there is any unavoidable reason otherwise (CPA §163-2 ②).

(ii) Interrogation of Witness through Video or Other Transmission System

A court may, if deemed proper when it examines any of the following persons as witness, examine the person through a video or other transmission system or install a partitioning facility to place the person behind the facility for examination after hearing the opinions of the public prosecutor and the defendant or his or her defence counsel:

⁹ And also for the victims of sexual violence (on application), victims of sexual trafficking (on application as well as *ex officio*), victims of elder and child abuse (on application pursuant to Article 39 of the *Welfare of the Aged Act*, introduced by an amendment on 29 January 2004, and Article 28 of the *Child Welfare Act*), presence of persons having a reliable relationship with the victim is possible during the investigation or questioning in court as a witness.

- (a) a victim of a crime under any provision of subparagraphs 1 through 3 of Article 40 of the Child Welfare Act;
- (b) a juvenile or a victim who shall be protected from a crime under any provision of Articles 6 through 10 of the Act on the Prevention of Juveniles from Sexual Abuse; and
- (c) a person who is deemed likely to seriously lose peace of mind due to psychological burdens when the person testifies in confrontation with a defendant or any other person, in light of the nature of the crime involved, the age of the witness, his or her physical and mental state, the relationship with the defendant, or any other circumstances (CPA §165-2).

The interrogation of a witness through video or other transmission system is provided for in legislation with the goal of preventing the secondary victimization of the victim and guaranteeing the defendant's right to cross-examination. This technology allows the interrogation to be implemented. This type of interrogation was already available to the victims of sexual crimes, but has now been extended to the victims of all other crimes. Some criticize this type of interrogation by pointing out that the defendant cannot exercise his or her right to defend him or herself fully in this interrogation. However, even though the defendant cannot confront the witness directly, the defendant still can exercise his or her right to cross-examination in this interrogation. Therefore, I believe that this type of interrogation does not violate defendants' rights in criminal proceedings.

(iii) Submission of Evidence of Video-recorded Product

In the event that the victim of a sexual crime is under the age of 16 or has feeble ability in discerning matters or making decisions due to physical or mental impediments, the contents of the statements made by the victim and the process of investigation shall be videotaped and kept with the consent of the victim. In the event that the statement made by the victim, which is recorded in the videotape, is authenticated for its formation by a statement of the victim or any person who was present in the process of investigation and has a reliable relationship, on the date when a trial is prepared to be held or a trial is held, such videotape may be made evidence (*Act on the Punishment of Sexual Crimes and Protection of Victims Thereof*. §21-3③, ④).

In the present criminal procedure, the video-recorded product does not have the independent probative value of evidence, but can be employed as a supporting document that proves the authenticity of the formation of a protocol.

4. Provision Information for Victims of Crime

A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his or her legal representative (including the victim's spouse, lineal relative, or sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of the trial, and facts about detention, such as whether the suspect or the defendant is detained or released (CPA §259-2). The matters of which the prosecutor should notify the applicant are: the date of trial, the specific court where the trial proceeds, main sentencing in the judgment, the date of sentencing, the court's finalization of the judgment, and whether the defendant appeals the judgment (*Enforcement Decree of the Crime Victim Protection Act* §2①ii).

A victim of a case pending in court (including a victim's spouse, lineal relative, or sibling, if the victim is dead or suffers from a severe mental or physical disorder), the legal representative of the victim, or the spouse, lineal relative, sibling, or attorney at law with the power of attorney granted by the victim or his or her legal representative, may file an application for inspection or copying the litigation record with the presiding judge (CPA § 294-4 ①).

5. Compensation Order System

The compensation order system requires that a victim and his or her successor may receive a civil compensation order for direct physical damages, medical expenses, and solatium that occurred due to the criminal acts of the accused case, either *ex officio* or upon application from the victim or his or her successor, when a conviction is to be declared in a criminal trial procedure of the first instance and second instance against the crimes such as bodily injury, death resulting from bodily injury, crimes of inflicting bodily injury and death through negligence, crimes concerning rape and infamous conduct (except sexual intercourse under pretence of marriage), larceny and robbery, fraud and extortion, embezzlement and breach

of trust, destruction and damage (*Act on Special Cases concerning Expedition, etc. of Legal Proceedings* §25①). The court may order compensation also for the amount of compensation for damages agreed upon between the accused and the injured party (*Act on Special Cases concerning Expedition, etc. of Legal Proceedings* §25②). An authentic copy of the written conviction wherein a compensation order is finalized shall have the same effect as an authentic copy of a civil judgment with executive force, with regard to a compulsory execution.

In the future, the compensation order system should be revised by including provisions that a victim should be informed of the availability of a compensation order and that the indirect costs of the victim of participating in the investigation and the trial may be reimbursed to the victim.

Table 4: Current Data on the Compensation Order System (Judicial Year Book (2000-2008))

Section Year	Request (case)	Management					Amount of Compensation (won)
		Total	Accept	Reject	Withdraw, etc.	Percentage of Acceptance (%)	
2000	1,521	1,416	493	686	237	34.8	22,623,778,079
2001	1,726	1,510	391	674	445	25.9	23,284,854,700
2002	1,930	2,226	433	418	1,375	19.5	37,633,017,681
2003	3,480	3,053	660	758	1,635	21.6	27,402,781,689
2004	3,151	3,732	756	1,550	1,426	20.3	55,621,107,364
2005	3,743	3,279	802	705	1,772	24.5	60,084,592,946
2006	4,258	4,087	858	1,963	1,266	21.0	55,437,494,842
2007	6,263	5,951	1,082	459	4,410	18.2	94,371,444,688
2008	4,904	4,824	1,075	3,363	386	22.3	83,326,196,213

6. Reconciliation in Criminal Proceedings with Regard to Civil Controversy

Where an agreement is reached concerning a civil controversy between the accused and the injured party in an accused criminal case (limited to a case where a controversy over damage is related to a relevant accused case), the accused and the injured party may in collaboration apply to the court of the first instance or the second instance whereas the relevant accused case is pending to have the agreement entered in the protocol of the trial (*Act on Special Cases concerning Expedition, etc. of Legal Proceedings* §36①). When the court in charge of the case records the agreement in the protocol of the trial, it will be given the competence of civil procedural execution as like the judicial reconciliation (*Act on Special Cases concerning Expedition, etc. of Legal Proceedings* §36⑤).

This system of reconciliation in criminal proceedings with regard to civil controversy looks similar to the compensation order system. However, from the aspect that the reconciliation system allows the victim to exercise the right to request civil compensation in the criminal justice proceeding, the reconciliation system goes one step farther than the compensation order system in protecting the victim's right.

Unfortunately, however, the actual use of this reconciliation system is very low. From 2006 (the time of enactment) to August 2009, only 75 criminal cases took advantage of this reconciliation system. Several factors contribute to the low level of the utilization of this system. First of all, this system has not yet acquired public awareness, thus, many victims and criminal defendants did not understand that they could use this system at trial. Second, the defendant may prefer not to use this system because the defendant's reconciliation with the victim would be understood as an admission of guilt on the merits even before the end of the criminal trial. Finally, judges may be reluctant to recommend this system. The judge's recommendation can be misinterpreted by the defendant as a persistent demand to reconcile with the victim in exchange for reducing the sentence.

7. Measures for Victims of Crime in the Treatment Proceedings for Juvenile Delinquents

On 21 December 2007, the *Juvenile Act* was revised, and the major features of this revision were to guarantee the victim's right to make a statement in the trial of a juvenile protection case and to introduce the new system of the recommendation of compromise. A judge of the Juvenile Department shall, when

a victim or his or her legal representative, a counsel, a spouse, a lineal relative, or a sibling apply for statement of opinion, give the victim an opportunity to state an opinion, etc. on the date of a trial (*Juvenile Act* §25-2). A judge of the Juvenile Department may, if deemed necessary for character correction of a juvenile and protection for a victim, recommend that a juvenile compromise with a victim, such as give compensation for the victim's loss or another form of compromise (*Juvenile Act* §25-3①). In cases where a juvenile has compromised with a victim according to the recommendation, a judge of the Juvenile Department may take this into consideration when deciding the protective disposition (*Juvenile Act* §25-3③).

The system of recommendation of compromise was installed based on the consideration of its efficiency in protecting victims, as well as the correction of a juvenile through a reconciliation or mediation process between the victim and the juvenile. However, some criticize this system by asserting that it is not a true adoption of restorative justice since it can only be recommended in the hearing stage. This system also compels a juvenile to participate in the compromise procedure.

During a three-month-period starting in July 2008, a conferencing programme (victim-offender mediation and dialogue) was implemented in 10 juvenile cases in order to apply the recommendation of compromise in the investigation stage of juvenile protection cases. This conferencing programme was organized through collaboration between the Seoul Family Court, the Seoul Juvenile Classification Review Board, the Korean Institute of Criminology, and the Center for Resolution of Conflict in Women Making Peace (WMP). Unfortunately, however, this programme is no longer provided because of the difficulty in selecting appropriate cases.

Example 4

In March 2008, A (a second-year student of X middle school) and B (a second-year student of Y middle school) fought each other twice because each criticized the other's school. B and his friends as a group beat A seriously, and B, consequently, was brought into the juvenile court.

A, B, and their parents participated in the above-described conferencing programme, had five-hour-conversations, and finally reached an agreement.

D. Execution of Sentence Stage

1. Probationary Supervision

(i) *Probationary Supervision Program Considering Victims of Crime*

In the process of executing probation orders, community service orders, or attendance service orders on a criminal, some programmes have been implemented in order to enhance the criminal's accountability to the victim. For example, in 2005, Seoul Probation and Parole Office developed the victim-offender meeting programme with the purpose of preventing school violence. The details of services provided by this victim-offender meeting programme are: (1) giving an opportunity to the offender to write a letter to the victim; (2) arranging and facilitating a meeting between the offender, the victim, and their family members; and, (3) inviting the Director of the Association for Victims of School Violence and allowing him or her to give a special lecture to the offenders. In addition, attendance service orders for sex offenders encourage apologies from offenders to their victims and further attempts by offenders to reconcile with their victims by informing the offenders of the victims' feelings during and after the crime. Furthermore, since December 2009, the homes of victims have been included as locations where convicted criminals can complete their community service orders. Thus, criminals visit victims' houses and do household chores for victims' families, or renovations such as wallpapering or other tasks.

Example 5

In 2007, victim A, who was the owner of a bar, was knifed by an offender who tried to use a stolen credit card. The offender was sentenced to four years in prison, while A suffered bodily injury and the after-effects of the injuries, such as acute respiratory problems. A lived in a small efficiency apartment with her husband, who could not get a job because of his liver problem, and with her teenage son, who was mentally handicapped.

In December 2009, the Minister of Justice hung wallpaper in A's apartment, with offenders, as one way of completing their community service.

(ii) Imposition of Special Matters of Observation Considering Victims of Crime

When the court orders probation by conferring either suspended execution of sentence (*Criminal Act* §62①) or suspension of sentence on probation (*Criminal Act* §59①) and the Parole Examination Board makes a decision on probation or parole, the court and the Parole Examination Board can impose special matters of observation upon the criminal, i.e., prohibiting his or her access to a victim or certain group of people who would then become the subject of his or her recommission of a similar crime and recovering damages occurring from his or her criminal act (*Protection and Surveillance, etc. Act.* §32③iv,v). This provision was introduced through the revision of the *Protection and Surveillance, etc. Act* on 28 May 2009. This provision provides the basis for intimating the idea of restorative justice in the probation stage.

(iii) Provision of Information for Victims of Crime

A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his or her legal representative (including the victim's spouse, lineal relative, or sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of trial, and the facts about detention, such as whether the suspect or the defendant is detained or released (CPA §259-2). In particular, regarding the process of executing probation, the prosecutor should notify a victim about the specific location of the Probation and Parole Office, the commencement and expiration date of the defendant's probation orders, community service orders, or attendance service orders, the date of the suspension of the defendant's parole, and the date of the withdrawal of suspension of the defendant's parole (*Enforcement Decree of the Crime Victim Protection Act* §2①iv). The Crime Prevention Policy Bureau of the Ministry of Justice developed the "Specific Report for Supporting Crime Victims in Relation to Probationers and Parolees" in January 2008 and has provided information to victims.

2. Correctional Service

(i) Edification Program Considering Victims of Crime

The Ministry of Justice has implemented the Edification Program for inmates in order to educate inmates about the impact of crime on a victim's life or the victim's emotions after the crime. In February 2006, the Ministry of Justice announced "The Ministry of Justice's Strategic Plan for Change — Promise for Opening Hope" and officially declared its step-by-step plan for implementing restorative justice programmes. As a short-term plan, the Ministry of Justice will establish procedures for reconciliation meetings and letter mailing, which initially applies to minor offenders such as offenders of plain acts of violence or traffic offences and offenders inflicting bodily injury on lineal ascendants and will be gradually extended to other offenders. As a long-term goal, the Ministry of Justice will examine the possibility of adopting the defendant's compromise with the victim or the defendant's compensation to the victim as important factors to consider in making decisions on the defendant's leave or parole. The Ministry of Justice will also review ways of sending a part of the defendant's in-prison wages to the victim each month.

In practice, the Seoul Regional Correction Headquarters actually implemented a programme of sending an apology letter to victims in 2007. Unfortunately, only a few defendants participated in this programme, which became an initial obstruction in implementing the Strategic Plan for Changes. As a result, the Strategic Plan has not been implemented as initially planned.

(ii) Consideration of the Opinion of Victims of Crime in Parole

The warden of the correctional institution shall investigate whether the victim has recovered or not before reviewing parole (*Enforcement Rule of the Act on Execution of the Sentence and Treatment of Prisoners* §246). The warden of the correctional institution must take into account the feelings of the victims of crime, the possibility that the criminal will commit a retaliatory crime when released, and whether conciliation has been made or not, etc. (*Enforcement Rule of the Act on Execution of the Sentence and Treatment of Prisoners* §247).

(iii) Provision of Information for Victims of Crime

A public prosecutor shall, promptly upon receiving an application from a victim of a crime or his or her legal representative (including the victim's spouse, lineal relative, or sibling, if the victim is dead), notify the applicant of the facts about detention, such as whether the suspect or the defendant is detained or released (CPA §259-2). In regard to the process of executing the sentence of the defendant, a prosecutor should inform the victim of the defendant's parole, release, transfer, death, or flight (*Enforcement Decree of the Crime Victim Protection Act* §2①iii). The Correctional Service of the Ministry of Justice published

“Instructions for Providing the Inmate Information to the Crime Victims” in March 2007 and has actually provided information to crime victims.

V. OTHER MEASURES FOR VICTIMS OF CRIME

A. Crime Victim Aid

According to the *Crime Victim Aid Act*, the bereaved family of a person who has died, or a person who suffers a serious disability due to a criminal act injuring human life or body, can receive a limited amount of criminal injury aid money. In other words, if a person who suffers a criminal injury cannot be compensated for the whole or part of the injury due to an obscurity or insolvency of the offender, or a person becomes a victim in connection with furnishing any clue to the criminal investigation, such as complaint, accusation, etc., as well as any statement, evidence or presentation of materials, for an investigation or judgment of his or her or another person’s criminal case, the State shall pay criminal injury aid money to the victim or his or her bereaved family (*Crime Victim Aid Act* §3①).

However, where the victim and offender are related to each other (including a *de facto* marital relationship), where the victim provokes a criminal act, or the occurrence of the criminal injury is attributable to the victim, or even where it is deemed proper in a socially-accepted view, the whole or part of criminal injury aid money may not be paid (*Crime Victim Aid Act* §6). The range of criminal injury that can be applied is limited to death and serious disability, which is graded 1 through 6. In the case of a death, 30,000,000 won (about USD 24,000), 20,000,000 won, or 15,000,000 won of the criminal injury aid money is given to the family members of the dead victim. The exact amount is based on considerations regarding the victim’s family, such as the number of surviving family members and their respective ages. 30,000,000 won is paid to the victim in the case of a grade 1 injury, and 6,000,000 won in the case of a grade 6 injury (*Enforcement Decree of the Crime Victim Aid Act* §12, §13). Any person who desires to receive criminal injury aid money shall apply for it within two years after the occurrence of the criminal injury is known, or five years after the criminal injury occurs (*Crime Victim Aid Act* §12). The Criminal Injury Aid Council established in the respective district public prosecutors’ office shall deliberate and decide matters concerning payment of criminal injury aid money (*Crime Victim Aid Act* §11).

On 20 April 2009, the amount of criminal injury aid money was raised and the range of disability grades was extended for the current system of the criminal injury aid. However, since the application of the criminal injury aid is still limited, it is necessary that the amount should be increased, and also those who suffer disability from grade 7 to grade 13 should also be eligible for criminal injury aid money.

B. Other Financial Assistance

1. Bounty for Reporting Crimes

The informant (and his or her family) of particular crimes such as violent or narcotics crimes who are in fear of retaliation, suffer from financial loss, or pay for moving expenses or a job change, may get a bounty of up to 1 million won, according to Article 14 of the *Protection of Informants, etc. of Specific Crimes Act*. A person who has tipped any investigation agency off about any crimes of trafficking of women and girls for sexual purposes may also be paid a bounty, according to Article 28 of the *Act on Punishment of Acts of Arranging Sexual Traffic*.

2. Compensation for Traffic Accidents Caused by Uninsured Cars or Hit-and-Run Accidents

Victims of traffic accidents which were caused by unknown drivers, uninsured cars, stolen cars or drivers without licenses who have no other compensation, are entitled to 80 million won in a case of death, 15 million won in case of injury and 80 million won for the aftermath, according to Article 5 of the *Guarantee of Automobile Accident Compensation Act*. When recipients under the *Basic Livelihood Security Act* suffer from severe complications and disability caused by automobile accidents, the Victims and Family Support Project of the Korea Transportation Safety Authority provides assistance for rehabilitation, living expenses, scholarship, and dependents.

3. Compensation Money for a Person Killed or Wounded for a Righteous Cause

A person who is killed or injured while trying to save another person’s life, body or property from imminent danger may be paid a similar amount of compensation as that which would have been given to a

person for distinguished services to the State under the *Honorable Treatment of Persons Wounded or Killed for a Righteous Cause Act*.

4. Assistance from the Korean Legal Aid Corporation

The Korean Legal Aid Corporation has been providing victims of domestic violence, sexual violence and sexual trafficking with legal aid such as legal representation, free advocacy and legal counselling since January 2003. By an amendment to the *Legal Aid Act* on 29 March 2007, the Corporation may legally protect and support victims of crime in order to properly guarantee the rights of the victims of crime and help them speedily rescover from the damage suffered.

5. Other Assistance

Besides the assistance listed above, there is a financial support system for the victims of sexual crimes and domestic violence cases for their medical treatments. Emergency assistance can also be provided to the victims of sexual crimes, domestic violence, and cruel treatment if the victims are temporarily unable to earn a living due to the result of the crime.

C. Civil Assistance

The Crime Victim Support Center (CVSC) was created on 5 September 2003 in Gimcheon and Gumi. It was the first civic organization from a local community to support the recovery of crime victims from criminal damages and to help them to live normal everyday lives as survivors. From the establishment of Gimcheon and Gumi CVSC until December 2007, 57 CVSCs were established throughout the country, one in every district of the Prosecutor's Office. These CVSCs actively provide their services to crime victims. In addition, on 3 September 2008, the Nationwide Association for the Korean Crime Victim Support was established.

In order to differentiate themselves from the sexual violence clinics or domestic violence clinic services, the CVSCs have focused on direct legal assistance to the victims and spontaneous medical support immediately after the incident, rather than providing mere counselling. The sorts of services provided by the CVSCs can be divided into several categories. First, they provide consultation services via telephone, Internet, and face-to-face conversations. Second, groups of services can be identified as direct assistance to victims, including:

1. Crisis intervention immediately after the occurrence of a crime;
2. Provision of information concerning a criminal proceedings; and
3. Accompaniment to the investigation institutions and the court.

The examples of crisis intervention immediately after the occurrence of a crime are as follows:

1. Assisting a victim with calming down at the actual scene of a crime;
2. Cleaning up a crime scene;¹⁰
3. Helping to reset a victim's everyday life, such as taking care of the victim's children;
4. Finding a proper hospital in case a victim needs emergency treatments;
5. Accompanying a victim to a hospital; and
6. Searching for ways to secure a victim's safety when retaliation or re-victimization can possibly occur.

Third, the CVSCs provide medical care services in collaboration with certain hospitals in the surrounding area. Fourth, the CVSCs also support victims financially by giving them living subsidies. Fifth, in addition to these individual support services, CVSCs promote secondary services for crime victims, too. CVSCs conduct studies on crime victims in order to both ensure the substantiality of victim support systems and to foster public awareness of the necessity of the victim support systems. CVSCs also develop education programmes to cultivate human resources in crime victim support and to enhance their qualifications. CVSCs actively inform communities about the availability of their services. Finally, CVSCs do not limit the

¹⁰ The Korean Central Victim Support Center, established in Seoul on 1 December 2004, aims to prevent re-victimization. Re-victimization can be prevented partially by cleaning the scene of the crime. Thus, the Center has provided cleaning services at the scene of a murder or other violent crimes through co-operation with cleaning business companies.

boundary of their services to Korean citizens, but also provide their services to foreigners.¹¹

Despite such vigorous activities, the CVSCs still have difficulties in obtaining appropriate funding. Furthermore, critics of CVSCs cite a lack of distinguishable or special skills in their personnel. CVSCs also suffer from insufficient advertising of their services. A third challenge is the low level of co-operation the CVSCs receive from other institutions. Thus, ways of improving the CVSCs' quality of services must be addressed in order to respond to these criticisms.

Example 6

In the case of serial killing that happened in the southwestern area of Kyunggi Province, the Ansan CVSC conducted individual face-to-face interviews with bereaved family members. The Ansan CVSC provided eight bereaved family members a total of 53,000,000 won for their living expenses, provided free medical services (e.g., psychiatric treatment) to 16 victims who had suffered serious emotional problems, and provided legal assistance. In total, the victims received a 1,300,000,000 won compensation order from the court.

Example 7

A, a 31-year-old female, was knifed by the robber B, who originally entered into A's apartment disguised as a prospective tenant. Because of this incident, A sustained a 7.5-centimeter scar to her face, but the cost of cosmetic surgery was prohibitive. The Korean Central Victim Support Center placed her with a specialist in plastic surgery, who is a member of the medical support team, who performed successful cosmetic surgery on her face at no cost.

Table 6: Activities of the CVSCs

	Consultation	Financial & Medical Assistance	Personal Protection	Publicity & Education	Scene Assistance	Total
2008	19,260	3,400	277	3,558	40	27,535
2009 (Jan.-Aug.)	15,481	2,274	201	1,741	30	19,727
Comparison with that of same period of 2008						+7.4%

There are two organizational features of the Victim Support Centers in Korea. The most significant one is that they work with a direct connection with the Prosecutor's Office. The Centers were established with the initial support of each District Prosecutor's Office and are supervised by the Ministry of Justice. Second, the Centers have maintained a very close co-operative relationship with the Crime Prevention Committee in the establishment, organization, and actual provision of services. This alliance is desirable because the relationship between crime prevention and victim support is like that of the front and back wheels of a car. However, it is necessary for the victim support centers to develop and maintain their own respective working scope before they work closely with the Crime Prevention Committee.

¹¹ The Western Seoul Victim Support Center, established on 10 December 2004, was successful on this point. For example, two Thais who came to Korea after being defrauded by an employment agency received assistance in this Center. In co-operation with the victim assistance office of the Western Seoul Prosecutors' Office, the Center helped them get documents from Thailand in order to file a complaint with the investigation office. The Center then provided them financial support for accommodation and travel.

VI. CHALLENGES OF MEASURES FOR VICTIMS OF CRIME

A. Preparation and Enforcement of the Substantial Basic Plan for Protection of, and Assistance to, Victims of Crime

I believe that the measures for victims of crime must consist of an overall provision of services relevant to victims' recovery from the crime. Therefore, the support to victims should not be limited to the boundaries of the criminal justice policy, but should include aspects of social welfare - providing various social welfare services for the victims' residence, health, education, and employment, etc. For these reasons, I would argue that for effective assistance to victims, it is necessary to draw the government's special attention to this issue and to develop an integrated policy for victim support.

In 2007, the Korean government set up and implemented the Basic Plan for Protection of, and Assistance to, Victims of Crime (2007-2011). Up to now, it was expected that this plan would be implemented very specifically and would achieve real goals, but it has not yet achieved all it was designed to accomplish. One of the main reasons for its shortcomings is that many departments of the government, except for the Ministry of Justice, have not given their full attention to this issue. Above all, however, the key problem is the lack of attention from local governments which influence the everyday lives of ordinary Koreans most directly in providing their administrative services.

One way of increasing general awareness of crime victims is that the Korean President can make an official statement concerning the protection of crime victims during Crime Victim's Week as the American President did. He can also attend the Human Rights of Korean Crime Victims Competition annually. The President's attention to this issue can be the most effective driving force for promoting new and better measures for crime victims. Along with increased attention from the government, the Basic Plan should be designed to include an array of feasible sub-plans and strategies from various perspectives.

Recently, the Ministry of Justice sought to establish the Welfare Center for Victims of Crime (Smile Welfare Center) and to develop a strong network among institutions supporting crime victims. The Welfare Center for Victims of Crime is a place for providing psychological and mental care services to victims of violent crimes and their family members. This Center will also run a shelter for those victims who are unable to get appropriate care in their own homes. The Ministry of Justice has a plan to implement all services of the Welfare Center for Victims of Crime, beginning this year, by contracting with a civic professional institute.

The Ministry of Justice's work for developing a strong network is to create a systematic collaborative relationship among individual victim support institutions, which only covers one or two specific groups of crime victims separately. For example, some institutions focus only on victims of sexual violence crime cases and domestic violence cases. Others aim to help victims of school violence. As such, victims of child molestation cases and sexual traffic cases are also assisted separately through different institutions. Thus, with the goal of providing proper assistance to a victim in a right time period, the Ministry of Justice is attempting to develop a total telephone network among these institutions and a source internet homepage connecting all these institutions. In particular, it is necessary to include the police, prosecutors, and emergency call 119 into this total network of victim support in order to help victims from the very first stage of the criminal investigation.

B. Strength of Measures for Victims of Crime in Criminal Proceedings

The revision of the *Criminal Procedure Act* allows the petition for adjudication for all crimes, and since 2008, lay Koreans have participated in the criminal justice process as a revised form of a jury trial. Along with these recent changes in the criminal justice system, I believe that it is necessary to enhance the status of crime victims in the criminal justice procedure. Thus, a system should be adopted in which the crime victim can participate in a criminal case as a direct party to the proceeding, not as a witness, and exercise his or her rights. For instance, the victim or his or her bereaved family may be allowed to conduct his or her own action by producing evidence, by calling and questioning witnesses, by stating his or her opinion about the sentencing, and by being involved in the appeal process. Or, at least, the system should allow the victim or his or her bereaved family to appear in court as a direct party and to ask his or her own questions of the defendant.

Recently, there has been a very desirable movement toward the strong support of victims of crime in criminal proceedings. The Ministry of Justice has considered the adoption of systems strengthening the status of victims in the criminal procedure very positively. Such systems include: (1) the victim participation system, where a victim can present his or her opinion in court - not as a witness, but as a participant; (2) the victim counsel system; and, (3) the witness protection programme, which substantially guarantees the protection of a witness, including the relocation of a witness or even the creation of a new identity for a witness, when necessary.

C. Creation of the Crime Victim Fund

Sufficient financial support is an essential prerequisite for the stable and successful implementation of any viable measures for crime victims. Since the current budget for these measures is very tight, the establishment of the Crime Victim Fund is urgent and crucial. Recently, one defendant who committed a child sexual crime was given a relatively very short prison sentence, especially compared to the degree of the cruelty of his criminal act. This case was reported in the Korean news media, which eventually led to a national awareness of the necessity for victim support. As a result, on 21 October 2009, a *Draft of the Crime Victim Fund Act* was submitted to the Korean National Assembly and is now being deliberated.

The *Draft of the Crime Victim Fund Act* considers fines paid for criminal acts to be a major source of money for the Crime Victim Fund. This plan would require the allocation of approximately 5% of the total amount of executed fines to this fund. For instance, in 2008, the total amount of executed fines was 1.5 trillion won. Thus, 5% of this total, or 75 billion won, would be paid to this fund according to the draft of this Act. The draft specifies:

1. The usage of this fund for the various types of financial subsidies for victims;
2. The payment of government subsidies to the co-operatives for assisting victims of crime; and
3. Other measures to support crime victims.

It is presumed that the National Assembly will reduce the amount of the fund when it passes the draft of this Act. Nevertheless, if the draft is passed, irrelevant to the actual amount, the Crime Victim Fund will make a great turning-point in Korean measures for victims of crime.

If the fund is secured, it should be first employed to support and foster the Crime Victim Support Centers. The Crime Victim Support Centers then will be well-equipped from every organizational aspect: personnel, material, and financial management. As a consequence, it is expected that the Crime Victim Support Centers will provide “services of searching for victims to support (rather than waiting until victims come to the centers)” and “services according to the demand of victims.” In addition, based on the creation of the Korean Crime Victim Supporting Association in September 2008, more attention should then be given to international co-operation for victim support.