THE DISPLACED RESIDENTS’ RIGHT TO RELOCATION ASSISTANCE: TOWARD AN EQUITABLE URBAN REDEVELOPMENT IN SOUTH KOREA

Jihye Kim†

Abstract: Major urban redevelopment projects are currently on-going to beautify the urban landscape in Seoul, which is the most densely populated metropolitan area of South Korea. In this process, massive acquisition of homes has taken place, displacing many residents who are now demanding relocation assistance. South Korean law imposes obligations upon developers to provide relocation assistance for displaced residents. However, vagueness in the statutory language causes not only confusion in the implementation of the law, but has also led to a Supreme Court decision denying displaced residents’ legal right to relocation assistance. This interpretation further expanded developer’s discretion in carrying out their statutory duty to provide relocation assistance. As a result, the current law fails to protect displaced residents from the exploitations of developers, who are often private, for-profit corporations. This Comment argues that South Korea should amend the Relocation Assistance Statute in order to ensure displaced residents’ right to housing, which derives from the Korean Constitution and international law, so that they can secure adequate and fair relocation assistance.

I. INTRODUCTION

South Korea’s rapid economic growth over the last fifty years has dramatically changed the composition of its urban areas.1 Since the 1960s, a large proportion of the South Korean population has flooded into Seoul for job opportunities.2 As of 2009, the Seoul National Capital Area, which includes Seoul and its vicinity areas, had twenty-four million inhabitants, comprising almost half of the total South Korean population.3

† J.D. Candidate, University of Washington, 2011; Ph.D. in Social Welfare, Seoul National University (South Korea), 2005. The author would like to thank Professor Yong-Sung Jonathan Kang and editors Heather Ahlstrom Coldwell and Lauren Katz for their insightful and thorough comments.


As the most densely populated metropolitan city of South Korea, Seoul is the main target of urban redevelopment projects. One of the South Korean government’s major urban redevelopment projects in Seoul began as preparation for hosting the Seoul Summer Olympic Games in 1988. The motive for the urban redevelopment project was to present Seoul to the world as “a prosperous, happy, and healthy place—not as a squalid, impoverished city run by a brutal military dictatorship . . . .” As a result, during the 1980s, urban redevelopment projects replaced the traditional small, one-story urban housing units with multi-story Westernized apartment building. According to a report by Seoul National University, approximately 48,000 residential buildings were destroyed and 720,000 people were evicted during the six-year period before the 1988 Olympics.

Today, urban redevelopment in Seoul and its vicinity continues in order to accommodate the large population and to renovate old urban districts. These redevelopment projects usually result in developers acquiring land from existing owners and renters. The South Korean government justifies large-scale land acquisition related to urban redevelopment as a public works project, enhancing the quality of urban living and promoting modernization. Notably, the current Mayor of Seoul, Oh Se-Hoon, has dedicated his administration to several major redevelopment projects, including the New Town Project and the Han River Renaissance, which are intended to beautify the urban landscape.

One of the major ongoing urban redevelopment projects in Seoul is the “New Town Project.” The New Town Project is a comprehensive...
urban redevelopment project intended to transform broad areas of Seoul to create a new “town” within the city.\textsuperscript{15} Under the Project, the city not only replaces old, substandard housing with new, modernized housing, but also provides new roads, parks, and schools.\textsuperscript{16} The city of Seoul has designated twenty-six districts for the New Town Project, thus affecting fifteen percent of Seoul’s total households (about 250,000 households).\textsuperscript{17}

While urban redevelopment projects have improved the quality of housing and urban living for some people, they simultaneously created a significant relocation problem for displaced residents.\textsuperscript{18} For example, after redeveloping the 4th District of Gilum in Seoul, only 15.4% of the original homeowners in the district—10.9% of the total residents, including tenants—resettled in that redeveloped district after the project was completed.\textsuperscript{19}

The low resettlement rate after the developers’ large-scale land acquisition is attributable to two things. First, the redevelopment projects reduced the quantity of available housing units.\textsuperscript{20} For example, Seoul’s redevelopment projects destroyed 136,346 housing units between 2006 and 2010, but only 67,134 housing units were constructed in their place.\textsuperscript{21} Second, the redevelopment projects construct housing units that are prohibitively expensive for the original residents,\textsuperscript{22} who are mainly poor or low-income people.\textsuperscript{23} As a result of the redevelopment projects in Seoul, units that cost less than \textsterling500,000,000\textsuperscript{24} comprise only thirty percent of the available homes, compared to eighty-six percent before redevelopment.\textsuperscript{25} Thus, with respect to low-income residents, these urban redevelopment projects failed to improve the original residents’ housing quality, which was
one of the stated purposes of the project, and low-income residents have been effectively expelled from the redeveloped districts.

As a result, the current urban redevelopment projects primarily benefit wealthy new residents at the expense of low-income original residents. Displaced residents strongly resent this policy and have initiated protests. Tragically, having failed to secure alternative housing, some displaced residents committed suicide out of frustration, anger, and desperation after losing their homes. In response, displaced residents demanded that the Korean National Assembly amend the law governing compensation for displaced residents, the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor (“Compensation Act”). Among other things, they criticized the unfairness and inadequacy of relocation assistance, which is provided under Article 78(1) of the Compensation Act (“Relocation Assistance Statute”). However, no changes have been introduced yet, and courts have increased the developers’ discretionary power in implementing relocation assistance by interpreting the statute in favor of the developers.

This comment argues that South Korea should amend the Relocation Assistance Statute to ensure adequate and equitable relocation assistance for displaced residents by clarifying their legal right to relocation assistance and legal obligations of developers. Part II describes the Relocation Assistance Statute, and argues that although the statute imposes obligations upon developers to provide relocation assistance to displaced residents, its vagueness as to the displaced residents’ legal right to relocation assistance

---

26 Dae-Hee Lee, supra note 20.
27 Id.
29 Dae-Hee Lee, supra note 20.
33 See Dae-Hee Lee, supra note 31.
34 Compensation Act, supra note 32, art. 78(1).
35 See infra Part III.B.
and developers’ duties to fulfill the legal obligation causes confusion and arbitrariness in its implementation. Part III analyzes the Korean Supreme Court’s interpretation of the Relocation Assistance Statute, which held that displaced residents do not have a legal right to demand relocation assistance and developers enjoy broad discretion in establishing and implementing the relocation assistance. Part IV argues that, contrary to the Court’s interpretation, relocation assistance is an integral part of the fundamental human rights recognized by the Korean Constitution and the International Covenant on Economic Social and Cultural Rights. In conclusion, this comment recommends that the Korean National Assembly amend the Relocation Assistance Statute to: 1) recognize displaced residents’ legal right to relocation assistance, 2) establish standards for adequate relocation assistance, and 3) provide appropriate and accessible complaint procedures for displaced residents.

II. BACKGROUND

The Relocation Assistance Statute creates a legal obligation for developers to provide relocation assistance to displaced residents; however, the statute’s vagueness has undermined the intent of the statute and caused significant confusion and arbitrariness in its implementation. Although the Relocation Assistance Statute imposes a duty on developers to provide relocation assistance for displaced residents, it fails to specify what means are acceptable to fulfill the developers’ legal obligation to the displaced residents. As a result, the city of Seoul has exploited the statutory vagueness to adopt controversial relocation assistance methods.

A. Developers’ Obligations and Displaced Residents’ Rights Under the Relocation Assistance Statute Are Not Clearly Defined

When the South Korean government implements an urban redevelopment project under the Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents (“Urban Redevelopment Act”), the Compensation Act governs. The Urban Redevelopment Act provides that developers may expropriate or use private property to implement an urban redevelopment project. The developers, as defined under the Urban Redevelopment Act, include public sectors, such as

---

36 Compensation Act, supra note 32, art. 78(1).
37 Urban Redevelopment Act, supra note 11.
38 Id. art. 40(1).
39 Id. art. 38.
local governments or governmental entities, as well as private sectors, such as landowners or private construction companies.\textsuperscript{40} When a developer acquires or uses private property for an urban redevelopment project, Article 40(1) of the Urban Redevelopment Act requires that developer to provide compensation according to the Compensation Act.\textsuperscript{41}

The Compensation Act is a comprehensive statute that regulates compensation for people who lose their property due to public use or acquisition.\textsuperscript{42} The Act was created in 1976 as the Special Act on the Acquisition and Compensation for Loss of Land for Public Use ("Special Act") and was reenacted in 2003 to merge with other relevant statutes.\textsuperscript{43} The reenacted Compensation Act aimed to establish both the economic standard and the procedural process to administer compensation claims; and further aimed to provide more comprehensive legal protections to people whose property rights were infringed because of public works.\textsuperscript{44}

The Compensation Act provides several means of compensation for displaced residents—people who lose their homes due to appropriation for public use.\textsuperscript{45} It requires developers to pay the owner the price of the land and the building.\textsuperscript{46} In addition, developers have the obligation to pay the residents for their moving costs.\textsuperscript{47}

Relocation assistance is a specific form of compensation under the Relocation Assistance Statute of the Compensation Act\textsuperscript{48} available to displaced residents—those who lose their homes due to appropriation for public use—in addition to the compensation for the land, building, and moving costs. The Relocation Assistance Statute provides:

\textsuperscript{40} Landowners can initiate redevelopment by establishing a partnership with at least three fourths of landowners. \textit{Id.} arts. 13, 16 (1)-(2). Public or private construction companies can join in the redevelopment with the partnership’s consent. \textit{Id.} art. 8. Redevelopment generally takes place in the form of joint redevelopment, in part because construction companies often lobby or harass landowners to get the necessary consents. Myung-Hoon Lee, \textit{supra} note 5, at 5; The Asian Coalition for Housing Rights, \textit{supra} note 1, at 91-92.
\textsuperscript{41} Urban Redevelopment Act, \textit{supra} note 11, art. 40(1).
\textsuperscript{42} Compensation Act, \textit{supra} note 32, art. 1.
\textsuperscript{43} Reasons for Enacting the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor (2003), http://www.law.go.kr/ (last visited May 2, 2010).
\textsuperscript{44} \textit{Id.}
\textsuperscript{45} Compensation Act, \textit{supra} note 32, arts. 70-82.
\textsuperscript{46} Where a person’s land is expropriated, the Compensation Act requires developers to pay the owner the price of the land, as evaluated in the public record, in consideration of inflation and the value of location of the land. \textit{Id.} art. 70(1). For the loss of a building, the Compensation Act requires developers to compensate for the building, in which case the amount of compensation can be either the cost of rebuilding the building in a new location or the price of the building, whichever is lower. \textit{Id.} art. 75(1).
\textsuperscript{47} \textit{Id.} art. 78(5).
\textsuperscript{48} \textit{Id.} art. 78(1).
Any developer shall either formulate and implement a relocation plan or pay the relocation fund, under the conditions as prescribed by the Presidential Decree, for persons who [come] to lose their basis for living due to an implementation of public works (hereinafter referred to as “persons subject to a relocation plan”) by providing the residential buildings.49

Under the Relocation Assistance Statute, developers must provide relocation assistance either as a relocation plan or relocation fund to “persons subject to a relocation plan.”50 The statute does not articulate a clear definition of a relocation plan or relocation fund.51 The statute only implicitly indicates that a relocation plan is a form of non-monetary relocation assistance, whereas a relocation fund is monetary compensation.52 Both forms of relocation assistance are available to “persons subject to a relocation plan,” meaning that those who are qualified for a relocation plan may be eligible to receive any benefit under the statute.53 Therefore, the

49 Id. The translation of the statute here is a modified version from that of the Korean Legislation Research Institute. The translation by Korean Legislation Research Institute reads: “[a]ny project operator shall either formulate and implement a plan for moving or pay the resettlement funds, under the conditions as prescribed by the Presidential Decree, for persons who [come] to lose their basis for living due to an implementation of public works (hereinafter referred to as “persons subject to a plan for moving”) by providing the residential buildings.” This comment chose a different English translation for “project operator,” “plan for moving,” “resettlement funds,” and “persons subject to a plan for moving” and instead used “developer,” “relocation plan,” “relocation fund,” and “persons subject to a relocation plan,” respectively, for clarity and consistency without changing the original meaning of the statutory language in Korean.

50 Compensation Act, supra note 32, art. 78(1). When there are requests by more than ten households, developers must establish and provide a relocation plan. Gongiksaupeul Wehan Toji Deungeui Chideuk Mit Bosangeh Kwanhan Bunryul Sihangryung [Enforcement Decree Pursuant to the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor] Rule No. 21565, art. 40 (amended 2009) [hereinafter Compensation Act Enforcement Decree].

51 Id. Developers must provide a relocation fund when the developer does not implement a relocation plan or the “persons subject to a relocation plan” move to a district where the relocation plan does not cover. Compensation Act Enforcement Decree, supra note 50, art. 41. However, the amount of compensation provided as a relocation fund is not necessarily comparable to the relocation plan. Under the current government regulation, persons subject to a relocation plan may receive a relocation fund for thirty percent of the value of the appropriated residential building, the total amount of which is contained to minimum ₩5,000,000 (approximately US $50,000) and maximum ₩10,000,000 (approximately US $100,000). Gongiksaupeul Wehan Toji Deungeui Chideuk Mit Bosangeh Kwanhan Bunryul Sihanggyuchick [Enforcement Regulation Pursuant to the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor] Rule No. 180, art. 53(2) (amended 2009).

52 Id. Developers must provide a relocation fund when the developer does not implement a relocation plan or the “persons subject to a relocation plan” move to a district where the relocation plan does not cover. Compensation Act Enforcement Decree, supra note 50, art. 41. However, the amount of compensation provided as a relocation fund is not necessarily comparable to the relocation plan. Under the current government regulation, persons subject to a relocation plan may receive a relocation fund for thirty percent of the value of the appropriated residential building, the total amount of which is contained to minimum ₩5,000,000 (approximately US $50,000) and maximum ₩10,000,000 (approximately US $100,000). Gongiksaupeul Wehan Toji Deungeui Chideuk Mit Bosangeh Kwanhan Bunryul Sihanggyuchick [Enforcement Regulation Pursuant to the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor] Rule No. 180, art. 53(2) (amended 2009).

53 In accordance with the Relocation Assistance Statute, the subsequent governmental regulations consistently use the term “persons subject to a relocation plan” as the target population for relocation assistance. E.g., Compensation Act Enforcement Decree, supra 50, arts. 40, 41 (relocation fund is available to “persons subject to a relocation plan”).
scope and content of the relocation plan is critical to the implementation of either type of relocation assistance.\(^{54}\)

Although the Relocation Assistance Statute provides the legal basis that obligates developers to provide relocation assistance, it contains much ambiguity in its implementation. First, the statute does not specify how developers must fulfill their obligation to provide relocation assistance.\(^{55}\) The Statute fails to set a clear standard for determining the adequacy of a relocation plan.\(^{56}\) Article 78(4) of the Compensation Act mandates the relocation plan to contain “the basic facilities for living on a normal level, such as roads, water-supply facilities, drainage facilities and other public facilities . . . .”\(^{57}\) However, the mere assurance of a basic living standard is insufficient as a standard for relocation assistance because it simply ignores the compensatory nature of the relocation assistance. Additionally, Article 78(2) requires developers to consult the local government when they intend to establish a relocation plan, and yet the provision fails to provide a standard on which the government can evaluate and monitor it.\(^{58}\) In the absence of clear guidance under the statute, developers are theoretically free to adopt any method to satisfy this vague legal obligation.\(^{59}\)

Second, the Relocation Assistance Statute does not specify how displaced residents can seek recourse against developers. It is ambiguous whether it creates a legal right for individuals to seek relocation assistance against developers when a developer fails to fulfill its statutory obligation. Thus, under the Relocation Assistance Statute, the question arises how, and if at all, a displaced resident can challenge a developer’s rejection to relocation assistance.\(^{60}\) While the Relocation Assistance Statute is silent about legal rights of displaced residents, developers can legally exclude renters and occupants of illegally constructed homes from relocation assistance under Article 40(3) of the Presidential Decree pursuant to the Relocation Assistance Statute (“Presidential Decree”).\(^{61}\) This exclusion has caused serious resentment over the Relocation Assistance Statute because it

\(^{54}\) The Korean Supreme Court contemplated that a relocation fund is a form of relocation plan. 92Da35783 (en banc), (Gong1994.7.1.(971), 1779) (Supreme Ct., May 24, 1994) [hereinafter 92Da35783 [Lee Chun-Jae Case]] (Kim Sang-Won, J., Bae Man-Woon, J., Park Man-Ho, J., Chun Kyung-Song, J., & Park Jun-Suh, J., dissenting on other grounds).

\(^{55}\) See Compensation Act, supra note 32, art. 78(1).

\(^{56}\) See id. art. 78(1).

\(^{57}\) Id. art. 78(4).

\(^{58}\) Id. art. 78(2).

\(^{59}\) See infra Part III.B.

\(^{60}\) See, e.g., 92Da14908, (Gong1992, 2647) (Supreme Ct., July 28, 1992) [hereinafter 92Da14908 [Choi Yong-Min Case]]; 92Da35783 [Lee Chun-Jae Case], supra note 54.

\(^{61}\) Compensation Act Enforcement Decree, supra note 50, art. 40(3).
effectively takes homes from the most disadvantaged people without providing alternative housing.62

Ambiguities in the Relocation Assistance Statute have resulted in a great deal of disputes, especially in Seoul where major redevelopment projects have taken place.63 Particularly, the controversies that Seoul has experienced in recent decades show how the ambiguities of the Relocation Assistance Statute create confusion and resentment in implementing its noble goal of providing relocation assistance.

B. Under the Ambiguous Terms of the Relocation Assistance Statute, the City of Seoul Has Offered Controversial Means for Relocation Assistance

The Relocation Assistance Statute fails to explain how developers should fulfill their relocation assistance obligations under Article 78(1). The city of Seoul filled this gap by promulgating the Seoul City Ordinance on Special Supply of Citizen Housing for Displaced Residents (“Housing Ordinance”).64 Before it was amended in 2008, the Housing Ordinance required the city to provide Special Bunyangkwon (“Bunyangkwon”) to displaced residents when it conducts redevelopment projects in Seoul.65 Bunyangkwon can be defined as a right of first refusal to occupy a redeveloped housing unit.66 Bunyangkwon did not guarantee new housing; it only gave displaced residents an option to secure a new housing unit by placing a deposit before developers began to sell the housing in the market.67 For forty years, Bunyangkwon was the primary tool for implementing the city’s compensation obligations under the Relocation Assistance Statute for urban redevelopment projects in Seoul.68

63 See, e.g., 92Da14908 [Choi Yong-Min Case], supra note 60; 92Da35783 [Lee-Chun-Jae Case], supra note 54; 94Nu11279, Gong1995.12.1.(1005), 3795 (Supreme Ct., Oct. 12, 1995) [hereinafter 94Nu11279 [Lee Yang-Ok Case]].
64 Seoulteukbyulsi Chulgumin Deungeh Daehan Kukminjootaek Teukbyulgonggeup Gyuchick [Seoul City Ordinance on Special Supply of Citizen Housing for Displaced Residents], Ordinance No. 3616 (2008) [hereinafter Seoul Housing Ordinance].
66 See 92Da35783 [Lee Chun-Jae Case], supra note 54. Bunyangkwon literally means a right to allocation. Depending on the context, Bunyangkwon can be used to mean a right to get an offer to buy or lease a housing site or an apartment.
67 See Si-Youn Sung & Sun-Wook Choi, supra note 65.
68 Id.
The effectiveness of Bunyangkwon was controversial. In a way, it was an effective means of relocation assistance because it allowed the residents to buy a new home at a relatively low price in the new development before its price increased in the open market. However, even the relatively low price was prohibitively expensive for the original residents in many cases. While the original residents were mainly low-income people living in small substandard homes, developers tended to build large, luxurious buildings in their place. Moreover, it created a black market for the trading of Bunyangkwon between residents and outsiders. Outsiders, who could afford the new housing, had an incentive to buy the original occupants’ Bunyangkwon, not only to acquire the newly developed housing, but also to enjoy the increased market value of the housing after redevelopment. Indeed, for some people, Bunyangkwon was a “ticket” to a windfall profits because they could obtain a home at a low price before the price soared after redevelopment. As a result, only a very small percentage of the original residents could resettle in their redeveloped district, even with Bunyangkwon assistance.

In amending the Housing Ordinance on April 10, 2008, Seoul abolished the Bunyangkwon compensation method. The city stated that it repealed Bunyangkwon because of: 1) a lack of new land sites for housing construction, 2) a desire to eliminate the black market for Bunyangkwon, and 3) a belief that the developers’ financial burden under the Compensation Act was onerous. The city acknowledged that there would not be enough housing to offer to the displaced residents after redevelopment. With respect to developers’ burden, the city indicated that a recent change in a government regulation (which now requires developers to offer moving

---

70 See id.
72 Soo-Hyun Kim, supra note 16, at 214.
73 Si-Youn Sung & Sun-Wook Choi, supra note 65.
74 Id.
75 Id.
76 See Gwang-Suk Choi, supra note 69; The Asian Coalition for Housing Rights, supra note 1, at 91.
77 Seoul Housing Ordinance, supra note 64.
79 Dae-Sik Sun, supra note 78.
costs to displaced homeowners as well as tenants) imposed a great burden on the developers.\textsuperscript{80}

Whereas Bunyangkwon offered displaced residents an option to \textit{buy} a new housing unit, the current Housing Ordinance provides only a right to \textit{lease} to both homeowners and renters.\textsuperscript{81} The city explained that this new compensation plan intended to promote the city’s new housing policy to guarantee “occupancy” rather than “ownership” of housing.\textsuperscript{82} In the amendment, the city also inserted a new eligibility condition for displaced residents, which limits the right to lease only to displaced residents who “agree to a negotiated compensation.”\textsuperscript{83} If the displaced residents disagree with the compensation plan, they lose their right to lease under the Housing Ordinance.\textsuperscript{84} Although the city did not explain why it added this new condition, it appears that the city intended to use the relocation assistance not merely as compensation but also as a mechanism to precipitate redevelopment.

The repeal of Bunyangkwon instigated heated disputes about what should be adequate and fair relocation assistance for displaced residents.\textsuperscript{85} Many displaced homeowners fiercely opposed the new form of relocation assistance as an unfair and inadequate means of compensation for the loss of their homes.\textsuperscript{86} However, the Relocation Assistance Statute, with the absence of clear terms, fails to guide adequacy and fairness of the relocation assistance. The subsequent Korean Supreme Court’s decisions in cases below did not fill the gap in the Relocation Assistance Statute. To the contrary, the Court’s decisions only broadened the leeway with which developers could formulate a relocation assistance plan at their own discretion.

\begin{flushright}
\textsuperscript{80} Seoul Housing Ordinance, supra note 64; Reasons for Amending Seoul Housing Ordinance, supra note 78.
\textsuperscript{81} Dae-Sik Sun, supra note 78.
\textsuperscript{82} Reasons for Amending Seoul Housing Ordinance, supra note 78; Seoul Housing Ordinance, supra note 64, art. 2(10); Dae-Sik Sun, supra note 78.
\textsuperscript{83} Seoul Housing Ordinance, supra note 64, art. 5(1).
\textsuperscript{84} Reasons for Amending Seoul Housing Ordinance, supra note 78.
\textsuperscript{85} Mainly homeowners opposed the new Ordinance because it would turn them into tenants by taking their homes. Dae-Sik Sun, supra note 78.
\textsuperscript{86} Id.
\end{flushright}
III. The Korean Supreme Court Further Eroded Displaced Residents’ Rights Under the Relocation Assistance Statute

The Relocation Assistance Statute does not specify whether or not it creates a legal right for displaced residents to obtain relocation assistance. Nor does it clearly describe how developers must fulfill their obligation to provide relocation assistance. The Korean Supreme Court reviewed these issues and concluded that the Relocation Assistance Statute does not create a legal right for displaced residents to obtain relocation assistance, and that developers have broad discretion in determining how to implement their legal obligation to provide relocating assistance. The Court’s interpretation of the Relocation Assistance Statute effectively deprives displaced residents of their right to demand adequate and fair relocation assistance, and places them at the mercy of developers to secure relocation assistance.

A. According to the Korean Supreme Court, the Relocation Assistance Statute Does Not Create a Concrete Right for Displaced Residents

The Korean Supreme Court’s current position on the individual rights conferred by the Relocation Assistance Statute represents a complete divergence from precedent. On July 28, 1992, the Korean Supreme Court held that the Relocation Assistance Statute creates a legal right for displaced residents to sue developers for relocation assistance when the developers allegedly fail to provide relocation assistance. In the 92Da14908 decision (“Choi Yong-Min case”), the developer, the Korean National Housing Corporation, declined to offer the plaintiffs Bunyangkwon as relocation assistance under its relocation plan when the property was expropriated. At the time of expropriation, the plaintiffs, Choi Yong-Min and another unnamed displaced resident, had temporarily designated a third party as the owner in trust of their home. The plaintiffs argued that they were eligible...
for Bunyangkwon because they were the true owners of the property at issue, notwithstanding the temporary change in the title.92 However, the Corporation determined that the plaintiffs did not qualify as “persons subject to a relocation plan”93 under its relocation plan and contended that the plaintiffs thus had no right to demand relocation assistance.94

The Court held that the plaintiffs had the legal right to challenge the developer’s denial of Bunyangkwon when the developer’s rejection was based on its own arbitrary relocation assistance eligibility determination.95 In reaching this holding, the Court determined that the intent of the Relocation Assistance Statute is “to provide a developer with a duty rather than power.”96 The Court thus concluded that “a displaced resident who is excluded from a relocation plan because of the developer’s arbitrary interpretation [of the plan] should be able to seek a claim to demand the same legal status as other displaced residents who secured the status of persons subject to a relocation plan.”97 In this case, the Court effectively ruled that the Relocation Assistance Statute created a private right of action allowing displaced residents to bring a civil lawsuit against developers when the residents were denied relocation assistance.98

This interpretation of the statute lasted only two years. On May 24, 1994, the Korean Supreme Court revisited the issue.99 In the 92Da35783 decision (“Lee Chun-Jae case”), Lee Chun-Jae, who was the owner of a residential building, brought a civil suit against the developer, the Korean National Housing Corporation, seeking Bunyangkwon for relocation assistance.100 In this case, the plaintiff failed to submit an application for Bunyangkwon during the designated period.101 Meanwhile, Yang Jae-Hong, who was the plaintiff’s renter at that time, claimed ownership of the building and acquired Bunyangkwon.102 The plaintiff argued that he had the right to demand Bunyangkwon from the developer as the actual owner of the house,

---

92 See id.
93 Compensation Act, supra note 32, art. 78(1).
94 See 92Da14908 [Choi Yong-Min Case], supra note 60.
95 Id.
96 Id.
97 Id.
98 See id.
99 92Da35783 [Lee Chun-Jae Case], supra note 54. As in the Choi Yong-Min decision, 92Da14908 [Choi Yong-Min Case], supra note 60, the Relocation Assistance Statute interpreted in this case was Article 8 of the Special Act, which is equivalent of Article 78(1) of the Compensation Act. See text accompanying n.89.
100 92Da35783 [Lee Chun-Jae Case], supra note 54.
101 Id. In this case, the property was appropriated for a housing site development, which is a public work implemented to develop housing sites for housing construction.
102 Id. Yang Jae-Hong was a co-defendant in this case.
and that the defendant corporation was obligated to provide him with Bunyangkwon, according to the developer’s relocation plan.\textsuperscript{103}

In its \textit{en banc} decision, the Court disagreed with the plaintiff.\textsuperscript{104} The Court held that the Relocation Assistance Statute intends to assist displaced residents to "recover their previous living condition, as well as to ensure a quality of life as a human being."\textsuperscript{105} However, the Court ruled that the Statute did not create a "concrete"\textsuperscript{106} right for individuals to claim relocation assistance.\textsuperscript{107} In other words, although the statute required developers to provide relocation assistance, the Court interpreted that the requirement does not enable individuals to bring an action to demand relocation assistance against the developers.\textsuperscript{108} According to the Court, relocation assistance is a mere benefit arising from government’s political and benevolent motivations rather than a right created because of loss.\textsuperscript{109} Thus, while individuals can generally sue for an indemnity, they cannot do so for relocation assistance because they did not suffer deprivation of a cognizable right that would allow them to bring a civil lawsuit against developers.\textsuperscript{110}

The Court further stated that an individual’s right to relocation assistance is realized as a concrete right only after "the resident seeks to obtain the right, and applies to the selection process, . . . and the developer confirms and determines the resident as a person subject to a relocation plan."\textsuperscript{111} Thus, the Court effectively held that displaced residents under the Relocation Assistance Statute merely have a right to apply for relocation assistance.

\textsuperscript{103} \textit{Id.} Under the corporation’s relocation plan, a person was eligible to become “persons subject to a relocation plan” if he was the actual building owner and did not have other housing. In this case, the plaintiffs argued that they satisfied both of the conditions.

\textsuperscript{104} \textit{See id.}

\textsuperscript{105} 92Da35783 [Lee Chun-Jae Case], \textit{supra} note 54.

\textsuperscript{106} The Korean word translated into “concrete” here can be also translated into “substantive” or “actionable,” which in any case indicates that it is a right that is deemed to have a self-sufficient power to be enforced through legal recourse. In this case, the Court used “concrete” right, as opposed to “abstract” right, to mean that a concrete right is a legal right that is vested in the individual and allows the individual to bring a lawsuit against developers when the right is violated. In comparison, an abstract right has no legal power in itself and needs to satisfy other conditions to have the legal effect as a concrete right. \textit{See id.}

\textsuperscript{107} \textit{Id.}

\textsuperscript{108} \textit{See id.}

\textsuperscript{109} \textit{See id.} In reaching this decision, the Court introduced the term “living compensation” as a type of compensation that is distinguishable from “indemnity.” According to the court, the key distinction between living compensation and indemnity is that the right to living compensation arises from the government’s political and benevolent motivations, whereas the right to indemnity arises from the loss itself. While individuals cannot bring a civil lawsuit against developers for living compensation, they can sue for an indemnity. In this case, the court held that assistance under the Relocation Assistance Statute may only be granted for living compensation.

\textsuperscript{110} \textit{See 92Da35783 [Lee Chun-Jae Case], supra note 54, (Kim Sang-Won, J., Bae Man-Woon, J., Park Man-Ho, J., Chun Kyung-Song, J., & Park Jun-Suh, J., dissenting).}

\textsuperscript{111} \textit{Id.}
assistance according to the developer’s relocation plan, while the developer has the final decision whether or not to grant such assistance.\textsuperscript{112}

The Court’s interpretation of the Relocation Assistance Statute in the \textit{Lee Chun-Jae} case directly contradicted its previous interpretation in the \textit{Choi Yong-Min} case.\textsuperscript{113} Thus, the Supreme Court overruled the decision in the \textit{Choi Yong-Min} case.\textsuperscript{114} Accordingly, subsequent cases have relied on the interpretation in the \textit{Lee Chun-Jae} case and have denied displaced residents’ concrete rights to relocation assistance.\textsuperscript{115}

The Constitutional Court of Korea\textsuperscript{116} adopted the Supreme Court’s interpretation in \textit{Lee Chun-Jae} case when it decided 2004Hunma19 (the “\textit{Lee Sun} case”) on February 23, 2006.\textsuperscript{117} In this case, Petitioner Lee Sun challenged the constitutionality of Article 40(3) of the Presidential Decree, excluding renters from relocation assistance despite the mandate under the Relocation Assistance Statute.\textsuperscript{118} In upholding the constitutionality of the provision, the Constitutional Court relied on the Supreme Court’s interpretation of the Relocation Assistance Statute in the \textit{Lee Chun-Jae} case\textsuperscript{119} and ruled that relocation assistance is a form of “living compensation,” which is a mere benefit given by the government, rather than a fundamental right prescribed by Constitution.\textsuperscript{120}

This uniform interpretation of the Relocation Assistance Statute by the Supreme Court and the Constitutional Court confirms that under the current Relocation Assistance Statute whether a displaced resident has a right of action depends on the developer’s decision; displaced residents can demand relocation assistance from a developer only when the developer establishes a

\textsuperscript{112} See \textit{id}. (Kim Sang-Won, J., Bae Man-Woon, J., Park Man-Ho, J., Chun Kyung-Song, J., & Park Jun-Suh, J., dissenting).

\textsuperscript{113} \textit{Id}.

\textsuperscript{114} \textit{Id}.

\textsuperscript{115} See, e.g., 94Nu11279 [Lee Yang-Ok Case], \textit{supra} note 63; 2008Du12610 [SH Corporation Case], \textit{supra} note 89. South Korea has a civil law system. In the civil law system, the \textit{Lee Chun-Jae} decision, 92Da35783 [Lee Chun-Jae Case], \textit{supra} note 54, does not have a binding effect but has legal authority to serve as guidance for statutory interpretation.

\textsuperscript{116} Both the Korean Supreme Court and the Korean Constitutional Court are the courts with the highest authority in the South Korean judicial system. Although the Korean Constitutional Court is primarily responsible for dealing with constitutional disputes, the Korean Supreme Court also has the authority to interpret the Constitution when deciding cases. This parallel judicial structure, which allows the two highest courts to render different decisions about constitutionality, is controversial. Gang-Jin Cha, \textit{Constitutional Law} 1289 (8th ed. 2008).

\textsuperscript{117} 2004Hunma19 [Lee Sun Case], \textit{supra} note 89, at 245-46.

\textsuperscript{118} \textit{Id.} at 243-44.

\textsuperscript{119} This case cites a Korean Supreme Court Decision, 2001Da57778, (Gong2003.9.15.(186), 1817) (Supreme Ct., July 25, 2003), which refers to the \textit{Lee Chun-Jae} decision to support its decision. 92Da35783 [Lee Chun-Jae Case], \textit{supra} note 54.

\textsuperscript{120} 2004Hunma19 [Lee Sun Case], \textit{supra} note 89, at 246.
relocation plan and designates the displaced resident as an eligible applicant. While individual displaced residents do not have a legal power to enforce the Relocation Assistance Statute, the residents are left to the mercy of the developers to secure relocation assistance.

B. The Court’s Ruling in Lee Chun-Jae Granted Developers Broad Discretion in Implementing Their Duty to Provide Relocation Assistance

In addition to denying displaced residents a concrete right to compensation under the Relocation Assistance Statute, the Korean Supreme Court’s decision in the Lee Chun-Jae case significantly increased developers’ discretion in implementing their legal obligation to provide displaced residents with relocation assistance. In the Lee Chun-Jae case, the Court expressly acknowledged that developers may rely on their subjective judgment based on “the type and characteristics of the public project, project circumstances and conditions, and the number of the persons subject to the relocation plan” when determining the terms and the amount of compensation that they are willing to provide as relocation assistance. Thus, under the Court’s interpretation, the Relocation Assistance Statute does not limit developers when they exercise their discretion according to their own financial priorities and convenience to determine the scope and methods of relocation assistance.

The Lee Chun-Jae case directly influenced the Korean Supreme Court’s 94Nu11279 decision (“Lee Yang-Ok case”), decided on October 12, 1995. In the Lee Yang-Ok case, the Court reaffirmed that the Relocation Assistance Statute allows developers broad discretion in providing relocation assistance for displaced residents. The Korean Supreme Court stated that the Relocation Assistance Statute provides a mere legal benefit to apply for the relocation assistance “to those who cooperate with the public project.” The Court further held that developers have discretion to determine: 1) the number of housing units to allocate for relocation

---

121 92Da35783 [Lee Chun-Jae Case], supra note 54.
122 Id.
123 See id. (the relocation plan’s “specific content is determined at the discretion of the developers based on the consideration of the overall situation, including the type and characteristics of the public project, project circumstances and conditions, and the number of the persons subject to the relocation plan”).
124 94Nu11279 [Lee Yang-Ok Case], supra note 63.
125 See id.
126 Id.
assistance and 2) the criteria to select beneficiaries among the displaced residents.127

Developers continue to enjoy broad discretion in determining the scope and methods of their relocation assistance. Recently, in a case decided on March 12, 2009, the Korean Supreme Court again held that developers have discretion in determining both eligibility criteria and the amount or type of land or housing that can be assigned to displaced residents for relocation assistance, as long as no special reason requires the Court to suspect that the determination was unreasonable or invalid.128 In this case, the defendant developer arbitrarily chose a date and applied differential relocation assistance to displaced residents based on whether they had residential status before that date.129 Under the developer’s relocation plan, those who lived in the district before the designated date, had no other housing, and agreed to voluntarily move out and accept the compensation plan could get a right to buy a maximum eighty-five square meter apartment.130 On the other hand, those who were not residents before the designated date but were able to satisfy the other requirements had a right to buy a maximum sixty square meter apartment.131 Those who failed to meet all the conditions could only receive a right to lease a sixty square meter apartment.132 The Korean Supreme Court held that adopting such conditions and applying differential relocation assistance according to these conditions is within the developer’s legal discretion, and is permissible under the Relocation Assistance Statute.133

Thus, under the Korean Supreme Court’s current interpretation of the Relocation Assistance Statute, developers have discretionary power to arbitrarily determine relocation assistance while simultaneously denying individuals’ legal redress for abuse of discretion. This statutory scheme that grants developers an overbroad power results in inequity in relocation assistance for displaced residents.

---

127 Id.
128 2008Du12610 [SH Corporation Case], supra note 89.
129 Id.
130 Id.
131 Id.
132 Id.
133 Id.
C. The Current Relocation Assistance Statute is Ineffective in Protecting Displaced Residents from the Exploitation of Developers

The current Relocation Assistance Statute fails to balance bargaining power between developers and displaced residents. Under the statute, not only are displaced residents at the mercy of developers to provide relocation assistance, but also developers can use their power as a tool to expedite evictions. The developers can fashion their relocation plan to disadvantage residents who do not agree with the proposed compensation plan and refuse to move out. In the Lee Yang-Ok case and the Housing Ordinance described above, developers could establish and implement a disparate relocation plan depending on the displaced residents’ voluntariness in agreeing to the proposed compensation plan and moving out. This practice illustrates how developers can use their legal duty to provide relocation assistance in order to diminish displaced residents’ power in negotiating relocation compensation. Because of the disparate bargaining power, displaced residents are often left with a choice between voluntarily moving out with unsatisfactory compensation or forcefully moving out with even less (or no) relocation assistance.

The uncontested power of developers in implementing relocation assistance is particularly problematic because developers are often private, for-profit entities inclined to minimize compensation expenses in order to maximize their own profits. Private developers tend to maximize their profits from the redevelopment projects by: 1) reducing the number of residents who receive relocation assistance, 2) reducing the cost for relocation assistance, and 3) building large, luxurious apartments in order to generate high profits per unit. These developers’ private interests contribute to under-compensation in assisting relocation of displaced residents, and also a decrease in affordable housing for the residents.

---

135 E.g. 2008Du12610 [SH Corporation Case], supra note 89.
136 Id.; Seoul Housing Ordinance, supra note 64, art. 5(1).
137 See 2008Du12610 [SH Corporation Case], supra note 89; Sang-Cheol Kim, supra note 30.
140 Id. at 215-16.
The current Relocation Assistance Statute is ineffective in providing adequate and fair relocation assistance for displaced residents. It fails to balance the power differences between developers and displaced residents, and thus alienates displaced residents from the benefits of urban redevelopment.\textsuperscript{141} This deficiency compels an amendment of the Relocation Assistance Statute to protect displaced residents from exploitation by developers.

IV. THE RELOCATION ASSISTANCE STATUTE SHOULD BE AMENDED TO PROTECT DISPLACED RESIDENTS’ RIGHT TO HOUSING

The fact that the current Relocation Assistance Statute fails to protect displaced residents against the exploitation of developers is problematic not only as a matter of law, but also as a matter of policy. The right to relocation assistance is an indispensible component of the right to housing, which is recognized under both the Korean Constitution and international law. In order to protect the residents’ fundamental human right to housing, the Korean National Assembly must amend the Relocation Assistance Statute and ensure that displaced residents secure alternative housing.

A. The Korean Constitution Compels the Government to Protect Displaced Residents’ Right to Housing

The Korean Constitution creates several individual rights and government duties that are relevant to displaced residents. Primarily, Article 23(3) provides an individual with the right to just compensation if the government appropriates private property for public use.\textsuperscript{142} With respect to the just compensation requirement, however, the Korean Constitutional Court in the Lee Sun case ruled that relocation assistance does not fall within the scope of just compensation under Article 23(3) of Constitution.\textsuperscript{143} The Court reasoned that relocation assistance is not mandated under the just compensation requirement, and thus a developer’s refusal of relocation assistance to renters did not violate any constitutional right.\textsuperscript{144}

\textsuperscript{141} Id. at 216.
\textsuperscript{142} HUNBUP [SOUTH KOREAN CONST.] art. 23(3) (“The compensation for acquisition, use, or restriction of private property shall be determined by law, in which event just compensation shall be provided.”).
\textsuperscript{143} 2004Hunma19 [Lee Sun Case], supra note 89, at 246.
\textsuperscript{144} Id. The Constitutional Court’s decision is arguably problematic because it rendered its decision without defining what just compensation constitutes for displaced residents in the context of urban redevelopment. The Supreme Court’s decision in the Lee Chun-Jae case, on which the Constitutional Court relied, did not provide the definition of just compensation either. See 92Da35783 [Lee Chun-Jae Case], supra note 54. Thus, by introducing and using the concept of “living compensation” without
Yet, the *Lee Sun* Court failed to consider other constitutional provisions that provide additional duties to the State when it implements housing redevelopment projects. Article 35(3) provides that the government has a duty to “ensure comfortable housing for all citizens through housing development policies.” Additionally, Article 122 states that the State may impose “restrictions or obligations necessary for the efficient and balanced utilization, development, and preservation of the land of the nation that is the basis for the productive activities and daily lives of all citizens.” These two constitutional provisions mandate that South Korea do more than merely compensate people for the loss of property in implementing redevelopment projects; rather, they impose an affirmative duty for South Korea to ensure that the redevelopment effectuates promotion of housing for all people.

Indeed, the Korean Constitutional Court noted that the Constitution underscores the paramount importance of housing. It stated that housing is an indispensable part of human life necessary to sustain comfortable living and pursue happiness; and is an important national policy agenda, which the government can achieve through an adequate housing policy. The Court further acknowledged that the government’s responsibility to secure housing for all citizens can be greater than its duty to protect other types of private property. Hence, under the constitutional scheme, the South Korean government has the duty to protect not only property rights but also housing rights when it conducts urban redevelopment projects.

defining just compensation, these Courts left their decisions somewhat unconvincing as to why relocation assistance does not fall under the standard of just compensation. For example, the United States Supreme Court defines just compensation as putting “the owner . . . in the same position monetarily as he would have occupied if his property had not been taken.” Almota v. U.S., 409 U.S. 470, 473-74 (1972). This definition of just compensation in the United States is arguably equivalent to the standard of living compensation to “to recover their living condition, as well as to ensure a quality of life as a human being.” 92Da35783 [Lee Chun-Jae Case], *supra* note 54; 2004Hunma19 [Lee Sun Case], *supra* note 89, at 246.

145 HUNBUP [SOUTH KOREAN CONST.] art. 35(3) (“The State shall endeavor to ensure comfortable housing for all citizens through housing development policies and the like.”).

146 HUNBUP [SOUTH KOREAN CONST.] art. 122 (“The State may impose, under the conditions as prescribed by Act, restrictions or obligations necessary for the efficient and balanced utilization, development and preservation of the land of the nation that is the basis for the productive activities and daily lives of all citizens.”).

147 GANG-JIN CHA, *supra* note 116, at 959-60; *see also* 2006Hunba112, Case Report (18(20), Ha), p. 1, 68 (Constitutional Ct., Feb. 23, 2006) [hereinafter 2006Hunba112 [Son Ae Cases]].

148 2006Hunba112 [Son Ae Case], *supra* note 147, at 68.

149 *Id.*

150 *Id.* at 72-73.

151 This constitutional scheme, which recognizes both property rights and housing rights, is similar to the Constitution of South Africa, under which the Constitutional Court of South Africa concluded that the two rights “create a broad overlap between land rights and socio-economic rights, emphasizing the duty on the State to seek to satisfy both [property right and housing right].” Port Elizabeth Municipality v Various Occupiers 2004 (12) BCLR 1268 (CC) (S. Afr.).
B. International Law Establishes the Right to Relocation Assistance as an Integral Part of the Fundamental Human Right to Housing

In addition to the Korean Constitution, the International Covenant on Economic and Social Rights (“ICESCR”) grants displaced residents the right to relocation assistance.\footnote{International Covenant on Economic, Social and Cultural Rights [ICESCR], G.A. Res. 2200A (XXI) (Dec. 16, 1966), \url{available at http://www2.ohchr.org/english/law/pdf/cescr.pdf} [hereinafter ICESCR].} Under Article 6(1) of the Korean Constitution, “[t]reaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law have the same effect as domestic law.”\footnote{HUNBUP [SOUTH KOREAN CONST.] art. 6(1) (“Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.”). ICESCR may also have a binding effect as a generally recognized rule of international law.} As a duly ratified treaty by South Korea in 1990, the ICESCR has binding effect to the same extent as domestic law.\footnote{Treaty Body Database, Treaty Status by Country, \url{http://www.unhchr.ch/tbs/doc.nsf/Statusfrset} (last visited Mar. 27, 2010).}

Article 11(1) of the ICESCR requires that the State party to “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate…housing, and to the continuous improvement of living conditions.”\footnote{ICESCR, supra note 152, art. 11.1.} Issuing its comment on the right to housing under ICESCR, the Committee on Economic, Social and Cultural Rights (“Committee”) strongly condemned the pervasive practice of “forced evictions”\footnote{The forced eviction in the Comment was defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Office of the U. N. High Comm’r for Human Rights, Comm. on Econ., Soc. and Cultural Rights [CESCR], General Comment 7: The Right to Adequate Housing (art. 11.1 of the ICESCR): Forced Evictions, ¶ 3, U.N. Doc. E/1998/22, annex IV (May 20, 1997), \url{available at http://www2.ohchr.org/english/bodies/cescr/comments.htm} [hereinafter CESCR, General Comment 7].} as a violation of fundamental human rights,\footnote{Id. ¶ 2.} while acknowledging that it occurs “primarily in heavily populated urban areas,”\footnote{Id. ¶ 5.} often “accompany[ing] large-scale development projects”\footnote{Id. ¶ 18.} “in both developed and developing countries.”\footnote{Id. ¶ 4.} Here, the Committee defined “forced eviction” as an acquisition of homes and land against the resident’s will “without the provision of, and access to, appropriate forms of legal or
other protection." Under the definition, acquisition of home without appropriate “relocation measures” would constitute a forced eviction.

With respect to South Korea’s status of compliance with Article 11(1) of the ICESCR, the Committee has recognized the deficiencies of the South Korean government’s relocation assistance for displaced residents, especially those who fall under private developers and are low-income. The Committee stated:

The Committee is also concerned that victims of private construction projects are not provided with compensation or temporary lodging, unlike private homeowners who are evicted as a result of public projects. Moreover, the Committee is concerned about the affordability of housing for lower income groups especially the vulnerable and marginalized groups . . .

Accordingly, the Committee recommended that South Korea provide protections, “to victims of forced evictions resulting from private development projects,” and “ensure that adequate housing is available to members of vulnerable or marginalized groups.” It further recommended that South Korea “establish a focal point within the Government for dealing with complaints or appeals for assistance on housing matters.”

The ICESCR, as well as the Korean Constitution, compels South Korea to promulgate laws that ensure fair and adequate relocation assistance for displaced residents who lose their homes in implementing urban redevelopment projects. To satisfy this governmental duty, the Korean National Assembly should revisit the Relocation Assistance Statute.

---

161 CESCR, General Comment 7, supra note 156, ¶ 3.
162 See id. ¶¶ 2, 3, 18.
164 Id. ¶ 25.
165 Id. ¶ 41.
166 Id.
167 Id.
168 See HUNBUP [SOUTH KOREAN CONST.] arts. 23(3), 35(3), 122; CESCR, General Comment 7, supra note 156, ¶ 9. In addition, the Korean Constitution imposes a duty on the State “to confirm and guarantee the fundamental and inalienable human rights of individuals.” HUNBUP [SOUTH KOREAN CONST.] art. 10. Under this provision, the Korean National Assembly has the obligation to enact or amend laws to protect the rights of individuals guaranteed under the Constitution. GANG-JIN CHA, supra note 116, at 388. The duty to protect individual rights applies not only against the State but also private parties. Id. at 386.
C. The Relocation Assistance Statute Should Be Amended to Ensure Equitable Relocation Assistance for Displaced Residents

To uphold the intentions and requirements of the Korean Constitution and the ICESCR to protect displaced residents’ right to housing, the Korean National Assembly should consider amending the current Relocation Assistance Statute as proposed below. The three proposals for amendment include: 1) recognizing displaced resident’s concrete right to relocation assistance; 2) establishing standards for adequate relocation assistance; and 3) providing appropriate and accessible complaint procedures for displaced residents.

1. The Relocation Assistance Statute Should Recognize Displaced Residents’ Concrete Right to Relocation Assistance

The Korean National Assembly should amend the Relocation Assistance Statute to declare that displaced residents have a concrete right to relocation assistance as an inherent part of right to housing under the Constitution and the ICESCR. Such an amendment would effectively annul the interpretation of the Relocation Assistance Statute by the Korean Supreme Court in the Lee Chun-Jae case \(^{169}\) and the Korean Constitutional Court in the Lee Sun case, \(^{170}\) which denied displaced residents’ legal right to relocation assistance. Because these Courts failed to acknowledge the constitutional right to housing in deciding these cases, the Korean National Assembly should correct the error by articulating the right to housing in the Relocation Assistance Statute. Further, to meet the legal requirement under the Constitution and the ICESCR to promote adequate housing for all people, the Relocation Assistance Statute should at least ensure alternative housing for all displaced residents, whether or not they are homeowners, renters, or occupants of unauthorized buildings. \(^{171}\) Accordingly, Article 40(3) of the Presidential Decree \(^{172}\) excluding renters and occupants of unauthorized buildings from

---

\(^{169}\) 92Da35783 [Lee Chun-Jae Case], supra note 54.

\(^{170}\) 2004Hunma19 [Lee Sun Case], supra note 89.


\(^{172}\) Compensation Act Enforcement Decree, supra note 50, art. 40(3).
relocation assistance should be repealed. This amendment would effectively overcome the ruling of the Lee Sun case, which upheld the constitutionality of Article 40(3) of the Presidential Decree.

When offering relocation assistance for non-owner displaced residents, the Korean National Assembly should heed to the Committee’s recommendation that the State should give “due priority to those social groups living in unfavorable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.”173 Considering that the non-owner displaced residents are typically the very population who are in need of housing, the amended Relocation Assistance Statute should give special attention to protect renters and occupants of unauthorized buildings and ensure that they obtain affordable housing through relocation assistance.174

2. The Relocation Assistance Statute Should Establish Standards for Adequate Relocation Assistance

The Relocation Assistance Statute should provide standards for relocation assistance that promotes adequacy and fairness. The Korean Supreme Court and the Korean Constitutional Court have stated that the intent of the Relocation Assistance Statute is “to recover their previous living condition, as well as to ensure a quality of life as a human being.”175 This statement provides a useful standard for relocation assistance that would both uphold the right to housing and the right to just compensation under the Constitution.

Once the Relocation Assistance Statute establishes the standard for relocation assistance, it further should provide specific directions on how developers can satisfy the standard of relocation assistance. The United States’ Uniform Relocation Assistance Act (“URA”)176 may provide a blueprint that South Korea could adapt. The URA compensates homeowners, tenants, and other qualified occupants for the costs of acquiring a “comparable replacement dwelling,” as well as relocation expenses and advisory services.177 The URA requires that “a comparable

173 CESC, General Comment 4, supra note 171, ¶ 11.
174 Id. ¶ 8(c) (stating that renters should be protected against unreasonable rent levels or rent increases).
175 92Da35783 [Lee Chun-Jae Case], supra note 54.
replacement dwelling” should meet certain standards. Replacement housing should be: 1) decent, safe, and sanitary; 2) functionally equivalent to (and equal or better than) the present home; 3) actually available for the displaced person; 4) affordable; 5) reasonably accessible to one’s place of employment; 6) generally as well located with respect to public and commercial facilities, such as schools and shopping, as the present home; and 7) not subject to unreasonable adverse environmental conditions. The Korean National Assembly may consider adopting these requirements in specifying the developers’ duties under the Relocation Assistance Statute.

3. The Relocation Assistance Statute Should Provide Appropriate and Accessible Complaint Procedures for Displaced Residents

To ensure that the Relocation Assistance Statute provides adequate protections for displaced residents against exploitation by developers, the statute should establish appropriate and accessible complaint procedures that deal with disputes on relocation assistance. Currently, under the Supreme Court’s decision in the Lee Chun-Jae case, a displaced resident can enjoy the right to bring an action against the developer only when the developer establishes a relocation plan and designates the displaced resident as an eligible applicant; therefore, if the developer does not formulate a relocation plan or ceases to implement the relocation plan, there is no way the displaced residents can challenge the illegality. The Korean Assembly should correct this inequity and provide aggrieved displaced residents with the right to bring an action against developers.

The specific complaint procedures for displaced residents may have a form of legal and/or other recourses. Granting displaced residents the right to bring a lawsuit against developers in civil court or administrative court proceedings is one option. Alternatively, as the Committee suggested, the statute may establish a specialized governmental organization that deals with complaints and appeals for assistance on relocation assistance. The latter form of procedures would be especially appropriate for many low-income displaced residents who cannot afford attorneys to bring lawsuits.

179 See CESCR, General Comment 7, supra note 156, ¶ 13.
180 92Da35783 [Lee Chun-Jae Case], supra note 54.
181 Id. (Bae Man-Woon, J., dissenting).
182 ECOSOC, Concluding Observations, supra note 163, ¶ 41; see also Chang-Hum Byun, supra note 23, at 9.
V. CONCLUSION

Urban redevelopment may be necessary to meet the public goals of urban modernization, but the development projects should serve to benefit all urban residents equitably. To achieve an equitable redevelopment that truly serves the public, displaced residents’ power to demand relocation assistance should be balanced against the developers’ power to implement public projects. Furthermore, as it carries out the redevelopment projects, the government should heed the fact that the right to housing is a basic right for all people and that relocation assistance for displaced residents is indispensable to protect this fundamental human right. Amidst the massive urban redevelopment, it is imperative for South Korea to recognize displaced residents’ right to relocation assistance and to provide them with adequate protection.