
National Human Rights Commission of Korea

**Bangladesh Delegation's
Study Visit to the NHRCK**

12-13 November 2007

Reference Book

National Human Rights Commission of Korea

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NATIONAL HUMAN RIGHTS COMMISSION OF KOREA

Study Visit of Bangladesh Delegation to National Human Rights Commission of Korea

12-13 November 2007
NHRCK Seminar Room (13th Fl.)
Seoul, Korea

Provisional Program

Monday 12 November 2007			
Session I. Courtesy Call & General Introduction	09:00- 09:30	Courtesy Call <i>Prof. Kyong-Whan AHN, NHRCK Chairperson</i>	Meeting Room (13 th Fl.)
	09:30- 10:30	General Introduction to the NHRCK <i>Soo Hee CHOI, NHRCK</i>	Seminar Room (13 th Fl.)
	10:30- 10:45	Break	-
Session II. Introduction to NHRCK Roles & Functions	10:45- 11:45	Complaint Handling Process <i>Jin Ho SHIN & Chae-Eun YOON, Human Rights Counseling Center</i>	Counseling Center (7 th Fl.)
	12:00- 13:30	Luncheon hosted by <i>Prof. Kyong-Whan AHN, NHRCK Chairperson</i>	Yongsusan (Korean Cuisine)
	14:00- 15:00	Investigations and Remedies I (Civil & Political Rights Violations) <i>Jung Rin KIM , Rights Violations & Remedies Bureau</i>	Seminar Room (13 th Fl.)
	15:00- 16:00	Investigations and Remedies II (Discriminatory Practices) <i>Yoon Ju JUNG, Discrimination & Remedies Bureau</i>	Seminar Room (13 th Fl.)

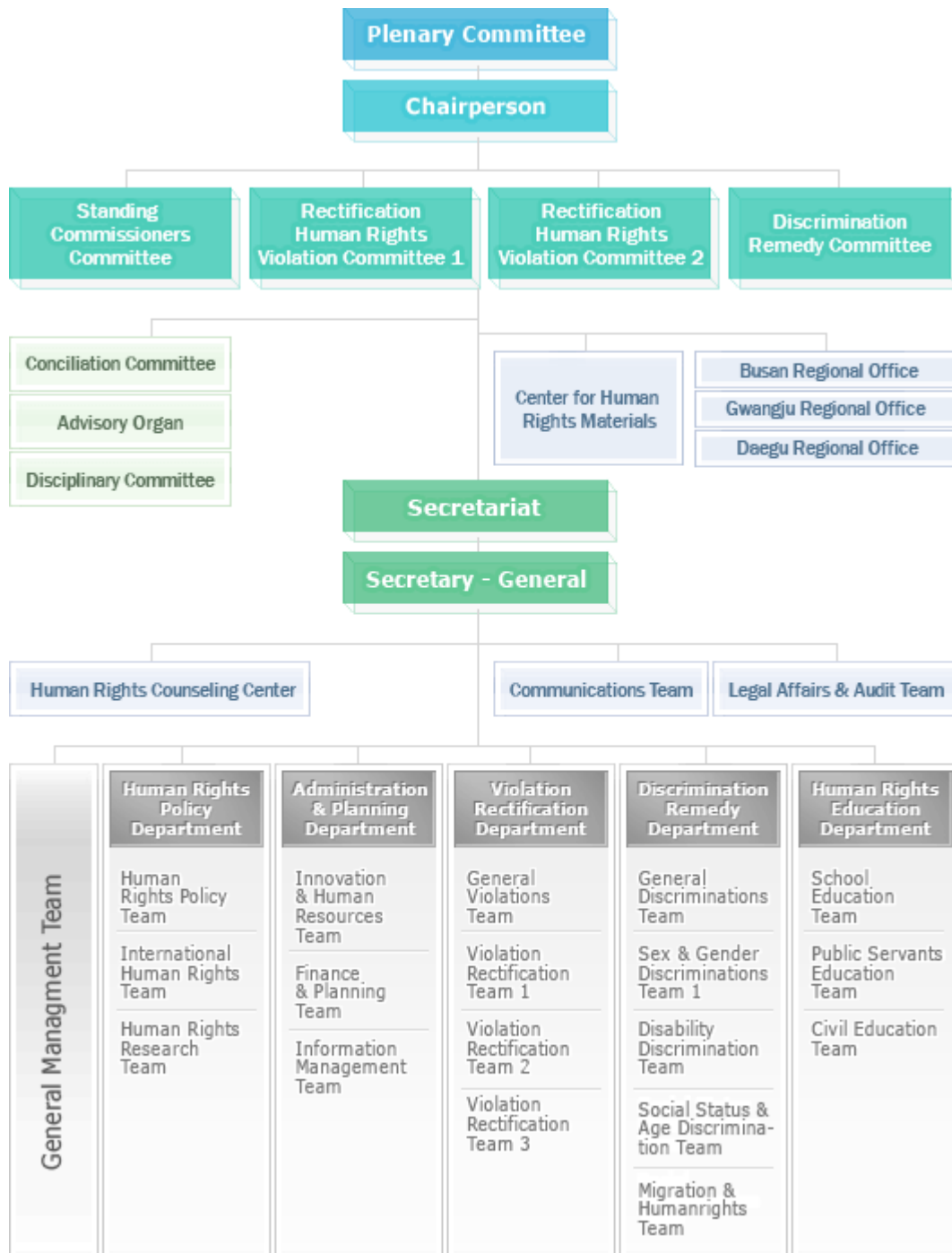
	16:00-17:00	NHRCK Tour <i>Soo Hee CHOI, NHRCK</i>	-
Tuesday 13 November 2007			
Session II. (continued)	10:00-11:00	Human Rights Policy Development <i>Seung-Gi HONG, Human Rights Policy Bureau</i>	Seminar Room (13 th Fl.)
	11:00-12:00	Human Rights Education and Public Awareness <i>Inaep PEAK, Human Rights Education Bureau</i>	Seminar Room (13 th Fl.)
	12:00-14:00	Lunch	-
Session III. Seminar on the NHRCK Establishment	14:00-16:30	14:00-14:30 (1) Historical Review on the NHRCK Establishment and Institutional Development <i>Young Sun CHUNG, NHRCK</i> 14:30-15:00 (2) The Civil Society's Engagement in the NHRCK Establishment <i>Youngmi YANG, NGO Activist</i> 15:00-15:30 (3) The Independence of the National Human Rights Commission <i>Byunghoon OH, NHRCK</i> 15:30-16:30 (4) Open Discussion	Seminar Room (13 th Fl.)

I. General Introductory Documents

1. General Introduction of the NHRCK
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General Introduction of the NHRCK
(Presentation Handouts to be Distributed)

Organization /About the Commission



The Commission

- The Commission is comprised of 11 commissioners.(The Chairperson, 3 Standing Commissioners and 7 Non-Standing Commissioners)
- Among the 11 commissioners, 4 shall be elected by the National Assembly, 4 shall be nominated by the President of Korea, and 3 shall be nominated by the Chief Justice of the Supreme Court and then approved by the President of Korea.
- The term of the Commissioners is for 3 years and can serve for up to 2 terms.
- The Commission compulsorily consists of at least 4 female commissioners.

Secretariat

- The Secretariat is comprised of 5 departments, 22 teams and 3 subsidiaries.
- The Secretariat executes the Commission's decisions and policies, and is responsible for all of the NHRCK's administrative duties.

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National Human Rights Commission of Korea

National Human Rights Commission Act

Public Law No. 6481 first enacted on May. 24, 2001

Revised in part by P.L. No.7427 (Civil Code) on Mar. 31, 2005

Revised in part by P.L. No. 7651 on Jul. 29, 2005

Revised in part by P.L. No. 7655 (Custodial Treatment Act) on Aug. 4, 2005

Revised in part by P.L. No. 7796 (National Public Official Act) on Dec. 29, 2005

Revised in part by P.L. No. 8050 (National Budget Act) on Oct. 4, 2006

Revised in part by P.L. No. 8435 (Act on Family Relations Registration, etc.) on May. 17, 2007

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

This Act purports to establish the National Human Rights Commission, which shall contribute to the embodiment of human dignity and worth as well as the safeguard of the fundamental democratic order through protecting unalienable fundamental human rights of all individuals and improving the standards of human rights.

Article 2 (Definitions)

The terms used in this Act shall be defined as follows: <Revised on Jul. 29, 2005; Revised by P.L. No. 7655 (Custodial Treatment Act) on Aug. 4, 2005; Revised by P.L. No. 8435 (Act on Family Relations Registration, etc.) on May. 5, 2007> <Effective as of January 1, 2008>

1. "Human rights" means human dignity, worth, liberty and rights as guaranteed under the Constitution and statutes of the Republic of Korea or recognized under international human rights treaties to which the Republic of Korea is a party and international customary law;

2. "Confinement or custodial facility" means a facility falling under any of the following:

- (a) Prison, prison for the youth, detention center and its branch, facility for probation, institute of forensic psychiatry, juvenile reformatory, and juvenile classification review board;
- (b) Police station cell and a facility where a judicial police officer investigates, detains and interns persons in order to perform his/her duties;
- (c) Military prison (including its branch, a detention house for the unconvicted and a military police guardhouse);
- (d) House for protecting foreigners; and
- (e) Custodial facility for many persons;

3. The term "custodial facility for many persons" means a facility to take custody or confine many persons, which is set forth in the Presidential Decree;

4. The term "discriminatory act violating Equal rights " means committing any of the following without any reasonable ground, on the basis of sex, religion, disability, age, social status, region of origin (referring to place of birth, base area of registration, principal area of residence before reaching maturity, etc.), national origin, ethnicity, physical condition including physical features, marital status such as married, single, separated, divorced, widowed, remarried or living together, pregnancy or having given birth, family form or family surroundings, race, skin color, ideology or political opinion, criminal record whose effect of punishment has been extinguished, sexual orientation, academic status, medical history, etc.; provided, however, that any temporary favorable treatment of a particular person (including a group of particular persons; hereinafter the same shall apply) to eliminate existing discrimination as well as the enactment and amendment of statutes and the formulation and enforcement of policy to this effect shall not be deemed a discriminatory act of violating the right of equality (hereinafter referred to as an "discriminatory act"):

- (a) An act of favorably treating, excluding, discriminating against or unfavorably treating a particular person regarding the employment (including recruitment, appointment, training, posting, promotion, payment of wage and any other money or supplying commodity, financing, age limit, retirement, dismissal, etc.);
- (b) An act of favorably treating, excluding, discriminating against or unfavorably treating a particular person regarding the supply or use of goods, services, means of transportation, commercial facilities, land and residential facilities;
- (c) An act of favorably treating, excluding, discriminating against or unfavorably treating a particular person regarding the education, training, and use of educational facilities or vocational training institutions; and

(d) An act of sexual harassment;

5. The term "sexual harassment" means that the working persons, employers or employees of a public agency make others feel sexually humiliated or loathsome by their sexual comments, etc. or giving others disadvantage in the employment on the pretext of disobedience to sexual comments, other demands, etc., by taking full advantage of their superior position or with regard to the duties, etc.;

6. The term "public agency" means an agency falling under the following items:

(a) State agency;

(b) Local governments;

(c) Various levels of schools set up pursuant to the Elementary and Secondary Education Act, the Higher Education Act and other Acts; and

(d) An agency affiliated with the public service pursuant to Article 3 (1) 10 of the Public Service Ethics Act; and

7. The term "disability" means the condition where one is hampered by substantial restriction in the daily life or social activity for a long time due to physical, spiritual or social factor.

Article 3 (Establishment and Independence of National Human Rights Commission)

(1) The National Human Rights Commission (hereinafter referred to as the "Commission") shall be established to deal with affairs for the protection and improvement of human rights under this Act.

(2) The Commission shall independently deal with the matters which fall under its jurisdiction.

Article 4 (Scope of Application)

This Act shall apply to all citizens of the Republic of Korea and all foreigners residing therein.

CHAPTER II ORGANIZATION AND OPERATION OF COMMISSION

Article 5 (Organization)

(1) The Commission shall be comprised of eleven commissioners for human rights (hereinafter referred to as "commissioners") including one chief commissioner and three standing commissioners.

(2) The President of the Republic of Korea shall appoint as commissioners four

persons nominated by the National Assembly (including two standing commissioners), four by the President, and three by the Chief Justice of the Supreme Court among certain individuals who are equipped with professional knowledge in and expertise on human rights matters and are well recognized to be capable of carrying out impartially and independently duties to protect and improve human rights.

(3) The President shall appoint the Chief Commissioner among the commissioners.

(4) Chief Commissioner and full-time commissioner shall be appointed as public officials in political service.

(5) Four or more of the commissioners shall be women.

(6) If the term of office of a commissioner expires, he/she shall continuously perform his/her duties until his/her successor is appointed.

Article 6 (Duties of Chief Commissioner)

(1) The Chief Commissioner shall represent the Commission and exercise the overall control of the affairs thereof.

(2) If the Chief Commissioner is unable to perform his/her duties for any inevitable reason, a full-time commissioner, whom the president designates in advance, shall act on behalf of the president.

(3) The Chief Commissioner may appear before the National Assembly and state opinions on affairs falling under the jurisdiction of the Commission, and, upon the demand of the National Assembly, shall appear and report to or answer the National Assembly.

(4) The Chief Commissioner may attend the Cabinet meeting to present opinions and may recommend to the Prime Minister the submission of any bill related to affairs falling under the jurisdiction of the Commission (including the draft Presidential Decree for the enforcement of this Act).

(5) In performing his/her duties related to the budget of the Commission, the Chief Commissioner shall be deemed to be the head of a national government agency as defined in Article 6 of the State Budget Act. <Revised on Jul. 29, 2005; on Oct. 4, 2006 by P.L. No. 8050 (State Budget Act)>

Article 7 (Term of Office of President and Commissioners of Commission)

(1) The term of office of the president and commissioners of the Commission shall be three years, and the consecutive appointment may be permitted for only one time.

(2) In the event a commissioner's seat becomes vacant, the President shall appoint

a successor within 30 days from the date of such vacancy. <Revised by P.L. No. 7651, Jul. 29, 2005>

(3) The term of office of the commissioner who is appointed as successor of a vacancy shall start anew.

Article 8 (Status Guarantee of Commissioner)

A commissioner shall not be removed from office against his/her will unless he/she is sentenced to imprisonment without labor or a heavier punishment; provided, however, a commissioner may be removed by the resolution of the consent of 2/3 or more of all commissioners if it is highly difficult or impossible for such commissioner to perform duties due to any physical or mental impairment.

Article 9 (Disqualifications for Commissioner)

(1) A person who falls under any of the following subparagraphs shall be disqualified for a commissioner: <Revised by P.L. No. 7651, Jul. 29, 2005>

1. A person other than a citizen of the Republic of Korea;
2. A person who falls under any subparagraph of Article 33 of the National Public Official Act;
3. A member of a political party; and
4. A person who is registered as a candidate in any such election as held under the Public Official Election Act.

(2) If a commissioner comes to fall under any subparagraph of paragraph (1) above, he/she shall, ipso facto, retire from his/her office.

Article 10 (Prohibition of Concurrent Offices of Commissioner)

(1) A commissioner shall neither concurrently take the office falling under any of the following subparagraphs nor perform the duties thereof during his/her office:

1. A member of the National Assembly or any local council;
2. A public official of any other State organization or a local government (excluding a public official for education); and
3. Other positions or affairs as determined by the Commission regulations.

(2) The commissioners shall neither join a political party nor participate in political activities.

Article 11 Omitted. <by P.L. No. 7651, Jul. 29, 2005>

<This Article was omitted following the decision of unconstitutionality made by the Constitutional Court on January 29, 2004 pursuant to P.L. No. 7651, July 29,

2005>

Article 12 (Standing Committee and Subcommittees)

(1) The Commission may establish a standing committee and subcommittees, such as subcommittee for relief from infringement, subcommittee for correction of discrimination, (hereinafter referred to as the "subcommittees") in order to let them perform part of its duties.

(2) The standing committee shall consist of a president and full-time commissioners, and the subcommittee shall consist of not less than three but not more than five commissioners.

(3) The standing committee and the subcommittees may have specialized committees segmented by category such as sex, disability, to study and examine the matters to deliberate.

(4) Necessary matters concerning the composition, duty and operation of the standing committee, subcommittee and specialized committee, and the qualification, term of office, entrustment, etc. of the specialized commissioners shall be stipulated by the Commission regulations.

[Entire Article Revised by P.L. No. 7651, Jul. 29, 2005]

Article 13 (Meeting Proceedings and Resolution Quorum)

(1) The Chief Commissioner shall preside over the meeting of the Commission and the resolution thereof shall, except as otherwise provided by this Act, require the consent of a majority of all the incumbent commissioners.

(2) The meetings of the standing committee and subcommittees shall be resolved by the attendance and consent of three or more commissioners on the register.

<Revised by P.L. No. 7651, Jul. 29, 2005>

Article 14 (Publication of Proceedings)

The proceedings of the Commission shall be made public: provided, however, that they may not be made public if deemed necessary by the Commission, the standing committee or the subcommittees. <Revised by P.L. No. 7651, Jul. 29, 2005>

Article 15 (Advisory Body)

(1) The Commission may establish an advisory body to offer advice on matters necessary to perform its duties.

(2) Matters necessary for the organization and operation of such advisory body shall be set forth in the Commission regulations

Article 16 (Executive Office)

(1) An executive office shall be established to handle general affairs of the Commission.

(2) There shall be one Executive director and necessary staff in the Executive Office and the Executive Officer shall be appointed by the President on the recommendation of the Chief Commissioner with the deliberation thereof.

(3) Career civil officers of Grade V or higher or belonging to the Senior Public Official Corp. among the staff of the Executive Office shall be appointed by the President on the recommendation of the Chief Commissioner and those in Grade VI or lower shall be appointed by the Chief Commissioner. <Revised by P.L. No. 7796 (National Public Official Act) on Dec. 29, 2005>

(4) The Executive Officer shall, under the direction of the Chief Commissioner, exercise the overall control of the affairs of the Executive Office and command and supervise the staff belonging thereto.

Article 17 (Establishment of Disciplinary Committee)

(1) Under the Commission, there shall be established a disciplinary committee to resolve on a disciplinary action against the staff belonging to the Commission.

(2) The composition, competence and deliberation procedure of the disciplinary committee, kinds and effects of disciplinary actions and other necessary matters therefor shall be set forth in the Commission regulations.

Article 18 (Organization and Operation of Commission)

Except as provided under this Act, matters necessary for the organization of the Commission shall be set forth in the Presidential Decree and those necessary for its operation shall be set forth in the Commission regulations.

CHAPTER III DUTIES AND AUTHORITY OF COMMISSION

Article 19 (Duties)

The Commission shall perform the duties of the following subparagraphs:

1. Investigation and research with respect to Acts and subordinate statutes

(including bills submitted to the National Assembly), institutions, policies and practices related to human rights, and recommendation of their improvement or presentation of opinions thereon;

2. Investigation and remedy with respect to human rights violations;
3. Investigation and remedy with respect to discriminatory acts;
4. Investigation on actual conditions of human rights;
5. Education and propaganda of human rights;
6. Presentation and recommendation of guidelines for categories of human rights violations, standards for their identification and preventive measures therefor;
7. Research and recommendation with respect to the conclusion of any international treaty on human rights and the implementation of said treaty, or presentation of opinions thereon;
8. Cooperation with organizations and individuals engaged in activities to protect and improve human rights;
9. Exchanges and cooperation with international or foreign organizations for human rights protection; and
10. Other matters deemed necessary to guarantee and improve human rights.

Article 20 (Consultation with State Entities)

(1) If the head of a related State administrative entity or local government intends to establish or amend any Acts and subordinate statutes which include contents likely to affect the protection and improvement of human rights, he/she shall notify the Commission in advance.

(2) The Commission may, if deemed necessary to perform its duties, request State entities, local governments and other public or private organizations (hereinafter referred to as "related entities") to consult with it.

(3) Upon receipt of a request under paragraph (2), such related entities shall faithfully comply therewith unless there exists any justifiable reason otherwise.

Article 21 (Hearing of Commission's Opinion in Preparing Governmental Report)

If a related state entity prepares a governmental report under the provisions of any international treaty on human rights, it shall hear opinions of the Commission.

Article 22 (Submission of Materials and Reference for Information)

(1) The Commission may, if deemed necessary to perform its duties, require the related entities to submit necessary materials or refer to said entities for

information.

(2) The Commission may require any person who is deemed to know the facts necessary to perform its duties or to have professional knowledge or experience to present himself/herself in order to hear his/her statement.

(3) Those entities which are so required or referred to under paragraph (1) shall, without delay, comply with such requirement or reference.

Article 23 (Hearing)

(1) The Commission may, if deemed necessary to perform its duties, require the representatives of related entities, the interested persons or other persons who have much knowledge and experience on relevant matters to present themselves and hear the statements of the relevant facts and opinions from them.

(2) The procedures and methods of hearings held by the Commission under paragraph (1) above shall be set forth in the Commission regulations.

Article 24 (Visit and Investigation of Facilities)

(1) The Commission (including the standing committee and subcommittees) may, if deemed necessary, visit confinement or custodial facilities to make an investigation by its resolution. <Revised by P.L. No. 7651, Jul. 29, 2005>

(2) A commissioner who visits and investigates under paragraph (1) may be accompanied by members of the staff of the Commission and experts who are deemed necessary to perform his/her duties and may delegate the investigation on any matter to them by specifying its scope. In this case, the delegated expert shall, if he investigates said matter, be accompanied by members of the staff of the Commission.

(3) The commissioner, member of the staff of the Commission or expert who visits and investigates under paragraph (2) (hereafter referred to as the "commissioner, etc." in this Article) shall show the interested persons an identification verifying his/her authority to do so, and the head or administrator of a confinement or custodial facility visited and investigated by the commissioner, etc. shall immediately provide conveniences necessary for such visit and investigation.

(4) The commissioner, etc. who visits and investigates under paragraph (2) may hold an interview with members of the staff or internees (hereinafter referred to as "internees") of the relevant confinement or custodial facility and also may have them present oral or written statements or opinions.

(5) The staff member of the relevant confinement or custodial facility may be

present at an interview of an internee by a commissioner, etc.; provided, however, that recording such interview is prohibited.

(6) Other necessary matters for the procedures and methods of visit and investigation of confinement or custodial facilities shall be set forth in the Presidential Decree.

Article 25 (Recommendation of Improvement or Rectification of Policies and Practices)

(1) The Commission may, if deemed necessary to protect and improve human rights, recommend related entities to improve or rectify specific policies and practices or present opinions thereon.

(2) The heads of related entities receiving any recommendation under paragraph (1) shall respect and endeavor to implement the said recommendation.

(3) If the heads of related entities receiving any recommendation under paragraph (1) fail to implement the said recommendation, they shall clarify the reasons for such failure to the Commission in writing.

(4) The Commission may, if deemed necessary, publish its recommendation and presented opinions under paragraph (1) and the reasons clarified by the heads of related entities under paragraph (3).

Article 26 (Education and Propaganda of Human Rights)

(1) The Commission shall conduct the education and propaganda necessary to awaken and enhance everyone's consciousness of human rights.

(2) The Commission may consult with the Minister of Education and Human Resources Development in order to contain contents concerning human rights in curriculum of various schools under Article 23 of the Elementary and Secondary Education Act. <Revised by P.L. No. 7651, Jul. 29, 2005>

(3) The Commission may consult with the heads of schools established under Article 2 of the Higher Education Act on necessary matters for the development of human rights education and research. <Revised by P.L. No. 7651, Jul. 29, 2005>

(4) The Commission may consult with the heads of related State entities or local governments in order to contain the contents on human rights in employment or promotion examinations and training or education courses for public officials.

(5) The Commission may, in consultation with the heads of research institutions or the Research Council established under the Act on the Establishment, Operation and Fosterage of Government-Invested Research Institutions and the Act on the Establishment, Operation and Fosterage of Government-Invested Research

Institutions of Science and Technology, make a request for researches on human rights to them or carry out such researches jointly with them. <Revised by P.L. No. 7651, Jul. 29, 2005>

(6) The Commission may recommend the lifelong education organizations or lifelong education facilities under the Lifelong Education Act to include the matters on human rights in their education programs. <Revised by P.L. No. 7651, Jul. 29, 2005>

Article 27 (Center for Human Rights References)

(1) The Commission may establish a center for human rights references.

(2) The center for human rights references shall collect, arrange and preserve domestic and foreign information and data concerning human rights, and may provide them to the public.

(3) The center for human rights references shall be deemed as a library under the Libraries and Reading Promotion Act. <Revised by P.L. No. 7651, Jul. 29, 2005>

(4) Necessary matters for the establishment and operation of the center for human rights references shall be set forth in the Commission regulations.

Article 28 (Presentation of Opinions to Courts and Constitutional Court)

(1) If proceedings liable to affect the protection and improvement of human rights are pending, the Commission may, if requested by a court or the Constitutional Court or deemed necessary by the Commission, present the opinions on de jure matters to the competent division of the court or the Constitutional Court.

(2) If proceedings with respect to matters investigated or dealt with by the Commission under the provisions of Chapter IV are pending, it may, if requested by a court or the Constitutional Court or if deemed necessary by the Commission, present the opinions on de facto and de jure matters to the competent division of the court or the Constitutional Court.

Article 29 (Report Preparation, etc.)

(1) The Commission shall prepare an annual report on its activities for the preceding year, human rights situation and improvement measures and make report thereon to the President and the National Assembly.

(2) In addition to the report under paragraph (1), the Commission may, if deemed necessary, make any other special report to the President and the National Assembly.

(3) The related entities may present to the Commission their opinions on the report under paragraphs (1) and (2) as well as the results of measures which they have already taken or plans for measures to be taken.

(4) The Commission shall open the report under paragraphs (1) and (2) to the public; provided, however, that any matter which requires confidentiality on the ground of national security or protection of honor or privacy of the interested person, or the publicity of which is restrained by any other Act, may not be made public.

CHAPTER IV. INVESTIGATION OF AND REMEDIES FOR HUMAN RIGHTS VIOLATIONS AND DISCRIMINATORY ACTS <Revised July 29, 2005>

Article 30 (Matters Subject to Investigation by Commission)

(1) In the case falling under any of the following subparagraphs, the person who suffered from violation of human rights or discriminatory acts (hereinafter referred to as a "victim") or any other person or organization that comes to know such violations, may file a complaint to the Commission: <Revised by P.L. No. 7651, Jul. 29, 2005>

1. Where the human right as guaranteed in Articles 10 through 22 of the Constitution has been violated or a discriminatory act has been committed in connection with the performance of duties (excluding the legislation of the National Assembly and the trial of a court or the Constitutional Court) of State entities, local governments or confinement or custodial facilities; and

2. If a discriminatory act has been committed by a juristic person, organization or private individual.

(2) Omitted. <by P.L. No. 7651, Jul. 29, 2005>

(3) Even no complaint is filed as set forth under paragraph (1), the Commission may conduct an independent investigation if there is a sufficient ground to believe that a human rights violation or a discriminatory act has been committed and that the substance of such act is deemed grave.

<Revised by P.L. No. 7651, Jul. 29, 2005>

(4) Matters necessary for the procedure and methods of filing a complaint under paragraph (1) shall be set forth in the Commission regulations.

Article 31 (Guarantee of Complaint Right of Internee of Confinement or Custodial Facility)

(1) If an internee of any relevant confinement or custodial facility intends to file a complaint to the Commission, a public official or staff member belonging to the said facility (hereinafter referred to as the "public official concerned") shall immediately afford the internee a reasonable time, place and convenience necessary to prepare the written complaint.

(2) If any internee is willing to file a complaint in the presence of a commissioner or staff member of the Commission (hereinafter referred to as a "commissioner, etc."), the public official concerned shall immediately inform the Commission.

(3) The public official concerned shall immediately send the written complaint as prepared by an internee under paragraph (1) to the Commission and deliver the voucher of the document receipt as issued by the Commission to the internee. If of information under paragraph (2), a document verifying such information and one with a fixed interview date as issued by the Commission shall be delivered immediately to the said internee.

(4) If the Commission is informed under paragraph (2) or deems that there exists any reasonable ground that an internee truly desires to file a complaint, it shall have a commissioner, etc. visit the relevant confinement or custodial facility to receive an oral or written complaint from the said internee. In this case, the commissioner, etc. who receives the complaint shall immediately prepare a document verifying such receipt and deliver that document to the same internee.

(5) With respect to the visit to the relevant confinement or custodial facility and receipt of any complaint by a commissioner, etc. under paragraph (4) above, Article 24 (3) and (4) of this Act shall apply *mutatis mutandis*.

(6) The staff of the relevant confinement or custodial facility shall not participate in an interview which a commissioner or others hold with an internee who has filed a complaint (including those who intend to do so), or shall not hear or record the content of such interview; provided, however, that such staff may observe them at a distance of visibility.

(7) The public official concerned shall not peruse a written complaint or document prepared by an internee for the purpose of the presentation thereof to the Commission.

(8) Measures which confinement or custodial facilities shall take to guarantee the free preparation and presentation of a written complaint by an internee and other necessary procedures and methods, shall be set forth in the Presidential Decree.

Article 32 (Rejection of Complaint, etc.)

(1) The Commission may reject a filed complaint if any of the following applies:
<Revised on Jul. 29, 2005>

1. If the substance of such complaint does not fall under the scope of investigation by the Commission;

2. If the substance of such complaint is deemed manifestly false or groundless;

3. If it is manifest that the victim does not desire investigation If such complaint is filed by any person other than a victim;

4. If said complaint is filed after one or more years have elapsed since the facts causing the complaint happened; provided, however, this provision shall not apply where a criminal or civil proceeding with respect to such facts is not completed or the Commission has determined to investigate;

5. If the trial at a court or the Constitutional Court, the criminal investigation by an investigation agency or the procedures for the relief of rights under any other Act are in progress or terminated with respect to the facts causing the complaint, at the time when said complaint is filed to the Commission: provided, however, that this provision shall not apply if the Commission receives a complaint against cases identical with those falling under crimes of Articles 123 through 125 of the Criminal Act which are being investigated by the investigation agency;

6. If said complaint is filed under any pseudonym or anonym;

7. If the Commission deems it improper to investigate said complaint;

8. If said complaint is withdrawn by a complainant who files it;

9. If said complaint is again filed against the facts identical with any other complaint which has already been dismissed by the Commission; and

10. If the purport of said complaint is contrary to the final judgment of a court or decision of the Constitutional Court on the facts causing the complaint.

(2) If the Commission rejects a complaint under paragraph (1), it may, if deemed necessary, transfer the complaint to related entities. In this case, those related entities to which the complaint is transferred shall, if requested by the Commission, inform the Commission of the results of treatment thereof without delay.

(3) The Commission may, even after initiating the investigation on a complaint, reject it in any case falling under any subparagraph of paragraph (1).

(4) If the Commission rejects or transfers a complaint, it shall immediately inform the complainant, by specifying the reason. In this case, the Commission may, if deemed necessary, advise the relevant victim or complainant on the procedures and measures for the relief of his/her rights.

Article 33 (Alternative Remedies and Transfer)

(1) In the event that the substance of a filed complaint is manifestly intended for another competent state entity with remedial power as set forth under a different statute, the Commission shall transfer the complaint to such state entity without delay.

(2) If after the Commission initiates an investigation on a complaint under Article 30 (1), a criminal investigation on any case identical with the fact causing the complaint is initiated by other complaints or accusations of relevant victims, the Commission shall transfer the said complaint to the competent investigation agency.

(3) If the Commission transfers a complaint under paragraphs (1) and (2), it shall, without delay, inform the complainant and those related entities to which the complaint is transferred shall, if requested by the Commission, inform the Commission of the results of treatment thereof.

Article 34 (Cooperation between Investigation Agencies and Commission)

(1) If there exists any reasonable ground that the facts causing a complaint fall under criminal acts and it is deemed that there exists a necessity either for preventing the suspect thereof from escaping or destroying relevant evidences or for ensuring the evidences, the Commission may request the Prosecutor General or the head of the competent investigation agency to initiate an investigation as well as to take necessary measures.

(2) The Prosecutor General or the head of the competent investigation agency who receives a request under paragraph (1) shall, without delay, inform the Commission of the results of measures taken by him/her.

Article 35 (Purpose of Investigation)

(1) The Commission shall endeavor not to impede the performance of functions of state entities in the course of its investigation.

(2) The Commission shall not make investigation for the purpose of infringing on the privacy of any individual or unduly participating either in the proceedings in pending or in the prosecution for any case the criminal investigation of which is in progress.

Article 36 (Methods of Investigation)

(1) The Commission may investigate complaints using any of the following methods:

1. To require a complainant, a victim or the respondent (hereinafter referred to as the "party concerned") or an interested person to be present and submit a written statement, or to hear his/her statement;

2. To require the party concerned, an interested person or the related entity to submit such materials as deemed related to matters subject to investigation;

3. To practically inspect or appraise any such place, facility or material as deemed related to matters subject to investigation on the spot; and

4. To refer to the party concerned, an interested person or the related entity for such fact or information as deemed related to matters subject to investigation.

(2) The Commission may, if deemed necessary for the investigation, have a commissioner, etc. visit any relevant place or facility to practically inspect or appraise any such place or facility or other materials on the spot. In this case, a commissioner, etc. may require any party concerned or related person to present himself/herself on the spot and hear his/her statement.

(3) Any person who is required to submit a written statement under paragraph (1) shall submit it within 14 days.

(4) The presence of the respondent under paragraphs (1) and (2) above may be required only if it is difficult to judge any relevant case by his/ her written statement because he/she is the very person who commits a violation of human rights or discriminatory act and there exists any reasonable ground that a violation of human rights and a discriminatory act under Article 30 (1) are deemed to occur.

(5) A commissioner, etc. who makes investigation under paragraph (2) may require the head or staff member managing the relevant place or facility (hereafter referred to as a "related person" in this Article) to submit the necessary materials or articles.

(6) A commissioner, etc. who makes investigation under paragraph (5) shall carry an identification indicating his/her authority and show it to the related persons.

(7) If the Commission requires the submission of relevant materials or articles or intends to practically inspect or appraise said materials or articles or relevant facilities on the spot, the head of any related state entity may reject such submission, inspection or appraisal by clearly explaining to the Commission that those materials, articles or facilities fall under any of the following subparagraphs. In this case, the Commission may require the identification of necessary matters of the said head, who, in turn, shall faithfully comply with such requirement:

1. State confidentiality liable to have any substantial effect on state security or diplomatic relations; or

2. Any such case as deemed to be liable to cause a serious obstacle to any

criminal investigation or trial in pending.

Article 37 (Authority to Interrogate or Inspect)

(1) If the Commission intends to know either the place where there are materials necessary for the investigation under Article 36 or the related persons, it may interrogate that person who has any reasonable ground for believing that he/she knows the contents thereof or inspect the documents and other articles in which there exists any reasonable ground that they include those contents.

(2) The provisions of Article 36 (5) through (7) shall apply mutatis mutandis to paragraph (1) of this Article.

Article 38 (Exclusion, etc. of Commissioner)

(1) A commissioner and a conciliation member under Article 41 (hereafter referred to as the "commissioner" in this Article) shall, if falling under any of the following subparagraphs, be excluded from the participation in the deliberation and resolution on the relevant complaint:

1. If the commissioner or any person who is or was his/her spouse is the party concerned of the relevant complaint or the joint holder of any rights or joint burdener of any duties with the said party;

2. If the commissioner is or was a blood relative of the party concerned of the relevant complaint;

3. If the commissioner has made a witness or appraisal concerning the relevant complaint;

4. If the commissioner participates or participated in the relevant complaint as agent of the party concerned; and

5. If the commissioner has participated in any criminal investigation or trial with respect to the relevant complaint or relief procedures under any other Act.

(2) If there exists any ground for which it would be difficult to expect the impartial deliberation and resolution of the commissioner, the party concerned may request the Chief Commissioner to recuse such commissioner, and the Chief Commissioner shall decide thereon without referring the request to the Committee for resolution; provided, however, the said request shall be referred to the Commission for resolution if it is inadequate of the Chief Commissioner to make the decision.

(3) If any commissioner falls under either any of subparagraphs of paragraph (1) or paragraph (2), he/she may voluntarily recuse oneself from the deliberation and resolution on the applicable complaint.

Article 39 (Dismissal of Complaint)

(1) The Commission shall dismiss a complaint if the contents thereof turn out to fall under any of the following subparagraphs as a result of investigation: <Revised by P.L. No. 7651, Jul. 29, 2005>

1. Where it is evident that the contents of complaint are not true, or there is no objective proof that they are true;

2. Where it does not fall under the violation of human rights or discriminatory acts pursuant to the provisions of Article 30 (1) as the result of the investigation; and

3. If it is deemed that any further remedy is not required because the injury related to the complaint has already been relieved.

(2) The Commission shall, if dismissing a complaint, inform the party concerned of the fact and grounds.

Article 40 (Recommendation on Compromise)

With respect to any complaint the investigation of which is in progress or completed, the Commission may propose a remedy necessary for the fair solution of the case concerning the complaint to both parties concerned to make a compromise.

Article 41 (Establishment and Composition of Conciliation Committee)

(1) The conciliation committees segmented by sex, disability, etc. may be established under the Commission to ensure the speedy and fair settlement of conciliation. <Revised by P.L. No. 7651, Jul. 29, 2005>

(2) The commissioners of the conciliation committees segmented by sex, disability, etc. shall be commissioned by the president from among the commissioners of the Commission and the persons falling under any of the following subparagraphs: <Revised by P.L. No. 7651, Jul. 29, 2005>

1. Person who has professional knowledge and experience regarding the human rights and has worked in the field relating to the human rights in the State agency or civilian organization for 10 years or more;

2. Person who has worked in the profession of judge, prosecutor, military judge advocate or attorney-in-law for 10 years or more; and

3. Person who has worked in the profession of assistant professor or higher in the university or publicly certified research institutions for 10 years or more.

(3) The meeting of the conciliation committee shall consist of the following persons:
<Revised by P.L. No. 7651, Jul. 29, 2005>

1. One person designated by the president at each meeting from among the commissioners of the conciliation committees who are the commissioners of the Commission; and

2. Two persons designated by the president at each meeting from among the commissioners of the conciliation committees segmented by the fields pursuant to the provisions of paragraph (2).

(4) Any matters necessary for the appointment and term of the conciliation committee members, the organization and operation of the conciliation committee, and the conciliation procedures, etc. shall be set forth in the Commission regulations. <Revised by P.L. No. 7651, Jul. 29, 2005>

(5) The Judicial Conciliation of Civil Disputes Act shall apply to all matters concerning the conciliation procedure of the Commission that are not defined in this Act or the Commission regulations. <Revised by P.L. No. 7651, Jul. 29, 2005>

Article 42 (Conciliation)

(1) The conciliation committee may start the procedure of conciliation regarding the complaint submitted to the conciliation committee in accordance with the application of the party concerned or ex officio on the case of violation of human rights or discriminatory acts. <Revised by P.L. No. 7651, Jul. 29, 2005>

(2) The conciliation shall be completed at the time when, after the procedures therefor are initiated, both parties concerned enter the compromised matters in the document of conciliation by fixing their sign and seal and the conciliation committee, in turn, identifies no flaw of that document.

(3) If both parties concerned fail to reach a compromise in the course of the procedures for conciliation, the conciliation committee may make a decision in lieu of the conciliation in order to fairly settle the case.

(4) The decision in lieu of conciliation may include any of the following subparagraphs: <Revised by P.L. No. 7651, Jul. 29, 2005>

1. Interruption of the violation of human rights or discriminatory acts subject to the investigation;

2. Recovery, compensation for damage or other necessary remedies; and

3. Measures necessary for the prevention of recurrence of the same or similar violation of human rights or discriminatory acts.

(5) If the conciliation committee makes a decision in lieu of conciliation, it shall

serve both parties concerned with the written decision without delay.

(6) If any party concerned fails to file a complaint within 2 weeks after he/she has been served with the written decision under paragraph (5), he/she shall be deemed to accept the conciliation.

Article 43 (Effect of Conciliation)

The conciliation under Article 42 (2) and the decision in lieu of conciliation If of no complaint under Article 42 (6) shall have the same effect as settlement at court.

Article 44 (Recommendation of Remedies, etc.)

(1) If the Commission deems that there occurred any violation of human rights or discriminatory acts as a result of the investigation of any complaint, it may recommend the respondent or the head of the entity or organization to which he/she belongs or the supervisory institution thereof (hereinafter referred to as the "institution to which the respondent belongs") the matters of the following subparagraphs: <Revised by P.L. No. 7651, Jul. 29, 2005>

1. Implementation of remedial measures under subparagraphs of Article 42 (4); and

2. Rectification or improvement of any relevant Act and subordinate statute, institution, policy or practice.

(2) The provisions of Article 25 (2) through (4) shall apply mutatis mutandis to the head of the institution to which the respondent belongs, who has received recommendation under paragraph (1) of this Article.

Article 45 (Accusation and Recommendation of Disciplinary Action)

(1) If as a result of the investigation of any complaint, the Commission deems that the contents of the complaint correspond to an act of crime against which a criminal punishment is required, it may file an accusation to the Prosecutor General; provided, however, if the accused is the military personnel or civilian personnel in the military service, the accusation may be filed with the Chief of Staff of the applicable branch of armed forces to which the said accused belongs or with the Minister of National Defense.

(2) If it is deemed that there occurred any violation of human rights as a result of the investigation of any complaint, the Commission may recommend a disciplinary action against the respondent or any other person responsible for the same violation to the head of the institution to which he/she belongs.

(3) The Prosecutor General, the Chief of Staff of the armed forces or the Minister of National Defense, who has received a complaint under paragraph (1), shall complete the criminal investigation within 3 months of receipt and notify the Commission of the results thereof; provided that he/she shall notify the reason therefore in case of a failure to do so within 3 months.

(4) The head of the institution to which the respondent belongs, who has received recommendation from the Commission under paragraph (2), shall respect said recommendation and notify the Commission of the results of treatment thereof.

Article 46 (Provision of Opportunity to State Opinion)

(1) The Commission shall provide the respondent with an opportunity to state his/her opinion before making recommendation or taking a measure under Article 44 or 45.

(2) In any such case as referred to in paragraph (1), any party concerned or interested person may present his/her oral or written opinion or necessary materials to the Commission.

Article 47 (Request for Legal Aid for Victim)

(1) The Commission may, if deemed necessary to investigate complaints, ensure evidences or relieve victims, request the Korea Legal Aid Corporation or any other institution to render legal aid to said victims.

(2) Legal aid under paragraph (1) shall not be requested against the clarified will of the relevant victim.

(3) Necessary matters concerning the procedures, contents and methods of legal aid under paragraph (1) shall be set forth in the Commission regulations.

Article 48 (Recommendation of Urgent Relief Measures)

(1) The Commission may, If after receiving any complaint it deems that it is considerably probable any violation of human rights or discriminatory acts subject to the investigation is in progress and it is likely to cause any damage difficult to recover if left as violated, recommend the respondent or the head of the institution to which he/she belongs to take measures falling under any of the following subparagraphs at the application of the complainant or victim or ex officio before making a decision on the complaint: <Revised by P.L. No. 7651, Jul. 29, 2005>

1. Provision of medical service, meal or clothing, etc.;
2. Participation in the on-site inspection and appraisal of any relevant place,

facility or materials, etc. or the verification and appraisal which is conducted by any other entity;

3. Change of detention or accommodation places of internees;
4. Interruption of violation of human rights or discriminatory acts;
5. Displacement of any public official who is deemed to effect violations of human rights or discriminatory acts from his/her present assigned position; and
6. Other necessary matters for protecting the life or security of person of the victim.

(2) The Commission may, if deemed necessary, take necessary measures for protecting the life, security of person and honor of any party concerned or interested person, etc., obtaining relevant evidences or preventing the destruction thereof, or recommend the interested person and the head of the institution to which he/she belongs to do so instead.

Article 49 (Confidentiality of Investigation and Conciliation, etc.)

The investigation of any complaint and the conciliation and deliberation conducted by the Commission shall be kept confidential; provided, however, the Commission may reach a resolution to make such records available to public.

Article 50 (Publicity of Results of Settlement)

The Commission may publicize the content and results of any investigation or conciliation, the recommendation to the related entities, and the measures taken by them under this Chapter; provided, however, that this provision shall not apply to any case in which such publicity is prohibited under any other statute or it is likely to infringe on the privacy of any individual.

CHAPTER V SUPPLEMENTARY PROVISIONS

Article 51 (Prohibition of False Personation)

Any person shall not exercise the authority of the Commission by falsely pretending to be a commissioner or its staff.

Article 52 (Prohibition of Disclosure of Secret)

A person who was or is a commissioner, advisory member or staff of the Commission and any other person who performed or performs affairs of the

Commission after having been dispatched to or entrusted by the Commission in order to do so shall not disclose any secret which comes to their knowledge or is acquired by them in the course of performing their duties.

Article 53 (Prohibition of Use of Similar Name)

Any person other than the Commission shall not use the name of the National Human Rights Commission or any other name similar thereto.

Article 54 (Dispatch of Public Official, etc.)

(1) The Commission may, if deemed necessary to perform its duties, request the head of any related entity to dispatch a public official or staff member under his/her control to the Commission.

(2) The head of the related entity who is requested under paragraph (1) may dispatch a public official or staff member under his/her control to the Commission in consultation with the Commission.

(3) The public official or staff member who is dispatched to the Commission under paragraph (2) shall perform affairs of the Commission, separated from the entity to which he/she belongs.

(4) The head of the related entity who has dispatched a public official or staff member under his/her control to the Commission under paragraph (2) shall not take unfavorable measures for the said public official or staff member in terms of allocation and promotion as well as treatment.

Article 55 (Prohibition of Unfavorable Treatment, and Supports)

(1) Any person shall not be subject to any removal from his/her office, transfer to another position, disciplinary action and unjust treatment as well as other unfavorable measures in status or treatment on account of his/her complaint, statement, witness, presentation of materials or reply under this Act.

(2) The Commission may give any necessary support or reward to a person who either reveals the fact of any violation of human rights or discriminatory acts, or finds and presents relevant evidences or materials. <Revised by P.L. No. 7651, Jul. 29, 2005>

(3) The contents and procedures of support or reward under paragraph (2) and other necessary matters shall be set forth in the Commission regulations.

CHAPTER VI PENAL PROVISIONS

Article 56 (Obstruction of Performance of Human Rights Protection Duties)

(1) A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than 5 years or by a fine not exceeding 30 million won: <Revised by P.L. No. 7651 on Jul. 29, 2005>

1. A person who assaults or intimidates a commissioner or staff member of the Commission who performs affairs thereof;

2. A person who assaults or intimidates a commissioner or staff member of the Commission for the purpose of coercing or hindering any act in relation to the performance of duties of said commissioner or staff member or compelling him/her to resign his/her office;

3. A person who obstructs the performance of duties of a commissioner or staff member of the Commission by any deceit; and

4. A person who destroys, falsifies or alters any evidence related to other person's case of violation of human rights or discriminatory acts subject to the investigation by the Commission under Chapter IV of this Act, or uses any such evidence as so falsified or altered.

(2) If a blood relative of a person commits a crime under paragraph (1), subparagraph 4, for such person, he/she shall not be punished.

Article 57 (Obstruction of Preparation of Written Complaint)

A person who fails to receive or obstructs any complaint in violation of Article 31 shall be punished by imprisonment for not more than 3 years or by a fine not exceeding 10 million won.

Article 58 (False Statement on Identity)

A person who exercises the authority of the Commission by falsely pretending to be a commissioner or its staff in violation of Article 51 shall be punished by imprisonment for not more than 2 years or by a fine not exceeding 7 million won.

Article 59 (Disclosure of Secret)

A person who discloses any such secret as coming to his/her knowledge or acquired by him/her in the course of performing his/her duties in violation of Article 52 shall be punished by imprisonment with or without labor for not more than 2 years or by qualification suspension for not more than 5 years.

Article 60 (Obstruction of Urgent Relief Measures)

A person who obstructs the measures taken by the Commission under Article 48 (1) or (2) shall be punished by imprisonment for not more than one year or by a fine not exceeding 5 million won.

Article 61 (Violation of Guarantee of Complaint Right of Internee)

A person who violates the provisions of Article 31 (6) or (7) shall be punished by a fine not exceeding 10 million won.

Article 62 (Legal Fiction as Public Official in Application of Penal Provisions)

Any person other than a public official from among the commissioners of the Commission shall be deemed to be a public official in the application of penal provisions under the Criminal Act or any other Act. <Revised by P.L. No. 7651, Jul. 29, 2005>

Article 63 (Fine for Negligence)

(1) A person who falls under any of the following subparagraphs shall be punished by a fine for negligence not exceeding 10 million won:

1. A person who refuses, obstructs or evades either a visit and investigation under Article 24 (1) or a practical inspection on the spot under Article 36 without any justifiable reason;

2. A person who fails to comply with the requisition for submitting a written statement or presenting himself/herself by the Commission under Article 36 (1) 1 or (2) without any justifiable reason; and

3. A person who fails to comply with the requisition for submission of materials and the reference for any fact under Article 36 (1) 2 and 4 or (5) without any justifiable reason, or submits false materials.

(2) A person who violates the provisions of Article 53 shall be punished for negligence by a fine not exceeding 3 million won.

(3) A fine for negligence as defined under paragraphs (1) and (2) shall be imposed by the Chief Commissioner in accordance with the Presidential Decree.

(4) A person who is dissatisfied with any disposition of fine for negligence as prescribed in paragraph (3) may raise an objection to the Chief Commissioner within 30 days after being notified of said disposition.

(5) If a person who is subject to a disposition of fine for negligence under

paragraph (3) raises an objection under paragraph (4), the imposition authority shall, without delay, notify the competent court, which, in turn, shall proceed to a trial on a fine for negligence pursuant to the Non-Contentious Case Litigation Procedure Act. <Revised by P.L. No. 7651, Jul. 29, 2005>

(6) If an objection is not raised within the period as set forth in paragraph (4) and a fine for negligence is not paid, the fine for negligence shall be collected by referring to the practices of dispositions on default of national taxes.

ADDENDA

ADDENDUM <P.L. No. 6481, May. 24, 2001>

(1) (Effective Date) This Act shall take effect in six months after the date of its promulgation; provided, however, that the appointment of the commissioners and staff, the enactment and promulgation of the Commission regulations concerning the enforcement of this Act, and the preparation for the establishment of the Commission may take place even before this Act takes effect.

(2) (Application Example concerning Commencement of Term of Office of Commissioners) The term of those commissioners appointed under this Act shall be deemed to commence on the date when this Act takes effect.

(3) (Enactment of Presidential Decree) The Chief Commissioner may recommend the Prime Minister to submit the draft Presidential Decree concerning the enforcement of this Act.

ADDENDUM <P.L. No. 7427, Mar. 31, 2005>

Article 1 (Effective Date)

This Act shall take effect on the date of its promulgation. Provided [...omitted...] regulations under Article 7 shall take effect as of Jan. 1, 2008.

Articles 2 through 7 omitted.

Article 7

(1) through (6) omitted.

(7) The following revision shall be made to the National Human Rights Commission Act:

Under Paragraph 2 of Article 56, "blood relatives or the head of house of any person, or family members living with him/her" shall be changed to "blood relatives"

(8) through <29> omitted.

ADDENDUM <P.L. No. 7651, Jul. 29, 2005>

Article 1 (Effective Date)

This Act shall take effect on the date of its promulgation.

ADDENDUM <P.L. No. 7655, Aug. 4, 2005>

Article 1 (Effective Date)

This Act shall take effect on the date of its promulgation.

Articles 2 through 7 Omitted.

Article 8 (Revision of Other Acts)

(1) through (6) Omitted.

(7) The following revision shall be made to the National Human Rights Commission Act:

Issue (A) under paragraph 2 of Article 2 is changed to "Prison, prison for the youth, detention center and its branch, facility for probation, institute of forensic psychiatry, juvenile reformatory, and juvenile classification review board"

ADDENDUM <P.L. No. 7796, Dec. 29, 2005>

Article 1 (Effective Date)

This Act shall take effect as of Jul. 1, 2006.

Articles 2 through 5 omitted.

Article 6 (Revision of Other Acts)

Sections (1) through (12) omitted.

(13) The following revision shall be made to the National Human Rights Commission Act:

Under paragraph 6 of Article 16, "Public officials in Grade V or higher" shall be changed to "Public officials in Grade V or higher or belonging to the Senior Executive Service"

(14) through <68> omitted.

ADDENDUM <P.L. No. 8050, Oct. 4, 2006>

Article 1 (Effective Date)

This Act shall take effect as of Jul. 1, 2006. Provided, The regulations under Article 56 shall take effect on the financial year that the standards regarding government account has been prepared and enforced, as provided in the Act; Regulations under Paragraph 14 (regarding <National Budget Act> Article 48, Paragraph 4) and 17 (regarding <Commodity Management Act> Article 21) of Article 11 of the Addendum shall take effect as of Jan. 1, 2008.

Articles 2 through 10 omitted.

Article 11 (Revision of Other Acts)

Sections (1) through (11) omitted.

(12) The following revision shall be made to the National Human Rights Commission Act:

"Article 14 of the Budget and Accountings Act" in Article 6(5) is changed to "Article 6 of the National Budget Act"

(13) through <59> omitted.

Article 12 omitted.

ADDENDUM <P.L. No. 8435, May. 17, 2007>

Article 1 (Effective Date)

This Act shall take effect as of Jan. 1, 2008. [Provisory clause omitted.]

Articles 2 through 7 omitted.

Article 8 (Revision of Other Acts)

(1) through <28> omitted.

<29> The following revision shall be made to the National Human Rights Commission Act:

Under Paragraph 4 of Article 2, "original domicile, place of domicile" is changed to "base area of registration"

<30> through <39> omitted.

Article 9 omitted.

II. The Establishment of the National Human Rights Commission of Korea

1. The Establishment and Characteristics of the National Human Rights Commission of Korea and Institutional development
 2. The Establishment of the National Human Rights Commission of Korea (Excerpts from 2002 Annual Report)
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The Establishment and Characteristics of the National Human Rights Commission of Korea and Institutional development

Young-Sun Chung
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National Human Rights Commission of Korea

Human Rights have come a long way in Korea. From the oppressive military regimes of the latter half of the 20th Century, Korean citizens were able to foster a fertile democracy. The establishment of the NHRCK can be said to be the epitome of this sacrifice on the part of countless activists from these tremulous times. This purpose of this essay is to give the reader a preliminary understanding of this meaningful organization. Accordingly, we shall start by briefly going over the history of the Commission's establishment, and its characteristics.

1. History of the Establishment of the NHRCK

The international environment which made the founding of the NHRCK is a familiar one. To give a brief outline, we may recall that in 1960 the United Nations recommended States to establish National Institutions in their domestic legislation to effectively implement international human rights standards. 18 years later in 1978, the Geneva Guidelines were set to delineate the guidelines for the establishment of National Institutions. The experience of the NIs since then culminated into the Paris Principles of 1993, which are the principles related to the status and functioning of NIs in the service of the protection and promotion of human rights.

The inception of the National Human Rights Commission of Korea took place at the same time the Paris Principles were established. After having participated in the establishment of the Principles in 1993, Korean NGO representatives began requesting for a National Institution back home. However, the time was not ripe, and the coalition was met with apathy from the Kim Yong-Sam regime. Four years later in 1997, under extensive lobbying on the part of NGO activists, would-be president Kim Dae-Jung pledged to establish a national human rights institution.

Thus, after president Kim Dae-Jung assumed power intense debate raged over the question of making this Korean NI an "Institution" (advanced by the Ministry of Justice) or a "National Organ" (advanced by the ruling party). After it was settled that the NI would be a national organ, a debate regarding the issue of the degree of status and power that would be conferred onto the NI went on for another three years, 1999 to 2001. The result was the National Human Rights Commission Act, which was promulgated in May 2001. In the 25th of November 2001, the National Human Rights Commission of Korea finally set sail.

2. The Commission at a glance

2.2.1. The Four Characteristics of the NHRCK

The NHRCK has four main characteristics. The first is that it is Comprehensive; in other words, it is an "all-in-one human rights institution" designed to protect and promote human rights across the spectrum and to fight and rectify discrimination. Hence, the NHRCK has both a policy advisory function and a complaint-resolving function. It is also endowed with research,

education, publicity and networking roles. Unlike a court, which should be an impartial and dispassionate adjudicator, the Commission is intended to serve as a monitor, inspector, advocate, advisor, educator, facilitator, promoter, mediator and adjudicator. Simply put, the Commission can be said to function like a combination of all the major United Nations human rights related bodies, condensed to suit one nation.

As well as being comprehensive, the Commission is also Independent: the legal foundations of the NHRCK ensure that it carries out the functions to be stated below independent of state forces (i.e. the Ministry of Justice, President, National Assembly) or circumstances. However, the Commission is still as of yet a statutory body, and thus the Commission lacks the safeguards conventionally reserved for constitutional bodies, especially when it comes to budgeting, recruiting, and rule-making procedures.

With regards to its complaint resolving function, we may say that the Commission is Quasi-Judicial: while the Commission has a form of investigative rights, the resolutions provided by the Commission are not legally binding. Specifically, the Commission differs from the judiciary in that in most cases the remedial package of the Commission includes legal and policy measures necessary for curbing or preventing a reoccurrence of the same or similar violations. Also, the judgments by the Commission normally go beyond the respondent to include any superior agency with supervisory powers over the respondent. The Commission's decisions come as recommendations, because coercion is not a proper method for an advisor/advocate/educator. Fourthly, as its decisions are not legally binding, the Commission can be more progressive than the other governmental bodies in selecting criteria for decisions.

The last characteristic of the Commission is that it is Quasi-International: It is not fully international in that in essence the NHRCK is a domestic institution. However, it assumes international characteristics in that, to implement international law at the national level, the Commission cooperates with the UN, regional arrangements and other NIs to develop international human rights norms and implement universal human rights norms.

2.2.2. Composition

The NHRCK is comprised of eleven commissioners: the chairperson, three standing commissioners and seven non-standing commissioners. Among the commissioners, four shall be elected by the National Assembly (including two standing members), four shall be nominated by the President of Korea (including the president and one standing member), and the remaining three shall be nominated by the Chief Justice of the Supreme Court. All members are to be approved by the President of Korea. Four or more members need to be women. The term of the Commissioners is for three years and can serve for up to 2 terms.

The Secretariat to the Commission is comprised of 5 departments, 22 teams and 3 subsidiaries. The Secretariat executes the Commission's decisions and policies, and is responsible for all of the NHRCK's administrative duties. Including the secretariat, the NHRCK has a total of 201 staff members (as of 2006).¹

3. Institutional development

3.1.1 Statistical Review

¹ Refer to <Appendix 1: The Structure of the NHRCK> for the organizational chart of the NHRCK

'Human rights counseling' at the Commission entails informing an individual or the public about the duties of the Commission, the subjects appropriate for investigation, remedial procedures, and the petition-filing process for human rights violations or discriminatory acts. The Commission had 6,057 counseling cases in 2004, 9,136 in 2005 and 10,737 in 2006. The topics discussed in counseling are becoming more diversified-from legal inquiries to calling for the Commission's intervention in social conflicts-which reflects how the concept of 'human rights' is expanding in Korean society.

The other side, the number of civil rights violation cases the Commission investigated and resolved in 2006 amounted to a total of 3,251 cases, a 21.3% decrease from 2005 and In 2006, 824 complaints concerning discrimination were filed, a 23.7% decrease from the 1,081 complaints filed in 2005.

3.1.2 Legal Status of the NHRCK

The National Human Rights Commission of Korea can be said to be the first independent body in Korea to have been truly made by the people, despite opposition from other governmental sectors. As was detailed above, the formation of the Commission was not an easy process, and was only able to form through a series of legislative actions, making it a statutory body.²

After six years, however, the NHRCK is at a stage in which it needs and at the same time deserves an upgrade from its current legal status as a statutory body to a constitutional one. There are three reasons for this. The first is that the duties and functions of the Commission are of a constitutional nature because protection of human rights is central and essential duty of the State.

The second reason comes from the fact that the Commission assumes the role of the watchdog of powers and privileges in particular other governmental branches. The Commission is naturally subject to political pressures from powerful entities, and therefore it needs the guarantees that come from assuming constitutional status to maximize its degree of independence and autonomy.

The third reason stems from the Commission's Quasi-Judicial nature; because the NHRCK is necessarily endowed with only "soft" powers, it needs the strengthened legal status that comes from being a constitutional body to balance this deficiency. The political and normative pressures that result in ignoring recommendations and remedies from a constitutional body are much higher than those coming from a mere statutory body.

4. Conclusion

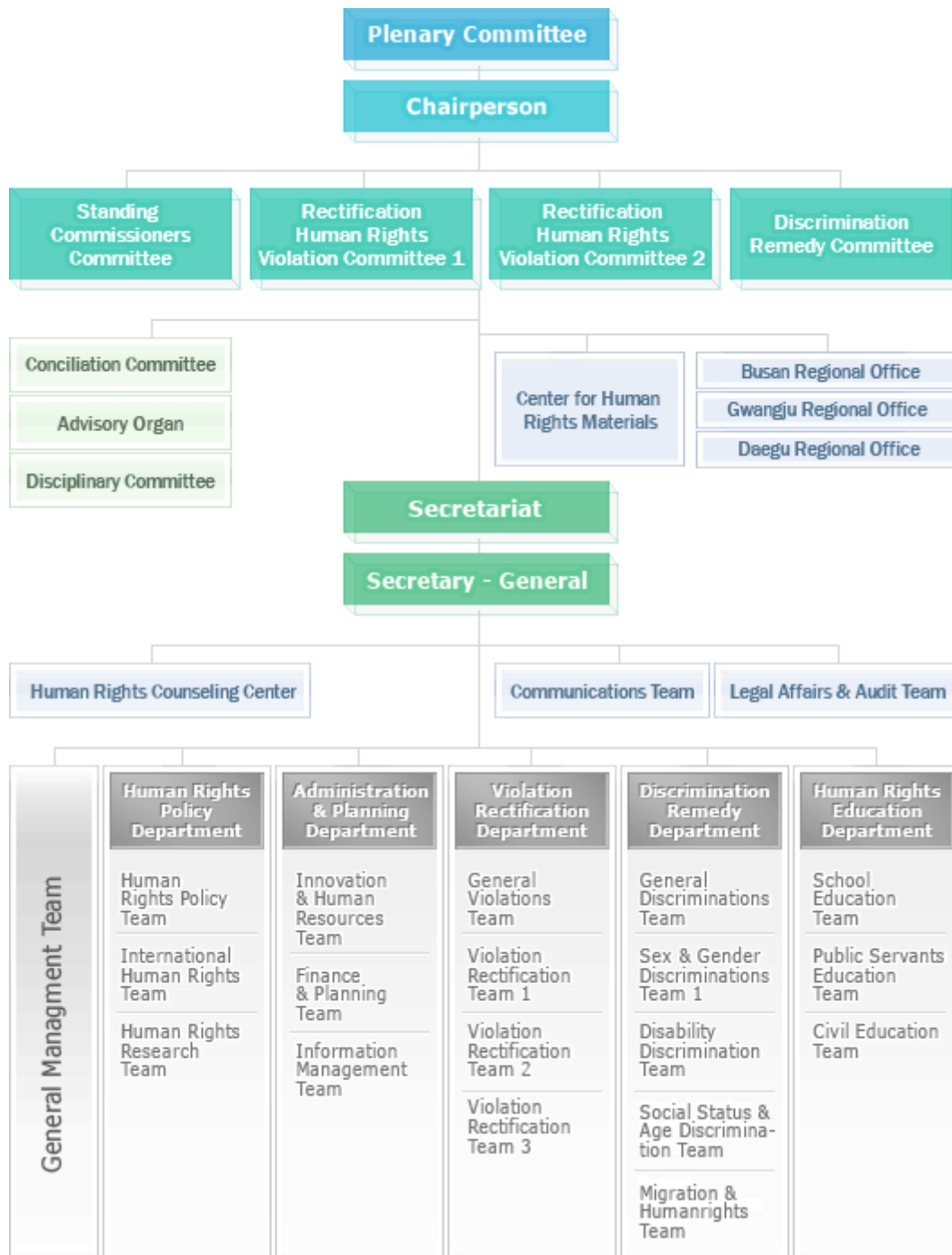
The NHRCK is still a young organization, its sixth birthday coming up this month. At its establishment in 2001, amidst fervent debate it was generally well received by the mass media and NGO community as an essential part of a liberal and democratic state in this age of international human rights law. It endeavors to inspire the spirit of human rights into all state agencies in Korea. Without the Commission, human rights complaints would be less heard, more dispersed, and more costly to resolve. Now that all human rights issues and complaints sooner or later find their way to the Commission, both experience and expertise are rapidly developing and accumulating inside this single state agency.

² The establishing Act of the NHRCK is Act No. 6481, the National Human Rights Commission Act. This Act was revised in No. 7427. Acts No. 7651 (Civil Law) and No. 7655 (Medical Treatment and Custody Law) made necessary changes to relevant laws to make the Commission functional.

However, the NHRCK is now coming up against new challenges. Human rights issues are becoming increasingly complicated and more diverse, evidenced by the complaints filed with the Commission. In recent times, discrimination cases are on the rise, whereas complaints for civil and political rights violations overwhelmed us in the past years. The contents and the merit of complaints are also growing to be more sophisticated than in the past, and the issues requiring multi-faceted viewpoints have increased. This reflects the changes occurring in Korean society and the complexity of contemporary human rights issues. The Commission is now faced with the challenge to become an institution that provides more professional and advanced "human rights service." Also, the Commission is increasingly pressured to assume a more active role internationally as well. As new challenges present themselves on a daily basis, however, the Commission is responding to them in stride. The Commission is confident that it will continue in making meaningful contributions to the human rights effort both domestically and globally.

Appendix

<Appendix 1: The Structure of the NHRCK>



National Human Rights Commission of Korea

The Establishment of the National Human Rights Commission of Korea

(Excerpts from 2002 Annual Report)

Part 1

THE ESTABLISHMENT OF THE NATIONAL HUMAN RIGHTS COMMISSION

Chapter 1. History of the
Commission

Chapter 2. Organization and
Functions of the National
Human Rights
Commission

History of the Commission

As a result of combined efforts and supported by the fervent hope of the people for democratization and improvement of human rights, the persistent endeavors of human rights organizations, and the determination of the government and the concerns of the international community, the National Human Rights Commission began to carry out its mission in November 2001 to create a systematic framework for the protection and promotion of human rights. This meant the birth of a new kind of national institution to serve as a advocate to accelerate the realization of substantial democracy through an "institution exclusively devoted to human rights," by recommending improvement of statutes, regulations and policies related to human rights, protecting people from all kinds of human rights violations and discriminatory acts, and playing an extremely important role in raising and intensifying awareness of human rights through public education.

As the Republic of Korea undergoes democratization after the previous authoritarianism age of darkness, our country has continued to create systematic devices for eliminating human rights violations in every corner of society, and consequently, the people's concern for human rights has risen drastically. However, human rights abuses are still pervasive in many systems and customary practices in Korea and the average citizen's awareness of human rights needs improvement. Launching its mission at this critical time, the Commission will fully perform its role and responsibility as the watchdog and advocate for human rights.

1. International development of national human rights institutions

Although national human rights institutions are individually established and operated under the domestic law of each country, the blueprint for such institutions is found in international human rights law. This means that the national human rights institutions currently operating in many countries were



not only born because of their respective countries' needs, but also because of developments and accomplishments in international law.

The ombudsman system, which we can call the "mother of national human rights institutions," made its first appearance in Scandinavian countries, including Sweden, in the early nineteenth century. As an institution independent from the administrative, legislative, and judicial branches with the authority to monitor and rectify the abuses of the state, the idea of a national human rights ombudsman was adopted as a way to solve a deficit found in states formed in accordance with the separation of powers concept.

Because the United Nations helped reshape the global order after World War II and pursued the development of international and human rights law, it became a natural place for discussion on the establishment of human rights institutions. In 1946, the UN Economic and Social Council issued a recommendation advising the establishment of an Information Group or a Local Human Rights Committee in each country in order to promote cooperation with other countries during the course of activities of the UN Commission on Human Rights. This recommendation encouraged the international community to discuss publicly the establishment of national human rights institutions.

The UN Commission on Human Rights adopted the Guidelines for the Structure and Functioning of National Institutions in 1976. The adoption of the guidelines was part of the UN project to outline human rights standards, which began in full scale as the international covenants on human rights, namely, "International Covenant on Economic, Social and Cultural Rights" and "International Covenant on Civil and Political Rights," went into effect.

Taking the advantage of this remarkable event in the world history, in which legally binding human rights covenants were created, the UN showed its strong support for the establishment of domestically created and controlled bodies as a mechanism to effectively enforce international human rights standards. The UN efforts helped to increase the number of nations that created national human rights institutions throughout 1970s and 1980s. Particularly in 1980s, the number of nations adopting such a national institution quickly increased as developing countries freed themselves from the bondage of authoritative systems and started promoting democratization and human rights.

The historical trend of establishing national human rights institutions reached a turning point when the "Principles relating to the Status of National Institutions" (or the 'Paris Principles') was adopted during the First International Workshop on National Institutions, held in Paris in 1991. The Principles were endorsed by the UN Commission on Human Rights in 1992 and the World Conference on Human Rights held in Vienna in June 1993. They were consequently approved by the UN General Assembly in December of that year to become the common and basic criteria concerning establishment of national human rights institutions.

On the premise that a national institution must have the power necessary to protect and enhance human rights, the "Paris Principles" stipulate that the organization's authority and power must be vested in it by constitutional law or, at the very least, a statute so that its status independent from another state power can be guaranteed. In other words, the Principles articulate that a national human rights institution must have the status of a constitutional body because it must reflect and realize the spirit of the times in the international human rights law age. Thus, independence and autonomy at a level similar to a constitutional institution is required, even in cases where due to difficulties in amending constitutional law, the institution is founded by statute. The "Paris Principles" present each nation with the framework for the establishment of national human rights institutions by enumerating four specific and basic categories of requirements for national human rights institutions: Power and responsibilities of national human rights institution; guarantee of independence and diversity in organization; operating method including organization of committees; and additional principles regarding the status of the national human rights institution having quasi-judicial power.

2. Progress in legislation of the National Human Rights Commission Act

In Korea, discussion of the establishment of a national human rights institution began when the joint committee, organized by non-governmental organizations, participated in the World Conference on Human Rights held in Vienna in June 1993. The NGOs demanded the legislation of an act that would establish an independent national human rights institution to perform functions



such as study, research, education, training, and public relations for the protection and enhancement of human rights in accordance with the resolution adopted by the UN Commission on Human Rights in 1992 and the Paris Principles adopted in 1991. Subsequently, the Third Workshop for Human Rights in the Asia-Pacific Region in July 1994 and the international symposium under the joint sponsorship of the domestic non-governmental organizations in celebration of the Fiftieth Anniversary of Independence from Japanese occupation in November 1995 were held. In November 1996, non-governmental organizations participated in the Asia-Pacific Human Rights Conference held in New Delhi, making the demands for the establishment of a national human rights institution by the NGO community louder and more persistent.

During his presidential election campaign in December 1997, Kim Dae-jung publicly announced that if elected he was committed to establishing a national human rights institution. After his successful campaign, the "legislation of the Human Rights Commission Act and establishment of the National Human Rights Commission" was adopted as one of "One Hundred Main National Tasks" of the new administration led by President Kim. Discussion of a national human rights institution created a sensation at all levels of society. As the new administration took office, the Ministry of Justice organized the "Preparation Team for Establishment of National Human Rights Commission" in April 1998 and held a public hearing concerning legislation of the human rights act in October of that year to accelerate the establishment of a national human rights institution. It was revealed, however, that the main contents of the draft bill of the human rights act as prepared by the government provided that the Commission would be an affiliate agency of the Ministry of Justice. Non-governmental organizations protested fiercely against the government's draft bill because it fell far below the international standard for national human rights institutions as set forth in the "Paris Principles".

In September 1998, the "Joint Promotional Council of Non-Governmental Organizations for Legislation of Human Rights Act and Establishment of National Human Rights Institution" (hereinafter 'Joint Promotional Council') was organized by 29 human rights organizations. The conflict between the Ministry of Justice and human rights organizations continued in connection with legislation of the

human rights act. In the meantime, the Joint Promotional Council was reformed to become the "Joint Action Council of Non- Governmental Organizations for Proper Materialization of National Human Rights Institution (hereinafter 'Joint Action Council')", and a separate "draft bill on establishment of the national human rights commission" was prepared to actively promote negotiations with the government. However, because the gap in the opinions between the government and the Joint Action Council could not be narrowed, negotiations repeatedly broke off.

It was only in April 2001 when the revised bill brought up by the Millenium Democratic Party, the ruling party at that time, was passed in the National Assembly by a narrow majority. The National Human Rights Commission Act, which finally passed successfully overcoming the attempt of the Ministry of Justice to put the Commission under its control, defines the Commission as an "independent" national institution unaffiliated with a legislative, administrative or judiciary body of the government. There are still many unsatisfactory and insufficient elements in the act: the privilege of exemption from liability for defamation under civil law or criminal law is not given to the Commission or the Commissioners; the procedure of a hearing and consent from the National Assembly is not provided adequately for appointment of Commissioners for Human Rights; independence in personnel management and budget is not sufficiently provided for; the governmental organs and agencies over which the Commission has jurisdiction for investigation are limited; The Commission has no power to order a person to come along for investigation; and an interrogation system for witnesses is not available. Nevertheless, it was the momentum of the persistent struggles of the human rights organizations over three years that ended in a "half victory." The government held the State Council on May 15, 2001 to resolve the promulgation of the Act, and the National Human Rights Commission Act promulgated as the Statute No. 6481 on May 24 and took effect six months later on November 25.



3. Preparatory progress for establishment of National Human Rights Commission

The Commission Act was passed despite many complications and hurdles, but conflict over the specifics of the Commission's mission continued. The government had to deliberate extensively over the creation of the Commission because of its unique standing as an "independent national institution" and its unprecedented status as a national agency. However, the Joint Action Council, which had represented the opinions of non-governmental organizations, criticized the legislation because the Commission's power was substantially curtailed.

On August 1, 2001, it was informally decided to appoint Kim Chang-guk, an accomplished lawyer, to be the First President of the Commission, and the "Preparation & Planning Team for Establishment of National Human Rights Commission (hereinafter 'Planning Team')" was organized under the Prime Minister's Directive No. 420 on August 20, only three months ahead of November 25, the date given for the official launch of the Commission. The Planning Team set out to gather information and prepare draft bills in order to comply with the Enforcement Decree and the Rules for the Commission Act, and began to outline the necessary logistical procedures and proposed organization of the Secretariat. However, progress was not made as planned because of the delay in appointment of Human Rights Commissioners for Human Rights and other difficulties. It was October 9, only 40 days ahead of the launch, when the President officially appointed 11 persons to the Human Rights Commission including 4 Commissioners selected by the National Assembly, 3 Commissioners nominated by Chief Justice of the Supreme Court, and 4 Commissioners nominated by President himself.

The Act became effective on November 25, 2001 in accordance with Paragraph 1 of Addenda of the Commission Act, but the Decree on Staff Organization was not ready for enforcement until that time because of the different view of the ministry responsible for personnel management regarding the number of regular personnel and employment method. Since the Planning Team established under Prime Minister's Directive would be automatically

disbanded on November 24, the Commission organized the "Preparation Team for Secretariat of the National Human Rights Commission" (hereinafter 'Preparation Team') as a temporary secretariat so that it could prepare for the establishment of the Secretariat and assist in running the Commission by making the "Rules on Preparation Team for Secretariat of the National Human Rights Commission."

The Enforcement Decree and the Decree on Staff Organization were finally concluded in early February 2002 due to excessive intervention by the related ministry. Choi Yeong-ae, the Secretary General-nominee, was recommended by a resolution of the plenary committee held on October 11, 2001, and was officially appointed on February 19, 2002, four months after the nomination. The Secretariat was run only with one person, the Secretary General, without other staff. The Secretariat could begin its official service only early April 2002 as it was organized with the staff employed during the period of about six weeks. Fulfilling the Enforcement Decree was no easier than establishing the Decree for Staff Organization. The Enforcement Decree was prepared at that time under the initiative of the Commission, but could not be brought up to the State Council directly. Because of the customary practice that an agenda could not be brought up to the State Council if a related ministry raised an objection against it, it was presented to the State Council only after a compromise with the government was made. The Enforcement Decree mainly included provisions regarding the extent of protective facilities for multiple persons, procedure and the method of on-site inspection of detention and protective facilities, and the measures for assuring detainees and inmates the right to free petition as authorized by the Act to specify in further details as well as other matters necessary for enforcing the Act. However, the clause requiring the government agencies and municipal governments to designate a department to take charge of coordination in connection with human rights could not be enforced due to objections from the ministries. Inadequate cooperation between government agencies caused substantial trouble to the Commission's performance last year. Since cooperation is an essential element for accomplishing the goal of a national human rights policy, it is a task to be solved in the future by all means necessary.



4. Significance of establishment of the Commission

The establishment of the Commission is meaningful not only because it is the birth of a national institution, but is also greatly significant as a institution exclusively devoted to human rights created by a worldwide historical movement. The groundwork for the enhancement of human rights has been laid since the Commission began its service in full force, and the significance of its launching can be summarized as follows:

First, the creation of the Commission means domestic materialization of an international institution for human rights, i.e., the domestic launch of a "quasi-international institution" in connection with human rights. The Commission Act defines the term "human rights" as "human dignity, value, freedom and rights which are guaranteed by the Constitution and laws, and also recognized by international treaties and covenants on human rights acceded to or ratified by the Republic of Korea or international conventions," reflecting consitutional guarantee of human rights and worldwide standards. This indicates that the issue of human rights is not a mere domestic one, but that each nation has a duty to comply with the covenants of human rights internationally approved on the basis of the universality of human rights.

Second, it is significant in that a national institution, independent from legislative, administrative and judiciary bodies of the government, has been created so that it can check and monitor the existing powerful government agencies. Reflection on the fact that the government failed to perform its duty to guarantee people fundamental rights, and even violated those rights, has led not only Korea but other countries in the world to create an institution exclusively devoted to human rights, independent from existing power structures.

Third, the Commission performs its role as the "watch-guard for human rights" that can illuminate the "dead zone of human rights" and take preventative measures against human rights violations. Carried out by this Commission are investigative and remedial services for human rights violations, arising in connection with performance of duties by government agencies, municipal government offices, detention and protective facilities as well as investigative and remedial services for discriminatory conduct in 18 different kinds, arising in



employment contexts and other situations.

Fourth, The Commission carries out its function as an advocate for human rights. While the Commission performs investigative and remedial services for the people whose human rights are violated, it also serves as a place that can provide quick and simple solutions at a lower expense to socially disadvantaged people such as the persons with disabilities, elderly people, sexual minorities and the homeless.

A path is open now through which we can wipe off the dishonor of our country, in which basic human rights violations such as torture have frequently occurred in spite of remarkable economic development, and we can make progress to become an advanced country in the field of human rights. It is necessary to improve laws and systems and also to raise ordinary citizens' sensitivity of human rights in order for us to develop to the level of other advanced countries in human rights. The Commission will have to take the initiative to publicize extensively the importance of human rights and make more efforts to continuously conduct educational and training programs. The Commission is committed to making every effort to execute its historical mission competently, and perform its duty and responsibility completely as a catalyst that accelerates substantial realization of democracy in order to create the "world where people can live humanely."

Organization and Functions of the National Human Rights Commission

1. Organization and Budget of the Commission

The Commission, officially established on November 25, 2001, is comprised of 11 Commissioners including one President of the Commission and three Senior Commissioners. Commissioners are appointed by the President, out of which four persons (including two Senior Commissioners) are selected by the National Assembly, four persons nominated by the President, and three persons nominated by the Chief Justice of the Supreme Court. The President of the Commission is appointed by the President among the commissioners, and it is required that four or more commissioners be female. The President represents the Commission, and has the right to attend the National Assembly to deliver a speech, and the right to attend the State Council to express his/her opinion and to make a proposal on submittal of a draft bill (including a draft bill of Presidential Decree) to the Prime Minister concerning the affairs or matters under his/her jurisdiction.

The Commission has a Plenary Committee, a Standing Committee, and three Subcommittees in order to run the Commission efficiently. In addition, it has a Conciliation Committee for conciliation of petitioned cases and the Special Committee for handling urgent affairs. The three Subcommittees are: Subcommittee 1 deliberates and resolves the matters relating to the affairs under Articles 19(1), 19(8), and 19(9) of the Commission Act; Subcommittee 2 deliberates and resolves matters relating to human rights violation under Articles 19(2) and 30(1); and Subcommittee 3 deliberates and resolves the matters relating to discriminatory conducts amounting to equal right violations under Articles 19(3) and 30(1)(2).

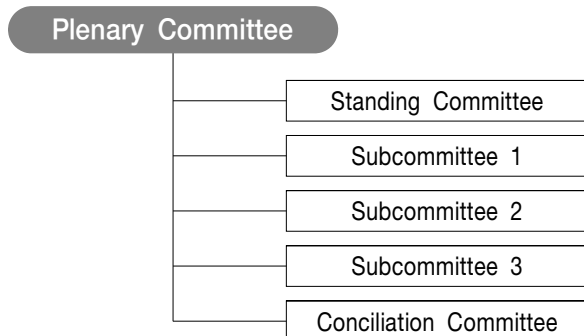
Concerning the organization of the Secretariat, a demand was first made to the ministry responsible for the organization of the government to allow the Commission to have one Office, four Bureaus, Two Director General's Offices



with total 321 regular staffs in service, but as a result of negotiations it was finalized instead to have five Bureaus, 18 Divisions and one attached institution with 180 regular staffs in service (a separate arrangement was made regarding 20 officials dispatched from other ministries and 15 contract-based specialists), with the Office for Human Rights Policy downsized to a Bureau and significant curtailment made to the Commission's demands. The Secretariat consists of the General Affairs Division, the Human Rights Policy Bureau, the Administrative Support Bureau, the Human Rights Violation Investigation Bureau, the Discrimination Investigation Bureau and the Education & Cooperation Bureau. The Public Information Officer, Inspector General, Counselling Center are directly under the control of Secretary General. The Human Rights Library is also attached to the Commission. The "Staff Organization of the Commission and its attached institution" was deliberated and finally decided on by the State Council held on February 4, 2002, and the organization chart is as shown in the (Figure 1-2-1) below.

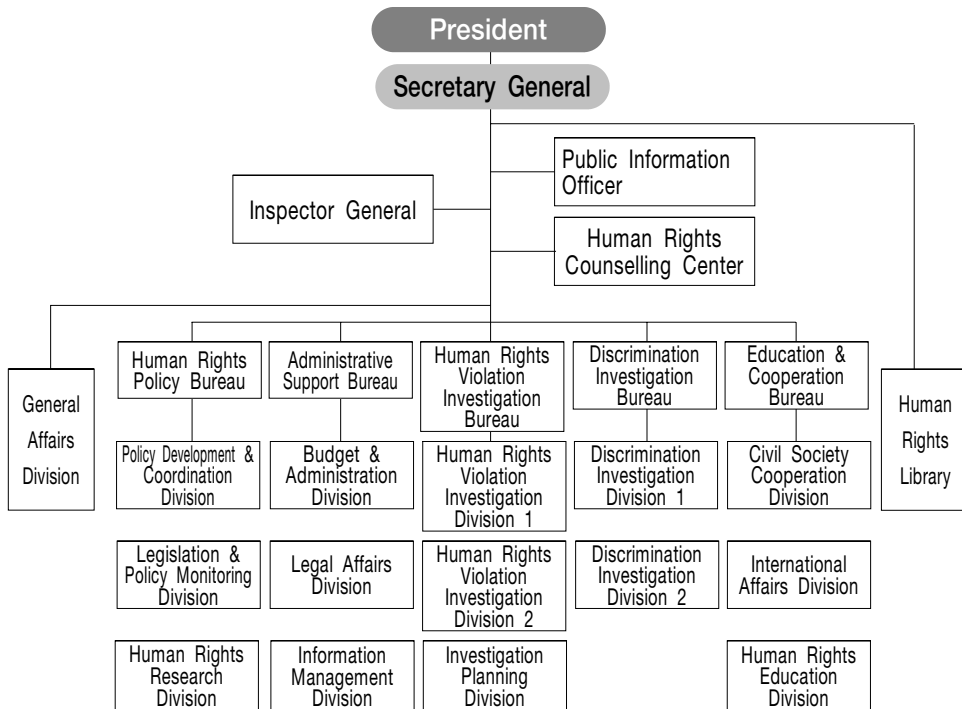
〈Figure 1-2-1〉 Organization chart of the Commission and its Secretariat

Organization of the Commission



* In accordance with the amendment to the "Rules on Management of the National Human Rights Commission" dated January 27, 2003, the Subcommittee for Policy and External Cooperation was changed to Subcommittee 1, the Subcommittee for Investigation of Human Rights Violation to Subcommittee 2, and the Subcommittee for Investigation of Discriminatory Conducts to Subcommittee 3 respectively.

Organization of the Secretariat



Subsequent negotiations with the ministry responsible for budget led to the appropriation of the budget expenditure in 2002 amounting to 19.2 billion Korean Won. As shown in <Table 1-2-1> below, the budget meets ordinary working expenses such as securing an office building and purchasing furniture and equipment, mainly consisting of 5.3 billion Won (27.6%) for payroll expense, 9.4 billion Won (48.9%) for basic operation expenses such as rent and management expenses for the office building, ordinary expenses necessary for carrying out basic services, and 4.5 billion Won (23.5%) for major project cost such as public relations relating to human rights.

<Table 1-2-1> Budget 2002

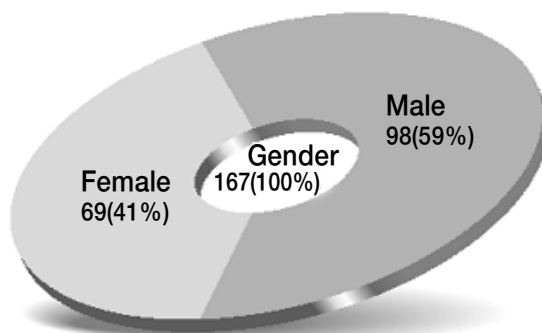
(Unit : 1 million Won)

Total amount	Payroll expense	Working expense			Remarks
		Sub-total	Basic working expense	Major project cost	
19,203 (100%)	5,309 (27.6%)	13,894 (72.4%)	9,372 (48.9%)	4,522 (23.5%)	

Immediately upon establishment of the regulation on the "Staff Organization of the Commission and its Attached Institution," the Commission began preparing for the establishment of the Secretariat to have 31 officials transferred from other ministries for the first time in January 2002, and subsequently to conduct public recruitment of personnel for the Secretariat in February 15 of the year. As shown in <Table 1-2-2>, 167 persons (out of 180 persons of personnel quota) were employed at the Commission as of December 31, 2002.

The staff of the Commission consists of 69 females (41%) and 98 males (59%), showing significant gender parity compared to that of other governmental agencies. By job classifications, it shows diversified distribution with 4 persons for political affairs (2%), 70 persons for ordinary affairs (42%), and 49 persons for special affairs (30%), 31 persons for technical service (18%) and 13 contract-based employees (8%). However, this number of personnel is insufficient to carry out the Commission's services such as inspection of more than 330 detention facilities and about 900 protective facilities throughout the country and investigation into discriminatory conduct.

〈Figure 1-2-2〉 Distribution of personnel by gender (as of December 31, 2002)



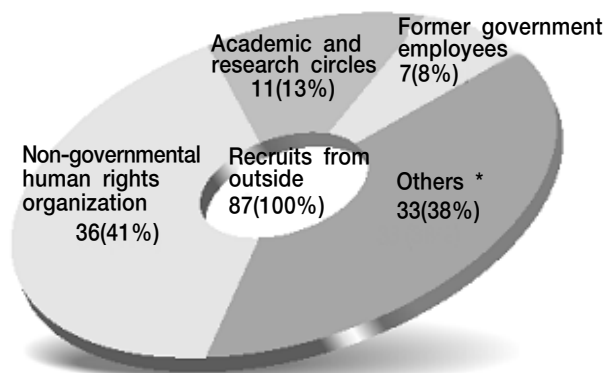
* It is planned to employ 10 persons additionally at the end of March 2003.

〈Table 1-2-2〉 Status of personnel by job classifications

(Unit : person)

Classification	Total number	existing public officials	Recruited from outside
Total number	167(100%)	80(48%)	87(52%)
Political affairs	4(2%)	-	4(5%)
Ordinary affairs	70(42%)	65(81%)	5(6%)
Special affairs	49(30%)	3(3%)	46(53%)
Contract-based	13(8%)	-	13(15%)
Technician	31(18%)	12(16%)	19(21%)

〈Figure 1-2-3〉 Distribution of recruits from outside (person)



* Private business, public corporation, press, political parties, etc.



2. The Commission's functions

The Commission's major functions can be divided into four categories including policy, education and public relations, investigation and remedy, and domestic and international cooperation.

The function of policy includes: research and study on statutes (including bills and pending legislation), systems, policies and customary practices concerning human rights as provided for under Article 19 of the Commission Act and issuance of recommendations or presentation of opinions for as a result of such research and studies (Subparagraph 1 of the aforementioned Article); surveys on current conditions of human rights (Subparagraph 4); presentation and recommendation of guidelines for categories and criteria for judgment of human rights violations, and preventive measures for such violations (Subparagraph 6); and research, issuance of recommendations and presentation of opinions with respect to accession of any international treaty on human rights and the implementation of such treaty (Subparagraph 7). Consultation with government organs (Article 20), presentation of the Commission's opinion in preparing governmental reports (Article 21), submittal of information and inquiry into facts (Article 22), proceeding of hearings (Article 23), on-site inspection of facilities (Article 24), recommendation of improvement or rectification of policies and customary practices (Article 25) and presentation of opinions to courts and the Constitutional Court are also necessary provisions for the Commission to carry out its policy function properly.

The function of education and public relations [Article 19(5)] includes: Consultation with the Minister of Education and Human Resources Development in order to put human rights education into the curriculum of schools provided under Article 23 of the "Elementary and Secondary Education Act" [Article 26(2)], consultation with schoolmasters established under the provision of Article 2 of the "Higher Education Act" [Article 26(3)]; consultation with the heads of related government agencies or municipal government offices in order to put contents concerning human rights into examinations for employment and promotion, and training or educational courses [Article 26(4)]; making a request for study or conducting a joint study on human rights upon consultation with the heads of

research institution or research association [Article 26(5)]; and issuance of recommendations to put human rights education into the educational or training programs conducted by organizations or facilities for social education [Article 26(6)].

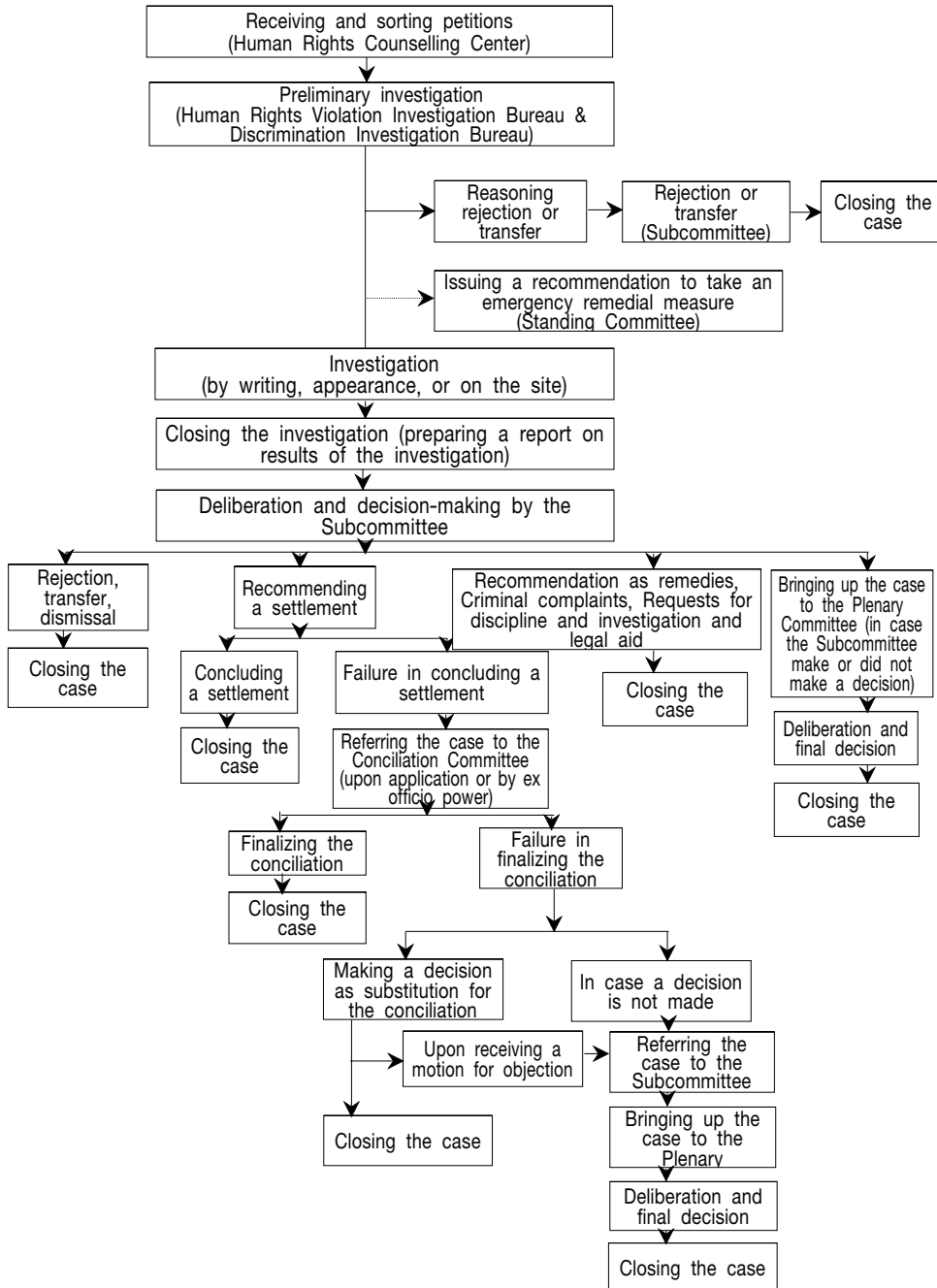
Enumerated in details under the provisions for the function of investigation and remedy [Article 19(2) & (3)] are: Affairs or matters subject to the Commission's investigation (Article 30); guarantee of the petition right of detainees and inmates in detention and protective facilities (Article 31); and investigation method (Article 36). The affairs subject to investigation include human rights violations committed by governmental or public authorities, and also human rights violations committed by private individuals, that is, discriminatory conduct against equal rights. The flow chart for handling the cases petitioned to the Commission is as shown in (Figure 1-2-4).

The Commission may conduct an investigation by its *ex officio* power if it finds that there is a probable cause to believe a violation against human rights occurred and the degree of such violation is severe enough where there is no petition complaining of such violation (while the Standing Committee may make a decision for commencing *ex officio* investigation in a "emergency case"). Furthermore, it may issue a recommendation to take a emergency remedial measure in a certain case, and the Subcommittee may refer a petitioned case to the Conciliation Committee by its *ex officio* power or upon receiving an application from the party involved to commence the conciliation procedure if it finds that there occurred a human rights violation, but the parties failed to reach a settlement under Article 40 of the Act.

Specified as the function of domestic and international cooperation is cooperation with organizations and individuals who are working for the protection and enhancement of human rights and the affairs or matters relating to exchange and cooperation with international and foreign institutions related to human rights [Article 19(9)].



〈Figure 1-2-4〉 Flow chart for handling petitioned cases



III. Introduction to Major Activities of the NHRCK

1. Human Rights Policy Bureau
 2. Civil Rights Violations & Remedies Bureau
 3. Discrimination & Remedies Bureau
 4. Human Rights Education Bureau
 5. Human Rights Counseling Center
-

Human Rights Policy Bureau

I . Action Plans of NHRCK

Commission's efforts are focused on creating a society where all members are treated equally.

○ Our Vision Is : A World of Dignity for All

○ Our Missions Are :

- To monitor potential civil rights violations committed by state authorities;
- To monitor state authorities and private actors to prevent any human rights infringements;
- To realize the principles and standards in human rights set forth in the Constitution of the Republic of Korea and international human rights treaties and conventions to which Korea is a party;
- To determine human rights violations and make policy recommendations in accordance with the principles set forth in the Constitution, international law and international customary law;
- To nurture a societal culture respecting and observing human rights; and
- To foster societal understanding and embrace of human rights through education programs and public awareness campaigns for the fundamental advancement of human rights.

○ Our Five Goals Are :

- To improve human rights protection for the underprivileged and underrepresented;
- To establish human rights standards and practices consistent with universal norms;
- To improve accessibility and efficacy of remedial action against human rights violations and discriminatory practice;

- To foster public understanding of human rights by enhancing education programs; and
- To develop the role and authority of the Commission in overall human rights matters.

■ Mandate & Jurisdiction of NHRCK

○ Commission Undertakes :

1. Analysis and research of human rights statutes (including bills pending at the National Assembly), legal and judicial systems, policies and practices as well as issuance of opinions and improvement recommendations thereon;
2. Investigation of human rights violations and remedy recommendations;
3. Investigation of discriminatory practices and remedy recommendations;
4. Review of human rights issues and environments;
5. Education and public awareness programs on human rights;
6. Proposal for and recommendation of guidelines for various categories of human rights violations, determination standards, and preventive measures thereof;
7. Research and issuance of recommendations or opinions with respect to the ratification and/or implementation of international human rights treaties to which Korea is a party;
8. Cooperation with domestic and overseas organizations and activists engaged in the protection and promotion of human rights;
9. Exchanges and cooperation with international human rights organizations and human rights institutions of foreign countries; and
10. Other matters deemed necessary to protect and promote human rights.

○ How Commission Works:

1. Request for the submission of relevant information and materials to concerned entities and professionals subject to investigation;
2. Visit to and investigation of detention or protective facilities, if necessary;
3. Filing of Commission's opinions on human rights issues with the courts and the Constitutional Court; and
4. Submission of annual reports on Commission's activities and human rights situations to the President of the Republic of Korea and the National Assembly.

■ Major tasks of 2006

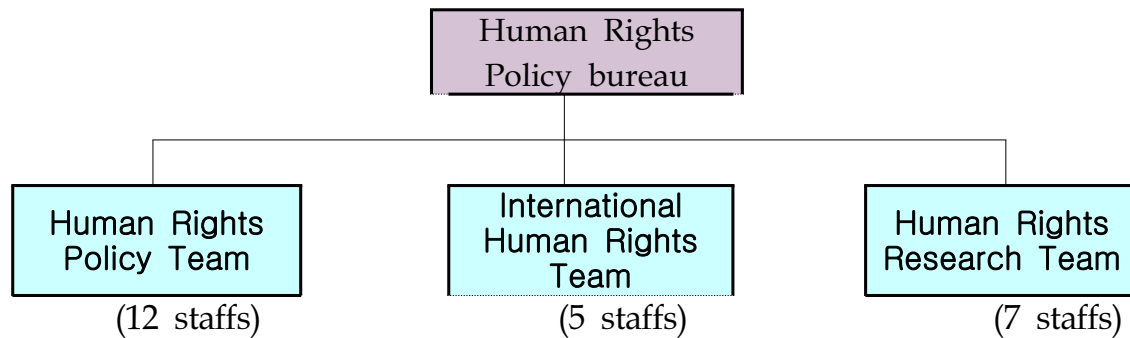
- ① To cooperate with the government to establish the National Action Plans for Promotion and Protection of Human Rights (NAPs on Human Rights) and monitor their implementation
- ② To recommend the legislation of the Anti-Discrimination Law
- ③ To establish standards for determining human rights violations (social rights included) and discriminatory practice
- ④ To improve human rights of the elderly
- ⑤ To improve human rights of the enlisted men in the military and the riot police
- ⑥ To improve human rights of persons living in social welfare facilities
- ⑦ To improve human rights of foreign spouses married to Koreans and foreign workers and their families
- ⑧ To improve human rights of North Korean defectors
- ⑨ To advocate the legislation of the Fundamental Human Rights Education Act
- ⑩ To expand human rights education programs targeting social welfare facilities, private corporations, and the media

■ Major tasks of 2007

- ① To improve human rights of children and adolescents
- ② To improve human rights of persons living at welfare facilities
- ③ To improve human rights of persons with disabilities
- ④ To reinforce the right to survival of the underprivileged subject to subsidy under the National Minimum Living Guarantee Act
- ⑤ To continue projects on human rights in North Korea
- ⑥ To improve human rights of foreign spouses married to Koreans and foreign workers
- ⑦ To develop guidelines to determine human rights violations and discriminatory practices
- ⑧ To develop a comprehensive plan to improve human rights education
- ⑨ To bolster Commission's role and standing in the international organizations of national human rights institutions
- ⑩ To proactively express Commission's opinions on matters related to human rights

II . Human Rights Policy bureau

■ Structure & Staffs: 3 teams (24members)



■ Main Operation

The Commission makes systematic efforts to protect and enhance human rights by recommending and rectifying relevant policies and laws. Since its establishment in 2001, the Commission has advised over a hundred cases and has taken a major role in improving the standards of human rights practice in our society. The Commission monitors and provides opinions on various laws and policies with an eye toward human rights promotion and protection.

○ Human Rights Policy Team :

Formulates mid- to long-term strategies and annual plans regarding human rights policies; investigates human rights conditions; seeks improvements to laws, institutional mechanisms, policies, and practices to ensure rights to freedom; and reports on human rights conditions to the President and the National Assembly.

○ International Human Rights Team :

Provides support for signing of international human rights treaties, promotes domestic implementation of international human rights treaties and standards as well as recommendations by international human rights organizations; and pursues international cooperation.

○ Human Rights Research Team :

Oversees promotion of human rights concerning social rights; recommends improvements to laws, institutional systems, policies, and practices pertinent to social rights and mid- to long-term human rights tasks; and holds forums on social rights, invites human rights theses for competitions, and conducts cooperation projects with various research institutes.

■ Major achievement

- Abolition of Death Penalty (2005): National Assembly, Under review
- Abrogation of Patriarchal Registration System (2003) : Constitutional Court, Accepted
- Opinion against Deployment of ROK Military Troops to Iraq War (2003) : National Assembly, Not accepted
- Acknowledgement of Right to Conscientious Objection (2005) : National Defense Minister, Under review
- Abrogation of National Security Act (2004) : Justice Minister, Under review
- Advancement of Rights of Patients with Leprosy (2006) : Health & Welfare Minister, Accepted
- Age limit in Recruiting Employees in National Universities (2005) : 14 National Universities, Accepted
- Age limit in Recruiting Public Officers (2006) : Civil Service Commission, Under review
- Due Respect for Rights of Detainees in Immigration Detention Facilities (2007) : Justice Minister, Under review
- Human Rights Abuses in Mental Hospitals : Hospitals, Health & Welfare Minister, Mostly Accepted
- Ill-treatment by Policemen : National Policy Agency, Mostly Accepted
- Mistreatment of Detainees and Inmates : Justice Minister, Mostly Accepted
- “Flesh Color” → “Apricot Color” : Korea Standards Association, Accepted

- Expansion of Definition of Sexual Harassment (2007) : Individual Offenders, Accepted
- Discrimination against the Disabled (2007) : Korean Airlines, Accepted

■ How to reach this recommendation

○ National Action Plan for Human Rights

From 2003 to 2005, the National Human Rights Commission of Korea (NHRCK) formulated and recommended proposed national action plans for the promotion and protection of human rights ("NAPs on human rights"). Based on the NAPs on human rights, the Commission suggested on January 9, 2006, the government to develop its own NAPs on human rights. The government since designated the Ministry of Justice to oversee the human rights efforts and has been establishing NAPs on human rights. The Ministry of Justice held a public hearing in February 2007 on draft NAPs on human rights that reflect policy tasks proposed by government agencies, and the final NAPs will incorporate opinions presented in the public hearing. To ensure that its original recommendations to the government will be fully reflected, the Commission has been rendering assistance and advice from the early stage of formulation of NAPs on human rights. It is also analyzing and evaluating the government's draft NAPs on human rights. The Commission will closely monitor implementation of the NAPs on human rights following their formulation.

○ The Discrimination Prohibition Act

On July 24, 2006, the Commission recommended that the government enact the Discrimination Prohibition Act. Discrimination as defined by the legislative bill is defined comprehensively as direct discrimination, indirect discrimination, and harassment. It indicates the 20 types of discrimination

such as gender, disability, age, and race and identifies employment, education, goods and services, etc. as the areas of discrimination. The bill also contains provisions on discrimination prohibition and preventive measures in each area. It explicitly stipulates government agencies' obligation to rectify discrimination including the NHRCK's formulation of recommendations on basic plans for addressing discrimination and the president's establishment of basic plans for eliminating discrimination. The bill also defined the NHRCK's rectification recommendations as a basic remedy. Furthermore, the bill provides for litigation support for major cases and sets out such matters as temporary relief by the court, transfer of the burden of proof, and so forth.

○ The Convention on Rights of Persons with Disabilities

On December 13, 2006, the Convention on Rights of Persons with Disabilities ("Convention") was adopted by the General Assembly of the United Nations. On April 9, 2007, the Prohibition of Discrimination Against People with Disabilities Act ("Act") was enacted in the Republic of Korea. Accordingly, the Commission hosted a panel discussion with the Ministry of Health and Welfare (the ministry in charge) and NGOs on persons with disabilities on April 12, 2007 to guarantee ratification of the Convention and effective domestic implementation of the Act. In the debate, participants actively discussed the Convention on Rights of Persons with Disabilities, Prohibition of Discrimination Against People with Disabilities Act, and overall policies pertaining to disabilities. They also discussed ways to mutually address problems and promote domestic implementation of the Convention on Rights of Persons with Disabilities.

National Human Rights Commission of Korea

A Roadmap to a National Human Rights Culture

*A Practical Guide to the Recommendation for the "National Action
Plan for the Promotion and Protection of Human Rights"
(Human Rights NAP)*

A Roadmap to a National Human Rights Culture

A Practical Guide to the Recommendation for the "National Action Plan for the Promotion and Protection of Human Rights" (Human Rights NAP)

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Part 1. Overview of the Recommendation for the Human Rights NAP

© What are 'human rights'?

- Human rights are the fundamental rights and freedoms to which we are all inherently entitled as human beings and without which we cannot live with dignity. Human rights include the right to life, liberty and security of person, and the right to equal protection under the law without discrimination. Human rights belong equally to all persons, without distinction of any kind, such as race, color, sex, religion, political or other opinion, national or social origin, property, birth or other status.

© Human rights are universal.

- Human rights must be universally protected for every person, everywhere. While nations, with their own distinct cultures and traditions, may differ slightly in their understanding and interpretation of human rights, it is unacceptable to dismiss the paramount importance of the fundamental human rights of individuals by claiming that "human rights can be sacrificed for national interests" or that "human rights should be addressed after all other needs are fulfilled."

© What is the 'National Action Plan for the Promotion and Protection of Human Rights'?

- On January 9, 2006, the National Human Rights Commission of Korea (NHRCK) released its Recommendation for the "National Action Plan for the Promotion and Protection of Human Rights" (hereafter, Human Rights NAP). The Human Rights NAP provides the foundation upon which mid- and long-term national human rights policies can be built.

© **The Human Rights NAP represents our commitment to the international community to promote and protect human rights.**

→ In the wake of the turmoil and atrocities of World Wars I and II, the United Nations proclaimed the Universal Declaration of Human Rights (UDHR). Adopted in 1948, this historic landmark document, which has been incorporated in many national constitutions and law, marked the first international recognition of the universal and inalienable rights of all persons, everywhere. As the foundation of international human rights law, the Declaration has also served as a model for subsequent international human rights instruments, including the International Covenant on Civil and Political Rights ("rights to freedom") and the International Covenant on Economic, Social and Cultural Rights ("social rights").

In 1993, several world leaders gathered in Vienna to encourage national governments to draw up and implement a Human Rights NAP. Later in 2001, the United Nations Committee on Economic, Social and Cultural Rights recommended that, by June of 2006, the Korean Government inform the Committee of the progress it has made toward devising the Human Rights NAP. The Human Rights NAP represents our national commitment to the international community to promote and protect human rights.

✱**Rights to freedom** is a comprehensive concept that refers to civil and political rights, including the right to bodily safety and freedom, the right to freedom of thought and conscience, and the right to freedom of assembly and association.

✱**Social rights** refer to economic, social and cultural rights, including the rights to adequate food, housing, healthcare, education, working conditions, social security, and culture entitled to all persons and their families. Every national government is obliged to guarantee for all persons an adequate standard of living; thus, social rights cannot be enjoyed unless certain economic resources are secured first.

◎ **The NHRCK is responsible for the Recommendation for the Human Rights NAP.**

→ Article 1 of the National Human Rights Commission Act provides that: "The purpose of this Act is to contribute to the realization of human dignity and worth and the safeguard of the basic order of democracy by establishing the National Human Rights Commission to ensure the protection of the inviolable and fundamental human rights of all individuals and the promotion of the standards of human rights." Under this Act, the NHRCK acts as the sole national institution that deals exclusively with human rights issues. The NHRCK's recommendations regarding governmental development and implementation of mid- and long-term human rights policy plans are contained in the Recommendation for the Human Rights NAP.

◎ **The NHRCK will keep a close eye on how the Government develops and implements the Human Rights NAP.**

→ The NHRCK and the Government have agreed on a division of the labor with regard to human rights issues. In accordance with the agreement, the NHRCK is responsible for drawing up the Recommendation for the Human Rights NAP, and the Government is responsible for setting it up, based on the

NHRCK's recommendation.

From start to finish, the NHRCK serves as the advisory body to Governmental development and implementation of the Human Rights NAP. It makes policy and priority recommendations for the Human Rights NAP as well as provides advice for its successful development and implementation.

◎ **Any human rights issues not included in the 1st Human Rights NAP will be addressed in the 2nd Human Rights NAP.**

- Any human rights issues requiring attention but not included in the 1st Recommendation for the Human Rights NAP will be addressed in the 2nd Recommendation which will be drawn up five years from now. After consideration of the results of the development and implementation of the 1st Human Rights NAP, those human rights-related areas determined to require further improvements will also be addressed in the 2nd Recommendation.

◎ **The Recommendation is the result of large-scale data-based research as well as ongoing discussions with various individuals, organizations, and institutions.**

- In preparing the Recommendation for the Human Rights NAP, we collected and analyzed a vast amount of data, and reviewed the research literature, government-run research institute reports, human rights body materials, and human rights-related news articles. We also considered the Government's mid- and long-term frameworks and policy plans, as well as the *UN Guide to the Human Rights NAP*, the Human Rights NAPs of fifteen nations, and thirteen country reports issued under UN human rights conventions. Additionally, we consulted twenty-six studies on current domestic human rights conditions conducted by outside experts.

Moreover, we listened to what human rights groups had to say. We held seventeen meetings with a wide-range of human rights groups, each specializing in a different area of human rights. Upon drafting the Recommendation for the Human Rights NAP, we asked these groups to review the draft and provide suggestions for improvements.

We also consulted Government agencies and held meetings with government officials engaged in different areas of human rights policy, including labor and social welfare. In particular, officials from the Ministry of Labor and the Ministry of Health and Welfare offered insightful opinions and information.

◎ **Preparation for the Recommendation spanned three and a half years.**

- The NHRCK organized an NAP task force, an advisory team composed of human rights specialists, a council of human rights policy-makers, and an NAP working party to collectively map out the Recommendation. The NAP task force, comprised of representatives from the NHRCK, human rights groups, and academic and legal circles, decided on the basic direction of the Recommendation. The advisory team served to increase the professionalism of the Recommendation by conducting fact-finding research to determine the status of human rights in Korea. The council of human rights policy-makers functioned as a channel through which we communicated and coordinated with Government agency officials to explore human rights policy options. Finally, the NAP working party, consisting of NHRCK staff, performed practical assignments such as collecting data, coordinating tasks, organizing seminars, and drafting the Recommendation.

◎ **The Recommendation consists of three parts.**

→ Part 1 defines the Human Rights NAP and describes the courses we took in drawing up the Recommendation for the Human Rights NAP. Part 2 focuses on the positive measures that we recommend ought to be taken to protect and promote the human rights of eleven socially disadvantaged and minority groups, including non-standard and migrant workers, and persons with disabilities. Part 3 suggests legislative and institutional improvements for the promotion of human rights, and provides recommendations for the strengthening of human rights education and forging of more communicative and cooperative exchange with the international community.

© **Protecting socially disadvantaged and minority groups is our number one priority.**

→ The Recommendation for the Human Rights NAP prioritizes human rights protection of socially disadvantaged and minority groups, including persons with disabilities, non-standard workers, and North Korean defectors. It also places great emphasis on legislative and institutional improvements for the promotion of social rights and rights to freedom.

Part 2. Human Rights Protection For Socially Disadvantaged and Minority Groups

In step with our society's tremendous democratic progress, we have witnessed a considerable improvement in human rights conditions. Nevertheless, the fundamental rights of socially disadvantaged and minority groups have yet to be fully protected. In addition, the foreign exchange crisis of 1997 and its subsequent economic difficulties degraded the promotion and protection of human rights for these groups. Against this backdrop, the NHRCK has identified eleven socially disadvantaged and minority groups for whom the exercise of rights is difficult and remedial action is urgently needed, and urges that more resources be directed for the promotion and protection of the human rights of these groups over the next five years. The target groups include persons with disabilities, non-standard and migrant workers, refugees, women, children and youth, the elderly, sexual minorities, persons with a history of illness, soldiers, riot police and police conscripts, North Korean defectors, and institutional residents. This Part provides a detailed description of the current status and conditions of these groups as well as the positive measures that ought to be taken to address their problems.

[Persons with disabilities]

We recommend protection of the right to freedom from discrimination in employment, working conditions, and social security benefits for persons with disabilities.

○ Promoting employment and guaranteeing work opportunities for persons with disabilities.

Laws and regulations related to persons with disabilities ought to include the standards by which to determine a discriminatory act and the remedies and sanctions to be taken in response. The State plays an important role in promoting the employment of persons with disabilities. As such, we recommend that the Government offer a range of incentives to those who employ persons with disabilities and show stronger support of persons with disabilities who are or wish to be self-employed.

○ Eliminating discrimination in educational opportunities and improving educational environments.

We recommend that all educational institutions be equipped with convenient facilities for students with disabilities and staffed by appropriately trained and qualified teachers and educators.

○ Guaranteeing the right to mobility and access.

The Recommendation, with an eye toward securing the right to mobility for persons with disabilities, calls upon the Government to take positive measures regarding those facilities that were built or installed prior to the effect of the 'Act on the Promotion of Mobility Convenience for the Mobility Handicapped.' In addition, we recommend an increase in the numbers of in-service buses equipped with wheelchair lifts and elevators installed and operating in and around subway stations, as well

as additional railcar seats reserved for those with disabilities.

○ **Effectively guaranteeing the exercise of the right to vote.**

We recommend that the Government work to guarantee the effective exercise of the right to vote for persons with disabilities by developing and distributing assistive devices, improving criminal trial proceedings involving persons with disabilities (especially for those persons living with mental disabilities), reinforcing education and training of persons providing services or operating facilities designed for persons with disabilities, and expanding services and facilities for persons with disabilities.

○ **Securing the right to health.**

We recommend an increase in the numbers of hospitals and medical personnel providing rehabilitation services for persons with disabilities. In addition, the NHRCK urges the Government to work toward eliminating discrimination against persons with mental disabilities in accessing medical insurance by amending relevant provisions under the Commercial Code. We also recommend revision of the private insurance law to protect persons with disabilities from unreasonable discrimination by private insurance providers. Finally, in order to address the economic difficulties faced by persons with disabilities and their families, we suggest the calculation of a minimum cost-of-living index and an increase in current disability benefits to a realistic level.

[Non-standard workers]

Today's standard worker might be tomorrow's non-standard worker.

Types of non-standard work include temporary work associated with temporary work agencies and fixed-term contracts, as well as work associated with the cottage industry.

Non-standard workers, whose numbers have been on the rise since the 1990s, are unable to exercise the three fundamental rights to work. There is also a widening gap between non-standard and standard workers in terms of wages and working conditions.

Valuable lessons can be learned from the experiences of advanced nations where the types of non-standard work are strictly regulated and legislation regarding fixed-term or part-time employment have been enacted. It is necessary that we iron out workable alternatives to address discrimination against non-standard workers.

- **In order to prevent the overuse of non-standard work, legislation and regulations are needed to define the grounds for justifying the use of non-standard work.**
- **Eliminating discrimination in wages, working conditions, and social security benefits.**

Legislative and institutional improvements are required to ensure equal treatment of non-standard workers and their standard counterparts with regard to working conditions including wages, work hours, and employee benefits. We recommend that the law require an employer seeking to employ a fixed-term worker to draw up a written contract that clearly specifies the term of employment; otherwise, the worker concerned shall be treated as

an employee contracted for an indefinite duration of time.

Concrete measures need to be taken to protect the three fundamental rights to work: the right to organize labor, the right to collective bargaining, and the right to collective action. Moreover, we recommend devising and implementing a range of measures to protect workers engaged in special-type work, with full consideration given to the unique features of their work.

Prime contractor employers (i.e., employers who enter into contractual agreement with and dispatch workers to other employers) and subcontractor employers (i.e., employers using dispatched workers) ought to be liable for non-compliance with employer obligations and responsibilities.

In 2001 the UN Committee on Economic, Social and Cultural Rights observed that, in general, non-standard workers in Korea received lower wages, pension benefits, unemployment and health benefits, and have less job security compared to standard workers who performed the same tasks.

○ **Expanding educational opportunities and job training for non-standard workers to enable their transition to standard work.**

We recommend offering non-standard workers improved access to educational and job training opportunities, and providing financial and other incentives to employers and employees participating in vocational skill development programs. We believe such measures will lead to a rise in non-standard worker participation in educational and training programs.

[Migrant workers and refugees]

Migrant workers are not an expendable and exploitable workforce.

According to the International Labor Organization (ILO), a migrant worker is a person who migrates or who has migrated from one country to another with a view to being employed otherwise to his/her own account. Although migrant workers play an important role in the Korean economy, their social and economic status is still very low. The Recommendation for the Human Rights NAP stresses that migrant workers, including undocumented workers and their families ought to be protected from any infringement of their human rights and guaranteed the rights to work, social security, family care and education, health, and culture.

- **Legislative and institutional improvements are needed to protect and prevent violation of the fundamental human rights of migrant workers.**

We recommend easing the restrictions on workplace mobility placed on foreign workers under the foreigner work permit system. Moreover, a social security accord ought to be reached so as to address the unfavorable treatment of migrant workers in social security programs, including the pension scheme.

- **The rights to parenting, health, education, and culture should be guaranteed.**

The children of migrant workers ought to be entitled to the right to be cared for by their parents and the right to be educated, regardless of the origin or status of their parents. Within the social welfare framework, we recommend financial provisions for migrant workers to aid in medical and child care expense coverage.

In January of 2003, the UN Committee on the Rights of the Child recommended that the Korean Government ensure equal access to education and social welfare for all children of foreigners, including those of undocumented migrant workers.

○ **Promoting maternity protection of and violence prevention for migrant women.**

We suggest strengthening workplace inspections to ensure that legal provisions for maternity protection apply to female migrant workers. We also recommend that eligibility requirements for social security programs, including basic living benefits, include foreign women married to Korean nationals, even if they have not yet acquired Korean citizenship.

The UN Committee on the Elimination of Racial Discrimination recommended that the Korean Government take positive measures to prohibit discrimination against resident foreigners, women married to asylum seekers, and children of mixed marriages, particularly Amerasian children (in 1999), and to make efforts to prevent the trafficking of foreign women as well as provide support and assistance to the victims of such trafficking (in 2003).

○ **The refugee recognition process needs to be improved, and social assistance for refugees and asylum-seekers ought to be expanded to promote their human rights.**

We recommend the establishment of refugee relief centers and an independent body for refugee recognition, consisting of specialists in refugee-related areas. We also recommend that legal services be made available to asylum-seekers. Additionally, recognized refugees ought to enjoy the same right to social security on par with Korean nationals.

[Women]

The fight against gender discrimination is not yet over.

In recent years, Korea has made significant legislative and institutional progress, including passage of the Equal Employment Act and abolition of the male-oriented family registry system, toward combating discrimination against women. However, gender discrimination continues to persist in people's attitudes and minds, as well as in social practices.

In response, the Recommendation urges the Government to take measures to ensure the prevention and elimination of the various forms of violence to which many women are exposed. It also seeks promotion of maternity protection and assurance that housekeeping, and family and child care responsibilities are shared by men, women, and the State.

- **Taking measures to address violations of women's human rights, including sexual harrassment, sexual violence, domestic violence, and commercial sexual exploitation, as well as provide stronger victim protection.**

In order to promote awareness of women's human rights and gender inequality, we recommend the development of relevant teaching and learning materials and programs for students at all educational levels. We also suggest reinforcement of social welfare services designed to counsel, protect, or care for the victims of human rights violations, as well as procedural improvements in criminal investigations and trials to ensure the full human rights protection of victims.

- **Increasing public awareness of childbearing and childcare needs to protect the maternity rights of working women.**

We recommend that maternity protection guidelines be drawn up and child care facilities expanded so as to contribute to the creation of a more family-friendly culture, lest women suffer disadvantages in employment and other areas of social life just because of their pregnancy or confinement.

- **Enacting policy measures to protect the human rights of women who are particularly vulnerable to rights violations, such as non-standard female workers, women employed in the cottage industry, female migrant workers, women with disabilities, female inmates, and women living in poverty and/or in rural areas.**

[Children and youth]

The State should assume more responsibility in caring for and educating our children and youth.

Under the current educational system in Korea, the inordinate focus on college entrance exam preparation has created an extraordinarily competitive learning environment for students, even those enrolled in primary schools. This problem is compounded especially for those children and youth living in poverty and/or exposed to various forms of abuse, such as bullying, and domestic and school violence, including corporal punishment administered by school officials. In addition, unequal access to child care and educational opportunities, which depends largely on family access to economic resources, adversely impacts the mental and physical development of our children and youth. In light of these problems, the Recommendation for the Human Rights NAP urges the Government to assume more responsibility for the care and education of our children and youth.

○ Reinforcing State responsibility for the care and protection of our children and youth.

Every year approximately 10,000 children do not have access to proper care, whether as the result of poverty, running away, or their parents' divorce or death. In order to protect these children, we recommend that the State increase its authority over and regulation of foster care and other alternative family arrangements. We also suggest expansion of financial provisions and other forms of aid to support such alternative family arrangements. Additionally, we recommend that measures be taken to prevent child abuse and neglect, as well as to increase

the number of child protection zones and to strengthen facility safety in order to protect children from safety hazards, accidents, and violence at school and other potentially harmful environments.

○ **Enhancing basic health care and welfare services.**

We recommend improvements in health care services for children living in poverty and basic health care provisions for the children of migrant workers, as well as implementation of policies to support those children for whom health care services are not easily accessible. In addition, we suggest expansion of free school meal programs for children in need, as well as improvements in the quality and nutrition of school meals.

○ **Guaranteeing disadvantaged children the right to education and increasing support for neonatal and pre-school educational services and programs.**

The Recommendation for the Human Rights NAP calls upon the Government to increase support for educational and care services for infants and pre-school children. Specifically, we recommend expanding public child care facilities, increasing no-cost educational benefits and accessibility to child care fee exemptions or reductions, and facilitating child care leave. We further encourage the Government to adopt a gradual approach toward providing no-cost secondary school education, which will substantially ease the burden of educational costs for low-income families, and devise policy measures that will curb the cut-throat competition for college entrance.

○ **Empowering children to participate in decision-making processes at school and in society at large.**

[The elderly]

An aging society demands protection of the human rights of the elderly.

As of November 2005, persons aged 65 or older comprised 9.1% of the total population of Korea. This means that Korean society is aging at an unprecedentedly rapid rate. In light of this trend, we have yet to build an adequate system to protect the human rights of the elderly. The Recommendation for the Human Rights NAP places emphasis on the establishment of nursing homes for the elderly, the construction of a public health care system for the elderly, and preferential treatment for the elderly in access to permanent rental housing. We also urge that policy measures be taken to ensure an adequate standard of living for the elderly and an institutional system created to prevent elder abuse.

- **Guaranteeing the rights to housing, health, and social welfare benefits to secure an adequate standard of living for the elderly.**
- **Preventing elder abuse and protecting the elderly from such abuse.**

[Persons with a history of illness]

No person deserves unfavorable treatment just because of his or her illness or history of illness.

The National Human Rights Commission Act specifies that unfavorable treatment based on an individual's illness or history of illness constitutes a discriminatory act that infringes on his or her right to equality. Furthermore, the UN Human Rights Committee, the World Health Organization (WHO) and the International Labor Organization (ILO) have recommended banning HIV/AIDS group testing and employment dismissal due to infection. Yet, persons with a history of illness continue to be denied their fundamental rights largely due to the social prejudice against them. Such persons often have no choice but to endure wide-spread discrimination in healthcare services. HIV/AIDS-infected persons, persons suffering from Hansen's Disease, and hepatitis-B carriers are particularly vulnerable to discrimination in Korea.

- **Revising relevant legislation to ensure that healthcare services are fully available to HIV/AIDS-infected persons and human rights violations and discrimination against them are eliminated.**

Amendments should be made to regulations that permit compulsory medical examinations, employment restrictions, name reporting, and regulation of disease transmission, as well as to provisions of the Immigration Control Act on forced deportation. In order to eliminate social prejudice against HIV/AIDS-infected persons, we encourage the promotion of HIV/AIDS education and public campaigns.

- **Measures should be taken to address and prevent the discrimination and human rights violations faced by persons suffering from Hansen's Disease.**

We encourage improvements in living conditions of the eighty-nine extremely isolated settlements where persons who have completely recovered from or who are in a non-contagious stage of Hansen's Disease live. We urge public revelation of the State-committed human rights violations against Hansen's Disease sufferers (e.g., the situation involving the Oma Island reclamation project), as well as proper compensation and reputation restoration for victims. In addition, we recommend that the Government formulate the 'Special Act on Hansen's Disease Sufferers' designed to set up welfare policy measures tailored to their reality.

- **Removing misunderstanding about and prejudice against hepatitis-B sufferers, and improving legislations and institutions to eliminate employment discrimination against persons with hepatitis-B.**

With regard to the civil service application procedure requiring applicants to indicate whether they require a hepatitis vaccination, the NHRCK recommended in October 2003 omission of this requirement in response to its possible infringement upon the rights to equality and work for hepatitis-B carriers.

[Soldiers, riot police, and police conscripts]

The human dignity and the right to life of soldiers, riot police officers, and police conscripts should be protected.

Although much headway has been made in improving the conditions of military service, little progress has been made toward securing professionalism and impartiality in the investigations and handling of cases involving cruel and inhumane treatment and suspicious deaths of soldiers, riot police officers, and police conscripts. Investigations into such cases should be conducted in a complete and impartial manner, and a human rights-approach should be taken to address the underlying causes of such problems. Soldiers, riot police officers, and police conscripts should also hold a clear legal status, and be guaranteed the freedom to petition to an external authority. Also, specific military-related restrictions and regulations should be amended to the law so as to eliminate inhumane physical punishment and cruel treatment of military and police personnel.

Moreover, human rights or grievance counselling should be made systematically available to military personnel, and the Government ought to proceed with enactment of the 'Law on the Guarantee of Soldiers' Human Rights' to protect and promote soldiers' human rights.

[Institutional residents]

The human rights of persons living in social welfare institutions should be guaranteed.

According to the data released by the Ministry of Health and Welfare, 86,116 persons lived in 1,213 registered institutions and 21,896 persons lived in 1,209 unregistered institutions, bringing the total number of residents living under institutional care to about 110,000 persons, as of January 2005. Eighty-two percent of these institutions are designated for persons with disabilities and the elderly.

The Government, in a bid to increase the number of residential institutions, has eased the requirements and increased its support for the establishment of social welfare institutions. Government policy measures taken in recent years to encourage the transition from unregistered to registered institutional status are an indication that the Government has taken more responsibility for and is committed to the growth of social welfare institutions and the promotion of the human rights of persons living under institutional care.

However, there is still much that needs to be done to guarantee the human rights of persons living under deinstitutionalized or community-based care. There are persistent problems surrounded such alternative care, including human rights violations, privacy violations, institutional privatization, and accounting fraud.

Accordingly, we recommend that the Government make legislative and operational improvements in social welfare residential institutional care and facilities to ensure the full protection of the human rights of persons living in those institutions.

When the controversy surrounding human rights violations in large-scale institutions emerged in the 1970s, some nations like Sweden, the United Kingdom, and Germany adopted a policy of deinstitutionalization, which shifts focus away from institutional care to community-based care.

In 1990 the United Kingdom enacted a community care law, under which it adopted a system integrating institutional care and home-based care and undertook user-oriented policy measures.

[Sexual minorities]

One's sexual orientation should not be grounds for any form of discrimination.

A 'sexual minority' is a person or group of a sexual orientation that is not part of the majority (i.e., heterosexual). This category includes gays, lesbians, bisexual and transgendered persons. Many Koreans view sexual minorities with misunderstanding and prejudice, and several provisions contained in the Penal Code and the Military Penal Code explicitly discriminate against sexual minorities. These legal provisions are incompatible with international instruments, such as the Amsterdam Treaty and the Resolution of the European Union, that prohibit discrimination on the basis of sexual orientation.

As such, we recommend the repeal or revision of existing laws or regulations permitting discrimination based on sexual orientation so as to facilitate the elimination of such discrimination against sexual minorities. In addition, we suggest non-disclosure of personal information of those seeking sex reassignment therapy or surgery, among other measures to be taken to prevent possible human rights violations. Bearing in mind the high cost of sex reassignment surgery, we recommend that the Government consider the possibility of including, on a gradual basis, such medical costs under national health care insurance coverage

<p>In 1985 the Netherlands enacted a transsexuality law which placed the medical expense of sex reassignment surgery under medical care insurance coverage. In the United States, the City of San Francisco passed an ordinance providing city government employees financial support for sex reassignment therapy or surgery.</p>
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[North Korean defectors]

Those from the North have the right to live a decent life in the South.

'North Korean defectors' ('*sae-teo-min*' in Korean, literally meaning 'people in a new land') are persons who departed North Korea to live in South Korea. Since the mid-1990s, the number of North Korean defectors has been on the rise, largely due to food shortages in the North. In 2002, the annual number of North Korean defectors surpassed 1,000 persons, later exceeding 7,000 persons in September 2005. They are a minority group for whom particular attention needs to be paid, especially because of the cultural differences between South Korea and North Korea or other countries. Currently, the Government provides North Korean defectors with settlement funds, and support for housing and education under the Act Concerning Protection of and Settlement Support to North Korean Escapees. However, we believe more measures should be taken to secure the rights of and an adequate standard of living for North Korean defectors.

- **Taking measures to ensure that the human rights of North Korean defectors are protected in the re-settlement process and that they are integrated smoothly into Korean society.**

The Recommendation for the Human Rights NAP urges the Government to provide human rights education and training to those civil servants responsible for work related to North Korean defectors. The purpose of this is to prevent human rights violations and discrimination against North Korean defectors during the course of monitoring their re-settlement process, including the monitoring of their arrival, social adaptation and

vocational education. We also recommend that the Government expand vocational training and job placement for North Korean defectors, undertake special protections for especially vulnerable defectors, such as family-less youth, persons with disabilities, female-headed households, and elderly persons and families, provide educational support for defectors and their children, and implement public awareness campaigns to aid defectors' adaptation to Korean society.

In cooperation with local governments, the former West Germany effectively dealt with the social adaptation issues of former East German defectors. For example, the West recognized all defectors' qualifications and working experiences acquired in the East.

Part 3. Infrastructural Development and Support for the Promotion of Human Rights

1. Protecting Civil and Political Rights

Civil and political rights are the inalienable rights and freedoms entitled to all humans without which we cannot live with dignity. It is a comprehensive concept that includes the right to bodily safety and freedom, the right to freedom of thought and conscience, and the right to freedom of assembly and association.

In order to protect human rights during criminal proceedings (i.e., investigations, indictments, trials, and sentencing), respect for human rights should underlie all legislation, and the statute of limitations should be excluded or suspended in the prosecution of State-sanctioned crimes against humanity or human rights violations.

In order to expand democratic participation in political decision- and policy-making processes to an acceptable extent that is consistent with political, economic and cultural development and international standards, the range of political activities permitted for teachers and civil servants to engage in should be extended to a given limit. Also, measures should be taken to promote the right to participate in public affairs for socially disadvantaged and minority groups, and the quota for female nominations for parliamentary seats should be expanded. The right to vote for Koreans living abroad should also be recognized.

In order to promote the freedom of expression, the right to reputation ought to be protected, while the rights to knowledge and access should be promoted. To this end, legislation and regulations regarding classified information considered critical for national

security should be improved, while the right to access that enables persons to publicly express their opinions and thoughts should be expanded.

In order to prevent human rights violations and protect the right to information, legislation protecting personal information should be devised, along with other legislative improvements. Also, an independent and specialized body ought to be created to protect personal information. Moreover, restrictions on the collection of residential identification numbers should be imposed, and Government regulations on internet contents and browsing ought to be lessened, while access to internet service should be increased for people with disabilities, the elderly, and foreigners, so as to reduce inequalities in information access.

In order to maximize the exercise of the freedom of assembly and association, which is already clearly protected by the Constitution, the tight legal restrictions and strict administrative procedures on assemblies and demonstrations ought to be eased. In addition, the National Security Law must be repealed to protect the rights to conscience and religion. Conscientious objection to military service should be legalized and a system of alternative services adopted.

In order to guarantee artistic freedom, Government regulation on authorship should be minimized, while its support for the promotion and dissemination of the arts increased. In order to protect the freedom to choose and change one's residence, the Security Surveillance Act must be repealed and immigration regulations made clearer. In addition, the death penalty should be abolished and the laws and institutions concerning bioethics need to be improved so as to protect the right to life and human dignity.

2. Promoting Economic, Social and Cultural Rights

Economic, social and cultural rights refer to the rights that entitle us to the social benefits and services necessary to meet basic life needs, including the rights to adequate food, housing, healthcare, education, working conditions, social security, and culture. Every national government is obliged to guarantee for all persons an adequate standard of living.

In order to secure the right to life, the Government needs to improve the existing system designed to guarantee an adequate standard of living for all persons, widen the scope of benefit eligibility, and raise the minimum cost-of-living index. Moreover, social insurance coverage, including the national pension plan, industrial accident compensation insurance, and employment and healthcare insurance, must be extended, in addition to other improvements in social insurance coverage, so as to ensure that no one is excluded from social insurance protection.

In order to promote the right to work, the Government should respect labor-management autonomy and minimize intervention in labor relations. Compulsory arbitration on essential public services should be abolished and replaced with a minimum service requirement. In order to secure the rights to work and fair working conditions, the provisions of the Labor Standards Act should be extended to cover employees of companies employing four persons or less. The minimum wage system should be improved, the industrial accidents system should be enhanced, and labor inspection should be reinforced.

In order to promote the right to health, public access to medical care needs to be increased and a range of adequate and efficient medical services provided. And, in order to guarantee the right to choose one's residence, proper compensation and alternative housing

should be provided for persons affected by forced demolitions. Additionally, institutional programs should be implemented to deal with residences that do not meet minimum housing standards and ought to guarantee such residents adequate housing standards.

In order to promote the right to education, educational opportunities should be expanded for children of disadvantaged groups, including low-income families, persons with disabilities, North Korean defectors, migrant workers, and families living in rural areas. A range of educational opportunities, including alternative schools, distance learning and fixed-term courses, should be offered to children and youth excluded from access to standard educational institutions as well as to adults seeking to continue their education.

In order to promote the right to culture, the disparity in the ability to exercise the right to culture for different regional communities needs to be resolved, and cultural awareness and diversity increased. And, in order to guarantee the right to environment, the Government must protect the rights to life and health, while pursuing sustainable growth.

3. Reinforcing Human Rights Education

Human rights education is aimed at enhancing social understanding and awareness of human rights and creating behavioral patterns and attitudes that support the protection and promotion of human rights. In order to enhance the respect for the fundamental rights and freedoms of all persons and foster understanding of and sensitivity to human dignity and worth, human rights lessons should be integrated into compulsory school curricula at all grade levels. In addition, a variety of teaching and learning methods and materials need to be developed, while fostering a human rights-friendly class environment. And, in order to prevent human rights violations committed by public office-holders, human rights

educational curricula and courses should be integrated into public officer training and institutes. Effective programs and materials for human rights education must also be developed, and human rights education should be made a prerequisite course in training and educational centers for military personnel. Furthermore, in order to promote human rights in civil society, human rights education must be provided for socially disadvantaged and minority groups. The Government must work out ways to support and facilitate human rights education in the corporate sector, as well as activate human rights public awareness campaigns via advertisements and other mass media channels.

4. Establishing Domestic and International Cooperation Networks for the Promotion of Human Rights

With an eye toward empowering civil society, the Government must provide legal and institutional support for all sectors of civil society and undertake measures to strengthen the capacities of civic groups. In order to position itself as a responsible member of the international community and contribute to the globalization of human rights, the Government should create cooperation networks with international and regional human rights organizations, as well as make necessary amendments to laws and regulations to enable and expand foreign aid programs, including Overseas Development Aids (ODA). Moreover, in order to implement international human rights law within the framework of national law and strengthen human rights protection to a level acceptable by international standards, national legislation and regulations need to be streamlined, and interaction and cooperation with international human rights organizations secured. The major international human rights instruments, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Elimination of Discrimination Against Women

should be signed and ratified, and reservations in the UN Covenant on Civil and Political Rights should be withdrawn and the individual complaint/communication scheme accepted.

Introduction to the Investigation and Remedies (Civil and Political Rights Violations)



Rights Violations and Remedies Bureau
National Human Rights Commission of Korea

Contents:

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Introduction to the Rights Violations & Remedies Bureau

■ Introduction

The Commission handles violations of human rights, guaranteed under Articles 10 through 22 of the Constitution of the Republic of Korea, by central government agencies, local governments, and detention/protection facilities in performing their duties. The Commission deals with human rights abuses perpetrated by public institutions, with focus on human rights issues as follows: protection for people accommodated in detention facilities; advocacy for the rights of persons with mental disabilities; improvement of human rights conditions in the prosecution, police, and military; human rights protection for migrants; and protection of privacy and personal information.

The Commission since its establishment has made a great contribution to expand its access to the places of detention such as prisons and mental health facilities which had never been open to the public scrutiny. The Commission has strived to redress cruel acts, unfair treatments, and poor living conditions in places of detention through investigating complaints and recommending the related authorities to take appropriate measures. In doing so, the Commission offered face-to-face complaint system and installed a complaint box in the places of detention. The Commission now puts more emphasis on proactive and preventive measures by monitoring detention centers and mental health facilities and developing guidelines for the related authorities and officers.

The Commission is keenly aware of the pressing need to improve laws and institutional systems for people with mental disabilities and, therefore, has pressed the government to amend the Mental Health Act. The Commission perceived that individuals' privacy is an emerging issue and privacy is most likely to be violated by the government and its agencies that collect, store and use a massive amount of personal information of its citizens. In this context, the Commission has tried hard to prevent citizens' privacy by opinion on the newly introduced information systems.

Note) Human rights guaranteed under Articles 10 through 22 of the Constitution of the

Republic of Korea include human dignity and value, right to pursue happiness (Article 10); right to equality (Article 11); personal freedom (Article 12); substantive guarantee of personal freedom (Article 13); freedom of movement (Article 14); right to choose occupation (Article 15); freedom of residence (Article 16); secrecy and right to privacy (Article 17); freedom of correspondence (Article 18); freedom of conscience (Article 19); freedom of religion and separation of religion and state (Article 20); freedom of expression (Article 21); and academic and artistic freedom (Article 22).

■ Organization and Functions

Under Paragraph 2, Article 19 of the National Human Rights Commission Act, the NHRCK conducts investigation and remedy with respect to human rights violations. The Violation Rectification Department of the NHRCK conducts investigations of central and local governmental facilities, including the prosecutor's office as well as law enforcement and detention facilities. In all cases involving the occurrence of human rights violation, the Commission provides relief and protection to victims. Thus far, over 90% of NHRCK-initiated recommendations have been accepted.

The Violation Rectification Department has four teams that focus on different entities to be investigated.

○ General Violations Team

Formulates, supervises, and coordinates basic plans; studies investigative procedures and methods; and handles matters related to human rights violations that do not belong to the jurisdiction of the other teams within the department.

○ Violation Rectification Team 1

Handles human rights affairs regarding the prosecution, police, National Intelligence Service, special law enforcement officers, military police, military prosecution, Defense Security Command, and military prisons and military detention houses, as well as other matters pertinent to human rights abuses within the military.

○ Violation Rectification Team 2

Handles human rights affairs at correctional facilities and detainment facilities.

○ **Violation Rectification Team 3**

Handles human rights affairs pertaining to protective facilities for the vulnerable. (e.g. people with mental problems, children, the elderly, etc.).

Types and Process of Investigation

☐ Types of Investigation into Human Rights Violation

☐ Investigation into Complaints

— The NHRCK investigates into complaints filed by a person whose human rights, guaranteed under Articles 10 to 20 of the Constitution of the Republic of Korea, are violated while the police conducts its business.

☐ Ex-officio Investigation

— The NHRCK may conduct an ex-officio investigation if there is sufficient evidence of grave human rights abuses or discriminatory acts.

☐ Other investigations

— Visit to and inspection of facilities, survey on human rights conditions, hearings, reference for information, and etc.

☐ Characteristics of Investigations by the NHRCK

☐ Investigation by the NHRCK might lead to punishment of the violators according to the contents of human rights violation. However, its ultimate goal is to recover victims' rights and rectify the violations, rather than punishment, through compromise between parties, recommendation, conciliation or legal relief.

☐ Therefore, the NHRCK investigation is different from the "investigation" by the investigative agencies, in that it is a non-coercive way that provides easy access to the victims, and fast and relatively cheap relief measures.

☐ The NHRCK also aims at: identifying reasons that create human rights violations; rectifying problems in legislation, system, policy and practices; improving systems in a future-oriented way; and preventing human rights violations in advance.

☐ Complaints Handling Process

① Receipt of complaints: Complaints are received at the human Rights Counseling Center, and submitted to investigation teams.

② As a result of preliminary investigation, if the complaint falls under Article 32.1 (rejection of petition) or Article 33 (other remedies and transfer), it is rejected or

transferred, closing the case.

③ If the complaint is found out to satisfy the requirements after the preliminary investigation, it is investigated as follows.

- Investigators may request that the complainant submit written statements and materials deemed related to the investigation.
- Investigators may request the complainant, the respondent, or other related people to present themselves, or hear their opinions.
- Investigators may conduct on-site investigations or assessment on related places, facilities or materials.
- Investigators may inquire of related people or organizations into certain facts or information.
- Investigators may seek expert opinions and legal advice.
- Investigators write a investigation report and submit it to committees (subcommittees, Standing Commissioners' Committee and Plenary Committee).

④ The Committees shall deliberate and make decisions.

⑤ The Commission may deliver a recommendation to the National Police Agency or other related agencies, or deliver accusation or recommendation of disciplinary actions.

☐ **Types of Decisions**

☐ **Accusation and recommendation of disciplinary action and request for investigation**

- If, as a result of the investigation of any petition, the Commission deems that the contents of the petition correspond to an act of crime against which criminal punishment is required, it may file an accusation to the Prosecutor General.
- If the Commission finds any violation of human rights after the investigation of any petition, it may recommend disciplinary action against the respondent or any other person responsible for the same violation to the head of the institution to which he/she belongs.
- If the Commission finds significant reasons to believe the contents of the petition corresponds to an act of crime, it may request investigation to the investigative agencies.

○ **Recommendation of Remedies, etc.**

- If the Commission concludes, as a result of the investigation and deliberation of any petition, that a human rights violation occurred, it may recommend to the respondent or the head of the organ or organization to which he/she belongs or the supervisory institution thereof stoppage of the human right violation, restitution or compensation, or measures necessary for the prevention of recurrence of the same or similar human rights violation,
- or rectification or improvement of any relevant statute, institution, policy or practice.

○ **Request for legal aid for victim**

- The Commission may, if deemed necessary to relieve victims, request Korean Bar Association or the Korea Legal Aid Corporation to render legal aid to the said victims.

○ **Recommendation of Urgent Relief Measures**

- When the Commission deems that it is highly probable that a human rights violation or any discriminatory act subject to investigation is in progress and that it is likely to cause irrecoverable damage if left as violated, the Commission may recommend relevant organizations to take urgent relief measures.

○ **Recommendation of compromise, closure with compromise, and conciliation**

- The Commission may propose to both parties concerned a remedy necessary for the fair resolution of the case concerning the petition, and may recommend a compromise.
- If the parties compromise and the reason of the petition is resolved during the investigation, the parties may write the compromise statement and the case may be closed.
- The Commission may refer the petition at the request of the party concerned or at ex officio.

○ **Dismissal of petition**

- The Commission shall dismiss a petition if the contents are false or there is no

evidence to support the contents; a petition is proven to be unrelated to any human rights violation; or it is deemed that any further remedy is not required because any injury related to the petition has already been relieved.

Statistics on Civil Rights Violations Cases

☐ Annual Statistics on Handling Complaints related to Civil Rights Violation (2001.11.26~2007.7.31)

Year	Cases closed	Actions Taken									Decisions not to act				
		Request for investigation	Recommendation	Recommendation	Accusation	Recommendation of disciplinary actions	Request for legal aid	Emergency relief	Compromised	Sub-total	Rejected	Transferred	Dismissed	Suspended	Sub-total
2001	1	1	0	0	0	0	0	0	0	1	0	0	0	0	0
2002	1,364	1	3	5	1	16	0	2	0	28	1,174	26	136	0	1,336
2003	3,137	5	2	55	4	3	0	2	23	94	2,210	116	717	0	3,043
2004	4,931	2	0	79	4	2	4	0	54	145	3,306	148	1,280	52	4,786
2005	4,132	2	0	156	4	6	2	1	73	244	2,378	147	1,318	45	3,888
2006	3,251	0	0	164	17	2	1	0	23	207	2,018	70	935	21	3,044
2007	2,691	0	0	105	1	5	2	0	28	141	1,717	51	762	20	2,550
Total	19,507	11	5	564	31	34	9	5	201	860	12,803	558	5,148	138	18,647

☐ Acceptance of the Commission's Recommendation (As of July 31, 2007)

	Total	Accept	Accept in part	Accept with alternative measures	Refuse to accept	On review	Rate of Acceptance (%)
Request for legal aid	9	7	0	0	0	2	100.0
Recommendation of disciplinary actions	34	13	15	2	2	2	93.8
Emergency relief	5	5	0	0	0	0	100.0
Recommendations	566	388	11	2	12	153	97.1
Total	614	413	26	4	14	157	96.9

☐ Civil rights violations by type of respondent organizations

(As of July 31, 2007)

Type of respondent organizations	Filed	Closed	Request for investigation	Recommendation	Recommendation	Accusation	Recommendation of disciplinary actions	Request for legal aid	Emergency relief	Compromised	Rejected	Transferred	Dismissed	Suspended	On investigation
Total	20,763	19,507	11	5	564	31	34	9	5	201	12,803	558	5,148	138	1,256
(%)		100.0	0.1	-	2.9	0.2	0.2	-	-	1.0	65.6	2.9	26.4	0.7	
Prosecutor	1,124	1,063	2	0	30	1	1	0	2	2	779	15	218	13	61
Police	4,584	4,329	6	0	193	4	24	2	2	137	2,571	72	1,279	39	255
Prisons	9,035	8,635	1	1	132	1	3	6	0	21	5,390	429	2,592	59	400
Military	422	400	2	1	15	1	0	0	0	4	327	2	46	2	22
Government agencies	3,397	3,273	0	3	78	3	3	0	1	25	2,692	20	441	7	124
Local Gov.	886	761	0	0	50	0	2	0	0	4	460	5	236	4	125
Judicial branch	297	274	0	0	2	0	0	0	0	0	228	0	43	1	23
Congress	20	18	0	0	0	0	0	0	0	0	17	0	1	0	2
Mental health facilities	958	754	0	0	64	21	1	1	0	8	339	15	292	13	204
dis-sorting	40	0	0	0	0	0	0	0	0	0	0	0	0	0	40

☐ **Annual Statistics on Handling Complaints related to the Police**

(2001.11.26~2007.6.30)

	filed	closed	Actions Taken							Decisions not to act				
			request for investigation	recommendation	accusation	recommendation of disciplinary actions	request for legal aid	emergency relief	compromised	rejection	transferred	dismissal	stopped to investigate	progress in investigate
total	4,454	4,198	6	191	4	24	2	2	133	2,490	72	1,236	38	551
2001~2002	838	374	1	2	0	15	0	0	0	293	9	54	0	464
2003	702	839	4	13	0	2	0	2	19	578	16	205	0	0
2004	688	758	0	24	2	1	0	0	39	419	7	252	14	0
2005	937	868	1	31	2	2	1	0	39	477	19	287	9	69
2006	796	778	0	85	0	2	0	0	17	411	14	242	7	18
2007 (As of June.30)	493	581	0	36	0	2	1	0	19	312	7	196	8	0

※ Analysis on the cases related to the police

- Complaints related to the police takes up 22% out of all the complaints.
- The Commission have taken actions for 22.7% of all investigations related
- Among them, 99.8% were taken by the National Police Agency.

☐ **Violation Cases by Agency Involved (2001.11.26~2007.6.30)**

organs	Police	Detention facilities	Other state organs	Prosecutors	Protective facilities	Local governments	Military	Judiciary organs	Special law enforcement
rate (100%)	22%	43.7	16.1%	5.5%	4.5%	4.1%	2.0%	1.4%	0.6%

☐ **Received Cases by Type of Violation**

Type	Rate	Type	Rate
Violence during arrest or investigation	21.9%	Violation of the right to personal dignity	12.3%
Partial and unfair investigation	9.6%	Cruel conduct during arrest	6.8%
Insufficient investigation by law enforcement officers	6.6%	Lack of arrest requirement	3.3%
Excessive use of guns, handcuffs and other such devices	2.9%	Wrong investigation	2.8%
Failure to notify rights of the suspect	2.3%	Illegal detention	2.0%
Violation of right to medical care	1.9%	Securing evidence by illegal means and coercion	1.8%
Excessive forced suppression	1.8%	Insufficient protection for social minorities and victims	1.6%
Unfair confiscation	1.6%	Unfair and forced companion	1.5%
Unfair surveillance	1.2%	Questioning by patrolling policemen	1.0%
Leaking information on suspects	1.0%	Others	16.1%

Major Decisions of the Commission

■ Excessive Police Violence against Protestors

The National Human Rights Commission of Korea recommends police agencies to restrict use of force and violence at protest sites, and engage in human rights training.

The National Human Rights Commission (NHRCK) made a recommendation recently requiring "A" Provincial Police Agency to limit the volume and force of police officers, to admonish the on-site commanders for using force against civilians and to require police captains to complete training on human rights and proper use of police devices. This recommendation was a direct response to a complaint filed against "A" Provincial Police Agency for their excessive dispatch of police officers, forceful removal of protestors and other excessive use of force at a bona fide protest site, including stone throwing. The Commission found that these actions infringed upon the protestors' basic right to freedom of assembly and personal safety.

The complainant, a 35-year-old male representative of the "B" Construction Labor Union, filed a complaint with the Commission on June 15, 2006, stating that the labor union received official permission to hold a demonstration in front of "C" Police Station on June 12, 2006. The demonstration was to protest against the arrest and detention of the "B" Construction Labor Union's former deputy chairman-known as "D"-by the "C" Police Station. Despite the approval, over 2,000 police officers were dispatched to break up the demonstration. The complaint also indicated that the protestors from the labor union held a peaceful assembly on the roadside, since the police had occupied their designated site. Suddenly-according to the complaint- auxiliary police launched tear gas into the crowd and began beating protestors with batons, shields, and stones in the face and other body parts. From these events, 43 protestors suffered severe and minor injuries including broken noses and cheekbones.

The respondents, the "A" Provincial Police Agency and officers, contended that the dispatch of a large force of officers was necessary to prevent possible occupation of the police station by the protestors. The respondents asserted that this was a minimum necessary measure and that the police neither obstructed the assembly itself, nor resorted to

violent treatment of the protestors. Furthermore, the respondents maintained that they had opened the sidewalks and two one-way lane roads for the demonstration, which they alleged was sufficient for the size of the demonstration.

Upon investigation, the Commission came to several conclusions and subsequent recommendations.

1. Obstruction of Assembly

Since the demonstration was scheduled to occur in the vicinity of "C" Police Station, where "D" was being detained, the Commission found it legitimate to dispatch officers to prevent possible occupation of the police station. The Commission confirmed that the 850 labor union demonstrators did not engage in illegal protesting or demonstration, and did not commit any violent acts to agitate the police officers. Additionally, the respondents exercised a force beyond a reasonable minimum by dispatching 1,000 police officers to the site. The Commission also determined that the restriction of protest site was an act outside of police officers' jurisdiction, which antagonized protestors by shortening the buffer zone between the protestors and the police. These findings lead the Commission to conclude that the respondents were negligent in adhering to Article 1 (Purpose) and Article 3 (Prohibition of Obstruction) of the Assembly and Demonstration Act, which guarantees legal assembly and demonstration and security from obstruction, and Article 21 of the Constitution, which guarantees the right to freedom of assembly.

2. Excessive Use of Violence and Force

The Commission recognizes the respondent's need to forcefully disperse the protestors, as it has confirmed that two police officers and four auxiliary police officers were taken by the protestors as ransom for the release of "D." The Commission also confirmed that the respondents requested protestors to conclude the demonstration on several occasions, via loud speakers on police vehicles, and also informed protestors of a voluntary dispersion order on three occasions. This behavior follows due process, as outlined in applicable laws, in the judgment of the Commission.

Despite this, the auxiliary policemen associated with the 4 auxiliary policemen held by the protestors sprayed many seated union members with fire distinguishers, swung their batons at the crowd like baseball bats and hit the protestors with police shields. A victim known as "E" suffered a broken nose, cheek bone and broken teeth after being beaten in

the face by a police baton. Of the 43 victims, 21 suffered injuries to vulnerable spots on their head, including ears, cheekbones, front teeth, nose, crown, and eyes. It has been confirmed that a significant number of the union members that were seriously injured were hospitalized and underwent operations. Additionally, some auxiliary policemen threw sidewalk blocks toward fleeing protestors. Victim "F," who was escaping across the center line of the two-lane highway, was hit by a block thrown by an auxiliary policeman, breaking the upper and lower bones of his right eye socket and his cheekbone, which required four weeks of hospitalization.

The Commission does not see these violent actions as justified on the part of the auxiliary police officers. Stone throwing is an illegal and unreasonable act, as stones are not legal tools for police officers to employ in the line of duty. This is clearly outlined in the Act on the Performance of Duties by Police Officers. Such behavior from the respondents violated regulations set forth in the Principles on Use of Police Weaponry and the Act on the Performance of Duties by Police Officers. Finally, these acts were deemed to have infringed on the demonstrators' right to personal safety, as stipulated in Article 12 of the Constitution of the Republic of Korea.

The Commission has recommended that the respondent promptly admonish the commanders in charge at the demonstration site and those responsible for the obstruction of peace, stone throwing and other agents that employed excessive violence against the demonstrators. The Commission further recommended that job training be issued for mid-level commanders-including auxiliary police-to ensure proper instruction on the ethical use of police weaponry. This recommendation is in accordance with Article 44(1)1 of the National Human Rights Commission of Korea Act.

The National Human Rights Commission of Korea was established in 2001 to promote human rights education and defend those who have experienced discrimination, or have had a right violated, in Korea. The Commission offers counseling, full investigation and protection for citizens, along with educational initiatives for organizations.

■ Persons under Arrest Deserve Timely Notification

The National Human Rights Commission of Korea recommends that police officers adequately inform persons under arrest of their situation and rights.

The National Human Rights Commission (NHRCK) recently recommended that all police stations take responsibility for professional handling of warrants and handling of persons under arrest. This recommendation, specifically in response to an incident at Police Station "A" in December 2006, targeted the officers for handling the warrants in both unprofessional and unconstitutional manners.

The complainant, a 55-year-old male identified as "Kim," filed his case with the Commission in December of 2006. The complainant stated that he had applied for suspect examination and was detained in the police station holding room after the examination held at 14:00 on April 28, 2006. During his stay in the holding room, the complainant alleged that the police officer in charge of his case withheld information about the issued arrest warrant for his arrest, the date of the warrant-which was after the date of the suspect examination-and how the warrant should be executed. The date of the arrest warrant was 09:00 on May 1, 2006. The complaint also stated that the officer withheld this information until he was transferred into prosecution, therefore violating his right to due process.

The respondent, a police officer at Police Station "A," held that the police officer's actions were justified. The officer stated that the suspect examination was held on Friday, April 28, 2006 in the afternoon and the warrant for arrest was issued the same evening. However, the officer alleged that he could not physically obtain the warrant until the following Monday morning. After receipt of the warrant, the officer claims he promptly produced it for the complainant to see, informed him of his rights as a suspect and took a statement of confession from the complainant.

Upon investigation, the Commission concluded that the complainant most likely endured significant stress while in the police holding room, as the decision of the warrant would determine whether or not he would be incarcerated. The Commission believes that the police officer in charge of a case should have immediately notified the complainant of the situation. If it was not possible to deliver the final decision from the court, the police officer in charge was then responsible for ensuring that the person under arrest be fully informed of the pending situation and his or her rights.

The Commission confirmed through investigation that the police officer did not inform

the complainant of the warrant review for more than 62 hours after the decision. The Commission further determined that the police officer's failure to inform the complainant of his rights and his situation shows blatant disregard for the well-being and importance of the situation. Withholding this information from the complainant for over 62 hours is unconstitutional, and violates the complainant's right to due process, according to Article 12 of the Constitution of the Republic of Korea, and the complainant's right to information, according to Article 21 of the Constitution. The Commission therefore recommended that the chief of Police Station "A" issue a public statement admonishing the actions of the respondent, and take proactive measures to prevent this situation from reoccurring.

The National Human Rights Commission of Korea was established in 2001 to promote human rights education and defend those who have experienced discrimination, or have had a right violated, in Korea. The Commission offers counseling, full investigation and protection for citizens, along with educational initiatives for organizations.

■ Delayed Processing of Amnesty Leads to Human Rights Violations

NHRC Recommends Reform to Prevent Late Updating of Police Records on Amnesty and Reinstatement

On 27th June 2003, the National Committee on Deaths of Schoolgirls (President Hong Geun-Soo) filed an appeal to the National Human Rights Commission (NHRC) against Prosecutor 'Kim', Sergeant 'Yeo' and others at Seoul Metropolitan Police Agency, claiming that "During investigation of the victim ('A', 28 years), the investigators intentionally ignored the claim that the victim had been granted amnesty from past convictions, and treated the victim as having a criminal record. After having investigated into the case, the NHRC ruled that the victim's personal rights have been infringed through unnecessarily late processing by the Supreme Public Prosecutor's Office, of information on past criminal records related to amnesty and reinstatement.

The NHRC recommended that the Chief of the Metropolitan Police Agency reform relevant institutions so as to enable criminal records to be more swiftly updated.

This case was raised when the victim, who worked as a volunteer for the Committee on Deaths of Schoolgirls, was arrested while participating in a Gwanghwamun-area candlelight demonstration on 7th June 2003, and made an appeal to the NHRC. The reasons for filing the appeal were that during investigation by Prosecutor Kim and others, △ the prosecutors ignored the claim that the victim had been given immunity and reinstatement for past criminal offenses, △ they had falsely written in their opinion on imprisonment and in the arrest warrant that the victim was 'under sentence suspension', and continued to treat the victim as having a criminal record, and △ the prosecutors had unjustly indicted the victim for violation of law on assembly and demonstration and for obstruction of justice, while in fact the victim had participated in a peaceful demonstration.

During the NHRC investigation, Sergeant Yeo - the detective in charge - testified that "The victim did not mention amnesty and reinstatement from past records during the four interrogation sessions that the victim underwent" and that he had "written the victim as being 'under sentence suspension' in the opinion and warrant based on the Police Agency computer database." Prosecutor Kim testified that "Investigation record of Sergeant Yeo stated that the victim was under sentence suspension, and even in the interrogation record, there was no mention of amnesty. That is why the victim was noted, without second thought, to be 'under sentence suspension'. It was not known beforehand and ignored

intentionally."

Having investigated into and synthesized the victim's investigation record, testimonies of the victim and those whom the appeal has been filed against such as Prosecutor Kim, and the results from the criminal record and amnesty database of the Supreme Public Prosecutor's Office, the NHRC has concluded that there was not enough evidence to prove the part of the appeal that the prosecutors had known of the victim's amnesty but had ignored the fact intentionally.

However, although the victim had been given amnesty and reinstatement from the Ministry of Justice on 30th April 2003 for past criminal offenses, the change was not reflected in the Police Agency's computer database, which manages these records. It was found that the victim's record was transferred from the Supreme Public Prosecutor's Office on 30th June 2003, 60 days after that grant. The change was then entered into the database system on 8th July. The NHRC also found that other cases where amnesty was granted also took as long as 60 days to be updated in the database.

In short, it had taken 60 days for the criminal records of those who had been granted amnesty, including the victim, to be erased, and thus when field investigators use the database to search for criminal record, there are possibilities that △ prosecutors or the court who use the database can mistakenly identify accused persons as having a criminal record and make disadvantageous rulings, and that △ personal rights of accused persons can be violated by treating them as criminals.

According to the Supreme Public Prosecutor's Office, the reasons why it takes 60 days or so to process information on amnesty and reinstatement are as follows: △ an amnesty and reinstatement certificate has to be issued, △ relevant information has to be entered into the Agency's database, △ sentence documents have to be adjusted, and △ list of imprisoned persons needs to be reorganized. However, △ the process is an administrative one following the granting of amnesty and reinstatement by the Ministry of Justice, △ there is no compulsory reason for this administrative process to be completely finished before transferring relevant information to the Police Agency, and △ even if the intentions of the Prosecutor's Office are partly considered to be just, the NHRC still sees 60 days as being too long.

Therefore, the NHRC ruled out, on basis of insufficient evidence, the claim that Prosecutor Kim and others had intentionally ignored the victim's record of amnesty and reinstatement, and also the claim that Prosecutor Kim had unjustly indicted the victim since the case is still pending in court. However, the NHRC recognizes that the victim's personal

rights as stipulated in Article 10 of the Constitution have been violated by the inability of the Prosecutor's Office to swiftly process information on past criminal offenses and thus the inability to reflect the granting of amnesty and reinstatement to the Police Agency database. On the basis of Article 11 Clause 1 Paragraph 2 of the National Human Rights Commission Act (NHRCA), the NHRC has recommended that the 'Guideline on Administrative Processing of Amnesty, Reduction of Sentence and Reinstatement' - a regulation of the Supreme Public Prosecutor's Office - be appropriately amended so as to be able to notify the Chief of Police Agency, without any hindrance, the list of persons who had been granted amnesty and/or reinstatement.

■ There is reason to suspect beating, water torture took place during questioning

NHRC to Request Public Prosecutor-General to Investigate 2 Officers of Busanjin Police Station

The National Human Rights Commission (NHRC) has decided to ask the Public Prosecutor-General to investigate police lieutenant Lee and police sergeant Kim in relation to a case petitioned by a credit card larceny suspect, Kim, 23. In his June 2002 complaint against Busanjin Police Station, complainant Kim charged that after his arrest, he was treated brutally by police during questioning, and was subject to beating, abusive language, and water torture.

The petitioner-suspected of using a credit card stolen at a public bathhouse-was originally arrested, along with other suspected accomplices, under the emergency arrest procedure. In the course of questioning about the origins of the ring he was wearing, the petitioner also confessed to the officers that he had stolen it. The petitioner alleged that during the questioning that led to his self-incrimination: the police officers beat him with their hands and with a broom; they spit on his face; they tied up his arms and legs with roping and poured water on his head 3 times, and subject him to cruel and unusual treatment. However, the defendants of the complaint (the police) categorically denied having brutalized the complainant.

The NHRC investigation found that the complainant was healthy at the time of arrest and did not try to flee, resist the police officers or hurt himself during the arrest or investigation process; however, when he was logged into a holding cell right after the questioning, he complained of bruises and without eating his meal, just lay down in his cell. The investigation also found that the officers did not take the complainant to the room for questioning criminal suspects, but rather to a separate, closed-off room for questioning. Testimony from witnesses included: "after the complainant emerged from questioning, his hair and upper body was dripping wet"; "when the officers came out of the separate room right after questioning the complainant, I saw them carrying a metal bucket and towels"; and "right after the questioning, I saw red marks on the complainants wrists that looked like rope marks from binding." After fully considering the evidence, the NHRC investigation concluded that there is reason to suspect that the complainant had indeed been subject to beating and water torture during the questioning about the origins of his ring.

The NHRC found that the defendants' conduct violated article 12 (integrity of the body) of the Korean Constitution, and that there was a high probability that their conduct also constitutes criminal conduct under article 125 (violence, cruel acts) of the Criminal Law; thus, the NHRC decided to request that the Public Prosecutor-General investigate into police lieutenant Lee and police sergeant Kim with regard to this case.

■ NHRCK to Recommend that Prosecutors Investigate Union Member's Death

NHRC recommends Ministry of Government Administration and Home Affairs to issue a warning to the National Police Agency

After an investigation triggered by a complaint involving a unionists' rally at the Hyeongsan Junction in Pohang, which was filed by the Korean Confederation of Trade Unions on July 16, 2006, the National Human Rights Commission of Korea (NHRCK) has confirmed that there was an overuse of ban notices and excessive repression by the police. The Commission has decided to request that prosecutors investigate the death of Mr. Jung-Geun Ha, a member of the POSEC Labour Union who died during the demonstration. It also plans to issue recommendations that the Chief Constable of the Pohang Nambu Police Station be disciplined for using excessive control measures and that the Chief Commander of the Seoul Special Mobile Police be given a warning.

The NHRCK launched a team of nine investigators on August 2, 2006, and the team has since performed a wide range of investigations into the matter. First, the team has conducted a series of field studies: they visited Pohang and interviewed witnesses and injured people as well as the commander of the repression mobile police and his charges. In addition, the investigators reviewed documentation submitted by the police and the fact-finding team under the Pohang Joint Task Force of the labor community, as well as relevant videos and photos. They also listened to the opinions of forensic medical doctors. A total of five rounds of deliberation took place before the Plenary Committee adopted a final resolution on November 27.

In the resolution, the NHRCK recognized that the police's move to ban all assemblies following, and on account of, the labour union members' occupation of POSCO's headquarters was a violation of the freedom of assembly guaranteed by the Constitution of the Republic of Korea. Moreover, the Commission has confirmed that the security forces used their shields not only for self-protection, but often used as a weapon of aggression by wielding their shields horizontally or lifting their shields up high to strike down demonstrators. This occurred even though police are urged to exercise minimal physical force in dispersing demonstrators, even in the case of illegal assembly. The Commission has also found that as a result of such aggressive repression, many of the injured were struck on parts of the body above the neck, e.g., the face or back of the head.

In particular, the investigation has determined that during the second round of forceful dispersion, the police used fire extinguishers and discharged the chemical agent toward the demonstrators to fog up the air thus avoid violent collisions between the police and demonstrators. Despite the good intension, the use of fire extinguishers backfired: The security forces and demonstrators wielded bamboo bars (demonstrators), billy clubs (police), and shields (police) against each other when they could not see each other well, resulting in more injuries on such sensitive body parts as the faces and heads of demonstrators. The use of fire extinguishers is prohibited for purposes other than firefighting. Meanwhile, the Assembly and Demonstration Act stipulates that before attempting to forcefully disperse an assembly, the police must air a warning at least three times, but the security forces did not comply this provision. What is worse, such warnings were given through a portable electrical megaphone whose rated power was weak, and many demonstrators could not hear the warnings.

In the case of the death of Mr. Jung-Geun Ha, a member of the POSEC Labor Union, it has been recognized that he died during the police's forceful disperse of the rally, but the Commission has nonetheless decided to request that the Prosecutor General investigate the specific cause of death.

■ Excessive Suppression of Rallies Opposing the Siting of a Nuclear Waste Facility Violation of Human Rights

NHRC recommends Chief of North Cholla Province Police to compensate victims for the injuries suffered at rally

From August 2003 to June 2004, KIM In-Kyung (55) and two co-representatives from the "Bu-an County Residents Committee Against Nuclear Waste Facility and Nuclear Power Plant" filed petitions over four times with the National Human Rights Commission (NHRC). They claimed "the police violated the participants' human rights." In response to these petitions, the NHRC concluded that:

1. The fact that the situation concerning Bu-an nuclear waste facility was not kept under control at an early stage but deteriorated is not only due to the faults of the chief of police himself but also the assistants for not having fulfilled their function; therefore the NHRC asked the Ministry of Government Administration and Home Affairs, the supervising authority of the Police Agency, to issue a warning to the Police Agency.

2. The NHRC recommended the chief of the National Police Agency to severely warn the chief of North Cholla Province police to establish a plan for the prevention of similar incidents from happening, to revise the regulations for the inspection and make inspection mandatory, and reclassify the same regulation from "classified" (3rd degree) to a general document.

3. To the chief of National Police Agency and North Cholla Police Agency, the NHRC asked that they investigate the officers in charge and those who used violence to gather information and officially reprimand them according to the degree of responsibility. The persons in charge of research and direction at the sight should be warned.

4. The NHRC recommended that North Cholla Province Police compensate the victims who did not participate in the rally yet were injured in the process.

5. Assistance from the Korean Bar Association for the victims should be requested.

The petition included points such as the police: (1) excessively suppressed a legitimate rally, (2) did so while intoxicated, (3) illegally searched the committee office, (4) only investigated the citizens in matters of illegal activities and not the police and used it as evidence for execution of private law, (4) illegally used shields and assaulted the citizens with stones or bottles, (5) illegally removed placards, (6) illegally put police officers into

Nae So Sa temple, (6) put too many police in Bu-an Eup (town) thereby interfering with the traffic and limiting a peaceful rally, (7) sexually harassed female demonstrators and pregnant women in the course of taking them to the police station. As a result of the NHRC's investigation, the Commission found that:

1. Regarding the Police's excessive suppression and violence, the fact that the demonstrators used extreme methods such as trying to take over the provincial office, occupy highways, set fire to public facilities, throwing stones and petrol bombs, and driving into the police line with trucks and tractors was considered. However, in light of the fact that as many as 325 citizens were hospitalized, even when considering the urgency and confusion at the site, excessive force such as hitting the demonstrators with shields and police batons were in violation of the dignity and worth of the human person and the right to happiness as specified in Constitutional Law's Article 10, equal rights in Article 11, and personal liberty in Article 12.

2. Regarding the takeover and search of 8 committee offices opposing nuclear power waste site on November 22, 2003 from 06:30~07:00, the NHRC acknowledged the fact that although there is no statement on the warrant that nighttime search is allowed, the search was illegally conducted before sunrise (the sunrise on the day was 07:15). The NHRC decided the search was in violation of Criminal Procedure Act Article 125 which prohibits nighttime execution of duties, and thereby violated personal liberty as specified in the Constitutional Law Article 12, the right to be free from intrusion of place of residence in Article 16, and the right to privacy in Article 17.

3. Regarding the unjust operation of research parties, the NHRC acknowledged that they did not investigate the activities of the police, yet one-sidedly investigated citizens and used findings as evidence for private law execution; this is in violation of the State Public Officials Act 56 which outlines sincerity, and the Code of Practice by Police Officers Article 2, thereby violating the dignity and worth of a person and their right to happiness as stated in Constitutional Law Article 10, and equal rights in Article 11.

4. Regarding inappropriate use of weapons, the fact that the police officers in question did learn the necessary procedures for using shields is acknowledged. However, because they did not keep up proper maintenance and safety inspection of them, citizens were injured from the edges of shields or from stones. The NHRC decided this was negligent to the prevention of human rights' violations.

5. Regarding excessive control of residents' freedom of movement such as the banning of all rallies and the suppression of traffic, the NHRC acknowledged that after an intense rally

on November 19, 2003, police forces were increased from 8,000 to 10,000 officers assigned to 77 companies. These officers were mainly stationed in the Bu-an downtown area and blocked candlelight assemblies and broke up any parties of more than three persons after sundown. On main roads police officers holding shields and batons were stationed in rows of two or three, and conducted police questioning which did not follow the procedure and necessary conditions specified in the Code of Practice. They did not consider the actual danger in nighttime assemblies which is in violation of Article 21 stating freedom of assembly and association. The questioning was also in violation of Article 10 which protects the dignity and worth of the person, a violation of the right to lawful procedures in Article 12, and the right to move at will in Article 14.

6. The removal of placards was conducted by Bu-an Province and does not have any connection with the police. As for the argument of intoxication, violence against pregnant women, and abusive language towards female demonstrators, there is no evidence except for the petitioner's claim. Also, regarding the use of force in Nae So Sa temple considering the duration of the Bu-an magistrate's detention and the negotiation efforts of the police, the NHRC decided the incidents adhered to appropriate law enforcement. Therefore, the NHRC dismissed these claims.

The claim for sexual harassment was revealed as false, and the police took legal action for libel. The complaint was withdrawn afterwards, and the NHRC dismissed the petition as having no right of arraignment.

■ Forcing a witness to come to the police station is a human rights violation

In February of 2005, a petition was filed by Ms. K (38) with the National Human Rights Commission against 2 policemen from a police station located in Gyeonggi Province, stating "I was emotionally traumatized from being unfairly forced by the police to go to the police station." In response, NHRC confirmed the case was a human rights violation and found the two policemen had broken relevant regulations. The Commission recommended the Chief of the police station to take action to warn the policemen and to require them to receive special human rights education.

Ms. K, the petitioner, claimed that around 6 pm on November 12 of 2004, two policemen visited and demanded she come to the police station regarding a case of real estate fraud of XX construction Corp. Throughout this process, she said, (1) she had to leave her work place and bring her four-year-old daughter home before her kindergarten closes at 8: 30 pm. So she told them it was impossible to go to the police station that day. She did say she would voluntarily go to the station the next day for the investigation. However, (2) one policeman said "Go get your daughter from the kindergarten and bring her with you to the station for the investigation. If you don't we could force you to go to the station." Also, the other policeman frightened her by taking out his handcuffs from his pocket. She said for almost two hours, she was threatened to visit the station.

In response to the complaint, the policemen said that (1) it is true that they visited her workplace to ask her to come to the station because they needed her statement while they were tipped for the fraud case. (2) However, they came back without her when she promised to visit the station the next day saying that she could not come because of her daughter. They just suggested the idea to get her daughter and bring her along to the station because she couldn't come due to her daughter. They said that it is she who shamelessly treated them saying 'you are not humans.' (3) They also contested the fact that they took out the handcuffs because they say they did not bring the handcuffs with them to her workplace.

Nevertheless, NHRC found that:

1. The policemen unexpectedly came and demanded her to accompany them.
2. Despite her situation of having no one to watch her daughter and having promised to visit the station the next day, they spent 2 hours at the complainant's office and suggested

she pick up her four-year-old daughter and bring her to the station.

3. Consequently, it was confirmed that they left her office when she sat on the floor and wailed.

4. Also, one of her co-workers stated that she saw the policeman taking the handcuffs out of his pants pocket and put them on a desk.

Even though Article 221 of the Code of Criminal Procedure states that a prosecutor or police officer may demand the attendance of a witness (not a suspect) when it is necessary for investigation, in practice, the investigators depend on the witness's cooperation. So care should be taken not upset or damage the honor of the witness when asking for his/her cooperation in making a statements.

NHRC concluded that the acts of the two policemen created an oppressive atmosphere to coerce the petitioner to go and give a statement in the station, rather than asking for cooperation. This infringed on Article 12 (personal liberty) of the Constitution, Article 18 of the Code of Conduct for Law Enforcement Officials and Article 10 of the Working Rules of Investigation for Human Rights Protection thereby violating the petitioner's human rights.

As a result, NHRC recommended the Chief of the police station to take action to warn the relevant policemen and to require them to receive 'special human rights education.'

■ Excessive emergency arrest on the basis of a police officer's personal discretion violates human rights

NHRC Issues Recommendation of Human Rights Education for Police Officer whose Abuse of Authority Led to Illegal Arrest

The National Human Rights Commission (NHRC) has issued a recommendation to Police Lieutenant Lee of Seocho Police Station in Seoul to receive special human rights education under the auspices of the NHRC. The recommendation follows an October 2002 complaint submitted by Mr. Jo, 59, claiming that his human rights were violated when, in the course of questioning, Police Lieutenant Lee handcuffed Mr. Jo, arrested him without a warrant under "emergency arrest" procedures, and subject him to violent language and verbal inducement.

The incident occurred on 18 April 2002. Mr. Jo had previously filed charges against a third party for repayment of debt. However, in the course of investigating Jo's charges, Defendant Lee stated that he was arresting the complainant for calumny and bound the complainant in handcuffs. The defendant had thought that Jo was making false accusations because Jo's testimony did not match a document-submitted by another person-in which terms for repayment and settlement debt are agreed upon.

The NHRC investigation found that: 1) the handwriting of the repayment agreement did not match the handwriting of Jo's written testimony, and it would appear that the repayment agreement had been written by a different person, not Mr. Jo; 2) before arresting Jo on charges of calumny, Police Lieutenant Lee should have confirmed the veracity of the repayment agreement by contacting the person listed as the "witness," but Lee did not make efforts to confirm whether the document was a forgery; 3) if the person being sued for repayment and the person listed as "witness" to the agreement had conflicting testimony, Lee should have undertaken joint questioning measures to resolve the question, but he did not, and 4) the complainant's charges and his testimony during questioning were consistent.

Taking these facts into consideration, Lieutenant Lee failed to meet the requirements for conducting an emergency arrest as stipulated in article 200: clause 3: paragraph 1 of the Criminal Procedure Act, and conducted an extra-legal emergency arrest. Thus, the defendant's behavior constitutes a violation of articles 10 (human dignity, pursuit of happiness) and 12 (right to integrity of one's person) of the Korean Constitution and the Commission recommended human rights education in order to prevent recurrence of illegal

arrest.

■ NHRC files suit against police officer who prevented an opposition leader from attending major rally

Although Police Officer's Actions Relate to NPA Guidelines, NHRC Finds such Actions Violated Due Process

In response to the 5 March 2003 complaint filed by Solidarity for Peninsular Reunification, charging that "a major opposition leader was abducted and held to prevent his participation in our event," the National Human Rights Commission (NHRC) has found Police Officer Hwang to have violated the abductee's human rights and has decided to press "illegal confinement" charges with the public prosecutor.

The case involves Shin, Chang-gyun--age 97 and the honorary chairman of the Pan-Korean Alliance for Reunification (hereafter, "Pan-Korean Alliance")--and Kwacheon Police "intelligence and security officer" Hwang, who had been assigned to track Shin's movements on a regular basis. On the day in question, 1 March 2003, Shin was en route to the "National March 1st Commemoration Rally for Peace and (peninsular) Unification" event held at the Seoul Walker Hill Hotel as part of a series of events-held under the auspices of "non-government inter-Korean exchange and cooperation"--to which North Korean delegation members were invited. The complaint charged that Hwang intentionally offered Shin a ride to the hotel for the purpose of instead abducting and trapping Shin in his car and driving him around for 4 to 5 hours in order to prevent Shin's participation in the event.

During the NHRC investigation, Hwang testified that: (1) since he trailed Shin regularly, they were well-acquainted with one other, (2) at 16:30 of March 1st, Hwang had gone to the seedling market near Seoul Grand Park to buy seedling trees and take a walk, and accidentally bumped into Shin, (3) Shin asked Hwang to give him a ride to the Walker Hill Hotel and Hwang consented, (4) because of a traffic jam, poor night vision, and lack of familiarity with the route, he got completely lost and was thus unable to take Shin to the event, and (5) that he was not instructed to deliberately hijack Shin but rather had made a mistake.

However, after comprehensive consideration of (1) a site investigation of the places in question, (2) the report drafted by the National Police Agency (NPA) department of supervision and investigation, and (3) evidence obtained by questioning the complainant and witnesses, the NHRC investigation came to the following conclusions.

1. Police officer Hwang had been assigned to keep tabs on Shin since 9 October 1991, and had regularly phoned the security guards at Shin's apartment as well as other persons around Shin to ascertain Shin's movements.

2. The security affairs department of the NPA had drawn up "Guidelines for Security Tasks Relating to the National March 1st Commemoration Rally" instructing officers: to ascertain which persons would attempt illegal participation in the event despite the Unification Ministry's refusal to grant participation permission to persons from organizations such as the Pan-Korean Alliance that allegedly "benefit the enemy (North Korea)," and to prevent such persons from going near the event. These guidelines were transmitted to the Gyeonggi Province Police Authority and retransmitted to the Kwacheon City Police "intelligence and security department."

3. To carry out these guidelines, Officer Hwang deliberately visited Shin's home in Byeol-lyang-dong, Kwacheon City, on 28 February 2003 from 21:00 - 22:00 to ascertain if Shin intended to participate in the event and found out that Pan-Korean Alliance members would visit Shin's home at 16:00 the next day to escort him to the event.

4. At 16:30 on March 1st, Hwang returned to Shin's apartment and the Pan-Korean Alliance members had yet to arrive. In his old age, Shin, who had been waiting for his escort, mistook Hwang for a Pan-Korean Alliance member and boarded Hwang's car.

5. Inside the car, Shin finally recognized Hwang and repeatedly entreated Hwang to take him to the Walker Hill Hotel on time. However, Hwang pretended to get lost and deliberately drove around Youido and other parts of the city for 4 hours and 50 minutes; he drove Shin back home at 21:20. Thus, Shin was unable to participate in the event, unable to partake of food, and forced to urinate in his clothing in the back seat of the car. Immediately after, officer Hwang reported back to the Kwacheon Police security affairs personnel on his activities.

On the one hand, Hwang was acting under NPA directives issued in line with the Unification Ministry's policy barring Shin's participation. However, when police officers undertake actions that curtail basic rights, such action should be based on an actual violation of the law, and the means of law enforcement should be proportional to the nature of the crime.

However, by confining the victim to a limited space, and preventing the victim from freely being able to carry out normal bodily functions (using the restroom), the defendant illegally restricted the victim's liberty of person, which violates article 124 of the Criminal

Act (illegal arrest, unlawful confinement). Such actions fall under the realm of "discretionary" use of authority and went beyond legal duties defined in the Act on the Performance of Duties by Police Officers. Further, such actions violate liberty of person (article 12, Korean Constitution) and freedom of assembly (article 21, Korean Constitution) in that ultimately, the defendant physically prevented the victim from participating in the reunification event.

Granted, the Kwacheon City Police guidelines were somewhat vague; however, they cannot be interpreted as mandating officers to scheme up unlawful actions. Thus, the NHRC has filed a lawsuit with the Public Prosecutor against Officer Hwang.

■ NHRCK Recommends Prosecution Comply with Legal Procedures in Issuing Warrant of Penalty Execution

In May 2006, a complainant known as Hwang (male, 34) filed a complaint to the effect that the police arrested him at home and detained him because the prosecution ordered compulsory execution by issuing a warrant of penalty execution and placing him on the wanted list before dunning him to pay a fine of KRW2 million following a relevant payment order, which constituted a violation of human rights as it was in breach of the fine collection procedures. In response to the complaint, the National Human Rights Commission of Korea (NHRCK) recommended the public prosecutor general (head of the "D" District Public Prosecutor's Office) admonish the prosecutor at the District Public Prosecutor's Office who issued the warrant of penalty execution as well as the officer in charge of such execution.

The "D" District Public Prosecutor's Office argued that issuance of a warrant for penalty execution and placement of the complainant on the wanted list, which served as the rationale for his arrest, had already been notified to him at the time of issuance of the fine payment order against him. It also contended that such actions were lawful and legitimate pursuant to applicable regulations.

According to findings by the NHRCK, fines must be collected according to the prosecution's rules on collection when the results of a trial regarding fines to be collected are finalized. The relevant procedures are as follows: ① adjustment of impositions; ② issuance of payment order; ③ dunning; ④ compulsory execution; and ⑤ detention in a workhouse. In cases where a person fails to pay a fine even when the prosecution's payment notice is served on him after the end of a thirty-day period as provided in Article 69 of the Criminal Act, the fine is still payable after a dunning letter is served on him and he fails to make payment despite being found to own property based on a property investigation, the fine must be collected according to a specific sequence by such means as collection orders to execution officers or court filings for compulsory real estate auction. Nonetheless, the respondent issued a warrant for penalty execution and placed the complainant on the wanted list before dunning him to make payment, which is a gross breach of the lawful procedures for fine collection.

Even in cases where a person fails to pay a fine by a set deadline, applicable law stipulates that such measures as compulsory execution or detainment at a workhouse cannot immediately be taken and a prosecutor should request the person to make payment. This

is intended to minimize the costs incurred by compulsory execution by encouraging voluntary payment if possible and to use detainment at a workhouse as the last resort after all other means are exhausted.

The NHRCK judged that it was desirable for criminal policies to subject as few persons as possible to detainment in workhouses and prisons through said sequential execution procedures, which provide a sufficient filtering process. In addition, the Commission determined that detention in a labor house of those who failed to pay fines should be the last resort in the state's imposition of penalties. Therefore, according to the NHRCK, it is desirable to pursue compulsory execution when absolutely necessary, at least only after a set fine payment deadline has passed.

Based on its belief that the respondent's issuance of a warrant for penalty execution in violation of fine collection procedures was a breach of the principle of lawful procedures under Article 12 of the Constitution and infringed upon the complainant's human rights, the NHRCK recommended an admonition of the respondent in a bid to prevent recurrence of similar incidents.

■ NHRCK Calls for Effort to Find Ways to Prevent Suicides and Beatings of Combat/Auxiliary Police

The National Human Rights Commission of Korea (NHRCK) announced the findings of its ex officio investigations, current status investigations, and relevant meetings concerning the routine human rights abuses committed against combat/auxiliary policemen on February 27,. They have been subjected to beatings and other cruel acts, and they have shown a high suicide rate. Based on its findings, the Commission recognized that the human rights conditions of combat/auxiliary policemen could hardly be redressed without fundamentally addressing the unreasonable systems and practices that spark the human rights abuses against them. The Commission formulated a comprehensive institutional improvement plan for combat/auxiliary policemen and recommended that the commissioner general of the National Police Agency implement the plan. The Commission also decided to make such recommendation to the minister of planning and budget and the minister of national defense (related parties) as well, based on the determination that proactive government-wide budgetary support and cooperation are necessary to ensure effective, good-faith implementation of said recommendation.

Major details of the improvement recommendation include (i) establishment of measures to prevent excessive dispatches and working hours; (ii) formulation of effective controls for those persons who are inappropriate for and who can hardly adapt themselves to service as police; (iii) establishment of measures to improve undemocratic and human rights-unfriendly barracks life; (iv) formulation of methods to enhance internal and external systems to prevent human rights violations and provide necessary relief; (v) bolstering of human rights education and implementation of a required system; (vi) establishment of measures to improve the medical system for combat/auxiliary policemen to guarantee their substantive right to medical services; (vii) proactive improvement of poor living facilities including barracks facilities for combat/auxiliary police; (viii) establishment of measures to seek qualitative improvement of the meals of combat/auxiliary police and to adjust their transportation expenses to a realistic level; (ix) increasing legal liability by bringing criminal charges against those who perpetrate beatings and other cruel acts; and (x) rational improvement of the disciplinary mechanism including abolishment of the guardhouse system.

A string of suicides has been committed by combat/auxiliary policemen. On February 25, a combat policeman who had been transferred to a Daegu police office one month

before killed himself by jumping from the 4th floor auditorium of the police office. He stated in a note that life in his unit was too severe on him. On March 3, a combat policeman associated with the Jeju Coastal Guard Corps on leave to mark his 100th day in service hanged himself in a Seoul subway station restroom. These are tragic events at the state level, going beyond the problems of those who committed suicide. There are sufficient grounds to suspect existence of fundamental problems with the combat/auxiliary police management system. The Commission is deeply concerned about this situation.

The Commission believes that the root of these problems is relevant organizations' failure to conduct fundamental reviews of institutional and environmental factors. They tend to resolve outstanding issues in very superficial ways, such as punishing the persons involved, while playing off problems as the personal problems of the combat/auxiliary policemen concerned and internal problems of their units. Hence, the Commission analyzed problems with the human rights status and institutional environment of combat/auxiliary policemen and recommended execution of area-by-area institutional improvement plans since proactive steps for institutional improvement need to be taken, although belatedly, at the government level.

In discussing possible approaches to improve the human rights status of combat/auxiliary policemen, the NHRCK concluded that ways to seek human rights improvement regarding demonstration control and handling should not be neglected. The number of combat/auxiliary policemen who suffer injuries and diseases due to involvement in demonstrations has been increasing year after year. The burden and pressure arising from violent demonstration suppression is emerging as a new factor of human rights violations. Considering that the Joint Civilian-Government Committee for Peaceful Demonstration co-chaired by the prime minister and the representative of civilian groups is in operation within the government, the NHRCK expects that substantive methods to improve the human rights status of combat/auxiliary police in connection with demonstrations will be formulated in the near future. From a long-term standpoint, the NHRCK will closely monitor the latest position of the government to abolish the system of alternative services as combat/auxiliary policemen.

■ Police Negligence in Reconstruction of a Traffic Accident Causes Secondary Injury

A person sustained secondary injury due to the failure of a police officer dispatched to the scene of a traffic accident to take proper safety measures to prevent any additional accident. The National Human Rights Commission of Korea (NHRCK) requested the Korean Bar Association to provide legal aid so that the victim may receive appropriate relief.

The victim merely known as Choi (male, 11, fifth-grader) bumped against a truck while riding bicycle downhill at his school's back gate on September 22, 2006. The police officer who rushed to the scene of the accident requested the victim to reconstruct the accident. In the process, the victim crashed into the truck again, suffering a secondary injury (a left distal radioulnar fracture) requiring five weeks' medical treatment. The victim's mother (known as Kim, 43) filed a complaint with the Commission in October 2006 since the police officer did not acknowledge his negligence.

According to the Commission's findings, (i) the police officer isolated and excluded the complainant from the site of the accident on grounds that the parties to the traffic accident made conflicting arguments and that the complainant was overexcited and interfered with the accident investigation, notwithstanding that the police officer should have involved related persons in the investigation at the accident site to ensure trust and objectivity; and (ii) the respondent conducted on-site reconstruction of the accident without taking proper safety precautions to prevent any further accident involving the vehicle in question and other vehicles when conducting the on-site investigation under Subparagraph 3, Article 4 of the Traffic Accident Handling Guidelines.

Regarding the findings, the dispatched police officer contended that he let the truck remain at the original accident site to accurately recreate the situation and walked down the downward slope with the victim in order to identify circumstances leading to the accident and take necessary photographs because the parties involved in the accident had made conflicting arguments. However, according to the police officer, the victim suddenly jumped on his bicycle, collided against the truck again and fell down, causing another unexpected injury. The police officer expressed his regret and pity to the complainant and promised to provide medical treatment to the victim.

The Commission determined that the respondent's act of letting the victim sustain a secondary injury requiring five weeks' medical treatment was a result of his lack of sense of responsibility and negligence in the performance of his duties and that he violated the right to physical safety under Article 12 of the Constitution. Accordingly, the Commission requested the Korean Bar Association to provide legal aid to ensure that the complainant

(victim) would receive appropriate compensation for damages.

■ NHRCK to Recommend that Commissioner General of the Police Withdraw a Ban on a Public Assembly

On December 4, 2006, three petitioners at the Korean Alliance against KorUS FTA (KoA) made a request for urgent relief measures with the National Human Rights Commission of Korea against the Commissioner General of the Korean National Police Agency (KNPA). According to the complaint, the Unification Solidarity for the Attainment of the 6.15 Joint Declaration and Peace on the Korean Peninsula (hereinafter referred to as the 'Solidarity for Unification'), a member group of KoA, had reported that it would hold a large-scale public assembly to protest a Korea-US free-trade agreement for the third time in the Seoul Station Square and Seoul Plaza outside City Hall on December 6, 2006. However, the Commissioner General had held firm to a decision to ban the assembly. The petitioners said in the complaint that the decision to ban the rally was expected to violate the basic human rights of those hoping to attend the anti-FTA protest, and for that reason they filed the complaint with the NHRCK to request that the Commission implement urgent relief measures so that the General Commissioner of the KNPA would stop committing such a violation. On December 5, the day following receipt of the complaint, the NHRCK opened an ad-hoc Standing Committee meeting to deliberate on the request. As a result of the meeting, the NHRCK issued a recommendation to the Commissioner General of the KNPA that it take remedial measures including the withdrawal of the ban on the gathering in Seoul Station Square.

More specifically, the recommendation advised the respondent to take all necessary actions, including the cancellation of the ban, to ensure the gathering would proceed smoothly. But the recommendation came with a condition. In exchange for the KNPA's withdrawal of the ban, the petitioners were to ensure that rally in Seoul Station Square be held peacefully.

As for the gathering in Seoul Plaza, the Commission reached a different decision. Freedom of assembly serves dual constitutional functions as an element of individuals' self-fulfillment and as an element of democracy. Along with freedom of speech, freedom of assembly is one of the indispensable elements to a properly functioning democracy. Among the constitutional basic rights, it is an inherent right related to the expression of political opinions. In this vein, the NHRCK judged that it was inappropriate to adopt an urgent relief measure toward the Seoul Plaza rally, which the petitioners had reported they would hold on December 6, 2006, because on November 7, 2006 a third party had already

reported it would hold a gathering in the same place and day.

The Commission also clarified the reason behind the recommendation: A deliberation on the complaint about the Seoul Station Square assembly, which the Solidarity for Unification had reported it would hold on December 6, 2006, led the NHRCK to judge that in order to uphold the spirit of the constitution that ensures freedom of assembly, the respondent should take necessary measures, including the cancellation of the ban on the gathering, so that the public meeting can take place as planned, with the condition that the petitioners guarantee the peaceful organization and progress of the protest by signing a memorandum of understanding or holding a joint press conference together with the respondent.

Therefore, to guarantee the right to peaceful assembly and in accordance with the National Human Rights Commission Act of the Republic of Korea Article 48, Paragraph 1, the NHRCK decided to take an urgent relief measure against the ban on the Seoul Station Square assembly, and announced that, if the recommendation by the Commission is accepted by both parties—the petitioners and respondent—it would monitor whether the assembly progresses peacefully.

■ NHRCK Suggests Stringent Standards for Publicizing Charges Before Trials

With regard to the publicizing by the police of criminal charges prior to a demand for a trial in the process of investigation of two cases at the center of nationwide attention, the National Human Rights Commission of Korea (NHRCK) conducted an ex officio investigation in accordance with the National Human Rights Commission Act. The NHRCK determined that such act constituted a violation of the victims' right of integrity and privacy, and the right to a fair trial. Thus, the NHRCK recommended the Minister of Government Administration and Home Affairs and the commissioner general of the National Police Agency respectively issue a warning against the National Police Agency and against the Incheon Metropolitan Police Agency. In addition, the NHRCK recommended that the minister and commissioner general implement appropriate training and also formulate and take necessary measures to prevent recurrence of similar actions in the future.

The publicizing of criminal charges by an investigative authority prior to a demand for a trial is not permitted in principle. Article 27(4) of the Constitution of the Republic of Korea provides for presumption of innocence. Article 126 of the Criminal Act declares that the publicizing of criminal charges itself is illegal. Under the current legal system, there are tight restrictions on the announcement of criminal charges in cases where such announcement is made to satisfy the public's right to know.

In reality, however, the investigative authorities in Korea have repeatedly violated crime suspects' right of integrity and portrait by publicizing criminal charges prior to demands for trials. Under these circumstances, the NHRCK decided to correct investigation practices that were in violation of human rights. Noticing human rights abuses that arose from the November 2004 announcement of criminal charges in the process of investigating two cases that had serious social repercussions, the NHRCK determined to embark on an ex officio investigation, which lasted over two years.

The NHRCK listened to various opinions by holding public hearings of experts, hosting informal sessions with officers of the prosecution, police, and members of the press who are in the position of publicizing criminal charges, receiving advice from academics, and collecting information on comparable cases in foreign countries. The NHRCK ultimately made a judgment on whether publicizing criminal charges in said cases constituted a violation of human rights according to the following standards:

- △ The announcement of criminal charges must be confined to affairs of legitimate

interest to the general public. Only in cases where such announcement is intended to prevent possible pressing threat to people's lives and safety or where the case is already widely known to the public for such reasons as earlier press coverage, the need for announcing criminal charges is acknowledged to the least possible extent.

△ Even if announcement of criminal charges is beneficial or necessary, the investigative authorities including the police should respect certain limitations regarding its purpose and method by taking into consideration the balance of legal interests according to the principle of presumption of innocence and proportionality guaranteed under the Constitution.

△ Criminal charges must be publicized by a person who is authorized to announce investigation findings, pursuant to official internal procedures of the investigative authority. However, such charges must not be announced in a way that allows the public to deduce the suspect's identity.

△ The details of said announcement must be limited to only those that are absolutely necessary to accomplish the purpose of the announcement. In addition, the announcement should not be made concerning matters related to the crime suspect's integrity or privacy which do not directly pertain to the crime as well as specific details or reliability of evidence that may affect a trial. Besides, it is forbidden to use any expression or resort to speculation which might prompt a hasty conclusion that the crime suspect is guilty or to make any expression that might cause a premature prediction.

Given the nature of the two cases in question, the NHRCK determined that the need to announce criminal charges to satisfy public's right to know was apparently acknowledged. However, the NHRCK recommended formulation of measures to prevent recurrence of such cases based on the judgment that there were substantial violations regarding matters as specified above.

■ NHRCK Launches TFT for Crime Victims' Human Rights Protection

On July 14, the National Human Rights Commission of Korea (NHRCK) organized a crime victims' human rights protection task force team to safeguard and promote crime victims' human rights. Active by the end of 2006, the TFT plans to formulate, and recommend to the government agencies concerned, institutional schemes and policy improvement methods whereby crime victims are provided with prompt assistance for recovery from crime damages and substantial relief.

Before the establishment of the TFT, it had been pointed out repeatedly that there was a lack of social interest in, or guarantee of rights under criminal procedures for, crime victims deserving due protection and respect under such procedures. Against this backdrop, the Commission intends to explore ways to protect and promote crime victims' human rights in a more proactive manner through the TFT.

The TFT will examine applicable laws and regulations including the Crime Victims Protection Act, crime victim protection policies and systems of foreign countries including European nations, the U.S., and Japan, and activities by related domestic organizations and groups such as crime victim support centers. Based on its findings, the TFT plans to establish crime victim protection measures that primarily address (i) support for physical and mental recovery of crime victims; (ii) its involvement in investigation and trials of criminal cases; (iii) governmental compensation to crime victims, and (iv) strengthening the social effort to prevent crimes and support crime victims.

Introduction to Discrimination & Remedies Bureau

■ General Introduction

The Commission deals with 19 grounds of discrimination, which include gender, religion, disability, age, social status, place of origin, country of origin, ethnicity, physical conditions, marital status, pregnancy or childbirth, family type or conditions, race, color, ideology or political opinions, criminal records, sexual orientation, education, and medical history. Discrimination means the favorable or unfavorable treatment, exclusion, or differentiation without justification based on such the prohibited grounds.

Discrimination includes any acts of sexual harassment. Sexual harassment as provided by the National Human Rights Commission of Korea Act means sexual comments or actions made by those in the public sector, employers or employees in the context of business, employment or other such relationships by taking advantage of his/her position or in connection to work and other matters that cause feelings of sexual humiliation or degradation or that result in unfair employment treatment for refusing to respond to such sexual comments, actions or other such demands.

The Prohibition of Discrimination Against and Relief for People with Disabilities Act ("Prohibition of Discrimination Against People with Disabilities Act") passed the floor of the National Assembly in March 2007. It will come into force in April 2008. Enactment and enforcement of the Act will be a significant turning point in protecting and promoting the human rights of people with disabilities. This Act expands the definition and scope of discrimination from direct discrimination, to include indirect discrimination, and refusal to provide reasonable accommodation. Under the Act, the Commission is responsible for determining unlawful discrimination and issuing recommendations to redress them. In addition, the Act introduces a wide range of remedial measures such as court imposition of a fine against malicious discrimination as well as the power granted to the Ministry of Justice to issue recommendation for cases that have a significant impact on the public interest.

■ Organization and Main Function

The Commission investigates and rectifies discriminatory acts under Article 19 of the National Human Rights Commission Act. A discriminatory act in violation of the right to equality is any of the following acts of unreasonable discrimination on the basis of 19 reasons including gender, religion, disability, age, race, and social status. Since the establishment, the Commission has conducted investigation and provided remedies on 2,836 cases of discrimination and 272 cases affirmed as of December 31, 2006.

○ General Discriminations Team: 7

Deals with complaints and matters relating to discriminatory acts based on "other" grounds not included in the 19 grounds of discrimination as outlined in the Act as well as other matters relating to discrimination that are not handled by other teams.

○ Sex & Gender Discrimination Team: 6

Deals with complaints and matters relating to discriminatory acts based on grounds of gender, marital status, pregnancy & childbirth, family status, sexual orientation, and physical conditions.

○ Disability Discrimination Team: 5

Deals with complaints and matters relating to discriminatory acts based on grounds of disability and medical history.

○ Social Status & Age Discrimination Team: 6

Deals with complaints and matters relating to discriminatory acts based on grounds of educational background, place of origin, social status, criminal records, religion, ideology or political opinion.

○ Migration & Human rights Team: 5

Deals with complaints and matters relating to discriminatory acts based on grounds of nationality, ethnicity, race, skin color, or age as well as human rights violations against foreigners (including discriminatory acts).

■ Status of Discrimination Complaints

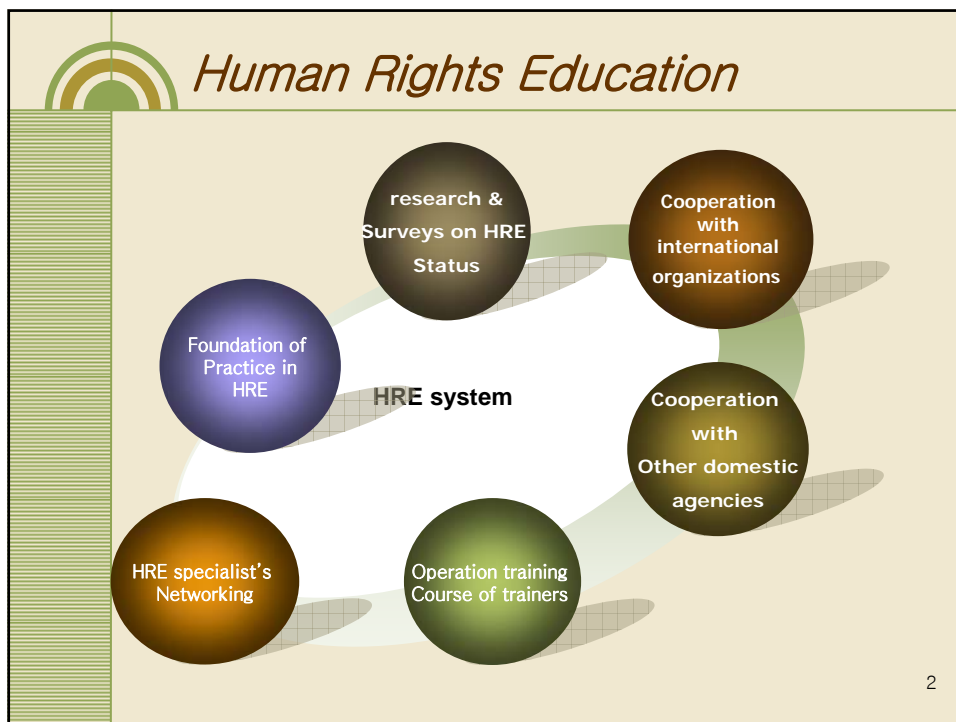
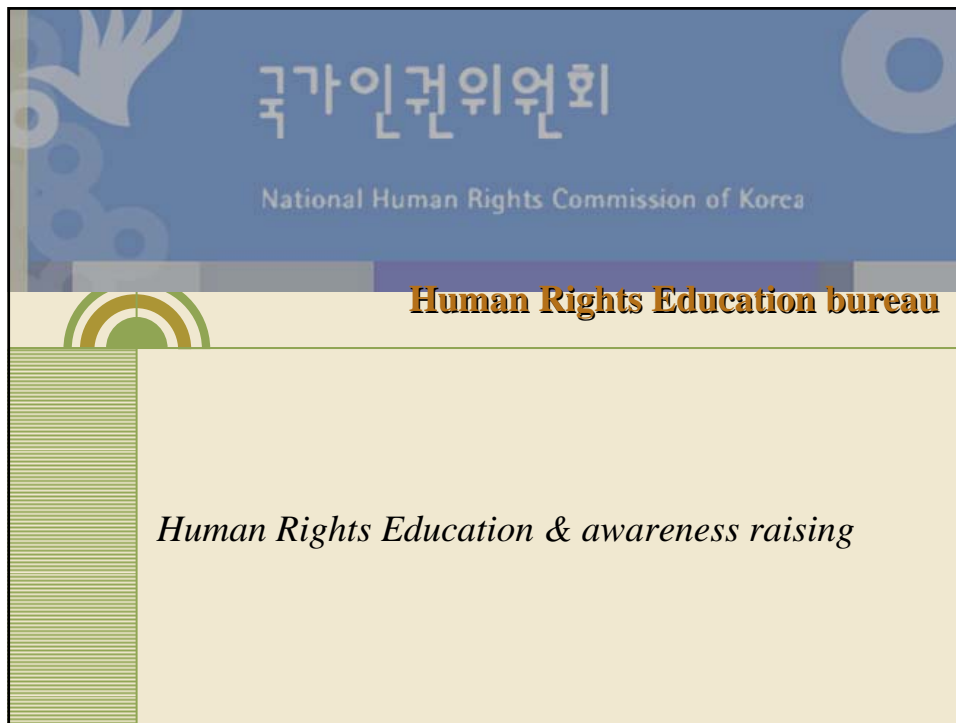
○ Status of Complaints Received by Year

(Unit: Number, %)

	Total	2001	2002	2003	2004	2005	2006	2007.7
Total	26,029	803	2,790	3,815	5,368	5,617	4,187	3,449
Civil Rights Violation	20,762	619	2,214	3,041	4,627	4,199	3,334	2,728
Discrimination	3,538 (13.6)	53 (6.6)	136 (4.8)	358 (9.4)	389 (7.2)	1,081 (19.2)	824 (19.7)	697 (20.2)
Others	1,729	131	440	416	352	337	29	24

○ Complaints on discrimination issues are steadily increasing. The highest number of complaints filed is in the area of employment accounting for 1644 cases which is 46.5% of the total number of complaints filed on discrimination, followed by supply and use of goods accounting for 722 cases(20.4%). Meanwhile, the highest number of complaints filed by the ground of discrimination is social status accounting for 779 cases(22.0%), disability accounting for 479 cases(13.5%), and sexual harassment accounting for 260 cases(7.3%).

■ Major Discrimination Cases





1. Main Operations

- Establishment and integration of the general planning for HRE.
- Researching law, institutions, policy, and practical improvements relative to HRE.
- Recommendations and manifestations of the Commission's position.
- Cooperation with institutions in and outside of Korea.
- Establishment of general planning for HRE.
- Consultation with related HRE institutions.
- Development and accessibility of programs and data for HRE.
- Training of HR professionals.
- Researching related HR systems and educational conditions.

3



2. Structure

Human Rights Education bureau

School sector Education Team(7)

Public sector Education Team(6)

Civil sector Education Team(6)

4



- **The enactment of HRE Law & the foundation of practice in HRE**

- The Introduction of Law & the first year of the HRE Institute
- Cyber HRE Activity

5



- **The Construction and Institutionalization of HRE in School**

- The Application of HR materials in the Curriculum of School Education
- Strengthening of HRE Programs for Teachers to improve HR awareness
- Activity of College HRE
- Holding the International Conference of HRE
- Holding the Forum of HR Enhancement for Students

6



School Sector Education Team

- The Educational Support and Development of Programs for HRE in School
 - Development of Textbooks and Programs about HRE for Children
 - Operation of the Second HRE Model School (March 2006-2008)
 - Reviewing Practical Cases and Holding the Practice Conference
 - Implementation of Lectures in Commemoration of the Anniversary of the Universal Declaration of Human Rights
 - Operation of Tour Program in the Commission

7



School Sector Education Team

- The Operation of the HRE Model Training Course
 - Operation of the HRE Training Course for Teachers
 - HRE Workshop for Educational Management Staffs
 - Development of the Capability of HRE Moderators

8



Public Servant Sector Education Team

- Promotion of the efficiency of the operation by approaching each unique situation differently so as to allow each HRE operation to function according to its capabilities.
 - Changing the way in which support is given to the law enforcement field (which has made a lot of progress over the past four years) from the Commission providing education to all officers to requiring law enforcement agencies to appoint a HRE representative to be trained by the Commission.
 - Focusing on the implementation of HRE in the fields of the military and social welfare, which have never before had HRE, increases cooperation by encouraging other related institutions to adopt HRE.

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Public Servant Sector Education Team

- Encouragement of participation in the planning, when various HRE functions are promoted, so that each institution can later operate HRE independently while having a good partnership with the Commission. (Institutions include: the HR team in the Ministry of National Defense and the Korea Human Resource Development Institute for Health and Welfare, etc.)

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Public Servant Sector Education Team

- Using the HR subject in the training course for public workers in the Welfare Administration of a local autonomous entity, 2007 Guide to the Training of Public Workers of Civil Service Commission, and the Guide to the Social Welfare Curriculum (written by the Council on Social Welfare Education) will help to institutionalize the functions of HRE.

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Public Servant Sector Education Team

- Expansion of HR through cultural events:
 - Holding several cultural events, such as Jazz performances for the Police and correctional institutions (who are somewhat apathetic toward the Commission), promotes the positive image of the Commission and a HR friendly culture.

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- Civil Sector Education Team**
- HRE for Company
 - The expansion of recognition through consulting with large enterprises, and a gathering with corporations joining in the UN Global Compact.
 - Mutual agreement and implementation of HRE with Korea Electric Power Corporation.
- 14



Civil Education Team

- **HRE for Journalists:**
 - The expansion of recognition through consultations with related institutions, such as the Press Foundation, Writers Council, PD Association, the Council of Korea Broadcasting Institute, and Citizens' Coalition for Democratic Media.
 - Mutual agreement and implementation of HRE for the seven major press companies (Yonhap News, Kyunghyang, CBS, Hankyoreh, Seoul, MBC, and KBS). The Commission provides HRE for recently employed Journalists at these companies.

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Civil Education Team

- **HRE Lifelong Education Facility :**
 - The expansion of recognition through meetings with related institutions, such as the National Center for Lifelong Education.
 - Requesting approval for credit for the class called 'Human Rights and Movie' at the lifelong education facility the colleges.
 - The implementation of HRE for teachers of adult education programs employed in lifelong education facilities.

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Civil Sector Education Team

The development of Programs and textbooks of HRE

- Development of HRE programs which are specialized for educatee, and resulting in the accumulation of management experience.
- Increase stimulation of HR sensibility. Increase recognition of HR in routine. Increase the development of HRE programs that apply the moderator technique, which mainly includes the recognition of the link between duty and HR.
- Preparation and practical use of the manual of 35 programs.

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Civil Sector Education Team

The Expansion of HR-friendly culture

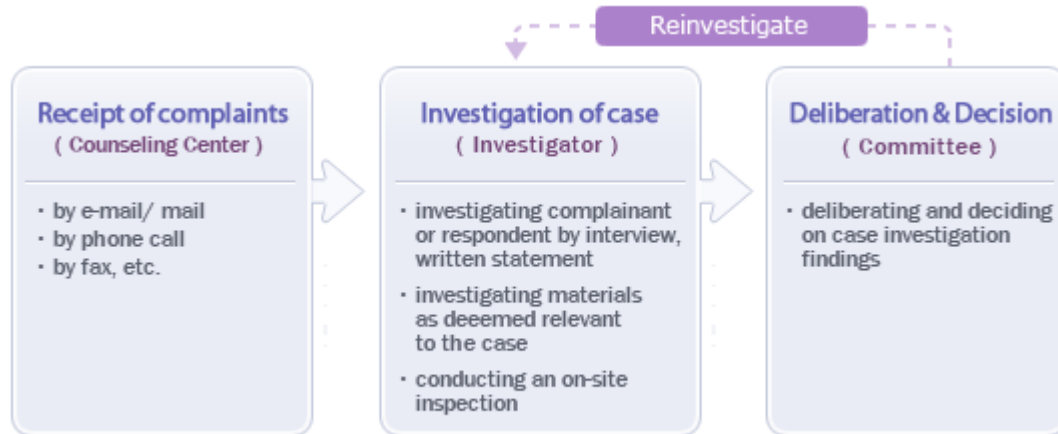
- Through the release of human rights productions (movie "If I were You 2," Exhibition Tour for Human rights cartoon-photo-movie-poster exhibition 'dalado gatayo', etc.), cultural materials contribute to the proliferation of HRE in society.
- HR cultural materials will be used as the HRE materials in the fields of School, Public, and Civic society to expand and continually update HRE.

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Complaint Resolution Process /Complaints Guide



1. Complaint Handling Process



* Decision type: recommendation, dismissal, rejection without deliberation, etc.

Complaint Receipt

There are several ways to file complaints with the National Human Rights Commission of Korea. Written complaints may be submitted at the Human Rights Counseling Center directly, or by mail or facsimile. It is also possible to download and prepare written complaints via the webpage of the Commission or to submit complaints verbally in person or by telephone. Persons accommodated in detention or protection facilities may file written complaints directly to the Commission or submit complaints to the Commission's investigators upon their visit and interview. When the Commission receives such complaints, it must deliver or forward receipt certificates to complainants.

Case Investigation

Upon receipt of complaints, the Commission's investigators conduct investigations as follows:

- Investigators may request that the complainant, victim, respondent, or other related person submit written statements. Those requested to submit written statements should submit them to the Commission with fourteen days.
- Investigators may request that the complainant, victim, respondent, or other related person submit materials deemed pertinent to the investigation. Investigators may also request the relevant persons to present themselves, hear their opinions, or inquire into certain facts or information when necessary.
- Investigators may conduct investigations or assessments on-site concerning the place, facility, materials, etc. in question.
- Investigators may seek expert opinions when necessary.

If complainants wish to withdraw their complaints, they must submit a letter of withdrawal specifying such intent (including a letter of withdrawal in the form of electronic documents including e-mail). If complainants verbally express intention to withdraw complaints to the staff of the Commission in person, protocols for withdrawal prepared by such staff by causing the complainants to affix their signatures or seals may be submitted in lieu of said letter of withdrawal. If complainants express intention to withdraw complaints by telephone without submitting a letter of withdrawal, telephone conversation reports prepared by the staff concerned may substitute for such letter of withdrawal.

When it is evident that a complainant should file a complaint to another government agency according to remedial procedures provided in other laws, the Commission shall immediately

transfer such complaint to the government agency concerned.

* Even in the absence of a complaint, the Commission may conduct an ex officio investigation by a resolution of its sub-committee in charge including the Standing Commissioners' Committee if there is sufficient evidence of grave human rights abuses or discriminatory acts.

Conciliation

- The Commission may submit complaints to the Conciliation Committee and commence conciliation procedures upon request by the persons concerned or by suo-moto. When the agreement reaches by the persons concerned, Conciliation Committee makes confirmation after commencement of the conciliation process. If the persons concerned fail to reach an agreement in the conciliation process, the Conciliation Committee may render a decision in lieu of conciliation for fair settlement of the case.

Deliberation and Decision

- The Commission (Plenary Committee, Standing Commissioners' Committee, and other subcommittees) shall deliberate on the findings of investigations into complaints and may make a recommendation, dismiss the complaint, reject the complaint without deliberation, recommend for settlement, transfer the complaint, or take other such action.

Conclusion

- Within fourteen days after such decision, the Commission should forward to the complainant a written guide and written notice of case handling results.

2. Types of Decisions

Acceptance

(1) Recommendation of remedial measures, etc. (Article 44 of the National Human Rights Commission of Korea Act)

- ① If the Commission determines on the basis of its investigation findings that human rights violations occurred, it may recommend any of the following to the respondent, or the head of the institution or organization to which the respondent belongs or its supervisory authority ("affiliated organization, etc."):
 1. Performance of remedial measures set forth in each subparagraph 1) of Article 42(4); and
 2. Rectification or improvement of laws, institutional schemes, policies, or practices.
- ② The provisions of Article 25(2) through 25(4) 2) shall apply mutatis mutandis to the head of the affiliated organization, etc. that received a recommendation under Paragraph ①.

-
- 1) 1. Discontinuance of human rights violations subject to investigation
 2. Restoration to the original state, compensation for damages, or other necessary remedial measures
 3. Measures necessary to prevent recurrence of the same or similar human rights violations

2) Article 25 (Recommendation to Improve or Rectify Policies and Practices)

1. If deemed necessary to protect and promote human rights, the Commission may recommend the institutions concerned, etc. to improve or rectify policies and practices or express its opinion thereon.
2. The head of the organization that receives a recommendation under the foregoing Paragraph (1) shall endeavor to respect and implement such recommendation.
3. If the head of the organization that receives a recommendation under the foregoing Paragraph (1) fails to implement such recommendation, he shall explain, in writing, the reason therefor to the Commission.
4. If deemed necessary, the Commission may publish its recommendation and expressed opinion as provided in the foregoing Paragraph (1) and the details of explanation given by the head of the institution that received said recommendation as provided in the foregoing Paragraph (3).

(2) Recommendation of accusation and reprimand (Article 45 of the National Human Rights Commission of Korea Act)

- ① If the Commission acknowledges, based on its investigation findings, that the act against

which a complaint was made constitutes a criminal act, it may bring charges to the Prosecutor General. However, if the respondent is a military personnel or civilian military employee, those charges may be filed with the relevant chief of staff or the Minister of National Defense.

- ② If the Commission acknowledges, based on its investigation findings, that a human rights violation occurred, it may recommend that the head of the affiliated organization, etc. reprimand the respondent or the person responsible for such violation.
- ③ The Prosecutor General, the chief of staff concerned, or the Minister of National Defense who receives such accusation as provided in Paragraph ① shall complete investigation within three months from the date of such receipt and notify the Commission of the results of such investigation. If the investigation is not completed within the three-month period, the cause thereof must be explained.
- ④ The head of the affiliated organization, etc. that receives the Commission's recommendation under Paragraph ② shall respect such recommendation and notify the Commission of its results.

(3) Recommendation of settlement (Article 40 of the National Human Rights Commission of Korea Act)

With regard to complaints of which investigation is underway or has been completed, the Commission may present to the parties concerned measures necessary to ensure fair resolution of the case and recommend that they work out an agreement.

Dismissal (Article 39 of the National Human Rights Commission of Korea Act)

- ① If a complaint falls under any of the following based on the Commission's investigation findings, the Commission shall dismiss such complaint:
 - 1. When it is evident that the complaint is untrue or if there is no objective evidence substantiating that the complaint is true;
 - 2. When the complaint does not address a human rights abuse or discriminatory act subject to investigation; and
 - 3. When it is acknowledged that separate remedial measures are unnecessary for such reasons as restoration from damage.
- ② When the Commission dismisses a complaint, it shall notify the persons concerned of the decision and reason therefor.

Rejection without Deliberation, etc. (Article 32 of the National Human Rights Commission of Korea Act)

- ① If a complaint falls under any of the following, the Commission shall reject such complaint without deliberation:
 - 1. When the complaint by its very nature is not subject to investigation by the Commission;
 - 2. When it is acknowledged that a complaint is obviously false or groundless;
 - 3. When it is evident regarding a complaint filed by a person who is not a victim that the victim does not want an investigation;
 - 4. When a complaint is filed more than one year after the date on which the cause therefor occurred. However, this shall not apply to cases regarding which the statute of limitations or civil liability concerning the cause of the complaint was not perfected and regarding which the Commission decided to conduct an investigation³⁾;
-
- 3) This is referred to as a decision to continue investigation.
- 5. When a trial by an ordinary court or the Constitutional Court, investigation by investigative authorities, or remedial procedure under other laws is underway or has been completed regarding the cause of the complaint at the time when the complaint is filed. However, this shall not apply in cases where a complaint is filed with the Commission concerning the matters which constitute offenses under Articles 123 through 125 of the Criminal Act and which are being investigated by the investigative authorities;

6. When a complaint is submitted anonymously or by alias;
 7. When it is acknowledged that it is inappropriate for the Commission to investigate into a complaint;
 8. When the complainant withdraws its complaint;
 9. When a complaint dismissed by the Commission is submitted again regarding the same matter; and
 10. When the purport of a complaint contradicts a final judgment by an ordinary court or a decision by the Constitutional Court on the cause of the complaint.
- ② In the event of rejection of a complaint without deliberation under Paragraph ①, the Commission may transfer the complaint to the authority concerned when deemed necessary. In such case, the authority concerned that receives said complaint shall promptly notify the Commission of the details of its handling upon request from the Commission.
 - ③ Even in cases where a complaint falls under any subparagraph of Paragraph ① after the Commission commences investigation into the complaint, the Commission may reject the complaint without deliberation.
 - ④ When the Commission rejects a complaint or transfers a complaint to the authority concerned without deliberation, it shall promptly notify the complainant of the reason therefor. In such case, the Commission may give the victim or complainant advice on the procedures and measures necessary for relief, when deemed necessary.

▲ TOP

How to File a Complaint /Complaints Guide



Making a Complaint

You can make a complaint to the National Human Rights Commission of Korea (NHRCK) on cases as follows.

- **In case :**
Human rights under the provisions of Article 10 through 22 are violated by state agencies, local governments, detention or correctional facilities while such entities perform their duties.
- **In case :**
There exists a discriminatory act of any violation of the right of equality by a juristic person, organization or private individual. That is, without any reasonable grounds, in case a person is unlawfully discriminated by gender, religion, disability, age, social status, regional, national or ethnic origin, physical condition such as physical features, marital status, pregnancy or delivery, family status, race, skin color, thought or political opinion, criminal record of which effective term of the punishment has expired, sexual orientation, or medical history.

Who can make a complaint :

A complaint may be filled

- by a person aggrieved by human rights violations and unlawful discriminatory acts;
- by a third party, who knows of such violations and discriminations, on behalf of the affected person.

Prohibition of Unfavorable Treatment

Any person shall not be subject to removal from his/her office, transfer to another position, disciplinary action and unjust treatment, or other unfavorable measures in status or treatment on account of his/her petition, statement, witness, presentation of materials or reply under this Act.

How to make a complaint :

- **By calling :**
Dial at 1331 (Seoul and Kyong-gi region) or at 02-1331 (Other regions)
- **By mail / visiting :**
- Address:
Human Rights Counseling Center, National Human Rights Commission,
7th Floor Geumsegi Bldg, 16 Euljiro 1-ga, Jung-gu, Seoul, Korea, 100-842
- **By fax :**
82-2-2125-9829
- **By e-mail :**
hoso@humanrights.go.kr
- If filing a complaint by mail, fax, and e-mail, please fill out your name and telephone number.
- If a detainee or inmate in detention or correctional facilities want to file a complaint, (s)he can use a complaint box installed by the NHRC in every facility or request the NHRC to visit her/him to the facilities in order to file a complaint after a face-to-face interview with a staff member of the NHRC.

You can download the complaint form here.

