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Collection of Decisions on Migrants' Rights

Cases from January 2006 to October 2008

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National Human Rights Commission of Korea

Note

The decisions selected in this book are English translations of original decisions in Korean. As there is a discord in interpretations of Korean with English translation version of the Commission's decision, interpretation of document in Korean precedes.

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I. Policy Recommendations

1. Recommendation on detention of foreigners

Recommendation Based on On-Site Investigations of Foreigner Detention and Correctional Facilities, dated December 17, 2007

[Main Text]

The National Human Rights Commission of Korea (NHRCK) hereby submits the following recommendation to the Minister of Justice in connection with the foreigner detention and correction systems in the Republic of Korea:

1. To Improve Alien Detention Procedures and to Protect and Promote the Human Rights of Detained Foreigners

A. Minimize detention measures that restrict personal freedom by proactively using alternative expulsion procedures including issuance of departure recommendations or departure orders.

B. Establish a substantive supervision scheme regarding detention measures comparable to those applied in criminal justice procedures.

C. Stipulate in the Immigration Control Act important matters on detained foreigners' basic rights including physical exercise, adequate food and clothing, writing, and proper accommodations so as to ensure that their basic rights are limited only by laws.

D. Provide for approval of an extended detention period every three months according to the cycle of such extension in order to ensure the adequacy of detention, guarantee foreigners' right to challenge their detention or to state their opinions in the approval process, stipulate a maximum detention period, and reflect said matters in the Immigration Control Act; and devise diverse support mechanisms by such means as relaxation of the conditions for temporary suspension of detention to resolve financial problems of detained foreigners including collection of their back pay and to shorten

their detention period.

E. Guarantee to the maximum possible degree free movement of foreigners outside detention rooms in detention facilities to facilitate their access to the yards and books during daily routines.

F. Permit aliens accommodated in detention facilities to carry and use necessary clothing, writing instruments and paper, books, family photos, cosmetics, etc., not authorizing the heads of such facilities to give provisional approval thereof, by revising Article 10 of the Foreigner Detention Rules so as to guarantee their right to bring clothing into and write correspondence in detention facilities to the maximum possible extent; allow detained foreigners to wear their own clothing; provide them with extra detainee uniforms; and seek other ways to maintain the cleanliness and hygiene of detainee uniforms by establishing adequate standards for regular exchange and laundering of detainee uniforms.

G. Examine and improve natural lighting systems, ventilators, and fans as well as shielding equipment in restrooms and bathrooms in detention facilities to meet the standards of accommodation as set out in the UN Standard Minimum Rules for the Treatment of Prisoners.

H. Tightly restrict the period of detention in foreigner detention houses that fail to satisfy the standards for accommodation as provided in the UN Standard Minimum Rules for the Treatment of Prisoners; and formulate guidelines to prevent overcrowding of individual cells.

I. Refrain from utilizing punitive solitary confinement in detention facilities in principle; minimize the conditions allowing segregated detention by revising Article 56-4 of the Immigration Control Act and Article 40 of the Foreigner Detention Rules to restrain solitary confinement and ensure its procedural legitimacy; set up procedural controls such as the Penalization Committee under the sentence execution system to deliberate on whether segregated detention is appropriate or not; and guarantee foreigners subject to solitary confinement, without any exception, an opportunity to defend themselves in such process.

J. Redress installation of excessive surveillance equipment to minimize breach of privacy; and cause female staff to perform surveillance camera monitoring of female detention rooms.

K. Provide for the following in the Immigration Control Act: posting rights guaranteed to detained foreigners including notification of detention, appointment of legal representatives, reception of visitors, sending/receiving correspondence and use of telephones, major issues concerning their treatment in detention facilities and their right to file complaints to the NHRCK by designating them as basic items of announcement in order to provide guidance on effective living rules and relief in detention facilities, and preparing written guidance in various languages including those used in countries that have signed an MOU on an employment permit system with the Republic of Korea and keeping such available in detention rooms.

L. Allow detainees to receive visitors during public holidays or in the evening after daily routines; and improve the method of such visits.

M. Provide better opportunities for physical exercise to detained foreigners in order to meet the Standard Minimum Rules for the Treatment of Prisoners; and create various activity programs in which detained aliens can freely participate.

N. Conduct safety education for detained foreigners; and inspect fire-fighting equipment.

O. Reinforce human rights education for personnel performing detention-related affairs.

2. To Promote Detained Aliens' Human Rights

A. Amend Article 60 of the Enforcement Decree of the Criminal Administration Act so as to permit detained foreigners to converse with visitors in their native languages in principle regardless of their command of the Korean language and deploy interpreters, etc. only when there is justifiable reason to believe that they may destroy evidence or attempt to escape.

B. Provide for exceptions regarding detained aliens' use of telephones by revising Article 51 of the Prisoner Classification and Treatment Rules and Article 7 of the Prisoner Telephone Use Guidelines.

C. Provide books in various languages in consideration of the nationalities of detained persons.

D. Ensure that guidance and complaint counseling are provided in languages

understandable by detained foreigners.

E. Offer meals that take into account the diets of the native countries of detained foreigners.

[Rationale]

1. Findings of On-Site Investigations and Background Behind Recommendation

A. The tragic fire at a foreigner detention center in February 2007 pointed to the need for an overhaul of detention policies concerning undocumented migrants to rectify such issues as excessive limitation on basic rights at detention facilities and protracted detention periods. In addition, a branch of a juvenile correctional facility came to serve as a prison for male foreigners in 2007, which resulted in a need to review aliens' treatment at the prison, together with a women's correctional facility doubling as a prison for female foreigners.

B. The National Human Rights Commission of Korea ("NHRCK") visited the detention and correction facilities for foreigners from June to November 2007 with over 30 external experts including activists from immigration groups, lawyers, doctors, and architects. The schedule of those visits is in the attached document.

C. Based on its findings from those visits, the NHRCK determined that it was imperative to formulate policies on detention of foreigners and improvement of their treatment in detention and correction facilities. It issued a recommendation in accordance with Subparagraph 1, Article 19 and Article 25(1) of the National Human Rights Commission of Korea Act.

2. Basis of Determination

A. Articles 1 and 2 of the National Human Rights Commission of Korea Act provide that the purpose of the NHRCK is to contribute to the realization of human dignity and worth and help safeguard the basic order of democracy by ensuring the protection of the inviolable and fundamental human rights of all

individuals and the promotion of the standards of human rights. According to those provisions, the term "human rights" means human dignity and worth, freedoms and rights guaranteed by the Constitution and other acts of the Republic of Korea, recognized by international human rights treaties entered into and ratified by the Republic of Korea, or protected under customary international law.

B. Accordingly, the NKRCK determined how to promote the human rights of foreigners detained in detention and correction facilities based on human dignity and value and the right to pursue happiness under Article 10 of the Constitution, personal freedom under Article 12, secrecy and right to privacy under Article 17, the principle of restricting basic rights under Article 37(2), other domestic laws including the Criminal Administration Act, and international human rights standards such as the Standard Minimum Rules for the Treatment of Prisoners.

3. Determination

A. Treatment of Foreigners in Unregistered Alien Detention Facilities

i. Legal Meaning of Detention and Related Problems

Article 51(1) of the Immigration Control Act stipulates that “if there is considerable reason to suspect that a foreigner falls under any subparagraph of Article 46(1), and that he has fled or might flee, an immigration control officer may intern such foreigner after obtaining a written detention order issued by the head of an office, branch office, or foreigner detention center.” Article 63(1) of the Act provides that “if it is impossible to immediately deport a person who is subject to a deportation order out of the Republic of Korea, the head of an office, branch office, or foreigner detention center may intern the person in a foreigner detention house, foreigner detention center, or other place designated by the Minister of Justice until the deportation is possible.” In other words, detention of foreigners may be defined as limiting their personal freedom to allow investigation as to whether they must be deported in cases where there is considerable reason to suspect that they are subject to a deportation order and that they may flee, or limiting their personal freedom until their deportation

becomes possible if it is impossible to immediately deport foreigners subject to a deportation order. Therefore, detention as currently handled is mostly an administrative reaction excluding punitive elements whereby foreigners whose violations of the Immigration Control Act have not been determined or who are subject to deportation, an administrative measure, are interned at a specific place under a written detention order issued by the head of an immigration office, etc.

Detention as actually implemented under the Immigration Control Act is similar to arrest, confinement, or accommodation under judicial procedures and widely restricts detained foreigners' basic rights. Under these circumstances, the NHRCK has already recommended the Ministry of Justice to clearly define the acts of detention under laws. On one hand, such recommendation means that internment must be executed to the minimum possible extent because it practically limits comprehensive basic rights including personal freedom and that the process needs to have a system for guaranteeing rights comparable to the procedures of criminal justice. On the other hand, the recommendation signifies that if detention measures must be executed nonetheless, they must be implemented only when it is inevitable to restrict detained foreigners' basic rights.

Subparagraph 10-2, Article 2 of the proposed amendment to the Immigration Control Act (formally called the Act on Immigration Control and Refugee Recognition; "prior announcement of proposed legislation") provides that 'detention' is internment and accommodation of persons regarding whom there is considerable reason to suspect that they are subject to deportation and who have fled or might flee or who received a deportation order in a foreigner detention house, foreigner detention center, or other place designated by the Minister of Justice. The provision merely defines the concept of detention while not providing for procedural improvement of detained aliens' human rights status and treatment based on self-reflection of deportation policies that mostly address detention.

Visits by the NHRCK from May to November 2007 revealed that most of

the aliens confined in the investigated detention facilities were subject to a crackdown by immigration control officers, had completed their criminal sentences or were detained based on notices by other government authorities. They were detained in those facilities when there was considerable reason to suspect that they were to be deported or subject to a deportation order irrespective of whether they might escape. In addition, detained aliens suffered limitations on personal freedom: their basic rights were not fully guaranteed with respect to the terms of management of and their treatment at detention facilities.

There is, accordingly, a need to review possible alternatives to existing policies on detaining and deporting unregistered foreigners and the ways to improve their treatment in the detention process in light of the fact that their basic rights are widely restricted in the process despite the concept of 'detention' as an administrative reaction simply aimed at taking custody of them.

ii. Pursuit of Improvement Plans to Minimize Detention Measures

According to Article 46 of the Immigration Control Act, any foreigners who violate the Immigration Control Act because they do not carry an effective passport, enter the Republic of Korea by unlawful means including any case where a cause prohibiting their entry into the country is detected or arises after their actual entry, overstay their permitted sojourn, or became unqualified for their stay after their entry into the country for such reasons as perpetuating a breach or who are released after receiving a sentence not lighter than imprisonment without prison labor are subject to deportation.

As stated above, under the existing Immigration Control Act, the Ministry of Justice detains concerned aliens when investigating whether they must be deported and until deporting them after their expulsion is determined. Their detention period cannot exceed ten days in principle, but there are no limitations on the period of detention for executing deportation.

Articles 67 and 68 of the Immigration Control Act also provide for departure recommendations and orders. As for foreigners who commit minor

breaches of the Act by overstaying their terms of sojourn or engaging in any activities in violation of their status of sojourn, the Minister of Justice, when he deems necessary, may issue a departure recommendation that those foreigners voluntarily leave the country without any detention within five days from the date of issuance of said recommendation in writing.

In addition, the Minister may issue a departure order against aliens who should be subject to deportation under Article 46 of the Immigration Control Act, but are willing to voluntarily depart from the country at their own expense or who failed to honor a departure recommendation. In issuing a departure order in writing, the Minister may restrict their freedom of movement or attach other necessary conditions after setting a deadline for departure. The Minister should issue a written deportation order against any person who failed to leave the country by a set deadline after receiving a departure order. In other words, the existing Immigration Control Act provides that departure recommendations and orders may be issued prior to deportation which accompanies detention to encourage voluntary departure by aliens subject to deportation.

According to the statistics on violators of the Immigration Control Act in the 'Annual Statistical Report on Immigration Control' for 2006 published by the Ministry of Justice, 18,574 foreigners were deported, while only 901 left the country in compliance with a departure order and only another 2,509 left in response to a departure recommendation. Clearly, the Ministry of Justice has deported the vast majority of violators of the Immigration Control Act, rather than making them depart from the country by departure recommendations or orders.

By contrast, foreign countries including Canada and the UK strictly expel those who breach immigration laws or commit crimes. However, these nations induce voluntary departure rather than resorting to forced departure based on detention in consideration of custodial costs and the human rights of unregistered migrants.

There is, therefore, a need to reexamine the immigration policies of the Republic of Korea making it a rule to confine concerned foreigners, limiting their personal freedom during investigation into whether they must be deported or pending execution of deportation, regardless of whether there is concern that those aliens may escape or pose any public menace. The country must seek various alternatives to the existing detention measures.

Even in the existing legal framework, issuance of departure recommendations or orders can minimize limitations on detained foreigners' basic rights. Such steps should be proactively used as alternative procedures to detention measures, thus providing those who leave the country through such procedures with incentives such as a shorter period of prohibition against re-entry into the country and encouraging compliance with departure recommendations or orders.

iii. Measures to Improve Detention Procedures

Detention under the Immigration Control Act is the effective equivalent of arrest or confinement in that it practically restricts personal freedom. Its execution must, therefore, be accompanied by a rights-guaranteeing scheme comparable to that applicable in criminal justice procedures.

In connection with this, the NHRCK determined in May 2005 that 'it is appropriate to apply the general warrant requirement concerning any measures that actually have an effect of arrest and confinement and seriously limit personal freedom including crackdown, escort, detention, and emergency detention among the means of exercise of authority by immigration control officers. It recommended that 'a substantive supervision system comparable to that found in criminal justice procedures be established with respect to crackdown on and escort, detention, and emergency detention of foreigners by immigration control officers.' (04 *JinIn* 139 and 04 *Jin Gi* 131 combined; May 23, 2005; decision by the Plenary Committee)

The Ministry of Justice, nevertheless, emphasizes that application of the general warrant requirement must be excluded on the following grounds:

'Clampdown on illegal aliens, unlike investigations into criminal suspects where actual truth must be closely determined, is intended to swiftly expel illegal aliens whose illegal status is determined very easily. Accordingly, it is reasonable to execute their deportation quickly through administrative procedures rather than complex criminal procedures. Their detention means accommodation for the shortest possible period of time until their departure in a situation where there are no alternative means to ensure attainment of an administrative goal, that is departure of illegal aliens. In other words, the purpose and nature of their detention are different from those of confinement of criminal offenders designed to limit personal freedom itself. In sum, crackdown on illegal aliens (i.e. their detention and deportation) constitutes a sovereign act.'

The Ministry of Justice's prior announcement of proposed legislation does not establish measures to redress perfunctory challenge procedures, nor provide a substantive supervision system concerning detention and emergency detention, except the procedural control on long-term detention based on insertion of a provision mandating approval by the Minister of Justice of detention for more than six months and the proactive guidance on how to file objection to the existing detention measures.

Despite said argument by the Ministry of Justice, detained foreigners are confronted with limitations on basic rights including personal freedom owing to detention measures. Since detention is effectively equivalent to arrest or confinement of criminal offenders, it is necessary to set up a supervisory system equivalent to that of criminal justice procedures and ensure that filing of objections to detention will serve as practical relief.

The Ministry of Justice should accept the NHRCK's recommendation issued in May 2005 and complement the prior announcement of proposed legislation in a manner that establishes a specific and substantive supervision system comparable to that under judicial procedures concerning detention and emergency detention of aliens by immigration control officers.

iv. Measures to Improve Treatment of Foreigners in Detention Facilities

1. Limit and guarantee basic rights of detained foreigners by law.

Notwithstanding that detention measures lead to limitations on fundamental basic rights of detained foreigners such as personal freedom, the Immigration Control Act does not contain substantive provisions on guarantee of and restrictions on basic rights. A substantial part of such provisions are found in the Foreigner Detention Rules and its detailed enforcement regulations, regarding which issues have consistently been raised. The NHRCK conducted an *ex officio* investigation into a fatal fire at a foreigner detention center on April 9, 2007. Based on its findings, the NHRCK declared to the Minister of Justice and the speaker of the National Assembly that 'detention measures can be taken to the minimum possible extent where it is deemed necessary to limit basic rights.' The NHRCK also recommended to them that the 'Immigration Control Act be amended in a way that specifically sets out the types and details of basic rights which may be limited by means of detention; general rights to which detained foreigners must be entitled in detention procedures; their rights to receive visitors, send/receive correspondence, and make petitions; restrictions on the use of physical force during detention; and other rights pertaining to health, meals, and medical care. Accordingly, Article 56-6 of the Ministry of Justice's prior announcement of proposed legislation acknowledges their rights to receive visitors, send and receive mail, and have conversations by telephone, which were originally matters requiring permission by the head of a detention office, as basic rights. In addition, Article 56-7 explicitly provides that any detainee who wishes to challenge their treatment in detention facilities may file a petition. Despite these desirable changes, important matters associated with detained aliens' basic rights including physical exercise, adequate food and clothing, writing correspondence, and the proper conditions of a detention room are still governed by an ordinance of the Ministry of Justice. There is, accordingly, a need to modify the Ministry of Justice's prior announcement of proposed legislation.

2. Minimize the detention period.

a. Among the detention facilities subject to this investigation, a foreigner

detention center had been detaining nineteen foreigners for not less than three months, including three interned for not less than one year.

b. The Immigration Control Act places no limits on the period of detention for the execution of a deportation order and stipulates that foreigners may be detained until 'their deportation is possible.' This means that it is possible to implement detention measures for an indefinite period of time. In spite of the fact that detention poses serious restrictions on foreigners' physical freedom without a court-issued warrant, there are no procedures of substantive control or relief regarding long-term detention including a court's prior and follow-up control procedures.

The Ministry of Justice inserted a provision in said prior announcement of proposed legislation to stipulate that detention of a person for more than six months requires approval by the Minister of Justice. Establishment of such internal control procedures concerning long-term detention is deemed a positive action. As regards detention for six months that constitute the minimum period requiring internal control procedures, however, there is no practical control or relief other than filing an objection to an initial detention order. Furthermore, the prior announcement of proposed legislation does not provide for detained foreigners' right to raise objection or state their opinions in the process of approving more than six months' detention. The period of extended detention, which necessitates re-approval by the Minister of Justice, was increased from 'three months' specified in the Ministry of Justice's proposed amendment to the Immigration Control Act in July 2006 to 'six months' in this prior announcement of proposed legislation. It is advisable to change said period to that provided in the proposed amendment to the Immigration Control Act.

c. The Ministry of Justice must also explicitly set forth the maximum detention period by law. The Immigration Control Act permits detention of foreigners without a warrant when such detention is carried out to execute deportation. In order for such measure to be acknowledged as an exception to the general warrant requirement, the period of detention must be as short as possible.

d. The Ministry of Justice should minimize the possibility of long-term detention by formulating steps to suspend detention of foreigners detained for less than one month until their 'deportation becomes possible', to grant long-term detainees the right to file objections or appeals in the process of approval of long-term detention, and to compel substantive control procedures.

e. Many of the detained aliens who had in-depth interviews with the NHRCK during its on-site investigations said that they wanted to leave the country immediately upon resolution of such financial problems as back pay and return of key money. They expressed serious difficulties associated with these problems. This implies that outstanding financial issues make long-term detention of aliens more likely.

In the face of limitations on the freedom of movement, it is extremely difficult for detained foreigners themselves to handle such issues as wages in arrears. In cooperation with regional labor administrations (offices), some foreigner detention centers cause labor supervisors to provide on-site counseling on back pay and other financial problems. However, such counseling can hardly have practical effect. It is because the jurisdiction of the regional labor administrations (offices) to which those labor supervisors belong often differs from the location of the businesses that have failed to pay wages to detained foreigners. Besides, there exist such problems as long-overdue back pay and unclear factory addresses. In an attempt to provide relief to aliens who sustained significant damage, the Ministry of Justice stipulated that immigration offices should temporarily release from detention those foreigners suffering financial damage of not less than KRW10 million due to back pay or a failure to have key money returned. However, such temporary release of foreigners may be implemented only when certain conditions are met: payment of a deposit in the amount of not more than KRW10 million, a Korean guarantor of their personal identity, and submission of evidentiary materials concerning an ongoing legal action and complaint. These conditions make it difficult for detained foreigners to exercise their right to temporary release from detention. Accordingly, more support mechanisms must be devised so that detained foreigners may resolve

financial problems and depart from the country within a short time.

3. The freedom of movement within detention facilities must be guaranteed to the maximum possible degree.

Restrictions on foreigners' basic rights as a result of their detention must be limited to a minimum level of restrictions on the freedom of residence or personal freedom intended to secure their custody for examination or execution of deportation. Since their detention does not constitute a criminal penalty, it is never permitted to limit their basic rights for the purpose of penalization or correction. Foreigners' basic rights can be limited only to the extent that is unavoidable.

The findings from the on-site investigations show, however, that the equipment of each detention facility and the treatment of detained foreigners are out of compliance with not only the UN Standard Minimum Rules for the Treatment of Prisoners but also the Foreigner Detention Rules in effect. Among problems found, those which are not ascribed to the execution of detention by detention facilities and accordingly can be resolved by the Ministry of Justice by such means as implementation of a budget or revision of applicable regulations to improve the human rights status of detained foreigners are summarized as follows. Firstly, the movement of foreigners in detention facilities is controlled too strictly. The entrance and exit doors outside detention houses are subject to stringent control. In the case of corridors leading to exterior walls, iron bars are installed in front of windows to prevent detained foreigners from escaping. Nonetheless, detainees are not even allowed to move to the corridors. In cases where public phones are installed in corridors, detainees can use those phones with the approval of detention staff. They can hardly go outside detention rooms to read books kept available in corridors. Many of the detention facilities installed door chains on the doors of detention rooms to enable passage of a single person. This situation is basically ascribable to the perception that detained foreigners are simply the targets of control, not persons whose freedom of movement in detention facilities must be guaranteed to the maximum extent to ensure their free use of the facilities under set rules, although their freedom of residence is restricted to the space of the facilities.

The Yarl's Wood Immigration Removal Center in the UK, which detains families to be deported, permits free movement of detained foreigners in the center. Detainees can freely use the facilities for them including a yard, gym, library, TV room, and clinic room during the working hours of the concerned personnel. Even the Dover Immigration Removal Center, which confines only males awaiting deportation after release from prison, allows detained foreigners to freely enjoy sports in a yard until sunset. Without special safe custody measures, they have free access to a gym, library, craft room, etc. If detained foreigners are permitted to move outside detention rooms and freely use a yard and so forth while remaining in detention facilities, their psychological pressure and uneasiness caused by limitations on personal freedom in detention facilities will be substantially alleviated. A precondition to such action is a change in the mind-set to acknowledge that limitation on detained foreigners' basic rights must be minimized as much as reasonably possible, and posting of more guards at detention facilities. The Ministry of Justice needs to devise improvement measures based on a fundamental overhaul of the current treatment of detained foreigners in detention facilities.

4. Guarantee the right to carry in clothing, etc. and to write correspondence to the fullest possible extent to secure detained foreigners' basic rights.

a. Article 10 of the Foreigner Detention Rules provides that during their accommodation in detention facilities, the heads of such facilities may permit detained foreigners to carry and use necessary items such as clothes, writing instruments and paper, books, family photos, cosmetics, etc.

The Foreigner Detention Rules stipulate that the heads of detention facilities may determine, at their discretion, whether detained foreigners can carry and use necessary items including their own clothing in detention facilities or whether the facilities will provide daily necessities to them. As a result, many detention facilities prohibit detained foreigners from bringing in even extra underwear, not to mention clothing, which constitutes a daily necessity. Detained foreigners must wear uniforms, not private clothes, in detention facilities. Most of the detention

facilities subject to on-site investigations give detainees only one uniform and change the uniform irregularly. Under these circumstances, detained foreigners were often seen stripping to the waist while they washed and dried their uniforms themselves. In addition, some detention facilities do not permit detainees to carry in extra underwear, which prompts detained foreigners to wash and dry their underwear at night and wear it in the morning. According to the minimum standards for detainees' clothing and bedding as set out in the UN Standard Minimum Rules for the Treatment of Prisoners, every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health, and such clothing shall in no manner be degrading or humiliating. In addition, all clothing shall be clean and kept in proper condition, and underclothing shall be changed and washed as often as necessary for the maintenance of hygiene. In connection with detained foreigners' wearing uniforms, the Ministry of Justice, in principle, should consider allowing them to wear their own clothing, not uniforms by permitting their carry-in of clothing, or provide them with extra uniforms and formulate minimum standards for regular change and washing of the uniforms in consideration of their hygiene and personal rights. The Ministry, in particular, must permit detainees to bring in their underwear in principle.

b. On-site investigations revealed that foreigners at most of the detention facilities could carry in writing instruments and paper only when necessary with the permission of staff, or used and returned borrowed ones. The right to write in detention facilities cannot be limited for the sake of convenience regarding detainee management and control. Accordingly, the carry-in and use of writing instruments, paper, and books must be acknowledged as detained foreigners' basic rights in principle rather than as matters requiring permission. Those rights should be limited only under exceptional circumstances. Towards this end, Article 10 of the Foreigner Detention Rules must be revised and such modification reflected in said prior announcement of proposed legislation.

5. Improve equipment in detention rooms.

According to the minimum standards concerning detention rooms under the

UN Standard Minimum Rules for the Treatment of Prisoners, all accommodations provided for the use of prisoners and in particular all sleeping accommodations shall meet all requirements of health, with due regard to climatic conditions and particularly to cubic content of air, adequate floor space, lighting, heating, and ventilation. In addition, the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air, regardless of whether or not there is artificial ventilation. Artificial light shall be provided sufficiently for the prisoners to read or work without injury to eyesight.

Most of the investigated detention facilities other than Cheongju Foreigner Detention Center, however, had problems with natural lighting and ventilation of detention rooms through windows. The windows in detention rooms, not restrooms, were very small or even non-existent and were blocked with iron bars and acrylic panels, which resulted in a need to use fluorescent lamps at midday in some cases. Many of the facilities had poor air conditions because of insufficient or malfunctioning ventilators. In some detention facilities, the shield between a restroom and detention room was so low that when detained foreigners sat on a toilet, the upper half of their body was exposed. In some cases, opaque glass was not used in the window of a shower booth. As a result, detained foreigners using a restroom or a shower booth were exposed to the other detainees in the same room and to the personnel monitoring them by means of a CCTV installed in the room. This raises a serious concern that detained foreigners' personal rights may be violated. The Ministry of Justice should examine such facilities and redress the situation.

6. Strictly limit the detention period at detention houses and formulate measures to prevent overcrowding.

a. Based on its on-site investigations, the NHRCK found that most detention houses, unlike detention centers, were using part of an office building for the purpose of internment. Thus, they fail to meet the minimum standards regarding lighting, ventilation, hygiene, etc. for accommodation specified in the UN Standard Minimum Rules for the Treatment of Prisoners.

It is, therefore, imperative to minimize the period in which foreigners are detained at a detention house, in addition to betterment of the existing accommodations for detention. As a matter of fact, immigration offices are already aware of this problem and endeavor to transfer foreigners, who must be detained until deportation, to detention centers unless there exist justifiable circumstances not to do so. However, some detention houses confine aliens for more than a week, far longer than their average detention period of two or three days. The period of detention at detention houses of immigration offices must be limited until issuance of a written detention order, and the subsequent transfer of concerned detainees to a foreigner detention center should be institutionalized.

b. Foreigner detention centers consider 6.6 square meters per person as the optimal space for detainees, while detention houses of immigration offices put the minimum space per detainee at 4 square meters. Foreigner detention centers are faithfully complying with said standard, but many detention houses are overcrowded. The year 2007 was an exceptional period because the Ministry of Justice hardly conducted crackdowns on illegal aliens: it designated June and July 2007 as a period of guidance for voluntary departures. The detention house of the Suwon Immigration Office, whose optimal number of detainees is put at 13, accommodated 34.8 and 21.3 persons in 2005 and 2006 respectively on a daily average. The detention house of the Seoul Immigration Office, which can optimally accommodate up to 45 detainees, interned 122 and 70 persons in 2005 and 2006 respectively on a daily average. Such overcrowding is largely due to crackdowns, which means that stricter crackdowns are likely to trigger overcrowding. Therefore, the appropriate number of detainees should be calculated to prevent any overcrowding at detention centers and detention houses, viable alternatives devised, and stringent internal guidelines formulated and respected.

7. Refrain from punitive solitary confinement and ensure procedural control and legitimacy.

a. Article 56-4 of the Immigration Control Act and Article 40 of the

Foreigner Detention Rules provide for solitary detention of foreigners and exercise of coercive power under certain conditions. Based on said provisions, immigration control officers place some detained foreigners in solitary confinement without undergoing specific procedures on grounds that they intend to or might commit suicide or self-injury; inflict harm on other persons; escape; or refuse or obstruct the lawful execution of duties by government officials.

Since it is sufficient to limit personal freedom of detained foreigners to keep their custody for deportation, their basic rights must be guaranteed to the maximum extent during their detention, in principle. The managers and operators of detention facilities may request detained foreigners to comply with minimum rules and norms to maintain the order of the facilities. They should consider possible solitary confinement as a final resort after initially inducing detained foreigners who violate said rules, etc. to comply with them in a phased manner such as by issuance of oral warnings and imposition of restrictions on their right to use facilities. Currently, detained foreigners tend to be regarded only as the targets of control and management. Consequently, detention facilities may put some aliens into solitary confinement and prohibit their physical exercise, reception of visitors, and reading on mere grounds that they might disrupt the order of detention facilities, without formulating and implementing other alternatives. Such measures are effectively punishment and constitute excessive limitation on basic rights.

b. Article 40 of the Foreigner Detention Rules provides for only internal procedures including the report of solitary confinement to the head of the corresponding detention facilities and the issuance of written directions for special custody. It lacks a controlling mechanism regarding solitary detention. In addition, the heads of detention facilities may, at their discretion, grant foreigners subject to solitary confinement an opportunity to state their opinions, which leads to procedural illegitimacy.

Article 56-4 of the existing Immigration Control Act and Article 40 of the Foreigner Detention Rules must be revised to minimize the conditions allowing solitary confinement, and procedural controls be set up such as the Penalization

Committee under the sentence execution system, which can deliberate on whether segregated detention is appropriate or not. In such process, foreigners subject to solitary confinement must be given, without any exception, sufficient opportunities for defense.

8. Prohibit excessive installation of surveillance cameras and cause female staff to perform surveillance camera monitoring of detention rooms accommodating females.

a. Article 56-8 of the Immigration Control Act in effect provides that the heads of immigration offices, etc. may set up necessary equipment and surveillance devices to maintain the safety and order of detention facilities and to effectively cope with any emergency. The provision also stipulates that only the minimum number of units of such equipment and devices necessary for surveillance be installed and operated in consideration of potential violation of internees' privacy and so forth.

The on-site investigations showed that most of the detention facilities monitored only special movements of detained foreigners by using one surveillance camera in each detention room. However, some detention facilities had not less than two surveillance cameras in a detention room whose optimum accommodation is five to six persons. More surveillance cameras tend to be installed and used where there are fewer detention workers. Detention facilities need to refrain from daily monitoring by means of surveillance cameras and rectify excessive installation of surveillance devices and, instead, recruit and deploy more personnel.

b. At some detention facilities that had an insufficient number of workers, male staff monitor the rooms accommodating female detainees by surveillance cameras. Those cameras which are set up on the wall by a door show every detailed movement of the detainees and, as already mentioned above, low restroom shields may cause infringement of female detainees' personal rights. To address this situation, female personnel must take charge of management of detention rooms accommodating female detainees.

9. Provide guidance and notification regarding living rules and relief in many languages including those used in countries that signed an MOU on an employment permit system with the Republic of Korea.

a. During the on-site investigations, only a small number of interviewed detainees at most of the detention facilities replied that they had received verbal explanations about living rules and relief procedures. Most of the respondents said that they acquired such information through written guidelines posted on the wall of a detention room or books kept available in detention facilities. Besides, 'Matters of Compliance for Detained Foreigners' distributed by some detention facilities, and 'living rules', 'filing of objections', and 'available relief including a complaint to the National Human Rights Commission of Korea' posted on the wall of a detention room at most detention facilities are available only in Korean, Chinese, and English. Detainees speaking other languages cannot understand their details accurately, and only a few detained foreigners were found to have knowledge of the right to raise objection to detention, right of petition regarding treatment in a detention center, right to file a complaint to the NHRCK, etc.

b. Article 57(2) of the Ministry of Justice's prior announcement of proposed legislation contains a newly inserted provision that the head of an immigration office, etc. may post procedures to challenge detention, request temporary release from detention, file a petition and receive visitors at a readily visible place in foreigner detention houses and centers. This provision represents an effort to step up protection of the human rights of detained foreigners by actively giving publicity to their rights. However, it falls short of the Ministry of Justice's proposed amendment to the Immigration Control Act in July 2006 that stipulated matters pertaining to notification of detention, appointment of lawyers, reception of visitors, correspondence and telephone conversations, written notification and posting of other important issues related with treatment in detention facilities, and keeping available major details of applicable laws concerning detention in detention facilities.

It is, therefore, necessary to upgrade the Ministry of Justice's prior

announcement of proposed legislation to the level of the July 2006 proposed amendment to the Immigration Control Act by including the right to submit a complaint to the NHRCK in the items to be notified and ensuring that related notifications and postings are made in many different languages including but not limited to those used in countries that signed an MOU on an employment permit system with the Republic of Korea.

10. Guarantee the opportunities to receive visitors during public holidays or in the evening after daily routines and improve the meeting methods.

a. At present, detention facilities permit detainees to meet with visitors from 9:30 a.m. to 11:30 a.m. and from 1:30 p.m. to 4:30 p.m on weekdays. However, most of the visitors can only visit detained foreigners late on weekdays or on Sunday. Such limitations on meeting time inflict difficulties on detained foreigners in many cases.

Many of the detained foreigners who participated in the NHRCK's in-depth interviews during its on-site investigations expressed hardship associated with the existing meeting time regulations. Although detained foreigners need to meet their colleagues to prepare for departure from the country, the currently allowed meeting time excluding weekday lunch breaks and holidays practically limits detained foreigners' right to contact the outside. There is a need to work out potential alternatives such as guaranteeing an opportunity to receive visitors during holidays or in the evening on weekdays.

b) As noted above, detention of aliens, in a legal nature, is merely intended to keep their custody for their deportation. Therefore, free face-to-face meetings between a visitor and a detained foreigner must be permitted. Causing detained foreigners, who are not prisoners, to receive visitors with an acrylic wall between them, as is the case now, is excessively limiting because it makes them feel as if they are being confined as prisoners. This situation must be redressed by improving the existing meeting facilities and permitting free face-to-face meetings.

11. Guarantee opportunities for exercise to the fullest possible extent and

offer various activity programs for detained foreigners.

a. According to the findings of the on-site investigations, none of the investigated detention facilities allowed detainees to work out everyday. Neither did any of them have a playground except for detention centers. Outdoor exercise is essential to the maintenance of physical and mental health of all internees. In connection with exercise, Article 21(1) of the UN Standard Minimum Rules for the Treatment of Prisoners provides that 'every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.' In addition, Article 24 of the Foreigner Detention Rules stipulates that a daily schedule of detained foreigners must include time for exercise. Article 26 also provides that detained foreigners must be offered exercise opportunities and that detention facilities without a yard should give consideration to detainees in order for them to stay fit in detention houses. Said provision also prescribes that detained foreigners may use athletic outfits kept available at detention facilities during workout time or participate in group exercises with other detained foreigners. However, no detention facility has programs or athletic goods for indoor exercise. Hwaseong and Cheongju Detention Centers each have a yard but few sporting goods for ball games.

b. Few detention facilities subject to the on-site investigations have leisure activity programs including physical exercise programs for detained foreigners. The only pastime for most aliens is watching television all day, and most books made available at detention facilities are only in a few languages. It is difficult to freely use book borrowing systems owing to their inefficiency. In particular, Hwaseong and Cheongju Detention Centers, which accommodate many foreigners for long periods of time, should provide a range of activity programs to detainees during their detention period so that they may maintain physical and mental health. However, even these two detention centers offer only a very limited range of programs that all detained foreigners can voluntarily participate in.

Hwaseong Foreigner Detention Center has recently been offering new

cultural programs including classes on Korean language, traditional manners, and folk crafts. The number and scale of programs depends on the number of aliens detained, but most are specifically for females, who represent a relatively small percentage of all detainees. Therefore, the Ministry of Justice should strive to develop appropriate programs to ensure that each of the detention facilities provide a wide range of leisure activity programs to all detained foreigners. In addition, improvements must be implemented in order to offer detained foreigners exercise opportunities compatible with the Standard Minimum Rules for the Treatment of Prisoners. Indoor workout programs for detention facilities with no yards should be created as well.

12. Conduct safety training for detained foreigners and inspect fire-fighting facilities.

Twenty seven people were killed or injured when a fire ripped through the foreigner detention house of Yeosu Immigration Office on February 11, 2007. Based on its ex officio investigation, the NHRCK already recommended the Ministry of Justice to promote overall safety of detention facilities, execute safety training for detained foreigners, and devise actions to enhance professionalism of guards and surveillance officers.

According to the findings from its on-site investigations, each of the detention facilities formulates activity plans to prepare for possible emergencies including a fire and conducts safety training for its staff. However, almost none of them implemented safety training for detained foreigners. In order to prevent another major accident, it is of paramount importance for detained foreigners to acquire, in advance, knowledge on how to take shelter or how to deal with an emergency. In particular, long-term detention facilities such as Hwaseong and Cheongju Foreigner Detention Centers need to formulate and conduct safety training plans for not only guards and surveillance personnel, but also detained foreigners.

Fire-fighting equipment separately kept at detention facilities is not in many cases adequate to extinguish a fire. Given this situation, the Ministry of Justice

must inspect and improve fire-fighting equipment in general to prevent another tragic fire such as the one in Yeosu.

13. Strengthen human rights training for detention personnel.

Detention centers have their own staff dedicated to execution of detention affairs as well as contractual workers in charge of surveillance and guarding. Detention houses have employees who take charge of matters pertaining to detention. If there are no such employees, personnel in charge of other affairs perform detention on a rotating basis when foreigners are interned. In such case, public service personnel provide assistance regarding a substantial part of detention affairs.

Concerned personnel provide support for detained aliens and resolve their difficulties through direct contact with them in an effort to safeguard their human rights. For the efficient execution of those affairs, related personnel must precisely understand the legal status and rights of detained foreigners. This requires that they periodically be given substantive human rights education. Article 47 of the UN Standard Minimum Rules for the Treatment of Prisoners provides that after beginning duty and during their careers, the personnel shall maintain and improve their knowledge and professional capacity by attending in-service training courses to be held at suitable intervals. Materials submitted by detention facilities to the NHRCK confirm that they have regularly implemented human rights training for their own staff, contractual workers, and public service personnel. However, most such educational programs are internal training, which is often conducted during regular monthly meetings. Therefore, it is difficult to flatly say that substantive education conducive to detained foreigners is being conducted, which in turn means that the Ministry of Justice should monitor human rights education for detention staff, contractual workers, and public service personnel while exerting an effort to ensure creation and implementation of appropriate educational programs for each target group at each detention facility in order to protect detained foreigners' human rights and promote understanding of appropriate personnel of their duties.

B. Treatment of Foreign Prisoners in Correctional Institutes

i. General Assessment

During its on-site investigations of the Cheonan Branch of the Cheonan Juvenile Correctional Institute ("Cheonan Branch") and the Cheongju Women's Correctional Institute, the NHRCK focused on whether foreign prisoners were receiving treatment that took into consideration their special characteristics and ascertained whether they were treated properly in the prisons in terms of communication, provision of guidance on life in prison at the time of imprisonment, degree of petitions to the Ministry of Justice and complaints to the NHRCK, form of accommodation, and daily life including exercise, religion, medical care, and meals.

The two correctional institutes, which serve as long-term accommodations for most of the prisoners, are operated in compliance with applicable laws including the Criminal Administration Act. As a result, the size of windows, natural lighting, and ventilation in accommodations are relatively good. With respect to some aspects of treatment including the frequency of exercise and the installation of monitoring facilities, foreign prisoners are apparently receiving better services than those interned in foreign detention houses and centers.

However, some improvements are still needed in the treatment of foreign prisoners to ensure that the Cheonan Branch and Cheongju Women's Correctional Institute provide appropriate services to them in consideration of their unique characteristics and subsequently serve as specialized foreigner confinement facilities.

ii. Measures to Improve Treatment of Prisoners at Correctional Institutes

1. Permit the use of native languages during meetings with visitors.

Prisoners must be given opportunities to have contact with outside persons in an appropriate manner. The right to receive visitors should be guaranteed as a right of prisoners based on human dignity and value as well as the right to pursue happiness under the Constitution of the Republic of Korea. For such reason, Article 37 of the UN Standard Minimum Rules for the Treatment of

Prisoners stipulates that prisoners shall be allowed under necessary supervision to communicate with their families and reputable friends at regular intervals, both by correspondence and by visits.

Prisoners' right to reception of visitors must be guaranteed to the fullest possible degree under said provisions. However, Article 60 of the Enforcement Decree of the Criminal Administration Act provides that prisoners and visitors shall not use foreign languages during their meetings in principle, with certain exceptions permitted with the approval from the warden of a prison. It is not deemed reasonable to require a foreign prisoner and his or her visitor who can hardly speak the Korean language to obtain special approval of a warden every time they meet. If it is difficult for them to communicate in Korean, it is meaningless to say that the prisoners' right to reception of visitors is guaranteed.

At present, the Cheonan Branch guarantees at its reasonable discretion that ordinary prisoners other than problematic ones may generally use any language that they want during meetings with visitors. In the meantime, different staff members of the reception rooms of the Cheongju Women's Correctional Institute permit or forbid foreign prisoners and their visitors to speak foreign languages. Against this backdrop, Article 60 of the Enforcement Decree of the Criminal Administration Act should be amended in a way that allows imprisoned aliens, in principle, to speak their native languages during meetings with visitors irrespective of their command of the Korean language while requiring accompaniment of an interpreter for those prisoners specifically feared to destroy evidence or attempt to flee.

2. Allow regular telephone use regardless of prisoner grades.

Imprisoned aliens do not have any family members, relatives, or friends in Korea. Even if they have one, they are given no opportunity at all to receive an outside visitor if their status of sojourn is not a registered alien. Thus, it is very likely that they will be substantively segregated from the outside world. In this respect, telephones, rather than reception of visitors, are the most important means of communication with the outside for foreign prisoners. Currently, the Cheonan Branch and Cheongju Women's Correctional Institute apply to foreign

prisoners the same telephone use rules as those applicable to Korean prisoners. In principle, grade 1 and 2 prisoners, but not grade 3 and 4 prisoners, are entitled to use telephones. However, imprisoned aliens are given a special opportunity to make telephone calls during holidays including Chuseok (Korean Thanksgiving).

Article 18-3(1) of the Criminal Administration Act provides that 'the warden may, if deemed necessary within the limit of not impeding the achievement of confinement purposes, permit a prisoner to have telephone communication with outsiders.' Article 51 of the Prisoner Classification and Treatment Rules and Article 7 of the Prisoner Telephone Use Guidelines stipulate that the use of a telephone is permitted as many as five times and three times per month to grade 1 and 2 prisoners respectively. Prisoners awaiting judgment can use a phone five times a month. There are no provisions pertaining to grade 3 and 4 prisoners.

The two correctional institutes' regulations on foreign prisoners' use of telephones were formulated in accordance with said provisions. Given the unique situation of imprisoned aliens that they can hardly communicate with the outside by means of reception of visitors or correspondence, grade 3 and 4 prisoners must be also given opportunities to use telephones on a regular basis.

3. Keep available books written in various languages.

Article 40 of the UN Standard Minimum Rules for the Treatment of Prisoners provides that every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it. Cheongju Women's Correctional Institute and Cheonan Branch respectively have about 4,736 and 5,600 books. Both of them have a wide array of books on subjects ranging from philosophy to history. However, the only books written in foreign languages that Cheongju Women's Correctional Institute has are 5 Russian and 13 Dutch books. All the books owned by the Cheonan Branch are written in Korean except for foreign language dictionaries. Therefore, these two correctional institutes, as entities in charge of foreign prisoners, need to make

available a wider selection of books in the native languages of the prisoners.

4. Offer guidance to life in prison and provide complaint counseling in languages understandable by prisoners.

According to the survey of prisoners in the two correctional institutes, very few of the respondents said that they had received sufficient guidance on prison life at the time of their imprisonment. Some interviewees replied that they could not understand the explanations given to them. This implies that proper guidance regarding essential information on prison life is not provided at all or at least not in such manner and language as is understandable by foreign prisoners.

Article 8-2 of the Criminal Administration Act provides that the warden of a correctional institute shall inform new prisoners of basic matters necessary for life in prison. Those matters include the initial and final dates of a prison term, information on reception of visitors, postal correspondence, disciplinary actions, punishment, and petitions as well as other basic matters necessary for life in prison. Accordingly, the Ministry of Justice makes it a rule to keep its written guidance on prison life at accommodations of each prison building. However, such written guidance is hardly understandable by foreign prisoners even if they can communicate in Korean because many terms used in it are not everyday language. This situation particularly calls for translation of the guidance into many different languages in favor of imprisoned aliens. It is appropriate for the Ministry of Justice rather than individual facilities to prepare and distribute such guidance. In addition, prisoners must be given chances to fully express their opinions in order to resolve wide-ranging difficulties including medical issues that they confront in prison.

Article 5(1) of the Foreign Prisoner Treatment Guidelines prescribes that the head of a correctional institute accommodating foreign prisoners shall designate at least one correctional officer who has good command of a foreign language as a dedicated staffer who carries out daily individual interviews, resolves complaints, arranges prisoners' meetings with religious personnel, conducts verbal and written translation, contacts the concerned authorities including consuls, and

so forth. These guidelines alone cannot ensure in-depth individual meetings with prisoners who have various nationalities and speak different languages or effective settlement of their complaints. Accordingly, interpreters speaking many different languages must be deployed at said correctional institutes that serve as prisons dedicated to accommodation of foreign prisoners.

5. Provide meals in consideration of dietary characteristics.

Article 9 of the Foreign Prisoner Treatment Guidelines stipulates that natives of countries whose staple food is rice shall be given rice or barley, while other foreigners shall be provided with bread, etc. The two correctional institutes offer non-Asian prisoners meals of bread and other Western foods. As Western foods cost more than Korean foods, not all foreign prisoners who want Western foods are provided with them. In some cases, Asian prisoners are offered Western foods according to the judgment of medical officers, etc. Some Asian prisoners are not accustomed to spicy and salty Korean foods and find it difficult to eat the Korean-style meals provided by a prison. Such problems are likely to decrease significantly upon diversification of the cooking methods of side dishes even if Korean foods mainly made of rice or barley are offered. However, the two correctional institutes provide foods cooked in the same manner as those for Korean nationals, failing to provide Korean meals suited to foreigners. Even Asian prisoners whose staple food is rice must be provided with meals that take into consideration their individual characteristics.

4. Conclusion

The NHRCK has determined in connection with the findings from its on-site investigations that the existing detention/correction systems and facilities need to be improved to comply with the principle of respecting and protecting foreigners' basic human rights. Pursuant to Subparagraph 1, Article 19 and Article 25(1) of the National Human Rights Commission of Korea Act, it decided to recommend as specified in the main text.

December 17, 2007

Plenary Committee

2. Recommendation on human rights of sojourners based on humanitarian reasons

Recommendations for Human Rights Protection of Approved Sojourners based on Humanitarian Reasons, dated January 28, 2008

[Main Text]

I. Overview

1. Background of the Recommendation

The Commission started to examine, on the basis of the Article 25 Paragraph 1 of the National Human Rights Commission Act, the requirements of the improvement of the system for sojourners who received approval for their stay on the basis of humanitarian reasons in the light of a previous decision of the Commission as well as international standards. The Commission's stance on this issue emerged after receiving a complaint on June 13th, 2007, from someone who alleged that her right to life had been violated by Korean government. The complainant, an asylum seeker from the Democratic Republic of the Congo, has been recognized to be in a humanitarian status and was issued G-1 visa (status of stay for "etc." reasons. However, under this status, she was not allowed to work nor receive fundamental social supports such as social welfare and medical care services. Also because the renewal terms of stay were too short, she could not predict when she would have to leave the country, which prevented her from living a stable life.

2. Discussion Processes

On June 12th, 2006, the Commission recommended the Ministry of Justice to improve the system for people who received status of stay for humanitarian reasons by 'the recommendation on improvements of the policy for the protection of rights of refugees'.

On June 13th, 2007, the Commission received the complaint that the right to life of persons who were recognized to be in a humanitarian status had been encroached upon by not permitting them to work, etc. The Commission examined the case and concluded that it requires the improvement of systems for people who receive status of stay for humanitarian reasons. The Commission decided to review relevant policies and dismissed the individual case on January 28th, 2008.

3. Subject of the Recommendation

A. Immigration Control Act

Article 2 (Definitions)

2-2. the term "refugee" means a person to whom the Convention relating to the Status of Refugees (hereinafter referred to as the "Refugee Agreement") is applied under Article 1 of the Refugee Agreement and Article 1 of the Protocol relating to the Status of Refugees;

Article 10 (Status of Sojourn)

(1) A foreigner wishing to enter the Republic of Korea shall satisfy requirements of status of sojourn as provided for in the Presidential Decree.

Article 18 (Restriction on Employment of Foreigners)

(1) If a foreigner desires to be employed in the Republic of Korea, he shall obtain the status of sojourn eligible for employment under the conditions as prescribed by the Presidential Decree.

(3) No person shall employ any person having no status of sojourn as referred to in paragraph (1).

B. Enforcement Decree of the Immigration Control Act

Article 12 (Classification of Sojourn Status)

Sojourn status of foreigners under Article 10 (1) of the Act shall be as the attached Table 1.

[Table 1] Sojourn Status of Foreigners (relevant to Article 12)

29. Ect. (G-1)	Person who is not applicable to status from diplomacy (H-1) to permanent residency (F-5) and tourism employment (H-1), and who is admitted by the Minister of Justice

Article 23 (Foreigner's Employment and Status of Sojourn)

(1) For the purpose of Article 18 (1) of the Act, the term "status of sojourn eligible for employment" means such sojourn status as a sojourn status 9. Short-term employment (C-4), 19. Professor (E-1) through 25. Specific activities (E-7), 25-2. Employment for training (E-8), and 25-3. Non-professional employment (E-9) and 25-4. Coastwise sailor (E-10), in the attached Table 1.

II. Relevant Standards

1. Standards for Decision

A. International Convention on the Elimination of All Forms of Racial Discrimination

Article 2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 5 In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration;

B. Convention relating to the Status of Refugees

Article 1. Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

2. Referential Standards

On June 12th, 2006, the Commission recommended to specify the status of stay of people who have legally justified and humanitarian reasons for living in Korea, to improve the relevant system, and to establish and grant separate status of stay for them to allow them to work and to receive basic social securities, through 'the recommendation on improvements of the policy for the protection of rights of refugees'.

On August 17th, 2007, the United Nations Committee on the Elimination of

Racial Discrimination recommended the Korean government after reviewing its periodical report based on the International Convention on the Elimination of All Forms of Racial Discrimination that the refugee status determination process be carried out in a fair and expeditious manner, that asylum seekers and persons granted humanitarian protection be allowed to work, and that comprehensive measures be adopted in order to facilitate the integration of refugees in Korean society.

III. Findings

1. The Views of the Authorities Concerned

A. The Ministry of Justice

The Ministry of Justice permits the people not recognized as refugees or the people requiring humanitarian consideration to sojourn in Korea until the termination of the causes and grants the G-1 status of stay to them. Currently people with the G-1 status are not allowed to receive employment. However the Ministry is preparing the revision of the Immigration Control Act to selectively grant the permission to work under some uniform standards to those who require humanitarian consideration for them to maintain their livelihoods.

B. The Ministry of Health and Welfare

G-1 status sojourners are not eligible to be insurance subscribers under the National Health Insurance Law, nor fundamental livelihood subsidy recipients under the National Fundamental Livelihood Security Law, nor medical care recipients under Medical Care Allowance Law, and nor beneficiaries under the Emergent Welfare Support Law.

Those who with G-1 status are not considered viable applicants for health insurance, which is for long-term sojourning visitors in case of the

domestic investment promotion by foreign capital, the inducement of foreign high-quality human resources, and the legal status guarantee with overseas Koreans. Because those with G-1 status are not eligible for receiving employment, they are not recognized as employees who qualify for National Health Insurance. Also G-1 status is excluded from the status of stays eligible for the Self-employed Insured of the Insurance. However, in case that people with G-1 status are granted employment qualification, the Ministry will review their applications for Health Insurance.

People who are eligible to receive national basic livelihood security benefit according to the National Basic Livelihood Security Act among foreigners are those who are married to the Korean nationals, are bringing up children under age of Korean nationality, or who are divorced or bereaved by the Korean spouses but bringing up under-age children of Korean nationality. The medical care allowance system defines its beneficiaries as basic livelihood subsidy recipients by the National Basic Livelihood Security Act. Under the Emergent Welfare Support Act, foreigners are not eligible for its application, but the immigrants married to Korean people are exceptions included as beneficiaries.

2. The Approved Facts

A. In case that the status of stay is considered necessary to be granted on the grounds of humanitarianism, G-1 status is granted which is not a separate status for those who need humanitarian assistance. Those who are granted G-1 status are excluded from the statuses that are entitled to work according to the definition by the Immigration Control Act and its enforcement decree. Also, the people with G-1 status are not eligible to receive the basic livelihood subsidies from the National Basic Livelihood Security Act, nor medical care from the Medical Care Allowance Act, nor can they be beneficiaries by the Emergent Welfare

Support Act or insurance subscribers by the National Health Insurance Act.

B. The number of people who were not recognized as refugees but who were granted permission to stay in Korea for humanitarian reasons until their humanitarian situations improved was 44 as of March 21st, 2007.

Total no. of persons	2007. 3.	2006	2005	2004	2003	2002	1994-2001
44	-	16	14	1	5	8	-

3. Judgment

The sojourners permitted to reside in Korea for humanitarian causes, who are formally admitted in Korea until the resolution of these causes, are guaranteed their fundamental human rights like human dignity, as protected by the Constitution of Korea and international human rights laws such as the Universal Declaration of Human Rights. The country is expected to uphold its obligations and to make every effort to support the causes of these individuals.

Also, the UN Committee on the Elimination of Racial Discrimination has recommended the Korean Government that the humanitarian sojourners to be made eligible for employment in Korea. The Commission has also recommended the Minister of Justice to regulate such sojourning admission according to the humanitarian causes by law, permit those requiring protection equivalent to that of refugees to be eligible for employment, and establish and grant a separate status of stay to guarantee basic social securities. (June 12th, 2006)

However, the sojourners in Korea with humanitarian status have been granted just 'the G-1 status of stay', or temporary admission thus far. As a result, there have been restrictions on their employment opportunities and also they have been excluded from the eligibility for any medical care and welfare systems

such as National Health Insurance and Emergent Welfare Support.

Even though the government as formally permitted their staying in Korea with a humanitarian status, the fact, that they have been excluded from the eligibility for all the fundamental subsidies in medical care, and social welfare as well as from employment opportunity, means that such restrictions still run contrary to the ideas of human dignity, the right to live, and the basic right to maintain good health as guaranteed by the Constitution of Korea.

Therefore, in order for the Ministry of Justice to institutionally secure the human rights of those sojourning for the humanitarian causes, it must regulate the admission to sojourn on the ground of humanitarianism by law and grant a separate status of stay to permit to such sojourners so they can receive employment. Particularly, for those who are obliged to escape expeditiously from their homelands and sojourn in other countries, precariously until the situations in their countries improve, because of serious human rights infringements such as civil wars, the fundamental livelihood should be secured. In addition, the status of stay for the humanitarian causes may well be accompanied with the security of a minimum length of sojourning necessary to keep their living stable.

Moreover, the Ministry of Health and Welfare may well consider that the sojourners admitted on the grounds of humanitarianism are not eligible for any medical and social welfare protection offered currently through the National Health Insurance Institution and the Basic Livelihood Security System, respectively. So the government needs to establish measures essential to guarantee the emergent or usual medical protection and fundamental social securities.

Lastly, considering the increasing number of the sojourners recognized as humanitarian cases and the pressing needs for state-level protection, the Ministry of Justice and the Ministry of Health and Welfare are responsible for establishing temporary measures of support that will last until well-devised, long-term systems are implemented.

IV. Conclusion

Therefore, considering the fact that employment, medical care, and the social welfare system exclude the sojourners permitted to reside in Korean the grounds of humanitarianism, it is determined that the state of Korea has infringed upon the dignity and value of human rights and the right to seek happiness, which are guaranteed in Article 10 of the Constitution. So, for the protection and improvement of human rights, the related policies and practices are recommended to be improved in accordance with 'RECOMMENDATION' according to Article 25 Paragraph 1 of the National Human Rights Commission Act.

January 28, 2008

Anti-Discrimination Committee

3. Opinion on marriage brokage law

Expression of Opinion on the Proposed Enactment of the Enforcement Degree and Enforcement Rule of the Act on the Management of Marriage Brokerage Business, dated April 10, 2008

[Complainant] National Human Rights Commission of Korea

[Respondent] Minister for Health, Welfare and Family Affairs

[Main Text] With respect to the proposed enactment of the Enforcement Decree and Enforcement Rule of the Act on the Management of Marriage Brokerage Business, of which the Ministry for Health, Welfare and Family Affairs made a prior announcement on April 3, 2008, the NHRCK hereby expresses its opinion to the Minister for Health, Welfare and Family Affairs. Article 6 of the proposed Enforcement Decree of the Act on the Management of Marriage Brokerage Business needs to be improved as follows:

. It is advisable for a party who signed a contract with a marriage broker to prepare his personal information and exchange it with the other party. This shall apply if the other party has not signed a contract with a domestic marriage broker.

b. The personal information provided to the two persons who intend to get married by brokerage should be prepared in the languages understandable by the two parties and provided in writing.

c. Personal information provided to the two parties who are to get married by brokerage should include criminal records for a certain period of time, including records of domestic violence.

d. It is advisable to specify when such personal information must be provided to the two parties who intend to get married by brokerage in the overall brokerage process.

[Rationale]

1. Background Behind Expression of Opinion

In December 2007, the Ministry for Health, Welfare and Family Affairs enacted and promulgated the proposed Act on the Management of Marriage Brokerage Business, which regulates the marriage brokerage business. It includes introduction of the report system concerning the domestic marriage brokerage business and the registration system regarding the international marriage brokerage business. The Ministry plans to enforce the Act on June 15, 2008. It formulated the draft Enforcement Decree and Enforcement Rule of the Act on the Management of Marriage Brokerage Business and made a prior announcement of legislation on April 3, 2008. An increasing need to restrict violations of human rights such as race discriminatory advertisement in the process of international marriage brokerage, provision of false information on would-be spouses, and holding of group meetings for marriage led to enactment of the proposed Act on the Management of Marriage Brokerage Business. Its Enforcement Decree and Enforcement Rule contain important provisions on the human rights of the couples of international marriage including provision of personal information on would-be spouses in the process of international marriage brokerage. Accordingly, the NHRCK examined those proposed laws under Subparagraph 1, Article 19 and Article 20(1) of the National Human Rights Commission of Korea Act.

2. Basis of Determination

The NHRCK's judgement on the proposed laws is based on Article 36 of the Constitution, Articles 17(1), 17(2) and 23(3) of the International Covenant on Civil and Political Rights, Article 10(1) of the International Covenant on Economic, Social, and Cultural Rights, and Article 16(1)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women.

3. Determination

"Collection of Strategic Meeting Materials on Asian Migrant Women to Prevent and Deter International Marriages with the Nature of Purchasing Marriage" published by the Women Migrants Human Rights Center in 2006 points out that in many cases, international marriage brokers provide aspiring brides with false information on their male partners in order to increase marriage rates and thus maximize their profits, which exacerbates the human trafficking that often accompanies international marriages.

The Constitution of the Republic of Korea and all international standards on marriage including the Convention on the Elimination of All Forms of Discrimination Against Women provide for the guarantee of the same right to freely choose a spouse and to enter into marriage only with free and full consent of the concerned persons. In an international marriage brokered by professional brokers, it is necessary for a couple to acquire true and accurate information on the other party for free choice and consent. Therefore, it is deemed desirable that the proposed Enforcement Decree should contain a provision requiring that personal information prepared by a party to a marriage brokerage contract be provided to his potential partner in writing.

The proposed Enforcement Decree needs some improvements with regard to the details and provision of personal information as described below in order to uphold the human rights of marrying persons.

a. Need for two-way provision of personal information

The proposed Enforcement Decree prescribes that persons who signed a contract with marriage brokers should prepare personal information, which shall be furnished to their would-be spouses.

In most international marriages arranged by brokers, Korean men sign a marriage brokerage contract with a domestic company engaging in international marriage brokerage, and foreign women seeking an international marriage conclude such contract with an international marriage broker in their own

country. According to the said provision, personal information on Korean national men interested in international marriage must be provided to foreign women seeking international marriage, while those men may not be provided with information on those women comparable to their own personal information.

Marriage should be an act of free will by two persons who want to get married. Personal information on those persons must be provided to each other on equal terms. Accordingly, the said provision should explicitly stipulate that in an international marriage in particular, personal information on a party who concluded a marriage brokerage contract shall be provided to his would-be spouse in writing, while information on the would-be spouse who is not a party to the contract shall also be provided to the aforementioned contractual party in writing.

b. Need for provision of personal information in an understandable language

In an international marriage, a lack of information on either party to marriage is largely ascribable to marriage brokers' failures to provide sufficient interpretation services. In other words, even if personal information is provided to either party in writing, the utility of the information and the trustworthiness of an intent to get married are compromised in the event that a language not understandable by such party is used. Therefore, there is a need to devise measures to tackle this situation. Applicable provisions must be complemented to ensure that personal information on both parties subject to arranged international marriage be prepared in a language understandable by the other party.

c. Need for the provision of personal information related to criminal records including domestic violence for a certain period of time

Criminal records for a certain period of time including information on domestic violence or sexual assault must be added to the personal information that shall be provided under the proposed Enforcement Decree. Those who commit domestic violence or sexual assault are inclined to be violent habitually,

which may be a primary reason for failure of marriages.

According to a 2007 survey by the Ministry of Gender Equality and Family, 16.9% of marriage immigrants experienced acts of violence or insult. In addition, 9% of them could not report severe domestic violence to the police because of their lack of knowledge on how to do so. Due to the hardship associated with communication and insufficient information on how to resolve problems, female marriage migrants suffering habitual domestic violence by their spouses can hardly raise an issue for themselves.

A few female marriage migrants were recently beaten to death by their husbands. It seems that domestic violence is a serious problem in international marriages. Criminal records on sexual assault, domestic violence, etc. during a set period of time must be provided to both parties to a marriage so that such information may be considered in making a decision on whether to get married or not. The specific scope of the said period requires further discussion.

The U.S. International Marriage Broker Regulation Act of 2005 prescribes that personal information on U.S. nationals who file visa petitions for fiances including information on domestic violence or other types of violent crimes should be provided to international marriage brokers, the Department of Homeland Security, and the Citizen and Immigration Service. It also stipulates that the Department of Homeland Security shall send such information on U.S. nationals to their foreign national fiances or spouses, together with the U.S. nationals' other personal information (Section 832). In addition, U.S. embassies verbally notify foreign national fiancees or spouses of U.S. nationals of criminal records of those U.S. nationals during their marriage interviews.

d. Timing to provide personal information

The proposed Enforcement Decree provides that personal information on a party to an international marriage brokerage contract shall be provided to each of his potential partners in writing. However, it remains ambiguous at which stage of brokerage such personal information must be furnished.

Given the principle of 'free choice and full consent of the concerned persons' as prescribed under the Constitution and international standards, the proper timing of provision of such personal information (i.e. before, during or after a date for marriage) should be duly considered.

The U.S. International Marriage Broker Regulation Act of 2005 provides that an international marriage broker shall not provide any United States male client with the personal contact information of any foreign national female client unless and until the international marriage broker has provided to the foreign national client in the foreign national client’s primary language, the United States male client's personal information, criminal records on violence and sexual assault, and information required under domestic violence laws and other applicable laws and then received from the foreign national client a signed, written consent to release her personal contact information.

The process of international marriage brokerage is often characterized by group dates and unilateral choice by a man as well as swift decision on whether to get married. In order to promote more cautious decision-making by persons to be married, their personal information must be provided to each other prior to their arranged date so that they may freely determine whether to meet their would-be partners or not in the first place, based on such information. Considering this situation, the proposed Enforcement Decree should clearly provide at which phase of brokerage such personal information shall be supplied.

4. Conclusion

For the reasons stated above, the NHRCK hereby makes a decision as specified in the main text pursuant to Subparagraph 1, Article 19 of the National Human Rights Commission of Korea Act.

April 10, 2008

Standing Commissioners' Committee

4. Opinion on law regarding employment permit system

Expression of Opinion on the Proposed Partial Amendment to the Act on the Employment, etc. of Foreign Workers, Dated September 29, 2008

[Main Text]

With respect to the proposed partial amendment to the Act on the Employment, etc. of Foreign Workers ("proposed amendment") regarding which the Ministry of Labor requested an opinion on July 10, 2008, the National Human Rights Commission of Korea ("NHRCK") hereby expresses the following opinion to the Minister of Labor.

A. The provisions permitting an organization of business owners to conduct a basic skills test of local workers may be against the existing policies of the government that has endeavored, through signing of MOUs, to prevent irregularities pertaining to dispatch of foreign workers. Therefore, it is advisable to delete those provisions.

B. With respect to easing of the one-year term restrictions on an employment contract, it is desirable to devise measures to prevent possible forced labor because the purport of the existing provisions limiting the effective period of an employment contract to one year is to preclude the risk of long-term forced labor.

C. Concerning relaxation of the requirements for reemployment for alien workers whose period of sojourn has expired, it is advisable to add in the proposed amendment a provision that such period may be extended upon request from their employers or conclusion of an employment contract with other employers prior to their departure, since there exists a possibility that employers may worsen their working conditions and require endurance of unfair treatment under the pretext of reemployment.

D. Regarding extension of the period in which alien workers should obtain permission of a workplace change, it is desirable to provide that if more than two months elapse from the deadline for a reason not attributable to the workers, their departure may be postponed for a sufficient period of time after relevant circumstances are remedied.

[Rationale]

1. Background Behind Expression of Opinion

On July 9, 2008, the Ministry of Labor made a prior announcement on enactment of the proposed amendment for the purpose of executing deregulation intended to ensure stable supply and employment of foreign workers to meet the needs of domestic companies and ameliorating the requirements for a change in workplace to safeguard the rights and interests of alien workers. Pursuant to Subparagraph 1, Article 19 and Article 20(1) of the National Human Rights Commission of Korea Act, the NHRCK reviewed this proposed amendment, which contains important matters pertaining to the human rights of alien workers including their change of workplace.

2. Basis of Determination

3. Determination

A. Assessment of Foreign Job-Seekers' Qualifications (Article 7(2) of the Proposed Amendment)

Article 66 of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that recruitment of workers shall be restricted to the public services or bodies of the State and international organizations (subject to any authorization, approval, and supervision by the public authorities of the States, agencies may also be permitted to undertake the said operations). Based on a decision by its Plenary

Committee on January 11, 2007, the NHRCK recommended that the Committee on Foreign Workforce Policies under the Prime Minister retract its decision to “permit selection of candidates through interviews in the candidates' countries as regards employment in the construction industry." The decision above is deemed inappropriate as it may contradict the existing policies of the government, including granting of the authority to conduct interviews in candidates' countries and select candidates only to the Human Resources Development of Korea, that are designed to prevent possible irregularities by recommended training institutes concerning dispatch of foreign workers under the industrial trainee system. The Ministry of Labor contends that under the employment permit system, selection of workers from a computerized list of job seekers based on examination of documents only leads to dropouts and unqualified personnel after their entry into Korea due to their lack of work competencies. According to the Ministry, such situation imposes a burden on employers and therefore assessments in candidates' own countries by an organization of business owners should be partially permitted. However, if an organization of business owners is allowed to directly conduct a basic skills test of workers in a foreign country as set out in the proposed amendment, there arises the possibility of corruption of such organization regarding dispatch of foreign workers, as seen in the industrial trainee system. It is, therefore, advisable to delete the corresponding provisions.

B. Easing of the One-year Term Restrictions on Employment Contracts (Article 9(3) of the Proposed Amendment)

Article 16 of the Labor Standards Act prescribes that "the term of a labor contract shall not exceed one year, except in cases where there is no term fixed or where a term is fixed as necessary for the completion of a certain project." The provision limiting the effective period of any fixed-term employment contract ("fixed-term employment contract") to one year prevents the risk of long-term forced labor. However, the provision became null and void on July 1, 2007 with entry into effect of the Act on the Protection, etc. of Fixed-term and Part-time Employees.

Until invalidation of Article 16 of the Labor Standards Act, workers could

freely terminate their long-term employment contracts exceeding one year at any time after one year from conclusion of such contracts without having to pay compensation for damages. Accordingly, they could protect themselves from forced labor against their will.

Absent such restrictions as provided in Article 16 of the Labor Standards Act, however, it is acknowledged that the provisions of the Civil Act on termination of an employment contract shall apply. In such case, if a worker signed an ordinary fixed-term employment contract of three years, the worker may not freely terminate the contract during the three-year period unless the employer is held liable for non-performance of obligations or the like. If the worker wishes to terminate the contract, the worker has to compensate the employer for any damages incurred. Thus, the worker is effectively bound by a long-term employment contract.

Under these circumstances, it is necessary to clearly provide for workers' statutory rights to terminate an employment contract so that not only employers but also alien workers may refuse to renew employment contracts after their expiration. In addition, it is advisable to include the cases where a worker intends to reject renewal of an employment contract upon its expiration in the reasons for applying for a change in workplace so as to preclude any risk of long-term forced labor.

C. Relaxation of the Requirements for Reemployment for Alien Workers whose Period of Sojourn Has Expired (Article 18-2 of the Proposed Amendment)

Article 23(1) of the Universal Declaration of Human Rights provides that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." In addition, Paragraph 1, Article 6 of the International Covenant on Economic, Social, and Cultural Rights signed and ratified by the Republic of Korea on July 10, 1990 stipulates, "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts." Those provisions

explicitly state that lawful rights to work shall be guaranteed to foreign workers as well.

Under the existing employment permit system, unnecessary procedures, time, and expenses are required when an employer wishes to reemploy a foreign worker whose period of sojourn has expired or when an alien worker seeks reemployment, owing to monolithic short-term employment cycle policies. In order to reduce the limitations on utilization of human resources and the costs of reemployment, it is desirable to formulate measures easing reemployment requirements for those workers whose period of sojourn has expired. However, the proposed amendment stipulates that alien workers may be reemployed only to the extent that their employers make such request upon expiration of their employment period. In other words, foreign workers cannot be reemployed without the consent of their employers no matter how competent and faithful they are. It is feared that employers might refuse to improve their working conditions by taking advantage of reemployment.

If the departure requirements are limited narrowly as above, employers may worsen the working conditions of foreign workers and require their endurance of unfair treatment under the pretext of reemployment by using their monopolistic position regarding reemployment. Therefore, it would be advisable to insert in the proposed amendment "upon request from their employers or conclusion of an employment contract with other employers prior to their departure."

D. Extension of the Period in which Alien Workers Should Obtain Permission of Workplace Change (Article 25(3) of the Proposed Amendment)

On January 10, 2008, the NHRCK, based on a decision by the Plenary Committee, made the following recommendation to the Minister of Labor: modify Article 25(3) of the Act on the Employment, etc. of Foreign Workers, providing that in case a foreign worker has failed to obtain permission to change his/her workplace within two months after making an application therefor, the foreign worker shall depart from the country, in order to ensure that such foreign worker may stay in the country during a period permitting his or her stable

reemployment; and amend Article 25(3) of the said Act in such manner that if the foreign worker cannot continue working for such reasons as sickness or pregnancy or if the period to change his/her workplace has expired due to the business owner's failure or negligence to file reports or perform registrations, the period for a change of the workplace shall be extended for the period in which said circumstances continue to exist.

September 25, 2008
Standing Commissioners' Committee

II. Human Rights Violation and Discrimination Cases

1. Discrimination against overseas Chinese

Regarding the discriminatory action in refusing to acknowledge school credits from Hwakyo schools, case number 04Jincha386, dated August 29, 2006

[Complainant] Anonymous

[Respondent] Ministry of Education & Human Resources Development

[Main Text]

1. The Complaint

Credits from Hwakyo schools within the Republic of Korea (hereafter, "Korea") are currently not being recognized. Those who wish to attend or transfer to a Korea school after attending an Hwakyo School can only do so by passing the qualification exam. While China and other countries recognize credits from Hwakyo schools, Korea does not recognize them, and thereby is discriminatory against one's country of origin.

2. The Defense

A. Because foreign schools are recognized to have their own specialized and particular needs, they are exempted from regulations such as teaching qualifications, curriculum, etc. While foreign students can enroll in state schools, they instead opt to attend foreign schools, which set their own curricula.

B. As evidenced by repeated failure (3 times) to adopt legislation

regarding foreign school accredited operational regulation, the issue of Korean citizens or residents attending foreign schools is a sensitive subject, for which a national consensus is difficult. The current matter should therefore be rectified through seeking passage of appropriate legislation.

C. Also, if we recognize foreign school credits of Korean nationals or residents, it may damage the educational curriculum of local schools. Thus, this case is not a discrimination against Hwakyo schools, but another instance asserting the problem of foreign schools themselves. Recognition of schooling is an institutional matter that each sovereign country applies to its respective needs and realities.

D. Those who enroll in foreign schools do so with the foreknowledge that their school credits will not be acknowledged. Also, though foreign schools can be locally accredited, the schools themselves choose not to file for such recognition.

3. Related Standards

As stated under the relevant provisions in accompanying Document 1.

4. Findings of Fact

A. Promoted in 2003 by the Ministry of Education & Human Resources Development and other such institutions, the minimum standard of a Korean educational curriculum dedicates either one hour to Korean language, culture, and history, each, or two or more hours on the combined subjects.

B. For students in the fifth grade and on, all Hwakyo schools teach at least 2 hours of Korean language. Due to the recent increase in the number

of Hwakyo-school students who continue their studies at Korean universities and expanding number of classrooms of the Korean educational curriculum, Hwakyo middle schools are dedicating more than 2 hours, Hwakyo high schools, more than 3 to 10 hours per week on Korean history, geography, and society.

[Table 1] The Status of Hwakyo schools

School	Nationality	**Education**	**Number of Students**	
			Under-graduate	**Native**
1. OO Hwakyo Middle and High School	Taiwanese	Middle High	629	11
2. OO Hwakyo Primary School	Taiwanese	Elementary	62	0
3. OO Hwakyo Primary School	Taiwanese	Kindergarten Elementary	537	35
4. OO Hwakyo Primary School	Republic of China	Kindergarten Elementary	197	1
5. OO Hwakyo School	Republic of China	Middle High	145	0
6. OO Hwakyo Elementary School	Taiwanese	Elementary	64	13
7. OO Hwakyo Middle and High School	Taiwanese	Middle High	50	0
8. OO Hwakyo Primary, Middle and High School	Taiwanese	Kindergarten Elementary Middle High	329	158
9. OO Hwakyo Primary School	Taiwanese	Kindergarten Elementary	97	60
10. OO Hwakyo Primary School	Taiwanese	Kindergarten Elementary	71	0
11. OO Hwakyo Primary School	Taiwanese	Elementary	3	0
12. OO Hwakyo Primary School	Taiwanese	Elementary	18	0

13. OO Hwakyo Primary School	Taiwanese	Elementary	5	0
14. OO Hwakyo Primary School	Taiwanese	Elementary	2	0
15. OO Hwakyo Primary School	Taiwanese	Elementary	6	1
16. OO Hwakyo Primary School	Taiwanese	Elementary	12	6
17. OO Hwakyo Primary School	Taiwanese	Elementary	18	0
Total 17			2245	285

C. Table 1 shows that credits from Korean kindergartens and elementary schools in Taiwan are being recognized under the provisions of the Establishment of Immigrant and Foreign Schools Act, while credits from Hwakyo elementary, middle, and high schools in Korea are not.

[Table 2] The Status of Korean Schools in Taiwan

School	Taipei Korean Primary School	Kaohsiung Korean School
Nationality and Language	Korea	Korea
Level of Education	Kindergarten, Elementary School	Kindergarten, Elementary School
Number of	2 Kindergarten Classes (17 Students)	4 Elementary Classes (28 Students)
Classes & Students	6 Elementary Classes (36 Students)	
Founding Date	February 1, 1962	January 25, 1961
The Korean Government's Authorization Date	October 1, 1961	January 25, 1965
The Taiwanese	December 18, 1961	February 12, 1961

Government's Authorization Date		

D. Unlike Korea, Japan recognizes credits from British, American, Korean and other foreign schools via embassies and related government agencies. However, credits from Jochongnyeon Schools, which constitutes a large majority of the foreign schools in Japan, are not being recognized for political reasons. Though it is difficult to determine how many native Japanese attend foreign schools, students who graduate from foreign schools generally enjoy the same recognition of credits that those from ordinary Japanese schools do.

E. In January 2006, under the National Action Plan for the Promotion and Protection of Human Rights (NAP), the National Human Rights Commission of Korea pressed for the advancement of Hwakyo schools' right to teach, "Even if Hwakyo schools don't follow Korea's educational curriculum, students of Hwakyo schools should be permitted to conduct themselves as members of Korean society and, because Hwakyo schools are taxed for being an educational institution, they should be treated differently from other foreign schools."

5. Decision

Article 27 of the International Covenant on Civil and Political Rights states, "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." All paragraphs under Article 29 of the International Convention on the Rights of the Child state that we should strive for, "The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations

different from his or her own." Additionally, Article 30 states, "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language." Paragraph 2, Article 6 of the Korean Constitution also provides that, 'The status of foreigners is guaranteed as prescribed by international law and treaties.' Finally, Item 1, Article 2 of the National Human Rights Commission (NHRCK) Act states that these treaties on international human rights, once ratified by Korea, must guarantee an individual's freedom and rights.

The ethnic Chinese have settled and resided in Korean society for over 100 years. Unlike other foreigners residingin Korea, a majority of ethnic Chinese hold permanent residencies and are settled in Korean society as one, distinct ethnic group. They have been active members of Korean society, participating in the May 31 2006 local elections by electing and voting for their region's representative, and by paying the Korean government numerous taxes, including an education tax. Ethnic Chinese students of Hwakyo schools are settled and generally wish to continue residing in Korea and become integrated members of Korean society. They are unlike foreign-school students, whose guardians are either temporary residents or diplomats, the majority of whom proceed to higher educational institutions in their native countries or a third country.

As stated in the above International Treaties and the Korean Constitution, minorities in a society largely composed of a different ethnic group have the fundamental right to enjoy their distinct cultures, languages, religions, and especially to educate future generations on their cultural assets. Suffice it to say that these rights are not merely for the ethnic Chinese in our society, but also for Koreans residing in Japan and for other such minority groups of various countries.

From this perspective, by refusing to recognize credits from Hwakyo schools, which were established by ethnic Chinese to continue their cultural traditions and conduct classes in their own language, and by thus refusing students who have completed their Hwakyo schooling the opportunity to attend a higher educational

institution, the defendant committed an act of discrimination against one's country of origin.

The defendant argues that if a Hwakyo school wishes to be considered a legitimate schooling body, it must meet the standard of a school whose credits are recognized, namely one that is Korean. In order to meet that standard, Hwakyo schools must, under Articles 97 and 98 of the Primary & Secondary Education Law & Its Regulation, operate according to the educational curricula of Korean middle and high schools. In essence, this means that a school must teach the same contents taught at ordinary Korean Middle and High schools, and also means that Hwakyo schools will not be able to teach in their own language.

Further, the defendant claims that each student voluntarily chose to attend these schools, knowing that their school credits would go unrecognized, and thus, should personally have to deal with the consequences of their decisions.

However, situation in which a person receives personal damages cannot be compared to a situation in which his/her human rights are violated. In no light can a human rights violation be reduced to a case of mere personal loss. Students enter Hwakyo schools in order to preserve their cultural identity.

Their endeavor is one guaranteed under the right to pursue happiness, and should be safeguarded, rather than demoted to poor decision-making.

Furthermore, to rectify its discriminatory practices against ethnic Chinese, the defendant shall pursue a program to recognize the credits of Hwakyo-school students who wish to transfer or enter Korean schools and other educational institutions of higher degree.

6. Conclusion

According to Article 27 of the International Covenant on Civil and Political Rights and Articles 29 and 30 of the International Convention on the Rights of the Child, refusing to recognize Hwakyo school credits is a violation of the ethnic Chinese person's right to be educated in his/her own language and pursue happiness. As this violation is classified under Item 2, Paragraph 1, Article 44 of the NHRCK

Act as a discriminatory act against one's country of origin, the Commission decides as it has ordered.

August 29, 2006

Anti-Discrimination Committee

2. Racial discrimination in service

A. Rejection of service in restaurant based on racial discrimination, case number 07Jincha525, dated September 11, 2007

[Complainant] Anonymous

[Respondent] President of the OOORestaurant

[Main Text]

1. The Complaint

It is alleged that the defendant commit a racial discrimination by rejecting the victims from the defendant's restaurant, the OOO . At approximately 5:00PM on May 18, 2007, as the victims ordered food in the OOORestaurant, an employee asked the victims to produce identification cards. After having their passports checked, the victims were told that Africans were not welcomed in the restaurant. When the victims inquired as to the reason for denial of service, the employee confirmed that the victims were denied entering because they were racially considered to be "black."

2. Positions of the Relevant Parties

A. Complainant

Refer to comments listed under 'the Complaint'.

B. Defendant

i. The OOO restaurant has been recently requesting identification card from all foreigner patrons, after an incident between employees and some Nigerians caused damages to our business.

However, we have only barred a very small number of customers from entering the restaurant. The restriction policy is not on the grounds of nationality or race of customers.

ii. When the victims entered the restaurant on May 18, 2007, an employee explained the position of the restaurant first and asked the victims to present identification cards (ID). The victims did not present their ID and started to become angry with the employee. This conflict arose between the employee and the victims due to the victims' assumption that the request for ID was a response to their race.

iii. Currently OOO Restaurant does not restrict patrons to use the restaurant if they present identification cards.

C. Witnesses

ⅰ. OOO (OOO residing in Korea)

I had been a regular customer of the OOO restaurant. However when I went to the restaurant three or four times between April and May, I was denied entering to the restaurant either because I was black or because I was Nigerian. I have never been to the restaurant since.

ii. OOO (OOO residing in Korea)

An employee of the OOOrestaurant once told me, "We don't want Nigerians." Although the employees of the restaurant still ask customers to show their ID cards, they do not reject Nigerians anymore.

iii. OOO (OOO residing in Korea)

One day in April of 2007, when I went to the OOO restaurant with my wife who has U.S. citizenship, an employee stood in the entrance of the restaurant and asked us to present our ID cards. After checking our passports, the employee let my wife enter, but would not let me enter, saying, "We don't allow people from your

country." The employee explained that they restricted Nigerians because there was a Nigerian that had caused trouble in the restaurant. I have never been to the restaurant since then because I thought it was not right to reject all other Nigerians, who are not related to the previous trouble in the restaurant.

3. Relevant Standards

A. The Constitution of the Republic of Korea

Article 11 (1). All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.

Article 37 (1). Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution.

B. International Convention on the Elimination of All Forms of Racial Discrimination

Article 1 (1). In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Article 5. In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks

C. National Human Rights Commission Act

Article 2 (Definitions) The definitions of terms used in this Act shall be as follows:

4. The term "discriminatory act violating the right to equality"means any of the following acts committed without reasonable cause based on gender, religion, disability, age, social status, region of birth (including place of birth, domicile of origin, one's legal domicile, and major residential district where a minor lives until he/she becomes an adult), national origin, ethnic origin, appearance, marital status (i.e., married, single, separated, divorced, widowed, and de facto married), race, skin color, thoughts or political opinions, family type or family status, pregnancy or birth, criminal record of which effective term of the punishment has expired, sexual orientation, academic background or medical history, etc. If a particular person (including groups of particular persons; hereinafter the same shall apply) receives favorable treatment for the purpose of remedying existing discrimination, and the favorable treatment is excluded from the scope of discriminatory acts by any other Acts, then such favorable treatment shall not be deemed a discriminatory act:

(a) Any act of favorably treating, excluding, differentiating, or unfavorably treating a particular person in employment (including recruitment, hiring, training, placement, promotion, wages, payment of commodities other than wages, loans, age limit, retirement, and dismissal, etc.);
(b) Any act of favorably treating, excluding, differentiating, or unfavorably treating a particular person in the supply or use of goods, services, transportation, commercial facilities, land, and residential facilities;
(c) Any act of favorably treating, excluding, differentiating, or unfavorable treating a particular person in the provision of education and training at or usage of educational facilities or vocational training institutions

4. Facts and Findings

A. The victims claim that, on May 18, 2007, an employee in the

OOOrestaurant rejected the victims to enter the restaurant because they were African.

The defendant insists that the employee only asked for ID cards and that the victims angrily responded, causing conflict. No disinterested witnesses or evidence were found regarding this incident.

B. However, witnesses that were rejected to enter the restaurant because they were black or Nigerians in the similar period when the victims were allegedly rejected were found. Based on the statements of these witnesses, the Commission judges that it is highly probable that the victims were rejected to enter the OOO restaurant on the ground of nationality or another similar reason.

C. Even though the policy of the defendant on rejecting service to Nigerians was established owing to the trouble caused damages of the restaurant by some Nigerians, there is no justifiable reason to restrict all Nigerians to enter the restaurant because it is prejudice to presume all Nigerian customers as people who will cause damages in the future.

D. Therefore, the Commission decided that the restriction on Africans or Nigerians from entering the OOO restaurant is a discriminatory act based on race or nationality.

5. Conclusion

Based on these findings that the act of the defendant in the complaint is discriminatory, the Commission makes this recommendation in accordance with 'RECOMMENDATION' pursuant to Article 44, Paragraph 1, Sub-paragraph 1 of the National Human Rights Commission Act.

September 11, 2007

Anti-Discrimination Committee

B. Discrimination in provision of commercial service against African, case number 08Jincha121, dated August 25, 2008

[Complainant] OOO

[Respondent] 1. KIM OO
2. The head of the OO Office of the Seoul OO Police Station

[Main Text]

1. The Complaints

A. When the complainant tried to enter the OO Pub & Grill (hereinafter called 'OOO Pub') located in OO at 11pm on Feb 7th 2008, the Managing Director of OOO Pub, KIM OO(hereinafter called 'KIM ') asked the complainant to show his ID. After seeing his ID, KIM refused his entrance, saying that Africans are not allowed to come in the OOO Pub. It is allegedly discrimination that the KIM rejected to provide service to the complainant because the complainant is African.

B. While the complainant was protesting about the rejection of service by the OOO Pub, the complainant was assaulted by 4 employees of OOO Pub. The complainant went to the OO Office of the OO Police Station at 11:25pm on this same day for investigation of the assault case. However the police investigated only 2 persons from the OOO Pub although the complainant alleges that he was attacked by 4 employees of Helios Pub. Also, the police allowed KIM OO to go out and change his clothes even though there was blood on the clothes. It is allegedly human rights violation that the police carried insufficient investigation.

2. Positions of the Relevant Parties

A. The Complainant

The same as stated in 'the Complaints'.

B. The Defendants

i. KIM OO

1. The OOOPub is a space that everyone from all over the world can freely come in and mix with each other and there is no restriction in providing service for people who come from Africa. However, the OOO Pub strictly restrict the entrance of those who have provoked and been involved in a certain offensive activities such as violence, sexual assault, theft, etc. for protecting the safety and rights of other major customers.
2. The complainants frequently come to OOO Pub since Jan. 2008 and he has been bad-mannered to other female customers and even conducted sexual harassment. Although there is no material evidence of his guilt, there was even a report on a wallet stolen after mixing with the complainant. It is the reasons why KIM OO asked the complainant to present the ID to check his name. After explaining the claims against the complainant, KIM OO rejected entrance of the complainant to the OOO Pub. However, KIM OO alleges that he has never said "Africans are prohibited from coming into this Pub".

ii. The OO Office of the Seoul OO Police Station

1. The complainant and KIM OO and LEE OO of OOOPub came into the OO Office of the Seoul OO Police Station around 23:26 on Feb 7th 2008 and argued that they had been attacked by each other. The police started to investigate the case and listened to the statements from each party. When the police interrogated KIM OO based on the complainant's statement that KIM had struck the complainant using a baton, KIM finally admitted the fact. KIM OO was arrested as an offender at the OO Office around 00:01 the following day and was

transferred to the Criminal Department of the Seoul OO Police Station.

2. Putting the various statements from people concerned including the complainant together, the police concluded that the customers who were entering the OOO Pub and the complainant bumped into each other and the complainant mistakenly thought that these people were also the employees of the OOO Pub, and sent the report with the conclusion to the Criminal Department of the Seoul OO Police Station.

3. The Regulations Concerned

1. National Human Rights Commission Act

Article 2 (Definitions)

The definitions of terms used in this Act shall be as follows:

4. The term "discriminatory act violating the right to equality" means any of the following acts committed without reasonable cause based on gender, religion, disability, age, social status, region of birth (including place of birth, domicile of origin, one's legal domicile, and major residential district where a minor lives until he/she becomes an adult), national origin, ethnic origin, appearance, marital status (i.e., married, single, separated, divorced, widowed, and de facto married), race, skin color, thoughts or political opinions, family type or family status, pregnancy or birth, criminal record of which effective term of the punishment has expired, sexual orientation, academic background or medical history, etc. If a particular person (including groups of particular persons; hereinafter the same shall apply) receives favorable treatment for the purpose of remedying existing discrimination, and the favorable treatment is excluded from the scope of discriminatory acts by any other Acts, then such favorable treatment shall not be deemed a discriminatory act:

(b) Any act of favorably treating, excluding, differentiating, or unfavorably treating a particular person in the supply or use of goods, services, transportation, commercial facilities, land, and residential facilities;

Article 30 (Matters Subject to Investigation of Commission)

(1) In any case falling under the following subparagraphs, a victim of a human rights violation or discriminatory act (hereinafter referred to as a "victim"), or any person or organization possessing knowledge about a human rights violation may file a petition to the Commission:

1. In the case such human rights as guaranteed in Articles 10 through 22 of the Constitution are violated by the performance of duties (excluding the legislation of the National Assembly and the trial of a court or the Constitutional Court) of state organs, local governments or detention or protective facilities; or

2. In the case there exists a discriminatory act or any violation of the right to equality committed by a legal body, organization, or private individual.

2. International Convention on the Elimination of All Forms of Racial Discrimination

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

4. Approved Facts

A. Concerning the Part A of the Complaint

i. When the complainant was trying to enter the OOO Pub around 11:00pm on Feb 7th 2008, KIM OO checked the ID of the complainant and then KIM refused the complainant.

ii. The complainant and KIM OOwith LEE OO came into the OO Office of the Seoul OO Police Station at 23:25 on Feb 7th 2008 and requested an investigation about the violence case. As a result of decoding the related CCTV, it was identified that the complainant claimed the police and other person in a fiery tone repeatedly three times that KIM OO blocked him entering the Helios Pub because he was an Ethiopian or African. There was no reaction by KIM OO and LEE OO about the complainant's assertion in the CCTV.

iii. According to the Investigation report done by the Criminal Department of the Seoul OO Police Station on Feb 8th 2008, it is recorded that the violence case provoked when KIM OO refused the complainant to provide service, saying 'No African is allowed' after checking the complainant's ID, and the complainant protested about the KIM's action saying 'Why am I allowed to come in?'.

B. Concerning the Part B of the Complaint

i. In the process of police investigation about violence case, the complainant continuously insisted that he was attacked by 4 employees of Helios Pub and the police should investigate all of 4 people.

However, KIM OO and LEE OO insisted that the number of people of the Helios Pub involved in this incident was only 2.

Therefore, the number of people by the OOO Pub involved was unclear in the initial stage of investigation by the police. In consideration of the statements from parties involved and the circumstances, the OO

Office of the Seoul OO Police Station concluded that the complainant had mistakenly regarded the customers as employees of the OOOPub.

ii. When KIM OO came in the OOOffice of the Seoul OO Police Station with the complainant and LEE OO at 23:25 on Feb 7 2008, he was wearing a white shirt. Because KIM OO insisted that the complainant attacked LEE OO with a stone, the police asked KIM to bring the stone as evidence. KIM OO went out to find the stone and when he came back to the OO Office around 23:30, he was putting a black colored jacket on him. KIM OO was on the black jacket when he entered and left the OO Office 3 times more in the process of investigation.

5. Judgments

A. Concerning the Part A of the Complaint

The complainant alleged that the defendant 1 refused to provide service because the complainant was an African at OOO Pub on Feb 7th 2008, and the refusal was discriminatory. Therefore, the Commission reviews the reason of the refusal is whether the complainant being African or not.

Taking into account of the facts that the complainant had been to the OOO Pub before the incidence occurred and the defendant 1 stated that the OOO Pub was not restricting any customer with racial the reason, the Commission considers that defendant 1 does not restrict the provision of service to some customers because of his/her nationality or ethnic origin in general.

However, the complainant consistently insisted that he was refused by the Defendant 1 because he was an African in the process of investigation conducted by the OO Office of the Seoul OO Police Station on Feb 7th 2008. Regarding the claim of the complainant, the defendant 1 did not contradict, and the Seoul OO Police Station concluded that the violence was provoked when the defendant 1 had restricted the complainant's

entrance to the OOO Pub, saying Africans were not allowed after checking the complainant's ID. Moreover, the defendant 1 claimed that he asked the complainant to present the ID in order to check his name even though he knew the complainant already. It is difficult to understand the defendant's allegation that he tried to check the name of the complainant who already know, because if you know a person already it is possible to identify when you see the person.

Putting the circumstances aforementioned together, the Commission concludes that the defendant 1 refused the complainant to enter the OOO Pub around 11:00pm on Feb 7th 2008 and said that Africans were not allowed to come in the Pub after checking the ID of the complainant.

Although the refusal of provision of service on the ground of ethnic origin or nationality does not happen all the time on the place of business, and may be based on the intention to protect the safety and rights of major customers, the refusal of providing service of defendant 1 on the ground of being African is a discriminatory act violating the right to equality according to the Article 2, Paragraph 4 of the National Human Rights Commission Act which defines the exclusion of some people in using commercial facilities on the ground of their race is discrimination, and to the Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination which prohibit all forms of racial discrimination violating the right to access any facilities or service.

B. Concerning the Part B of the Complaint

The complainant claimed it is human rights violation that the police had investigated only 2 among 4 employees of OOO Pub who had been involved in violence case, and had allowed KIM OO to change clothes with blood with the intention to destroy the evidence of related crime.

However, the OO Office of the Seoul OO Police Station concluded that the complainant mistook the customers for employees of the OOOPub, based

on the statements of relevant parties. Therefore, the Commission consider that the judgement done by the OO Office of the Seoul OO Police Station is within the discretion of the investigating organization so that not the human rights violation stated at Article 10 of the Constitution.

The complainant also claimed that the defendant 2 had allowed KIM OO to change clothes with blood in order to destroy the evidence, while the defendant 2 counter-claimed that KIM OO had put on a jacket additionally on the shirt and not changed. Even after decoding of the relevant CCTV decoded by the Commission, it is difficult to identify whether KIM OO changed the shirt with blood or put on jacket on the shirt, where it is certain that the KIM was on the jacket. Therefore, the Commission concludes that there is no enough evidence to prove the complainant's claim besides the opposite statements from each party.

6. Conclusion

On the reasons stated above, the Commission concludes as the text in the 'DECISION', in accordance with the Article 44, Paragraph 1, Sub-paragraph 1 regarding the part A of the Complaints, with the Article 39, Paragraph 1, Sub-paragraph 1 of the National Human Rights Commission regarding part B of the Complaints respectively.

August 25, 2008
Anti-Discrimination Committee

3. Human rights violation in the process of deportation

A. Regarding the human rights violation of compulsory eviction, case number 08Jinin28, dated April 28, 2008

[Complainant] Anonymous

[Respondent] Ministry of Justice, OO Immigration Office

[Main Text]

1. The Complaint

Between the hours of 08:00 and 09:30 on November 11, 2007, officers from the Investigation Department of the OO Immigration Office force fully took the complainants to police authorities at the OO Foreigner Detention Facility and issued a eviction order on the grounds that the complainants, employed as second section committee chairman and assistant committee chairman at their respective offices in the Workers Union of OO, OO, OO, and OO, were illegally residing in Korea. On November 29, the complainants submitted an appeal to the Ministry of Justice against the OO Immigration Office's detention and eviction orders. The Minister dismissed the complainants' appeal and, at 18:00 on December 23, forwarded the decision to their attorney.

Subsequently, beginning at approximately 03:00 on December 13, 2007, the OO Immigration Office implemented the complainants' eviction order. At around05:00, the complainants' attorney repeatedly telephoned the OO Foreigner Detention Facility to inquire about the status of the eviction order. An employee at the OO Foreigner Detention Facility replied, "As of today, there are no plans execute out the order." At approximately 06:20 of the same morning, another representative of the complainants telephoned to request an interview with his clients and inquire whether the eviction order

had been executed. The employee again replied, "As of today, there are no plans to execute the order."

Yet, since approximately 03:00 A.M on December 13, 2007, the OO Immigration Office had already implemented measures to evict the complainants. Using a OO Air aircraft that had arrived at 07:30, stood by until approximately 08:30, then departed with the complainants at 09:30, the OO Immigration Office successfully executed the eviction order and, in doing so, violated the complainants' rights.

A. At 18:00 on December 12, 2007, the OO Immigration Office sent the complainants' attorney a written rejection of the complainants' appeal against the detention and eviction orders. Because the OO Immigration Office forced the complainants to depart the following morning, the complainants had neither the time to meet and discuss the detention and eviction orders with their attorney nor the subsequent opportunity to file a lawsuit against the OO Immigration Office. The complainants were deprived of their right to legal counsel and due process.

B. The OO Immigration Office began executing the eviction order at around 03:00 on December 13, 2007. Yet, from approximately 18:00hrs on the 12th, to 06:20hrs of the 13th, when asked several times after the fact that whether eviction orders were being carried out, the defendants imply replied, "This must be discussed internally." The defendant did not mention anything in regard to the implementation of the eviction order, and even said, "As of today, there are no plans to execute the eviction order." By forcing the complainants to depart the country, the defendant violated their rights to a lawyer, legal counsel, and other related aspects of due process guaranteed them by the Constitution.

C. The detention and eviction orders, the Ministry's dismissal of the complainants' appeal against the two orders, and the forcible eviction of the complainants violate Paragraph 3, Article 12 of the Constitution,

which requires a warrant, issued by a judicial officer, in the instance that physical force is needed to implement an eviction order.

2. Contentions of the Parties

Convinced that the OO Immigration Office had used racial profiling against them, the complainants submitted an appeal to the National Human Rights Commission (hereafter 'the Commission'). The OO Immigration Office interfered with the complainants' appeal process by forcing them to depart the country amidst the Commission's investigation.

A. Complainant

Refer to comments listed under 'the Complaint.'

B. Defendant

1. Regarding the violation of the complainants' right to trial

i. All three complainants entered the country on a temporary visa and had since resided in the country illegally for over 10 years. Paragraph 1, Article 46 of the Immigration Control Act clearly states that all illegal residents risk eviction. Therefore, the detention order issued under Paragraph 1, Article 63 was legal and necessary.

ii. The detention order under Article 63 of the Immigration Control Act states that in the instance that one receives a compulsory eviction order but cannot depart the country immediately, he/she is to give a provisional deadline to complete the necessary preparations for departure, then be promptly evicted.

2. Regarding the violation of the complainants' right to an attorney by means of forcing their departure from the country without notice.

i. The complainants had plenty of time to consult an attorney in the two weeks that followed the issuance of the eviction order. Also, it is an undisputable truth that the complainants were breaking the law and, as long as the eviction order's legality and enforcement were not in dispute, it was well expected for the order to be enforced as soon as the complainants were prepared to leave.

ii. For the duration of their illegal residency, the complainants violated the laws of the Republic of Korea and, in a situation where any objective third party could easily predict the complainants' attempt to resist eviction, the Office felt no obligation to notify the complainants' attorney of their eviction. Moreover, one's right to counsel and wish to consult a lawyer for incalculable lengths of time do not entail the right to disobey a proper legal order.

3. Regarding interference with the National Human Rights Commissions' Investigation

The victims clearly violated the Immigration Control Act. To meet the departure condition under Article 46 of the Immigration Control Act, they were evicted without further delay, having had their passports, boarding passes, and other necessary materials for departure provided for them.

3. Relevant Standards

As stated in the accompanying document.

4. Findings of Fact

From the petition, the complainants' affidavit, the defendant's defence, and the findings of the Commission's investigation, the following facts were derived:

A. The OOImmigration Office sent a written rejection of the complainants' appeal against its detention and eviction orders to their attorney on December 12, 2007, then immediately forced the complainants to depart the next day, December 13, around 03:00hrs.

B. Regarding the violation of the right to counsel

At approximately 03:00 on December 13, 2007, the OO Immigration Office began implementing the complainants' eviction order, while, at 18:00 the previous day, when the complainants' attorney and an investigator from the Commission inquired about the post-dismissal procedure, the Office simply told them that the information was to be discussed within, excluding any reference to the implementation of the eviction order. In spite of having evicted the complainants and at 05:00 and 06:20 on the 13th, asked the OO Immigration Office if the eviction order had been carried out, the OO Immigration Office falsely replied to the attorney's question about the eviction order, "As of today, there are no plans to carry out the eviction order."

C. Regarding interference with the Commission's investigation

While the Commission was engaged in its ongoing investigation, the OO Immigration Office forced the departure of the complainants on December 13, 2007 without the Commission's approval. Though the Commission had completed its first round of interviews with the victims, the OO Immigration Office submitted its response to the Commission on the concerned case only after it had evicted the

complainants, and thus made it impossible for the Commission to
a) determine whether legal procedures had been violated,
b) compare and contrast the complainants and defendants' statements,
c) cross-examine the parties, and perform other such basic investigative procedures.

5. Decision

A. Whether the right to trial was violated

In the instance that one's rights under Articles 10 through 22 of the Constitution have been violated and/or one has faced discrimination by local authorities or detention facilities, Subparagraph 1, Paragraph 1, Article 30 of the National Human Rights Commission Act (NHRCK Act) provides that one can submit an appeal to the Commission. The complainants claim that their right to discuss filing a cancellation lawsuit against the detention and eviction orders with their attorney and to request the suspension of the orders and take other such judicial measures, were violated as a result of the Seoul Immigration Office's written dismissal of their petition. However, since the right to trial is guaranteed under Article 27 of the Constitution, and thus, is not included in the Commission's investigation, this point of appeal shall be dismissed.

B. Whether the right to counsel was violated

By forcing the complainants to depart the country immediately after faxing its written rejection of their appeal, the OO Immigration Office substantially deprived the complainants of the right to file a lawsuit against the defendants. According to Paragraph 3, Article 12 of the Constitution, eviction proceedings fall under the "arrest and incarceration" provision; hence, the complainants are protected by the same laws that govern a "physical detainee." The complainants can, therefore, claim the right to an interview with their attorney. Additionally, Paragraph 4, Article 12 of the Constitution states that "anyone" who is under arrest or restraint must immediately be notified of the right to a lawyer. Here,

"anyone" is not restricted to activate of the Republic of Korea, but encompasses, "anyone who has been put under bodily restraint," and thus includes foreigners. In the case that a foreigner is under a detention facility or accommodation which substantially limits his/her physical capacities, he/she must be ensured of his/her right to legal counsel, namely a lawyer and an interview. The OO Immigration Office did not only fail to inform the complainants and their attorney of the order enforcement procedures, but also falsely claimed that it had no plans to carry out the order, though the order had already been executed. The OOImmigration Office thereby violated the complainants' right to counsel.

C. Whether the provisions of the Immigration Control Act and its implementation violate the principle of Paragraph 3, Article 12 of the Constitution

Referring to its recommended order for the May 23, 2005 joint cases of 04Jinin131 and 04Jingee131, along with on-site investigations of detention and correction facilities, the Commission recommended that immigration officers adopt concrete methods to regulate foreigners that would reflect the procedures of criminal law, namely search and seizure, arrest, and urgent detention. The recommendation was never adopted.

Though arresting and detaining violators of the Immigration Control Act is a proper use of administrative power, the victims' detention was not short-term but rather lasted a total of 10 days (according to Article 4 of the Act on the Performance of Duties by Police Officers, detention should last for 24 hours).

At most a detention may be extended, but must be limited to one occasion. This regulation did not apply to the complainants' case. Under the foreigner detention facility, the complainants' faced substantial bodily constraints. From all the aforementioned things we judge that, with the severe limitations placed on the complainants' bodily freedoms, detaining a foreigner for violating the Immigration Control Act is the same as arresting or detaining someone under criminal law procedures. Therefore, because foreigner detention facilities limit

the bodily freedoms of the detainee, arresting, jailing, detaining, and performing other such acts on foreigners must be carried out in accordance to the arrestee's rights under criminal law procedures. Also, because procedures for forced evictions essentially violate one's freedom from constraint, it must operate under criminal law procedures. Under Paragraph 4, Article 9 of the Civil Liberties Covenant, the complainants must have the opportunity to go to trial and have a judge decide whether their detention was lawful.

Thus, the Immigration Control Act and other related policies on foreigner detention or proceedings for forced eviction must be revised to meet the standard of criminal law procedures.

D. Regarding interference with the National Human Rights Commission's investigation of the complainants' petition against racial profiling

The Commission shall perform its investigation and relief work in accordance with Paragraph2, Article 19 of the NHRCK Act. Based on Subparagraph 1, Paragraph 1, Article 30, of the NHRCK Act, the Commission is authorized to investigate any case that concerns the violation of rights listed under Articles 10 through 22 of the Constitution by a government organization.

The Commission was in the middle of investigating the November 27, 2007 case, "07Jinin2691 Regarding the human rights violation of racial profiling,"based on the NHRCK Act, and had been receiving statements from the victims through out. However, OO Immigration Office submitted its response to the Commission for 07-Jinin-4691, only after it had evicted the three victims on December 13, 2007, and, in doing so, made it impossible for the Commission to carry out basic investigative procedures. As a result, the OO Immigration Office kept the Commission from

a) determining whether there had been a violation of the complainants' right to due process,

b) contrasting the complainants and defendants' statements, and

c) cross-examining involved parties.

Because the victims were clearly violating the Immigration Control Act, the Justice Department claimed that they legally evicted, providing them with their

passports, boarding passes, and other costs to meet the departure requirements under Article 46 of the Immigration Control Act. Though the Justice Department's acts complied with legal procedures, they eventually disrupted the Commission's investigation, which had been authorized by Article 36 of the NHRCK Act to investigate the complainants and defendants. Hereafter, the Commission expresses its strong opinion that forced evictions shall be suspended until the Commission has completed its investigation on the concerned case or approved of the concerned individuals' eviction.

6. Conclusion

Because the first point of appeal found in item 'A,'under the section titled, 'Petition,' does not fall under the Commission's jurisdiction, it shall be dismissed according to Subparagraph 1, Paragraph 1, Article 32 of the NHRCK Act. Regarding the second point of appeal in item 'B' and third in item 'C,' the Commission shall recommend a course of action for the defendant, the Minister of Justice, with the authority given it by Item 2, Paragraph 1, Article 44 of the NHRCK Act. In relation to the fourth point of appeal in item 'D' and the necessity for the Commission to assert its opinion, as stated under Subparagraph 1, Paragraph 1, Article 19 of the NHRCK Act, it decides as it has ordered.

April 28, 2008

Anti-Discrimination Committee

B. Human right violation caused by excessive enforcement of deportation, case number 07 Jinin4510, dated February 18, 2008

[Complainant] Anonymous

[Respondent] 1. Head of the OO Immigration Processing Center
2. KIM OO

[Main Text]

1. The Complaints

A. It is alleged that around 9:30 A.M. in November 13, 2007, the defendant enforced deportation of the complainant, who was detained in the OO Immigration Processing Center, even though the complaint didn't have received back the bag with his personal belongings. It is alleged that the defendant used excessive compelling power toward complainant, during the enforcement of the deportation, by ten employees of the Center knocking him down and forcibly putting him handcuffs, and changing trousers of the complainant.

B. It is alleged that KIM OO, employee of the OO Immigration Processing Center, obstructed complaint to the Commission of the complainant. The complainant prepared written complaints and requested to KIM to send them to the Commission on November 5 and 7, 2007, but Kim failed to send them.

2. Positions of the Relevant Parties

A. Concerning the Part A of the Complaint

i. The Complainant

1. The formal landlord of the complainant was holding the bag with the personal belongings of the complainant because of the overdue room rent. An employee of the Embassy of the Federal Republic of Nigeria went to see the landlord to have the bag and the passport of the complainant back, however, he was able to receive only the passport. The landlord refused to return the bag.
2. Around 9:30 A.M November 13, 2007, about ten employees including Kim went to the room of the complainant and notified the enforcement of the deportation and took him to the room for body search. The complainant told the employees that he could not go back to his country because he doesn't have his bag. However, the employees enforced deportation by putting him handcuffs, changing his trousers, etc. One employee knocked the complainant down and while pushing him from his backside, other employees put him handcuffs. Then the employees changed trousers of the complainant while some people could see the scene.

ii. The Defendant, the OO Immigration Processing Center

1. On August 21, 2007, when the complainant entered the Center, we inquired him if he had his passport with him and if he could afford to pay for the deportation expense. The complainant replied that an employee of the Embassy of the Federal Republic of Nigeria was supposed to bring him his passport, bag, and departure expense, and asked us to wait. However, it was not until three months later, on November 9, 2007, that the Nigerian Embassy could find his passport and send it to us. During the period, though we persuaded the complainant to inform us of his address to search for his passport and bag in favor of him, the complainant refused to answer it, just saying that the employee of the OOO Embassy was supposed to bring them to him, which brought about intentionally delaying the

enforcement of the deportation.

2. Also, on November 12, 2007, considering the complainant's personal financial difficulty, the Center decided that the total amount of his deportation expense, 1,020,000 Won, be offered at the cost of the government. And then, though he was informed of the fact and

persuaded to accept it, he did nothing but keep replying that he could not depart.

3. On November 13, 2007, we couldn't but enforce the deportation on him, and that was after our staff explained the inevitability of enforcement of deportation, notifying him to cooperate with us for the enforcement. Though one of the staff, OOO, warned him three times before he put handcuff on the complainant, he wouldn't listen. As a result, by using arresting skills with the least physical force, four staffs managed to put the handcuff on him and coerce him to change his inmate trousers to his private ones. At that time, though it is admitted that some part of his skin on the wrists got stripped off amid his outrageous resistance with the handcuff on his wrists, it is certain that there were no other violent actions of the violation of human rights.

4. Yielding to the complainant's request, on November 22, 2007, a treatment to outside hospital, at OOOOHospital, OO, OO Province, was offered upon him. The doctor didn't give any special medical opinion about him.

iii. A Reference, Francis OO (employee of the Embassy of the Federal Republic of OOO)

I, the reference, was told that the landlord of the complainant held the passport in trust and had only the passport, which is the property of the OOO government, returned from the landlord, in about October, 2007.

B. Concerning the Part B of the Complaint

i. The Complainant

The same as stated in 'the Complaints'.

ii. The Defendant, KIM OO

The fact that the complaint presented by the complainant on November 5th, and 7th, 2007, were deferred and not being forwarded to the National Human Rights Commission, was because the contents of the complaint didn't contain any violation of human rights but involved the application for the refugee status. So I , as the officer in charge of refugees, considered that the case needed to be decided on its recognition as a refugee or not, and I didn't have any intention to disturb the complaint itself for the violation of human rights. It think there was a communication problem because of language, and thus the mislead me.

3. *The Regulations Concerned*

1. Immigration Control Act

Article 56-4 (Exercise of Legal Force)

(1) When wards fall under any of the following subparagraphs, the immigration control official may exercise the legal force on the relevant wards, and protect them by isolating from other wards:

1. When they intend to commit suicide or self-injury acts;
2. When they inflict harms on other persons or intend to do so;
3. When they escape or intend to do so;
4. When they refuse, avoid or obstruct the execution of duties by the immigration control official without any lawful grounds; and
5. When they commit other acts of remarkably harming the protection facilities and the safety of the wards and order, or intend to do so.

(2) The legal force under paragraph (1) shall be exercised within the minimum necessary, and shall be limited to the exercise of physical tangible power

or the use of protection outfits designated by the Minister of Justice, including the police club, gas jet gun, electronic shock gadget and other security outfit to control wards.

(3) When intending to exercise the legal force under paragraph (1), the relevant wards shall be warned of it in advance: Provided, That in case thee is no time to warn wards in advance due to emergency situation, the same shall not apply.

(4) When it falls under any of subpragraphs of paragraph (1) or it is necessary for the escort, etc. to maintain the order of protection facilities or to evaluate wards by force, the immigration control official may use gadgets falling under each of the following subparagraphs:

1. Handcuffs;
2. Cords;
3. Face protection gadgets; and
4. Other gadgets deemed especially necessary for the safe custody of protected foreigner, which are provided by the Ordinance of the Ministry of Justice.

(5) The use of gadgets under paragraph (4) and procedures for the use shall be provided by the Ordinance of the Ministry of Justice. [This Article Newly Inserted by Act No. 7406, Mar. 24, 2005]

Article 62 (Execution of Deportation Orders)

(1) The deportation order shall be executed by an immigration control official.

(2) The head of the office or branch office or the head of the foreigner internment camp may entrust any judicial police official to execute a deportation order.

(3) To execute a deportation order, the order shall be presented to the person who is subject to it, and he shall be repatriated without delay to the country of repatriation as prescribed in Article 64: Provided, That if the head of the ship, etc. or forwarder repatriates him under Article 76, the immigration control official may hand over such person to the head of the ship, etc. or forwarder.

2. The Foreigners' Protection Rules (The Ministry of Justice Order No.580, September 23rd, 2005)

Article 42 (the Exercise of Physical Force) No physical force defined in the regulation of No.1, Art.56-4 of the law may be exercised without the order of the head of the office. In case of emergency, though, the public officials can exercise it to report to the head of the office with no delay.

Article 43 (the Use of Controlling Tools)

(1) No controlling tools defined in the regulation of No.4, Art.56-4 of the law may be applied without the order of the head of the office. In case of emergency, though, the public officials can apply it to report to the head of the office with no delay.

(2) The controlling tools may not be applied for the purpose of disciplinary punishments: Cord and handcuff can only be applied for fear of suicide, self-injury, flight, or violence by the protected foreigners. Face-mask can be used for the protected foreigners who are suspicious of self-injury or making a high-pitch noise in resisting any restrictions.

(3) For the protected foreigners bound by the controlling tools, it is a must to inspect their movability every two hours, and especially, those wearing face-masks must be kept checked.

(4) The head of the office should order the official in charge to get rid of the controlling tools in case the conditions required are finished after applying them, according to the regulation of Cl.2.

3. National Human Rights Commission Act

Article 31 (Guarantee of Petition Right of Detainee of Detention or Protective Facility)

(3) The public official concerned, etc. shall immediately send the written petition prepared by a detainee under paragraph (1) to the Commission and deliver the voucher of the document receipt which is issued by the Commission to the said detainee. In the case of the notice under paragraph (2), a document verifying such notice and a document of fixed interview date, which are both issued by the Commission, shall be delivered immediately to the same detainee.

4. Approved Facts

A. Concerning the Part A of the Complaint

i. The complainant arrived in Korea by a short-term business visa, on February 27, 2001, and has stayed overdue since January 1, 2003. On August 17, 2007, the complainant was arrested, on a charge of property damage, by the OO Police Station. On inquiry, it was found out that he had stayed overdue, and then he was handed over to the OO Immigration Office and was put to internment at the OO Immigration Processing Center, on August 21, 2007.

ii. The defendant demanded the complainant to inform of the address to collect the complainant's passport and bag. But the complainant insisted that the employee of the Nigerian Embassy was supposed to bring him his passport and bag, of which just the passport ended up being delivered by the employee of the Embassy on November 9, 2007. The defendant has tried to persuade, by calling, the landlord to return the complainant's bag, which the landlord would not, over the period of more than three months since the internment of the complainant. The defendant notified the complainant that he would get the total amount of his deportation expense paid for at the cost of the government, and deportation enforced, on November 12, 2007.

iii. At around 9:00pm, November 13, 2007, the staffs of the OO Immigration Processing Center, KIMOO and SONOO, informed him that they were going to enforce the deportation that day, and asked him to change his inmate clothes into his private ones. Notwithstanding, the complainant kept insisting that he could not depart without his bag being returned by the landlord, refusing to

be evacuated by force. Despite the refusal of the complainant, the staff SON knocked the complainant down to put handcuff on him, and managed to change his trousers. In the meantime, the complainant kept resisting by throwing his shoes off, and he got injured on the wrists for the handcuff in the acts of his resistance and the physical force by the staff. As the disturbance continued, the OO Immigration Processing Center decided to delay enforcement of the deportation.

B. Concerning the Part B of the Complaint

i. The complainant submitted to KIMOO of the OO Immigration Processing Center the letters meaning to complaint the National Human Rights Commission on November 5, and 7, 2007 respectively. Below the letter dated on the 5th was clearly stated 'to petition the National Human Rights Commission of the Republic of Korea', and on the top of the letter dated on the 7th was the National Human Rights Commission of the Republic of Korea appointed as a recipient, noting the facsimile number of the Commission.

ii. In each letter dated on November 5 and 7 was included that 'the complainant had many enemies in his homeland, so that he was to be in danger of back there he got to be deprived of his money by some bad guys in Korea and to request to consider allowing him to stay in Korea instead of getting back to his native country.'

5. Judgments

A. Concerning the Part A of the Complaint

According to the Immigration Control Act and other related regulations, the government officials of the Immigration Control Office can enforce the order of the deportation on those to whom the order of the deportation was issued. And in case the internee refuses or evades the performance of the

order by the government officials with no proper reasons, some physical force can be exercised. In case the internee refuses the enforcement of the deportation when it is notified by the government officials, the reason needs to be listened to. Depending on the reasonableness of the refusal, the decision should be made on the delay of the enforcement of the deportation until the solution of the reason raised. Also, even though the reason for which the enforcement was refused proves to be unreasonable, the use of physical force should be limited to the least.

Though the complainant insists that it was not proper for the defendant to enforce the deportation, without having his bag containing his personal effects returned by the landlord, the immigration officials had suspicion on the complainant that he attempted to delay enforcing the deportation on purpose; for example, the complainant would not inform of the address when the defendant asked where he had resided in order to collect the bag from the landlord. And the defendant tried to persuade the landlord to return the bag by calling. Besides, if the reason why the landlord would not return the bag containing the complainant's personal belongings is that the rent has been in arrears, this is basically a matter to be settled with between the two individuals, which is hard for the defendant to be involved in. As the landlord had not returned the bag over the period of more than three months, it seemed almost impossible to get it back. Considering all these facts, it is admitted that the defendant properly has decided on the enforcement of the deportation on the complainant after a considerable grace period.

Concerning whether the OO Immigration Processing Center observed the regulations of its least required exercise of physical force in the process of enforcing the deportation, the following is admitted: At around 9:00am, November 13, 2007, the defendant notified the complainant to enforce the deportation in advance. As the complainant refused to let the deportation enforced by throwing his shoes off in the act of resistance, the defendant needed to knock the complainant down to put handcuff on the wrists and change the inmate trousers to the private trousers. The injury on the

complainant's wrists was caused by his resistant reaction with the handcuff put on. And the handcuff used in the enforcement of the deportation was removed when he was brought back to the Center. Also, as the complainant complained about the pain, the defendant had him checked at an external hospital and the doctor in charge provided no special medical opinion.

Therefore, the defendant's decision to enforce the deportation upon the complainant was according to the proper reasons. And physical force exercised in enforcing the deportation is judged to have been inevitable under the circumstances of the complainant's resistance at that time. In conclusion, the measures of the defendant are hard to be seen as an act of violation of human rights.

B. Concerning the Part B of the Complaint

In the letters conveyed to the OO Immigration Processing Center by the complainant, the complainant stated clearly his will to deliver his letters to the National Human Rights Commission; in particular, in the letter dated on November 7, 2007, even the conveyed number of the Commission was clearly written down. Accordingly, it is clear that the letters above mentioned were meant to submit to the National Human Rights Commission.

Though the defendant judged the letters to be related to the application for the refugee status, and explained it to the complainant, he should have forwarded the letters to the Commission, when the complainant insisted to send them to the Commission, and leave the judgment to the Commission. Therefore, not forwarding the letters of the complaint to the National Human Rights Commission is the infringement of the right to pursue happiness and the freedom of communication stated clearly in the Article 10 an 18 of the Constitution. And it can be also judged as the violation of the Article 31 Paragraph 3 the National Human Rights Commission Act imposing the duty of forwarding the letters of the complaint on the government officials of the public facilities.

6. Conclusion

A. In terms of the part A of the complaints, it is hard to be seen as the infringement of the human rights defined in the National Human Rights Commission Act, so that it is concluded as the following text of a judgment, based on the Article 39 Paragraph 1 Sub-paragraph 2 of the Act.

B. In terms of the part B of the complaints, it is considered to be the infringement of the human rights of the complainant that the defendant did not forward the letters of the complaint to the National Human Rights Commission, so that it is concluded as the following text in the 'DECISION', based on the Article 44, Paragraph 1 Sub-paragraph 1 of the National Human Rights Commission Act.

February 18, 2008
Anti-Discrimination Committee

4. Human rights violation in the process of crack-down

Infringement on human rights violation by violation of lawful procedure and assault during crack-down, case number 08Jinin3152, dated October 27, 2008

[Complainant] Anonymous

[Respondent] 1. the Minister of Justice
2. OOO, the OO Immigration Office
3. OOO, the OO Immigration Office
4. OOO, the OO Immigration Office

[Main Text]

1. The Complaints

A. The complainant who has a tourist visa valid June 27, 2008 through August 27, 2008 was arrested by defendants on August 19 and was detained on August 20 in the probation office of the OO Immigration Office because he had part time job while staying in Korea. The defendants didn't observe lawful procedures during crack-down. They did not ask for agreement to the owner of the company that I worked when they enter the work places.

B. The complainant escaped from the immigration officers because he considered that there is no reason to be arrested when there are no witnesses who saw the complainant working. However during the process of the crack-down, defendants hit complainant's eyes and put handcuffs on him by force. They even didn't present the urgent detention order to complainant immediately during crack-down. The defendant asked complainant to write autograph unlawfully the next day of the crack-down.

2. Positions of the Relevant Parties

A. The Complainant

The same as stated in 'the Complaints'.

B. The Defendants

i. Regarding taking lawful procedure

The defendant 2(site head of the crack-down team) presented a judicial police officer's identification card to the business owner, explained the background of the crack-down, and took the lawful procedures such as presenting his identification and the urgent detention order to illegal sojourner. The defendant even explained the following process and the detention in a kind way. Yet, the urgent detention order wasn't issued at the patrol car and we got complainant's autograph in the office after finishing the crack-down.

ii. Regarding the physical assault

The defendant 3 found complainant who was escaping from the site of the crack-down and ran into the pampas grass bushes which was 30-40m distance from the dormitory. So, the defendant 3 called other officers, the defendant 2 and 4 by whistling, and while the defendants were trying to arrest the complainant, there were unavoidable physical contacts to control him because of complainant's strong resistance. The defendant 4 got injured with sprain and tension of thumb of his right hand which needed three weeks treatment in the procedure.

The defendants made complainant enter the probation office in the OO Immigration Bureau, but complainant resisted to enter the office. The complainant hit his forehead by himself and kept trying not to enter the office, and then folded his hands in an angle pillar stores foreigner's belongings to resist to enter the office.

C. The Witnesses

i. Witness 1(OOO: OOO)

The witness 1 who stayed at the same dormitory room of the company at 4:00 PM on June 9, 2008 with complainant when there was the crack-down. Because the witness 1 surprised and fled at the time of crack-down, he didn't witnessed the site of physical assault, however he noticed that when the complainant got in the patrol car complainant's right eye became red and swollen.

ii. Witness 2(OOO, the security division of OO Immigration Bureau)

The witness 2 takes in charge of foreigners' physical check-up when new inmate comes in the OO Immigration Office. When the complainant entered the office on August 20, 2008, he witnessed that the complainant's eyes were red.

iii. Witness 3(OOO, CEO of OO Industry)

The witness 3 is the owner of the company that the complainant worked at a part time. The witness 3 stated that officers of the OO Immigration Office went to his factory and dormitory abruptly, cracked down illegal sojourners. However the immigration officers didn't receive agreement from him before the crack-down.

3. The Regulations Concerned

1. Article 9 of the International Covenant on civil and political rights

1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty

except on such grounds and in accordance with such procedure as are established by law.

2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

2. Article 12 of the Constitution (personal freedom and admissibility of evidence of confession)

1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated except as provided by Act. No person shall be punished, placed under preventive restrictions or subject to involuntary labor except as provided by Act and through lawful procedures.

2) Warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search: Provided, That in a case where a criminal suspect is an apprehended flagrante delicate to, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an ex post fact to warrant.

3) No person shall be arrested or detained without being informed of the reason therefor and of his right to assistance of counsel. The family, etc., as designated by Act, of a person arrested or detained shall be notified without delay of the reason for and the time and place of the arrest or detention.

3. Article 51, Paragraph 1 of the Immigration Control Act

An Immigration Bureau official shall get issue of the urgent detention order from the chief of office, branch office, and probation office, when foreigner as a subject of compulsory eviction under Article 46, Paragraph 1 of the Immigration Control Act and all Subparagraphs 1 has considerable reasons to have suspicions and possibility to escape from the site.

4. Article 51, Paragraph 3 of the Immigration Control Act

When foreigner has considerable reasons to get suspicions, escaped or has possibility to escape from the site under Article 46, Paragraph 1, every Subparagraph 1 of the Immigration Control Act and an Immigration Bureau official has no time to have issue of the urgent detention order from the chief of the Bureau office, a branch office, and a probation office, he shall issue the urgent detention order in the name of the Immigration Bureau Official after notifying the purpose to them and detain the foreigner hereafter.

5. Article 64, Paragraph 3 of Enforcement of Decree of the Immigration Control Act

An Immigration Bureau official should present the urgent detention order including purpose, detention place and detention period to a suspect under Article 51, Paragraph 3 of the Immigration Control Act, when he detains the suspect in emergency.

6. Article 81, Paragraph 1 of the Immigration Control Act

Article 81, Paragraph 1 of the Immigration Control Act prescribes that Immigration Bureau officers and its relevant government officers that president regulates shall visit foreigner, employer hiring the foreigner, organization the foreigner belongs, the representative of a business that foreigners work, or the owner of lodging house foreigner stay, ask questions to them, and call for materials for the purpose of investigation whether foreigners stay in Korea lawfully under this law or the order of this law.

4. Approved Facts

The following facts are approved by analyzing the data such as hearing of complainant's statement and opinion, defendant's written statement, materials from defendant's organization and office, written opinion of the OO Immigration Office and OO ophthalmology clinic, and so forth.

A. Concerning the PartA of the Complaints

Thirteen officials of the OO Immigration Office exercised crack-down around the OO Industry located in OOO, OOO, OOOO to find out unregistered foreigners at 4:00~4:30PM on August.19, 2008. The defendant 2 OOO insisted that he explained the background of the crack-down after showing his identification card and the urgent detention order to the owner. However, the owner denied that assertion and stated that the defendants had not shown identification card and exercised the crack-down without explaining the reason.

Therefore, the fact that the defendants didn't present the identification card and didn't have explanation for the crack-down to the owner in a business and dormitory of OO Industry is approved.

B. Concerning the Part B of the Complaints

The defendant 2, 3 and4 entered the dormitory of the company for crack-down on unregistered foreigners. When the complainant and the witness 1 saw the defendants entering the dormitory, they escaped to outside of their dormitory. The complainant escaped into the pampas grass bushes which are 30-40m far from the dormitory. The defendant 3 found out the complainant and called other defendants by whistling, but as the complainant kept running, he threw down him by holding up complainant's leg and the defendant 2 and 4 who arrived there fought with complainant. The defendant 4 got injured with sprain and tension of thumb of his right hand in the procedure.

Also, the facts that the defendants didn't present the urgent detention order according to Article 51, Paragraph 3 of the *Immigration Control Act* right after the crack-down in the site and the patrol car, and they got complainant's autograph for the urgent detention order after the crack-down with explanation at the office of the Immigration Office are approved.

C. Patient's Condition After Detention

Medical records suggest that complainant kept his eyes closed since entering the OO Immigration Office on August. 20, 2008 because he felt pain when

he opened his eyes, and felt no pain while closing them. When the investigator the Commission went to the OO Immigration Office on September 4, 2008 to check the complainant's condition, he checked the patient's condition and found out that complainant's left eye was swollen and he couldn't open eyes.

5. Judgments

A. Concerning the Part A of the Complaints

Article 81, Paragraph 1 of *the Immigration Control Act* prescribes that the immigration officers and relevant government officers that president regulates shall visit foreigners, employers hiring the foreigner, organizations foreigner belongs to, representatives of a business that foreigner work, or owner of lodginghouse that foreigner stays, ask questions to them, and call for materials to them for the purpose of investigation whether foreigners stay legally in Korea under this law or the order of this law. According to the purpose of this law, the act that defendants entered a business abruptly without permission for crack-down exceeded the limit of Article 81 for investigation on visiting and calling for materials. As the result, defendants' act for investigation by force (entering, investigating and crack-down) violated the lawful procedure of Article 12 of *the Constitution*, infringement of private life protection under Article 17 of *the Constitution*, and human dignity and worth under Article 10 of *the Constitution*.

The fact that defendants began to exercise the crack-down without agreement from the owner of OO Industry, OOO and there weren't emergency situation defendants couldn't get the agreement from the owner. So we recommend that officers of the Immigration Office should improve the general practice that the immigration officers enter a business hiring foreigner and their residence without permission hereinafter.

B. Concerning the PartB of the Complaint

Defendants insisted that they didn't assault complainant during crack-down, and complainant didn't have injury before being detained in the office of the OO Immigration Office. However, analyzing witnesses' written statement, diagnostic certificate, and interview with complainant, that complainant got eye injury through assault during crack-down and the course detaining complainant to the office was a violation of personal freedom under Article 12 of *the Constitution*.

Moreover, the defendant 2 as a head official didn't follow the lawful procedures to issue the urgent detention order, didn't explain the purpose of the crack-down to complainant before or right after the procedure under *the Immigration Control Act*, and also didn't inform complainant on the purpose of the investigation after crack-down. He violated the lawful procedures of crack-down.

Therefore, the Commission recommends the head of the OO Immigration Office to give admonition to defendant 2 OOO, and to provide human rights education to the defendant 3 OOO and 4 OOO, and give notification of the result to the Commission.

6. Conclusion

A. The Commission recommends regarding the part 'A' of the complaints, the Immigration Office to change the general practice of officers entering work places and residences without permission according to the provision of the Article 44, Paragraph 1, Sub-paragraph 2 of *the National Human Rights Commission Act*.

B. The Commission recommends regarding the part 'B' of the complaints, the head of the OO Immigration Office to give admonition and to provide human rights education to the defendant 2 or 4 because they

presented the urgent detention order after crack-down during investigation and used excessive physical force during crack-down, according to the Article 44, Paragraph 1, Sub-paragraph 1 of *the National Human Rights Commission Act.*

October 27, 2008
Anti-Discrimination Committee

5. Discrimination against foreigners with disabilities

Discrimination Against Foreign Nationals in Filing of Applications for Disabled Registration Certificates, case number 07 Jin Cha 359 · 07 Jin Cha 546 · 07 Jin Cha 919 (Combined), Dated July 15, 2008

[Complainant] 1. Wang ○○
2. Lee ○○
3. Lee ○○

[Respondent] Minister for Health, Welfare and Family Affairs

[Main Text] It is hereby recommended to the Respondent that the system for registration of the disabled be improved so that aliens living in the Republic of Korea may apply for such registration.

[Rationale]

1. Complaint Summary

Korean nationals with disabilities are entitled to welfare benefits for the disabled based on issuance of disabled registration certificates under the Welfare of Disabled Persons Act. However, disabled foreign nationals are not even allowed to file applications for issuance of disabled registration certificates on grounds of their foreign nationality. These circumstances need to be rectified.

2. Argument by the Concerned Parties

A. Complainant

Same as specified in the Complaint Summary above.

B. Respondent

i. In general, welfare policies implemented by the government inure to the benefit of the public. Applicable laws in effect do not guarantee registrations as

the disabled in favor of Koreans residing abroad or foreign nationals. Therefore, permissions for such registrations are to be determined in line with applicable policies. It is difficult to apply to foreigners various welfare policies for the disabled, which mostly serve as means of public assistance. Besides, foreign nationals tend to have unclear domestic abodes, and it would be difficult to conduct efficient follow-up management after their registrations as disabled persons. Under these circumstances, foreign nationals are not permitted to register themselves as disabled persons.

2) There are problems with the concerned management systems and administrative skills, and the level of services for Korean nationals remains low. The country is redressing discrimination against foreigners selectively on a case-by-case basis, as found in the disability sign issuance scheme for automobiles operated by the disabled, rather than permitting registration by aliens as disabled across the board. More specifically, the amendment to the Enforcement Rule of the Welfare of Disabled Persons Act permits issuance of such signs to Koreans residing abroad and foreigners living in Korea starting in January 2000.

3. Applicable Regulations

4. Acknowledged Facts

i. Welfare policies for the disabled are classified into undertakings performed by the Ministry for Health, Welfare and Family Affairs; by other central administrative agencies; by local governments under municipal ordinances; and by civil organizations according to their internal operational regulations. Each of those policies sets out the targets of assistance in detail, basically requiring that those policies be applied to people registered as the disabled.

ii. As of the end of December 2007, there were 2,104,889 registered disabled persons in Korea. Foreign nationals with disabilities who reside in Korea are not permitted to register themselves as the disabled, which disqualifies them from benefiting from welfare policies for the disabled. However, a sign indicating a vehicle operated by a disabled person is issued to Koreans living

abroad with walking disorders who reported their residence in Korea as well as other such foreign nationals who are registered aliens within the scope of one automobile per person.

5. Determination

Social welfare services for the disabled are intended to promote the social integration of a vulnerable class. Provision of such services constitutes an important factor that affects whether people with or without disabilities can serve as equal members of society. Hence, it is appropriate to provide these services to appropriate people, not based on their nationalities, but according to the location of their regular residence from the perspective of enhancing social integration. Social welfare services help disabled persons cope with difficulties stemming from their disabilities in their daily and social lives, and the availability of such services in the residential areas of the disabled, unlike cash benefits such as public assistance, strongly impacts their ordinary lives.

The government of the Republic of Korea does not need to give more consideration to foreign nationals with disabilities than to disabled Koreans. From the standpoint of disabled people's participation in social activities and promotion of their human rights, however, it is more adequate and desirable to entitle disabled foreigners sojourning in Korea for not less than a certain period of time to social welfare services, at least to the extent that doing so does not incur high costs or excessive administrative effort.

The Respondent cites the burden of public assistance and the difficulties in its administrative process as a reason for its refusal to permit disabled foreigners to be registered as the disabled. However, such registration of foreigners does not necessarily mean their entitlement to benefits with the nature of public assistance. For example, the qualifications for disability benefits are satisfied upon fulfillment of separate detailed standards based on a deliberation, not registration as a disabled person. Therefore, the Respondent's argument that registration of foreigners as persons with disabilities will increase the burden of public assistance is hardly convincing.

Unlike many foreign countries that define the application scope of social welfare policies for the disabled for each individual project, the Republic of Korea initially selects those entitled to social welfare services and those eligible for benefits through the disabled registration system, while carrying out separate reviews in determining whether to provide public assistance services. Accordingly, foreign nationals who are not allowed to register themselves as disabled persons are deprived of access even to the most rudimentary welfare services for the disabled that are offered by civil organizations.

Therefore, it is in line with the purport of the Constitution of the Republic of Korea, international standards on the disabled, and the recently enforced Act on Anti-Discrimination Against and Remedies for Persons with Disabilities to permit, regardless of nationality, all disabled people's registrations as the disabled, which constitutes the basic qualification for the use of welfare services for the disabled, so as to resolve any inconvenience that foreign nationals with disabilities face in their daily lives.

6. Conclusion

For the reasons stated above, the NHRCK hereby makes a decision as specified in the main text pursuant to Article 44(1)2 of the National Human Rights Commission of Korea Act.

July 15, 2008

Anti-Discrimination Committee