

are aware of such cases can make petition to the NHRC.

(3) The NHRC can initiate investigation where there is sufficient reason to believe that significant human rights abuse or discriminatory acts exist.

ARTICLE 41. (1) Those who wish to make a petition to the NHRC should do so in a written form. It shall have the following.

1. The name and address of the petitioners.
2. The name and any characteristic of those against whom the petition is made.
3. the content of the petition.

(2) The officials of detention facilities shall allow detainees to make petition if the person so wishes.

(3) The above official shall submit the petition of the detainee to the NHRC and give the detainee a proof of official submission.

ARTICLE 42. Conditions of refusal to receive petitions.

ARTICLE 43. The NHRC shall start immediately the investigation as soon as a petition is received.

ARTICLE 44. (1) The NHRC shall focus on the content of the petition, and should not interfere or distract the activities of the state agencies.

(2) The NHRC shall not start investigation for the purpose of intruding into one's privacy, or of interfering with cases which are under the legal or police proceedings.

ARTICLE 45. (1) The method of investigation.

1. the commission can ask for submission of written report from the petitioner, witnesses, and the person against whom the petition is lodged. However, in case the commission is not satisfied with the written report, it can subpoena the above persons for a hearing.

2. the appointment of assessor for the report.

3. the commission can ask for submission of relevant material from the agency the person against whom the petition is lodged belongs to.

(2) The commission can, if necessary, have its commissioners or staff of the secretariat conduct an on-the-spot investigation into the place or material relevant to the petition.

(3) The commission can, if necessary, have its commissioners or staff of the secretariat listen to the petitioner, witnesses, or the person against whom the petition is lodged, in a place the presidential decree designates.

(6) the investigation of the commission shall be confidential except when the plenary committee of the commission decides not to do so.

ARTICLE 46. The NHRC cannot ask a state agency to co-operate or submit evidence material, in case the state agency presents the view that it amounts to following cases.

1. confidentiality based on official activity.

2. material deemed to be detrimental to state, national, military, diplomatic security or interests if publicised.

3. material deemed to be interfering with court proceedings.

4. material deemed to be detrimental to privacy, life or security of a relevant person.

5. material deemed to be interfering with the operation of detention facilities or law enforcement agencies.

ARTICLE 47. Transfer of petition.

ARTICLE 48. The discontinuation of investigation.

ARTICLE 49. Recommendation for conciliation.

ARTICLE 50. Procedure for arbitration.

ARTICLE 51. Arbitration.

ARTICLE 52. Effectiveness of arbitration.

ARTICLE 53. Recommendation and expression of opinion.

ARTICLE 54. Repudiation of petition.

ARTICLE 55. The NHRC can file an official complaint to the prosecution office in case it believes that the content of a petition constitutes criminality.

ARTICLE 56. Notification of the decision.

ARTICLE (1) The commission may allow a commissioner to inspect such facilities as police detention centre, correctional institutions, immigration detention centre, military detention centre and mass incarceration facilities, in case of necessity.

(2) In case of necessity the inspecting commissioner may meet the detainee in a place where the presidential decree designates.

(3) The inspection of a detention facility must be subjected to a prior approval of the NHRC.

(4) The inspecting commissioner must present a certification of his/her terms of reference to the relevant authority (of the inspected facility).

ARTICLE 57.

(1) The commission may allow a commissioner to inspect such facilities as police detention centre, correctional institutions, immigration detention centre, military detention centre and mass incarceration facilities, in case of necessity.

(2) In case of necessity the inspecting commissioner may meet the detainee in a place where the presidential decree designates.

(3) The inspection of a detention facility must be subjected to a prior approval of the NHRC.

(4) The inspecting commissioner must present a certification of his/her terms of reference to the relevant authority (of the inspected facility).

ARTICLE 58. (1) The commission can make it public its recommendation, expression of opinion, filing of complaints on the prosecution, the response from the state agency concerned (article 59). Nevertheless, the public announcement shall be restricted in case it is deemed to be against the law.

(2) consideration of individual privacy.

ARTICLE 59. (1) The head of a state agency, the head of the prosecution office, or the head of the police who has received the recommendation of the commission, has been lodged a complaint by the commission, or has been asked to launch an investigation by the commission shall notify the commission of the necessary measures taken or measures to be taken in the future, within 30 days of the original recommendation or others. The notification shall then be referred to the Minister of Justice.

(2) In case the head of a state agency decides not to take the recommendation of the commission, the head shall give reasons for not taking it.

ARTICLE 60. The Minister of Justice shall report every year to the President the summary, review and recommendations for improvement on human rights affairs, based on the recommendations, filing of complaints or requests for investigation of the commission, by 31 March each year.

#### IV. HUMAN RIGHTS GROUPS

ARTICLE 62. The undertakings of human rights groups shall be as follows.

1. counselling of human rights matters.
2. human rights education and awareness.
3. investigation and research on human rights affairs.
4. recommendation for (government) human rights policy.
5. other works for human rights promotion and protection.

(1) Human rights organisations may register with the Ministry of Justice as stipulated in the (forthcoming) presidential decree.

(2) The human rights group which wishes to register with the Justice Ministry shall have appropriate financial (or asset) and human (or manpower) capacity.

ARTICLE 64. Persons working for the human rights groups or who had worked for them shall not make public confidential knowledge he or she may have acquired during their work.

#### V. THE STATE SUPPORT

ARTICLE 65. the secondment of government employees in other state agencies to the commission.

ARTICLE 66. (1) The state shall provide necessary budget for the establishment, facilities, operation and workings of the commission, within the limit of the government general account.

(2) The state may provide subsidy to the above human rights groups who have registered with the Justice Ministry for the sake of their sound development.

(3) The relevant affairs of financial provision shall be stipulated in the presidential decree.

ARTICLE 67. The free use of governmental property by the commission.

ARTICLE 68. (1) The registered human rights groups may receive financial donation from the public, notwithstanding the existing laws which forbid such activities.

ARTICLE 69. The human rights groups which receive subsidy for the government shall report to the Minister of Justice their annual budget, its use, auditory records, etc.

(2) The Minister of Justice can have the human rights groups receiving government subsidy report to him/her about their financial conduct, or can launch an audit.

#### PENALTIES

#### SUPPLEMENTARY CLAUSES

등록일	분류기호	자료번호
	C 3-2	59

**Bill of Human Rights Law as proposed by the Ministry of Justice**  
[Unofficial translation]

**PART I. GENERAL CLAUSES**

**Article 1 [The purpose of the Law]**

The purpose of this Law is to realize the society where there is no violation of human rights and discrimination in all the political, economic, social and cultural fields in order to secure the dignity and value as human being to everyone.

**Article 2 [Basic policy]**

(1) The basic policy of this Law is to give effect to the following items for the realization of the purpose of Article 1, and the State has the primary responsibility to carry out this basic policy.

- (a) education and public information to foster public awareness of human rights:
- (b) improvement of the laws, regulations, institutions, policies and practices relating to human rights:
- (c) prompt investigation and remedies of violations of human rights:
- (d) prompt investigation and remedies of discriminatory practices:
- (e) other measures necessary to protect and promote human rights.

(2) A National Human Rights Commission shall have the responsibility to supervise the activities of the State in relation to the implementation of the basic policy, as provided in paragraph 1, and to carry out the basic policy if the activities are not sufficient.

**Article 3 [Definitions]**

The terms used in this Law are defined as follows:

- (a) "human Rights" means freedoms and rights of human beings as set out in the Constitution and laws or international human rights treaties ratified or acceded to by the Republic of Korea:
- (b) "detention facilities" means prisons, juvenile prisons, detention centers, protective detention centers, detention centers for medical treatment, reformatories, and review centers for the classification of juveniles:
- (c) "mass protection facilities" means the facilities for the protection and reception of a number of people as designated by the presidential decree
- (d) "human rights organizations" means organizations conducting activities for the protection and promotion of human rights such as counselling, education, inquiries and researches concerning human rights.

**Article 4 [Duties of State authorities]**

State authorities shall endeavor to secure the necessary legal and institutional mechanisms for the human rights education and public information, the improvements of laws, regulations, institutions, policies and practices relating to human rights, the eradication of human rights violations and discriminatory practices in accordance with the basic policy as provided in Article 2, paragraph 1, and to provide the necessary resources.

**Article 5 [Functions of the Ministry of Justice]**

The Minister of Justice shall perform the following functions to fulfil the duties of State authorities as provided in Article 4:

(a) formulation and implementation of a comprehensive plan for the protection of human rights:

(b) cooperation among other Ministries and agencies for the protection of human rights:

(c) assistance to the National Human Rights Commission and analysis of the situation of its activities:

(d) protection and fostering of human rights organizations and individuals working for the protection and promotion of human rights.

**Article 6 [Functions of the Ministry of Foreign Affairs and Commerce, the Ministry of Education, the Ministry of Health and Welfare, the Ministry of Labor and others]**

(1) The Minister of Foreign Affairs and Commerce shall endeavor to prevent violations of human rights and discriminatory practices against the nationals of the Republic of Korea outside its territory, and to provide victims with redress.

(2) The Minister of Education shall include human rights education in the educational courses at every level of schools.

(3) The Minister of Health and Welfare shall endeavor to promote human rights through the betterment of welfare of the socially weak people such as women, the disabled, the old, and children, and shall guide and supervise mass protection facilities lest a violation of human rights occur.

(4) The Minister of Labor shall endeavor to promote the rights of workers through the promotion of employment and the improvement of work conditions, and shall guide and supervise lest a discriminatory practice occur in the field of employment.

(5) The Chair of the Special Committee for Women shall endeavor to increase women's participation in society, to develop their ability and to eliminate discrimination on the basis of sex.

(6) The heads of other central administrative authorities shall study plans to implement the basic policy of Article 2, paragraph 1 in the execution of their duties, and shall implement them.

**Article 7 [Duty of nationals]**

Every national shall recognize the meaning and significance of human rights and strive to protect and promote human rights.

**Article 8 [Scope of application]**

(1) This Law shall apply to violations of human rights or discriminatory practices against nationals and foreigners that had occurred in the territory of the Republic of Korea.

(2) This Law shall apply to violations of human rights or discriminatory practices against Korean nationals that had occurred outside the territory of the Republic of Korea.

**PART II. VIOLATIONS OF HUMAN RIGHTS AND DISCRIMINATORY PRACTICES**

**Article 9 [Violations of human rights]**

The term "violations of human rights" for the purposes of this Law means the commission of the following acts by officials attached to the Prosecutors Office, the Police Office, the National Security Planning Agency, prison authorities, centers for protective overvation, and the Office for the Administration of Entries and Departures (including alien protection centers), those performing the duties of judicial police officers as provided in the Law on the Personnel Performing the Duties of Judicial Police Officers and the Scope of their Duties, soldiers and civilian personnel belonging to the Military Prosecutors Office, the Military Police, and military secrecy units, and the personnel belonging to mass protection facilities in abuse of their powers while executing of their duties:

- (a) acts of arrest or detention:
- (b) acts of assault or intimidation:
- (c) acts of cruel treatment or torture:
- (d) acts of forcing an individual to work without obligation or interfering with one's exercise of rights:
- (e) inspection of mails, eavesdropping of telecommunications or violating the secrecy of conversations between others:
- (f) photographing and making public the private life of others or its disclosure:
- (g) acts of insulting others or causing sexual humiliation:
- (h) disciplinary measures or punishment of detainees or protected persons in police detention places, prison authorities, alien protection centers, military prisons (including military detention places and detention barracks of military police units. Hereinafter 'military prisons').

#### **Article 10 [Prohibition of a violation of human rights]**

The officials, those performing the duties of judicial police officers, soldiers, military services personnel and the personnel as provided in Article 9 shall not commit acts in violation of human rights.

#### **Article 11 [Grounds of discrimination]**

The term "grounds of discrimination" under this Law means sex, religion, age, disability, social status, *alma mater*, provincial, national or ethnic origins, facial appearance and other physical conditions, marital status, family situation, race or colour. Discrimination based on child-birth or pregnancy shall be deemed to be on the ground of sex.

#### **Articel 12 [Discrimatory practices]**

The term "discrimatory practices" under this Law means the engagement in the following acts on the grounds of discrimination without reasonable grounds. It shall not be deemed a discriminatory practice, however, where other laws exclude preferential treatment of specified persons (including specified groups of persons. Hereinafter 'specified persons').

(a) acts of preference, exclusion, distinction or detrimental treatment of any person in employment (including recruitment, appointment, education, disposition, promotion, wages and payment of money and articles, financing, age limit, retirement, dismissal. Hereinafter 'employment'.):

(b) acts of preference, exclusion, distinction or detrimental treatment of any person in the provision or use of any good, service, means of transportation, commercial premises, land, residential accommodation:

(c) acts of preference, exclusion, distinction or detrimental treatment of any person in the access to educational or vocational training facilities:

(d) other acts of preference, exclusion, distinction or detrimental treatment of any person in the political, economic, social, cultural or any other field.

#### **Article 13 [Racial harassment]**

Acts of showing hostility or hatred toward or contempt with disdain or derision of any person on the ground of race, colour, national or ethnic origins in employment as provided in Article 12, items 1 to 3, in the provision or use of goods, services, means of transportation, commercial premises, land, residential accommodation or in the utilization of educational or vocational training facilities, shall be deemed discriminatory practices based on race, colour, national or ethnic origins.

#### **Article 14 [Sexual harassment]**

It shall be deemed a discriminatory practice on the ground of sex for any person to cause sexual humiliation or abhorrence by language or behavior of a sexual nature to the person under his or her protection or supervision in respect of business, employment or any other relationship.

#### **Article 15 [Prohibition of discriminatory practices]**

No one shall be subjected to discriminatory practices.

### **PART III. NATIONAL HUMAN RIGHTS COMMISSION**

#### **Chapter 1. Establishment and Functions**

#### **Article 16 [Establishment]**

(1) A national human rights commission (hereinafter 'Commission') shall be established to carry out effectively the investigation and redress of violations of human rights and discriminatory practices and the protection and promotion of other human rights.

(2) The Commission shall be a body corporate.

(3) The Commission shall be constituted with the registration of establishment at the place of the principal office.

(4) With respect to the Commission, the provisions on foundational juridical persons in the Civil Law shall apply except where provided otherwise in this Law.

#### **Article 17 [Office]**

(1) The place of the principal office of the Commission shall be determined by the articles of the Commission.

(2) The Commission may set up its branches in accordance with its articles.

#### **Article 18 [Articles]**

(1) The articles of the Commission shall describe the following items.

(a) objective:

(b) name:

(c) matters relating to the principal office and branches:

- (d) matters on business:
- (e) matters on the board of directors:
- (f) matters on the whole Commission and the subcommission:
- (g) matters on human rights commissioners and staff:
- (h) matters on the property and accounting:
- (i) matters on the methods of public notice:
- (j) matters on the amendment of the articles:
- (k) matters on the enactment, amendment and repeal of by-laws.

(2) The Commission shall seek the approval of the Minister of Justice for the amendment of its articles.

#### **Article 19 [Functions and the like]**

(1) The functions of the Commission are as follows.

- (a) human rights education and public information:
- (b) making recommendations or stating views on matters necessary to research and improve the laws, regulations, institutions, policies and practices relating to human rights:
- (c) investigation and handling of violations of human rights and discriminatory practices:
- (d) provision of assistance in writing State reports in compliance with international human rights treaties:
- (e) making recommendations or opinions on matters necessary to inspect and improve police detention centers, prison authorities, alien protection centers, military prisons, and mass protection facilities:
- (f) cooperation with human rights organizations and individuals working for the protection and promotion of human rights:
- (g) other functions necessary to fulfil the functions of items (a) to (f).

(2) The Commission may request cooperation such as the submission of necessary information to State authorities, local government authorities, and other public and private organizations to fulfil the function of item (a).

(3) The Commission shall notify the Minister of Justice of the contents when it recommends or expresses views to relevant State authorities in accordance with paragraph 1, items (b) to (e).

#### **Article 20 [Status]**

(1) The Commission shall perform independently its functions within its powers.

(2) The Commission shall perform independently personnel management and any other work necessary for the operation of the organization as provided by the presidential decree.

(3) The Commission may enact such by-laws as are necessary for its operation.

#### **Article 21 [Submission of annual report]**

(1) The Commission shall submit a report on the situation of its activities of the previous year by the end of February each year to the President, and make it public to nationals.

(2) The submission of the report to the President in accordance with the provision of paragraph 1 shall be via the Minister of Justice.



**Article 22 [Cooperation of State authorities and others]**

- (1) Those State authorities and others that received the request of the Commission in accordance with Article 19, paragraph 2, shall cooperate faithfully.
- (2) The head of the relevant State authorities that received a recommendation in accordance with Article 19, paragraph 3, shall respect it unless there is appropriate reason to do otherwise.

**Chapter 2. Organization and Operation**

**Article 23 [Appointment of directors and other matters]**

- (1) The Commission consists of not more than 11 directors including a chief director. Directors are differentiated between ex officio and designated directors.
- (2) Designated directors shall be appointed by the President with the nomination of the Minister of Justice. The details concerning appointment and disqualifications of directors shall be determined by the presidential decree.
- (3) The chief director shall be elected among designated directors with the majority of the enrolled in favor.
- (4) The directors including the chief director shall be non-permanent posts.
- (5) When appointing designated directors, the President shall endeavor to include representatives from each field of the society such as law society, women, and labor.
- (6) The President shall appoint more than two women among designated directors.
- (7) The term of the directors including the chief director shall be 3 years, and they are eligible to be reappointed.
- (8) The directors including the chief director whose term of the office expired shall perform their duties until their successors are appointed.
- (9) The number and the term of ex officio directors shall be determined by the presidential decree.

**Article 24 [Duties of the chief director]**

The chief director shall summon the board of directors and be a chairperson of the meeting. When the chief director is not able to perform duties due to unavoidable circumstances, another director shall be in charge in accordance with the articles.

**Article 25 [Constitution and functions of the board of directors]**

- (1) A board of directors shall be established to consider and decide important matters of the Commission.
- (2) The board of directors shall consider and decide the following matters:
  - (a) appointment and nomination of human rights commissioners including the chief commissioner of the Commission:
  - (b) appointment of an auditor:
  - (c) budget and accounting:
  - (d) amendment of the articles of the Commission:
  - (e) acquisition and alteration of property:
  - (f) any matters requiring the decision of the board of directors in accordance with laws and the articles of the Commission.

#### **Article 26 [Auditor]**

- (1) An auditor shall be appointed by the board of directors for the term of 2 years.
- (2) The auditor shall audit the operation and the account of the Commission.
- (3) The auditor shall be able to present and state views at the board of directors.

#### **Article 27 [Qualifications and Appointment of Human Right Commissioners]**

- (1) The Commission consists of not more than 9 human right commissioners (hereinafter "commissioners") including a chief commissioner.
- (2) The chief commissioner and the commissioners are appointed by the President with the nomination of the Minister of Justice among those falling under one of the following items.
  - (a) a person of high respect in society who has knowledge on human rights and experience and has been recommended by major social organizations:
  - (b) a person who worked more than 10 years as a judge, a prosecutor or a lawyer:
  - (c) a person who held at least an associate professorship or an equivalent position at a university or a publicly accredited research institutions for more than ten years:
  - (d) a person who worked as a senior public official above the third grade for more than 5 years:
  - (e) a person who worked as an official of the Human Right Commission for more than 10 years.
- (3) The chief commissioner shall be a permanent post, and two persons from the other commissioners except the chief commissioner shall be permanent posts.
- (4) More than three qualified lawyers shall be appointed as commissioners including the chief commissioner.
- (5) More than two women shall be appointed as commissioners including the chief commissioner.
- (6) The term of the chief commissioner and commissioners shall be 2 years, and they may be reappointed once.
- (7) The commissioners including the chief commissioner whose term of the office expired shall perform their duties until their successors are appointed.
- (8) The chief commissioner and commissioners shall not be appointed as directors at the same time.

#### **Article 28 [Commissioner's duties]**

- (1) The chief commissioner represents the Commission.
- (2) When the chief commissioner is not able to perform duties due to unavoidable circumstances, the permanent commissioner designated in advance by the chief commissioner shall do so on behalf of him or her.
- (3) The chief commissioner may attend and present views at the board of directors.

#### **Article 29 [Disqualifications of commissioners]**

- (1) Those who fall under one of the following shall not be qualified to be a chief commissioner or commissioners.
  - (a) a person who is not a Korean national:
  - (b) a person who falls under each item of Article 33 of the State Officials Law:
  - (c) a public servant (except education officials):

(d) a member of a political party:

(e) a person who registers as a candidate for the election held under the Election for Official Posts and Prevention of Electoral Wrongs Law.

(2) The chief commissioner or commissioner who falls under each item of paragraph 1 shall be duly dismissed.

#### **Article 30 [Guarantee of the status of commissioners]**

The chief commissioner or commissioners shall not be dismissed against his or her will unless the conduct of functions becomes manifestly difficult or impossible due to physical or mental disability.

#### **Article 31 [Composition of the whole Commission and subcommission]**

(1) The Commission consists of the whole Commission comprising all human rights commissioner.

(2) The Commission may establish a subcommission consisting of one permanent commissioner and three non-permanent commissioners.

(3) The subcommission shall include more than one commissioner who is a qualified lawyer.

#### **Article 32 [Matters within the Jurisdiction of the Whole Commission and the Subcommission]**

(1) The whole Commission shall preside over the affairs of the Commission.

(2) The whole Commission may allow the subcommission to consider and decide those matters other than coming under each of the following items.

(a) matters relating to the administration of the Commission, except those that are provided in Article 25, paragraph 2:

(b) matters requiring the previous decisions of the whole Commission to be modified:

(c) matters which the subcommission did not decide or it decides to be dealt with by the whole Commission:

(d) any other matters that the whole Commission recognizes the need to deal with itself.

(3) The matters considered and decided by the subcommission in accordance with paragraph 2 shall be deemed to be considered and decided by the whole Commission.

#### **Article 33 [Proceedings and the quorum]**

(1) The proceedings of the whole Commission shall be presided by the chief commissioner, and a decision of the majority of the commissioners is a decision of the Commission.

(2) The proceedings of the subcommission shall be presided by a permanent commissioner, a decision of the majority of constituent commissioners is a decision of the subcommission.

#### **Article 34 [Exclusions, removals, and avoidance]**

(1) The commissioner shall be excluded from the consideration and decision of a complaint in the following cases.

(a) where the commissioner, his or her spouse, or ex-spouse is a party to the complaint (meaning the victim of the complaint filed by those other than the complainant,

the accused and the victim. Hereinafter the same) or co-holders of rights or duties with the party:

(b) where the commissioner has or had a family relationship with a party to the complaint:

(c) where the commissioner gives testimonies or expert opinions in relation to the complaint:

(d) where the commissioner is or was proxy for a party in relation to the complaint:

(e) where the commissioner was involved in the investigation or trial in relation to the complaint.

(2) The parties may apply for the removal if there are circumstances difficult to expect the impartiality of the consideration and decision by the commissioner. The chief commissioner shall decide on this application for the removal without the decision of the whole Commission. However, if it is not appropriate for the chief commissioner to decide, it shall be decided by the whole Commission.

(3) The commissioner himself or herself may avoid the consideration and decision of the complaint when there is a ground coming under each item of paragraph 1 or paragraph 2.

#### **Article 35 [The establishment of the secretariat]**

(1) The Commission shall establish the secretariat to deal with its affairs.

(2) The secretariat consists of necessary staff including one secretary-general. The secretary-general is appointed by the President with the nomination of the chief commissioner.

(3) The secretary-general shall deal with the affairs of the secretariat in accordance with the orders of the chief commissioner, and shall direct and supervise its staff.

#### **Article 36 [Prohibition of personation and other matters]**

(1) No one shall exercise the authority of the Commission by personating commissioner, director, auditor or staff of the Commission.

(2) No one who had been or held the posts as a commissioner, a director, an auditor or a staff of the Commission shall disclose the secret acquired in the course of dealing with its affairs.

#### **Article 37 [Prohibition of the use of similar names]**

No one but the Commission shall use the name of the National Human Rights Commission or other similar names.

#### **Article 38 [Treatment as public servants for the application of penal rules]**

(1) The commissioners, directors, auditor and staff of the Commission shall be regarded as public servants for the application of Articles 123, 129 to 132 of the Penal Law.

(2) The commissioners and staff of the Commission shall be regarded as public servants for the application of Articles 65 and 84 of the State Officials Law.

#### **Article 39 [The organization and operation of the Commission and other matters]**

Any other matters necessary for the organization and operation of the Commission, which are not prescribed by this Law, shall be determined by the presidential decree.

### Chapter 3. Investigation and Handling of Human Rights Violations

#### Article 40 [Subject matters of investigation by the Commission]

- (1) The Commission may investigate human rights violations and discriminatory practices.
- (2) A victims suffered from or a person who knows about human rights violations and discriminatory practices may file a complaint to the Commission.
- (3) The Commission may initiate necessary investigations proprio motu when there are substantial grounds to believe that there exist serious violations of human rights and discriminatory practices.

#### Article 41 [Forms of a complaint]

(1) Those who wish to file a complaint to the Commission shall do so in writing stating the following items. Oral complaints may be accepted where there are special circumstances in which written complaints are not possible.

(a) the name and address of the complainant:

(b) the name of the accused and other facts making it possible to identify the accused:

(c) the facts grounding the purpose and cause of the complaint.

(2) If a person held or protected in a police detention centre, prison authorities, alien protection center, military prison and mass protection facilities wishes to file a complaint to the Commission, the officials belonging to the police, prison authorities, alien protection center and military prison and the personnel belonging to mass protection facilities shall allow him or her to draw up the complaint.

(3) The officials and the personnel of paragraph 2 shall forward the complaint in accordance with paragraph 2 to the Commission without delay, and serve the complaint with the certificate of receipt issued by the Commission.

#### Article 42 [Dismissal of a complaint]

(1) The Commission shall dismiss a complaint without investigation if it comes under one of the following items.

(a) where it passed more than a year since the fact grounding the cause of the complaint had occurred:

(b) where a complaint does not fall under the subject matters of investigation by the commission:

(c) where the contents of a complaint itself is regarded as clearly false or groundless:

(d) where a complaint is filed anonymously:

(e) where a complaint is filed by anyone other than the victim in case that the victim does not wishes investigation:

(f) where the complainant withdraws the complaint, except the case where the victim does not give consent to its withdrawal even if the complaint filed by anyone other than the victim is withdrawn:

(g) where the purpose of a complaint is contrary to the conclusive judgment of a court of law or decision of the Constitutional Court on the fact grounding the cause of the complaint:

(h) any other cases where the Commission considers it inappropriate to investigate.

(2) If it dismisses a complaint in accordance with paragraph 1, the Commission may refer the complaint to relevant authorities when it considers necessary. In this case, the relevant authorities shall notify the Commission of the result of the handling of the complaint without delay when it is requested by the Commission.

#### **Article 43 [Initiation of investigation]**

(1) When it receives a complaint, the Commission shall initiate necessary investigations on its contents without delay.

(2) Even after it initiated an investigation, the Commission shall dismiss the complaint when it comes under one of the items under Article 42, paragraph 1.

#### **Article 44 [Purpose of investigation]**

(1) The investigation by the Commission is purported to redress human rights violations and discriminatory practices, and shall avoid causing hindrance to the conduct of functions of State authorities.

(2) The Commission shall not conduct an investigation in order to interfere with the privacy of an individual or improperly with the prosecution of a case under investigation.

#### **Article 45 [Methods of investigation]**

(1) When the Commission considers it necessary while investigating in accordance with Article 43, paragraph 1, it may take the following measures as determined by the presidential decree.

(a) the request to submit a written statement from a complainant, witnesses and the accused. When it considers insufficient with the written statement, however, it may ask them to be present and hear testimonies.

(b) the appointment of an assessor and the asking for the assessment

(c) the request to submit related materials and things to the accused or his or her organ, facilities, organization and so on, or the keeping them in custody.

(2) When the Commission considers necessary for an investigation, it may authorize its commissioners or staff to undertake on-the-spot investigation on the materials and things in the place where the fact grounding the cause of the complaint occurred and other necessary places.

(3) When the Commission considers necessary, it may authorize its commissioners or staff to hear statements from the complainant, witnesses, and the accused in such places as determined by the presidential decree.

(4) The commissioners or staff investigating in accordance with paragraph 2 may request that those authorities, facilities and organization under an on-the-spot investigation submit necessary materials and things, or keep them in custody.

(5) In the case of paragraph 2 to 4, the relevant commissioners or staff shall present a certification of the terms of reference to relevant persons.

(6) The investigation of the Commission shall be in camera. However, the Commission may make the investigation public if the whole Commission decides so.

#### **Article 46 [Limit of investigation and inquiries of the fact]**

(1) When the Commission requires the submission of the materials and things, or is about

to undertake an on-the-spot investigation under Article 45, paragraph 1, item 3, and paragraphs 2 to 4, it shall not do so if the head of the relevant central administrative authorities issues a certificate to the Commission to the effect that the relevant materials and things come under one of the following items.

(a) official secrecy under laws and regulations

(b) materials or things that are deemed to be detrimental to significant national interests such as national security, national defence, reunification, foreign relations, if disclosed:

(c) materials and things relating to investigation, trial, and execution of sentences coming under one of the following sub-items if disclosed:

(i) when it is detrimental to an on-going investigation of crimes or a pending trial:

(ii) when it is detrimental to the honor, the secrecy of private life, the life, physical security or the tranquility of living of a relevant person:

(iii) when it is detrimental to the effective operation of prison authorities and investigation agencies or likely to reveal secrecy about the methods of investigation.

(2) Where the Commission is not allowed to require the submission of materials and things under paragraph 1, it may communicate to the relevant State authorities and request the confirmation of the necessary matters.

#### **Article 47 [Referral of complaints]**

(1) If the Commission deems it appropriate for other State authorities to deal with a complaint, it may refer the complaint to them.

(2) If a trial is pending or an investigation is in progress in relation to the case where the facts underlying the cause of a complaint are the same, the Commission shall refer it to the relevant court or investigation agency.

(3) The State authorities under paragraph 1 and the investigation agency under paragraph 2 shall notify the Commission of the results of the handling of the case relating to the complaint without delay.

#### **Article 48 [Suspension of investigation]**

If the Commission is not able to continue an investigation because the whereabouts of the parties to the complaint and witnesses are not known or they are ill, or for other reasons, it may suspend the investigation till such reasons cease to exist.

#### **Article 49 [Recommendation of agreement]**

When the Commission deems that there is probability of human rights violations and discriminatory practices in the course of the investigation of a complaint, it may recommend an agreement to the victim and the accused.

#### **Article 50 [Commencement of conciliation procedure]**

(1) If the victim and the accused does not reach an agreement in accordance with a recommendation of agreement under Article 49, the Commission may refer the complaint to conciliation.

(2) The victim and the accused may make an application for conciliation to the Commission where they could not reach an agreement in accordance with a recommendation of

agreement under Article 49.

(3) If there is referral to or application for conciliation in accordance with paragraph 1 and 2, the Commission shall commence the procedure of conciliation without delay.

(4) The details of conciliation shall be determined by the presidential decree.

#### **Article 51 [Conciliation]**

(1) A conciliation is reached when a conciliation document recording the terms of agreement between the victim and the accused after the commencement of the procedure of conciliation is signed by them and certified by the Commission.

(2) If the victim and the accused after the commencement of the procedure of conciliation have failed to reach an agreement or the Commission deems the terms of agreement not appropriate, the Commission may make a decision proprio motu (hereinafter "decision in lieu of conciliation") for the equitable settlement of the complaint considering all the relevant circumstances.

(3) Decisions in lieu of conciliation may include the following matters.

(a) measures to prevent the same or a similar violation of human rights or discriminatory practice from reoccurring:

(b) restitution, compensation and any other necessary remedies.

(4) When the Commission made a decision in lieu of conciliation, it shall serve the decision on the victim and the accused without delay.

(5) The victim and the accused may appeal to the decision in lieu of conciliation within two weeks of its service.

#### **Article 52 [Effect of conciliation]**

(1) Conciliation under Article 51, paragraph 2 and a decision in lieu of conciliation where the victim and the accused do not appeal in accordance with Article 51, paragraph 5, shall have the same effect as an amicable settlement in the court.

(2) If the victim or the accused makes an appeal in accordance with Article 51, paragraph 5, the Commission shall advise the victim on other remedies.

#### **Article 53 [Recommendation of remedies and other measures and statement of views]**

(1) If the Commission, after the investigation of a complaint, considers that the contents of the complaint amount to a human rights violation or discriminatory practice, it may recommend remedies including the measures covered by each item of Article 51, paragraph 3 or express its views to the accused, the head of the authorities, facilities, and organizations of his or her belonging or the head of supervisory authorities when it deems necessary.

(2) If the Commission, in the course of the investigation of a complaint, considers it necessary to improve laws, regulations, institutions, policies and practices relating to human rights, it may recommend reasonable improvement with respect to them to the head of the relevant State authorities, or express its views.

(3) If the Commission recommends or expresses its views to the relevant State authorities or the head of supervisory authorities under paragraph 1 or the head of the relevant State authorities under paragraph 2, it shall notify the Minister of Justice of its contents.

(4) The accused or the heads of the authorities, facilities, and organizations received



recommendations under paragraphs 1 and 2 shall respect it unless there are appropriate reasons.

**Article 54 [Dismissal of a complaint]**

If the contents of a complaint as a result of the investigation into a complaint comes under one of the following items, the Commission may dismiss the complaint.

(a) where it is not true:

(b) where it does not amount to a human rights violation or discriminatory practice:

(c) where any other remedies are deemed not necessary as damages are already recovered or for other reasons.

**Article 55 [Accusation]**

(1) If the contents of a complaint resulting from the investigation into a complaint amounts to a criminal act, the Commission may bring an accusation to the head of the Prosecutors Office, when it deems penal punishment necessary.

(2) If the Commission bring an accusation in accordance with paragraph 1, it shall notify the Minister of Justice of that fact.

**Article 56 [Notification of a decision]**

When the Commission dismissed a complaint under Article 42, paragraph 1 and Article 43, paragraph 2, referred it under Article 47, paragraphs 1 and 2, suspended under Article 48, made recommendations or statement of views under Article 53, paragraphs 1 and 2, dismissed under Article 54 and accused under Article 55, paragraph 1, it shall notify the parties of the complaint.

**Article 57 [Inspection of police detention centre and the like]**

(1) The Commission may allow a commissioner to inspect police detention centers, prison authorities, alien protection centers, military prisons and mass protection facilities when it deems particularly necessary to evaluate the situation of human rights.

(2) The commissioner inspecting under paragraph 1 may interview detainees or protected persons in a place designated by the presidential decree if deemed necessary.

(3) The inspection under paragraph 1 shall be decided by the whole Commission.

(4) The commissioner inspecting under paragraph 1 shall present a certification of his or her terms of reference to the relevant authority.

**Article 58 [Public announcement of recommendations and the like]**

(1) The Commission shall make public its recommendations or the contents of its views under Article 19, paragraph 3, decisions in lieu of conciliation under Article 51, paragraph 2, recommendations or views under Article 53, paragraphs 1 and 2, accusations under Article 55, paragraph 1, and the contents of the result of measures under Article 59 unless it is restricted under the provisions of other laws.

(2) If the public announcement of the contents of the result of measures under paragraph 1 is likely to violate the privacy of private life of an individual, the Commission shall make public the contents of the result of measures in such a way as to conceal the individual's identity by the decision of the whole Commission.

**Article 59 [Notification of the result of measures and the like]**

(1) The head of the relevant State authorities or the head of the Prosecutors Office who has received a recommendation or accusation under Article 19, paragraph 3, Article 53, paragraphs 1 and 2, and Article 55, paragraph 1 shall notify the Commission of the result or the plan of measures within 30 days of the recommendation or accusation. In this case, the Commission shall notify the Minister of Justice of the contents of the result of the measures without delay.

(2) When the head of the relevant State authorities or the head of the Prosecutors Office who has received a recommendation or accusation under Article 19, paragraph 3 and Article 53, paragraphs 1 and 2, does not accept the recommendation of the Commission, it shall explain its reasons in notification.

**Article 60 [Analysis report of human rights situations]**

The Minister of justice shall report to the President by March 31 each year an analysis of human rights situations and actions to be taken for its improvement putting together recommendations and accusations under Article 19, paragraph 3, Article 53, paragraphs 1 and 2, and Article 55, and the results or plans of measures under Article 59 paragraph 1.

**Article 61 [Applicable provisions]**

When the Commission conducts an investigation under Article 40, paragraph 3, Articles 44 to 53, 55, 56, 58 and 59 shall apply.

**Chapter 4 Human Rights Organizations**

**Article 62 [Functions of human rights organizations]**

The functions of human rights organizations are as follow.

- (a) counselling on human rights:
- (b) human rights education and public information:
- (c) investigation and research on human rights matters:
- (d) recommendation for human rights policy:
- (e) other works for the protection and promotion of human rights.

**Article 63 [Registration of human rights organizations]**

(1) Human rights organizations may register with the Minister of Justice as provided by the presidential decree.

(2) The human rights organization which wishes to register under paragraph 1 shall have appropriate financial and human resources for its activities.

**Article 64 [Prohibition of disclosure of secrecy]**

Persons working for the human rights organizations or who had worked for, shall not disclose the secrecy acquired during their work.

**Chapter 5 The State support and other matters**

**Article 65 [The secondment of officials]**

(1) The chief commissioner may request the secondment of officials to State authorities, local government authorities, education authorities or research agencies via the Minister of Justice when it deems necessary for its conduct of functions.

(2) The heads of State authorities or agencies who have received the request under paragraph 1 may send their officials or staff to the Commission in consultation with the latter.

(3) The seconded officials or staff under paragraph 2 shall carry out the functions of the Commission independent of their authorities or agencies.

(4) The heads of State authorities or agencies which have sent officials or staff in accordance with paragraph 2 shall not take measures not favorable to them in matters such as personnel affairs and treatment.

#### **Article 66 [Contribution and provision of subsidies]**

(1) The State shall contribute to the Commission within the limit of budget for its establishment, facilities, operation and works.

(2) The State may provide subsidies to those human rights organizations which registered under Article 63, paragraph 1 within the limit of budget when it deems necessary for their sound fostering and development.

(3) The contribution and the payment and provision of subsidies, their use and other necessary matters under paragraphs 1 and 2 shall be prescribed by the presidential decree.

#### **Article 67 [Lending State and public property free of charge]**

(1) The State or the local government authorities may allow the Commission to lend or use and make profits the State property free of charge for its establishment and operation.

(2) Matters necessary for the terms, conditions and procedures for the lending, use and making of profits under paragraph 1 shall be prescribed by the presidential decree.

#### **Article 68 [Reception of financial donations]**

(1) The Commission and the registered human rights organizations under Article 63, paragraph 1 may receive financial donations from individuals or legal persons notwithstanding the provisions of the Regulation of Financial Donation Law.

(2) The Commission and the human rights organizations which have received donations under paragraph 1 shall report to the Minister of Justice its amounts and items as provided by the presidential decree.

(3) Donations under paragraph 1 shall be for the operation of the Commission or human rights organizations which received them.

#### **Article 69 [Submission of operation plans and others]**

(1) The Commission and those human rights organizations which receives subsidies under Article 62, paragraph 2 shall report to the Minister of Justice the following documents as provided by the presidential decree.

(a) the operation plan and the budget of every fiscal year:

(b) Account of income and expenditure every fiscal year.

(2) The Minister of Justice may require the Commission and the subsidized human rights organizations under Article 66, paragraph 2 to report their account and fiscal matters, or audit them.

## Chapter 6 Penalties

### Article 70 [Penalties]

- (1) Any one who has filed a complaint based on a false fact of human rights violations and discriminatory practices shall be subjected to an imprisonment of less than 5 years or to a fine not exceeding 10 million won.
- (2) Any one who falls under one of the following items shall be subjected to an imprisonment of less than 3 years or to a fine not exceeding 7 million won.
  - (a) a person who violates the provisions of Article 36, paragraph 1:
  - (b) a person who violates the provisions of Article 41, paragraph 2:
  - (c) a person who violates the provisions of Article 41, paragraph 3.
- (3) Any one who violates the provisions of Article 36, paragraph 2 shall be subjected to an imprisonment of less than 2 years or to a fine not exceeding 5 million won.

### Article 71 [Negligence fine]

- (1) Any one who falls under one of the following items shall be subjected to a negligence fine not exceeding 10 million won.
  - (a) a person who does not respond to the request to appear before the Commission under Article 45, paragraph 1 without statutory or any other reasonable grounds:
  - (b) a person who does not respond to the request to present materials or things under Article 45, paragraph 1, items 3 and paragraph 3, or present false materials or things without statutory or any other reasonable grounds:
  - (c) a person who refuses, obstructs or excludes an on-the-spot investigation under Article 45, paragraph 1 or inspection under Article 57, paragraph 1 without statutory or any other reasonable grounds.
- (2) Any one who violate the provisions of Article 37 shall be subjected to a negligence fine not exceeding 12 million won.
- (3) Negligence fines under paragraphs 1 and 2 shall be imposed and collected by the Minister of Justice with the request of the Commission as provided by the presidential decree.
- (4) Any one who objects to the imposition of negligence fines under paragraphs 1 and 2 may appeal to the Minister of Justice within thirty days after knowing the imposition.
- (5) When a person who was imposed a negligence fine under paragraphs 1 and 2 appeals in accordance with the provision of paragraph 4, the Minister of Justice shall notify the fact to a competent court without delay, and the competent court which is notified shall hold a trial of negligence fines in accordance with the Procedural Law for Non-litigation Cases.
- (6) When an appeal is not made within the time limit under paragraph 4 and the negligence fine is not paid, it shall be corrected as in the case of overdue national tax.

## Supplementary rules

### Article 1 [Date of implementation]

This Law shall be implemented from the public proclamation.

**Article 2 [Preparation of establishment]**

(1) The Minister of Justice shall appoint not more than seven commissioners for establishment to undertake the work for the establishment of the Commission within thirty days.

(2) The commissioners for establishment shall draw up articles of the Commission and seek approval from the Minister of Justice.

(3) When there is approval under paragraph 2, the commissioners for establishment shall do the registration of establishment of the Commission with all their names without delay.

(4) After the registration of establishment of the Commission, the commissioners for establishment shall transfer their works to a board of directors.

(5) When the transfer of works under paragraph 4 finishes, the commissioners for establishment are considered dismissed.

(6) All expenses incurred for and until the establishment of the Commission shall be born by the Commission.

**Statement : We are against the Human rights Draft law  
proposed by the government**

**- Human right activists from 18 organizations are entering hunger strike**

7 April, 1999

On last March 30th, Human Rights bill passed the council of the national affairs neglecting the opposite opinions of many human rights organizations. We human rights activists from 18 organizations, who actually have been spending our lives on the spots where human right infringement cases are occurring, are entering hunger strike to protest against the human right bill. The bill is far from its original purpose now as the bill was made by politicians secretly in a secret place.

When president Kim Dae-jung promised the society where human rights are respected in his inauguration speech, we were moved so much and still we can't forget the excitement we had deep in our hearts on that day. 'The society where human rights are treasured' had been a true ideal for all Koreans who had gotten through all the difficult times of trouble. It is a must for us to have the kind of human right organization that can wipe out tears of the weak whose human rights have been infringed unduly. For this the organization should be independent from the politics and must be given power and authority. when this comes true we will be able to say that the new era has been open slamming the door of the old era where the authority carried matters with a high hand.

But unfortunately for the past 1 year, our expectation has gradually turned into disappointment and again it's turning into big anger now. From the beginning the prosecutor were not interested in protecting human rights of the people, rather they had unreasonable desire for making the national human rights organization under the Ministry of Justice. When it turned out to be impossible with the opposition of civil organizations, they maneuvered to weaken the authority and power of the national human rights organization. As a result the human rights organization described in the bill is not the one that gives hope to the alienated and wipes out their tears. It is just one of the ornaments to advertise the governments works. Now the most important reform is about to fail. It's our calling to live with human-right-infringed victims finding out each and every case of them. So when we evaluate the efficiency of a human rights organization, we look at the actual output of it. Whether an organization actually work and save those people based on human right law matters to us. We can't understand why the prosecutors took the lead on the discussion about making of the human right organization whose basic function is to save those weak and poor people. Nobody would believe that the prosecutors would be on their side and share

the pains they are experiencing. We think that the governments human rights bill should be retracted. We should open discussion about the bill for all Korean nationals and create a new human rights organization which actually can fulfill the human-rights-respected society. We will do our best to push on our demands.

- 18 Human Rights NGOs : Minkahyup Human Rights Group/ Buddhist Committee for Human Rights/ The Joint Committee for Migrant Workers in Korea/ The Research Institute of the Differently Abled People Rights in Korean/ People's Solidarity for Social Progress/ Chunbuk Solidarity for Peace and Human Rights/ Sarangbang Group for Human Rights/ PSPD(People's Solidarity for Participatory Democracy)/ KYPT(Korea Youth Progress Party)/ Catholic Human Rights Committee/ Lesbian & Gay Human Rights Federation. South Korea/ Korea Sexual Violence Relief Center/ Korean Women's Association United/ Korean Women's Association for Democracy and Sisterhood/ Korean Women's Hot Line

- 33 Human Rights Activists including Suh Joon-sik(Representative of Sarangbang)/ Nam Kyu-sun(Chief Secretary of Minkahyup)/ Oh Chang-ik(Chief Secretary of Catholic Human Rights Committee)

**\* The main problems of the final bill of Human Rights Law  
passed by a council of national affairs \***

1. The Human Rights Law was made without the democratic process.

The Ministry of Justice consulted abruptly about Human Right Laws with the new chief of the Policy Planning Committee in the ruling party while Kim Won-gil, the ex-chief of Policy Planning Committee and Lee Kee-moon, the chief of Human Rights Committee, who were main motors, reshuffled. As we can see from the false report of the interview by Park Joo-sun, the Minister of Justice and the president's legal advisor, the Ministry of Justice has tried immorally to achieve the agreement with the ruling party concerning the draft law of human rights. Mary Robinson, UNHCR, emphasized that to establish the Human Rights Commission by democratic and fair process is as important as the status of the Human Rights Commission. In this sense, the final bill of Human Rights Law about which the Ministry of Justice made the abrupt agreement with the ruling party, is the result of by the back door lobbying.

On March 10, Kim Won-gil, the ex-chief of the Policy Planning Committee, and Lee Kee-moon, the chief of the Human Rights Committee, met with an NGO coalition and promised that the National Human Rights Commission (NHRC) would be established in collaboration with civil organizations. The process for building NHRC would be open to public. In spite of their promise, Chang Young-chul, the new chief of the Policy Planning Committee, passed the bill a week after he was appointed and he did not consider the NGOs opinions at all. Moreover, President Kim Dae-jung, told the Minister of Justice in the debriefing that the Minister of Justice should meet the representatives of civil organizations to discuss the articles and review the articles that accept the interruptions of Minister of Justice. However, the Minister of Justice did not contact civil organizations but rather laid a bill in the council of national affairs of his own accord. The Minister of Justice, a conservative public prosecutor, ignored the president's indication of assuring democratic process.

2. The National Human Rights Commission is likely to be an entity in name only.

The human rights commission is nothing but the subordinate of the Ministry of Justice. The Ministry of Justice stated that NHRC would be independent according to its final draft law. However, if we look at the draft laws in detail, it is salient that NHRC is the subordinate machinery of the Ministry of Justice. For example, the NHRC will help national institutions to deal with human rights(article 2, passage 2) : as the Ministry of Justice is considered a human rights institution(article6), NHRC is nothing but an assisting institution for the Ministry of Justice. The Ministry of Justice has the power to monitor NHRC's activities and management. For



instance, NHRC must report its opinions, processes, and decisions to Minister of Justice (article 65), the Ministry of Justice is entitled to make comprehensive human rights reports as well, even though the NHRC submits human rights report to the president.

- The Minister of Justice is entrusted with full power in establishing NHRC.

Committee and articles of association: who is going to establish the NHRC is very important. According to the final bill, the Minister of Justice has the power to appoint a committee, which will cause the defamation of the independence of NHRC. In order to establish an independent commission, the process for establishing NHRC should not be under government control. The committee has to be appointed by the president in collaboration with civil organizations and human rights experts.

- Presidential decrees: 13 items that will be controlled by presidential decrees rather than the law are mostly about process and method of investigation indicating that investigation performed by NHRC will be limited by presidential decrees. Above all, it seems that the final bill protects the independence of NHRC by the guarantee of receiving a budget directly from the government and the eradication of budget control power by the Minister of Justice. However, the request process of a budget, budget distribution, and the use of budget are ordained by presidential decrees so that there are high possibilities for NHRC to be interrupted by the Ministry of Justice.

Presidential decrees can be freely formulated and amended by the Ministry of Justice so that when the management and the budget of NHRC are ordained by presidential decrees, there is a high risk that the Ministry of Justice will revise the presidential decrees and make NHRC a subordinate institution to the Ministry of Justice. As we have experienced the distortion of the presidential decrees so many times, the management and the budget of NHRC have to be ordained by law, and complementary items can be formulated as the regulations of commission to prevent the distortions of law.

The extent of jurisdiction of NHRC is so limited that investigations on violation of human rights can be blocked.

According to the final bill, NHRC can only investigate eight kinds of violations of human rights such as infringement of one's life and personal liberty, which are already regulated and considered as a penal offence by the existing law. The extent of jurisdiction of NHRC is considerably limited so that many violent cases of human rights violations that are out of its jurisdiction can not help being rejected. In this situation, the frequently occurring human rights violations such as freedom of expression, social rights like environmental, residential, and educational rights, and prisoners' rights can not be investigated by the NHRC.

- The veto power

The government declared that it would solve the violation cases that happened in the past, by establishing NHRC. However, the final bill states that the chief of any institution can exercise veto power by sending a letter for refusal in case of leaking official secrets and encroachment of privacy and reputation (article 48). The reasons of exercise of the veto power are not clearly indicated, allowing for the veto power to be abused by the chiefs of any institution. Due to the veto power, politically sensitive cases like suspicious deaths can not be solved even though NHRC originally has the right to investigate politically sensitive issues.

- The decisions of NHRC will be likely to be nothing.

The Fair Trade Commission, the Labor Commission and the Commission for Improving Gender Discrimination can order any violators to rectify their situations but NHRC can only recommend the rectification of violations of human rights. The Ministry of Justice insisted that this recommendation right is enough for NHRC to make its work effective. However, it is illogical to say that the related party will follow the decisions of NHRC if NHRC does not have any authority to punish persons or institutions that commit the violations. If NHRC can have recommendation right only, it must have the authority to punish the persons or the institutions that do not follow the recommendation.

\* A report on the proceedings for establishing NHRC \*

-July 1993: An NGO coalition that participated in the UN World Human Rights Conference in Vienna, suggested to formulate Human Rights Law and to establish NHRC.

November 1997: The announcement of the election pledges by President Kim Dae-jung.

-May, 1998: Amnesty International announced "the recommendations for establishing NHRC in Korea." (Amnesty International has urged to the Korean government to build an effective and independent NHRC).

-17 September, 1998: An NGO coalition for establishing NHRC which consists of 30 civil organizations, is established.

-18 September, 1998: The representatives of the NGO coalition have a meeting with Park Sangchun, the Minister of Justice (request for transparency and democratic process)-25 September, 1998: The announcement of the draft law for human rights by the Ministry of Justice the NGO coalition and Korean Lawyers' Association announce the critical statement.

-14 October, 1998: The first meeting between the Ministry of Justice and the ruling party concerning Human Rights Law- Due to the difference of their opinions, the meeting was broken off.

-16 October, 1998: The Ministry of Justice holds a public hearing.

-19 October, 1998: A meeting with Brian Burdekin, Special Advisor of UNHCR.

He said that the draft law by the Ministry of Justice could not protect the independence of NHRC.

-23 October, 1998: Amnesty International sends the public letter to President Kim Dae-jung and the Minister of Justice ( the letter pointed out that NHRC in the draft law by the Ministry of Justice lacked independence and effectiveness)-29 October, 1998: President Kim Dae-jung holds public meeting with the representatives of civil organizations (President promised to formulate Human Rights Law which can protect people's rights).

-5 November, 1998: President indicates that Human Right Law has to be made based on UN recommendations.

-6 November, 1998: An NGO coalition holds a public hearing for formulating the law of Human Rights Commission.

-27 November, 1998: Ministry of Justice announce that the revised draft law. NGO coalition and Amnesty International criticize it because of the lack of independence of NHRC in its draft law.

-28 November, 1998: The second consultation between the Ministry of Justice and the ruling party. It is broken off again because of the difference of opinions.

-8, December, 1998: Twelve influential senior activists for democracy announce the proposal to establish an independent NHRC.

- 9 December, 1998: President Kim Dae-jung holds a meeting with the ruling party, the

opposition party and the Ministry of Justice. It was broken off because of the difference of opinions. President indicates that the ruling party and the opposition party should make one draft law after consultation with civil organizations.

- 31 December 1998: Kim Won-gil, the chief of the Policy Planning Committee holds a meeting with the representatives of civil organizations: promises that he finishes the formulation of Human Rights Law by February. The ruling party agrees that NHRC will be national institution.

- 26 January, 1999: Park Joo-sun, the president's legal advisor has the business trip to New York to listen to the opinions of UN human rights experts. It is revealed that He makes the false report which distorts the opinions of UN human rights experts. An NGO coalition urges the Minister of Justice to resign.

- 9 February, 1999: The third consultation between the ruling party and the Ministry of Justice. The announcement of the secondly revised draft law. The consultation is broken off. An NGO coalition and Amnesty International criticize the second draft law.

- 19 February, 1999: The demonstration by an NGO coalition in front of the building of the ruling party (an NGO coalition urges the government to establish independent NHRC).

- 22 February, 1999: Amnesty International makes the evaluation report of Kim Dae-jung's one year presidency. - demands for establishing an independent NHRC.

- 24 February, 1999: President Kim Dae-jung holds the press conference - He declares that the government will not adopt the draft law by the Ministry of Justice and Human Rights Committee will be an independent civil institution.

- 2 March, 1999: A meeting with Lee Kee-moon, the chief of the Human Rights Committee- an NGO coalition request that the process for establishing NHRC have to be open to public

- 10 March, 1999: Kim Won-gil, the chief of the Policy Planning Committee promises that the process for establishing NHRC will be open to public and the ruling party will consult the civil organizations.

- 15 March, 1999: Kim Won-gil, the chief of the Policy Planning Committee reshuffled; Chang Young-chul take office as the new chief of the Policy Planning Committee.

- 22 March, 1999: The consultation between the ruling party and the Ministry of Justice is held. The Ministry of Justice revises the draft law again. It makes the consult abruptly with the thirdly revised draft law.

- 23 March, 1999: An NGO coalition criticize that the draft law by the Ministry of Justice ignores the opinions of civil organizations. It make the protest visit to the office of the chief of the Policy Planning Committee but an NGO coalition is not able to meet him.

- 25 March, 1999: The president told the Ministry of Justice in debriefing that the Ministry of Justice has to revise the draft law which accepts the intervention of the Ministry of Justice.

- 26 March, 1999: An NGO coalition protests against the draft law passed by the consultation between the ruling party and the Ministry of Justice.

- 26 March, 1999: The Ministry of Justice lay the bill in a council of vice-ministers without revising. It is passed.

- 29 March, 1999: the Members of Association for Families who lose their family members by Suspicious Deaths are tonsured to urge government to formulate the special law for investigating the suspicious deaths.
- 30 March, 1999: An NGO coalition holds a gathering to urge the independence and strengthening its power of NHRC.
- 30 March, 1999: The Human Rights Law is passed in a council of national affairs.
- 31 March, 1999: Thirty influential senior activists for democracy holds the press conference for the withdrawal of the Human Right Law.

## \* The Plan for the Hunger Strike \*

Thirty activists from 17 organizations think that the final bill of human rights can not bring the new period for human rights and protect people's rights who are discriminated and marginalized. If NHRC establishes by the bill of Human Rights Law, NHRC will be the subordinate institution and will not have any authority to investigate the violations. It will be an entity only in name. Therefore, we, human rights activists, start the hunger strike to oppose the bill of Human Rights Law.

While we are having the hunger strike, we will also hold a discussion, a gathering, and national campaign.

\* National Campaign: every morning and afternoon.

\* A gathering with people: every evening 6:30

\* Discussion of 'the problems of the bill of the Human Rights Law' with people: 8 April. 5pm. Myungdong cathedral.

\* A gathering with civil organizations: 3pm, 10 April. Myungdong Cathedral

\* A public hearing by Korean Lawyer's Association: 2pm, 12 April, " The bill of the Human Rights Law, Is it enough?"

\* Activities for International Network: Ask for the support from international human rights organizations by indicating the undemocratic attitude of the government and the problems of the bill of Human Rights Law.

FDL-AP, October 25, 1995

Two Rivaling Conceptions of National Human Rights Institutions:  
Essential and Inherent Institution vs. Secondary and Supplementary Institution

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1. Introduction

National human rights institutions(NIs) are defined as constitutional or statutory bodies operating at the national level with a sole purpose of protecting and promoting human rights. In most cases, NIs are established in the form of a commission. Since its very beginning, United Nations has strongly recommended member states to establish and strengthen NIs. International guidelines and recommendations have been developed concerning the status and structure of NIs, but it remains the right of each state to choose the framework which is best suited to its particular needs at the national level. Legislative debates as to the status and structure of NIs are inevitable, therefore, at the national level.

Two contrasting conceptions of national human rights institutions(NIs) have been roughly formulated and hotly debated during the Korean legislative process which has been under way since September 1998. According to one conception, which underlies the government bill and reflects the perspective of national constitutionalism, the national human rights institution is a state institution which has no essential and inherent business of its own, but performs rather a secondary and subsidiary role in the national legal system of human rights protection. In this view, existing state agencies in general and the court, the police and the prosecution office, in particular, are assigned primary and inherent responsibility in the protection and promotion of human rights.

According to the other conception, which has been supported by the NGO side and reflects the perspective of global constitutionalism, the national human rights institution

is a state institution which is entrusted with new and distinct tasks essential to the protection and promotion of human rights in the age of international human rights law. In this vision, NIs complement rather than supplement existing state bodies.

With different background understandings and different practical implications, these rivaling conceptions would lead to different legislations. In this sense, each conception may be regarded as an ideal-type. Consequently, conceptual debates of the kind which dominated the Korean legislative process are likely to be reproduced in any countries where national institutions are under serious consideration. In this paper, I will try to analyze the argumentative structure of each conception and clarify its ideological and institutional implications so as to enhance general understanding of the national human rights institution and to contribute to its burgeoning international jurisprudence.

## II. National Human Rights Institutions: Background and Overview

To protect and promote human rights, NIs are usually entrusted with the three-fold tasks of promoting awareness and educating about human rights, advising and assisting government, and investigating alleged human rights violations. NIs should perform these tasks independently and autonomously. NIs should be composed in a pluralistic way so that they may not resemble ordinary state bureaucracies. Pluralistic composition of NIs is one way of guaranteeing independence from the government, which is the life and blood of NIs.

## III. National Institutions as Secondary and Supplementary Institutions

There are two approaches to the understanding of NIs. One approach views NIs from the perspective of modern constitutionalism, while the other from the perspective of global constitutionalism. Under the first approach, the primary responsibility to protect and promote human rights rests with existing state bodies such as the court, the police, etc. But they are imperfect: they have shortcomings and leave gaps. NIs are introduced to cope with these shortcomings and gaps. Consequently NIs are state institutions of secondary order, operating in gaps left by other primary institutions.



This conception has practical implications on the legislative design of NIs. The terms associated with this conception such as "gap-filling institutions" or "secondary role" connote that NIs are rather unimportant and non-essential. If the theoretical role of NIs is merely secondary and supplementary, then it should be reflected in the status and powers of NIs. Thus, NIs would have rather low status, narrow jurisdiction and weak power.

#### A. Critical Analysis

Upon close examination, this conception consists of four sequential arguments. The first premise is that NIs would not be necessary if existing state agencies such as the police, the prosecution office, and the court, function properly. The second element is the argument that the tasks of NIs are not distinct to NIs but common to all state bodies. The third part is that NIs have a secondary and subsidiary role in the protection and promotion of human rights. The final conclusive point is that NIs need not be given the highest status, that is, the constitutional or quasi-constitutional status, because they play neither an inherent nor essential role, but only a derivative and supplementary role in the protection and promotion of human rights.

##### 1. Are NIs unnecessary if judiciary is independent and parliament is democratic?

Independent judiciaries are often inaccessible because of high costs and intimidating procedures. And they are very lukewarm in acknowledging international standards as enforceable sources of law. Democratically elected parliaments often succumb to majoritarian whims and jeopardize the rights of vulnerable minorities. Therefore NIs are necessary even where the judiciary is independent and the parliament is democratic.

##### 2. Are the tasks of NIs neither distinct nor essential?

The sole business of a NI is simply to promote and protect human rights by monitoring power exercises, advising and assisting the government, educating about human rights, and investigating alleged human rights violations. These kinds of activities are in fact alien to existing state bodies, the main business of which is to exercise state power

rather than to protect human rights. The protection and promotion of human rights may be both a regulating ideal and an evaluating measure of all state bodies, but is not their business in the proper sense. For NIs, however, it is their daily business. NI's functions are distinct in the sense that no other state institutions are expected or required to perform the same. They are also essential to any states which are genuinely willing to discharge its solemn responsibility to respect human rights, because reflection over authoritarian and totalitarian rule makes it crystal clear that the legal and political foundations of human rights are very fragile and that the effective enjoyment of human rights calls for the establishment of effective national infrastructures such as NIs.

### 3. Are NIs secondary and supplementary?

The business of traditional state agencies is to exercise state power in compliance with the requirements of the rule of law, while the business of NIs is to monitor and warn the violation of human rights by state bodies. Accordingly NIs have inherent and separate business of their own, which is categorically distinguishable from existing state bodies in both direction and purpose. The notion that existing state agencies occupy primary and essential position while performing same function as NIs is blind to this undeniable reality.

It is true that NIs are supposed to complement existing state bodies, but not to replace or compete with them. In this sense, the term "gap-filling institutions" rightly grasps one aspect of NIs. But it should be noted that NIs are expected to fill the gaps, not left by individual state agencies such as the court, the police and the prosecution office but left by the international and domestic systems of human rights protection as a whole. In other words, the gaps for NIs to fill are too sizable and weighty for NIs to be relegated to a secondary and subsidiary position.

### 4. Are NIs deserving the constitutional status?

If NIs are secondary-order institutions, it would be wrong to grant them the highest legal status and establish them as constitutional or quasi-constitutional agencies. The organizational form in harmony with their secondary and supplementary nature would be

that of statutory corporations, because they are meant to conduct secondary and derivative business under the supervision of the state, while the state performs primary and inherent business independently.

#### B. Theoretical Comments

The view that NIs are accessory institutions of secondary nature depicts NIs as a mere extension of modern constitutionalism. In this view, NIs are deemed as a supplement to the traditional state apparatus of modern constitution. The central problem with this conception is that it totally lacks the international dimension of human rights. The idea that international human rights law now plays the role of a global bill of rights is missing. Also invisible is the role of international and regional human rights machinery in the national system of human rights protection. Preoccupied with the domestic meaning and role of NIs, the conception of NIs as secondary and supplementary institutions loses sight of their international meaning and role. In short, this conception is one-sided and inadequate because it is not free from the narrow consciousness of modern nation state. As a result, it leads to the reluctant reception of and the minimalist, state-centered approach to NIs.

#### IV. National Institutions as Essential Institutions in the Age of Global Constitutionalism

This conception is based on the realistic observation that current global and regional human rights systems have grave and inherent limitations. Global or regional complaints procedures for example cannot deal with more than a tiny proportion of human rights violations. Moreover it will take years to utilize them. Protection and promotion of human rights remain therefore the primary responsibility of the national state and depend predominantly on the strength of domestic institutions.

At the national level, a pluralist parliament, an accountable executive, and an independent judiciary are the minimum institutions required to secure human rights. However, even these institutions are inadequate in securing human rights for all. Courts are often inaccessible to a large proportion of people because of forbidding costs and procedures. Parliaments are dominated by majority vote disadvantaging eternal

minorities.

Another difficulty inherent in this age of the global bill of rights arises in connection with the implementation of international standards. No existing state agencies have particular interest or incentive in implementing them. So the efforts to develop procedures and institutions necessary to put the standards into effect in reality are lacking at the national level.

NIs are thus the result of the recognition that both existing international and national systems of rights protection have serious shortcomings and limits. The underlying belief is that if there is an independent and autonomous NI with a mandate and adequate powers to monitor and protect human rights, the demonstrable deficiencies of global and regional systems, democratic governments, constitutional guarantees, and court systems can be considerably attenuated. In contrast to regional or international bodies, NIs can serve human rights in a more informed manner which takes into account constitutional peculiarities and local conditions. NIs can also do this without making politically motivated compromises unlike parliaments which tend to follow majoritarian whims. In short, NIs are essential to protection and promotion of human rights in the age of international human rights law.

NIs represent a new type of state institutions in that their function is power-monitoring rather than power-exercising. In contrast to traditional state agencies whose business has been to exercise power against people from the viewpoint of state reason, the official business of NIs is to protect people from the abuses of power from the viewpoint of human rights. Advanced democracy and rule of law increasingly create this new type of state institutions. NIs are but one example.

If we characterize NIs as an innovative device invented by international society with a view to implementing international human rights standards at the national level, NIs would have inherent and primary functions of their own, so that they are treated as primary and essential institutions of the contemporary state. And the status of NIs could safely be upgraded to that of constitutional or semi-constitutional agencies, since international treaties ratified by the state have the same status under the national legal

system. Also, NIs may be allowed a broader jurisdiction and stronger powers if they are deemed necessary.

Needless to say, NIs in this perspective should be more positive in accepting and applying international standards. Main activities of NIs such as education and training, advice and consultation, investigation and remedy should be primarily based on international standards. As a result, state agencies would be made more attentive to and more receptive of international standards when performing their own business. International standards would thus become the living law of the land. In this sense, NIs may be best characterized as the watching eye of international society transplanted into the nation state.

## V. Conclusion

As repeatedly emphasized in UN documents, universal respect for human rights requires the concerted efforts of every government, every individual, every group and every organ in society. NIs are but one component of a complex, multi-level system of ensuring human rights. Nevertheless, independent and effective NIs can contribute substantially to the realization of human rights and fundamental freedoms at the national level.

Of the two contrasting visions of NIs reviewed in this paper, my analysis shows that the conception of NIs as a new state institution inherent and essential in the age of global constitutionalism is in line with the spirit of the time. The rivaling conception of NIs as an quantitative, supplementary extension of the national institutional system of rights protection is shown to be one-sided because it ignores the international dimension involved.

Of all state institutions, NIs are peculiar in that they are intended to serve, not to rule, the vulnerable and powerless. NIs are also peculiar in that support from international society and civil society are essential for effective functioning. Heightened sensitivity to the voice of both international society and civil society and channeling of their concerns to the relevant state agencies belong to the very essence of NIs. In this sense, NIs can

be understood as state windows widely open towards both international and civil society.

In conclusion, being the official focal site within the state where international and domestic issues of human rights are taken seriously, NIs can best be viewed as the institutionalized conscience of the contemporary state listening to the cries of human rights in light of universal international standards. As an innovative device of global constitutionalism, NIs are expected to play the role of the intermediary and reconciliator in the name of human rights between international society and nation state on one hand and between nation state and civil society on the other hand.