

**STATEMENT OF COMPLIANCE WITH THE PARIS PRINCIPLES  
OF THE NATIONAL HUMAN RIGHTS COMMISSION OF THE REPUBLIC OF KOREA  
- [NOVEMBER 2008] -**

## **I. BACKGROUND**

At the April 2006 meeting of the International Coordinating Committee of National Institutions (ICC) it was agreed that members currently accredited with status A would have their accreditation reviewed as part of a regular process of re-accreditation, which would be conducted according to an agreed schedule commencing in October 2006. The National Human Rights Commission of the Republic of Korea (herein after the NHRCK) first applied and was granted accreditation to the ICC in 2004. The NHRCK is scheduled for an accreditation review in October 2008.

The following sections provide background information on the NHRCK based on supporting documentation submitted by the NHRCK to the ICC Secretariat in accordance with Article 3 of the ICC Rules of Procedure.

## **II. DOCUMENTATION PROVIDED IN SUPPORT OF THE APPLICATION**

To permit the ICC to make a determination on the NHRCK's compliance with the Paris Principles, the NHRCK has submitted the following documentation in support of its application:

- National Human Rights Commission Act 2008
- NHRCK Budget 2008
- NHRCK Organizational Structure 2008
- Annual Report 2007
- Strategic Plan 2004-2009
- NHRCK Information Brochure
- Statement of Compliance with the Paris Principles
- Replies to Questions on the Statement of Compliance with the Paris Principles

## **III. CHARACTER OF THE NHRI**

### **1. Establishment**

The NHRCK commenced operation on 25 November 2001. Its legislative foundation is the *National Human Rights Commission Act 2001* (herein after the NHRC Act). Article 3(1) of the NHRC Act establishes a Commission 'to address matters regarding the protection and promotion of human rights'. The Act applies to all citizens of the Republic of Korea and all foreigners residing therein (NHRC Act, Article 4), thus the NHRCK has geographic jurisdiction across the whole country.

Under Article 18 of the NHRC Act 'matters for the organisation' of the NHRCK are prescribed by 'Presidential Decree', while those necessary for its operation are prescribed by the rules of the Commission. There are currently two Presidential Decrees in place, the 'Enforcement Decree' and the 'Decree on the Organisation of the NHRCK and Regional Offices'. Thus when changes to the structure of the NHRCK are made, the relevant Decree must be revised following deliberation by the government (Reply to Questions on the Statement of Compliance).

### **2. Independence**

Article 3(2) of the NHRC Act states that the NHRCK 'independently addresses matters which fall within the purview of its authority', which gives it legal autonomy to carry out its mandate.

However, in certain respects, the NHRCK does not enjoy complete functional autonomy from the Government. NHRCK is considered a 'central government institution' under the National Fiscal Act, which is defined under Article 6 of that Act as 'central administrative agencies established under the Constitution, the Government Organization Act or other Acts'. This is in contrast to 'independent institutions', which Article 6

defines as the National Assembly, the Supreme Court, the Constitutional Court and the Central Election Management Commission (Reply to Questions).

In relation to its financial autonomy, the NHRCK reports that its budget is apportioned in the national budget, which is finalised by the National Assembly. The Ministry of Finance and Planning lays the National Budget draft (including the NHRCK's budget) before the National Assembly. Generally, the Ministry has a power to draft the National Budget and allocate the budget amongst governmental bodies. Accordingly, after the NHRCK has prepared its annual budget, it must consult with the Ministry. If the Ministry does not agree with the budget proposal made by the NHRCK, the proposal is negotiated or compromised. The NHRCK has control over its budget expenditure, subject to reasonable compliance with the National Fiscal Act. The NHRCK reports that for the 2008 financial year, its budget is 23.4 billion Korean Won, approximately 23 million USD (Statement of Compliance).

The budgetary arrangements for the NHRCK may be viewed in contrast to those for independent institutions. The NHRCK notes that other independent bodies entrenched in the Constitution, such as the Supreme Court and Constitutional Court, are in a more independent position in terms of finance (Statement of Compliance). Under Article 40(1) of the National Finance Act "The government must respect the opinion of the head of the independent institution as much as possible in making the budget of independent institutions, and must consult with the head of the independent institutions in advance if an adjustment is needed depending on the nation's fiscal situation." Article 40 (2) further specifies that "If the government, despite consultations under Article 40 Paragraph (1), wishes to reduce the requested amount of the annual expenditure budget of independent institutions, an opinion of the head of the independent institution concerned shall be sought by a meeting of the State Council and when the government reduces the requested amount of the annual expenditure budget of independent institutions, the scale of and reason for the reduction and the opinion of the head of the independent institution concerned shall be submitted to the National Assembly" (Reply to Questions).

In early 2008 it was proposed that the NHRCK should be placed directly under the Office of the President of the Republic of Korea. This proposal was ultimately withdrawn. However, NHRCK appears to be facing increased scrutiny by government authorities since then (information from OHCHR Desk Officer). The National Commission of Audit attempted to undertake, for the first time, a significantly more rigorous audit of the NHRCK's activities and budget. It reportedly fielded a larger team of auditors over a longer period of time. The Ministry of Government Administration and Home Affairs, in response to the NHRCK's request for additional staff to deal with disabilities issues, used the pretext to conduct a study on the NHRCK's organizational structure. The NHRCK agreed on the condition that it has the autonomy to hire a consultant to conduct the study (information from OHCHR Desk Officer).

The NHRCK is accountable to Parliament in that it must prepare an annual report each year on its activities for the preceding year, including the human rights situation and any improvement measures. The NHRCK's Annual Report is submitted to the President of the Republic of Korea and to the National Assembly (NHRC Act, Article 29(1)). The NHRCK also reports that its financial accounts are audited and reviewed before Parliament (Reply to Questions).

To avoid conflicts of interest, Article 10 of the NHRC Act contains provisions that prevent Commissioners from holding concurrent positions as a member of the National Assembly or local council; a public official or any other state institution or local government; and other positions or affairs as determined by the rule of the NHRCK. Commissioners are also prohibited from joining a political party, or participating in political activities. Commissioners are also excluded from participating in the deliberation and resolution of petitions (see section 7 below) in certain cases where a conflict of interest may arise (NHRC Act, Article 38) However, there is no provision in the Act that deals with broader conflicts that may not result from concurrent positions or relate to a complaint petition. NHRC Act does not stipulate that the Commissioners enjoy immunity for actions taken in their official capacity. However, the NHRCK notes that in practice, no Commissioner has incurred liability for such action (Statement of Compliance).

### **3. Appointments processes and organisational infrastructure**

#### **3.1. Composition of the NHRI's membership and appointment processes**

Article 5(1) of the NHRC Act states that the Commission shall be comprised of eleven Commissioners for human rights. This includes one Chairperson and three Standing Commissioners. As at 7 July 2008 the composition of the Commission is as follows:

- Mr. Kyong-whan AHN (Chairperson)

- Mr. Nam-young YOO (Standing-Commissioner)
- Ms. Kyong-sook CHOI (Standing-Commissioner)
- Ms. Kyong-ran MOON (Standing-Commissioner)
- Mr. Hyung-Eun WON
- Mr. Tae-Hoon KIM
- Mr. Ki-Won YOON
- Ms. Deok-Nam HWANG
- Mr. Jae-Geun CHUNG
- Mr. Kuk CHO

There is a new non-standing Commissioner to be appointed shortly (Statement of Compliance).

The Chairperson and Standing Commissioners are appointed as 'public officials in political service' (NHRC Act, Article 5(4)), meaning they are full-time. The National Public Official Act defines public officials as including 'those in charge of making or assisting in making high-level policy decisions and designated as such by law or the Presidential Decree (Reply to Questions). The non-standing commissioners are considered part-time commissioners and do not hold public official status.

Under Article 5(2) Commissioners are appointed by the President of the Republic of Korea, on nomination from the following:

- Four persons selected by the National Assembly (two of which are Standing Commissioners)
- Four persons nominated by the President
- Three persons nominated by the by the Chief Justice of the Supreme Court

The President appoints the Chairperson from among the Commissioners (NHRC Act, Article 5(3)). The NHRCK reports that to date these procedures have been applied in practice (Statement of Compliance). However, it also notes that the appointment process does not allow for the participation of the public or civil society organizations. There are no institutional mechanisms that allow broad public consultation or public scrutiny of the candidates' qualifications. Vacancies are not usually advertised, nor are there any arrangements for public nomination (Statement of Compliance).

Under Article 7(1) Commission members are appointed for an initial three year term, which may be extended for an additional three years. The NHRCK reports that the Chairperson is remunerated at the level of Minister, while the three standing Commissioners are remunerated at the level of vice-Minister. The non-standing Commissioners do not receive salaries, but their allowances and business travel expenses are covered at the level of vice-Minister (Statement of Compliance).

Under Article 8 of the NHRC Act, a member of the Commission cannot be removed from office without their consent, unless they have been sentenced to imprisonment without labour, or a heavier punishment. However, if it becomes 'difficult or impossible' for a member of the Commission to perform their duties due to any physical or mental handicap, he or she may be dismissed from office by a resolution of consent of 2/3 or more of the Commission. Article 9 of the NHRC Act also lists a number of people who will be disqualified from holding the position of commissioner, including a person who: is not a citizen of the Republic of Korea; is a member of a political party; or is a registered political candidate. The NHRCK reports that no Commissioner has been dismissed during their term, although a few have resigned for personal reasons (Statement of Compliance).

Article 15 of the NHRC Act allows the Commission to establish an 'Advisory Organ' to seek advice on matters necessary for the performance of its duties. Organizational and operational details of such an organ are prescribed by the rule of the Commission. The NHRCK reports that there are currently fourteen 'Thematic Experts Committees', in the areas of: Anti-Discrimination, Gender Discrimination, Discrimination against Persons with Disabilities, Migrants Rights, Human Rights Education in Schools, Civic Education, Human Rights of Persons with Mental Disabilities, Social Rights, Children's Rights, International Human Rights, Prosecutors and Police, Correctional Facilities, Group Care Facilities, and Human Rights in the Military. These Committees are each composed of approximately five individuals. Members of these Committees are appointed by the Chairperson (Statement of Compliance).

### **3.2. Pluralism**

Persons appointed as Commission members must possess professional knowledge of and experience with human rights matters and must be recognised as being capable of fairly and independently performing duties for the protection and promotion of human rights (NHRC Act, Article 5(2)). At least four

or more of the Commissioners must be women (NHRC Act, Article 5(5)). The NHRCK notes that while the appointment process in Article 5(2) (which allows for nominations to come from various authorities) provides for a degree of balance amongst interest groups, the focus is not directly on ensuring pluralist representation. However, the current composition of the Commission reflects a de facto pluralism; four Commissioners are women, one is a person with a disability, all come from different professions, such as journalists, lawyers, academics, NGO activities, judges etc (Statement of Compliance).

In relation to the appointment of members of the Expert Advisory Committees, the NHRCK reports that it has enacted the 'NHRCK Experts Committee Rules'. In accordance with Article 2(2) of these rules, committee members are appointed from among the persons 'who have worked in the respective human rights fields, such as gender discrimination and discrimination against the disabled, investigation, rehabilitation, social welfare, international human rights, and other human rights related field for at least five years, persons who have actively worked for at least five years in a related organization or persons deemed to have professional knowledge or experience in each respective expert committee field'. The term of committee members is two years, and the chairperson of each expert committee is appointed by the NHRCK Chairperson among the commissioners (Reply to Questions).

In terms of a pluralist representation amongst its staff, the NHRCK reports that there is not a specific provision in the NHRC Act that enforces the principle of pluralism. However, in practice staff members come from a variety of expertise and career backgrounds, as they are recruited on merit and competence. Over 45 percent of the total workforce are women. However, the majority of managerial positions are occupied by men (Statement of Compliance).

### **3.3. Organisational infrastructure**

#### **3.3.1. Organisational Structure**

The Chairperson of the Commission exercises overall control of the Commission's affairs (NHRC Act, Article 6(1)) and is deemed to be the head of a 'central governmental institution' under the National Fiscal Act when performing duties related to the Commission's budget (NHRC Act, Article 6(5)). The general affairs of the NHRCK are carried out by a secretariat. The NHRCK reports that the secretariat is currently composed of 5 Bureaus and 26 Teams, with 210 full-time staff (Statement of Compliance). The five Bureaus are (1) human rights policy; (2) administration and planning; (3) investigation and remedy; (4) anti-discrimination; and (5) human rights education. Other teams that sit outside these five bureaus include the counselling centre (see section 7 below), the legal affairs and audit team, the communications team, the human rights library and the administrative support team. An organisational chart is included at Appendix A.

The secretariat is headed by a Secretary General, who controls the affairs of the secretariat under the direction of the Chairperson (NHRC Act, Article 16(4)). The Secretary General is appointed by the President of the Republic of Korea on the recommendation of the Chairperson of the Commission, and after due deliberation of the Commission (NHRC Act, Article 16(2)).

#### **3.3.2. Staffing**

The Secretary General and senior staff of the secretariat<sup>1</sup> are appointed by the President on recommendation of the Chairperson, while other staff are appointed directly by the Chairperson (NHRC Act, Article 16(3)). The NHRCK reports that in practice the Government has always implemented the Chairperson's recommendation on staff appointments, but that the Government's complicated screening procedure does prolong the recruitment process (Reply to Questions). The NHRCK reports that its authority to hire staff is limited by the Government Organization Act, which regulates the hiring procedures and size of the staff. The ICC Secretariat sought further clarification on this matter and the NHRCK noted that the Government Organization Act sets out the standards and processes for staff of national administrative agencies and accordingly, the NHRCK must consult with the relevant government ministry and the finance ministry when it plans to recruit public officials or establish new regional offices (Reply to Questions).

The NHRCK also reports that its current workforce is insufficient to meet increasing demands (Statement of Compliance). In April 2007 the Disability Discrimination Act was passed, increasing the workload of the NHRCK. The NHRCK and the Government reach agreement allocating 20 more staff members to the NHRCK. However, recruitment of these staff members has not occurred

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<sup>1</sup> Defined as Public Officials of Grade V or those registered with the Senior Civil Service Pool System.

because the downsizing trend of the new Government (Reply to Questions). In the context of discussions about these additional staff, the Government has sought to conduct a structural review of the NRHCK as discussed above in section 1.

Article 54 of the NHRC Act permits the NHRCK to request that a public official or staff member of any related entity be dispatched to it. Article 54 also specifies that the public official or staff member dispatched to the Commission shall perform affairs of the Commission, separate from the entity to which he/she belongs and that unfavorable measures shall not be taken against the said public official or staff in terms of personnel matters and treatment. The NHRCK reports that it currently has five public officials from the Ministry of Justice (two prosecutors, two immigration officers, one corrections officers) and two public officials from the National Police Headquarters (Reply to Questions).

### **3.3.3.Regular meetings**

The NHRC Act stipulates that the Chairperson presides over Commission meetings. Resolutions passed at Commission meetings require the consent of majority of the incumbent Commissioners (NHRC Act, Article 13(1)). Proceedings of the Commission are made public, unless it is deemed otherwise necessary (Article 14). The NHRCK reports that the Plenary Committee and Sub-Committees of the Commission (see section 5.3 below) meet every two weeks. The Standing Commissioners' Sub-Committee meets every week. Other committees, such as the Conciliation Committee and the Thematic Experts Committees are held as necessary (Statement of Compliance).

## **4. Relations with Civil Society and human rights institutions**

### **4.1. Formal Relationships with Civil Society**

Under Article 19(8) of the NHRC Act, the NHRCK is given the duty of 'cooperation with organizations and individuals engaged in any activity for the protection and promotion of human rights'. If it considers it necessary for the performance of its duties, the NHRCK may also request the consultation of state organs, local governments and other public or private organisations, who must faithfully comply with such a request unless they have a justifiable reason not to (Articles 20(2)-(3)).

### **4.2. Regular Consultations**

The NHRCK reports that it cooperates with domestic human rights NGOs and stake-holder groups in various ways. This includes annual consultation on action plans at the beginning of each year and thematic consultations with relevant NGOs whenever needed. For example, in 2007 the NHRCK focuses on active cooperation with the religious community, by visiting religious leaders through community organisations, organising human rights courses for Buddhist monks and holding a joint human rights event with the National Council of Churches in Korea on December 10 (Annual Report). Consultation is also facilitated through the fact that a number of NGO representatives serve on the Thematic Experts Committees and on the Policy Advisory Committee (Statement of Compliance).

The NHRCK also reports that it cooperates with government agencies at both the national and local levels, in particular in preparation of reports to UN human rights bodies. This cooperation consists of regular and ad hoc policy consultation on various human rights issues, or seminars and workshops on subjects like human rights in North Korea (Statement of Compliance).

The NHRCK also reports that, in accordance with the 'Enforcement Decree' of the NHRC Act, it has organised a 'Human Rights Policy Council' with relevant government agencies, which provides greater structure for consultation with the Government in making recommendations for National Action Plans. The Enforcement Decree contains provisions that govern the composition, function and operation of the Council (Reply to Questions). The NHRCK also consults with the Constitutional Court and Ombudsman institutions whenever needed (Statement of Compliance).

### **4.3. Cooperation with the United Nations, regional and national institutions**

Under Article 18(9) of the NHRC Act, the NHRCK is given the duty of 'exchanges and cooperation' with international organisations related to human rights and human rights institutions of other countries. More specifically, Article 21 of the Act requires that in preparation of a state party's report under the provisions of any international treaty on human rights, state institutions must hear the opinions of the Commission.

The NHRCK has participated in the review of the Republic of Korea's periodic reports to HRC, CESCR, CRC, CEDAW, CAT and CERD. In doing so, it has expressed its opinions on the State reports before the committee, publicised the concluding observations and monitored the implementation of the concluding observations by the state (Statement of Compliance).

The NHRCK has also provided relevant information on individual communications and human rights situations to Special Procedures mandate holders. For example, when the Special Rapporteur on Migrant Workers and the Special Rapporteur on DPRK visited Korea in 2007 and 2008 respectively, the NHRCK organised meetings with NGOs and other relevant stakeholder groups and has been monitoring the implementation of the Special Rapporteurs' recommendations (Statement of Compliance).

The NHRCK participated in consultations by the State in preparation of its report for the UPR and submitted separate information for the stake-holders report. The NHRCK also sent a delegation to the UPR working group review and made an oral statement to the plenary session where the working group's report was adopted. The NHRCK is now planning a follow-up to the UPR process to monitor the implementation of the recommendations made (Statement of Compliance).

The NHRCK cooperates closely with OHCHR, through its National Institutions Unit. It has organised workshops and seminars on a variety of topics in cooperation with OHCHR. In 2008, the NHRCK sent a staff member to OHCHR as a National Institutions Fellow and is planning to expand its cooperation with OHCHR by exchanging staff and working on substantive issues (Statement of Compliance).

The NHRCK has been a member of the ICC since 2004 and has served as Vice-Chair since 2007. It hosted the 7<sup>th</sup> International Conference of NHRIs in September 2004. It has also been a member of the Asia Pacific Forum of National Human Rights Institutions (APF) since 2002. It was elected as Chair in 2006 and served as Vice-Chair since 2007.

The NHRCK has also provided technical assistance for the establishment of NHRIs around the region, for example in China, Japan, Pakistan and Bangladesh. It has also provided training to staff of the NHRIs from Afghanistan and Timor Leste (Statement of Compliance).

## **5. Accessibility**

### **5.1. Procedures and mechanisms to ensure accessibility**

The NHRCK reports that its programs and services are provided on the principles of non-discrimination and accessibility to all populations, regardless of their status. For example, counselling tours are organised regularly to meet the special needs to the marginalised sectors of Korean society. In 2007 on-site counselling services in disadvantaged and remote areas were held on nine occasions through the year (Annual Report). To promote its accessibility, the NHRCK also offers a nation-wide hotline and an online counselling service (which features both face-to-face and internet conversation).

The right of detainees to lodge a petition with the NHRCK receives special protection under Article 31 of the NHR Act. Detention facility staff must afford detainees place, time and resources necessary to prepare a written petition, the NHRCK must be notified if the detainee wishes to lodge a petition in the presence of NHRCK staff, the NHRCK must return a document receipt when it receives a petition from a detainee, NHRCK staff may visit a detention facility to receive an oral petition. The NHRCK has put in place an easy access program for people deprived of their liberty, known as the 'face to face complaint system'. It is now also compulsory for all detention facilities such as prisons, immigration offices, mental hospitals etc to install a human rights complaints box (Statement of Compliance). In 2007 the NHRCK received 215 in-person complaints from detainees (Annual Report).

### **5.2. Procedures and mechanisms for addressing public opinion**

The NHRCK reports that public opinion is taken into account in the development and implementation of all its planned activities. Its website – [www.humanrights.go.kr](http://www.humanrights.go.kr) – is its main window for communication with the public. A website is also available in English, to provide foreigners, particularly migrant workers, with relevant information on their rights. The NHRCK also regularly releases public statements, newsletters and publications (Statement of Compliance).

The NHRCK publishes a complaints form and brochure on the complaints handling process. These documents are available in various languages, including English, Japanese, Chinese, Russian, Thai,

Indonesian, Vietnamese, and Mongolian. The NHRCK's human rights counselling service is also available in English through the internet, telephone or in person (Statement of Compliance).

The NHRCK has its principal office in Seoul. It also has regional offices in three major cities – Daegu, Gwangju and Busan. Each regional office provides a variety of services, such as counselling, investigation on individual cases and human rights education (Statement of Compliance).

### **5.3. Working Groups**

The Commission operates in a 'plenary committee' comprised of the Chairperson, standing Commissioners and non-standing Commissioner. The Plenary Committee makes decisions relating to basic policy on the NHRCK's operation, budget, subcommittees etc (Reply to Questions). Under Article 12 of the NHRCK Act, the Commission may establish subcommittees as it deems appropriate, including a Standing Commissioners Committee (composed of the Chairperson and Standing Commissioners), Human Rights Violation Rectification and Discrimination Remedy Committee. The Standing Committee decides on matters including those related to the administration of the NHCRK referred to it by the Plenary Committee (Reply to Questions).

Each subcommittee may have between 3-5 commissioners and its composition, operation and work will be regulated by Rules of the Commission. The subcommittees may establish special committees (for example on gender, disability etc) to research and review issues for deliberation. The qualifications, term and appointment of members of special committees are determined by Rules of the Commission. Resolutions adopted by the subcommittees require the attendance and consent of at least three members (NHRC Act, Article 13(2)). The NHRCK reports that it currently has four subcommittees, the Investigation and Remedy I and II Committees, the Anti-Discrimination Committee and the Disability Discrimination Committee. Each subcommittee deals with issues within their thematic areas that do not require a decision of the full plenary Committee (Statement of Compliance).

## **IV. COMPETENCE AND RESPONSIBILITIES**

### **6. General Jurisdiction and Functions**

#### **6.1. Mandate to promote and protect human rights.**

Human rights are defined broadly in Article 2(1) of the NHRC Act to include those guaranteed by the Constitution and in legislation of the Republic of Korea, those recognised by international treaties ratified by the Republic of Korea and those protected under international customary law.

Although, in August 2007 the CEDAW Committee, in its 39<sup>th</sup> Session, expressed concern that a definition of discrimination against women in accordance with Article 1 of the Convention, encompassing both direct and indirect discrimination and covering all areas of the Convention, had yet to be applied through its prohibition in relevant domestic laws and made applicable to both public and private sectors (although it noted that the NRHC Act covers a number of discriminatory acts on the basis of gender).

The general purpose of the NHRCK is defined in Article 1 as 'to ensure the protection of the inviolable and fundamental human rights of all individuals and the promotion of the standards of human rights'. The NHRCK is then vested with more specific duties under Article 19, which are as follows:

1. Investigation and research with respect to statutes (including bills submitted to the National Assembly), legal systems, policies and practices related to human rights; and recommendation for their improvement or presentation of opinions thereon;
2. Investigation and remedy with respect to human rights violations;
3. Investigation and remedy with respect to discriminatory acts;
4. Survey on human rights conditions;
5. Education and public awareness on human rights;
6. Presentation and recommendation of guidelines for categories of human rights violations, standards for their identification, and preventive measures therefore;
7. Research and recommendation or presentation of opinions with respect to the ratification of any international treaty on human rights and the implementation of the treaty;

8. Cooperation with organizations and individuals engaged in any activity for the protection and promotion of human rights;
9. Exchanges and cooperation with international organizations related to human rights and human rights institutions of other countries; and
10. Other matters deemed necessary to protect and promote human rights.

## 6.2. The mandate in practice

In order to carry out its duties in practice, the NHRCK has adopted an "Action Plan to Promote Human Rights (2006~2008)", which presents its missions, operating principles, goals and action plans, both at home and abroad. This plan provided the context for the formulation of the NHRCK's work plan for 2007 (Annual Report). In 2007, the NHRCK set the following as its five strategic goals:

- strengthening the protection of human rights for the socially disadvantaged;
- establishing human rights systems and practices conforming to international standards;
- enhancing accessibility and effectiveness of remedial actions of rights;
- strengthening human rights education to improve human rights awareness; and
- enhancing the capabilities of the Commission.

It also decided to pursue the following 10 priority tasks (Annual Report):

- promoting human rights of children and teenagers;
- promoting human rights of those who are in detention facilities;
- promoting human rights of disabled persons;
- strengthening the subsistence rights of those who are vulnerable in basic livelihood;
- promoting human rights of North Korean refugees;
- promoting human rights of migrant workers and those in international marriages;
- establishing guidelines to determine human rights violations and discriminatory acts;
- establishing comprehensive human rights education development plan;
- strengthening the Commission's international role as a leading national human rights institution;
- actively submitting the Commission's opinions to major human rights-related legal cases.

In order to achieve the aforementioned strategic goals and priority tasks, the NHRCK has divided its secretariat by departments (outlined above in section 3.3.1) and carried out relevant activities, which are outlined further below.

## 6.3. Functions regarding national legislation

Article 19(1) outlined above gives the NHRCK the function of making recommendations in regards to national legislation related to human rights, including bills submitted to the National Assembly. Furthermore, article 20(1) requires that administrative or local government institutions notify the NHRCK if they intend to enact or amend any statute that includes contents likely to affect human rights. The Chairperson may also attend the State Council<sup>2</sup> to present opinions and recommend that the Prime Minister introduce bills on matters falling under the Commission's mandate (NHRC Act, Article 6(4)).

Within the Human Rights Policy Bureau, the Policy Coordination Team, International Human Rights Team and Human Rights Research Team are responsible for making recommendations and presenting opinions on human rights-related statutes. The Investigation and Remedy Bureau and Anti-Discrimination Bureau are additionally mandated to review matters concerning the improvement of statutes and policies related to complaints (Annual Report). In 2007, the NHRCK presented opinions and made recommendations on over a dozen statutes and policies, including for example:

- Full Amendment to the Act on Youth Protection from Sexual Abuse
- Special Bill on the Assistance for Land Mine Victims
- Disability Discrimination Bill
- Bill on the Prevention of Terrorist Financing

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<sup>2</sup> The State Council acts as the Government's Executive Cabinet under the Korean Constitution

#### 6.4. Encouraging ratification and implementation on international standards

Article 19(7) gives the NHRCK the function of making recommendations to the Government with respect of the ratification and implementation of international human rights treaties. The NHRCK gives the following examples of policy recommendations on international standards (Statement of Compliance):

- In August 2004, the NHRCK recommended that the Government abolish the National Security Law, a recommendation originally made by the Human Rights Committee in 1992 and 1999.
- In April 2005, the NHRCK expressed its opinion that the death penalty be abolished in Korea, there has been a moratorium on the death penalty for the past ten years.
- The NHRCK has recommended that the Government protect the rights of conscientious objectors and provide alternative military service, which is now considering.
- In October 2006, the NHRCK recommended that the Government accede to the Optional Protocol to the Convention Against Torture, which it is now considering doing. This recommendation was echoed by the Committee Against Torture in December 2006.
- The NHRCK has recommended that the Government ratify the Convention on Enforced Disappearances and amend domestic laws and regulations such as the Assembly and Demonstration Act.
- In 2007 the NHRCK recommended that Korea ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol and conducted a comparative analysis of Korean law with the provisions in the Convention. It concluded that the Convention would be compatible with existing laws in Korea.

In relation to the implementation of international standards, the NHRCK is given the function of presenting its opinions on *de jure* matters before the courts or constitutional courts which significantly affects the protection and promotion of human rights or on *de jure* and *de facto* matters that were previously investigated or dealt with by the NHRCK; either at the court's request, or if the NHRCK deems necessary (NHR Act, Article 28).

#### 6.5. Programmes for teaching and research

The NHRCK is given an education and public awareness function under Article 19(5) of the NHRCK Act. In addition, Article 26 specifies that the NHRCK shall 'conduct education and raise public awareness necessary to awaken and elevate public consciousness of human rights'. In doing so, the NHRCK may consult with the Minister of Education and Human Resources Development to include human rights content in school curricula; consult with state institutions or local governments to include human rights training for public officials; request that certain research institutions or study associations conduct research on human rights; or recommend that continuing-education organizations include human rights in their educational programs. The NHRCK is also able to establish a centre for human rights materials under Article 27 to collect, arrange, and preserve domestic and foreign information and reference materials concerning human rights, and may provide them to the public.

The NHRCK reports that its human rights education strategy focuses on three target groups:

- The public sector: including law enforcement officials such as police, correction officers, military officers and prosecutors
- School students: developing human rights education materials and programs for students
- Civil Society: working with a variety of groups such as NGOs, academics, film makers, artists etc to produce user-friendly education materials such as films, animations, cartoons and fairy books.

Within the Human Rights Education Bureau, the roles of the three teams reflect these three focus areas so that tailored programs and courses could be developed and offered to meet the needs to different groups, such as universities, the social welfare field, business and journalists (Annual Report).

In regards to human rights education, the NHRCK has undertaken numerous initiatives aimed at meeting the needs of its focus groups. For example, it offers online courses for students, teachers, government officials and the public on introducing human rights, preventing gender discrimination and disability discrimination, and the administration and human rights. It has also produced movies and animations on human rights (Annual Report). The NHRCK is also currently developing a human rights education program for young athletes in cooperation with the Korean Sports Council (Statement of Compliance). In 2007, the NHRCK submitted a draft bill on human rights education to the National Assembly. At that time there was no progress on the bill's adoption, but it is to be resubmitted to the newly established National Assembly this year (Statement of Compliance).

In regards to human rights research, the NHRCK reports that it conducts research analyzing particular human rights situations by financing thematic survey or fact finding missions. In addition, it supports academics carrying out research on human rights issues and publishes the results of such research annually. The NHRCK holds a national human rights thesis competition for university students and graduates, scholars and NGO activists.

## 6.6. General powers

The NHRCK is given a number of functions that give it a broad power make recommendations on matters concerning the promotion and protection of human rights. Under Article 25 of the NHRC Act, the NHRCK may make recommendations on the improvement or rectification of policies and practices, if deemed necessary to protect and promote human rights. It may present these recommendations to the relevant entity, which must endeavor to implement them or clarify in writing the reasons for any failure to do so. The NHRCK may publish its recommendations and any the reasons given by related entities. Under Article 19(4) the NHRCK is given the function of conducting surveys on human rights conditions, the results of which it may publicize (Statement of Compliance). The NHRCK also has an *ex officio* investigation power under Article 30(3) of the NHRC Act and may take up an investigation on its own volition if there is reasonable cause to believe that serious human rights violations or discriminatory acts have been committed.

Under Article 29(2), the NHRCK may present special reports to the President and the National Assembly. Again, related entities are given the opportunity to respond. The NHRCK shall make any such reports public, provided that any matter which requires confidentiality on the ground of national security, or protection of reputation or privacy of an individual, or the release of which is restrained by any other Acts, is protected. Furthermore, the Chairperson may attend the National Assembly and state opinions on affairs falling under the jurisdiction of the Commission (NHRC Act, Article 6(3)). The NHRCK reports that it will publish a report on the rights of persons with mental disabilities in 2009 (Statement of Compliance).

The NHRCK monitors and publishes statistical data on the Government's compliance with its advices and recommendations. Current compliance data shows:

### **The compliance of Government with the Commission's recommendations. (November 2001 – December 2007)**

classification	acceptance	Partial acceptance	denial	Under consideration	total
recommendations	16	11	5	18	50
opinions	30	44	14	25	113
Submission of opinion to Court and Constitutional Court	1	0	0	1	2
total	47	55	19	44	165

## 6.7. Power to gather information

Under Article 22(1) the NHRCK may require related entities<sup>3</sup> to submit necessary materials to it or may refer to those entities for information. Those entities must comply with such a requirement or reference (Article 22(3)). Article 23 further provides that the NHRCK may require a representative of the related entity; an interested person; or other persons who possess knowledge and experience on relevant matters attend a hearing to provide a statement of the relevant facts and opinions. The procedures and methods of hearings held by the Commission are prescribed by the rule of the Commission. In the context of an investigation, the NHRCK may require a party concerned provide a written or oral statement, relevant material, facts or information. It may also conduct an on-site inspection of any relevant place, facility or material (NHRC Act, Article 36). The NHRCK may also visit detention or protective facilities to conduct an investigation (NHRC Act, Article 24). The NHRCK may 'interrogate' such person who they have reasonable cause to believe possesses knowledge of the location of

<sup>3</sup> Who are defined as state organs, local governments and other public or private organisations

material or a person, necessary for an investigation; or may inspect documents which they have reasonable cause to believe includes that information (NHRC Act, Article 37).

However, a state institution may decline a request to submit relevant materials or articles or for the NHRCK to conduct an on-site inspection or evaluation of those materials, articles or facilities if the institution's 'classified information has a substantial effect on national security or diplomatic relations' or if the request is deemed 'liable to cause a serious obstacle to any criminal investigation or pending trial'.

Under Article 63(2), a person may be fined an amount, not exceeding 10 million won, for negligence if:

- They refuse, obstruct or evade a visit to inspection facilities under Article 24 or an onsite inspection as part of an investigation under Article 36;
- The fail, without a reasonable excuse, to comply with a request for information under any of the subparagraphs in Article 36.

Such a fine shall be imposed by the Chairperson in accordance with the Presidential Decree. A person who is the subject of such a fine may challenge it in court within 30 days (Articles 63(3)-(5)).

## 7. Quasi-jurisdictional competence

In accordance with Article 19(2) of the NHRC Act, the NHRCK is vested with the competence to investigate and remedy cases of human rights violations or discriminatory acts. The procedures for this function are contained in Chapter IV of the NHRC Act. Under Article 30(1) victims of a human rights violation<sup>4</sup> or discriminatory act<sup>5</sup> or any person or organisation with knowledge of a human rights violation may lodge a petition with the NHRCK in cases where:

- 'such human rights as guaranteed in Articles 10 to 22 of the Constitution are violated in the performance of duties of state organs (excluding the legislation of the National Assembly and the trial of a court or the Constitutional Court), local governments or detention or protective facilities'; or
- There exists 'a discriminatory act or a violation of the right to equality committed by a legal body, organization or private individual'.

Matters concerning the procedures and methods for such a petition are prescribed by the rule of the NHRCK (Article 30(4)). On receipt of a petition, the NHRCK may decide to reject it on certain grounds, including if does not fall within the NHRCK's jurisdiction` or is manifestly false or ill-founded (Article 32); may transfer it to a state institution with authority to provide a remedy (Article 33); or may investigate it (Article 36). Methods for such an investigation include requesting that the complainant, victim, respondent, or other related person submit written statements or other materials deemed pertinent to the investigation; requesting that relevant persons to present themselves to give their opinions, or give certain facts or information; conducting investigations or assessments on-site concerning the place, facility, materials, etc. in question; seeking expert opinions (Article 36).

Following an investigation, the Commission deliberates on the investigation's findings and may commence conciliation procedures (Article 42). Conciliation is conducted by a conciliation committee, whose members are appointed by the Chairperson from among the Commissioners and members of the special committees (Article 41). If parties cannot reach an agreement through conciliation, the conciliation committee may make a decision in lieu of an agreement, which has the same effect as a settlement in court, provided there are no objections raised it (Article 43).<sup>6</sup> Alternatively, the Commission may dismiss a petition (Article 39); propose to both parties concerned a compromise for the fair resolution of the case (Article 40); make recommendations for remedial measures or improvements to a statute, policy or practice (Article 44); file an accusation with the

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<sup>4</sup> Defined as any rights and freedoms, including human dignity and worth, guaranteed by the Constitution and Acts of the Republic of Korea, recognized by international human rights treaties entered into and ratified by the Republic of Korea or protected under international customary law: NHRC Act, Article 2(1)

<sup>5</sup> Defined as any act of favorably treating, excluding, differentiating, or unfavorably treating a particular person (a) in employment (b) in the supply or use of goods, services, transportation, commercial facilities, land, and residential facilities; (c) in the provision of education and training at or usage of educational facilities or vocational training institutions without reasonable cause based on gender, religion, disability, age, social status, region of birth (including place of birth, first-registered domicile, 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. Sexual harassment also constitutes a discriminatory act: NHRC Act, Article 2(4)

<sup>6</sup> A party concerned has two weeks to raise an objection to a decision in lieu of conciliation (Article 42(6)). If this happens, the procedure followed before the conciliation occurred will resume (Reply to Questions).

Prosecutor General if a complaint reveals a criminal act (Article 45(1)); recommend disciplinary action (article 45(2)); or recommend urgent relief measures (Article 48). Such recommendations are not legally binding. However, the NHRCK will follow up recommendations (eg through the media) to persuade organizations to comply with its recommendations (Reply to Questions). Commission decisions on petitions are generally conducted by one of the subcommittees (Investigation and Remedy I, Investigation and Remedy II, Anti-Discrimination or Disability Discrimination Subcommittees). However, when the petition is deemed to be of great significance, the Subcommittee will refer it to the plenary committee for decision (Reply to Questions).

Since its foundation, the NHRCK has operated the 'Human Rights Counseling Centre', which provides services to the public via telephone, in person and over the internet. The Centre not only provides information on legal and procedural remedies available (including the NHRCK's own functions), but assists victims to deal with their pain and suffering. By conducting a preliminary review on an individual's situation, the centre can also swiftly dismiss cases that fall under Article 32 of the NHRC Act. As at 31 December 2007 the NHRCK had handled a total of 38,531 counselling cases and received a total of 28,854 complaints petitions since its foundation in November 2001 (2,499 of cases were complaints filed after counseling).<sup>7</sup> Complaints on human rights violations account for 80% (23,101) and complaints relating to a discriminatory act account for 13.9% (4,000) (Annual Report).

## **V. SUMMARY OF THE ANNUAL REPORT**

Pursuant to Article 29(1) of the NHRC Act, the NHRCK has published and distributed its Annual Report on its activities during the period January 1 to December 31 2007. The Report, divided into seven chapters, focuses on the NHRCK's work in relation to: (1) the improvement of laws, policies and practices; (2) human rights counselling and complaints; (3) investigations and remedies: civil and political rights violations; (4) investigations and remedies: discriminatory acts; (5) human rights educations; (6) cooperation with human rights organisations and communications; and (7) activities of the regional offices.

- The improvement of laws, policies and practices: this chapter includes a table of recommendations and opinions presented by the NHRCK during 2007 and notes the status of those recommendations. It also highlights major recommendations relating to statutes and policies and to the accession and implementation of international human rights treaties.
- Human rights counselling and complaints: this chapter outlines the services provided by the Human Rights Counselling Centre and provides a statistical breakdown of the counselling cases handled and the complaints received.
- Investigations and remedies – civil and political rights violations: this chapter provides a statistical breakdown of the types of human rights complaints handled by the NHRCK and outlines some of the major investigations undertaken during the reporting period.
- Investigations and remedies – discriminatory acts: this chapter provides a statistical breakdown of the types and status of discrimination complaints handled by the NHRCK and outlines some of the major investigations undertaken during the reporting period.
- Human rights education: this chapter describes the NHRCK's initiatives in relation to human rights education in schools, the public sector, and the civil and private sector.
- Cooperation with human rights organisations and communications: this chapter describes the NHRCK's initiatives in relation to cooperation with the domestic human rights community, such as visiting sites with poor human rights conditions and increasing its work with the religious community; its cooperation with the international community, such as its work with the ICC, APF and other national institutions; and its public awareness activities such as, its monthly magazine and email database.
- Activities of the regional offices: this chapter describes the work of each of the NHRCK's three regional offices. The regional offices conduct onsite human rights counselling and provide support for investigations. They are also in charge of investigation into cases related to correctional facilities in the region to facilitate remedial activities.

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<sup>7</sup> NB: there is no coloration between 28,854 petitions and 38,531 counseling cases. A person may file a complaint to the NHRCK with or without prior counseling. Equally, a person may receive counseling but not file a complaint (Reply to Questions)