

NATIONAL HUMAN RIGHTS COMMISSION ACT

2001

National Human Rights Commission

Republic of Korea

NATIONAL HUMAN RIGHTS COMMISSION ACT

Act No. 6481, May 24, 2001

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to contribute to the embodiment of human dignity and worth as well as to the safeguard of the basic order of democracy, by establishing the National Human Rights Commission to ensure that inviolable, fundamental human rights of all individuals are protected and the standards of human rights are improved.

Article 2 (Definitions)

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

1. The term "human rights" means any of human dignity, worth, liberties and rights which are guaranteed by the Constitution and Acts of the Republic of Korea or recognized by international human rights treaties entered into and ratified by the Republic of Korea and international customary law;

2. The term "detention or protective facility" means a facility falling under any of the following items:

(a) Prison, prison for the youth, detention center and its branch, facility for probation, institute of forensic psychiatry, juvenile reformatory, and juvenile classification review board;

(b) Police station cell, and facility where a judicial police officer investigates, detains and impounds persons in order to perform his/her duties;

(c) Military prison (including its branch, detention house for the unconvicted, and military police guardhouse);

(d) House for protecting foreigners; and

(e) Protective facility for many persons; and

3. The term "protective facility for many persons" means a facility for detaining and caring for many persons - which is prescribed by the Presidential Decree.

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

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

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

Article 4 (Scope of Application)

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

therein.

CHAPTER II ORGANIZATION AND OPERATION OF COMMISSION

Article 5 (Organization of Commission)

(1) The Commission shall be comprised of eleven commissioners for human rights (hereinafter referred to as a "commissioner") including one president and three full-time commissioners.

(2) Four persons selected by the National Assembly (including two full-time commissioners), four persons nominated by the President of the Republic of Korea, and three persons nominated by the Chief Justice of the Supreme Court, from among those persons who have professional knowledge and experience on the matters of human rights and are recognized to be capable of performing duties of human rights protection and promotion fairly and independently, shall be appointed by the President of the Republic of Korea to be commissioners.

(3) The president of the Commission shall be appointed by the President of the Republic of Korea from among the commissioners.

(4) The president and full-time commissioners of the Commission shall be appointed as public officials in political service.

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

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

Article 6 (Duties of President of Commission)

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

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

(3) The president of the Commission may attend the National Assembly and state opinions on affairs falling under the jurisdiction of the Commission, and shall, if required by the National Assembly, attend thereat and make a report or reply.

(4) The president of the Commission may attend the State Council, present his/her opinion and recommend the Prime Minister to submit any bill related to affairs under the jurisdiction of the Commission (including the draft of the Presidential Decree concerning the enforcement of this Act).

(5) When the president of the Commission performs duties related to the budget of the Commission, he/she shall be deemed to be the head of a central government office under the provision of Article 14 of the Budget and Accounts Act.

Article 7 (Term of Office of President and Commissioners)

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

(2) In case the term of office of a commissioner expires or there occurs a vacancy, the President of the Republic of Korea shall appoint a successor within 30 days after the date of such expiration or vacancy.

(3) The term of office of the commissioner who is appointed as successor of a vacancy shall start anew. (The date of enforcement is November 25, 2001.)

Article 8 (Status Guarantee of Commissioner)

A commissioner shall not be removed from his/her office against his/her will unless he/she is sentenced to imprisonment without labor or a heavier punishment: *Provided*, That in case it is very difficult or impossible for him/her to perform his/her duties due to any physical or mental handicap, he/she may retire from his/her office by the resolution of consent of 2/3 or more of all commissioners.

Article 9 (Disqualifications for Commissioner)

(1) A person who falls under any of the following subparagraphs shall be disqualified for a commissioner:

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

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

Article 10 (Prohibition of Concurrent Offices of Commissioner)

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

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

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

Article 11 (Restriction on Retired Human Rights Commissioner's Taking Public Office)

For two years after a commissioner retires from his/her office, he/she shall neither be appointed to be a public official other than a public official for education nor run for a candidate in any election under the Act on the Election of Public Officials and the Prevention of Election Malpractices.

Article 12 (Subcommittees)

- (1) The Commission may establish subcommittees in order to have them perform parts of the affairs of the Commission.
- (2) A subcommittee shall be composed of three commissioners, and necessary matters concerning its affairs and operation shall be prescribed by the rule of the Commission.

Article 13 (Meeting Proceedings and Resolution Quorum)

- (1) The president of the Commission shall preside over the meeting of the Commission and the resolution thereof shall, except as otherwise provided by this Act, require the consent of a majority of all the incumbent commissioners.
- (2) The resolution of the meeting of a subcommittee shall require the attendance and consent of all the members thereof.

Article 14 (Publication of Proceedings)

The proceedings of the Commission shall be made public: *Provided*, That they may not be made public if deemed necessary by the Commission or a subcommittee.

Article 15 (Advisory Organ)

- (1) The Commission may establish an advisory organ in order to ask advice on matters which are necessary for the performance of its duties.
- (2) Necessary matters concerning the organization and operation of the advisory organ shall be prescribed by the rule of the Commission.

Article 16 (Secretariat)

- (1) A Secretariat shall be established to deal with general affairs of the Commission.
- (2) There shall be one Secretary General and necessary staff members in the Secretariat and the Secretary General shall be appointed by the President of the Republic of Korea on the recommendation of the president of the Commission with the deliberation of the Commission.
- (3) Public officials in Grade V or higher from among the staff belonging to the Secretariat shall be appointed by the President of the Republic of Korea on the recommendation of the president of the Commission and those in Grade VI or lower shall be appointed by the president of the Commission.
- (4) The Secretary General shall, under the direction of the president of the Commission, exercise the overall control of the affairs of the Secretariat and command and supervise the staff belonging thereto.

Article 17 (Establishment of Disciplinary Committee)

- (1) Under the Commission, there shall be established a disciplinary committee to resolve on a disciplinary action against the staff belonging to the Commission.
- (2) The composition, authority and deliberation procedure of the disciplinary committee, kinds and effects of disciplinary actions and other necessary matters therefore shall be prescribed by the rule of the Commission.

Article 18 (Organization and Operation of Commission)

Except as provided by this Act, matters necessary for the organization of the Commission shall be prescribed by the Presidential Decree and those necessary for its operation shall be prescribed by the rule of the Commission.

CHAPTER III DUTIES AND AUTHORITIES OF COMMISSION

Article 19 (Duties)

The Commission shall perform duties falling under the following subparagraphs:

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 therefor;
7. Research and recommendation or presentation of opinions with respect to the accession of any international treaty on human rights and the implementation of the treaty;
8. Cooperation with organizations and individuals engaged in any activity to protect and promote human rights;
9. Exchange 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 improve human rights.

Article 20 (Consultation with State Organs)

(1) If the head of a related state administrative organ or local government intends to enact or amend any statute which includes contents likely to affect the protection and promotion of human rights, he/she shall notify the Commission in advance.

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

(3) Those related entities which receive a request under paragraph (2) shall faithfully comply therewith unless there exists any justifiable reason.

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

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

Article 22 (Submission of Materials and Reference for Information)

(1) The Commission may, if deemed necessary for the performance of its duties, require the related entities to submit necessary materials to it or refer to the said entities for information.

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

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

Article 23 (Hearing)

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

(2) The procedures and methods of hearings held by the Commission under paragraph (1) above shall be prescribed by the rule of the Commission.

Article 24 (Visit and Investigation of Facilities)

(1) The Commission(including a subcommittee) may, if deemed necessary, visit detention or protective facilities to conduct an investigation by its resolution.

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

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

(4) The commissioner, etc., who visits and investigates under paragraph (2), may hold an interview with staff members concerned or detainees of the relevant detention or protective facility (hereinafter referred to as a “facility detainee”) and also may have them present oral or written statements or opinions.

(5) Staff members concerned of the relevant detention or protective facility may be present at an interview with detainees held by the commissioner, etc.: *Provided*, That it shall be prohibited to record the contents of the said interview.

(6) Other necessary matters for the procedures and methods of visit and investigation of detention or protective facilities shall be prescribed by the Presidential Decree.

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

(1) The Commission may, if deemed necessary to protect and promote human rights,

recommend related entities to improve or rectify specific policies and practices, or may present opinions thereon.

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

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

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

Article 26 (Education and Public Awareness on Human Rights)

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

(2) The Commission may consult with the Minister of Education and Human Resources Development to include contents concerning human rights in the curriculum of schools under the provision of Article 23 of the Elementary and Secondary Education Act.

(3) The Commission may consult with the heads of schools established under the provision of Article 2 of the Higher Education Act on necessary matters for the development of human rights education and research.

(4) The Commission may consult with the heads of related state organs or local governments to include subject-matters of human rights in employment or promotion examinations and training or education courses for public officials.

(5) The Commission may, in consultation with the heads of research institutions or study associations established under the Act on the Establishment, Operation and Fosterage of Government-Invested Research Institutions, etc., make a request for researches on human rights to them or carry out such researches jointly with them.

(6) The Commission may recommend the organizations or facilities for social education under the Social Education Act to include subject-matters of human rights in their education programs.

Article 27 (Center for Human Rights Materials)

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

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

(3) The center for human rights materials shall be deemed to be a library under the Libraries and Reading Promotion Act.

(4) Necessary matters for the establishment and operation of the center for human rights materials shall be prescribed by the rule of the Commission.

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

(1) In case a trial, which significantly affects the protection and promotion of human rights, is pending, the Commission may, if requested by a court or the Constitutional Court

or if deemed necessary by the Commission, present its opinions on *de jure* matters to the competent division of the court or the Constitutional Court.

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

Article 29 (Preparation, etc. of Report)

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

(2) Except for the report under paragraph (1), the Commission may, if deemed necessary, make any other special report to the President of the Republic of Korea and the National Assembly.

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

(4) The Commission shall open the report under paragraphs (1) and (2) to the 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 Act, may not be made public.

CHAPTER IV INVESTIGATION OF VIOLATIONS OF HUMAN RIGHTS AND REMEDY

Article 30 (Matters Subject to Investigation of Commission)

(1) In any case falling under the following subparagraphs, the person whose human rights are violated(hereinafter referred to as a "victim") or any other person or organization, that comes to know the violation of human rights, may file a petition to the Commission:

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

2. In case there exists a discriminatory act of any violation of the right of equality by a juristic person, organization or private individual.

(2) The term "discriminatory act of violating the right of equality" means any of the following acts of unreasonable discrimination on the ground of gender, religion, disability, age, social status, regional, national or ethnic origin, physical condition such as features marital status, pregnancy or delivery, family status, race, skin color, thought or political opinion, criminal record of which effective term of the punishment has expired, sexual orientation, or history of diseases: *Provided*, That if the favorable treatment for particular

persons (including groups of particular persons; hereinafter the same shall apply) is excluded from the scope of discriminatory acts by any other Act, such favorable treatment shall not be deemed to be a discriminatory act:

1. Any act of favorably treating, excluding, differentiating or unfavorably treating a particular person in employment (including recruitment, appointment, training, assignment of tasks, promotion, payment of wages and payment of commodities other than wages, financing, age limit, retirement, and dismissal, etc.);

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

3. Any act of favorably treating, excluding, differentiating or unfavorably treating a particular person in the use of educational facilities or vocational training institutions.

(3) Even if any petition under paragraph (1) is not filed, the Commission may, *ex officio*, initiate an investigation when it deems that there exists a reasonable ground for believing that human rights have been violated and that such violation is serious.

(4) Necessary matters concerning the procedures and methods of a petition under paragraph (1) shall be prescribed by the rule of the Commission.

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

(1) If a detainee of any relevant detention or protective facility intends to file a petition to the Commission, the public official or staff belonging to the said facility (hereinafter referred to as the "public official concerned, etc.") shall immediately afford such detainee time, a place, and conveniences necessary to prepare the written petition.

(2) If any detainee desires to file a petition in the presence of a commissioner or the staff member of the Commission (hereinafter referred to as a "commissioner, etc."), the public official concerned, etc. shall immediately notify the Commission.

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

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

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

(6) The staff of the relevant detention or protective facility shall not participate in an interview which a commissioner, etc. holds with detainees who have filed petitions (including those who intend to do so), or shall not hear or record the contents of such

interview: *Provided*, That the said staff may watch them at a distance of visibility.

(7) The public official concerned, etc. shall not peruse a written petition or document prepared by a detainee for the purpose of the presentation thereof to the Commission.

(8) Measures which detention or protective facilities shall take to guarantee the free preparation and presentation of a written petition by a detainee and other necessary procedures and methods, shall be prescribed by the Presidential Decree.

Article 32 (Rejection of Petition, etc.)

(1) The Commission shall reject a petition which falls under any of the following subparagraphs:

1. In case the contents of a petition do not fall under the scope of the matters subject to the investigation of the Commission;

2. In case the contents of a petition are deemed manifestly false or ill-founded;

3. In case a petition is filed by any person other than a victim, but it is manifest that the victim does not desire the investigation thereof;

4. In case a petition is filed after one or more years have elapsed since the facts causing the petition happened: *Provided*, That this shall not apply to the case that the statutory limitation for public or civil prosecution with respect to such facts is not completed and that the Commission determines to investigate;

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

6. In case a petition is filed under any pseudonym or anonym;

7. In case the Commission deems it improper to investigate a petition;

8. In case a petition is withdrawn by the detainee who files it;

9. In case a petition, with the facts identical with any other petition which has already been dismissed by the Commission, is filed;

10. In case the purport of a petition is contrary to the final judgment of a court or decision of the Constitutional Court on the facts causing the petition.

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

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

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

Article 33 (Other Remedies and Transfer)

(1) In case the Commission deems that the contents of a petition show a clear purport to file a petition to any relevant state organ with authority, according to the procedure for remedies as prescribed by any other Act, it shall transfer, without delay, such petition to such state organ.

(2) In case, after the Commission initiates an investigation on a petition under Article 30 (1), a criminal investigation on the

petition with the same facts causing the petition is initiated by another petition or accusations of relevant victims, the said petition shall be delivered to the competent investigation agency.

(3) In case the Commission delivers a petition under paragraphs (1) and (2), it shall, without delay, inform the petitioner and those related entities to which the petition is delivered shall, if requested by the Commission, inform the Commission of the results of disposition thereof.

Article 34 (Cooperation between Investigation Agency and Commission)

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

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

Article 35 (Purpose of Investigation)

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

(2) The Commission shall not conduct investigation for the purpose of infringing on the privacy of any individual or unduly participating either in any pending judicial proceedings or in an indictment of any case under investigation.

Article 36 (Methods of Investigation)

(1) The Commission may investigate petitions by such methods as prescribed in the following subparagraphs:

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

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

3. To conduct an on-site inspection or evaluation of any such place, facility or material as deemed related to matters subject to investigation and

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

(2) The Commission may, if deemed necessary for the investigation, have a

commissioner, etc. visit any relevant place or facility to conduct an on-site inspection or evaluation of any place, facility or material. In this case, a commissioner, etc. may require any party concerned or related person to present himself/herself and hear his/her statement at such place or facility.

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

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

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

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

(7) If the Commission requests the head of any related state organ to submit relevant materials or articles or intends to conduct an on-site inspection or evaluation of the said materials or articles or relevant facilities, the head may reject such submission, inspection or evaluation by clearly explaining to the Commission that those materials, articles or facilities fall under any of the following subparagraphs. In this case, the Commission may request the head to identify any necessary matters and the head shall faithfully comply with such request:

1. In case of the state's classified information having a substantial effect on national security or diplomatic relations; or
2. Any case as deemed to be liable to cause a serious obstacle to any criminal investigation or trial in pending.

Article 37 (Authority to Interrogate or Inspect)

(1) If the Commission intends to know the location of materials or the concerned person necessary for the investigation under the provision of Article 36, it may interrogate such person that the Commission has any reasonable ground to believe that the person knows the contents thereof or may inspect the documents and other articles which the Commission has any reasonable ground to believe that they include such contents.

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

Article 38 (Recusal, etc. of Commissioner)

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

1. In case the commissioner or any person who is or was his/her spouse is the party concerned of the relevant petition or holds any rights or obligations jointly with the party

concerned;

2. In case the commissioner is or was a blood relative of the party concerned of the relevant petition;

3. In case the commissioner has testified or made an evaluation concerning the relevant petition;

4. In case the commissioner participates or participated in the relevant petition as an agent of the party concerned; or

5. In case the commissioner has involved in any criminal investigation, trial, or relief procedures under any other Act with respect to the relevant petition.

(2) The party concerned may, if there exists any ground for which it would be difficult to expect the impartial deliberation and resolution of the commissioner, make a request for recusal to the president of the Commission, who shall, in turn, make a decision thereon without referring the request to the Commission for resolution: *Provided*, That if it is inadequate that the president of the Commission makes the decision, the said request shall be referred to the Commission for the resolution.

(3) Any commissioner may voluntarily refrain from the deliberation and resolution on the relevant petition, if he/she falls under either any of subparagraphs of paragraph (1) or paragraph (2).

Article 39 (Dismissal of Petition)

(1) The Commission shall dismiss a petition if the contents thereof fall under any of the following subparagraphs as a result of investigation:

1. In case the contents are false;

2. In case the contents are not related to any act of violating human rights subject to the investigation; and

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

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

Article 40 (Recommendation of Compromise)

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

Article 41 (Establishment and Composition of Conciliation Committee)

(1) A conciliation committee, which is comprised of three conciliation members, shall be established under the Commission to ensure the speedy and fair settlement of conciliation.

(2) The conciliation committee shall deliberate and resolve on the case of petition which is referred by the Commission.

(3) Two of the conciliation members shall be commissioned by the Commission from among the commissioners and the other member from among the persons who fall under any of the following subparagraphs: The latter shall be commissioned to work part-time and one of three conciliation members shall be qualified as an attorney-at-law:

1. Persons who have professional knowledge and experience on human rights affairs and whose term of service related to human rights in a state organ or non-governmental organization is ten years or more;

2. Persons whose term of service as judge, public prosecutor, military judge advocate or attorney-in-law is ten years or more; or

3. Persons whose term of service as assistant professor (or corresponding position thereto) or higher either at college or at an authorized research institute is ten years or more.

(4) Necessary matters concerning the commission and term of office of the conciliation members, the operation of the conciliation committee and the procedures of conciliation, etc. shall be prescribed by the rule of the Commission.

(5) With respect to matters concerning the procedures for conciliation which are not prescribed both by this Act and by the rule of the Commission, the Judicial Conciliation of Civil Disputes Act shall apply *mutatis mutandis* .

Article 42 (Conciliation)

(1) If with respect to the relevant petition, the Commission decides that there was an act of violating human rights, but the compromise under the provision of Article 40 is not reached, it may, at the request of the party concerned or *ex officio*, refer the petition to the conciliation committee for the relevant procedure.

(2) The conciliation shall be completed at the time when, after the procedures are initiated, both parties concerned enter the compromised matters in the document of conciliation by fixing their signature and seal and the conciliation committee, in turn, identifies it.

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

(4) The decision in lieu of conciliation may include any of the following:

1. Stoppage of an act of violating human rights subject to the investigation;

2. Restitution, compensation for damage or other necessary remedies; or

3. Measures necessary for the prevention of recurrence of the same or similar act of violating human rights.

(5) If the conciliation committee makes a decision in lieu of conciliation, it shall serve both parties concerned with the written decision without delay.

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

Article 43 (Effect of Conciliation)

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

Article 44 (Recommendation of Remedies, etc.)

(1) If the Commission deems that there occurred any violation of human rights as a result

of the investigation of any petition, it may recommend the respondent or the head of the organ or organization to which he/she belongs or the supervisory institution thereof (hereinafter referred to as the "institution, etc. to which the respondent belongs") any of the following subparagraphs:

1. Implementation of remedial measures under subparagraphs of Article 42 (4); and
 2. Rectification or improvement of any relevant statute, legal system, policy or practice.
- (2) The provisions of Article 25 (2) through (4) shall apply *mutatis mutandis* to the head of the institution, etc. to which the respondent belongs, who has received recommendation under paragraph (1) of this Article.

Article 45 (Accusation and Recommendation of Disciplinary Action)

(1) If as a result of the investigation of any petition, the Commission deems that the contents of the petition correspond to an act of crime against which a criminal punishment is required, it may file an accusation to the Prosecutor General: *Provided*, That in case the accused is the military personnel or civilian personnel in the military service, the accusation may be filed to the Chief of General Staff of the armed force to which the said accused belongs or the Minister of National Defense.

(2) If the Commission finds any violation of human rights after investigation of any petition, it may recommend a disciplinary action against the respondent or any other person responsible for the same violation to the head of the institution, etc. to which he/she belongs.

(3) The Prosecutor General, the Chief of General Staff of the armed force, or the Minister of National Defense, who has received an accusation under paragraph (1), shall complete the criminal investigation within 3 months after being so received and notify the Commission of the results thereof: *Provided*, That he/she shall, if failing to do so within 3 months, submit the reason therefor.

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

Article 46 (Provision of Opportunity to State Opinion)

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

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

Article 47 (Request for Legal Aid for Victim)

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

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

(3) Necessary matters concerning the procedures, contents and methods of legal aid under paragraph (1) shall be prescribed by the rule of the Commission.

Article 48 (Recommendation of Urgent Relief Measures)

(1) The Commission may, in case after receiving any petition it deems that it is considerably probable any violation of human rights subject to the investigation is in progress and that it is likely to cause any irrecoverable damage if left as violated, recommend the respondent or the head of the institution, etc. to which he/she belongs to take a measure which falls under any of the following subparagraphs at the request of the petitioner or victim or *ex officio* before making a decision on the petition:

1. Provision of medical service, meal or clothing;
2. Participation in the on-site inspection and evaluation of any relevant place, facility or materials or the verification and evaluation which is conducted by any other organ;
3. Change of detention or accommodation places of detainees;
4. Stoppage of violations of human rights;
5. Displacement of any public official who is deemed to effect violations of human rights from his/her present assigned position; and
6. Other necessary matters for protecting the life or security of person of the victim.

(2) The Commission may, if deemed necessary, take any necessary measure for protecting the life, security of person and reputation of any party concerned or interested person, obtaining evidence or preventing the destruction thereof, or recommend the interested person and the head of the institution, etc. to which he/she belongs to take such a measure.

Article 49 (Non-Release of Investigation and Conciliation)

The investigation of any petition and the conciliation and deliberation conducted by the Commission shall be confidential: *Provided*, That they may be released if the Commission makes a resolution in favor thereof.

Article 50 (Release of Results of Settlement)

The Commission may release the contents and results of any investigation and conciliation, the recommendation to the related entities and the measures taken by such entities under this Chapter: *Provided*, That this shall not apply to any case in which such a release is restrained by any other Act or it is likely to infringe on the privacy of any individual.

CHAPTER V SUPPLEMENTARY PROVISIONS

Article 51 (Prohibition of False Impersonation)

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

Article 52 (Prohibition of Disclosure of Secret)

A person, who was or is a commissioner, advisory member or staff member of the Commission, and any other person, who performed or performs affairs of the Commission after having been dispatched or entrusted by the Commission, shall not disclose any secret which comes to their knowledge or is acquired by them in the course of performing their duties.

Article 53 (Prohibition of Use of Similar Name)

No person other than the Commission shall use the name of the National Human Rights Commission or any other name similar thereto.

Article 54 (Dispatch of Public Official, etc.)

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

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

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

(4) The head of the related entity, etc. who has dispatched a public official or staff member under his/her control to the Commission under paragraph (2) shall not take unfavorable measures against the said public official or staff in terms of personnel matters and treatment.

Article 55 (Prohibition of Unfavorable Treatment, and Supports)

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

(2) The Commission may give any necessary support or reward to a person who either reveals the fact of any violation of human rights or finds and presents evidence or materials.

(3) The contents and procedures of support or reward under paragraph (2) and other necessary matters shall be prescribed by the rule of the Commission.

CHAPTER VI PENAL PROVISIONS

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

(1) A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than 5 years or by a fine not exceeding 30 million won:

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

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

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

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

(2) If blood relatives or the head of house of any person, or family members living with him/her commit a crime under paragraph (1) 4 for him/her, they shall not be punished.

Article 57 (Obstruction of Preparation of Written Petition)

A person who fails to permit or obstructs any petition in violation of the provision of Article 31 shall be punished by imprisonment for not more than 3 years or by a fine not exceeding 10 million won. (The date of enforcement is November 25, 2001.)

Article 58 (False Impersonation)

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

Article 59 (Disclosure of Secret)

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

Article 60 (Obstruction of Urgent Relief Measures)

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

Article 61 (Violation of Guarantee of Petition Right of Detainee)

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

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

Any person other than a public official from among the commissioners of the Commission shall be deemed to be a public official in the application of penal provisions under the Criminal Act or any other Act.

Article 63 (Fine for Negligence)

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

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

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

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

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

(3) A fine for negligence as prescribed in paragraphs (1) and (2) shall be imposed by the president of the Commission in accordance with the Presidential Decree.

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

(5) If a person who is subject to a disposition of fine for negligence under paragraph (3) raises an objection under paragraph (4), the imposition authority shall, without delay, notify the competent court, which, in turn, shall proceed to a trial on a fine for negligence pursuant to the Non-Contentious Case Litigation Procedure Act.

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

ADDENDA <Act No. 6481, May 24, 2001>

(1) (Enforcement Date) This Act shall enter into force 6 months after the date of its promulgation: *Provided*, That the appointment of the commissioners and staff of the Commission, the enactment and promulgation of its rule concerning the enforcement of this Act, and the preparation for its establishment may be conducted even before this Act enters into force.

(2) (Application Example concerning Commencement of Term of Office of Commissioners) The term of office of those commissioners who are initially appointed under this Act shall be deemed to commence on the date when this Act enters into force.

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

Disclaimer

In case there is any divergence in interpreting the National Human Rights Commission Act between the Korean and English versions, the Korean version shall prevail.