

Forum Member Report-Republic of Korea

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The National Human Rights Commission of Korea (NHRCK) was established in November, 2001 under the National Human Rights Commission Act. As of June 30, it received the 20,000th petition. Since its inception, the number of petitions has continued to increase. Analyzed by year, 803 cases were filed in 2001, 2,790 in 2002, 3,815 in 2003, 5,368 in 2004, and 5,617 in 2005. The total number of cases reported up to June this year, is 1,608 cases. The continual increase in the number of petitions can be attributed to the fact that many human rights issues which were hidden in the society have emerged all at once since the establishment of the Commission.

The NHRCK also made great efforts to strengthen its capacity. For instance, in October 2005, the NHRCK opened and began to operate its regional offices in Busan and Gwangju. The opening is significant in that the NHRCK has quickly brought access to human rights issues to the local communities. Busan and Gwangju offices have conducted face-to-face interviews and human rights counseling in detention centers, investigated basic field research on urgent cases of human rights violations and discriminatory acts, and exchanged ideas and cooperated with human rights civic groups and relevant organizations to conduct education and public campaigns on human rights. Consequently, Busan office has so far dealt with about 1,990 cases and Gwangju office, around 1,460 cases including petitions, counsel and guide.

In January 2006, the NHRCK reformed its structure so that it can respond to human rights issues in a quicker, more professional and systemized manner. And the reorganization also reinforced the NHRCK's close "hands-on" involvement in human rights issues. Other key changes include that the structure was transformed from one that was bureau-division-based to one that is department-team based. The five departments consist of Human Rights Policy, Administration and Planning, Violation Remedy, Discrimination Rectification, and Human Rights Education departments.

Also, the NHRCK selected 10 major tasks in February, 2006. They are as follows: (1) Assist the government's establishing the National Action Plan for promotion and protection of human rights and monitor its implementations; (2) Recommend the establishment of the Anti-

Discrimination Law; (3) Set up standards for human rights violation and discrimination; (4) Promote the human rights of the elderly; (5) Enhance the human rights of soldiers and riot police; (6) Advance the human rights of persons living in social welfare facilities; (7) Elevate the human rights of foreigners living in Korea (i.e. spouses of Korean nationals), as well as those of migrant workers and their families; (8) Enhance the human rights of North Korean defectors; (9) Drive towards the establishment of the “Basic Law on Human Rights Education (tentatively named); and (10) Expand human rights education in social welfare facilities, corporations, and the media.

1. Human Rights Policy Sector

In December of 2005, the NHRCK confirmed that the right to conscientious objection to military service is protected under the Article 19 of the Constitution and parallel to the freedom of conscience stipulated in the Article 18 of the International Covenant on Civil and Political Rights. In addition, the Commission stated that the duty of male citizens to defend the state is one of the most fundamental obligations. As a result, the Commission made a Recommendation to the Minister of Defense and the Speaker of the National Assembly to introduce an alternative draft system to continue their duty so that the duty to serve the country and the alternative system can harmonize.

In January of 2006, the NHRCK recommended the President of the Republic of Korea to establish the National Action Plan for the promotion and the protection of Human Rights (NAP) based on the NHRCK’s version of NAP. The NAP draft focuses on immediate priorities that the Government has to set up within the next five years. The NAP draft is composed of three parts. Part I summarizes the outline, process and methods of Korea’s NAP. Part II comprises a total of 11 subjects including persons with disabilities, non-regular workers, refugees and immigrant workers, women, children, the youth, the elderly, persons with medical history of disease, soldiers and riot police, persons living in facilities, sexual minorities, and North Korean defectors to protect the human rights of the socially weak and the minority. Lastly, on civil rights in Part III, the recommendation includes an exemption law to eliminate or suspend the application of the negative prescription for prosecuting human rights crimes committed by the state; a specified expansion in the political activities of civil servants and teachers; a limitation on the reckless collection of resident registration numbers and the prevention of abuse of said numbers; minimization of the uniform limitation on Internet content by the government; ease of restriction on assembly and demonstration; abolishment of the National Security Law; and the recognition of those who refuse to serve

in the military based on their beliefs as well as introduction of an alternative draft system.

In March of 2006, the NHRCK held a public hearing in regards to the establishment of an anti-discrimination law. The hearing was designed to explain the progress made on the draft of the anti-discrimination law and to collect opinions from every sector of society. As soon as the final draft bill is developed, the Commission plans to present the draft to the Plenary Committee for deliberation and resolution and ultimately, push forward to legislate the new bill in cooperation with the Government and the National Assembly.

In December of 2005, the NHRCK presented its opinion to the Minister of Education and Human Resources Development who sought for the Commission's advise on the matter concerning a possible human rights violation when the National Youth Commission asked for information on teenagers who discontinued their education to support them with various projects. The Commission concluded that providing personal data without the teenager's consent or a legal ground violates the right to information self-determination. Specifically, it may highly breach the Article 30 paragraph 6(1) of the Primary and Secondary Education Law. Therefore, the Commission advised the Minister that the projects for the teenagers should be promoted to the extent where their right is not violated.

As a response to the request made by the Ministry of Justice regarding joining the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Optional Protocol) and the national preventive mechanism set in the Optional Protocol, the NHRCK presented its opinion in April of 2006 that the Government should sign and ratify the Optional Protocol. Also, the Commission expressed its confidence in its capacity to carry out the function of 'national preventive mechanism' mandated by the Optional Protocol.

The NHRCK presented the results of the investigation on Hansen's disease patients conducted during May and December of 2005 and hosted a discussion forum in January of 2005. Based on these results, the Commission opened the Plenary Committee and made the recommendation on policy to protect their human rights as follows:

- (1) Recommendations to the Minister of Health and Welfare,
 - To establish a special law to allow the investigation into the past human rights violations and discrimination, and indemnify the patients.
 - To abolish or improve the central registration system of Hansen's disease patients.
 - To improve a discriminatory welfare policies.

- (2) Recommendations to the Truth and Reconciliation Commission of the Republic of Korea,
- To take a fact-finding mission into the past human rights violation cases and
 - Take proper actions to compensate the victims and restore those patient's honor.
- (3) Recommendations to the governors of local governments where areas Hansen's disease patients' operating plantation exist,
- To improve the poor residential environment
 - To explore ways to ensure transparency and democracy in the operation of the plantation.

In 2006, the NHRCK advised the Minister of Justice to improve its overall policies concerning refugees. The Commission concluded that Korea's domestic laws and policies on the procedure of recognition of refugee status and social treatment toward refugees do not conform to international norms for refugee protection. The key issues include: Express 'Principle of *Non-Refoulement*' in its law; Improve accessibility for asylum seekers to the refugee status recognition procedure; Enhance programs such as Korean language and vocational training to help them settle down in local environments, and strengthen education on domestic laws and culture; and Enact a standing-alone law establishing refugee status recognition and their social treatment on a long-term basis.

NHRCK held a hearing in July 2006 regarding 'Measures to Guarantee the Right to Education in the process of Reconstruction and Redevelopment'. This hearing explored measures to formulate policies and improve systems for securing the right to an education when violations of environmental and education rights occur in the midst of reconstruction and redevelopment.

2. Human Rights Violation Remedy Sector

There are many cases that the NHRCK have remedied so far. Representative cases are as follows:

A petition was filed against a hospital in Daejeon, Chungcheong province on October, 2004 saying that patients were unjustly isolated and restrained. The NHRCK concluded the hospital failed to diagnose and take care of the patients appropriately thereby violated their human rights. Therefore, the NHRCK recommended the president of the hospital in

question to take measures to prevent further human rights violations and conduct human rights education to staff members on a regular basis, and to comply with the due procedure on the first and prolonged admission of patients under the Mental Health Law. Also the NHRCK took administrative measures to warn the Mayor of Daejeon City of its failure to supervise the hospital and advised the Mayor to strictly supervise the hospital.

The NHRCK investigated a petition filed against the Gwangju Correctional Facility on March, 2004. The petition alleged that the Facility did not allow prisoners to take a bath on a designated day. The NHRCK discovered that the Facility violated the Ordinance of Criminal Administration Act and the relevant regulation by failing to comply with the number of bath given to prisoners and by failing to grant them the right to outdoor exercise even on the bathing day. At the same time, the Facility breached the right to pursue happiness in the Article 10 of the Constitution. Accordingly, the NHRCK recommended (1) the Director of Gwangju Correctional Facility to guarantee the prisoners warm bath more than one time per week in winter time, (2) the Minister of Justice to administer the Facility. Further, the NHRCK advised the Minister to order the Facility to allow prisoners to exercise outside even on the bathing day and if impossible, to improve facilities and increase the number of staff thereby guaranteeing detainees' right to exercise.

In March 2006, the NHRCK presented its opinion on the detention of two human rights activists including Mr. Park, Rae-gun and Mr. Cho, Bak-gi who were arrested in the protest against the government's plan to expand the U.S. base in Pyongtak, Kyonggi province. It is as follows: (1) The NHRCK emphasized the principle of presumption of innocence described in the Constitution and the international human rights norms and requirements for arrest would be applied in a strict manner; (2) It is very regrettable for the government to justify the arrest saying that the activists refused fingerprinting and exercised their right of silence while not showing no repentance. However, the current law does not consider repentance or a possible second offense as requirements for arrest, thereby the government shows its poor sense of human rights; (3) The NHRCK is very concerned the arrest would bring doubt about human rights condition and development of democracy in Korea when Declaration on Human Rights Defenders describes the state's obligation to protect human rights defenders. (4) Finally, the NHRCK made it clear that it would monitor the development of the case.

The NHRCK investigated a case filed against a high school in Seoul on January, 2006, which alleged that the school failed to follow its internal guidance for students when

disciplining them. The NHRCK found out that the school's failure to grant the concerned student a chance to express its opinion violates the due process of law guaranteed by the Article 12 of the Constitution. Thus, the NHRCK advised the principal of the school to give concerned student a chance to speak for him/herself in discipline and to conduct education on the relevant matter to teachers of the school

On June, 2005, the NHRCK investigated a filed case where a former executive of a company was assaulted by three investigators and prosecutors for four days in a row without due process of law. It found that their acts committed crimes under the Articles 124 on unlawful confinement and 125 on violence and cruel acts of the Penal Act and the Article 44(2) of the Act on the Aggravated Punishment, etc. of Specific Crimes. Therefore, the NHRCK charged the respondents to the Prosecutor General and decided to ask the Korean Bar Association for legal aid for the victim.

3. Discrimination Rectification Sector

The NHRCK is pushing forward with setting up the standard for discrimination as one of its major business plans this year. It plans to finish off the draft of the standard by the latter half of this year, hold a series of public hearings, and announce the final standard in the early next year. This standard will refer to 17 grounds for discrimination such as gender, disability, country of birth and age, etc. described in the National Human Rights Commission Act. The standard will be a basis for determining discriminatory acts.

The NHRCK has continued to deal with discrimination cases as follows:

The NHRCK conducted an investigation into a petition filed on September 2005 where the Busan Metropolitan City Office of Education limited the wage level up to level 14 to all contract-based teachers regardless of their job career. The NHRCK found that the limit amounted to the discriminatory act violating the right to equality guaranteed under the Article of the Constitution and recommended the Superintendent of the Busan Metropolitan City Office of Education to revise the guideline on managing the contract-based teachers. For reference, the NHRCK advised the relevant agency to improve the administrative guideline that unreasonably discriminate such teachers on March, 2003.

After a case of sexual harassment against female prisoners in Seoul Detention Center was revealed, three teams of the NHRCK visited five correctional institutions with the greatest number of female detainees in each reason from March 8th to 10th, 2006 in accordance with

the Article 24 of the National Human Rights Commission Act and the Article 3 of the Enforcement Ordinance of the Act. The NHRCK surveyed detainees, conducted face-to-face interviews, checked out their physical conditions and their life there to see if there is any case for sexual harassment. Also, it reviewed the laws and acts relevant to the correctional affairs and their compliance.

After considering how to facilitate the use of assisting dog, the NHRCK, from November 2005 to February 2006, advised the Ministers of Health and Welfare, and Construction and Transportation and heads of local governments to revise the relevant laws and acts for financial support and come up with improved the related policy. Specifically, NHRCK recommended (1) the Minister of Health and Welfare to improve the Act on Welfare of Disabled Persons to establish a policy and to take measures to ease the use of helping dog; (2) the Minister of Construction and Transportation to prepare a special provision of the relevant act so that the helping dog must be allowed in the public place; and (3) heads of local governments to actively translate the Article 36(1) of the Act on Welfare of Disabled Persons into action, which prescribes training and provision of assisting dog.

The NHRCK investigated a discrimination case filed on January 2006 which said the Gyeongsang Namdo Office of Education qualified the older person out of the two who received the same marks of the qualification test for secondary school teachers. The NHRCK concluded that even though the Enforcement Regulation on Appointment of Public Educational Officials grants the margin of discretion to the relevant agency to some degree, the discretion should be exercised within the right to equality under the Constitution. Hence, the act of the Gyeongsang Namdo Office of Education cannot be justified. Accordingly, the NHRCK advised the Superintendent of the Office of Education to improve the criteria for qualifying public educational officials.

A petition was filed saying that the complainant was discriminated and was violated his human rights while serving in the military because he was a homosexual. On June 2006, the NHRCK recommended (1) the Army of Chief of Staff to warn the four officers including regiment commander and company commander involved in the case and to conduct human rights education to them; (2) the Minister of National Defense to establish a guideline to protect the human rights of the homosexual soldiers and to educate all soldiers to prevent sexual harassment from occurring within the military.

The NHRCK evaluated its work on discrimination rectification cases when it marked the first

anniversary on June 23rd 2006 since it had integrated the gender discrimination and sexual harassment cases. A total number of 151 cases were received (sexual harassment case: 99, gender discrimination case: 52), of which 127 cases (sexual harassment case: 73, gender discrimination case: 54) were resolved. Based on its analysis and evaluation of those cases, the NHRCK concluded that direct investigations and fact-finding missions have been done and most cases were resolved through conciliation. That is, the NHRCK has focused on eradicating gender discrimination by recommending the relevant systems and laws and acts that would create such a condition from the outset.

In January of 2006, a petition was filed against Mokpo National Maritime University for its entry system that restricts female students to 10% of all the applicants. In response, the NHRCK confirmed that distinguishing applicants by gender in the enrollment process and accepting considerably a higher number of male students than female students are discrimination against equal rights. The Commission recommended the President of Mokpo National Maritime University to discontinue the restriction on the number of female students and to take appropriate action to redress the complainant.

In response to a petition filed in March of 2006 for failure to provide convenient tools at an provincial examination for the level 9 of public officials in Gyeonggi province whereas national examinations already provide special examination papers and convenient tools for the disabled in accordance with the NHRCK's recommendation (22 November 2004), the Commission confirmed that the case was a human rights violation and recommended the Governor of Gyeonggi province to provide convenient tools for disabled examinees to be able to write their answers on the examination.

4. Human Rights Education Sector

The NHRCK has run a series of human rights education training course and programs as follows:

From October 11 to 21 2005, the NHRCK ran a training course targeted 70 public officials in the field of prosecution and correctional facilities to improve their human rights sensitivity and to create a culture where the human rights of suspects and prisoners are respected. The course covered raising the human rights sensitivity through role play; working without discrimination and prejudice, understanding the international human rights standards, and human rights matters related to their work.

For 2 days in November 2005, the NHRCK held the “Workshop on Human Rights with Wheelchair” attended by 16 senior supervisor in charge of special education and 16 principals of the integrated schools. The workshop addressed the difficulties arising from a lack of the appropriate system of integrated school from the perspective of the school manager. It consisted of understanding the human rights of persons with disabilities, learning how to talk in a non-violent manner, reviewing examples of human rights education, integration education, and establishing a plan for implementation.

From December 6th to 7th 2005, the NRHCK held a workshop on human rights education targeted sixty attendants who included personnel working in the Ministry of Education and Human Resources Development, senior supervisors of local offices of education, model schools to report the evaluation of five model schools across the nation for the last two years to develop the 7th program for enhancing a sense of human rights of the children. The activities of those model schools were analyzed by curriculum, special class arranged by teachers and extra-curricula class; practical human rights education in home, school and the community; and change of school into a human rights-friendly environment.

From December 13th to 16th, 2005, the NHRCK ran a training course targeted at 35 military officers including counselors, education officers, legal officers, and officers in correctional facilities to enhance their human rights sensitivity and to foster a culture where soldiers’ human rights can be respected. The course dealt with human rights cases in military, human rights protection of soldiers, understanding of the international human rights standards for soldiers, and matters related to human rights that can happen while serving in the military.

In the latter half of this year, the NHRCK intends to hold the 4th Contest of Good Practice of Human Rights Education targeted teachers in elementary, middle and high schools and human rights activist in civic groups. It will receive a total of 12 good practices for human rights education by the end of October, 2006 and award the best practices during November. Those awardees’ cases will be posted on the NHRCK’s Cyber Human Rights Education web page, and published for reference which will be distributed to schools across the country. This Contest would bring attention from the public, who, in turn, can be aware of the importance of the human rights education.

5. Others

The NHRCK carried out 17 fact-finding missions on human rights conditions last year. To this end, around KRW 700 million (about US\$700,000) of its budget was allocated. The missions focused on conditions of the minority including those living in poverty, persons with Hansen's disease, North Korean defectors staying in South Korea, undocumented foreigners, juveniles out of prison, patients with HIV and AIDS, the homeless, persons with disabilities, and children with disabilities. The NHRCK is considering a policy recommendation to improve their human rights.

In January, 2006, the NHRCK produced an omnibus film titled "If You Were Me 2" and screened the film in the country. This film was directed by five prominent directors, each of whom focused on discrimination cases about a girl with Down's syndrome, a teenager who fled the North Korea, an irregular worker, and an ethnic Korean Chinese, to bring attention to the socially weak and the minority to the public.

The Human Rights Library of the NHRCK has expanded its service to the public to bring their attention to human rights. Now, anyone can borrow books, video tapes and other materials at the Library. Also the Library is equipped with a magnifying screen, voice recognition program, and Braille printer so that persons with physical disabilities can take advantage of the Library. This equipment allows them to have access to the Commission's resolutions, publications, press releases and others and enables them to print out those materials.

Conclusion

With its vision of "a world where human beings can live in dignity", the National Human Rights Commission of Korea will work on in three years to come to achieve the following five goals: (1) Enhance the protection of human rights of the underprivileged and minorities; (2) Build up global level standards and practices for human rights; (3) Facilitate access to remedies and strive for greater work efficiency; (4) Strengthen education on human rights issues; and (5) Bolster the capacity of the Commission. While the first leadership put strenuous efforts to establish a framework to prevent violations of civil and political rights, the current leadership will move towards settling and institutionalizing those rights and will increase its interest in economic, social, and cultural rights to remove polarization in society.