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REPUBLIC OF KOREA (SOUTH KOREA) Proposed standards for a National Human Rights Commission

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1. A National Human Rights Commission for South Korea

When President Kim Dae-jung took office in February 1998 his government announced a list of "100 tasks" for priority action by the new government. Included on the list was the establishment of a national human rights commission.

Amnesty International welcomes this announcement and is taking the opportunity to put forward a series of recommendations aimed at ensuring that the body will be fully independent, empowered and effective in the promotion and protection of human rights and providing redress to victims. Amnesty International hopes that these recommendations will contribute to discussions and any future parliamentary debates on the establishment of a human rights commission. It intends to send further comments when legislation to establish this commission is drawn up.

Amnesty International also urges the South Korean Government to involve human rights organizations, lawyers, academics, parliamentarians and others in discussions on the establishment of a commission and take account of their views. A human rights commission will not be effective unless it has the confidence of the public and those working in the human rights field.

In this document, Amnesty International proposes a set of standards for the establishment of national human rights institutions. It recommends that these standards,

in addition to the Principles adopted by the United Nations (the “Paris Principles”), should be used in discussions and decisions throughout the process of establishing the proposed national human rights commission.

Amnesty International believes that while the creation of a national human rights commission can strengthen human rights protection, it can never replace, and should not diminish, effective legal structures enforced by an independent, adequately resourced and accessible judiciary. The creation of a human rights commission should be accompanied by a thorough review of existing legal and other institutions in order to make these more effective instruments of human rights protection. It must also be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.

In the 50th anniversary year of the Universal Declaration of Human Rights, Amnesty International wishes to highlight the universality and indivisibility of human rights. It believes that national human rights commissions should be mandated to work on the full range of human rights including civil, political economic and social rights.

2. National Human Rights commissions in the Asia-Pacific region

Recent years have seen a proliferation of national human rights institutions in the Asia-Pacific region as more and more countries recognise the importance of practical mechanisms to make international human rights commitments and standards effective at the domestic level. In spite of some problems, these institutions have made an important contribution to the protection and promotion of human rights in their own countries. South Korea now has the potential to develop one of the best human rights institutions in the region, drawing on the experience of others and learning from their mistakes.

National human rights institutions in many countries of the Asia-Pacific have advocated ratification of international instruments and have pressed their governments to ensure that domestic law and policy are in conformity with these standards. They have played a role in preventing violations by conducting investigations and making subsequent recommendations to government and judicial authorities. They have helped advise on government policy and legislative initiatives regarding the full range of economic, civil, political and social rights.

In some countries the achievements and credibility of national institutions have been undermined when they lacked sufficient resources or independence to conduct full and impartial investigations, when the conduct of security forces and agencies have been excluded from their mandate and when governments have failed to take adequate action on their reports. The South Korean Government could avoid these problems by ensuring that the new commission has adequate resources, that it is fully independent and that it has the widest possible mandate. The commission should also have the practical means to conduct full and independent investigations and government authorities should act upon the commission’s findings and recommendations.

In the 50th anniversary year of the Universal Declaration of Human Rights, it is hoped that all Asian human rights institutions will strengthen their human rights education and promotion work, including the training of law enforcement officials. The

Korean human rights commission could also play an important role in defending the principles of the universality and indivisibility of human rights and promoting the acceptance of international standards throughout the Asia region.

In many cases national institutions have developed good cooperation with international and domestic NGOs working for the protection and promotion of human rights. NGOs can provide useful information on alleged violations and valuable expertise.

Amnesty International can provide further information about the work of national human rights institutions elsewhere in the Asia-Pacific region.

3. Principles adopted by the United Nations (the "Paris Principles")¹

The Paris Principles constitute, in Amnesty International's view, the basic minimum guidelines for the establishment of a national human rights commission and identify the following responsibilities for such institutions:

- to submit recommendations, proposals and reports on any matter relating to human rights to the government, parliament and any other competent body;
- to promote conformity of national law and practice with international human rights standards;
- to encourage ratification and implementation of international human rights standards;
- to contribute to the reporting procedure under international instruments;
- to assist in formulating and executing human rights teaching and research programs and to increase public awareness of human rights through information and education;
- to cooperate with the UN, regional institutions and national institutions of other countries.

4. Amnesty International's proposed Standards for National Human Rights Commissions

Amnesty International recommends the following standards as essential elements for consideration in the establishment and functioning of national human rights commissions.

a) Mandate and composition of the Commission

- *The Commission should be independent from government and its Charter should reflect this. The Commission should be established by law or, preferably, by Constitutional amendment.*

¹Principles adopted by the United Nations as an annex to General Assembly resolution 48/134 of 20 December 1993.

- The Commission should consist of men and women known for their integrity and impartiality of judgment who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason. Its members should be independent of government, have a proven expertise and competence in the field of protecting and promoting human rights, and should be drawn from a variety of different backgrounds, including relevant professional groups and the non-governmental sector.
- The method of selection of its members should be fair and transparent and should afford all necessary guarantees of independence and broad representation. Commission members should serve in their individual capacity and should be able to serve the Commission effectively. The terms of their appointment, tenure and removal should be clearly specified, laid down in the Charter and should afford the strongest possible guarantees of competence, impartiality and independence.
- The Commission should be mandated to monitor and report on compliance with and implementation of relevant international human rights standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations (UN) Declaration and Convention against Torture, as well as the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions.
- The Commission should be mandated to review the effectiveness of existing legislation and or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislation or the introduction of new legislation as necessary. The Commission should also examine bills and proposals for new legislation put forward by the government or parliament to verify its conformity with international human rights standards and to ensure the state's compliance with the above international human rights instruments.
- The Commission should have precisely defined powers to investigate on its own initiative situations and cases of reported human rights violations and set clear priorities for its work in accordance with the seriousness of the violations reported to it. Priority should be given to alleged violations of the right to life and security of the person, and the right not to be tortured (rights from which no derogation can be made by any government under any circumstances); as well as to the right not to be arbitrarily arrested or detained.

- The Commission should be directed to establish effective cooperation with non-governmental organizations with first-hand information about reports of human rights violations.
- The Commission should also have the powers to conduct wide-ranging national inquiries on human rights concerns of fundamental importance to the nation.
- It is recommended that initially the Commission conduct a critical analysis of the factors which have contributed to the persistence of human rights violations within the national territory, including the failure of existing institutions and legal mechanisms to provide adequate human rights protection. Recommendations for legal and institutional reform to halt violations may be proposed on the basis of the findings of the study.
- The Commission should be authorized to investigate the conduct of the security forces and the application of security legislation throughout the national territory. To do this effectively, the Commission should have adequate facilities to conduct thorough investigations, independent of the security forces, whose conduct it will be called upon to assess.

b) Facilities and methodology of the Commission

- The Commission should have all necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.
- The Commission should have its own investigative machinery and should have access to expert assistance whenever required to verify alleged violations. It should have adequate facilities to carry out on-the-spot investigations. The Commission should have immediate and unhindered access to all places where detained persons are held or are suspected to be held. Officials should be obliged to cooperate with the Commission's investigations.
- The Commission should have powers to initiate investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if they themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Investigations initiated by the Commission should be adequately publicized, especially at the regional and local levels, to enable and encourage witnesses to come forward to testify.
- The Commission should have full and effective powers to compel the attendance of witnesses and the production of documents.

- The Commission should have full and effective powers to protect witnesses, complainants, or others providing evidence to the Commission, including bringing about the suspension or transfer of officials allegedly involved - without prejudice pending completion of investigations - to other duties where they would have no power over witnesses or complainants. Victims or relatives should have access to all relevant information and documents relating to the investigation and be granted all necessary facilities to present evidence. The Commission should be able to provide financial assistance to witnesses enabling them to travel and be accommodated in order to present their evidence before the Commission.
- The Commission should work in an open way with its hearings generally open to the public. Private hearings should be an exceptional measure and be resorted to only in specific pre-established circumstances. The Commission's methodology and the results of its investigations, together with official reports, including *post mortem* and other expert reports as well as police and court records, should in each case be published in full, in an easily accessible and comprehensible form.
- The Commission should also prepare regular reports documenting all the complaints it has received, together with the action taken in each case, as well as an account of all its other activities for the promotion and protection of human rights. The Commission's reports should be presented periodically to representative national and regional bodies.
- The result of the Commission's investigations should be referred to appropriate judicial bodies without delay. Anyone the Commission alleges to have been responsible for committing human rights violations or for ordering, encouraging or permitting them, should automatically be brought to justice. The government should ensure that any prosecutions for human rights-related offences are brought by authorities which are distinctly independent from the security forces or other bodies allegedly implicated in the human rights violations.
- The Commission should have powers to ensure that superior officers are held accountable for acts committed under their authority and should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time.
- The Commission should have powers to ensure effective remedies, including interim measures to protect the life and safety of an individual and free medical treatment where necessary; it should ensure that full and prompt compensation is paid and other measures of redress and rehabilitation are taken in all cases it has taken up in which members of the security forces are found to have perpetrated human rights violations.

- *The government should undertake an obligation to respond, within a reasonable time, to the case-specific as well as the more general findings, conclusions and recommendations made by the Commission. The government's response should be made public.*

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