

FOCUS

Asia-Pacific



Newsletter of the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA)

March 2017 Vol. 87

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Editorial

Addressing Human Rights Issues

The United Nations has developed a comprehensive set of policy and practical guides designed to address issues and situations affecting human rights in its member-states. These policy and practical guides are bases of recommendations of United Nations human rights bodies to member-states to improve human rights situations. And yet, there seems to be resistance by member-states to employing these guides at the national level.

Some member-states in Asia adopted weak laws on human rights because of their limited scope (in terms of situations and measures covered). There are also laws that provide governments the legal excuse for undertaking measures that could potentially violate human rights (including restrictions on freedom of expression to address national security issues, and limited definition of prohibited acts such as torture and illegal detention). Accountability for human rights violations does not appear to be important in these legal instruments.

There seems to be a trend of rewriting the meaning of human rights by adopting policy and other measures that do not adhere to international human rights standards. By overly emphasizing certain concerns (national security and even national development), the negative impact of these measures on human rights is disregarded.

Central Asia: Human Rights Issues

HURIGHTS OSAKA

Kazakhstan, Tajikistan, Turkmenistan, Uzbekistan and Kyrgyzstan comprise the subregion of Central Asia. They are all member-states of the United Nations, and have ratified or acceded to a number of human rights treaties as shown in Table 1.

The United Nations human rights treaty monitoring bodies examined the reports of the five countries during the 2015-2016 period. Below are some issues raised in the Concluding Observations issued by the human rights treaty monitoring bodies.

Kazakhstan

The Human Rights Committee (HRC) issued in 2016 its Concluding Observations on the reports of Kazakhstan.³ Following are some of the issues raised by the HRC.

On counterterrorism, the HRC was concerned about the broad formulation of the concepts of “extremism”, “inciting social or class hatred” and “religious hatred or enmity” under Kazakhstan’s criminal legislation and the use of such legislation on extremism to unduly restrict freedoms of

religion, expression, assembly and association.

The HRC was also concerned about the closely related issue of freedom of expression. It noted the “laws and practices that violate freedom of opinion and expression, including: (a) the extensive application of criminal law provisions to individuals exercising their right to freedom of expression, including provisions on the broadly formulated offence of incitement to ‘social, national, clan, class or religious discord’, defamation, insult, public insult or other encroachment on the

Table 1. Ratified/Acceded to Human Rights Treaties¹

Human Rights Treaties ²	Kazakhstan	Tajikistan	Turkmenistan	Uzbekistan	Kyrgyzstan
1. CAT	A	A	A	A	A
2. CAT-OP	R	—	—	—	A
3. CCPR	R	A	A	A	A
4. CCPR-OP2-DP	—	—	A	A	A
5. CED	A	—	—	—	—
6. CEDAW	A	A	A	A	A
7. CERD	A	A	A	A	A
8. CESC	R	A	A	A	A
9. CMW	—	R	—	—	A
10. CRC	R	A	A	A	A
11. CRC-OP-AC	R	A	A	A	A
12. CRC-OP-SC	R	A	A	A	A
13. CRPD	R	—	A	Signed	Signed

Note: R – ratification; A – accession

honour and dignity of the President of Kazakhstan, public insult of a State official by the mass media or information communication networks, and dissemination of information known to be false; (b) the blocking of social media, blogs, news sites and other Internet-based resources on national security grounds, including by using Law No. 200-V of 23 April 2014, which entrusts the Prosecutor General or his deputies with the ability to shut down or suspend a network or means of communication and access to Internet resources without a court order; (c) interference with professional journalistic activity and the shutting down of independent newspapers and magazines, television channels and news websites for reportedly minor irregularities or on extremism-related charges."

On death penalty, the HRC, while noting the moratorium on executions in force since 2003 and the objective of gradually reducing the grounds for imposition of the death penalty, was concerned that the new Criminal Code enacted on 1 January 2015 maintained the death penalty for seventeen types of crime.

On prisons and torture, the HRC noted the

- a. high number of "suicides and deaths in prisons, remand centres and temporary holding facilities;"
- b. exclusion of acts of torture committed by "all persons acting in an official capacity" in the coverage of

the law on torture and the non-recognition of the "physical and mental suffering caused as a result of 'legal actions' of civil servants;"

- c. "high rate of torture and the high number of claims of torture dismissed at threshold due to the allegedly excessive evidentiary standard required to pursue an investigation under the new Criminal Procedure Code;"
- d. "reported unduly prolonged duration of investigations into allegations of torture and/or ill-treatment;"
- e. "very low rate of effective prosecution, the mild punishments imposed and the involvement of interested law enforcement agencies in investigating allegations of torture or ill-treatment;"
- f. practice of automatically charging unsuccessful complainants of torture or ill-treatment with the crime of "false reporting of a crime;" and
- g. failure to provide full reparation to victims of torture or ill-treatment.

Turkmenistan

The United Nations Committee on the Elimination of Racial Discrimination (CERD) and Committee against Torture (CAT) reviewed the reports of Turkmenistan in 2016. Below are some of the issues raised in the Concluding Observations of CAT.⁴ The report of CERD could not be accessed at the moment,

thus the discussion below refers only to the CAT report.

CAT raised concern on many issues regarding detention or imprisonment:

- a. "consistent allegations of widespread torture and ill-treatment, including severe beatings, of persons deprived of their liberty, especially at the moment of apprehension and during pretrial detention, mainly in order to extract confessions." CAT noted the lack of cases against those alleged to have committed torture;
- b. "long-term incommunicado detention, a practice that amounts to enforced disappearance and violates the Convention" for a number of people (including Boris and Konstantin Shikhmuradov, Batyr Berdyev and Rustam Dzhumayev);
- c. "serious acts of intimidation, reprisals, threats and arbitrary arrests and imprisonment of human rights defenders and journalists in retaliation for their work, and of their relatives, as well as numerous reports that such persons have been subjected to torture and ill-treatment while in detention;"
- d. "deaths in custody owing to torture and about the State party's failure to ensure independent forensic examinations of such deaths;"

- e. “persons deprived of their liberty [were not enjoying] in practice ... all fundamental legal safeguards against torture from the moment of their apprehension;”
- f. “use of solitary confinement and the reduced regime for persons placed in solitary confinement, which has resulted in mental health problems and suicides;”
- g. “inadequate material and hygienic conditions in places of deprivation of liberty, including continued severe overcrowding, inadequate bathing and toilet facilities, lack of access to an adequate quantity and quality of food, natural and artificial lighting, proper ventilation and health care, lack of outdoor activities and unnecessary restrictions on family visits continued during the period under review,” and that the “supervision of conditions of detention in detention facilities [was] not within the remit of judicial bodies;”
- h. “physical abuse and psychological pressure against detainees by prison staff, including ill-treatment, collective punishment and sexual violence, including rape, which have resulted in several suicides;” and
- i. “prevalence of violence against women in the State party, including in penitentiary facilities, and at the low number of complaints, investigations

and prosecutions in this regard.”

Uzbekistan

The Human Rights Committee (HRC) issued its Concluding Observations on the fourth periodic report of Uzbekistan on 17 August 2015. The HRC noted the issues regarding women:

- a. lack of progress in adopting a law on equal rights and opportunities for women and men;
- b. violence against women, including domestic violence, continued to be regarded as a family matter; there was no law criminalizing domestic violence and marital rape; and law enforcement officers lacked due diligence in registering and investigating such complaints and owing to the absence of adequate and sufficient protection measures and support services for victims, including medical, social and legal services, as well as accommodation or shelters; and
- c. continued practice of forced and early marriage and bride abductions, especially in rural areas, and persistence of de facto polygamy, despite the legal prohibition against such practices.

The HRC noted that the definition of torture contained in the criminal legislation, including Article 235 of the Criminal Code, did not meet the requirements of Article 7 of the

International Covenant on Civil and Political Rights, as it was limited to illegal acts committed with the purpose of coercing testimony and therefore in practice was restricted to acts of torture committed only by a person carrying out an initial inquiry or pretrial investigation, a procurator or other employee of a law enforcement agency, and results in impunity for other persons, including detainees and prisoners. The HRC was also concerned that Uzbekistan continued to grant amnesties to persons who had been convicted of torture or ill-treatment under Article 235 of the Criminal Code.

It also noted the numerous reports of abuses, including beatings by prison guards and other prisoners, poor conditions of detention, inadequate medical care and imposition of long and physically demanding working hours, disproportionately affecting human rights defenders, government critics and individuals convicted of membership in Islamist parties and groups. The HRC was also concerned about the lack of a national independent mechanism mandated to regularly monitor and inspect all places of detention without prior notice, and about obstacles to the proper functioning of independent national and international human rights and humanitarian organizations.

Tajikistan

The Committee on Economic, Social and Cultural Rights (CESCR) in reviewing the Tajikistan reports during the first

quarter of 2015 raised a number of issues regarding the realization of economic, social and cultural rights.⁵

CESCR lauded the existence of a number of laws on some pressing issues, such as the following:

- a. Law on Prevention of Domestic Violence (2013);
- b. Amendments to the Refugee Law (2013);
- c. Social Protection for Persons with Disabilities Act (2010); and
- d. Commissioner for Human Rights Act (2008).

However, CESCR also observed that other issues lacked or had inadequate laws. It noted the lack of comprehensive anti-discrimination law and the partial and fragmented character of existing legal provisions; and the lack of legal protection of women against all forms of direct and indirect discrimination and harassment.

CESCR pointed out that the 2010 Law on Social Protection of Persons with Disabilities did not provide a clear definition of persons with disabilities and that the classification of disability, based on the degree of lost ability to work, has led to exclusion from employment of persons with disabilities. It cited the lack of a clear definition in legislation of the informal economy, which accounts for a very large portion of the total workforce in Tajikistan, making it difficult to assess the situation of workers in the informal economy and to develop effective policies to ensure the

protection of their rights under the International Covenant on Economic, Social and Cultural Rights (Articles 7 and 8).

It noted that domestic violence had not been criminalized and remained prevalent in the country. It was concerned about underreporting of cases of domestic violence, while those reported were not adequately investigated, and perpetrators often avoided punishment.

On children, the CESCR pointed out several concerns:

- a. Large number of children (approximately 200,000), mostly from single-parent families and migrant worker families, were involved in child labor, 13 per cent of them were working in dangerous conditions and 10 per cent never attended school;
- b. Lack of family- or community-based care for children with disabilities and children without parental care, which resulted in their being placed in institutional care;
- c. High dropout rates among girls and children from families in disadvantaged situations, and about the gender disparity in enrolment and retention rates across all levels of education;
- d. Poor quality of education due to lack of qualified teachers and of teaching materials, low teachers' salaries and poor condition of educational infrastructure and facilities; and

e. Decreasing number of classes provided in the languages of ethnic minorities and of students attending schools where the teaching is given in the languages of ethnic minorities, owing to the insufficient number of teachers, the lack of retraining programs for teachers and a shortage of textbooks in minority languages.

CESCR was also concerned about the lack of reasonable accommodation of persons with disabilities, including physical accessibility to buildings and facilities, particularly schools and health-care clinics.

Kyrgyzstan

The Committee on Economic, Social and Cultural Rights (CESR) issued in 2015 its Concluding Observations on the reports of Kyrgyzstan.⁶

The CESCR was concerned that women were not enjoying equal rights in the areas of economic, social and cultural rights because they were

- a. "predominantly employed in lower-paid sectors and positions;"
- b. not entitled to "all the rights in the Family Code or from alimony and other forms of support in the event of marriage dissolution" for the "significant number of marriages, particularly those under religious law, [that were] not formally registered;"
- c. "unable to prove guardianship of their

children [in cases of unregistered marriage] without their husband's confirmation, which, inter alia, hinders the children's residence registration, thus obstructing their access to basic services;"

- d. given "unequal access to property and inheritance;" and
- e. frequently denied application for "land plots."

There was prevalent bride kidnapping of "both women and underage girls" who were "often left with the kidnapper by their families for economic reasons or because the bride is considered to be tainted." There was also concern about the "bride [being] considered to belong to her husband's family, which had the power to hamper her access to education and employment."

The CESCRA raised its concern about the high number of homeless people and the absence of a plan to address their housing needs. There were also "disadvantaged and marginalized individuals and groups who face[d] an acute risk of homelessness, especially persons living in poverty, women single heads of households, persons with disabilities, migrants, children who [were] leaving institutions and former detainees."

It also raised the issue of health and environment due to the "high level of industrial pollution" such as "ground contamination resulting from uranium tailings, toxic waste dumps and burial sites for pesticides that are persistent

organic pollutants;" "continuing import of obsolete, prohibited or poor-quality pesticides;" and the proximity of a residential area to the place where cattle which died of anthrax were buried. The low level of awareness about this issue complicated the situation.

Final Note

The Concluding Observations raised many more human rights issues on the five countries of Central Asia. The discussion above illustrates what the United Nations human rights bodies have been urging member-states to give appropriate attention to in compliance with their obligation under the human rights treaties that they have ratified or acceded to. These issues, among many other issues, are certainly not limited to these Central Asian countries.

For further information, please contact HURIGHTS OSAKA.

Endnotes

- 1 Ratification/accession status taken from United Nations Human Rights, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx.
- 2 Terms used:
CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT-OP - Optional Protocol of the Convention against Torture
CCPR - International Covenant on Civil and Political Rights
CCPR-OP2-DP - Second Optional Protocol to the International Covenant on

Civil and Political Rights aiming at the abolition of the death penalty

CED - Convention for the Protection of All Persons from Enforced Disappearance

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women

CERD - International Convention on the Elimination of All Forms of Racial Discrimination

CESCR - International Covenant on Economic, Social and Cultural Rights

CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

CRC - Convention on the Rights of the Child

CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

CRPD - Convention on the Rights of Persons with Disabilities

CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

CRPD - Convention on the Rights of Persons with Disabilities

- 3 Human Rights Committee, Concluding observations on the second periodic report of Kazakhstan, CCPR/C/KAZ/CO/2, 9 August 2016.

(Continued on page 14)

An Assessment of China's Legal Framework on Combating Trafficking in Person

Zhang Wei

As a country with the largest population and number of victims of trafficking, both actual and potential, the efforts of the People's Republic of China (PRC) in contributing to a more uniform implementation of international legal norms and obligations in its current anti-trafficking mechanism, primarily through its Criminal Law, are inadequate.

Trafficking in person (TIP) under the Trafficking Protocol¹ consists of three elements: action, means and purpose. Using this framework, the Criminal Law of the PRC has the following issues:

- a. Failure to include males as subjects entitled to protection;
- b. Neglect of the importance of means; and
- c. Insufficient protection for trafficked victims, as well as deterrence against trafficking, for purposes other than economic exploitation.

The Trafficking Protocol requires that the means of trafficking should enable the person committing the act to gain control over another person (the victim).² Although there is no explicit provision on this issue under the Criminal Law of the PRC, case law provides traces of its recognition as a required

element. The Supreme People's Court uses the Guizhou Province case as a textbook example to elaborate the standards of offense for consummated/accomplished or attempted acts in trafficking cases: the state of someone having control over another is a determinant factor in the accomplishment of the offense.³

In this case, a couple from Guizhou Province gave their baby to Lu under the false impression that Lu was interested in the adoption of the baby. Lu then asked another person (Wang) to search for a buyer. Both Lu and Wang were caught in a hotel waiting for the buyer. Lu was convicted as the principal of the trafficking offense and sentenced to five years fixed-term imprisonment with 10,000 RMB fine; Wang, the accessory, was sentenced to three years fixed-term imprisonment with 6,000 RMB fine. The offenders were caught before the final transfer of the child was completed, hence the intense discussion over the standards of accomplishment of the crime. The Supreme People's Court commented that standards of accomplishment vary considering the definition of the crime and legislative intent. The acts of abducting, kidnapping and buying aimed at gaining control over the victims are accomplished once

the victims fall under the control of the actors. The acts of transporting and transferring aimed at handing over the victims at a designated place to a designated person are accomplished when the victims had been successfully relocated to another place or handed over to the trafficker. The act of buying shall be deemed accomplished once payment is delivered. In this case, Lu took the acts of abducting, transferring, and selling of the victim and, during the first two stages, had control over the victim. The selling act was not completed due to the intervention of the police. The element of "having control over another person" was thus specified and contributed to his conviction.

Another difference in the criminalization of TIP between the Criminal Law of the PRC and the Trafficking Protocol is the definition and scope of the purpose. The intention to exploit as stipulated by the Trafficking Protocol can be attributed to any individual or entity involved at any stage of trafficking. The Trafficking Protocol has a non-exhaustive list of forms of exploitation.⁴ Yet, the element of purpose under the Criminal Law of the PRC is limited to "selling."

A case in Guangdong Province in 2015 indicates the danger of overlooking other forms of exploitation as purposes for trafficking.⁵ A perpetrator, convicted of false imprisonment of another and sentenced to eleven months fixed-term imprisonment, was actually trafficking in children for the purpose of forced labor by paying them to get their consent. The maximum penalty for false imprisonment, three-year fixed-term imprisonment without aggravating circumstances, is far lighter than the penalty for forced labor or abducting and trafficking in women and children. The person was first charged with the offense of forced labor but he argued that the purpose was to retrieve the 400 RMB agency fee and made plea for the offense of false imprisonment. The purpose claimed did not correspond to the offense of trafficking. Additionally, the Court failed to distinguish the contradictory testimonies of the offender and the victims on the severity of violence or coercion inflicted upon the victims and the length of imprisonment.

This case exemplifies the extreme vulnerability of a child both as a victim and a witness. A child may act in an unanimated way when providing testimony due to limited cognition of the maltreatment,⁶ his/her own legal situation (such as staying in shelter for abused children),⁷ recollection of facts and fantasy; however, the legal system of China lacks effective mechanism to ensure the credibility of witness, let alone children. Three other similar cases were brought before the

same district court in the past four years, where offenders were mostly convicted of committing the offense of forced labor with no aggravating circumstances. All cases involved minor victims who were voluntarily recruited and transferred with the deceptive promise of payments or benefits but found themselves trapped in a situation of exploitation,⁸ where the defendant would be found guilty of TIP should the Trafficking Protocol be applied.

Some Proposals

In view of the current state of criminal legislation and jurisprudence in PRC regarding TIP, a few proposals are offered.

There is a need to closely adhere to the definition of TIP in Article 3(a) of the Trafficking Protocol and ensure that the legal rights and interests of males, especially male minors, as well as those of bisexual, transgender, and any persons regardless of sex, are adequately protected.

The law should also specify the element of means of control by a person over another in order to underscore the means of "abuse of a position of vulnerability"⁹ and deception approach.

Finally, the purpose of trafficking in the current criminal law should include exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, removal of organs, or other forms of exploitation such as

forced or servile marriages, debt bondage, serfdom, forced or coerced begging, illicit conduct of biomedical research on a person, the exploitation of children and adolescents in illicit or criminal activities or in armed conflict, and other forms of exploitation that accord with national experience.¹⁰

Zhang Wei is a graduate of the Johns Hopkins University, majoring in Comparative and International Law and has long been participating and coaching students in moot court competitions in China.

For further information, please contact HURIGHTS OSAKA.

Endnotes

1 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, United Nations General Assembly resolution 55/25, 8 January 2001. The definition of TIP under Article 3:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery

- or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age. See full document at www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.
- 2 Ibid. In an alleged sex-trafficking of minors case before the Tokyo High Court with the assistance and supervision of the UNODC (Tokyo High Court 2009 (U) No.992, also UNODC No: JPN001), the court upon appeal reversed a lower court guilty verdict due to the lack of illegal “control over the victims” in ways such as psychological pressure or physical influence on the Chinese victims (17 and 18 years old respectively) which prevented the victims from escaping. Also, it is noted that in times of war, offenses related to trafficking, such as rape, enslavement, sexual slavery, and enforced prostitution constitute war crimes and crimes against humanity according to the Statute of the International Criminal Court, Articles 7(1)(c), 8(2)(h)(xxii), 8(2)(e)(vi), UN Doc A/CONF. 183/9. The element of “ownership” which is similar to having control over another, is a critical element of enslavement as a crime against humanity, and later redeemed part of customary international law. See *Prosecutor v. Kunarac*, International Criminal Tribunal for the Former Yugoslavia, IT-96-23&23/1, Judgment, paras 539-542.
- 3 The First Criminal Tribunal of the Supreme People’s Court, editor, *Analysis and Interpretation of Classic Cases of Trafficking in Women and Children and Selected Rules and Regulations*, Beijing: China Legal Publishing House, 2010, pages 227-235.
- 4 Trafficking Protocol, Article 3(a). Also see UNODC, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (hereinafter the “Travaux Préparatoires”), New York, 2006, pages 343-344.
- 5 *Judgment*, People’s Court of Yuexiu District, Guangzhou, Guangdong Province. Case No. (2015) Hui yue fa xing chu zi di 952.
- 6 L. Sayfran, E.B. Mitchell, G. S. Goodman, M. L. Eisen, and J. Qin, “Children’s Expressed Emotions when Disclosing Maltreatment.” *Child Abuse & Neglect*, Vol. 32, No. 11, 2008, pages 1026-1036.
- 7 J. A. Quas, and M. Sumaroka, “Consequences of Legal Involvement on Child Victims of Maltreatment” in M. E. Lamb, D. La Rooy, C. Katz, and L. Malloy, editors, *Children’s Testimony: A Handbook of Psychological Research and Forensic Practice*, second edition, 2011, Wiley-Blackwell.
- 8 *Judgment*, People’s Court of Yuexiu District, Guangzhou, Guangdong Province, case No. (2015) Hui yue fa xing chu zi di 322; *Judgment*, Basic People’s Court of Yuexiu District, Guangzhou, Guangdong Province, case No. (2014) Hui yue fa xing chu zi di 889; *Judgment*, People’s Court of Yuexiu District, Guangzhou, Guangdong Province, case No. (2014) Hui yue fa xing chu zi di 166.
- 9 See *Interpretive Notes for the Official Records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (“Interpretive Notes”), UN Doc. A/33.383/Add.1, 3 November 2000, page 12, para 63; Also UNODC, UN.GIFT. *Model Law against Trafficking in Persons* (“Model Law”), 2009, page 10. Examples can be found in the state practice of United States State Department Model Law to Combat Trafficking in Persons, 2003 and the Law Containing Provisions to Combat Trafficking in Human Beings and Child Pornography of Belgium, Article 77 bis (1)2).
- 10 Interpretative Notes, page 12, paragraph 64; See also Model Law, pages 32, 35, 36.

Hate Speech in South Korea

Joo-Young Lee

On 19 February 2017, the National Human Rights Commission of Korea (NHRCK)¹ released the report entitled “The situation of hate speech² and regulatory measures to combat hate speech.”³ The report states the prevalence of online and offline “hate speech” targeting women, LGBTQ (lesbian, gay, bisexual, transgender and queer), persons with disabilities, as well as foreign migrants. It also mentions other people who are subjected to hate speech based on their origin, economic status or religion/beliefs such as those from Jeolla province, people living in poverty and Muslims. Hate speech has become a significant social problem in South Korea since around 2010 when an online community called *Ilbe* (Daily Best Repository) started causing concerns due to posts revealing or inciting disgust and hatred against women, people from Jeolla province (including the victims of the May 18 Uprising and their families), and people trying to advance democracy and peace. Evangelical Christians’ anti-LGBTQ speech has also become stronger, blocking any attempt at the national or municipal levels to institutionalize anti-discrimination measures, including those on sexual orientation and identity.

The NHRCK did a survey to clarify the situation of hate speech and identify regulatory

measures to combat it. 1,014 individuals participated in an online survey about their perception of and experience with hate speech. Also, in-depth interviews with twenty individuals who have been subjected to hate speech were conducted with a view to understanding the likely effects of hate speech on people. LGBTQ people, persons with disabilities, foreign migrants, and women were chosen as the main respondent groups of the online survey on the basis of existing research or media reports about hate speech. This survey also included two-hundred six male respondents who did not belong to any of the groups in order to identify their perceptions about hate speech and counter-measures to it.

The NHRCK research team used four categories of expression to analyze the situation, namely, 1) discriminatory harassment, 2) expressions either intending or implying discrimination and/or hatred, 3) public insults, contempt or threats, and 4) incitement to hatred. A common element in all four kinds of expression was identified: discrimination based on prohibited grounds, e.g., race, ethnicity, nationality, gender, sexual orientation and identity, religion, and disability. However, while these categories are useful in identifying measures on countering the

different types of hate speech, they do not necessarily coincide with how individuals or groups of individuals understand hate speech. Below are examples of content of hate speech either observed or experienced by the respondents.

Misogynistic (strongly prejudiced against women) expressions include those blaming Korean women in general, such as “Kimchi-Nyeo (女)” (literally meaning Kimchi woman) and derogatory expressions regarding women’s appearance, age, ability or sexuality. Particularly, contemptuous expressions associating women with sexual organs or sexual activities are often accompanied by expressions implying sexual violence and have the effect of justifying and inciting discrimination and violence against women. Such expressions are likely to cause fear and anxiety about potential sexual violence among women.

Hate speech targeted at LGBTQ people often contains adjectives like “dirty,” “disgusting,” or “animal-like,” and thus portray sexual minorities as an “object” that should be avoided and/or rejected. Also, these expressions often associate LGBTQ with “disease,” “mental illness,” “perverts,” and “sin,” and promote the narrative that LGBTQ people spread diseases, destroy families, the church and

the state, and the need to “fix” them. Extreme expressions include “ostracize them” or “kill them.” Such anti-LGBTQ expressions have the effect of being used to justify the denial of LGBTQ people’s existence and identity, or incite discrimination and violence against them.

Hate speech directed at persons with disabilities often associates disability with “something creepy or smelly” and furthermore “something that needs to be erased.” Persons with disabilities who participate in social life are seen as nuisance to “us, the citizens” which tend to exclude them from being citizens of society. Persons with mental illness are particularly vulnerable to vilification because they are seen as dangerous and causing harm to society, which is often followed by arguments that they deserve restrictions on their rights and freedom, as well as isolation from society.

Xenophobic expressions often describe a particular group of foreigners or migrants as “dirty,” “noisy,” and “smelly,” implying that they need to be avoided. Adjectives such as “uncivilized,” “ignorant,” “lazy” and “craving money” are also used to disdain and vilify them. Xenophobic speeches target foreign migrant workers, foreign women married to Koreans, children of international marriage, Muslim people and people with dark skin. Extreme forms of hate speech treat people from particular countries as potential “criminals” or “terrorists” and claim that they need to be controlled or expelled from the country for

the protection of Korean people and the prevention of crime. These forms of xenophobic expressions are in effect an incitement to hatred and discrimination.

Online hate speech is found to have a chilling effect on the target groups’ participation in social life. More than half of the female, persons with disabilities, and sexual minority respondents stated that their experience with hate speech discouraged them from uploading posts or leaving comments online, and also stopped them from visiting an online community where they were exposed to hate speech. A high percentage of target groups⁴ responded that they fear being vilified based on their identity, i.e., being a woman, a sexual minority, a person with a disability, or a foreign migrant.

Respondents in all groups, including men who do not belong to any of the minority groups, were positive to regulations on hate speech, among the different modes of regulation they were asked to select (multiple choice). Regulation by an anti-discrimination body is the most preferred way of countering hate speech by all groups. Regulation by intermediaries comes as second preferred counter-measure to online hate speech. Although criminalizing hate speech was the least preferred mode of regulation, the rate of positive responses among respondents exceeded 60 percent.

As part of the research team, I wrote a chapter on international standards on hate speech and

relevant legislations from other countries. The International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) require the state-parties to prohibit incitement to hatred, discrimination and violence on the grounds of race, ethnicity and nationality. Provisions on non-discrimination and equality, as well as equal protection of the law, in major international human rights treaties mandate the state-parties to take appropriate measures to counter other forms of hate speech that do not amount to incitement to hatred. In reviewing the periodic reports of state-parties, the treaty monitoring bodies have included recommendations on hate speech in their Concluding Observations. Countries have adopted different approaches to address hate speech. The U.S. regulates only discriminatory harassment at work through anti-discrimination laws. Member-states of the European Union (EU) criminalize incitement to hatred relating to the prohibited grounds of discrimination, in most cases, not only on race, ethnicity and nationality, but also on sexual orientation and identity, as well as religion. EU countries are required to have anti-discrimination laws (human rights laws), if they had not done so, which mostly have provisions on discriminatory harassment. Canada regulates incitement to hatred through criminal law, and by anti-discrimination laws (human rights laws) in most provinces. Human rights laws in most of

the Canadian provinces regulate not only discriminatory harassment but also expressions that expose or tend to expose hatred to any person or class of persons on the basis of a prohibited ground.

Incidents and court cases of hate speech directed at Korean residents in Japan have been reported in South Korea. Yasuko Morooka's book on hate speech was translated into Korean. While looking into legislation on hate speech in other countries, I had a chance to read the Osaka City Ordinance Against Hate Speech (2016) as well as the law on elimination of hate speech (2016).⁵ The lack of a penalty clause and specific provision on budget for education and consultation measures both in the law and in the Osaka City Ordinance attracted criticism about their effectiveness in deterring hate speech and providing remedies to victims. At the same time, it is important to note that the law and the ordinance, at the very least, send a clear message to the public that hate speech is by no means allowed. Considering the lack of legislation against hate speech in South Korea, I consider the legislative efforts in Japan a clear step forward in responding to hate speech and racial discrimination. During my research visit to Osaka in February 2017, I learned about the formation of a counter movement at the grassroots level that effectively pressed the Japanese Diet and Osaka City Council to pass the legislations against hate speech. It was also impressive to learn about the empowerment of victims in countering hate speech and the decisions of local governments

(e.g., Kawasaki city government) and courts (e.g., Yokohama district court) that put restrictions on public gatherings or demonstrations of hate groups. While trying to utilize the existing legislation to deter hate speech and protect minority groups, the counter movement is preparing the next steps, including proposing an enactment of anti-racial discrimination law. While the situation of hate speech, including its main target groups, in Japan is rather different from that in South Korea, the counter movement in Japan gives Korean civil society an inspiration on how to inform civil society of the issues and form a collective voice, "No to hate speech."

What should be an appropriate response to hate speech and the role of the NHRCK in this? The NHRCK stated that it would consider suggestions by the research team and prepare appropriate measures to prevent the spread of hate speech by consulting with relevant experts and civil society groups. While the definition of hate speech must be revisited for regulation purposes, hate speech should be prohibited by law, consistent with international human rights law. Considering the severity of the harm caused by hate speech and the purpose of regulation, different modes of regulation can be devised. The first step might be to enact a comprehensive anti-discrimination legislation and include provisions on hate speech. It is never enough to emphasize the importance of human rights education to empower individuals to counter prejudice and discrimination

against the minorities entrenched in society.

Joo-Young Lee, PhD, is an Advisor at the Human Rights Center, Seoul National University.

For further information, please contact: Joo-Young Lee, Phone: +82 2 880 2426, e-mail: jooyounglee@snu.ac.kr.

Endnotes

- 1 The National Human Rights Commission of Korea was established in 2001 as a national advocacy institution for human rights protection; a result of the Korean human rights movements' long-held campaign for an independent and effective national human rights institution. Its main mandate includes: Developing human rights policies through conducting human rights research and issuing policy recommendations; Investigating discrimination and human rights violation cases and providing access to remedies; Promoting human rights education and raising public awareness of human rights; and Promoting and monitoring national implementation of international human rights treaties.
- 2 嫌惡表現 in South Korea is a general term for various kinds of verbal and written expressions that insult, ridicule, contempt, threaten, or attack a person or particular groups of people. The usage of this term may not be the same as hate speech. However, hate speech is also a loose concept

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Law Against Buraku Discrimination

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The Japanese Diet (parliament) enacted on 9 December 2016 the first law against discrimination of the *Burakumin*. Similar to the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan, this law promotes “efforts at eliminating Buraku discrimination.” It does not penalize acts that discriminate against the *Burakumin*.

The law, entitled Act on the Promotion of the Elimination of Buraku Discrimination,¹ obligates the national and local governments to take measures against this form of discrimination.

Basic Principle

The law aims to make the Japanese society free from *Buraku* discrimination, an objective that upholds the constitutional principle that “all citizens shall be respected as unique individuals who enjoy fundamental human rights on equal basis.”

The law seeks the improvement of the “understanding of each and every citizen of the need to eliminate *Buraku* discrimination” in line with the Japanese Constitution.

Obligation of the Government

The national and local governments are obliged to implement measures for the elimination of *Buraku* discrimination. The national government shall guide, and also collaborate with, the local governments in implementing such measures at the local level.

Anti-discrimination Measures

The law identifies three measures that should be done by the national and local governments, namely:

- a. Consolidation of advisory mechanisms;
- b. Education and awareness-raising; and
- c. Survey of the situation of *Buraku* discrimination.

Both national and local governments are obliged to consolidate advisory mechanisms that can respond to requests for advice and support concerning *Buraku* discrimination. The law does not describe the types of existing advisory mechanisms that should be consolidated, and the kind of advice and support that such mechanisms should provide.

They are both obliged to work together to undertake necessary and appropriate [to local conditions] awareness-raising and educational measures in order to eliminate *Buraku* discrimination.

They are also both obliged to monitor the situation on *Buraku* discrimination through surveys. The results of the surveys should help the implementation of other measures to eliminate *Buraku* discrimination.

Supplementary Resolutions

Two supplementary resolutions have been adopted to guide the implementation of the law.

The first resolution provides for appropriate and careful implementation of the law and cautions the government to consider in the measures the various understanding of the *Buraku* discrimination among people of different generations and the actual conditions of the local communities.

The second resolution, adopted by the Committee on Judicial Affairs of the House of Councillors on 8 December 2016, also provides for consideration of the actual conditions of the local communities and

- a. The taking of steps against obstacles to the elimination of *Buraku* discrimination given the fact that excessive words and behavior of people in the past and other factors had undermined the elimination of discrimination;
- b. The consideration of content and methodologies

that would help prevent the occurrence of new forms of discrimination as a result of the awareness-raising and educational activities; and

- c. The consideration of scope, methodologies and other relevant matters in holding the survey to prevent the occurrence of new forms of discrimination as a result of the survey.

The recognition of *Buraku* discrimination as violation of the Japanese Constitution, of the

continued existence of this kind of discrimination, and of the change in the situation of discrimination due to increased use of information technologies make the law a significant support for concrete measures at the local community level.

For further information, please contact HURIGHTS OSAKA.

Endnote

- 1 The English name and text of the law are from the unofficial translation of the law by the International Movement Against All Forms of Discrimination and Racism (IMADR). See full text of the law in English in this url: <http://imadr.net/wordpress/wp-content/uploads/2016/12/Act-on-the-Promotion-of-the-Elimination-of-Buraku-Discrimination-2.pdf>.

Central Asia: Human Rights Issues

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- 4 Committee on the Elimination of Racial Discrimination, List of themes in relation to the combined eighth to eleventh periodic reports of Turkmenistan, CERD/C/TKM/Q/8-11, 7 October 2016 and Committee against Torture, Concluding observations on

the second periodic report of Turkmenistan, CAT/C/TKM/CO/2, 23 January 2017.

- 5 Committee on Economic, Social and Cultural Rights, Concluding observations on the combined second and third periodic reports of Tajikistan, E/C.12/TJK/CO/2-3, 25 March 2015.
- 6 Committee on Economic, Social and Cultural Rights, Concluding observations on the combined second and

third periodic reports of Kyrgyzstan, E/C.12/KGZ/CO/2-3, 7 July 2015.

Hate Speech in South Korea

(Continued from page 12)

requiring separate legal definition for regulatory purposes and therefore 嫌惡表現 is translated into hate speech in this article.

- 3 This is the report on the research conducted by a group of academics and practitioners in the field of human rights: Sung Soo Hong [홍성수], Jeong-Hae Kim [김정혜], Jin-

Seok Noh [노진석], Minhee Ryu [류민희], Seung-Hyun Lee [이승현], Seung-Mi Cho [조승미], and the author.

- 4 84.7 percent of sexual minorities, 70.5 percent of persons with disability, 63.9 percent of women, 52.3 percent of foreign migrants.
- 5 Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan

- 6 The Seoul National University Human Rights Center was established in 2012. Its functions include raising the awareness of human rights and gender equality on campus and providing a hub for human rights study and research. See website: <http://hrc.snu.ac.kr/?language=en>.

Business, Human Rights and Access to Justice

HURIGHTS OSAKA

Representatives of non-governmental organizations (NGOs), national human rights institutions, a labor union, an employers' organization, and United Nations agencies met to discuss the issues and initiatives on business and human rights in Asia, and their access to justice component. They met in a workshop held on 11-12 March 2017 in Mandaluyong city that was jointly organized by the Asian Consortium for Human Rights-based Access to Justice (HRBA2J-Asia), Commission on Human Rights of the Philippines (CHRP) and the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA). The GOJUST – Human Rights Project (through CHRP) and HURIGHTS OSAKA financially supported the workshop.

Background of the Workshop

The workshop was organized as part of HRBA2J-Asia's work on the business and human rights issue agreed upon in its Pattaya meeting in 2012. The Northeast Asia group of HRBA2J-Asia and HURIGHTS OSAKA collaborated

in pursuing the business and human rights initiative. Aside from preparing two publications (*Bridging Human Rights Principles and Business Realities in Northeast Asia* [2014] and the *Business, Human Rights and Northeast Asia – A Facilitator's Training Manual* [2016]),¹ they also organized meetings linking the refugee issues to business and human rights held in Makati city in January 2016 and in Seoul in June of the same year.² These meetings followed the HRBA2J-Asia meeting in Makati city in 2014 on general discussion on business and human rights.

Workshop Program

The workshop had three basic parts:

- a. Review of context of access to justice in relation to business and human rights – issues and practices - in Asia;
- b. Discussion of concrete responses to the human rights issues arising from corporate operations in South, Southeast and Northeast Asia;

- c. Discussion of possible regional platform on "Business, Human Rights and Access to Justice."

For further information, please contact HURIGHTS OSAKA.

Endnotes

- 1 HURIGHTS OSAKA, "A Facilitator's Training Manual on Business and Human, Rights," *FOCUS Asia-Pacific*, March 2016, volume 83, www.hurights.or.jp/archives/focus/section3/2016/03/a-facilitators-training-manual-on-business-and-human-rights.html.
- 2 See HURIGHTS OSAKA, "Business, Human Rights and Refugees," *FOCUS Asia-Pacific*, June 2016, volume 84, www.hurights.or.jp/archives/focus/section3/2016/06/business-human-rights-and-refugees.html.
- 3 See HURIGHTS OSAKA, "Workshop on Business and Human Rights," *FOCUS Asia-Pacific*, December 2014, volume 78, www.hurights.or.jp/archives/focus/section3/2014/12/workshop-on-business-and-human-rights.html.



HURIGHTS OSAKA Calendar

HURIGHTS OSAKA will soon start collecting materials for the 8th volume of *Human Rights Education in Asia-Pacific*.



PRINTED MATTER

AIR MAIL

May be opened for inspection by the postal service.

HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

Sender: HURIGHTS OSAKA

(Asia-Pacific Human Rights Information Center)

8F, CE Nishihonmachi Bldg., 1-7-7 Nishihonmachi, Nishi-ku, Osaka 550-0005
Japan

Phone: (816) 6543-7002

Fax: (816) 6543-7004

E-mail: webmail@hurights.or.jp

Website: www.hurights.or.jp



HURIGHTS OSAKA