

# FOCUS

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### Editorial

#### Foreigners and Human Rights

The words "All," "Every," "Everyone" among other terms embody the non-discrimination and equality principles of the international human rights standards. These simple words matter to those who have been marginalized or restricted by the legal, social, economic and cultural systems of a country. In many cases and for a number of reasons, foreigners are in this situation.

Under the international human rights standards, foreigners in any country have the same human rights enjoyed by the citizens, except for a few political rights related to the governance of the country (right to vote and be voted into public office, for example).

But foreigners have to contend with other limitations or restrictions under domestic laws and challenges brought by societal attitude. As a result, foreigners are liable to suffer from different forms of discrimination and restriction as well as legal problems. This situation constitutes a serious obstacle to the enjoyment by foreigners of their human rights in the family, school, workplace and community.

# Filipinos in Kansai: Living Within Japanese Society

Jefferson R. Plantilla

Filipinos constitute the third largest group of foreigners in Japan with almost 250,000 population.<sup>1</sup> 23,000 of them reside in the seven prefectures of the Kansai region.<sup>2</sup>

## Arrival in Kansai

From early 1920s till early 1940s, Filipino jazz musicians were playing in Kobe and Osaka. Filipino male musicians played in many entertainment places around US military bases in Japan from the 1950s, but in Kansai they started to arrive in bigger number from the 1970s to the 1980s. At the end of World War II, a number of Filipino women married to Japanese men arrived in Kansai from the Philippines (via Nagasaki) with their children. From the 1980s to mid-2000s, Filipino women as overseas contract workers (popularly known as entertainers) arrived in big number. Many of them became spouses of Japanese and started residing in Kansai to raise families.

Supported by the booming economy during the “bubble era” and the revision of Immigration Control and Refugee Recognition Act that took effect in 1990, many Japanese-descent Filipinos along with Filipino technical intern trainees came to Japan to supply labor to the industries in increasing number in the 1990s. Nurses and caregivers started to

arrive in Kansai under the Japan-Philippine Economic Partnership Agreement (JPEPA) from 2009. Almost at the same time, Japanese-Filipino children came to reside in Japan along with their Filipino mothers, some of whom were recruited to work in hospitals and caregiving institutions (such as facilities for the elderly). And from 2017, young Filipinos aiming to work in the caregiving industry in Kansai started to arrive to study Japanese language and prepare for caregiving licensure examinations. A few Filipinos arrived in Kansai in 2017 for training on domestic help work before deployment by companies to Japanese households.

On the other hand, since 1980s, Filipinos have been arriving and residing in Kansai as spouses, professionals working in various fields, religious missionaries, and students. There are Filipinos working in international schools in Hyogo and Osaka prefectures; some teach in Japanese public and private universities in Kansai; others teach in English language schools and as Assistant Language Teachers in primary and secondary schools. Some Filipinos who studied in Kansai eventually joined the academe or worked in companies. Filipino religious missionaries (priests, nuns, pastors) work in Catholic and Christian churches

in many cities in Kansai; other professionals (engineers or those engaged in technical jobs) come to Kansai for intra-company assignments or for training.

The arrival of Filipinos in Kansai continues due to a variety of reasons – family, education and new employment opportunities.

## Living in Japanese Society

Filipinos do not reside as one community in one place in Kansai; they reside in the different cities and towns of the region. Among the permanent and long-term Filipino residents, many are spouses, parents and in-laws in Japanese (-Filipino) families. There are also Filipino families living in Kansai, many of whom are Japanese-descent Filipinos.

Japanese-Filipino children born in Japan from late 1980s and early 1990s have grown up and joined the workforce; some have families and children of their own.

## Issues

Foreigners in Japan generally suffer from problems regarding the family, school, workplace, and relationships with fellow foreigners and the Japanese.

The Association for Toyonaka Multicultural Symbiosis (ATOMS), which has been providing services to foreign

residents in Toyonaka and other cities for the past several decades, lists the major problems sought for consultation by Filipinos in Table 1:<sup>3</sup>

SINAPIS (Social Action Center of the Catholic Archdiocese of Osaka) recorded similar problems of foreigners in general: residence status, welfare assistance, child-support allowance, application for Japanese nationality, unpaid wages, school/education problems, legal support and domestic violence.<sup>4</sup>

In general, the number of domestic violence cases in Japan rose when the economy was not in good condition;<sup>5</sup> and poverty rate among single parent families reached 55 percent in recent years.<sup>6</sup>

Family-related and economic problems (such as irregular income or unstable employment of the Japanese spouses/partners) are likely to cause domestic violence against the Filipino wives/partners and children.

Domestic problems in turn lead to divorce. Some divorced Filipinos suffer from lack of financial support for the children from their former husbands/partners. In case they have no children, or do not have custody of the children, they may lose the permission to continue to stay in Japan.

Those who are able to change their residence status and continue to stay in Japan may be deprived of contact with their children if they (children) are in the custody of the Japanese parents.

Table 1. Issues Affecting Filipinos

Issues	2016	2015	2014	2013	2012
1. Divorce	122	47	32	8	17
2. Child custody	74	73	28	2	1
3. Domestic Violence	24	1	21	27	19
4. Japanese citizenship acquisition	35	28	1	0	
5. Unpaid wages	77	95	48		1
6. Other labor issues	15	3	14	5	6
7. Human rights violations	1	32	6	—	—

Source: Association for Toyonaka Multicultural Symbiosis (ATOMS)

Some Filipinos suffer from the lax “divorce by agreement” system<sup>7</sup> in Japan that allows divorce applications to the local government despite the absence of one spouse. This results in the so-called “unwanted divorce,” divorce without proper consent by one of the spouses. A spouse can file a fraudulent divorce application by using the *hanko* (personal seal) of one spouse without permission, or by faking the signature of the spouse. A foreigner spouse may also be tricked into signing a Japanese-language document without knowing that it is a divorce application. The local government approves the fraudulent divorce application as a matter of course without giving the absent spouse the opportunity to confirm the *hanko* or signature on the document. The fraudulent divorce application can include a provision on the custody of the children, which can unfairly deprive foreign spouses of the right to have the custody of the children or even contact them. The approval of the fraudulent divorce application remains valid despite complaint of unauthorized use of *hanko* or

fake signature.<sup>8</sup> Affected foreign spouses/partners have to resort to a complicated judicial process to remedy the situation.<sup>9</sup>

There are reports of rising number of “unwanted divorce.” ATOMS, for example, received 69 “unwanted divorce” complaints of foreigners by end of March 2015 and another 69 similar complaints at the end of the year.<sup>10</sup>

Before 2008, Japanese-Filipino children born outside of wedlock whose Japanese fathers failed to acknowledge them before they were born were not qualified to become Japanese citizens under Japanese law. However, a Supreme Court decision in 2008 declared the relevant legal provision unconstitutional and violative of the international human rights standards.<sup>11</sup> The Japanese parliament (Diet) passed a law in the same year revising that particular provision of the Nationality Law based on the decision of the Supreme Court.<sup>12</sup>

The 2008 Supreme Court ruling and the subsequent amendment of the Nationality Law opened

the door for Filipino parents of Japanese-Filipino children (who either have Japanese citizenship or qualified to apply for it) in the Philippines to come and reside in Japan to take care of the children. So-called "foundations" in the Philippines offered to facilitate their visa application as parents accompanying their Japanese-Filipino children to live in Japan. They were also promised jobs to support themselves. Some of these parents were given work in caregiving institutions in Kansai, where they stayed with their Japanese-Filipino children.

Two problems have arisen from this situation: labor exploitation and welfare of the children. A case in Osaka involved long hours of work and numerous deductions from the salary of the parents (mothers). They were even asked to sign a document that exempted the company from any liability in case of death.<sup>13</sup> Some of the parents sued the company in court for damages, which ended with a settlement agreement.<sup>14</sup>

The other problem was on the adjustment of the Japanese-Filipino children to a totally new environment. Research on difficulties faced by Japanese-Filipino and Filipino children studying in Japanese schools reveals the following:<sup>15</sup>

- (1) Lack of Japanese language proficiency that affects communication with others and learning capacity;
- (2) Maintaining relationships with schoolmates who have "unfriendly attitude" to them, keep distance from them after knowing each other, have different ways of getting along as friends, and in some cases bully them or express prejudice against them;
- (3) Due to inadequate Japanese language ability, uncertainty about academic future after lower secondary school (junior high school), or worry about capacity to enroll in preferred university course even if they can enter upper secondary school;
- (4) Confusion on the different school cultures and rules in the Philippines and Japan leading to actions that are allowed in the Philippines being considered violations of Japanese school rules; some also feel pressured by the strict rules in Japanese schools;
- (5) New family environment such as living with parents they had not grown up with and the need to work part-time to help support the family (or themselves) affect their studies;
- (6) Use of Filipino and Japanese languages has not led to mastery of any language while learning the Japanese make them lose their proficiency in Filipino and English languages that eventually lead to communication gap with their parents;
- (7) Negative view of the Philippines may cause them to hide their Filipino identity, while those who see their Filipino ancestry positively have less worry being so identified. Some of

them have trouble following two value systems - Filipino and Japanese.

Older long-time resident Filipino women in Kansai recognize the limitation brought by their inability to read and write in Japanese. Though the jobs (low-paid, part-time work) available to them do not match their academic credentials, they still consider them important. Some have to work to support themselves and/or their family (in Japan and also in the Philippines). Some Filipino spouses/mothers work as the sole income earner in the family because of sick, irregularly employed or deceased Japanese husbands/partners. These women also have to contend with the often negative stereotypes about Filipino women that circulate in Japanese society.<sup>16</sup>

### Other Issues

Filipinos who come to Kansai under the Technical Intern Training Program (TITP) are deployed in companies in the different prefectures of the region. Many of these Filipino trainees (officially called technical intern trainees) seem to be working in small- and medium-sized companies. There are reports of abuses by the companies in terms of salary deductions, overtime pay, and working conditions (including long working hours and lack of safety in the workplace). In addition, they have to pay the high cost of accommodation and other needs (electricity and water costs).<sup>17</sup>

Filipinos who come to Japan to study Japanese language (and

caregiving for eventual work in the caregiving industry) can be abused by the “school” administrators by requiring them to work in order to pay for their supposed expenses. In one case in Kyoto, several Filipinos who paid for their travel to Japan to study were deployed to work beyond the allowed number of hours of part-time work for foreign students. They were also charged high fees for accommodation (15 people in one house) and other costs.

### Responses to the Issues

The drastic reduction of the number of entertainer visas issued to Filipinos did not address the exploitation issues (ranging from labor to trafficking problems) that affected them. Neither has there been adequate prosecution of those who committed the abuses in Japan against the entertainers.<sup>18</sup>

From the 1980-1990 period (when exploitation of entertainers was given more attention) to the present (when issues about Filipinos residing in Japan on long-term or permanent basis are the focus), a number of Japanese NPOs (non-profit organizations) and international centers have been extending support to Filipinos in Kansai. They provide a number of services from consultation service (personal visit or by telephone) to legal and other forms of assistance.<sup>19</sup> Filipinos and their children also avail of local government-operated shelters for victims of domestic violence.<sup>20</sup>

Filipino individuals, communities and organizations provide various types of support

to those in need of help; the Philippine Consulate-General in Osaka provides help through its Assistance to Nationals (ATN) program while the Philippine Overseas Labor Office (POLO) in Tokyo provides service to Filipino contract workers including trainees in Japan.

There is still much work to do to stem the tide of issues facing the Filipinos in Kansai. Largely unexpressed in public, Filipinos see the underlying discriminatory attitude against foreigners in the Japanese society as a factor to consider.

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### Endnotes

- 1 According to the Japanese government statistics, there were 243,662 Filipinos in Japan as of end of December 2016, see 第6表 都道府県別 年齢・男女別 在留外国人 (その4 フィリピン) [Table 6. Age by prefecture. Foreign nationals by gender (part 4 Philippines)], [www.e-stat.go.jp/SG1/estat/GL08020103.do?\\_toGL08020103\\_&listID=00001177523&requestSender=dse arch](http://www.e-stat.go.jp/SG1/estat/GL08020103.do?_toGL08020103_&listID=00001177523&requestSender=dse arch).
- 2 The Kansai region is composed of the following prefectures: Mie, Shiga, Osaka, Kyoto, Hyogo, Nara and Wakayama, see “Kansai,” The Government of Japan, [www.japan.go.jp/regions/kansai.html](http://www.japan.go.jp/regions/kansai.html). For the number of Filipinos residing in each prefecture, visit e-Stat, [www.e-stat.go.jp/SG1/estat/List.do?lid=000001177523](http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001177523).

- 3 Information fromとよなか国際交流協会 相談事業 (Toyonaka International Association Consultation Project), received by e-mail on 27 October 2017.
- 4 This list is based on 2015 data supplied by SINAPIS via e-mail dated 27 November 2017.
- 5 See David McNeil and Chie Matsumoto, “Speaking out about domestic violence,” *The Japan Times*, 7 November 2009, [www.japantimes.co.jp/news/2009/11/07/national/speaking-out-about-domestic-violence/#.WfBnLpuldu](http://www.japantimes.co.jp/news/2009/11/07/national/speaking-out-about-domestic-violence/#.WfBnLpuldu). See also Gender Equality Bureau Cabinet Office, *Violence Against Women, in Women and Men in Japan 2017*, [www.gender.go.jp/english\\_contents/pr\\_act/pub/pamphlet/women-and-men17/pdf/1-6.pdf](http://www.gender.go.jp/english_contents/pr_act/pub/pamphlet/women-and-men17/pdf/1-6.pdf).
- 6 See Anna Fifield, “In Japan, Single Mothers Struggle with Poverty and With Shame,” *The Washington Post*, 28 May 2017, [www.washingtonpost.com/world/asia\\_pacific/in-japan-single-mothers-struggle-with-poverty-and-with-shame/2017/05/26/01a9c9e0-2a92-11e7-9081-f5405f56d3e4\\_story.html?utm\\_term=.784de268cf81](http://www.washingtonpost.com/world/asia_pacific/in-japan-single-mothers-struggle-with-poverty-and-with-shame/2017/05/26/01a9c9e0-2a92-11e7-9081-f5405f56d3e4_story.html?utm_term=.784de268cf81).
- 7 The court route for divorce is also seen as lax because of its “non-trial” proceedings, with very loose procedural and evidentiary requirements,” and the lack of power of the courts to enforce their decisions in divorce proceedings. See Colin P. A. Jones, *Divorce and Child Custody Issues in the Japanese Legal System*, 1 February 2012, <https://amview.japan.usembassy.gov/en/divorce-law-in-japan/>.
- 8 See for example an initiative to prevent this problem from victimizing foreign spouses in RIKON ALERT (Action Group for Divorce by Agreement), <https://atoms9.wixsite.com/rikon-alert/english>.

- 9 Kyodo, "Law failing non-Japanese in forced divorces: advisory group," *The Japan Times*, 4 March 2016, [www.japantimes.co.jp/news/2016/03/04/national/social-issues/japanese-law-failing-prevent-fraudulent-divorces-advocacy-group/#.WgJiFYhx0dU](http://www.japantimes.co.jp/news/2016/03/04/national/social-issues/japanese-law-failing-prevent-fraudulent-divorces-advocacy-group/#.WgJiFYhx0dU).
- 10 Kyodo, *ibid.*
- 11 This provision of the Nationality Law had been criticized by the Japan Federation of Bar Associations (JFBA) many years earlier for being discriminatory. See *Statement on Supreme Court Ruling the Nationality Law Unconstitutional*, [www.nichibenren.or.jp/en/document/statements/year/2008/20080604.html](http://www.nichibenren.or.jp/en/document/statements/year/2008/20080604.html).
- 12 The Nationality Law (Law No. 147 of 1950, as amended by Law No. 268 of 1952, Law No. 45 of 1984, Law No. 89 of 1993 and Law No. 147 of 2004, Law No. 88 of 2008). Source: Ministry of Justice, <http://www.moj.go.jp/ENGLISH/information/tnl-01.html>.
- 13 "Japan firm obliges Filipino workers to waive its responsibility for deaths," *South China Morning Post*, 13 July 2014, [www.scmp.com/news/asia/article/1553177/japan-firm-obliges-filipino-women-waive-its-responsibility-deaths](http://www.scmp.com/news/asia/article/1553177/japan-firm-obliges-filipino-women-waive-its-responsibility-deaths).
- 14 "Nursing care firm to compensate 10 Filipino ex-staff over harsh working conditions," *Mainichi Japan*, 3 February 2017, <http://mainichi.jp/english/articles/20170203/p2a/00m/0na/020000c#csid3336a2bd39de6ec8b3f72be718c6804>.
- 15 List provided via e-mail on 11 November 2017 by Kimi Yamoto, based on her research on the school education of Japanese-Filipino and Filipino children and on the support she has been providing to them in public schools for many years.
- 16 Michelle Gedang Ong, *Growing old in an ageing Japan: Filipina migrants' experiences and meaning-making* (2016) (draft).
- 17 Masami Ito, "Foreign trainee system said still plagued by rights abuses," *The Japan Times*, 9 April 2013, [www.japantimes.co.jp/news/2013/04/09/reference/foreign-trainee-system-said-still-plagued-by-rights-abuses/#.WfKLboh0dU](http://www.japantimes.co.jp/news/2013/04/09/reference/foreign-trainee-system-said-still-plagued-by-rights-abuses/#.WfKLboh0dU); Kentaro Iwamoto, "Abuses rampant in foreign trainee program, Japan labor ministry finds," *Nikkei Asian Review*, 18 August 2016, <https://asia.nikkei.com/Politics-Economy/Economy/Abuses-rampant-in-foreign-trainee-program-Japan-labor-ministry-finds>; *Mainichi Japan*, "Editorial: Prevent abuses of foreign trainee program," 28 November 2016, <http://mainichi.jp/english/articles/20161128/p2a/00m/0na/021000c>. Watch also this video: "Used and abused: Japan's foreign trainees," France 24, 2017-06-09 [www.france24.com/en/20170609-focus-japan-foreign-interns-technical-trainees-immigration-labour-law-abuse-exploitation](http://www.france24.com/en/20170609-focus-japan-foreign-interns-technical-trainees-immigration-labour-law-abuse-exploitation). See also China Labour Bulletin, *Throw Away Labour - The exploitation of Chinese "trainees" in Japan* (Hong Kong, 2011), Institute for Human Rights and Business, *Learning Experience? Japan's Technical Intern Training Programme and the Challenge of Protecting the Rights of Migrant Workers*, October 2017, [www.ihrb.org/focus-areas/mega-sporting-events/japan-titp-migrant-workers-rights](http://www.ihrb.org/focus-areas/mega-sporting-events/japan-titp-migrant-workers-rights).
- 18 See "Japan- 2017 Trafficking in Persons Report," US State Department, [www.state.gov/j/tip/rls/tiprpt/countries/2017/271213.htm](http://www.state.gov/j/tip/rls/tiprpt/countries/2017/271213.htm) and for statistics on number of "cleared cases" and persons arrested on trafficking charges see Gender Equality Bureau Cabinet Office, 6. Violence against Women, *Women and Men in Japan 2017*, page 16, [www.gender.go.jp/english\\_contents/pr\\_act/pub/pamphlet/women-and-men17/pdf/1-6.pdf](http://www.gender.go.jp/english_contents/pr_act/pub/pamphlet/women-and-men17/pdf/1-6.pdf).
- 19 See "Breaking the Barrier: Japanese NGOs Take Up the Challenge," *FOCUS Asia-Pacific Newsletter*, Volume 5, September 1996, [www.hurights.or.jp/archives/focus/section2/1996/09/breaking-the-barrier-japanese-ngos-take-up-the-challenge.html](http://www.hurights.or.jp/archives/focus/section2/1996/09/breaking-the-barrier-japanese-ngos-take-up-the-challenge.html).
- 20 The 2001 Law on Prevention of Spouse Violence and Protection of Victims required the government to establish facilities to help domestic violence victims. See Miriam Tabin, "Domestic Violence in Japan - Support Services and Psychosocial Impact on Survivors," *FOCUS Asia-Pacific Newsletter*, Volume 70 December 2012, [www.hurights.or.jp/archives/focus/section2/2012/12/domestic-violence-in-japan---support-services-and-psychosocial-impact-on-survivors.html](http://www.hurights.or.jp/archives/focus/section2/2012/12/domestic-violence-in-japan---support-services-and-psychosocial-impact-on-survivors.html).

# Marriage Immigrants in Taiwan

Jun-Hong Chen

Based on the most recent data from the Ministry of the Interior (Taiwan), over 520,000 foreign spouses from China and Southeast Asian countries have married Taiwanese since 1997. They are mostly rural women from poor families. Just like everyone else, they dream of a happy marriage and a better future. However, after arriving in Taiwan, they realize that the whole society holds a strong tendency to treat them as “others.” Additionally, the current immigration policies are not supportive of the well-being of marriage immigrants. With access to available resources and assistance mostly blocked, marriage immigrants are expected to adjust to the new surroundings that are not friendly to them. They face many barriers including but not limited to those related to legal, family stability, employment opportunity, and mental health matters.

## Hardships Encountered by Immigrant Women

Marriage immigrants in Taiwan suffer from a number of problems caused by the existing laws and societal attitude.

### 1) Risk of becoming stateless

Article 9 of the Nationality Act requires foreigners in applying to become naturalized Taiwanese citizens to submit a “certification of his/her loss of previous nationality.”<sup>1</sup> Article 19

of the law states that the Ministry of Interior can revoke such citizenship if the naturalization application was not in accordance with the requirements of the law (Article 3). These provisions of the law have been applied to marriage immigrants. In a number of cases, the Ministry of Interior revoked their Taiwanese citizenship after court conviction for committing fraudulent marriage. However, this legal application ignores the problems in fraudulent marriage cases. Many marriage immigrants suffer from language barrier, lack of information and knowledge about the laws in Taiwan as well as lack of legal assistance for their defense in court. Anyone (including in-laws and friends) can report them for any reason to the police for having fraudulent marriage. Furthermore, the Ministry of Interior still revoked their Taiwanese citizenship even when the courts had ruled that they should not be so penalized because they committed very minor acts of fraud. In these cases, the immigrants had genuine marriages but they lied about their age on the marriage certificate or other documents. The revocation of citizenship by the Ministry of Interior to punish petty crime offenders is not justified. This penalty results in statelessness of the affected marriage immigrants. Other available penalties should be used instead.

### 2) Violation of the right to family reunion

Under Article 31 of the Immigration Act, divorced foreign spouses can continue to reside in Taiwan if they 1) have the guardianship of their children or 2) have been judicially declared divorced on ground of domestic violence and have minor children. The children should have permanent residence status in both cases.<sup>2</sup> And if the foreign spouses do not meet the financial requirement to become naturalized Taiwanese citizen, they can only legally reside in Taiwan until their children reach the age of 20.

Foreigners who want to stay in Taiwan for a long time can apply for an alien permanent residence rather than seek Taiwanese citizenship. Once the application is approved, they receive the alien permanent residence certificate (APRC). Foreigners who have obtained permanent residence can continue to reside in Taiwan without getting married and regardless of their employment, study or similar statuses. This saves them the trouble of having to extend their residence permit every one or three years. Apart from these advantages, however, having an APRC does not confer any other tangible rights. Since APRC holders are not Taiwanese citizens and do not have

citizen's identity cards, they do not enjoy the rights of citizens.

Marriage immigrants who obtained Taiwanese citizenship should obtain citizen's identity card to guarantee their enjoyment of the rights of citizens including continued stay in Taiwan. Unfortunately, some families of Taiwanese spouses intentionally keep the immigrant spouses under their control by not helping them get the citizen's identity card, and this has given rise to many conflicts and misunderstandings.

### 3) Flawed Interpretation Services

The government should undertake a thorough review of the various types of interpretation services both within each agency and in an interagency setting, and establish a comprehensive set of standard operating procedures for each type of interpretation services, as well as rules in ensuring respect for the interpreters' labor rights. Funding should be allocated, in accordance with Article 7 of Taiwan's Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to develop comprehensive training and certification standards for different forms of interpretation services, as well as service quality evaluations and proofreading mechanism for translated judicial documents.

Besides, there is no clear and uniform mandate among government agencies for the allocation of sufficient budget to

train, provide and manage interpretation services; various agencies have their own regulations regarding the provision of interpretation services. As a result, central government agencies, local governments, the police and the legal aid system often find themselves short on interpretation services capacity.

Interpretation services not only ensure the foreigners' rights as accused, they also directly affect a person's right to life, liberty and property, as well as other rights in matters such as medical service and household registration. Taiwan's lack of comprehensive interpretation system is not only inconsistent with International Covenant on Civil and Political Rights (ICCPR), but also a violation of the due process principle in a modern state.

### 4) The stigmatization of marriage immigrants

Some people regard immigrant women as "gold diggers" and characterize them as "social problems" because they question their (immigrant women's) ability to raise children and their loyalty in marriage. People call them "Foreign Brides" which implies pervasive xenophobia and discrimination against marriage immigrant women. The immigrant women are not only seen as "outsiders" but also as Taiwanese men's subordinates. The gender stereotype intertwined with Chinese ethnocentrism make immigrant women, who occupy a lower socio-economic position, the voiceless minority in Taiwanese society.

### Needed Social and Legal Support

The TransAsia Sisters Association, Taiwan (TASAT) was established on 7 December 2003. However, its origin dates back to the "Foreign Brides Chinese Literacy Program" that was founded at Meinung, Kaohsiung in 1995. The literacy program was founded on the idea that learning Chinese empowers immigrant women to speak for themselves and to form their own organization to fight for their rights. TASAT has the objective of helping immigrant women break away from isolation and become an active participant in society. It adopted this motto: *For living, For Being, For Human Rights*.

Three of the immigrant staffs of TASAT do not only attend the advocacy training workshops, but also help organize press conferences. Organizing press conferences requires good coordination with other NGOs, knowledge of the issues, and ability to write press releases. In the beginning, the marriage immigrants are asked to speak only for one minute due to their limited Chinese language capacity. After one year, they begin to take turns in hosting the press conference. This not only shows the abilities gained from the previous trainings but also transforms them into enthusiastic advocates. One TASAT immigrant staff, Vuoch-Heang Lee, said, "Taking on advocacy work sounds very intimidating, but I experience the happiest and [also] the most painful learning journey in TASAT. I think I will keep going because the more I challenge myself, the more I grow."



On the other hand, TASAT continuously organizes musicals, theatrical events or public speeches that involve immigrant women from different countries. It tries very hard to let the immigrant women know that they are by no means incompetent. The sudden change of environment and Chinese ethnocentrism deprive them of voice and talents. Through these activities, TASAT is able to attract a few marriage immigrants to join the trainings. Maybe they join TASAT because they like to perform in front of the audience. However, these activities are definitely making them learn more issues concerning their rights.

### Policy and Law Reforms

TASAT has been actively linking with other organizations to advocate for policy and law reforms. With government plan to enact laws to regulate and restrict the new immigrants, TASAT and organizations working on women, workers and human rights issues formed the Alliance for Human Rights Legislation for Immigrants and Migrants (AHRLIM) on 12 December 2003.

In March 2005, AHRLIM sent its own proposals to Parliament on the amendment of the Immigration Act, which was passed in November 2007. The amendment has better preventive provisions on domestic violence and human trafficking victims, an absolute ban on profit-oriented marriage brokers, anti-discrimination provisions, etc.

In November 2008, after several years of efforts, the Ministry of

Interior finally relaxed the financial proof of NT\$ 5,000,000 (USD 166,666) for immigrant women as one of the naturalization application requirements.

In September 2011, the Council of Labor Affairs' strict interpretation of the Employment Services Act was relaxed. Before the amendment to the Employment Services Act, widowed, divorced immigrant women or those who do not have children, could not work in Taiwan. Now foreign spouses who have permission to reside in Taiwan can apply directly to the Council for a work permit.

In December 2016, Article 4 of the Nationality Law was amended to recognize the right to apply for naturalization by divorced foreign spouses who are victims of domestic violence, widowed foreign spouses and those who support or have obligations to perform on behalf of Taiwanese children. However, the widowed spouses must remain in contact with their in-laws after becoming naturalized citizens.

### Concluding Notes

Not every immigrant has the chance to start a new life in another country smoothly. TASAT aims to help immigrants pursue that goal. In a whole new environment, they need to conquer serious hardships that Taiwanese citizens barely imagine or experience. These hardships involve, but not limited to, the legal system, cultural and language gaps, stereotypes, discrimination, and the stress resulting from the interplay of these hardships.

Although TASAT's current efforts to fully improve the well-being of the immigrants are limited, it still fights for it.

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### Endnotes

- 1 See Nationality Act, Ministry of Interior, Republic of China (Taiwan), [www.moi.gov.tw/english/english\\_law/law\\_detail.aspx?sn=82](http://www.moi.gov.tw/english/english_law/law_detail.aspx?sn=82).
- 2 See Immigration Act, National Immigration Agency, [www.immigration.gov.tw/ct.asp?xItem=1096847&ctNode=30026&mp=2](http://www.immigration.gov.tw/ct.asp?xItem=1096847&ctNode=30026&mp=2).

# The Labor Movement in Malaysia

Charles Hector

In Malaysia, the trade union movement seems to be weakening due to decreasing number of unions and union membership. Of the estimated 14.6 million workers, nearly 925,000 workers are union members as of 2017.<sup>1</sup> In the private sector, union membership declined from 376,362 in 2014 to 354,313 in 2017.<sup>2</sup>

## Issues with the Labor Unions

When violations of workers' and trade union rights occur, Malaysian labor unions sadly do not choose to struggle through pickets, strikes or campaigns against employers and instead use the lengthy administrative and judicial processes by lodging complaints. As an example, the trial at the Industrial Court of the case of Wan Noorulazhar (President of the Electronic Industry Employees Union Western Region, Peninsular Malaysia) who was wrongfully terminated on 26 August 2011 started only in April 2017. It is difficult to tell when the trial stage would end, and appeals to the High Court and the Court of Appeal can happen. Getting effective remedies (those that have impact on employers and/or instrumental in bringing changes in laws) from the courts is another issue.

Employers favor this method of "industrial dispute" resolution

mechanism that does not really impact their business and profits; the workers and unions remain as victims.

Trade unions have been controlled by laws, first imposed by the British colonial government and continued after Independence by UMNO-dominated coalition government – today known as the Barisan Nasional.

The trade union movement has accepted the "limitations" imposed on them by the authorities, and chose to survive within the "limited space" provided by a strong adherence to the law, even if that law is unjust. The labor movement has also made very little effort to reach out to the Malaysian public, Members of Parliament, State Assemblypersons and Senators for help in the fight for justice.

Since 1998, Malaysians generally have become braver and started to come out in much larger number in peaceful assemblies to protest wrongdoings and demand changes. But alas, this has not moved the trade union movement or workers to do the same – despite the continued erosion of workers' and trade union rights.

What happened in the 2015 Malaysian Airlines case, which involved the dismissal of about 6,000 workers, is an indication

of the state of the labor movement in the country. With the 10,000 (maybe even closer to 20,000) airline workers being mostly unionized, not a single mass protest or picket involving thousands of union members happened.

## Labor Issues

Malaysia continues with its "divide and rule" policy on trade unions – permitting unions based on occupation, sector and industry, and disallowing the formation of unions or federation of unions across different sectors, industry and occupation. Workers in the private and public sectors are still prevented from becoming members of common unions. The Malaysian Trade Union Congress (MTUC) and the Congress of Unions of Employees in the Public and Civil Services Malaysia (CUEPACS) continue to be registered as "societies."

Decades ago, Malaysia justified the control of the trade union movement as a necessity in attracting foreign investors to set up factories in the country and hence create more jobs and increase income. In other words, low wages and passive workforce made Malaysia attractive to foreign investment; and the absence of strike for almost four decades was seen as positive.

Malaysian trade union and labor laws fall far short of the minimum international human rights and workers' rights standards. Malaysia has to make significant amendments to its labor laws in order to comply with Chapter 19 on labor of the draft Trans-Pacific Partnership Agreement (TPPA). The aborted draft "Malaysia–United States Labour Consistency Plan," a "bilateral instrument in accordance with Chapter 19 of the TPP Agreement" has a long list of "legal reforms, and other changes that may be required to ensure consistency across its Acts, regulations and other measures."<sup>3</sup> After the United States decided to leave the TPPA in early 2017, the remaining eleven member-states decided to adopt a new free trade agreement in November 2017. Malaysia hopefully would amend its labor laws subsequently.

The Ministry of Human Resources Statistics on Employment and Labour (Statistik Pekerjaan dan Perburuhan) has the power to inspect and enforce workers' and trade union rights, occupational safety and health rights. But there has been no available information on the action taken on this inspection and enforcement power. The inspections must be done randomly and/or based on receipt of information from any sources. Many employers tend to terminate workers who lodge formal complaints, and thus avoid being penalized for violation of labor law. Under this situation, waiting for the workers to file complaints before the government takes action becomes unreasonable.

This situation sadly suggests that Malaysia may not even be interested in protecting the existing workers' and trade union rights.

Union busting continues by having union leaders easily terminated for issuing public statements, while union members are also terminated for sending memorandum to election candidates to get their commitment to struggle for better protection of workers' rights. Workers participating in legal pickets are arrested for "making noise." Union registration, and "recognition" processes are delayed, not expedited, not just by government bodies, but also by allowing long drawn-out litigation initiated by employers in court challenging even the Minister's decisions.

### Way Forward

Since the struggle for rights always has risks, will Malaysian workers and trade unions maintain the current situation or will they wake up and fight for better realization of the workers' and trade union rights – and a re-emergence of a strong labor movement in Malaysia?

Without highlighting wrongs, violations and struggles for better protection of rights, the public will not know the labor issues and concerns involved and the government and employers will not be pressured to protect workers' and trade union rights in Malaysia. Will the Malaysian political parties adopt a policy expressing commitment to improving the rights of workers and the

strengthening of the labor movement?

There are about 14.6 million workers in a country of 30 million plus population, and as such they have much power and say in not just the future of the labor movement, but also Malaysia. If a 100,000-strong FELDA settlers and their families could make their rights and welfare a major national concern, why could not the much more numerous workers and union members make their voice heard?

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### Endnotes

- 1 Data from Ministry of Human Resources, Employment and Labour Statistics.
- 2 Data from Ministry of Human Resources, Employment and Labour Statistics.
- 3 See the list of labor issues that needed legal reform under the aborted "Malaysia–United States Labour Consistency Plan" (November 2015), <https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-MY-Labor-Consistency-Plan.pdf>.

# People and Profits: UP IHR's Guide on BHR for NGOs

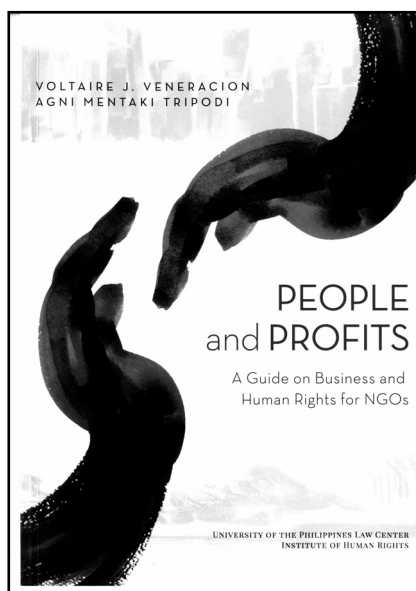
Voltaire J. Veneracion and Agni Mentaki Tripodi

On 23-27 October 2017, the **O**pen-Ended Intergovernmental Working Group (OEIGWG) held its third session seeking to deliberate on the content, scope, nature and form of a binding international instrument to regulate the activities of transnational corporations and other business enterprises.<sup>1</sup> SOMO, the Dutch non-profit center on multinational corporations, reported the huge turn-out of hundreds of “representatives of civil society organizations, trade unions and affected communities coming from every corner of the globe,” in the OEIGWG sessions that demonstrated the crucial role that civil society could play in high-level decision-making.<sup>2</sup>

While the provisional report of the session that was adopted by consensus on the third session's last day did not conclude that there would be a fourth session in 2018 to start substantive negotiations on the text of the future treaty, it did request the Chair-Rapporteur to hold informal consultations with States and other relevant stakeholders on the way forward.<sup>3</sup>

In 2015, when the University of the Philippines Institute of Human Rights (UP IHR) began its program of consultation with stakeholders and development of publication on Business and Human Rights (BHR), most

Philippine academic institutions and non-governmental organizations (NGOs) lacked publications and other resources on BHR that could have enabled them to substantially contribute to national, regional and international discussions on binding treaties such as the one envisioned above.



UP IHR, under the Directorship of Professor Elizabeth Aguilung-Pangalangan, engaged the services of the authors as consultants to find out the needs of the different sectors in the country and develop a publication for local readers on this emergent interdisciplinary field of human rights. UP IHR sought to build the capacity of Filipino organizations and communities on using the United Nations Guiding Principles on Business and Human Rights: Implementing

the United Nations 'Protect, Respect and Remedy' Framework (UNGP) as a tool to advocate for the respect and protection of human rights in economic and business endeavors, should they so wish.

## Participative Consultations

In 2015 and 2016, during UP IHR's participatory consultations on BHR, the authors confirmed that the Philippine government and business associations and chambers of commerce in the country had yet to make a public statement specifically referring to the UNGP. While the Philippine government had endeavored to protect migrant workers and fight human trafficking, it had not provided businesses, including those in areas affected by conflict, with guidance on how to respect human rights whether through encouragement, incentive or regulation.<sup>4</sup>

While we learned from civil society organization (CSO) participants about the Human Rights Impact Assessment (HRIA) of a local mining operation in 2013 by German NGO MISEREOR and its local partners,<sup>5</sup> most academic institutions and civil society organizations in the Philippines had yet to use UNGP in company research and advocacy and conduct a thoroughly documented HRIA of a business operation.

Participants from all three consultations held saw the benefit of training and gaining access to tools for conducting a general human rights check and addressing adverse human rights impacts.

### Guide on BHR

Consultation participants also gave presentations on UNGP and received feedback on a draft toolkit for assessing company compliance with UNGP that project research associates Ruth Guinto and Christopher Edward Nuevo helped prepare using many BHR references that author Mentaki Tripodi discovered while doing research for her postgraduate thesis. Various sectors affirmed the need for an UP IHR publication that explained BHR in the Philippine context, such that after finishing the consultations, UP IHR accepted our team's recommendation to develop such a local publication for civil society organizations.

Oxfam Southeast Asia helped our BHR team get access to Oxfam's toolkit, the Community-Based Human Rights Impact Assessment (COBHRA), and invited Veneracion to attend its BHR Workshop in Jakarta, Indonesia to learn how to use it, as well as other HRIA tools.

Upon the suggestion of UP College of Law Professor Evelyn "Leo" Battad, we added an introduction to human rights in general. She explained that in her experience as a lawyer of Free Legal Assistance Group (FLAG), many activists, campaigners, and community leaders knew little about human

rights and could benefit from learning about its history and basic principles before any discussion on BHR.

In mid-2017, we finished writing our book *People and Profits: A Guide on Business and Human Rights for NGOs* (UP Law Center: 2017) with the intention of promoting an awareness and understanding of UNGP - both its strengths and points for improvement - in the Philippines so that the Philippine government would be aware of its duty to protect human rights; companies, of their duty to respect them; and civil society organizations and communities of their human rights in relation to business operations.

### Book Launching

Last 30 August 2017, UP Law Center hosted the launch of the book at Malcolm Hall Faculty Lounge, College of Law, UP Diliman. IHR Director Prof. Elizabeth Aguilin-Pangalangan delivered welcome remarks; the authors made presentations on UNGP; former UP Law Dean (now International Criminal Court Judge) Raul C. Pangalangan, Commissioner Roberto Eugenio T. Cadiz of the Philippine Commission on Human Rights, and Bantay Dagat and Philippine MISEREOR Partnership Legal Counsel Mario Maderazo provided expert reactions to the new publication; and UP Law Associate Dean Concepcion Jardaleza delivered the closing remarks.

*People and Profits* provides an introduction to human rights in general; UNGP's history and the

three pillars, as well as developments in their implementation prior to the third session of OEIGWG on a legally binding treaty; and frameworks and links to an assessment tool for company compliance with UNGP and HRIA tools.

The authors and the rest of UP IHR hope that through *People and Profits* Philippine civil society can better lobby with government and the business sector for the development of a National Action Plan and support the implementation of the ASEAN Regional Strategy to Promote Corporate Social Responsibility and Human Rights (2016), as well as engage constructively in discussions and consultations on a legally binding instrument on BHR in international forums.

*Voltaire J. Veneracion is a Filipino attorney-at-law and social entrepreneur. He has been the lead researcher for UP IHR's projects involving women's rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the United Nations Guiding Principles on Business and Human Rights; capital punishment; and the security of Human Rights Defenders. Write him at vveneracion@gmail.com.*

*Agni Mentaki Tripodi is a Greek marketer by profession who practiced International Management for over 11 years and received a masteral degree with a thesis on Corporate Social Responsibility (CSR),*

*(Continued on page 15)*

# General Assembly on Buraku Liberation Research

Kazuo Yamawaki

The 51st General Assembly on Buraku Liberation Research, held in Osaka city on 6-8 November 2017, focused on supporting the implementation of the 2016 Act on the Promotion of the Elimination of Buraku Discrimination (APEBD), and promoting cooperation for the elimination of all forms of discrimination and the establishment of legal systems on human rights. The 2017 conference dealt with the developments on measures taken to address the discrimination against Buraku people.<sup>1</sup> More than 5,000 people participated in the conference including local government officials, members of the prefectural parliament, educators, representatives of corporations, members of labor unions, representatives of Buraku liberation communities, researchers, activists, members of religious organizations, and students. Following are summaries of two sessions on issues regarding APEBD.

## Law on Buraku Discrimination

Shigeru Sumitani, former Chief of the Office of Regional Improvement Measures Management and Coordination Agency, explained Japan's current severe human rights situation by presenting statistics on disabled people's low employment rate and poor social inclusion, and the slow



progress on the rehabilitation of former offenders for their re-entry into society.

He noted that the discrimination against the Buraku people was one of the biggest human rights issues in Japan that had not been sufficiently dealt with by the government (including local governments) after the expiration of two special measures laws in March 2002.<sup>2</sup> As a result, people lost interest in Dowa policies and lacked knowledge in dealing with Buraku issues as shown in the 2012 "Opinion Survey Regarding Human Rights."

He cited examples of the current discrimination practices such as 1) discrimination in employment, 2) land-related discrimination, 3) marriage discrimination, and 4) internet and other new forms of

discrimination. The latest forms of Buraku discrimination consisted of the lack of human rights education and knowledge, lack of self-awareness of human rights abuses, and the emotional backlash against human rights.

Regarding APEBD, he stressed 1) the need to recognize the basic reasons of the law, 2) the limitation on the effectiveness of the law due to the fact that it only provided for legal principles, and 3) the explicit declaration of the existence of Buraku discrimination and the duties of national and local governments on the problem.

He suggested key components of "a society free of Buraku discrimination": 1) the improvement of the consultation system of local governments; 2) re-organization of the human

rights education and awareness-raising program; and 3) holding of a national survey on Buraku discrimination by the government.

In conclusion, he noted that solving the Dowa problem would lead directly to the improvement of the state of human rights in Japan as a whole, and suggested concrete community development strategies based on social inclusion.

### Future Challenges

Fujihiko Nishijima, the Secretary-General of the Headquarters of the Buraku Liberation League (BLL), explained the progress on the legal steps taken since 1965 when the Dowa Policy Council Report<sup>3</sup> was released. He also discussed the background and contents of the report of Human Rights Protection Council (founded in 1997) and how the "Human Rights Protection Bill and the draft Bill on the Establishment of the Human Rights Commission" based on

this report were once decided upon and then withdrawn by the Cabinet.

He further explained the actions at the *Diet* (parliament) that led to the enactment of APEBD in December 2016 and the concrete developments since then.

He also pointed out that, beyond legal principles toward the promotion of Buraku liberation, there should be thorough public awareness-raising efforts about relevant policies, and appropriate measures enacted by prefectural assemblies and adopted by the local governments. He suggested several measures to help implement the law such as lobbying local governments to adopt good practices on addressing discrimination against the Buraku people, adopting guides on how to lobby the Ministries using Articles 4, 5, and 6 of the law, and suggesting guidelines for lobbying political parties and the government.

Finally, Mr Nishijima showed the materials of BLL on how to participate in the hearings of relevant Ministries regarding Article 6 of APEBD.

*Kazuo Yamawaki is the Vice-President of HURIGHTS OSAKA.*

*For further information, please contact HURIGHTS OSAKA.*

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### Endnotes

- 1 Read the "Buraku Problem Q & A" of the Buraku Liberation and Human Rights Research Institute for more information on the discrimination against Japanese called Buraku people, [www.blhrri.org/old/blhrri\\_e/Q\\_and\\_A/question.htm](http://www.blhrri.org/old/blhrri_e/Q_and_A/question.htm).
- 2 Act on Special Measures for Dowa Projects and the Act on Financial Measures for Area Improvement, both were enacted in 1969.
- 3 See "Buraku Problem Q & A" for more information on the Dowa Policy Council Report, [www.blhrri.org/old/blhrri\\_e/Q\\_and\\_AA012.htm](http://www.blhrri.org/old/blhrri_e/Q_and_AA012.htm).

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### People and Profits: UP IHR's Guide on BHR for NGOs

*(Continued from page 13)*

*specifically, on BHR and the implementation of UNGP in the pharmaceutical sector. Write her at [agniment@gmail.com](mailto:agniment@gmail.com).*

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### Endnotes

- 1 United Nations Office of the High Commissioner for Human Rights website, [www.ohchr.org/E.N/H.R/Bodies/HRC/WGTransCorp/Session3/Pages/Session3.aspx](http://www.ohchr.org/E.N/H.R/Bodies/HRC/WGTransCorp/Session3/Pages/Session3.aspx) (last accessed on 4 December 2017).
- 2 SOMO website: [www.somo.nl/development-un-treaty-business-human-rights-moving-new-phase/](http://www.somo.nl/development-un-treaty-business-human-rights-moving-new-phase/) (last accessed on 4 December 2017).
- 3 Ibid.
- 4 Human Rights Resource Center, *Business and Human Rights in*

*ASEAN: A Baseline Study* (May 2013), <http://hrrca.org/business-and-human-rights-in-asean-a-baseline-study/> (last accessed on 4 December 2017).

- 5 Brigitte Hamm, Anne Schax and Christian Scheper, *Human Rights Impact Assessment of the Tampakan Copper-Gold Project, Mindanao, Philippines* (Germany, Misereor: 2013).

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# HURIGHTS OSAKA Calendar

HURIGHTS OSAKA is redesigning its website - both the Japanese and English sections. The new website designs will be completed by the end of the first quarter of 2018.



**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.

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