

Summary Report

2021 Online Series: Racism in East Asia



3 December, 2021

Introduction

The 2021 webinar series of “Racism in East Asia” was led by the Organising Committee for East Asia regional consultation comprising human rights NGOs and networks in Hong Kong, Japan and the Republic of Korea. Following the successful webinar series in 2020 which focused on the impact of the COVID-19 pandemic, this year’s series continued to serve as a platform for human rights defenders, civil society representatives, and the interested public to exchange challenges and good practices in the fight against racial discrimination in the area of refugee protection, education and the issue of hate speech in East Asia.

Organising Committee for East Asia regional consultation

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Japan: International Movement Against All Forms of Discrimination and Racism (IMADR)
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Glossary

CERD	United Nations Committee on the Elimination of Racial Discrimination
CSO	Civil society organisation
EOC	Equal Opportunities Commission of Hong Kong
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ILO	International Labour Organization
MDWs	Migrant domestic workers
MOJ	Ministry of Justice
NGO	Non-governmental organisation
NHRCK	National Human Rights Commission of Korea
RDO	Race Discrimination Ordinance of Hong Kong
RSD	Refugee Status Determination
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
USM	Unified Screening Mechanism

Preface

On behalf of the Organising Committee, I would like to share with you our joy in the success of the webinar series on Racism in East Asia.

In East Asia, where the problem of racism is perceived as far away, we civil society organisations (CSOs) in Hong Kong, Japan, South Korea have been working to let the society know that racism is invisibly practiced in our daily lives, and to call for its elimination. It was in 2019 that we started preparing to have this regional consultation, and in 2020, just as we were about to implement it, the COVID-19 pandemic hit the world.

In the course of our initiatives, we learned two things. The first was that the pandemic had the most severe impact on one of the most vulnerable communities in our society, that is, migrants including refugees and asylum-seekers. It was closely related to the problems of racism that these communities have faced for many years. Secondly, it was CSOs that took actions quickly to deliver necessary support to these communities who are often forgotten in the midst of the social turmoil. It was CSOs who advocated to their respective governments the need for policies to ensure the mobilisation of public aid even under the emergency. In this webinar series, we learned that, through the continuing work of CSOs, we can identify the problem of racism, formulate and advocate necessary government policies to eliminate it.

By exchanging views with each other, we have been able to clarify the problem of racism and the challenges for its elimination from the regional perspective of East Asia, and on the basis of international human rights standards, which are our common norms. We are confident that we are very close to each other. These are great achievements.

Following [the summary report of the three webinars in 2020](#), with this year's report, we would like to start again our initiatives at the regional level. We hope you will join us in this movement. I believe that the larger the circle is, the stronger the fight against racism will be.

Lastly, I would like to share with you the issues of racism in Japan that were not discussed in this six-part series. These are discrimination against Buraku and indigenous peoples in Japan. We hope to share these problems with you when we meet again. Until then, we wish you all the best. Thank you very much.

Megumi Komori
Acting-Secretary General
International Movement Against All Forms of Discrimination and Racism (IMADR)

Executive summary

The 2021 webinar series examined the area of refugee protection, education and the issue of hate speech in Hong Kong, Japan and the Republic of Korea, through the lens of racism.

While Japan and the Republic of Korea have ratified the 1951 Refugee Convention, Hong Kong has not done so. The refugee recognition rate has been low in each country/territory, from below 1% to 3%. Civil society in the region has long called on the governments to strengthen the existing laws and procedures to be in line with the international standards of refugee protection including the guarantee of the right to family reunification, the right to counsel, the right to work and the right to social security. Between late 2020 and early 2021, the all three governments proposed legislative changes concerning the refugee status determination procedure. Prejudice and negative stereotypes against refugees and asylum-seekers played a part in the proposals. They raised serious concerns for violating the right to liberty and security, weakening due process and undermining the principle of non-refoulement. Civil society in each country/ territory contested the proposals through campaigning, advocacy, demonstrations and other available means.

Education systems in Hong Kong, Japan and the Republic of Korea have prevented the full inclusion of children with migrant or minority backgrounds into society. These children have faced various challenges such as de-fact school segregation, language barriers, economic hardship, the lack of access to and lower quality of education, restrictive visa status, negative treatments of children with migrant or minority backgrounds in school, as well as the public perception of their communities based on racial prejudice. At the same time, there have been certain positive developments which central or local governments revisited discriminatory policies in the area of education. Civil society has been actively working to remove the barriers for inclusion of all children through providing classes for children with migration roots, awareness-raising and advocacy.

In the absence of comprehensive anti-discrimination law in any of the country/territory, the cooperation with different stakeholders and civil society in combatting racist hate speech has been critical in East Asia. The National Human Rights Commission of Korea strengthened its capacity to address the issue of hate speech by undertaking a number of initiatives with civil society and other stakeholders that included research and awareness-raising activities. Following the enactment of the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (Hate Speech Elimination Act), the Japanese civil society has been working with local governments to adopt ordinances against hate speech. In Hong Kong, civil society has been advocating for the implementation of the recommendations from the UN Committee on the Elimination of Racial Discrimination (CERD) issued in 2018 that included the recording and prosecution of hate crimes as well as ensuring the victims' access to remedies.

The webinar series shed light on the critical role played by civil society in bringing domestic laws and policies closer to international human rights standards against racial discrimination. Furthermore, it reaffirmed the need of comprehensive anti-discrimination law, independent national human rights institutions, as well as the independence of relevant public bodies to combat racism and racial discrimination in East Asia.

Background information

	Hong Kong	Japan	Republic of Korea
No. of ratifications of the core international human rights treaties and related optional protocols	7 ¹	10 ²	9 ³
Individual communications	×	×	△
National human rights institution	C status	×	A status

Hong Kong

According to the latest population by-census conducted in 2016, 584,383 non-ethnic Chinese were residing in Hong Kong, which makes up 8% of Hong Kong’s total population⁴. A significant portion of these individuals are migrant domestic workers: as of 2020, 373,884 migrant domestic workers were working in Hong Kong, among them approximately 55.4% are Filipinos, 42.2% are Indonesians and 2.3% are people of other descent⁵. The other main minority ethnic groups include Caucasian, Indian, Nepalese and Pakistani⁶. Hong Kong is home to around 13,000 refugees and asylum-seekers at various stages of the asylum process.

Hong Kong’s Race Discrimination Ordinance (RDO) was introduced in 2009. However, it does not fully comply with Hong Kong’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as it does not prohibit discrimination on the grounds of nationality, citizenship, language and immigration status. The RDO is also the only anti-discrimination ordinance that does not cover discrimination during the performance of the government’s functions or the exercise of its powers. Crucially, a 2016 court case ruled that police actions, including the pursuit, arrest and investigation of a person, do not fall within the ambit of the RDO⁷. Over the years, no criminal prosecution has ever been brought under the RDO.

Hong Kong is a party to most of the core international human rights treaties except the Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has ratified the two Optional Protocols to the Convention on the Rights of the Child. It has not recognised the competence of any UN human rights treaty bodies to consider individual complaints. Its Equal Opportunities Commission is considered to not be in compliance with the Paris Principles.

1 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=HKG&Lang=en
 2 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=87&Lang=EN
 3 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=141&Lang=EN
 4 Hong Kong Race Relations Unit https://www.had.gov.hk/rru/english/info/info_dem.html
 5 Data.Gov.HK <https://data.gov.hk/en-data/dataset/hk-imm-d-set4-statistics-fdh/resource/063e1929-107b-47ae-a6ac-b4b1ed460ac3>
 6 2016 Population By-Census Thematic Report: Ethnic Minorities (December 2017) <https://www.statistics.gov.hk/pub/B11201002016XXXXB0100.pdf>
 7 Singh Arjun (by his next friend Singh Anita Guruprit) v Secretary for Justice & Hung Kai Kam (DCEO 9/2011)

Japan

There are indigenous, minority and migrant communities in the country. 13,118 indigenous Ainu people were documented in Hokkaido, the northernmost region,⁸ while the number of those living outside the region is unknown. The number of Buraku people, the community discriminated against on the basis of descent, is considered to be over 3 million people. The population of ethnic Koreans (*Zainichi Koreans*) exceeds 800,000 people. Approximately 2.9 million foreign nationals were living in the country by December 2020. Among them, over 378,200 people were technical intern trainees.⁹ By the end of 2020, 1,137 refugees were recorded in the country while 23,765 asylum applications were pending.¹⁰

While there is no comprehensive anti-discrimination law in Japan, the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan (Hate Speech Elimination Act, 2016), the Act on the Promotion of the Elimination of Buraku Discrimination in (2016) and the Act Promoting Measures to Achieve a Society in which the Pride of Ainu People is Respected (2019) are in place concerning some of the abovementioned communities.

Japan has ratified most of the core international human rights treaties except the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has ratified the two Optional Protocols to the Convention on the Rights of the Child. It has not recognised the competence of any UN human rights treaty bodies to consider individual complaints. It has not established an independent national human rights institution in line with the Paris Principles.

Republic of Korea

As of January 2021, according to government immigration statistics, 2,014,433 foreigners were residing in the Republic of Korea, which constituted approx. 5% of the total population. There has been the trend of steady increase of migrant population, approx. 7% annually in the past 5 years.¹¹ Chinese nationals, including those of Korean ethnicity, make up almost half of the total foreigner population, followed by nationalities of Vietnam, Thailand, United States, and Japan.¹² As of December 2019, approx. 863,000 migrants were in employment.¹³ By the end of 2020, 3,498 refugees were recorded in the country while 20,073 asylum applications were pending.¹⁴

⁸ http://www.pref.hokkaido.lg.jp/ks/ass/H29_ainu_living_conditions_survey_digest.pdf

⁹ <https://www.e-stat.go.jp/stat-search/files?page=1&layout=datalist&toukei=00250012&tstat=000001018034&cycle=1&year=20200&month=12040606&tclass1=000001060399>

¹⁰ <https://www.unhcr.org/2020-global-trends-annex.xlsx>

¹¹ Ministry of Justice (January 2021), Monthly Statistics on Immigration and Foreigner Policies (출입국외국인정책 통계월보 2021년 1월호) http://viewer.moj.go.kr/skin/doc.html?rs=/result/bbs/227&fn=temp_1614839976767100

¹² Ibid

¹³ Statistics Korea (December 2019), Survey on Residence and Employment of Migrants (2019년 이민자 체류실태 및 고용조사 결과) http://kostat.go.kr/portal/korea/kor_nw/1/3/4/index.board?bmode=read&bSeq=&aSeq=379451&pageNo=1&rowNum=10&navCount=10&currPg=&searchInfo=&sTarget=title&sTxt=

¹⁴ <https://www.unhcr.org/2020-global-trends-annex.xlsx>

There does not exist any comprehensive anti-discrimination law in Korea despite several legislative attempts, including the current ongoing efforts by civil society and the National Human Rights Commission. Several laws include declaratory provisions of non-discrimination, but only the National Human Rights Commission Act provides for remedy for victims, albeit only with recommendatory effect. There does not exist any provisions to determine hate crimes based on racially discriminatory intent, and such crimes are not subject to aggravated punishment.

The Republic of Korea has ratified most of the core international human rights treaties except the Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has ratified the two Optional Protocols to the Convention on the Rights of the Child. It has recognised the competence of the Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Committee, the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee against Torture (CAT) to consider individual complaints. Its National Human Rights Commission is accredited with A status for its full compliance with the Paris Principles.

Refugee Protection in East Asia: Changes and Challenges

The first webinar was held on 2 April, 2021. In the opening, Pilkyu Hwang from the GongGam Human Rights Law Foundation highlighted the history of solidarity among human rights defenders in Hong Kong, Japan and the Republic of Korea in the area of refugee protection. He recalled that Asia Pacific Refugee Rights Network (APRRN) held annual in-person discussions on the rights of refugees and asylum-seekers before the COVID-19 pandemic. He stressed that solidarity for refugee protection can be further strengthened. He shared his hope that the webinar can contribute to such efforts.

Republic of Korea

Jeanie Kim from Duroo – Association for Public Interest first gave an overview of refugee protection in the Republic of Korea. It is the first country in the region that adopted a comprehensive domestic legislation in 2013, the Refugee Act, to implement the 1951 Refugee Convention. The enactment of the Act led to the establishment of the Refugee Division under the Ministry of Justice (MOJ). Civil society expected the improvement of the refugee status determination (RSD) procedure and the protection of refugees and asylum-seekers.

However, the situation of refugees and asylum-seekers and the government's attempts to amend the Act have raised great concerns. The government insisted to make every effort to filter "abusive and/or fake" refugees and strengthen police patrol to "protect Korean people from refugees and migrants", despite the fact that the average refugee recognition rate in the first instance decision remained below 1%. In fact, it set a new record of 0.4% in 2019. According to the latest immigration statistics produced by the MOJ, 1,098 people were recognised as refugees out of 71,449 applicants (1.5%).

With regard to nationalities of 6,684 applicants in 2020, Russians were the largest group (1,064), followed by Egyptians (718), Kazakhs (603), Malaysians (452), Bangladeshis (435), Indians (420), and Chinese (311). In recent years, the government started using these statistics as a basis of its "abusive/ fake" refugee discourse, claiming that the majority of refugee applicants were from countries with a low-risk of persecution. Civil society has criticised the argument as it overlooked individual situations of applicants. Also, in fact, Russia and China have been ranked as top refugee producing countries globally for the past few decades.

Under the Refugee Act, an asylum-seeker can submit an application for refugee status when undergoing an entry inspection. The local immigration office then goes through the pre-screening assessment of the refugee applicant to determine whether the application should be referred to the RSD procedure. The pre-screening assessment at the port of entry should respect the Refugee Convention, particularly the principle of non-refoulement. However, the routine practice of rejection is observed from the statistics and reports, resulting in 93.1% of applicants at the border to be denied entry to the territory in 2019.

In 2019, there was a case of a family with four children at the ages of 5, 7 and 9 who entered into the Incheon Airport to apply for refugee status. The immigration office denied their entry on the grounds that the family had no clear reason to seek asylum. The family subsequently

filed the administrative litigation, but they had to stay at the transit zone of the airport for about 10 months without any support from the government.

Article 3 of the Refugee Act defines the prohibition of refoulement for “recognized refugees, humanitarian status holders and refugee status applicants”, but the prohibition should be applied in line with international law including those who applied at airport, irrespective of whether they have been recognised or not. Kim stressed that the pre-screening assessment should therefore be conducted with appropriate procedural safeguards, such as the right to counsel or opportunities to contact the UN High Commissioner for Refugees (UNHCR). In particular, vulnerable asylum-seekers including children should be referred to the regular RSD procedure without exception. Moreover, appropriate reception arrangements should be made available for asylum-seekers waiting decisions. All of which have not been the case in South Korea.

Humanitarian status provides international protection to people who do not meet the definition of refugee under the Refugee Convention. Yet, the official interpretation of the Refugee Convention in South Korea has been restrictive, limiting the number of recognised refugees and instead granting humanitarian status. This has been often the case for applications made in the context of armed conflict. Kim emphasised the need to provide the complementary forms of protection to those in need in line with international standards.

Humanitarian status holders are granted G-1-6 (others) visa which can be extended on a yearly basis. They are subject to a lower level of social benefits and protection compared to recognised refugees who have F-2 (residence) visa. The Refugee Act does not provide humanitarian status holders with the right to family reunification, therefore they are not allowed to bring family members to South Korea. Also, their “G” type visa does not allow humanitarian status holders to apply for citizenship regardless of their length of stay. They are not granted basic welfare services such as child care allowance and subsidies for housing. Although they are allowed to work, it is limited to certain sectors. They are required to find employers who are willing to hire them, and they need to be granted a “permission to engage in employment activities”. Due to the lack of information about the visa, humanitarian status holders often face difficulties finding employment. Kim argued that humanitarian status holders should be given the same level of treatment and social protection as recognised refugees, since they are likely to stay in South Korea for a long time.

On 28 December 2020, the MOJ delivered a press release to announce its plan to amend the Refugee Act. Its main objectives were claimed to enhance expertise and fairness of the RSD procedure, while ensuring efficiency to prevent “abuse of the system”. Kim analysed the proposal’s provisions on eligibility procedure, manifestly unfounded applications and other concerning provisions.

The proposal focuses on limiting the scope of eligibility for the RSD procedure. A person who has been issued an ineligibility decision according to Article 5-2 or a decision of non-referral according to Article 6(3) would not be able to submit an appeal against the decision, as Article 5-2 of the proposal prevents re-applications. Even under the current RSD procedure, it is extremely difficult for asylum-seekers to provide justification for “a significant change in circumstances” within 14 days in order to appeal against the decision of ineligibility. Asylum-

seekers with limited access to legal assistance would face great difficulties in their attempts to justify the need to access the RSD procedure.

While the UNHCR agreed in principle that re-application may be subjected to a preliminary examination, they also clarified that such a preliminary examination can only be justified if the previous claim was considered fully on the merits. The investigation of the National Human Rights Commission of Korea (NHRCK) found that the MOJ had attempted to arbitrarily identify cases with certain backgrounds to accelerate a procedure. Some interview reports were fabricated by refugee officers and interpreters under such a procedure. They led to the conclusion that asylum-seekers came to South Korea solely for economic reasons. The government did not apologise nor compensate for the victims. Kim pointed out that all applicants should be interviewed both at the eligibility and substantive stages to abide by the Refugee Convention, except when the authorities can take positive decisions based on available evidence. This is especially relevant to South Korea, since there is no independent body to administratively review first instance refugee status decisions.

The proposal allows the MOJ to determine certain application as “manifestly unfounded”, which limits the review period of an appeal. Kim pointed out that the criteria in the proposal to determine a “manifestly unfounded” claim are broad and irrelevant to the question of refugee status. For example, a criterion of “applying for the sole purposes of extension of sojourn” is very likely to be biased by immigration discretion. Furthermore, the proposed amendment includes provisions to limit the rights of asylum-seekers. Article 47 of the proposal, for example, stipulates grounds to punish refugee applicants for the use of false or fabricated documents and/or submission of documents including non-factual information during the RSD procedure.

Hong Kong

Rachel Li from Justice Centre Hong Kong began the presentation by explaining the Unified Screening Mechanism (USM) in Hong Kong which has four grounds of protection based on international human rights treaties. Although the Refugee Convention is not extended to Hong Kong, a series of litigations led to the rulings of domestic courts on the Hong Kong’s obligation to determine whether someone fits the refugee definition under the Refugee Convention. She explained that the first step in the screening process becomes only accessible once a person’s permit to stay expires. In other words, they have to break the law to request asylum in Hong Kong. The second step is the first instance determination process by the Immigration Department, followed by an appeal to the Appeal Board. Once the USM concluded the decision, individuals can apply for judicial review to challenge public law errors of the decision.

Hong Kong has been home to 13,000 refugees and asylum-seekers at various stages of the asylum process, and most of them (8,000) were at the judicial review stage. While there was no public statistics of asylum-seekers, it is roughly estimated that 80% were from Asia, 15% were from East, South, West Central Africa, and 5% were from Middle East, North Africa and other places.

The recognition rate of refugee applications in Hong Kong has been less than 1%, while it increased to 3% in 2020. Such low rates have been blamed for systematic issues including the lack of legal representation, poor quality of decisions, culture of hostility and cynicism, the lack of transparency, and immigration detention. The Hong Kong government has provided free legal representation through the Duty Lawyer Service for all applicants at the first stage of the screening process, yet only 7% of them were represented on appeal. Even though it is supposed to be a merit-based exercise, 51% of substantiated cases had legal representation. The use of Wikipedia for information on country of origin, insufficient understanding of the principle of non-refoulement law and refugee protection constituted to the poor quality of decisions. For example, sexual and gender-based violence have been frequently dismissed as private acts. The Appeal Board's decisions have not been published and hearings have been conducted in private. Wide powers have been given to the authorities to detain asylum-seekers under the Immigration Ordinance without effective safeguards against arbitrary detention. There have been allegations of serious human rights violations such as the punitive use of solitary confinement and strip search, in the absence of effective complaints and monitoring mechanisms. In addition, the government has openly displayed its hostility towards refugees and asylum-seekers and focused on their irregular status.

Immigration (Amendment) Bill was proposed in December 2020 which was expected to come into effect in August 2021. The Bill would expand powers of detention and justify immigration detention, which raises a serious concern on the risk of arbitrary detention without effective oversight. Furthermore, it would: allow immigration officers to more readily bear arms and weapons; allow the government to begin liaising with the applicant's country of origin to arrange deportation during appeal; mandate language of USM proceedings; mandate consent for medical examination; mandate attendance at interview; and shorten timeframes for appeal and evidence.

Civil society in Hong Kong has taken collective and participatory approach to challenge the proposals such as media outreach, submission of testimonies from the refugee community to the Legislative Council, and using access to information requests to present data.

Japan

Chie Komai, lawyer specialised on cases of refugees and migrant workers, described the RSD procedure in Japan as more of a refugee refusal procedure. In 2020, only 46 people were recognised as refugees among 3,523 cases, making the recognition rate about 1.3%. Though those rejected in the first stage can request for administrative review in the second stage, only one person was recognised as a refugee in 2020. This meant that among 5,272 decisions, only 0.02% of refugee applicants received protection at the second stage. She pointed out that it has been rare for asylum-seekers to gain refugee status through court, even though they can file a case at court in Japan.

She added that the number of applications in 2020 was about 4,000, a decrease from about 10,000 applications in 2019. It was clearly due to the impact of COVID-19. These asylum-seekers were from 67 countries. Among them, the largest group of asylum-seekers was from Turkey including many Kurdish people. The second largest group was from Myanmar, followed

by Nepal, Cambodia, Sri Lanka and other Asian countries including Iran. At the same time, there were those from African countries such as Senegal, Cameroon and Tunisia. She regretted that Japan had never recognised Kurdish applicants as refugees. In recent years, it has been difficult for people from Myanmar to receive refugee protection in Japan, though the recent political event in the country may change it.

She analysed that the RSD procedure in Japan does not follow international standards. Unless applicants were prominent figures targeted by the authorities at home, it has been significantly difficult to be recognised as refugees in Japan. Also, there has been a concern on the Japan's respect of the principle of non-refoulement. While the authorities normally did not track the fate of deportees, she reported that one Kurdish deportee was arrested and killed after return. Another deportee had gone into hiding in Sri Lanka for six years due to the fear of persecution.

There are two stages of administrative procedures for RSD in Japan. At the second stage, refugee adjudication counsellors can interview asylum-seekers and submit an opinion to the MOJ. Their main professions ranged from university professors and lawyers, to former judges, former prosecutors and others. She shared a concern that not all of them were experts on RSD, and there were cases that some counsellors made inappropriate comments to asylum-seekers. In addition, the collection and analysis of information on a country of origin have been inadequate. International standards including UNHCR guidelines have not been fully respected.

Proposed amendment to the Immigration Control and Refugee Recognition Act was highly problematic. For example, it would allow the deportation of asylum-seekers who applied for refugee status three times. While deportation is suspended during the consideration of an asylum request under the current system, the amendment would make it possible to deport asylum-seekers after the third application. As Japan has the extremely high rejection rate of asylum requests, the amendment posed a serious concern in respect to the principle of non-refoulement.

Furthermore, the amendment included the creation of a criminal offence for the evasion of deportation orders. It could make supporters of asylum-seekers without resident status such as friends and lawyers as "accomplices in crime". This new criminal category could pose a serious challenge to civil society.

At the same time, a number of asylum-seekers have been detained indefinitely without judicial checks even under the COVID-19 pandemic. In 2020, the UN Working Group on Arbitrary Detention (WGAD) issued an opinion (58/2020)¹⁵ on the detention of two asylum-seekers from Iran and Turkey that identified a series of violations of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

She stressed the need to establish an independent body for examination of asylum requests in line with international standards and to end indefinite immigration detention without

¹⁵ A/HRC/WGAD/2020/58

judicial review. Asylum-seekers should have safe conditions without being detained during examination.

There had been oppositions to the amendment inside and outside Parliament. Opposition parties submitted an alternative proposal which included the establishment of an independent body and the limit on immigration detention. Civil society mobilised themselves to collect petitions against the amendment and to protest publicly. While media coverages on the discussion on the amendment increased, awareness-raising among the public remained a challenge.

Panel discussion

Followed by the three speakers from South Korea, Hong Kong and Japan, refugee panellists from each jurisdiction shared their thoughts. As the first panellist, 'Mr. A' from Justice Centre Hong Kong recalled that until 2014 only the UNHCR was in charge of the RSD procedure in Hong Kong. He explained that applicants did not have legal representation under the UNHCR procedure. Although they could appeal the first instance decision within 14 days, a reason for rejection was not provided. Therefore, the rate of a successful appeal was very low. There was a lack of transparency, legal representation and advice in the UNHCR procedure, except the legal advice provided by Justice Centre Hong Kong.

Later, the USM was introduced which was broader than the UNHCR procedure. While it did not improve the recognition rate, the introduction of the access to legal representation and judicial review was a step forward. He stressed that more needed to be done to protect refugee rights in Hong Kong. More and more refugees in Hong Kong were joining civil society efforts for positive changes in refugee protection by sharing their experiences and voicing out concerns. He shared his hope that the situation can be improved in Hong Kong.

From South Korea, Darwish Musab from Migrant World TV, who arrived in the country in 2016, shared his experience in the country's RSD procedure. When he applied for asylum, he was subject to the Quick Evaluation system. His interview lasted less than 30 minutes during which he was not allowed to provide additional information. Two days after the interview, he received the rejection notice that concluded his file was incompatible with the characteristics of a refugee. Between 2015 and 2018, the RSD procedure used to depend on categorising refugees based on their nationality and outer appearance. He described that the system was to make quick rejections of asylum requests without proper investigations.

During the process of court appeal, it was revealed that the record of his interview was fabricated and replaced by a different story. The record did not include his work and political activity in the home country, but it stated that he was temporarily in South Korea for an economic reason. After the campaigning by asylum-seekers and refugee NGOs, some changes took place due to external pressures, including a longer duration of interviews. However, the problematic policy and practices remained such as the low recognition rate, the lack of investigations and inappropriate arrangement of interpreters. In some cases, interpreters were arranged from the same country of origin of asylum-seekers. In addition, the MOJ did not change its methods and failed to apologise to the victims of fabricated interviews.

He considered that the purpose of the proposed amendment was to justify the problematic practices in the RSD procedure. In South Korea, refugee issues became political issues, and the government and politicians either exploit them or refrain from addressing them, for their popularity. He shared a concern on the government's lack of consideration on the rights of refugees.

Elizabeth from Japan began her presentation with her experience of being detained twice by the immigration authorities which led her to support asylum-seekers and refugees in Japan including those in detention. She is a leader of the group who supports people under provisional release.

She highlighted the similarities of problems in the immigration system in South Korea, Hong Kong and Japan. She shared that many people in immigration detention in Japan she was supporting were suffering serious physical and mental health problems due to severe conditions. Even when they were out of detention for provisional release, they faced many difficulties as they were not allowed to move freely and work. She would be subject to a criminal penalty if the proposed amendment was adopted, because she already applied for refugee status twice. She also shared a concern that lawyers supporting asylum-seekers could be also penalised for their work. She encouraged the participants to pressure the governments to improve the situation of refugees and asylum-seekers in East Asia.

Q&A session

The audience participated in the discussion by posing follow-up questions during the Q&A session. Questions included public opinions on migration and the impact of COVID-19. Komai told them that a growing number of people in Japan were becoming interested in the situation of refugees thanks to refugees like Elizabeth, and media started covering their stories. NGOs launched a petition against the proposed amendment which had collected an unprecedented number of signatures. COVID-19 significantly reduced the number of asylum requests.

Li analysed that people in Hong Kong, especially young people, became more supportive of refugees. Mr. A added that the public opinion about refugees changed significantly in Hong Kong where more politicians and lawyers started supporting refugees and asylum-seekers. He reminded the audience that every single refugee recognition was given through a court case, which represented the remaining challenge in the authorities' perception. He stressed the importance of awareness raising for the public. In terms of the impact of COVID-19, Li clarified that the number of applications did not change, though it was unclear whether they were made by new applicants. Yet, it delayed court proceedings. Kim told the audience that the number of asylum applications in South Korea decreased due to COVID-19, and every applicant was mandated to be tested before interview.

In response to the question on immigration detention, Li recalled the issue of the lack of transparency in immigration detention in Hong Kong. There were limited data available and no monitoring has been in place. NGOs were not given access to immigration detention facilities which made them rely on information from former detainees.

A question on participatory approaches that include refugees was posed by the audience. Li reflected that the Hong Kong civil society could have done better by consulting with the refugee community in the early stage of advocacy against the proposed bill. However, Justice Centre Hong Kong has been working for community empowerment for refugees to prepare for the bill's impact. Kim shared that together with the NHRCK, the Korean civil society undertook a number of research projects on refugees and humanitarian status holders which led to the NHRCK's recommendations to the government.

To respond to a question on the practice of pre-screening at airports in South Korea, Kim explained that asylum-seekers who are deemed to be ineligible at the pre-screening process may be subject to deportation, unless they file a lawsuit against the decision. However, in most cases they did not have lawyers nor receive information about their rights to legal representation and the UNHCR. There was no data collected by the MOJ on this matter.

Concerning the public perception about refugees, Kim regretted that there have been serious backlashes in South Korea since the arrival of 500 Yemeni refugees in Jeju island in 2018. About 2 million petitions for the abolition of the Refugee Act were submitted. The MOJ has been using this negative sentiment to justify the proposed amendment.

The speakers shared that the UNHCR could do more in supporting domestic advocacy activities for the rights of refugees. In South Korea, there have been collaborations among civil society, the NHRCK and the UNHCR country office in the engagement with the government.

Responding to a question on non-ratification of the Refugee Convention in Asia, Hwang explained that there have been some positive developments in Thailand, Indonesia and Taiwan. He added that APRRN has been facilitating joint advocacy actions and researches.

For further collaborations among civil society in East Asia, various activities were proposed such as information-sharing and advocacy including towards UN agencies. It was acknowledged that the webinar was of the one of such activities.

Government Education Policies and Barriers to Inclusion

The second webinar took place on 6 July, 2021. Wooki Park-Kim from the Human Rights Association for Korean Residents in Japan (HURAK) opened the event by sharing the discriminatory treatment against Korean ethnic schools by the Japanese government which has been seemingly reflected on their approach towards children with migration backgrounds. She highlighted the legacy of colonialism and assimilation policies by Japan as a factor behind the current barriers in the access to education for children of foreign nationalities.

Republic of Korea

Wan Lee from the South Korean NGO Coalition for Monitoring the Domestic Implementation of the CERD and the Solidarity for Asian Human Rights and Culture presented a brief overview of the situation of migrant children in the Republic of Korea. In January 2021, 2,014,433 migrants were documented in the country. The annual growth rate of their number has been 9% and the total population was predicted to reach 3 million in few years, but the COVID-19 pandemic reduced the number.

He went on to unpack the government's multicultural education policy which has been handled mainly by the Ministry of Gender Equality and Family and the Ministry of Education and Human Resources Development. The policy can be broadly divided into four purposes: support for children and adolescents with migration backgrounds for their adaptation to school and life in South Korea; creating an atmosphere of hospitality for children and juveniles with migration backgrounds; multicultural education for all students in school curricula; and improving the awareness of all members of society including training of related stakeholders. In 2006, the government declared a multicultural society, but multicultural education focused on integration and Korean language classes for migrant children. It was only given to students from multicultural families while other students took different classes.

Lee shared his analysis that barriers to integration can be divided into systemic and emotional barriers, which are interconnected. Although there were some improvements, the education system has continued to exclude some children and intensify segregation. He recalled that no anti-discrimination law is in place in the country, though the prohibition of discrimination is a fundamental prerequisite for inclusion. Even when children from multicultural families could stay in the system, they would face significant emotional barriers in society such as indifference, exclusion, separation and racism. He criticised that the multicultural policy has left them with these barriers. There has been a tendency among Korean parents to avoid sending their children to schools with many children with migration backgrounds. Support provided to these children has been based on compassion and how much they will contribute to the Korean society. Hence, he stressed the importance of recognising the human rights of children with migration backgrounds.

Division represented by the concept of "multicultural" has intensified emotional barriers as well as racism. Despite the deep-rooted nature of hate speech and racism in the Korean society, the public has not responded in a serious manner. Furthermore, there has been a lack of awareness that migrants have equal rights as members of the Korean society.

In 2001, the government changed the enforcement ordinance to allow undocumented migrant children to enter elementary school if they submit certain documents. In 2006, a temporary visa was granted to undocumented migrant children and their parents, with the condition of voluntary reporting. Such admission procedures for elementary school were extended to middle school in 2010. Crack-downs on elementary and middle schools are suspended, and children are guaranteed to not be forcibly evicted until the graduation from middle school. This suspension was extended to high school students in 2013. In 2020, a new provision to the enforcement ordinance was added to ensure no rejection of admissions by school principals.

Nevertheless, there have been challenges. Although undocumented migrant children can officially complete education until high school, they need to obtain a study abroad visa to enter university which has proven to be extremely difficult. Lee pointed out that educational rights for children with migration backgrounds are recognised on a temporarily basis except their right to stay. While the concept of “multicultural” has had certain positive impacts, it has also created a stereotype which overlooks the diversity of migrant children. Support for multicultural families has also invited a public controversy over “reverse discrimination”. Lee explained that the term “multicultural” started carrying a derogatory meaning in society.

He shared a survey result on the multicultural acceptance conducted by the Ministry of Gender Equality and Family. It revealed that children have more multicultural acceptance than adults, and this gap has been widening every 3 years. This can be explained by the fact that adults did not receive multicultural nor human rights education unlike younger generations. Also, children have more opportunities to interact with migrant children in school. Furthermore, the survey showed the decline of mono-ethnic orientation. Yet, there have been mixed rates for multicultural acceptance. In contrast to the high acceptance rate for Western European whites, it has been low for other groups.

There have been positive changes in the public. For example, in response to the 2019 School Uniform Support Ordinance in Geumcheon-gu, Seoul, Korean parents and teachers formed “Citizen’s network organisation for supporting school uniforms without discrimination” in 2020. It resulted in the revision of the Ordinance in June 2020 to include all students.

In 2020, the Ministry of Education announced the support for non-face-to-face online subsidies, which paid 150,000 – 200,000 won (approx. 130 – 175 USD) each to Korean students, excluding students with foreign nationalities. The decision made school teachers uncomfortable as they teach children to not discriminate, and the educational community in Guro started protesting the decision. As a result, all local education offices decided to provide the support without discrimination, following the decision of the Seoul Metropolitan Office for Education.

Similarly, disaster subsidies by local governments initially excluded foreigners. It received protests from civil society as well as a recommendation from the NHRCK. Consequently, the Gyeonggi-do and the Seoul Metropolitan governments decided to provide disaster subsidies without discrimination against migrants. Yet, the disaster subsidies of the central government continued to exclude migrants.

Multicultural education has become mandatory since 2018 for teachers from elementary to high schools. At the same time, civil society has been active in this area. They have been promoting exchanges among people, the adoption of local human rights and cultural diversity ordinances, and the enactment of anti-discrimination legislations.

Lee concluded by sharing key challenges for the inclusion of migrants: the guarantee of fundamental rights of migrants and the recognition of their presence; the abolition of separation policies for migrant children that classify them as “multicultural”; the promotion of dynamic and active interactive exchanges; and the public recognition of positive contributions of migrants and the human rights of migrants as community members. He stressed the importance to raise awareness of teachers and public officials as well as human rights and cultural diversity education.

Hong Kong

Puja Kapai, Associate Professor at the Faculty of Law and the Convenor of the Women’s Studies Research Centre of the University of Hong Kong, began her presentation with the overview of the situation concerning education rights of ethnic minorities in Hong Kong. In 2015, the study called “Status of Ethnic Minorities in Hong Kong 1997 – 2014” was presented to the government to reveal the problems of racial discrimination. She reminded the participants that Hong Kong is a party to most of the core international human rights treaties that include the right to education and the right to equality and non-discrimination. Furthermore, Hong Kong has equality protections under its Basic Law, the Race Discrimination Ordinance (RDO) and the Bill of Rights Ordinance.

Of the approx. 7 million population in Hong Kong, 8% are the minority population. 4.2% are migrant domestic workers (MDWs) and 3.7% are staying in Hong Kong for a long term. The largest ethnic minority group, excluding MDWs, is Indians, followed by Pakistanis, Nepalese, Filipinos and Indonesians. Yet, the history of ethnic minorities is not taught in Hong Kong. She also drew the audience’s attention to the fact that the reproduction rate of ethnic minorities is higher than the rest of the Hong Kong population. It will make ethnic minorities future workforces, and their inclusion into society is necessary.

While the poverty rate in Hong Kong has been around 21%, it has been nearly 25% among ethnic minorities and close to 33% among ethnic minority children. A survey revealed a racial hierarchy in Hong Kong which has placed brown at the bottom and Africans and the rest of Asian population groups above them. Chinese and white have been the top of the hierarchy.

Problems in the education system are rooted from the change made during the handover period from the UK. Schools in Hong Kong used to teach students in English. In 1997, a new policy was introduced by the government to ensure that students were multilingual. Many schools which were teaching in English converted to teaching in Chinese as a medium of instruction. It created difficulties for ethnic minority students to learn Chinese and study in the language that was foreign to them. Most of their parents were not fluent in Chinese, and they were not able to help their children’s education.

In 2004, the government introduced designated schools. 11 to 31 designated schools were introduced between 2004 and 2013. These schools had a high concentration of ethnic minority students, accounting up to 90%. Students in designated schools were taught much lower levels of Chinese in comparison to non-designated schools. Consequently, the Chinese level of graduates of designated schools was primary 2 to 3 levels. Designated schools failed to prepare their students to be included in and contribute to society. Even though the government considered them as beneficial to ethnic minority children, designated schools did not allow them to achieve the same level of potentials as other children in Hong Kong. In 2013, a number of changes were made to address the system of de-facto racial segregation.

Lack of equal access to public school education has also been a problem. For example, ethnic minorities face difficulties in entering kindergartens as interviews are conducted in Cantonese, leading to a disadvantaged start at elementary school. Lack of accessible information on primary school admissions also prevents them from applying to public school, and communications from school are often in Chinese.

Multicultural policy and education do not exist in Hong Kong. There is a lack of curricula to teach Chinese as a second language, despite the evidence that mother tongue education is the most effective way for children to acquire another language. The fact that different ethnic minority households speak different mother tongues has not been taken into consideration. Teachers are not provided with training on multiculturalism or how to have and teach a diverse classroom.

Inclusive learning environment is also lacking. 30% of ethnic minority students felt that their teachers disliked teaching them. Even nearly 50% of Hong Kong Chinese children were unable to achieve the required pass to graduate from the Chinese programme. It suggests that ethnic minority children face more difficulties in learning the language without the support at home. There are negative stereotypes against ethnic minorities and the lack of public support for dedicating additional resources to education for these children.

In pre-primary education, ethnic minority children aged 3 to 5 have lower school attendance rates, despite the fact that their population is larger than Chinese children. One survey to kindergartens revealed that ethnic minority children were concentrated in few schools, resulting in de-facto racial school segregation and the lack of intercultural exchanges. De-facto racial segregation in primary education continues in secondly schools, which affects ethnic minority children's educational achievements and causes their drop-outs from high schools, though there have been differences among communities. In addition, 57% of ethnic minority children with special education needs drop out after primary school, while it is 5% in the general population with special education needs. This is mainly due to the lack of English language secondly school that caters to special education needs.

In 2013, the Education Bureau decided to disband designated schools and provide funding to public schools that would receive ethnic minority children. However, accountability for the funding was lacking. Instead of supporting the Chinese language learning needs of ethnic minorities, the grant was spent on other purposes including hiring teaching assistants with ethnic minority backgrounds. Kapai pointed out that there has not been a holistic approach to dismantle a systemic problem of entrenched racism in the education sector.

In 2014, Chinese as a second language policy in Hong Kong was introduced, but it was not a second language curriculum. It was similar to the measures of designated schools. It slowed down education milestones for the children by stretching out Chinese language curricula. Hence, it did not have a real impact on changing the problematic system.

Kapai shared recommendations from civil society to the Hong Kong government that are: improving teacher training; development of actual curricula of Chinese as a second language; measures to ensure that ethnic minority children achieve tertiary level education; evaluation of communications with ethnic minority parents and families; standardised translation of materials; supporting ethnic minority children to become educators; providing bridging courses for adults to learn Chinese; teaching of cultural histories of ethnic minorities; exploring mother tongue learning; multicultural policy in classroom; greater transparency of funding; and ensuring the compliance with its obligations under the ICERD.

Japan

Kosuke Oie, lawyer specialised on legal access and the protection of the human rights of migrants, shared challenges that children with migration backgrounds face in Japan. He focused his presentation on three areas: school education; status of their residence/visa; and structural discrimination they face in education.

The number of migrants has been rapidly growing in Japan in recent decades, driven by the high demand from the labour market. The number of children who come to Japan with their parents has also been increasing. Some arrived in Japan before the age of 10, while others came when they were teenagers. Although they can enrol in local elementary school or junior high school run by local government, the number of classes for non-Japanese speakers has been insufficient. Even when these classes were available, the number and skills of staff were inadequate. Oie pointed out that it was a result of the lack of the central government's policy for children with migration backgrounds, resulting in insufficient resources and budget. He shared that some of these children have been reportedly classified as mentally challenged and sent to school or class for students with special needs, simply because they did not understand Japanese.

Oie explained that a valid status of residence or visa is required to stay or work legally in Japan, and even children can be subject to deportation if they do not possess such documents. Japan's visa system is highly complicated and rigid, and a particular visa is required for different professions. Many migrant children who come with their parents have a visa as a "dependent" of their parents. Since this visa category does not allow them to work full-time, they need to change their visa when they start working after completing their education. However, some cannot change their visa, because they do not meet requirements for working visa. Oie shared his analysis that the Japanese visa system did not expect many children with migration backgrounds in its design, causing these challenges as consequences.

Furthermore, children with migration backgrounds in Japan face systematic and structural discrimination in education. For example, children with dependent visa cannot access public

education loan and scholarship, effectively excluding migrant children accompanied by their parents. Under the Japanese law, a specific category is given to ethnic schools and international schools which is different from Japanese schools. In particular, the central and local governments have excluded Korean schools from their subsidies, stating diplomatic concerns over the Democratic People's Republic of Korea (DPRK). In 2020, the government introduced financial assistance for students during the pandemic, but it set different requirements for foreign students.

Oie considered that the fundamental problem is the reluctance of the Japanese government to recognise the presence of migrants in the country as an essential part of the society. The government has clearly stated that it does not adopt an “immigration policy”, despite the existence of over 2 million foreign nationals. The government expects migrants to leave the country, which explains the lack of immigration policy. He added that the human rights of migrants and their children have been affected by politics and diplomacy.

Japanese civil society including migrant and local communities has been working tirelessly to tackle these challenges. Classes for children with migrant roots are provided by volunteers to close the education gap that can be found across Japan. Civil society successfully negotiated with the government regarding the visa system, which made it possible to change a dependent visa to a working visa under certain conditions. Yet, he regretted that the campaign against discriminatory measures has had limited progress.

He stressed that the government needs to recognise the long presence of migrants in the country to adopt an effective inclusion policy. In this regard, he shared a recent campaign by the Solidarity Network with Migrants in Japan (SMJ) called “*Koko ni iru (we are here)*” that sought to increase the visibility of migrants in Japan. He stressed the importance to listen to children to respect their rights, since those with migration backgrounds often find it difficult to raise their voices due to daily struggles.

Q&A session

The audience posed a number of questions to the panellists. In response to the request to elaborate on implications of the term “multicultural” in South Korea, Lee explained that the term started being used to distinguish migrants from Koreans. It reduced people with migration backgrounds to a particular stereotype or identity. On the question regarding education in mother tongue, he clarified that most schools focus on teaching Korean while some offer bilingual education. Ethnic studies are not included in regular school curricula.

One participant asked Kapai if designated schools in Hong Kong are similar to foreign schools in Japan, or such schools exist in Hong Kong. Kapai answered that the majority of foreign language schools in Hong Kong are private schools and not affordable to many. There are no schools for ethnic minorities like Indian, Nepali or Pakistani schools. She clarified that designated schools are public schools. While all children can apply to enter designated schools, they tend to host ethnic minority children and to be associated with negative stereotypes. Nevertheless, these schools recently introduced an option to take up Urdu, Hindi, or other mother tongue language as an elective course.

Asked about what urgent actions people can take to address the problems in Japan, Oie recommended to raise awareness of the public and speak out for migrant children. He shared a recent example of civic actions against the proposed amendment to the Immigration Control and Refugee Recognition Law that was withdrawn in May 2021. He encouraged the participants to build on this successful experience to advocate for the rights of children with migration backgrounds.

Responding to a question on good practices, Kapai shared that few schools developed own tailor-made materials for ethnic minority children and teach them Chinese as a second language. Oie informed the audience that some schools have interpreters in classes, though it depends on the interests of schools and their local municipalities.

Bringing Stakeholders Together Against Hate Speech

The third and last webinar took place on 7 October, 2021. Panellists from Hong Kong, Japan and the Republic of Korea shared their experience in working with different stakeholders, such as national human rights institution, local government and UN human rights mechanisms, to combat racist hate speech.

Hong Kong

Phyllis Cheung from Hong Kong Unison started her presentation with the demographic overview in Hong Kong where ethnic minorities refer to persons of non-Chinese ethnicity. According to the 2016 By-census, 92% of its population was Chinese. Among the remaining 8%, more than half of them were MDWs, mostly from the Philippines and Indonesia. The rest were asylum-seekers, refugees, expats and non-Chinese settlers who could be 3rd or 4th generation in Hong Kong because of the colonial history. 10% of the ethnic minorities in Hong Kong were white and 14.5% of them were South Asians with ethnic origins mostly from India, Pakistan, Nepal, Bangladesh and Sri Lanka.

She pointed out that persons of colour are often discriminated, both intentionally and unconsciously, because of the negative stereotype and misconception associated with their cultures and low socio-economic status. The conditions of MDWs in Hong Kong are often described as “modern day slavery” who typically earn less than 600 USD per month, work unlimited hours and live in less-than-ideal conditions. A lawmaker once stated during a Legislative Council Meeting that the presence of MDWs in public spaces was “an inconvenience” and affected environmental hygiene. Many MDWs perceived her comments as discriminatory, racist and offensive. It was one of many instances where derogatory remarks provoked dislike towards MDWs and perpetuated the condescending behaviour of employers.

Furthermore, Cheung explained that asylum-seekers in Hong Kong need to file non-refoulement claims because of the government’s non-ratification of the 1951 Refugee Convention. The process usually takes years, during which they cannot work or volunteer, and they are forced into relying on government subsidies and living under the poverty line. Some politicians call them “fake” refugees, accompanying with divisive, anti-refugee and xenophobic rhetoric. They are also targeted in social media, and often comments amount to racial vilification and incitement to violence. In some instances, such comments are also directed towards ethnic minorities, in particular South Asians.

In traditional and social media, negative portrayals and hostile statements targeting South Asians are not uncommon in Hong Kong. Not only individuals post racist and hateful comments, but also some groups even have called for the public to carry out acts of intimidation and hate crimes towards South Asians. For example, once a post on a social media page vowed to kill ethnic minorities if the page received more than 10,000 likes.

However, there is no specific legal protection against racist hate speech in Hong Kong, and the RDO falls short in addressing the issue effectively. While racial harassment is unlawful, the burden of proof rests on the complainant. If the case is lodged with the Equal Opportunities

Commission (EOC), it is required by law to investigate into the complaint and reach a settlement through conciliation. There has not been a civil law suit on racial harassment. Even though public racial vilification that incites hatred, serious contempt for, or severe ridicule of a person because of their race is considered unlawful, the EOC closes the case if the concerned remark is deleted or removed from a public social media page or online discussion forum.

Moreover, there is no protection from discrimination, harassment or vilification under the RDO on the grounds of nationality, citizenship or migration status. Given the polarised political climate in Hong Kong, people from Mainland China have also been victims of hate speech because of their nationality. In fact, in November 2020, a lawmaker expressed concern about the inadequacy of the existing law in prohibiting hate speech and urged the government to tackle the issue by legislation, but there has been no progress.

Hong Kong Unison and other civil society organisations (CSOs) regularly remind the government of the 2018 Concluding Observations of the CERD that recommended to: ensure that law enforcement officials consistently monitor, record, investigate, prosecute and sanction racist hate crimes; establish specialised prosecutors on hate crimes; and ensure that victims of racist hate crimes and hate speech receive support to facilitate reporting and are provided with appropriate remedies.

Cheung stressed that without delay, the EOC should establish a register for the reception of complaints and data pertaining to racist hate speech and actively promote it to ethnic minorities. The government is urged to establish a cross-sectoral, multidisciplinary consultative body to develop a Code of Conduct for the regulation of hate speech. Also, social media platforms and online discussion forums should have policies in place in submitting IP addresses to law enforcement to deal with online racist hate speech.

Japan

Yasuko Morooka, lawyer from Japan, shared the experience of civil society in working with local governments to combat hate speech. The main target of hate demonstrations and hate street propaganda in Japan is those from former colonies, *Zainichi Koreans* (Korean residents). She highlighted the link between the government's lack of reflection on the colonial past and continuing discriminatory policies against those from former colonies with the prevalence of hate speech against them. From 2013 to 2014, more than 300 hate demonstrations and street propagandas inciting killings of Zainichi Koreans took place in urban areas. In response, counter protests became active and the term "hate speech" became a buzzword in 2013, making it a social issue.

Japanese CSOs fighting against racial discrimination argued that the state's negligence of hate speech on the pretext of freedom of expression constituted a violation of the ICERD. They submitted alternative reports to the Human Rights Committee and the CERD in 2014. Both Committees issued strong recommendations to Japan to regulate hate speech.

At the same time, in response to attacks by a racist group in the period between the end of 2009 and early 2010, a Korean school in Kyoto brought the case into court. In July 2014, the

Osaka High Court ruled that the attacks constituted racial discrimination under the ICERD and ordered the group to pay a large amount of damage to the school. The ruling had a great impact on public opinion on hate speech.

Since 2013, some Diet members have become involved with anti-hate speech efforts. In 2014, CSOs helped them to create a parliamentary group for a “Basic Law on the Elimination of Racial Discrimination”. In May 2015, seven opposition members of the group submitted “the bill to promote measures to eliminate racial discrimination” to the Diet, based on the model bill developed by civil society.

In March 2016, during the deliberation of the bill by the Legal Affairs Committee of the House of Councillors, Choi Kanija, a Zainichi Korean woman who was working at the municipal welfare centre in Sakuramoto of Kawasaki City, expressed her opinion on the serious damage caused by hate demonstrations directed at the local Korean community. Members of the Committee also visited Sakuramoto and interviewed residents. In April, the ruling party introduced a counter-proposal, “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (Hate Speech Elimination Act)”. All members of the ruling and opposition parties voted in favour of the bill. In May, the bill was passed by the Diet with a majority vote.

The Act states that hate speech against people of foreign origin is "unacceptable," and specifies what the national and local governments should do to eliminate it. However, it does not have any prohibition or sanction clause. The Act stipulates that local governments should work to eliminate hate speech in accordance with their own local conditions. Based on the Act's legal grounds, several local governments have enacted an ordinance against hate speech for the past five years, including Osaka City, Tokyo Metropolitan Government, Kawasaki City, Osaka Prefecture, Kobe City, Setagaya Ward in Tokyo, Kunitachi City in Tokyo, and Komae City in Tokyo.

In December 2019, Kawasaki City enacted the "Ordinance for the Creation of a City Free of Discrimination and Respectful of Human Rights". It prohibits hate speech and punishes violations with a maximum fine of 500,000 yen (approx. 4380 USD). It was the first ordinance in Japan to prohibit and punish discrimination as a crime. Article 12 of the Kawasaki City ordinance contains a stricter and clearer definition of hate speech than the one in the Hate Speech Elimination Act.

There is the strong belief in Japan that prohibiting any sort of expression by law infringes freedom of expression guaranteed by the constitution. The view is widely shared among the government, constitutional scholars, lawyers, and others in the legal community at large. In order to challenge this view, Morooka identified five key elements from the experience in Kawasaki city: voices of those affected by hate speech; support of local community; cooperation with local legislators; the role of media; and expert knowledge of legal professionals.

While the Kawasaki City ordinance is ground-breaking and effective, racist groups continue to attack the city government and the residents of Kawasaki, for fear that similar ordinances

would be adopted in other cities. Morooka emphasised that other local governments must enact similar ordinances, that can also protect the residents and government of Kawasaki.

Morooka pointed out that the Hate Speech Elimination Act has been proven inadequate after five years since its enforcement. CSOs in Japan are calling for the enactment of a comprehensive anti-discrimination legislation, which was also recommended by the CERD.

Republic of Korea

Young-taek Oh from the National Human Rights Commission of Korea (NHRCK) and Chulhyo Kim, Research Fellow at the Social Science Research Institute of Jeonbuk National University, presented the work of the NHRCK and civil society in combatting hate speech.

Oh focused his presentation on the NHRCK's work in the last three years. Established in 2001, the NHRCK is run independently from the administrative, legislative and judicial authorities. Its core functions include: improvement of human rights laws and policies, investigation into and relief actions on acts of human rights infringement and discrimination, human rights awareness-building and publicity, and exchanges and cooperation with local and global human rights bodies. It operates six regional offices. Responding to hatred and discrimination is also part of the NHRCK's main roles.

Hatred in the South Korean society has become more evident in the online space since 2010s, most of them directed towards women, migrants and certain regions. For example, when around 550 Yemenis landed on Jeju Island and sought refugee status in 2018, it exposed hatred against Muslim refugees. Hateful expressions against them spread rampantly through various channels that included "fake news". Those against queer cultural festivals also contributed to hatred that sometimes culminated in violent acts. In response, a number of UN human rights treaty bodies issued recommendations to South Korea concerning the issue of hate speech.

With regard to the work of the NHRCK, Oh shared some of the concrete cases it dealt with. One of such cases was the local government's suspension of the construction of a mosque. The sole reason of the suspension was complaints from neighbours which were linked to stigma against Muslims and Islam. In the NHRCK's view, the way the local government handled the issue was a violation of human dignity, value and rights. Hate speech cases on other grounds included those inciting or further encouraging negative perceptions and bias against LGBT+ people. For example, one public figure running for office expressed his opposition to a queer cultural festival at the city centre and justified the rejection of LGBT+ people as a right.

The NHRCK launched a special initiative titled "proactive response to spread of hate speeches", and the Hatred and Discrimination Response Planning Team was formed in 2019 with three strategic objectives: to raise awareness and promote public discussions on the issue; to encourage voluntary response; and to respond to hate speech. In line with the first objective, the NHRCK surveyed public awareness about hate speech. The results showed that 6 in 10 people had experienced hate speech. 7 out 10 teenagers responded that they experienced

hate speech, mostly at school or from a friend. The results also formed the basis for the “Hate Speech Report” which gave an analysis into hate speech and provided response guidelines.

Under the second objective, the NHRCK and 9 media outlets and organisations agreed in January 2020 on the principles of zero-tolerance for hate speech. It is comprised of 7 principles that will be integrated into “human rights-based reporting guidelines” to serve as a reinforced standard. Furthermore, the NHRCK agreed with the superintendents of 17 municipalities in May 2020 to create safe schools without hate speech. The NHRCK developed and deployed various hate speech education materials and a checklist for action.

Oh pointed out that the distinctions between the so-called “pure blood” and “mixed blood” and between nationals and non-nationals are widespread in the South Korean society, which lead to discrimination and exclusion. It was clearly shown in the COVID-19 pandemic when various municipalities labelled migrant workers as a high-risk group and made diagnostic testing mandatory for them, and some provinces excluded foreign residents from emergency relief funds.

In the second half of 2020, promotional materials produced by government and municipalities contained discriminatory expressions based on gender and race. The NHRCK started monitoring hate speech in government materials and identified numerous discriminatory instances. For example, disasters and safety related policies were designed for nationals only. While white people were portrayed positively, those from Southeast Asia were described in a negative manner. They also documented problematic expressions of people with disabilities and women in government materials.

The NHRCK's activities have mostly focused on creating an environment to prevent hate speech. Oh stressed that the government needs to adopt effective measures including comprehensive anti-discrimination law. In 2006, the NHRCK recommended the government to introduce an anti-discrimination act, and again in June 2020 it issued an opinion that “Act on Equality and Anti-Discrimination” must be legislated. Oh affirmed the NHRCK's commitment to work against hatred and discrimination through advocacy, capacity building and other measures available to them.

As a speaker from civil society, Kim presented the outcome of a study on racial discrimination in government documents. The study was part of three monitoring projects proposed by the NHRCK on hate and discriminatory expressions in government documents in gender, disability and migration. The project on migration was conducted from 15 February to 31 May 2021 by a team of 25 activists, lawyers, scholars and students, many of whom were part of the Organising Committee for East Asia Regional Consultation. It reviewed official websites of 18 central government bodies and their affiliated agencies, as well as their social media accounts. The Ministries of Labour and Employment, Health and Welfare, Gender Equality and Family, Justice, and Oceans and Fisheries were identified as key ministries.

The study revealed that there were 150 cases of discriminatory expressions in communications of 18 ministries and 6 affiliated agencies. Websites, press releases and blogs were the channels that contained such expressions the most among others. Three most frequent categories of expressions were: stereotyping, inducing prejudice and fixing a social

role; hate speech, discrimination and disparagement; and association with social problem, danger and violence. The study found that terms such as “illegal” and “multicultural” were used in the government’s communications, despite the fact that the CERD recommended South Korea against the use of such terms. Also, illustrations used in the government’s materials concerning “illegal migrants”, “fake marriages” and English teachers were found to induce stereotypes and associate migrants with social problems. Furthermore, the study found that migrants were made invisible and under-represented by the use of the term “nationals” in communications from the government. Kim pointed out that the term is used frequently without considering its exclusive implication.

The study’s outcomes were widely reported by major newspapers. As a result, the team found that most of the problematic online postings identified in the study were deleted without any announcement. As the study helped CSOs to develop strategies and methods, Kim suggested the need to strengthen the monitoring work by different stakeholders including the Prime Minister’s Office, accompanied with mandatory trainings to promote diversity and human rights. He stressed that special efforts should also be taken to address unequal representation and invisibility of migrants in South Korea.

Q&A session

The audience actively engaged with the panellists and posed a number of questions to them. Regarding Hong Kong, one of them asked how the handling of IP address can ensure free speech. Another participant asked who is promoting hate speech in Hong Kong. Cheung clarified that the disclosure of IP address should be restricted to cases in violation of the national law and in line with guidelines of social media platforms to allow the EOC or police to intervene properly. In response to the second question, she explained that the government’s communications often exclude ethnic minorities, similar to South Korea, though there had been certain improvements. In addition, news contents and some politicians often portray ethnic minorities and migrants including asylum-seekers and refugees negatively, which has been apparent in the pandemic.

Questions on Japan included whether victims can use the ICERD in national courts and whether the enactment of the Hate Speech Elimination Act had an impact on the government’s reservation on Article 4 (a) and (b) of the ICERD. Morooka explained that more and more lawyers are using the ICERD in litigation. Specifically, they use the definition of racial discrimination in the ICERD in order to argue the act in question is in violation of the civil code constituting all illegal behaviour. The Hate Speech Elimination Act does not prohibit hate speech, therefore it does not impact the Japan’s reservation on Article 4. She pointed out that the government has justified its reservation on Art 4 (a) (b) for the reason that the withdrawal of the reservation would threaten freedom of speech guaranteed by Article 14 of the constitution. However, the CERD General Recommendation No. 35 on “combatting racist hate speech” clarified that the criminal law should be only applied to most serious cases of hate speech while other instances should be addressed through administrative and other measures. Hence, she argued that the rationale of the Japan’s reservation on Article 4 is invalid, since it is based on the concern on criminalising all instances of hate speech. In addition, a question on the Japanese society’s perception of nationals was raised. Morooka pointed out the

existing double standard. The Japanese background of a person tends to be highlighted when the person is a successful figure, while the foreign background is stressed in negative instances.

The audience asked follow-up questions to the speakers from South Korea regarding the study. Kim elaborated that there were differences in types of expressions depending on different groups. For example, people with darker skin colour were associated with the particular ideas such as dangerous or stealing jobs. In response to the question on the definition of invisibility in the study, he explained that there is the need to further develop such a definition for future monitoring activities as invisibility could apply throughout the study. In relation to the pandemic, one participant from Japan asked whether the recent news about the low vaccination rate among foreign nationals was based on prejudice or not. Kim clarified that out of 3 million migrants in South Korea, 20% of them were undocumented. In fact, the Korean government recognised the presence of undocumented migrants for the first time to promote vaccination and testing for COVID-19. At the same time, the lack of trust in the government from undocumented migrants and exploitative working conditions remained as obstacles to ensure their access to vaccination.

Cheung added that MDWs and refugees in Hong Kong face similar obstacles. Until July 2021, refugees in Hong Kong did not have access to COVID-19 vaccination. Also, there had been statements based on stereotypes that portrayed ethnic minorities as a high-risk group for COVID-19 infection. Cheung pointed out that the term “ethnic minorities” has been used in Hong Kong with negative connotations, similar to the use of the term “multicultural” in South Korea.

In the interactive discussion, Cheung asked the other panellists if there was anyone prosecuted for hate speech in South Korea or in Japan. While there was no such case in South Korea, defamation is criminalised and there were attempts to bring instances of hate speech to court, though they were unsuccessful. The current law including the Human Rights Commission Act does not cover hate speech against groups. The NHRCK has been calling for the adoption of comprehensive anti-discrimination law that would criminalise racial discrimination. In Japan, there were a number of cases that persons were punished for hate speech under the existing domestic law. However, they were not prosecuted for discrimination but for defamation, contempt or other offences.