

[Keynote Speech, 2020 Conference on Combating Hate and Discrimination]

Hate and Discrimination,
Challenge and role of the human rights community

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Hate and Discrimination – A challenge for the human rights community

Human history is a history that has excluded and discriminated against people by dividing them based on certain attributes, and at the same time, it is a history filled with efforts to reflect on and eliminate such discrimination. Groups such as women, people with disabilities, other religion and other ethnicity as well as sexual minorities that have been discriminated against, were stigmatized as an inferior, worthless and dangerous group and they were subjected to numerous wars, violence and genocide. However, going through World War II, the human rights community have realized how dangerous such exclusion, hatred and discrimination is and that reflection led to creation of international human rights standards.

It is not an exaggeration to say that non-discrimination and prohibition of discrimination is the most important principle that is at the heart of international human rights standards. The principle of equality and prohibition of discrimination is enshrined in various international human rights instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. It is prescribed that everyone is born free and equal in dignity and rights; shall not be discriminated based on any grounds such as religion, race, skin color and sex; and is entitled to enjoy fundamental freedom and rights prescribed under international human rights treaties. Governments of States have promised to realize the principle of equality and prohibition of

discrimination by joining international human rights treaties.

The scope of prohibition of discrimination is gradually expanding as theory on equality is becoming sophisticated and a new discrimination is being “identified”. However, the human rights community is currently faced with reality with proliferated hatred against migrants, refugees, people with certain race and religion and sexual minorities and politics that instigates anger against these people. A claim has emerged that not only denies the value of difference and coexistence of members of the society but also argues that it is a “right” to exclude and discriminate against certain people. Hate and discrimination threatens the hard-built value of universal human rights and democracy and poses a great challenge to the human rights community.

Spread of hate and discrimination resulting from discriminatory stereotypes and prejudices is a worldwide issue. It not only reinforces discrimination against the group subject to hate but also divides society and undermined democratic value by expanding and recreating the social structure of exclusion and suppression based on discrimination.

Hatred has two roots in Korean society. First, hatred was one of the most effective political tools in modern Korean history. Hatred was created by State and utilized as a tool to discipline or control the people or suppress political opponents. On the other hand, there has been a tendency in recent days that hatred is created due to discontent and fear on unstable status with exacerbating sociopolitical inequality. It was early 2010 when hatred started to be openly expressed. In early 2010, through international communities, hatred against women, immigrants, certain region, and democracy activists started to be expressed. One of the notable examples is a hate crime against women where a male murdered an unspecified woman randomly in a public restroom near Gangnam Station. In addition, in 2018, when 550 Yemeni refugees entered Jeju Island and applied for refugee status, hatred against Muslim refugees was expressed and some media

exacerbated such hatred. At the Queer Culture Festival held in the same year, hatred against festival participants was expressed by some groups opposing the festival. In addition, some politicians instigated hatred and discrimination in various elections.

Recently, amidst worldwide spread of COVID-19, we are faced with another form of hatred and discrimination. Korean government's response to COVID-19 has been evaluated as an exemplary case, but people with disabilities and the elderly in facilities, workers under unstable working condition, women care workers and migrant workers are exposed to the risk of this infectious disease. At the early stage of spread of COVID-19, migrants were not able to buy a mask provided by the government, and they were excluded from emergency government subsidy plan as well.

In particular, various groups have become subject to stigmatization and hatred during the course of spread of COVID-19. At first, it was Chinese people and Chinese migrants. Then, with occurrence of collective infection among people with certain religious, members of that religious group and local residents of the region with confirmed cases became the subject for hatred. Sexual minorities were the next target. Some media has emphasized that the very first person confirmed positive visited a "gay-club" and quarantine authority disclosed personal information of a confirmed case, which led to exacerbated hatred and stigmatization against sexual minorities, and as a result they have suffered from human rights infringement due to outing.

The situation caused by COVID-19 has clearly revealed the long-existed problem of inequality, discrimination and hatred. At the same time, it served as an opportunity to reaffirm that response of society to overcome the crisis of disaster must be based on respect for human rights and equality. For the principle of equality and prohibition of discrimination to be the main principle that operates society, a legislation is needed.

2. Legislation of principle of equality

Principle of equality does not mean absolute equality that denies any differential treatment. Rather, it means “Equality for the same thing, and difference for differing things.” That is, equal condition should be treated equally and different condition should be treated differently. Equality and prohibition of discrimination is the minimum condition required to guarantee that different people freely enjoy their lives in respect for their difference and equality. International human rights standards explicitly prescribe the principle of non-discrimination and prohibition of discrimination. The European Union, in the early 2000, created four guidelines on principle of equal treatment and recommended them to member states. In addition, many countries have enacted act on equality or prohibition of discrimination.

The principle of equality is the core principle of the Korean Constitution on the guarantee of fundamental rights. The Constitution prescribes in its preamble to provide equal opportunity to everyone in all sectors of politics, economy, society and culture, and Article 11.1 declares “All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on accounts of sex, religion or social status.” Movement for democracy in 1980s has expanded to activities to stipulate prohibition of discrimination, moving beyond political democracy. As a result, Equal Employment Opportunity Act was enacted in 1987, and in 2001, the National Human Rights Commission of Korea Act was enacted.

Of course, there are individual laws that deal with discrimination based on certain grounds such as disabilities or sex in Korea. However, as such legislations apply only in certain grounds of discrimination or area, there is a gap in dealing with various discrimination issues. In addition, even though various grounds of discrimination are prescribed under the National Human Rights Commission of Korea Act, it does not specifically stipulate the concept and type of discrimination, making it hard to determine what is discrimination. For all these reasons, enactment of a comprehensive act that deals with all discriminations

and provide a standard for consistent judgment has become a calling of the times.

That is why, the National Human Rights Commission of Korea recommended the government to enact an anti-discrimination act in 2006. However, with objection from some protestant groups that called for deletion of a provision regarding sexual orientation, the government had to step back and proposed a draft legislation, which failed to pass the National Assembly. After the recommendation of the NHRCK, related legislations were proposed 7 times, but none of them led to enactment. Some legislations were withdrawn due to severe objection from some religious groups.

In Korean society, discourses on anti-discrimination acts have been mainly centered on sexual orientation and gender identity as a ground of discrimination. That is why in order to enact an anti-discrimination act, such discourse with single direction has to be addressed. People who oppose enactment including some protestants argue that anti-discrimination act that regulates discrimination based on sexual orientation and gender identity encourages homosexuality, infringes the freedom of religion and conscience and that prohibiting discrimination against sexual minority is reverse discrimination against religion. It remains a task to persuade people that anti-discrimination act is not an act to regulate the freedom of religion and conscience and that it is to create minimum condition to enable people with different beliefs and perspectives to co-exist freely and equally.

Human rights treaty bodies such as the UN Human Rights Committee, Committee on ICESCR, and Committee on Elimination of Racial Discrimination continued to recommend the Korean government to enact anti-discrimination act from 2003. The NHRCK, in June this year, expressed its opinion to the National Assembly that there is a need to enact an Act on Equality and Prohibition of Discrimination (Equality Act) and proposed a draft legislation for reference.

The fact that there is a growing social consensus on enactment of an equality act in Korean society has to be

noted. According to a survey conducted by the NHRCK in April, 88.5 percent of respondents answered that there is a need to enact an anti-discrimination act. Ironically, spread of COVID-19 served as a chance for people to experience that discrimination is related to their own lives as well. 9 out of 10 respondents answered that there is a need for active efforts to address discrimination because other people's rights must be respected as well, and because I can be discriminated against or become minority any time. There is a higher support from religious groups for enactment.

When an equality act is enacted, an individual discriminated against will be able to receive appropriate remedy. However, enactment of an equality act is not just about providing a remedy for individual damage. It will prevent occurrence of potential discrimination with enhanced awareness on discrimination. In particular, it will enhance society's overall sensitivity by making people to think what is equality and what should be done to realize an equal society, which will lead to improvement of discriminatory practices or institutions.

3. Task of the Human Rights Community

Amidst worldwide spread of hate and discrimination against social minorities, we reaffirm state's responsibility to guarantee human rights. The state needs to present what values are undermined due to discrimination and hate as well as legitimacy of response to this discrimination and hate, and draw social consensus. They also need to educate people to respect diversity and treat each other equally as a citizen, and to reinforce promotional policy. Efforts should be made to promote alternative expression rather than hate and discrimination and freedom of expression of minorities. Foundation for self-regulation also has to be laid to prevent media or online platform companies from encouraging hate and discrimination. In addition, legal system must be established to realize this.

The human rights community should present policy direction and alternatives to fight against hate and

discrimination and lead nation's policy as well as gather social capacity. In particular, human rights institutions of the state and local governments are the pivot in playing this role. The NHRCK, in 2019, created a specialized division to deal with hate and discrimination which conducted fact-finding surveys, monitored media and presented recommendation to address hate and discrimination. It also created a guideline on prevention of hate and discrimination and drew a declaration from media and education sectors for self-regulation. In particular, it called for measures to prevent hate and discrimination against social minorities and remedies amidst the spread of COVID-19.

In Korean society, enactment of an equality act is a task that can no longer be postponed. The NHRCK, since expression of its opinion for enactment of an equality act in June to the National Assembly, explained the necessity of enactment to members of the National Assembly. It also listened to opinion of religious groups and asked for support and cooperation for enactment. In addition, it carries out diverse activities to publicly discuss an equality act and draw support from each societal sector as well as campaigns to formulate public opinion.

During this conference, the NHRCK, EU and APF, as well as the international community will be discussing measures to respond to the common challenge of hate and discrimination. The conference is a valuable opportunity where exemplary cases will be shared and cooperative measures for the human rights community will be discussed. It is hoped that this conference serves as an opportunity to lay a foundation for international cooperation to respond to discrimination and hatred.