



Can Strategic Human Rights Litigation Complement Social Movements?

A Case Study of the Anti-Hate Speech Movement in Japan

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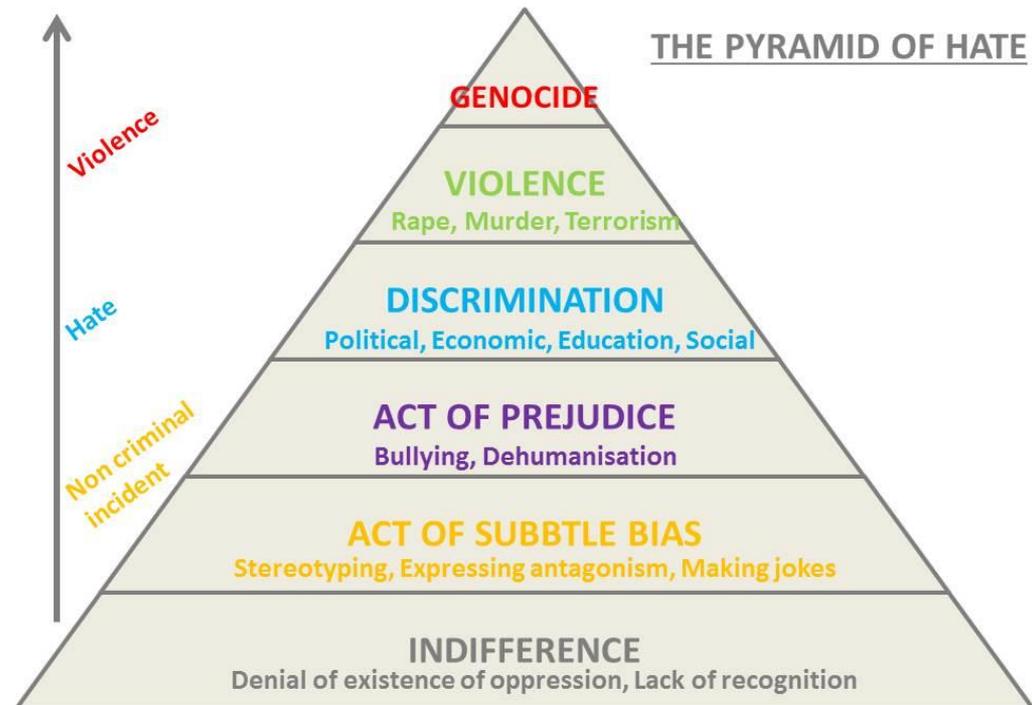
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What is “Hate Speech”?

- ▶ Hate speech defames, belittles, or dehumanizes a class of people or person on the basis of certain inherent properties — typically race, ethnicity, gender, or religion.
- ▶ Hate speech these days is not just “mere speech” by an individual. In this digital age, hate groups have gained real power to deprive others of rights to speech by using the media and the Internet.



Source: 2005 Anti-Defamation League

Global Rise of Xenophobia, Extremist and Nationalism



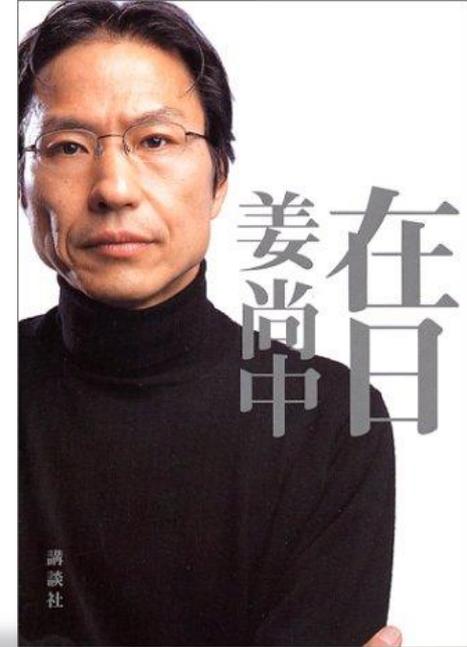
Hate Speech Rise in Japan

- ▶ Apart of a worrying global phenomenon, racism and ultra-nationalistic campaigns against ethnic minorities have seen a quick and serious growth in Japan.
- ▶ The growing number of hate speech rallies against foreign residents, mainly residential Koreans (*Zainichi* Koreans), vitriol on the streets and on the Internet has drawn both domestic and international public attention and criticism
- ▶ The Japanese Justice Ministry confirmed that 1,152 hate speech rallies were held from April 2012 to September 2015.



Who are *Zainichi* Koreans and Why they are targeted?

- *Zainichi* Korean (ethnic Korean residents in Japan) :Koreans who came or were brought to Japan during Japan's colonial rule of Korean peninsula, and their descendants. Foreign residents with special legal status in Japan.
- However, Discriminated in its legal system since Japan's colonial, expansionist era and postwar



Who are those in hate rallies?

- ▶ *The Zainichi Tokken wo Yurusanai Shimin no Kai* (Group of citizens who do not tolerate privileges for ethnic Korean residents in Japan), popularly known as *Zaitokukai*
- ▶ Diplomatic and historical problems behind their claim
- ▶ *Zaitokukai* also uses the internet as another medium for hate speech and to spread racist ideas and biased information meant to incite hatred and racial discrimination.





Hate Speech in Legal Limbo in Japan

- ▶ Despite the situation, there has been no effective regulation of discriminatory speech in Japan.
- ▶ Japan has neither comprehensive legislation prohibiting all forms of hate speech nor a statute specifically prohibiting racially-motivated hate speech.
- ▶ The current criminal code punishes defamation, personal insults, and forcible obstruction of business as crimes. However, defaming or insulting a general group does not constitute a crime and has no effect on hate speech. Current Japanese law only regulates cases in which victim(s) can be specifically identified.
- ▶ Tort under the civil code is only applied when a specific group or individual is targeted.
- ▶ Consequently, hate speech or rallies targeting “*Zainichi* Koreans” or other minorities in Japan are not prohibited even if they are unbearably derogatory and insulting.

Recommendation from the UN Human Rights Body and the Government's response



- ▶ The U.N. committee urged Japan to change this position and take “appropriate steps to revise its legislation,” to regulate hate speech (CERD in 2010) .
- ▶ The U.N. human rights body resolution asking Japanese Government to regulate hate speech : CERD in 2010 and 2014, ICCPR 2014.



Actions to spread or promote the idea of racial discrimination have not been taken in Japan to such an extent that legal action is necessary. ” “The definition to be found in articles 4 (a) and (b) of the Convention was open to broad interpretation and its incorporation into penal law could lead it into conflict with the Japanese Constitution, which guaranteed freedom of expression” .
(CERD/C/SR.2310) (2013)

Change of the Politics and Establishment of Anti-hate speech Legislation

- However, in May 2016, Japanese Diet passed **“The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan”** (Hate Speech Dissolution Act)

Stop! Hate Speech

STOP! HATE SPEECH

In recent years, “hate speech” – discriminatory expression and behavior aimed at specific ethnic groups or nationalities – has become a matter of grave concern. Such language or behavior not only causes feelings of anxiety and repugnance, but could also violate the victims’ dignity as human beings and fuel discriminatory attitudes.

Recently, the hate speech has been widely reported in the media, on the Internet and elsewhere, illustrating a rise in social concern. Ways of dealing with hate speech were recommended to the government in [“Concluding Observations on the Sixth Periodic Report of Japan” by the UN Human Rights Committee in July 2014](#) (PDF)* and [“Concluding Observations on the Combined Seventh to Ninth Periodic Reports of Japan” by the UN Committee on the Elimination of Racial Discrimination in August of the same year](#) (PDF)*.

In response, the “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” was enacted by the National Diet of Japan and brought into force on Friday, June 3rd, 2016.

Meanwhile, the human rights organizations of the Ministry of Justice are actively engaged in public awareness-raising and PR campaigns, using the methods shown below, to make it clearly understood that this kind of hate speech is not acceptable. These are in addition to the awareness campaign previously conducted on the theme of “Human Rights of Foreign Nationals” (“Respect for Foreign Nationals’ Rights”).

*Links to the Ministry of Foreign Affairs website.

■ Details of awareness campaigns

- (1) Campaign using newspaper advertisements
- (2) Campaign using [posters](#) (PDF) and [leaflets](#) (PDF)*
- (3) Campaign using public transport advertisements (advertising in railway stations)
- (4) Campaign using [Internet ads](#)
- (5) Campaign using spot video ([can be seen on YouTube](#))
- (6) Expanded opportunities to raise awareness through training in human rights classes and others
- (7) Enhancement of public information and PR through the Counseling Service ([“Human Rights Counseling Service”](#))

*Please do not modify or alter the posters or leaflets.

■ Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan”

[article](#) (PDF)

[Supplementary resolution \(House of Councillors Committee on Judicial Affairs\)](#) (PDF)



Kyoto Korean School Attach case

- ▶ On December 4, 2009, men from Zaitokukai and other ultra-nationalistic group flying the Japanese flag stood in front of the Korean School in Kyoto shouting, “Spies of North Korea, get out of Japan!”
- ▶ As the marchers shouted through their bullhorns, their hateful words were heard by the 170 elementary students in the school building. Many children were brought to tears from fear, which prevented classes from continuing.
- ▶ The demonstration escalated as Zaitokukai and other members started to violently pull down soccer goals in the local park used by Korean students and to detach school equipment such as platform and speakers. Similar demonstrations around the school with even more protesters were held on January 14 and March 28, 2010.





Epoch-making Kyoto Korean School Case

- ▶ Hate Speech rallies by *Zaitokukai* and other nationalistic groups in front of the Korean School in Kyoto, Japan on December 4, 2009, January 14 and March 28 in 2010.
- ▶ On June 28, 2010, Kyoto Korean school filed a civil lawsuit at the Kyoto District Court
- ▶ On October 7 in 2013, the Kyoto District court ordered *Zaitokukai* to stop hateful protests against a Korean school in Kyoto and pay the school 12.26 million yen (approximately US\$126,400)
- ▶ On July 8th, 2014, the Osaka High Court affirmed the decision of the Kyoto District Court. On December 9, 2014, the Japanese Supreme Court rejected the defendants' appeal.

Strategic Human Rights Litigation: Effects of Litigation Strategies on Social Movements

	Internal Effects	External Effects
Positive Effects on the Movement	<ul style="list-style-type: none"> • Raise consciousness and develop oppositional consciousness (positive constitutive or meaning-based change as well as instrumental change) • Form a collective identity • Attract financial resources and participants to the movement • Attainment of legal remedies 	<ul style="list-style-type: none"> • Increase bargaining power • Attract publicity and public attention • Provide legitimacy to the movement's claims • Provide recognition and dignity to individuals • Make allies
Negative Effects on the Movement	<ul style="list-style-type: none"> • Drain resources and divert energy from more effective strategies(Cost) • Potentially demobilize participants if the litigation is unsuccessful (negative constitutive or meaning-based change as well as instrumental change) 	<ul style="list-style-type: none"> • Mobilize opponents, counter movements(backlash) • Shore up the existing legal system; deradicalization (Elitist movement) • Fail to produce meaningful change on the ground, resulting in symbolic victory only (ineffective)

Impact of Kyoto Korean School Case: Turning Point

	Internal Effects	External Effects
Positive Effects on the Movement	<ul style="list-style-type: none"> • Raised consciousness in <i>Zainichi</i> Korean community (the role of cause lawyers) • Attainment of legal remedies (+ stop hate rallies around the school) 	<ul style="list-style-type: none"> • Increase bargaining power • Triggering other lawsuits • <u>Anti-hate speech law and ordinance (Osaka)</u> • Provide legitimacy to the movement's claims • <u>Attract publicity and public attention</u> • <u>Make allies (National counter-hate movement)</u> • Mitigation of hate speech rallies / demos
Negative Effects on the Movement	<ul style="list-style-type: none"> • Ethnic education/ identity claim left out 	<ul style="list-style-type: none"> • Mobilize opponents • Anti-hate speech law and media coverage: Deradicalization: fail to produce meaningful change on the ground, resulting in symbolic victory only ? ¹³

Why?

Key: Internalization of international human rights norms into judicial rulings and social movement

1. Change of judicial attitude toward International Law to spread into the movement allying with non-Koreans
2. Rise of civil society movement and Internalization of International law



1. Change of judicial attitude toward International Law

The Kyoto District Court ruling can be seen as indicative of a change in attitude of the Courts in Japan toward international human rights law.

- The Court unprecedently held that the hate rallies around the school were “illegal” as the actions “constitute racial discrimination as defined by the ICERD.” It ruled the hateful rallies were not protected as free speech and that the group was no longer allowed to stage their hateful protests against the Kyoto Korean School with paying the school high compensation.
- Though judges hesitated to apply international legal provisions against private persons in the 1980s and 1990s, a recent series of racial discrimination lawsuits, Japanese judges will likely continue to use international law to regulate interpersonal relationships(Prof. Webster, 2010).



1. Change of Judicial Attitude toward IL (Cont.)

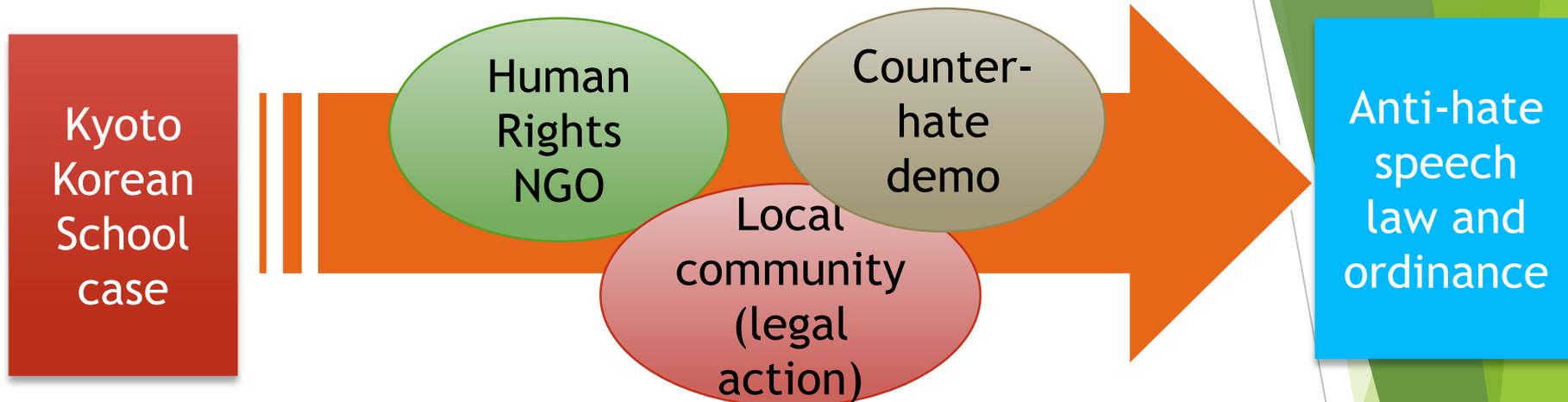
Spread into the movement allying with non-Koreans

- ▶ The Kyoto Korean School ruling, referring to the ICERD and condemning racism, has made the issue more universal. The ruling has helped make the issue not only about *Zainichi* Koreans but also about everyone in society, pushing the other minorities and majorities of the society into the major actors of the anti-racism movement.



“Thinking about the situation at that time, it was probably best for us that the district court emphasized racial discrimination as a violation of international human rights law and affirmed a high amount of compensation based on the discussion. If its ruling focused on right to ethnic education, at this first trial stage, the judgment could have resulted in protests against the Kyoto Korean School.”

2. Rise of civil society movement and Internalization of International law



“Our organization is driven by protecting universal human rights. Based on the concept of universal human rights and through spreading of the concept, we aim to diminish hate speech”

ヘイトスピーチ (差別扇動) デモ&街宣に反対してます。

We oppose hate demonstration and propaganda.

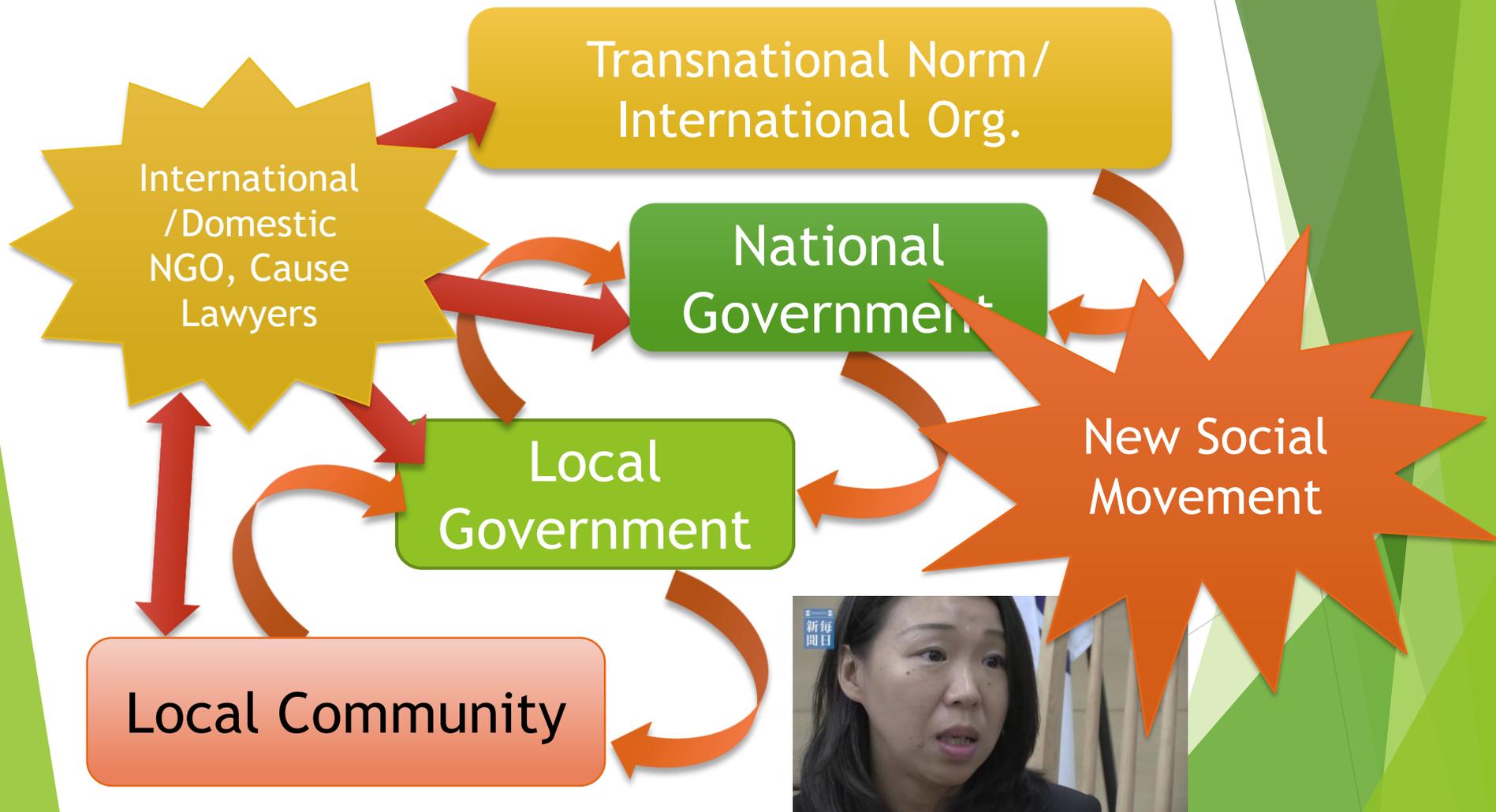
우리는 배외주의자들의 시위와 프로파간다를 반대합니다.

我们反对排外主义者的游行示威。

NO HATE! NO RACISM!

Anonymous, the member of a local counter hate speech organization Anti-Racism Project (ARP)

2. Rise of civil society movement and Internalization of International law(Con't)



Conclusion

Can Strategic Human Rights Litigation Complement Social Movements? -YES

- ▶ Litigation is not a solely a conservative strategy dominated by elites, but is rather a cooperative and dynamic process comprising of lawyers and civil society, local communities and even international human rights bodies, who built a united front against hate speech and brought “success” of Kyoto Korean School case as strategic human rights litigation
- ▶ In this case, **internalization of universal human rights value in the court and social movement** is a key

**HUMAN
RIGHTS
FOR ALL**

誰もが差別されない社会へ

STOP! HATE SPEECH

ヘイトスピーチ
許さない。



Thank you for listening!

Any questions and comments are
welcome to:

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Hate Speech Dissolution Act (2016)

The Act on the Promotion of Efforts to Eliminate
Unfair Discriminatory Speech and Behavior
against Persons Originating from Outside Japan

本邦外出身者に対する不当な差別的言動の解消に
向けた取組の推進に関する法律

Hate Speech Dissolution Act (2016)

Art. 1 (purpose)

In view of the fact that the elimination of unfair discriminatory speech and behavior against persons originating from outside Japan is a pressing issue, the purpose of this Act is to set out the basic principles for efforts towards their elimination, and to clarify the responsibilities of the national government, etc., as well as to set out and promote the basic measures.

Hate Speech Dissolution Act (2016)

Art. 2 (definition)

In this Act, “unfair discriminatory speech and behavior against persons originating from outside Japan” shall mean unfair discriminatory speech and behavior to incite the exclusion of persons originating exclusively from a country or region other than Japan or their descendants and who are lawfully residing in Japan (hereinafter referred to in this Article as “persons originating from outside Japan”) from the local community by reason of such persons originating from a country or region other than Japan, such as openly announcing to the effect of harming the life, body, freedom, reputation or property of, or to significantly insult, persons originating from outside Japan with the objective of encouraging or inducing discriminatory feelings against such persons originating from outside Japan.