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### **Fact-finding Report**

## **The Realities of Hate Speech Against Korean Residents In Japan (“*Zainichi* Koreans”)**

November 2014

International human rights NGO Human Rights Now

In cooperation with: Korea NGO Center

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# Fact-finding Report on the Realities of Hate Speech Against Korean Residents In Japan (“*Zainichi* Koreans”)

## 1. Purpose of this research and methods employed

In recent years, so-called “hate speech” has become an increasingly serious problem in Japan. In particular, propaganda expressing ethnic hostility, discrimination, and animosity against Korean residents in Japan (hereinafter “*Zainichi* Koreans”) have been found frequently.<sup>1</sup>

In light of this situation, Human Rights Now<sup>2</sup> carried out fact-finding research to reveal relevant facts, which should form the foundation for the discussion of policy decisions regarding hate speech against many and unspecified groups.

While there is no established definition of hate speech, in accordance with the framework of relevant international human rights treaties, it can be defined as a “manifestation of discrimination, hostility or hatred on the basis of race, ethnicity, language, religion, nationality, origin and gender, instigation thereto, and instigation of violence”.

Although hate speech is a broad category and it can appear in diverse forms of expression as mentioned above, this research focuses only on the impact of street propaganda and Internet hate speech on *Zainichi* Koreans, which is one of the most serious current problems in Japan.

The research method employed by this paper is as follows: in cooperation with the special nonprofit organization Korea NGO Center, we carried out individual interviews with 16 *Zainichi* Koreans living in the Kansai region (10 male, 6 female; ages: 10s - 1 person, 20s - 2 persons, 30s - 4 persons, 40s - 3 persons, 50s - 6 persons). The interviews were carried out individually on April 19, June 25, and July 15, 2014. The interviewees were asked about their experiences and feelings of victimization caused by hate speech.

The interviewees were not selected randomly. Rather, they were limited to *Zainichi* Koreans who had been interested in some way in counter-activities against hate speech and hateful street propaganda (hereinafter, “hate propaganda”). However, at the same time, not all the interviewees had been involved in such social activities as *Zainichi* Koreans.

Human Rights Now recognizes it would have been more desirable to carry out this research with a broader number of *Zainichi* Koreans in general. However, please keep in mind that this research is the first trial of this kind, and thus, we ask to please excuse any deficiencies of the method employed herein.

For your information, Human Rights Now submitted a report titled “A Counter Report Regarding Status of Human Rights” to the United Nations in June 2014, for the purposes of preparing for monitoring of Japan by the United Nations Human Rights Committee (hereinafter, “UN Human Rights Committee”).<sup>3</sup>

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<sup>1</sup> The word “*Zainichi*” refers in general to foreign citizens residing in Japan.

<sup>2</sup> Human Rights Now is an international human rights NGO, headquartered in Tokyo. It is an authorized nonprofit organization in Japan. It acquired a special consultative status with the UN Economic and Social Council (ECOSOC) in 2012. See <http://hrn.org.jp>

<sup>3</sup> Available at <http://hrn.or.jp/activity/hrn%20iccpr%20report%20final.pdf>

## 2. International standards for the regulation of hate speech

### a) Three international human rights treaties:

Because the term “hate speech” itself is new in the domain of international human rights law, there are no specific definitions of it. However, there are three treaties restricting racist hate speech.

First, the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) treats the most dangerous form of hate speech, “[d]irect and public incitement to commit genocide” (Article III), as a crime, and prescribes criminal punishment for it.

Second, the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter, “ICERD”) sets forth fundamental obligations for each state party to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms” (Article 2), while Article 1(d) stipulates that “(e)ach State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization”.

In particular, Article 4 addresses restrictions on hate speech and hate crimes, as a special provision of Article 2. Article 4 requires “States Parties [to] condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights” and, “[States Parties], inter alia:

- (a) Shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offense punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

Third, Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

### b) General recommendation No. 35: Combating racist hate speech

The Committee on the Elimination of Racial Discrimination (hereinafter, “CERD”) of the United Nations (hereinafter, “UN”), adopted in August 2013 “General recommendation No. 35: Combating racist hate speech”.<sup>4</sup>

General recommendation No. 35 states that all the specific forms of expression listed in Article 4 of the ICERD that is directed against groups listed in Article 1 of the ICERD (such as indigenous peoples, immigrants or non-citizens) will be treated as racist hate speech in the CERD’s practice. It also mentions “speech attacking particular racial or ethnic” groups as a form of racist hate speech, as well as explaining that racist hate speech is “understood as a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society.”<sup>5</sup>

The CERD has also underlined the role of racist hate speech in processes leading to mass violations of human rights and genocide, and recommends that the states parties declare and effectively sanction as offences punishable by law:

- (a) All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;
- (b) Incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin;
- (c) Threats or incitement to violence against persons or groups on the grounds in (b) above;
- (d) Expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination; and
- [(e) Participation in organizations and activities which promote and incite racial discrimination.]<sup>6</sup>

However, at the same time, the CERD recommends that the criminalization of racist expression should be reserved for only serious cases, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups, and the intention that the application of criminal sanctions should be governed by principles of legality, proportionality and necessity.<sup>7</sup>

### 3. The situation in Japan

- a) Current situation of hate speech and circumstances of relevant legislative regulations

Hate speech targeting *Zainichi* Koreans is deeply tied to the history of Japanese colonial rule over the Korean Peninsula and has been prevalent in Japanese society for a long time. Even without referring to the

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<sup>4</sup> Available at

<http://nhri.ohchr.org/EN/Themes/Durban/Documents/CERD%20Recommendation%20no.%2035.pdf>

<sup>5</sup> Committee on the Elimination of Racial Discrimination, *General recommendation No. 35: Combating racist hate speech* (26 September 2013), para. 7 and 10.

<sup>6</sup> *General recommendation No. 35: Combating racist hate speech*, para. 3 and 13.

<sup>7</sup> *General recommendation No. 35: Combating racist hate speech*, para. 12.

massacre of Korean residents after the 1923 Great Kanto Earthquake, there have been many hate crimes which are escalated forms of hate speech. Since the 1980s, every time the relationship between Japan and the Democratic People's Republic of Korea (hereinafter, "North Korea") has gotten strained, verbal abuse, violence, and harassment against *Zainichi* Koreans' schools and their students has occurred throughout Japan. For example, there was a case in which someone slit the ethnic costumes that female *Zainichi* Korean students wore as uniforms at one such school. Confirmation of a series of abductions of Japanese people by North Korea led to more than 1,000 cases all over the country during a period of half a year from September 2002.

At the same time, in recent years, along with spread of the Internet, anonymous discriminatory postings have also increased rapidly. In January 2007, the Association of Citizens against the Special Privileges of the *Zainichi* Koreans (hereinafter, "*Zaitokukai*") was founded. Their xenophobic demonstrations and hate propaganda have spread via the Internet from tens to hundreds of people all over Japan. Since 2012, hate propaganda by *Zaitokukai* and other similar groups has been further increasing on the streets of Tokyo, Osaka, Kobe, Kyoto, Kawasaki, Sapporo and other cities.

As explained above, Japanese society has witnessed the spread and escalation of hate speech and hate crimes in recent years. However, there is no law restricting hate speech against many and unspecified groups. In fact, hate propaganda activities have been largely unregulated, and police officers have given the impression that they are just there to protect the "freedom of expression" of the xenophobes.

Despite the situation, there is neither comprehensive legislation prohibiting all forms of hate speech nor a statute specifically prohibiting racially-motivated hate speech. The current criminal code punishes defamation, insults, and forcible obstruction of business as crimes. However, defaming or insulting a group of persons does not constitute either crime and has no effect on restricting hate speech. Current Japanese law only regulates cases in which victim(s) can be specifically identified.

For example, in a case involving an attack on a Korean school in Kyoto in September 2009, eleven members of *Zaitokukai* and the "Association of Seeking Recovery of Sovereignty" rushed through a gate at Kyoto First Korean Elementary School, shouting discriminatory words such as "This is a front for training North Korean spies", "Aren't you children of illegal immigrants?", "Eat your shit", "*Chonko*"<sup>8</sup>, "Stink like *kimchi*". There were approximately 150 students in the school building, and many children felt so scared that they started crying, which prevented classes from continuing. Even after that, tens of members of the *Zaitokukai* carried out subsequent demonstrations around the school three times in total, shouting hateful phrases. Although police appeared at the school gate in all three demonstrations, they allowed the crimes to continue.

The courts, however, stood on the *Zainichi* Koreans' side. Some of the acts by the *Zaitokukai* were recognized as prosecutable crimes of insult, destruction of property, etc. in a criminal trial. Additionally, in a separate civil case the Kyoto District Court (on October 7th, 2013) ruled that some of the said acts constitute not only tortious acts against the victims but also "racial discrimination" under the ICERD. The court approved the plaintiffs' claims for compensation of a weighted amount of damages. It also awarded an injunction against the

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<sup>8</sup> *Chonko* or *chon* is a derogatory term meaning Korean people.

defendants' street propaganda activities within 200 meters of the school in the future. Furthermore, the Osaka High Court (on July 8th, 2014) affirmed the decision of the Kyoto District Court, stating that the ideals of the ICERD should be realized even among private persons.

b) Countermeasures by the Japanese government

As discussed above, although hate speech is prevalent in Japan, current laws provide remedies only for cases in which victims can be identified. Hate speech targeting the unspecific, general public has neither been regulated nor addressed by policymakers. In addition, the Japanese government has taken reservations on Articles 4(a) and 4(b) of the ICERD.

In May 2013, the Minister of Justice gave a speech expressing apprehensiveness towards hate speech in the Diet. However, in a governmental report to the UN Human Rights Committee (completed in 2012) and a report answering questions from the UN Human Rights Committee (completed in 2014), there was no mention of that apprehension.

A report by the Japanese government submitted to the CERD (January 2013) stated, "The Government of Japan does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited, to the extent that ... legislation to impose punishment against dissemination of racist thoughts and other acts should be considered even at the risk of unduly stifling legitimate speech."<sup>9</sup>

Furthermore, in May 2013, the Ministry of Foreign Affairs did not answer a question in the Diet about whether hate propaganda by *Zaitokukai* and other similar groups is racial discrimination as defined in the ICERD. In our view, the Japanese government is failing to acknowledge reality and concealing the truth, and as such has not fulfilled its duties imposed by relevant treaties.

In June of the same year, the UN Committee against Torture recommended that the Japanese government disavow hate speeches made against so-called "comfort women" by public officials. However, the Japanese government determined in a cabinet meeting that the recommendations were not legally binding and that the government has no obligation to follow them. As a result, the Japanese government has been deliberately ignoring the recommendations.

c) Repeated recommendations made by the UN

The CERD has repeatedly (in 2001, 2010, and 2014) recommended that the Japanese government relinquish its reservation of Article 4 of the ICERD and punish hate speech. In addition, on July 23, 2014, the UN Human Rights Committee, having examined the Japanese government's report, adopted its concluding observations (on the sixth periodic report of Japan), stating:

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<sup>9</sup> The Government of Japan, *Seventh, Eighth, and Ninth Combined Periodic Report by the Government of Japan under Article 9 of the International Convention on Elimination of All Forms of Racial Discrimination* (January 2013), 20, available at <http://www.mofa.go.jp/mofaj/files/000023045.pdf>

“The State (Japan, hereinafter the same) should prohibit all propaganda advocating racial superiority or hatred that incited discrimination, hostility or violence, and should prohibit demonstrations that are intended to disseminate such propaganda. The State party should also allocate sufficient resources for awareness-raising campaigns against racism and increase its efforts to ensure that judges, prosecutors, and police officials are trained to detect hate and racially motivated crimes. The State party should also take all necessary steps to prevent racist attack to ensure that the alleged perpetrators are thoroughly investigated, prosecuted and, if convicted, punished with appropriate sanctions.”<sup>10</sup>

In addition, the UN Human Rights Committee, in its concluding observations to the Japanese government (on the combined seventh to ninth periodic reports of Japan), adopted on August 29, 2014, states:

“The Committee encourages the State party to review its position again and consider withdrawing its reservation to subparagraphs (a) and (b) of article 4. Recalling its general recommendations No. 15 (1993) and No. 35 (2013) on combatting racist hate speech, the Committee recommends that the State party take appropriate steps to revise its legislation, in particular its Penal Code, in order to give effect to the provisions of article 4.”<sup>11</sup>

In addition, it also mentions:

“Recalling its general recommendations No. 35 (2013) on combating racist hate speech, the Committee recalls that measures to monitor and combat racist speech should not be used as a pretext to curtail expression of protest. However, the Committee reminds the State party of the importance of safeguarding the rights of vulnerable groups in need of protection against racist hate speech and hate crimes.”

and advises:

“The Committee recommends, therefore that the State party take appropriate measures to:

- a. Firmly address manifestations of hate and racism as well as incitement to racist violence and hatred during rallies;
- b. Take appropriate steps to combat hate speech in media including the Internet;
- c. Investigate and, where appropriate, prosecute private individuals as well as organizations responsible for such acts;
- d. Pursue appropriate sanctions against public officials and politicians, who disseminate hate speech and incitement to hatred; and
- e. Address the root causes of racist hate speech and strengthen measures of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination

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<sup>10</sup> The UN Human Rights Committee, *Concluding observations on the sixth periodic report of Japan* (July 2014), para.12, available at [http://www.ccprcentre.org/doc/2014/07/CCPRCJPNCO6\\_E.pdf](http://www.ccprcentre.org/doc/2014/07/CCPRCJPNCO6_E.pdf) (original in English) and <http://hrn.or.jp/activity/area/cat147/post-287/> (Japanese translation)

<sup>11</sup> The UN Human Rights Committee, *Concluding observations on the combined seventh to ninth periodic reports of Japan* (August 2014), para. 10, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/CERD\\_C\\_JPN\\_CO\\_7-9\\_18106\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/CERD_C_JPN_CO_7-9_18106_E.pdf) (advance unedited version)



and to promoting understanding, tolerance and friendship among nations and among racial or ethnic groups.”<sup>12</sup>

#### 4. Experiences and feelings of victims which have been revealed by this research

##### a) Experiences of hate speech on the personal level and feelings of victims

As mentioned in Section 1 hereinabove, the Human Rights Now hate speech research project team interviewed 16 *Zainichi* Koreans by way of individual interviews. The results of our investigation regarding the experiences and feelings of victimization pertaining to hate speech answered by those people are as follows.

##### (1) Woman in her thirties

- In 2012, while she was involved in a campaign against the enactment of a local law to raise the national flag in front of an office building belonging to the municipality assembly of the city of Amagasaki, four to five people appeared and started to say: “If you don’t like *Hi-no-Maru*,<sup>13</sup> get out of Japan!”
- Elderly participants of the activity were told “Old fart and old bat, die soon!”
- They asked her Japanese friend, “Are you a Korean?” When they asked her (the interviewee) whether she was Japanese and she replied “No,” she was bombarded with bad words, such as “Here is a *chonko*,” “Get out of Japan,” and “Die!”
- Even though it happened in front of the assembly’s office building and some assembly members witnessed the incident, they said nothing and stood aside, laughing.
- She felt she did not want to let her children (ages 8 and 10), living as *Zainichi* Koreans, see them.
- She feels that there is an atmosphere in which hateful words are socially accepted. She also feels that there is a prevailing lack of remorse in Japan as a nation.
- During a convention on the problem of comfort women, there were people outside exclaiming: “Old bats!” “Prostitutes!” Some of them tried to attach paper notes saying “I’m a prostitute” to some elderly participants.
- While she was involved in a housing discrimination suit in 2004, she found on the Internet some postings such as “Get out”, “Die”, and “*Chonko*.” She felt emotionally wounded when she found those words.
- She has experiences requesting 2-Channel (an online bulletin board operator in Japan) and similar websites to delete some postings on their bulletin boards.

##### (2) Man in his thirties

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<sup>12</sup> *Concluding observations on the combined seventh to ninth periodic reports of Japan*, para. 11.

<sup>13</sup> *Hi-no-Maru* is a nickname for the national flag of Japan.

- When he was working for the *Zainichi* Korean Youth Association as a part-time administrator of an online bulletin board for the general public about ten years ago, he found tens of postings per day such as “Japan is correct”, “Die Koreans”, pictures of dishes of dog-meat, criticism against historical recognition of Korean people, etc. The amount of such postings was so large that he closed down the bulletin board.
- On March 31, 2013, he went to Tsuruhashi, where a propaganda demonstration was carried out. Since he was too far from the demonstration, he couldn't hear the hate speech very well. But he felt that there were surprisingly a lot of ordinary people participating.
- Afterwards, he saw a video [of the demonstration] and noticed terribly derogatory language being used. He felt that usage of such vulgar and derogatory language has increased since the time of the demonstrations in Okubo two years ago.
- In his previous workplace, the number of co-workers who favor hate speech has increased.
- When he discloses that he graduated from a Korean school, people tell him that Korean schools preach anti-Japanese education or that the imperial system is essential [for Japan].
- He thinks that iPhone apps which allow people to see 2-Channel's bulletin boards may have some influence.

(3) Woman in her thirties

- She was significantly shocked when she first learned of the existence of *Zaitokukai* around 2007. At that time, she tried to avoid looking at postings and videos on the Internet.
- Several times per month, her workplace (*Zainichi* Korean organization) receives harassment-like phone calls, such as remarks insulting Korea and denying history (e.g., “Comfort women were prostitutes” and the like). Once she realizes that it is a harassing phone call, she feels very nervous and scared. However, she tries to behave normally so that those people do not notice it.
- In daily life and normal situations, she sometimes feels frightened after hearing hate speech (e.g., hearing conversation from the next table in an eatery), and feels anxious that she may hear such things.
- Although scribbles [with insults] in school buildings warrant punishment, on the Internet it is not properly regulated.

(4) Man in his twenties

- About five years ago, he encountered four middle-aged *Zaitokukai* members engaging in hate speech in Hiroshima. He thought he could stop just in front of them and watch their conduct while holding his head up high. However, it was too frightening. Even though the *Zaitokukai* members did not look imposing, he felt afraid and could not move his body. He was not scared of actual danger. Rather, he thought they were speaking about him. He was scared of the fact that such ordinary people were, without hesitation, saying exactly what people would not want to be told the most and what people should not actually say even if they were thinking it in their hearts.

- He feels pain from the fact that he was told “Die” and “Kill him” for reasons that he cannot change.
- When he hears hate speech, he thinks that they are speaking about him and becomes offended. [He believes that being blamed for his identity, which he cannot change, is a kind of salt being poured on his wound.]
- Most *Zainichi* Koreans do not think much [about the hate speech], but in fact they are deeply hurt inside. Even if the victims do not produce active reactions or expressions of opinion, it does not mean that they are unharmed. There are no appropriate stages or opportunities to express their opinions.

(5) Man in his twenties

- Since 2002, he has been publishing his opinions on the Internet as a *Zainichi* Korean. But recently, responses to his postings have been “erupting.”
- Beginning in 2010, his Twitter account, which includes his criticisms of *Zaitokukai*, has been receiving hate speech messages every day.
- Before getting involved in the countermovement against hate propaganda, he fell into depression and went to see a psychiatrist to receive counseling. He was advised to stay away from the Internet for a while.
- His family asked him to stop [publishing his opinions as a *Zainichi* Korean], for fear of direct danger to him. However, if he stops, the harm caused by the hate speech will not be noticed. It is necessary to make the pain visible.
- For fear of worrying his *Zainichi* Korean friends, he was unable to consult with them or invite them to join. Even if it is a close friend, even now he cannot consult with or just talk about it with a Japanese friend.
- After one year of feeling this way, he collapsed and could not do anything even if he wanted to.
- While he was present for almost all the hate propaganda demonstrations in Kyoto, he could not do anything against them and just watched them every time. He went to see them with a sort of anxiety, but because of fear, he could not do anything.
- In February 2013, he was shocked to discover the *Shibaki-tai* Group<sup>14</sup> and became worried. He thought that it might be misunderstood by Japanese people as a threat by *Zainichi* Koreans and that such misunderstanding would fuel their anti-Korean feelings.
- Afterwards, he started to participate in counter-demonstrations in Tsuruhashi with a placard. He also participated in a counter-demonstration in Shin Okubo in March 2013. In April and May, he encountered terrible racist hate propaganda in Midosuji. He feels exhausted because he encounters hate speech [frequently].

(6) Man in his fifties

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<sup>14</sup> *Shibaki-tai* is a group in Japan, the main purpose of which is fighting against racist hate propaganda. The name of this group derives from a Japanese phrase “*Racist-wo-Shibaki-tai*”, a colloquial expression meaning “I wanna beat racists.”

- He has not experienced any physical harm. However, he has experienced emotional distress. He believes that the hate groups are saying what people should not say as humans. He does not want children to see them. When he actually saw them, he felt nausea. It is hard on his ego.
- While he has been aware that there are some slanders towards *Zainichi* Koreans on the Internet, he thinks that those slanders popped up into reality and changed into hate propaganda.
- When he watched a video on YouTube in which a 14-year-old girl said (or shouted), “a massacre in Tsuruhashi” or something alike in hate propaganda in Tsuruhashi last year, it froze his blood.

(7) Man in his fifties

- It was several years ago when he witnessed a hate propaganda event in Namba. He found it repulsive. He also watched a video of the district of Utoro. When he watched it, he felt hopeless.
- He feels angry about hate speech. While he knows that there has been discrimination in the past, he believes that the situation today is a little different. Things that used to be only spoken privately have surfaced and are now publicly discussed. He thinks that this problem cannot be left alone. Why should those who have studied and worked in this country have to leave? Because of the ill will of those people, counteraction is being taken.

(8) Man in his forties

- He has heard sounds of propaganda from his own home and has seen the videos. Horrified, he could not believe his eyes and thought it was a joke. Since those videos make him feel sick, he tries not to watch them. However, the propaganda comes on through Twitter. He feels they are deliberately disseminating incorrect information.
- He wants the hate speech groups to put an end to their propaganda, and if possible, to dissolve their [racist] organizations.
- The “diffusion argument” (i.e. the argument that hate speech that is targeted at many unspecified people is not a problem because the victims are diffuse) is meaningless and wrong. He feels that such expressions are targeting him. When he comes home from counter protests, he feels sick to his stomach. He feels all right when he is with friends. However, when he is alone such as when he goes to bed, he feels that kind of illness strongly.
- Since the March 2013 hate propaganda, he has often participated in counter-activities. He does not really want to do so, but he believes it is necessary to show his feelings. He thought that he should get involved in the counter-activities, once he felt doubts about the police’s discriminatory approach. He believes that the police have shown an attitude of permissiveness toward the hate groups as if they were protecting them, even though they are strict against the counter groups.

(9) Teenage Woman

- When she watched a video of the Attacking Kyoto Korean School case as a junior high school student, she felt as if it was something surreal, happening in a different world. Afterwards she saw hate propaganda with her own eyes, and was shocked by it. Surprisingly, the hate protests were held even in front of children. She wondered if it was usual for such a thing to occur.
- She wants to do something to change the situation in which terrible discriminatory words often appear on the Internet. She wants to talk to people who publish such words, but even if she tries to do so, in many cases, they just unilaterally speak to her [and so she cannot have a constructive conversation].
- She once spoke with a participant of a hate speech demonstration face-to-face. But in the end, she was told, "This country doesn't need you. Please go back to your country." She was sad.

(10) Woman in her fifties

- She has worked as an elementary school teacher in classes for ethnic minorities for more than twenty years, and as a result of her activities, more than thirty percent of her students started identifying themselves with their real names. However, such progress on education of human rights is declining due to the recent developments (i.e. escalation of the *Zaitokukai* and other similar groups' activities). In particular, criticism against ethnic education is severe. Bashing such as "Where are you getting your money from?" and "Ethnic teachers, go back to your country" has increased. Some parents also ask, "How are you going to take responsibility?" Even though there are cooperative and passionate teachers for ethnic education, she cannot believe in Japanese society any more.
- In the past, they welcomed newspaper articles that discussed their ethnic education classes, and they also proactively published such information themselves. But these days, they refrain from disseminating such information on the Internet. The school principal and the board of education are also frightened. Some people even rush into the principal's office, saying that the school puts too much effort into educating foreigners.
- In March 2013, she participated in a counter-demonstration, holding a placard for two hours. She took a video with her smartphone in order to show it to the schoolchildren in the ethnic classes. She had some opportunities to speak with third-year junior high school students, including Japanese children and ethnic classes in junior high school(s). She showed them the video and spoke about the history of discrimination in Japan, the current situation, and efforts to eradicate discrimination by Japanese people. The responses were varied, from children who were shocked, to those who got angry and shouted, "I would beat them."

(11) Man in his forties

- There are many *Zainichi* Koreans who are not vividly aware of their own roots. But after broadcasts of hate speeches on TV, more children who have [Korean] roots became aware of them and started to think, “Are they speaking about us?”
- He has not personally experienced discrimination in his interpersonal relationships. But after he became forty, he discovered hate speeches against him and started to see the underlying problems of society.
- Every year, he participates in a “Let’s get along parade”, a leaflet of which reports on examples of children’s harm. [An example:] “Last weekend, there was a demonstration targeting *Zainichi* Koreans in Tsuruhashi. A boy, A, who was coincidentally passing by there, usually does not participate in ethnic minorities’ classes. The following week, he saw a teacher for the ethnic minorities’ classes, told him/her about his experience in Tsuruhashi, where he watched the adults with anxiety, and said, ‘As I expected, I indeed realized that it was not good for me to inform people around me of that I am a Korean.’”

(12) Man in his fifties.

- He witnessed a xenophobic demonstration at Tsuruhashi on February 24, 2013.
- Having seen the demonstration, he thought that his existence was being denied, and his body started to shake while his heart started to pound quickly. It was actually a message addressed to all *Zainichi* Koreans, but he felt it was being thrown at him personally.
- Statements being made there were mostly false rumors saying that *Zainichi* Koreans were receiving special benefits, which in fact, they were not. He felt tremendous fear, recalling the genocide of ethnic Koreans after the Great Kanto Earthquake, which was also caused by a series of false rumors.
- Immediately after the demonstration, children using their real names were afraid to leave their homes and of telling their real names to Japanese people.

(13) Man in his fifties

- He saw a hate speech rally directly targeting the organization he worked for. The hate group members were passing a microphone around and in turns shouted, “Koreans are maggots”, “Koreans are cockroaches”, “Koreans, die!” Other participants applauded those remarks and all the participants looked excited. His name, read from his nameplate, was called through megaphones and abusive phrases were thrown at him. He felt fear from the fact that they were throwing hateful words at him face-to-face without any logic. Afterwards, his photo was posted on the propaganda group’s website and remains accessible there even today.
- Another time, there was a phone call to his office. A young woman received the call, and she was told some obscene words followed by, “Die, die, die...”

(14) Man in his thirties

- On Facebook and the Internet, there is a lot of false information being spread. He feels uncomfortable about it. However, he does not want to be involved with such incorrect information, so he is trying to fight back by publishing correct information about his activities.
- There are some bad posts and nasty responses on the *Zainichi* Koreans Youth Association's Facebook page. For example, "Something must be done about *Zainichi* Koreans' special privileges", and "Go back if you don't like Japan." If someone is denied by a place where he was born and grew up, it is not pleasant for him.

(15) Woman in her fifties

- Being involved in activities pertaining to the comfort women issue, she repeatedly experienced persistent disapproval of her group. Even when she is among friends, she feels unease and fear in hearing verbal attacks with the word "Chosen jin (derogatory word for Koreans)".
- In December 2012, when preparing for a candle concert commemorating a Wednesday demonstration in Ogimachi Park during daytime, she was shouted at for half an hour by a group of about 20 people saying, "*Chonko*", "*Chonko*", "Korean". She was heartbroken. It is impossible for her to share her pain with her Japanese friends. At first, she calmly just did what she should have done, but afterward, she noticed how emotionally wounded she had become. She feels unspeakable anger.
- Her friends' attacks do not target her. But she wonders if they are attacking her directly or if they are targeting only her even though she is together with her friends.
- She lives close to a town with many Koreans. She gets really mad at the fact that they come all the way to Ikuno to do such things. They come on Sundays and always make a mess. She is especially angry at the fact that they come to the districts where many *Zainichi* Koreans live and which have some Korean schools in order to do such things. She is especially angry and concerned about how their conduct hurts children mentally. When her son was in junior high school, he went to a convenience store to buy something and he saw hate speech there. Upon coming home, he said, "I want to become an adult soon to naturalize".
- She is most angry at the police. They just watch the hate groups' activities while saying and doing nothing. She heard that when a junior high school student asked, "Why don't you stop it?", they answered "It's because of freedom of speech."
- There are some postings [about Koreans] on the Internet. She is so scared that she does not read them. Many people have pointed out that such postings exist, but she does not ask what is written there. If she allows herself to be affected by seeing them, it would mean that she has given in to what the hate groups want. However, even thinking about it makes her feel bad. She cannot face it directly.
- She started "Wednesday Activity" on a pedestrian bridge in front of Osaka Station in October 2006 for the purpose of solving the "comfort women" issue. About 20 people joined it and handed out flyers for an hour each time. However, at the end of 2009, some *Zaitokukai* members came to the pedestrian bridge to harass them. The number of *Zaitokukai* members gradually increased, and eventually, they occupied

the entire pedestrian bridge. Some months later, her group was banned by the police because of “danger.” Since then, her group has given up their Wednesday demonstrations on the pedestrian bridge and started activities in different places with permission to occupy the streets. But harassment by *Zaitokukai* has continued sporadically and sometimes they come to her groups’ assemblies to harass them. Since 2012, her group has been fighting against hate speech made by Mayor Hashimoto against “comfort women.” She believes that such remarks deny historical facts and trample on the human rights of victims, constituting impermissible hate speech such as the “lies of Auschwitz.”<sup>15</sup> She also does not think that a public official should be making such remarks.

(16) Woman in her forties

- When she went to an anti-nuclear power plant demonstration in Namba in order to gather information as a writer in 2011, she saw [some members of] *Zaitokukai* shouting “Go back to Korea.” Afterwards, she saw a *Zaitokukai* demonstration in Shin-Okubo in February 2012. She was lost for words when she saw smiling people displaying signs with phrases like “Koreans, die, cockroaches” towards cameras. She was shocked that such an organization could demonstrate its legitimacy in broad daylight. 40 – 50 police officers looked as if they were guiding the *Zaitokukai*. Some police officers sat idly chatting in a police station. She started crying after the demonstration passed by.
- [After such experiences,] when she sees someone talking about an ethnicity, she thinks that that person is speaking about her. When she saw someone saying “Kill, kill, Koreans,” she was horrified by the thought that she might be killed by them.
- She is scared by the fact that ordinary-looking people are participating in hate speech.
- She has been threatened on the Internet many times because she writes articles on the Internet. When she was writing an article about a demonstration in Shin-Okubo on February 9, 2012, someone posted on her Twitter account, “Let’s kill both good Koreans and bad Koreans. Let’s kill [her account ID on Twitter], too.” She immediately called the police. The police built a case in May and told her they would send documents for the case to a prosecutor’s office in June. But instead of the deterrence the police promised, the suspect was eventually exempted from prosecution.
- She finds at least 100 postings on less busy days and as many as 500 postings on busy days. 90% are verbal abuses, such as “ugly,” “human feces wine (*Tongsul* or folklore remedy),” “such a *Kimuchi* guy,” “anti-Japan traitor.” When she makes remarks on the issue of comfort women, someone posts “*Chon*.”

b) Summary

Our interviews have revealed the reality of the situation in which hate speech targeting many unspecified *Zainichi* Koreans violates the human rights and dignity of each *Zainichi* Korean, while also influencing the actions and social life of each *Zainichi* Korean.

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<sup>15</sup> Which is also known as “Holocaust denial.”



(1) Fear

The interviewees in common answered that they felt hate speech targeting many unspecified people was actually targeting each of them individually, and that they were strongly affected. Each answered that he/she was so scared when confronted by hate speech that: he/she could not do anything; he/she could not move his/her body; or his/her body began shaking and heart began beating. Also, each said that he/she was horrified by thought that he/she might be killed because some people were saying “Kill, kill, Koreans” or that he/she was scared of the fact that some people have no hesitation in heaping abuses on them.

(2) Mental and emotional harm

Just as in cases where a specific individual is attacked, every interviewee experienced mental and emotional harm. They testified that it was so hard on the ego that he/she felt uncomfortable, painful, frustrated, nauseous or sick; that he/she thought it was irrational when people said “Die” or “Kill” to him/her for no reason other than an identity he/she could not change; that he/she felt unspeakable anger; and that he/she thought that his/her existence was being denied. They universally described their psychological anguish, which derives from their sadness that their dignity as a human and their existence itself are being denied. This, for example, often manifested in one of them crying after seeing a demonstration pass by.

We also found some voices pointing out that although *Zainichi* Koreans were deeply wounded in some sense, they did not have any opportunity or place where they could express their pain.

(3) Influence on social life

Harm caused by hate speech has influenced *Zainichi* Koreans’ daily social lives and relationships with Japanese friends. For example, a *Zainichi* Korean may more frequently experience cases in which he/she is frightened upon hearing words or witnessing hateful acts in his/her daily life. *Zainichi* Koreans also cannot consult with or talk to his/her Japanese friends about the issue, causing psychological alienation.

We also found a case in which a *Zainichi* Korean posted criticism of the *Zaitokukai* on Twitter and then started receiving hate messages every day, leading him/her to become depressed and having to see a psychiatrist for counseling.

(4) Influence on children

There were many voices expressing worry about the influence of hate speech on children. For example, some said that they did not want to show [hate speech] to children. In fact, [we found] non-negligible [cases in which] children changed their attitudes about their identities negatively, such as: a case in which a child who heard

hate speech was shocked and thought that he/she should not reveal his/her identity to other people; a case in which a child who had been identifying himself/herself by his/her real name began to hate going out and exposing himself/herself to Japanese people; and a case in which a child said that he/she wanted to naturalize as soon as he/she became an adult.

(5) Fear towards Japanese society

We also found some voices expressing fear towards a Japan society that generates hate speech and tolerates it without regulation. Many *Zainichi* Koreans were also fearful of the fact that ordinary people participated in hate speech.

Some interviewees also felt suspicious of the police, believing that the police has taken a permissive approach to the hate groups. The interviewees thought that the attitude of the police was indicative of a larger societal attitude that has done nothing regarding hate speech made by public officials.

## 5. Opinions and requests expressed in the interviews

We conducted individual interviews and heard from victims about their opinions and requests relating to hate speech, in addition to their experiences and feelings about it. The opinions all voiced concern about the lack of hate speech regulation and expressed hope for some regulatory legislation. Some also said that hate-speech is not “freedom of speech”, but just racial discrimination, criminal, and violent.

For example, we found: (1) a request for legislation prohibiting racial discrimination; (2) an opinion insisting that people should apprehend hate speech in a historical context; (3) a suggestion to restrict the type of permissible public road uses in some specific areas such as Tsuruhashi in Osaka; and (4) a request for a public investigation by a board of education as well as public care or a counseling system for minority children.

In addition, some opinions stated that the climate of hate speech in Japan was getting even worse. For example, some interviewees cited indifference (including by the media) toward hate speech or a permissive, even xenophobic, attitude by Japanese society. Some people also called a revolution “from the bottom up”, by thinking of solutions with Japanese people.

The following are opinions and requests that appeared in this research.

### 【legislation of regulation】

- “I think that legislation for regulating hate speech is necessary. [The local government] should not permit public road usage for the hate propaganda in Tsuruhashi.”
- “Hate speech is a problem for the whole Japanese society. Legal regulation is required.”

- “Hate propaganda and hate speech should be regulated. But we should not focus only on general perspective. We should not separate the historical context from our analysis.”
- “Some people insist freedom of speech, but that is not included in ‘freedom of speech.’ I wonder if the scholars who insist the existing laws can solve the situations do not have “alterity”<sup>16</sup> at all. The [criminal] code should be applied to words toward “unspecified and many” people. Insult toward unspecified people should also be punished by the criminal code. People’s origins cannot be changed by their effort. Civil law suits are too late [to solve the issues]. If regulation by criminal codes is working in European countries and there are little people who suffer from damages by such regulation, it should be able to be done in Japan, too.”
- “There is no freedom of speech which allows demeaning others. Discriminatory expression based on origin or ethnicity should be regulated by law.”
- “Discrimination is not in the areas of freedom of speech, but is violence. Someone insists “freedom of speech,” but we are deprived of places in which we can express our opinions.”
- “Because legislation of criminal regulation is high-hurdle, we may solve the issues through civil law suits. However, it is still hard for ordinary people to raise a lawsuit.”

#### 【Problems of the Japanese society】

- “I hope the world which treats peace and human rights more importantly, but I feel the trend of this society is going the opposite direction.”
- “It has become difficult for minority people to live.”
- “The Japanese society should pay more attention and subjectively deal with it.”
- “As long as there are indifferent Japanese people, this kind of hate speech will not extinct. Many Japanese people are indifferent to and do not care about matters happening around themselves. It is a problem of the whole Japanese society.”
- “Media such as TV broadcasters just pick up a side of social issues and only transmit momentary atmosphere of them. But they do not try to dig into fundamental part of the issues. Commentators make just short comments which deliver people just mental images. Those media which do not report what the essential problem about hate speech is at all may be consequently causing dissemination of the hate speech.”
- “There are terrible discriminations spreading on the Internet as well. I wonder if those people who make such words may not have experienced direct communication with *Zainichi* Koreans. To eradicate hate speech, *Zainichi* Koreans and Japanese people should build actual face-to-face relationship and communicate each other.”
- “A number of books based on hatred against South Korea, North Korea and China are piled up in book stores. I think this indicates that anti-foreignism is spreading.”

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<sup>16</sup> Generally, “alterity” means “the quality or state of being radically alien to the conscious self or a particular cultural orientation.” *Merriam-Webster*. However, in this context, this interviewee seems to be using this word in a different meaning, as if it meant “kindness or understanding of others or other cultural orientation.”

- “I think it is one of the reasons of generating hate speech that Japan does not accept many immigrants from abroad. Japan should accept more people from abroad and Japanese people should be exposed to diverse cultures.”
- “Although saying ‘I kill someone’ or attacking a specific race obviously constitutes [or should constitute] a crime, I wonder why such things are allowed on the shopping street. It is weird that police officers also let them keep going on although they come and see them. They do it in a way that does not allow us to resist or counter-act individually. This situation is acknowledged by the government but it is strange. We should show clearly that it is not allowed.”

#### **【Concrete suggestions】**

- “Good faith implementation of the ICERD by way of legislation of prohibition of racial discrimination. It will allow us to protest based on the law. However, there are some concerns about it because law enforcement is conducted by the authority. It is more important to have ‘revolution from the bottom up’ which is that ordinary people do not allow hate speech than to have ‘a solution from upper’.”
- “The board of education should conduct factual investigation and have solutions about mental damages of schoolchildren who have origin from Korean Peninsula, such as their unease or fear which hate speech or hate propaganda bring them. However, the investigation should be done very carefully. For example, they have to guarantee interviewees’ anonymity. If we do not tell children existence of hate speech and hate propaganda, those children may be confused and feel at a loss to manage those situations when they encounter them by accident or have opportunity to get to know of them. We need to support children by telling them “These things actually exist” and by hearing their feelings and opinions, without hiding [the realities], simultaneously with taking into consideration constituent groups of children and their personalities very carefully, so that they can live without discrediting themselves about their own identity.”
- “[The government] should guarantee places where minority children can go regularly.”

## **6. Recommendations by Human Rights Now**

This report suggests that the pattern of hate speech against *Zainichi* Koreans blatantly violates their human rights and ignores their dignity as humans.

At least the following human rights of *Zainichi* Koreans have been obviously violated: the right neither to be subject to arbitrary or unlawful interference with his privacy or family, nor to unlawful attacks on his honor and reputation (Article 17 of the ICCPR); the right to be protected equally without any discrimination (Article 26 of the ICCPR, Article 5 of the ICERD); the right of persons belonging to minorities, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (Article 27 of the ICCPR); the right to seek effective protection and remedies (Article 6 of the ICERD).

Based on these research results, Human Rights Now recommends that the Japanese government should take proactive measures to abolish racial discrimination pursuant to the recommendations of the UN Human Rights Committee, CERD, and General Recommendation No. 35 by the CERD, as follows:

(1) Withdrawal of reservations to Articles 4(a) and 4(b) of the ICERD

As mentioned above, despite repeated recommendations from the UN, the Japanese government has maintained reservations on Articles 4(a) and 4(b) of the ICERD, stating that “The Government of Japan does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited, to the extent that ... legislation to impose punishment against dissemination of racist thoughts and other acts should be considered even at the risk of unduly stifling legitimate speech.”

However, the hate speech against *Zainichi* Koreans in Japan has included direct attacks to human life and body as well as behavior inciting racial hatred. The hate speech tramples on the dignity of *Zainichi* Koreans and is not conducive to the establishment of a multicultural society. Thus, the statements by the Japanese government about the climate of hate speech in Japan are wrong.

Therefore, the Japanese government should withdraw its reservations on Articles 4(a) and 4(b) of the ICERD and take effective measures to abolish racial discrimination.

(2) Investigation on the reality of hate speech

In addition to recognizing the severity of the situation regarding hate speech, the Japanese government should conduct investigations into the reality of discrimination against ethnic minorities and foreigners in Japan. The knowledge gained will allow the Japanese government to prepare for effective measures to eliminate racial discrimination.

With regard to hate speech, the Japanese government should investigate the following: the contents of the demonstrations and propaganda activities; how police officers regulate and supervise those demonstrations; how police officers react to and regulate hate speech counter-movements; and how permits for usage of public roads have been handled.

It is also essential to conduct a wide range of interviews regarding the mental anguish *Zainichi* Koreans suffer when they encounter hate speech as well as the resulting damage to their social lives, so as to make clear the need to regulate hate speech.

As soon as possible, the Japanese government should conduct investigations into the actual situation in Japan, so that it can take measures to effectively eliminate hate speech.

(3) Creation of comprehensive anti-discrimination law

The Japanese government should enact a comprehensive law prohibiting discrimination against foreigners and ethnic minorities, based on the results of the investigation mentioned in Section 2 above:

- a) First, the anti-discrimination law should clearly stipulate that racial discrimination and hate speech are illegal and impermissible. Then, it should also clarify the nation's responsibility to abolish racial discrimination. The obligations to adopt appropriate measures to abolish discriminatory hate speech, to facilitate understanding among different races, and the prohibition of discrimination in administrative procedures should be stipulated clearly.
- b) Second, the law should clearly prohibit discrimination on the basis of race in all areas of public life<sup>17</sup> including employment, labor, residence, and education. The prohibition of hate speech as set forth in Article 4 of the ICERD should also be clearly stipulated. Effective regulatory mechanisms including a speedy and fair remedial process against hate speech must also be guaranteed. To realize these goals, in accordance with the Paris Principles (principles regarding the status of national human rights institutions), a national human rights institution which is independent from the government should be established. Bailout measures for damages caused by racial discrimination (including hate speech) should be taken [through activities by the national human rights institution?

#### (4) Measurements about education and enlightenment

The Japanese government should, pursuant to the International Human Rights Standards [for Law Enforcement], establish a comprehensive and concrete action plan to abolish racial discrimination and hate speech in order to encourage understanding among different races. The action plan should include following:

- Thorough education throughout the public education process
- An enlightenment campaign targeted at private companies and the media
- Comprehensive education for all public servants including those in administrative positions, the judiciary, the police, and public schools.

#### (5) Criminal regulation

- a) Because criminal regulation of hate speech can potentially be abused by the government, the definition of the concrete elements of *actus reus* (objective element of a crime) must be carefully considered. However, as General recommendation No. 35 suggests, only serious hate speech should be subject to criminal penalties.

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<sup>17</sup> The meaning of "public life" here is the same as the one used in Article 1 of the ICERD, which defines racial discrimination. It is understood that this refers to all activities engaged in by humans as a part of human society and includes not only activities of nations or municipal governments, but also activities of private companies. See <http://www.mofa.go.jp/mofaj/gaiko/jinshu/top.html> (FAQ by the Ministry of Foreign Affairs of Japan, written in Japanese)

b) Firstly, public officials and politicians who publicly make hate speeches or engage in activities that promote hateful agitation against ethnic minorities should be subject to criminal penalties.

Secondly, threats or agitation of violence against individuals or groups that are: (1) serious; and (2) motivated by hatred or discrimination on the basis of race, color, descent or national or ethnic origin should be subject to criminal regulation. Factors that should be considered include the contents, the type of speech (i.e. whether it is provocative and direct), and the public reach of the speech, including method of delivery (i.e. whether it is disseminated by large media or the Internet, and whether it is done repeatedly).

c) The concrete elements of *actus reus* under the proposed law should be carefully designed and limited only to serious cases in order to prevent abuse of public power and infringements on freedom of speech. Also, during the case-building phase, prosecution, or rendering of judicial judgment, the principles of legality, necessity, and proportionality should be followed.

d) Finally, hate speech that is not serious enough to warrant criminal punishment should be regulated by civil or administrative procedure.

(6) Appropriate application of the current criminal law

The Japanese government should deal with hate speech by enforcing the current law appropriately until the anti-racial discrimination law is enacted.

Some hate speech obviously constitutes a crime such as defamation, insult or forcible obstruction of business. When such hate speech is found, law enforcement should take any appropriate actions permissible under the current laws, including arresting the culprit on the spot.

Such actions must be subject, however, to public officers being given comprehensive education on eliminating racial discrimination, in order to prevent law enforcement authorities from abusing their power.

(7) Participation by ethnic minorities in the political decision process

To promote and develop the recommendations proposed above, a mechanism by which ethnic minorities can participate in the political process and that reflects their opinions should be established.