

## **Social Insecurity and Minority Rights in the Information Age: The current status of the Ainu people**

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### **The right to enjoy culture as viewed from the Ainu Culture Promotion Act<sup>1</sup>**

The rights of minorities to enjoy their culture are clearly stated in Article 27 of the International Covenant on Civil and Political Rights (hereafter referred to as ICCPR). The Japanese government ratified this Covenant in 1979 and in the following year, in its first report submitted to the UN Human Rights Committee, stated “the minorities defined by the regulations in this agreement do not exist in Japan.” They submitted their second report in 1987, the year after the former Prime Minister Yasuhiro Nakasone stated that Japan was a racially homogenous nation. Within that report, it clearly stated that the “Ainu people are preserving their unique religion and language, as well as maintaining their unique culture.” The third report in 1991 stated; “it can not be denied that the Ainu people were an ethnic minority.” It also reported that the government was positioning an implementation of the Hokkaido Utari (Ainu) Welfare Measures as a policy for the Ainu as a people. In extension of the previous reports, the fourth report submitted in 1997 stressed the establishment of the Ainu Culture Promotion Act.

From the first report denying the existence of the Ainu people, to the fourth report recognizing the Ainu as a minority people and emphasizing the establishment of the Ainu Culture Promotion Act, there has been no consistency in the opinion of the government on the issue of Ainu people. This hesitation to recognize the Ainu as a minority people stems from the failure of the government to consider the history regarding policies for Ainu people since the start of the Meiji era. While the government has made reports referring to the Ainu as a minority people and governed by Article 27 of the ICCPR, it is a fact that Ainu people do not enjoy the rights designated in accordance with the details of the ICCPR.

The cultural rights provided for by Article 27 of the ICCPR include the right to utilization and management of resources and rights over land, in order to enjoy ones’ culture. Although in the 1997 Nibutani Dam court case, the court handed down a decision that the submerging of

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<sup>1</sup> Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and Ainu Culture

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the Ainu people's traditional land was an infringement of their rights to enjoy a minority people's culture. The current Japanese government's policies for the Ainu people do not allow the Ainu to enjoy their rights.

Yet progress was made during the UN Human Rights Committee's process of examination of the Japanese governments report, discussion of positioning Ainu people as Japan's indigenous people was furthered. In the upcoming fifth report, the government will be obliged to answer the Human Rights Committee's declared concerns with regard to information concerning higher education and land rights of the Ainu people. Also, the government must show what proof they have for continuing their claim that the Ainu people are not indigenous peoples.

The bearer of responsibility for Ainu culture must, of course, be Ainu people. Following World War 2, the Ainu became organized, and traditional ceremonies were revived in many different areas. The *asir cep nomi* (ceremony to welcome the salmon) held in Sapporo and Chitose, and the *cip sanke* (boat launch) held in Nibutani are two examples of cultural revival. The local keepers of the traditional way conducted the ceremonies, and many Ainu people from the surrounding area attended. The *shakushain* memorial service in Shizunai, and the *nokamap icarpa* in Nemuro, took the form of memorial services, while in Tokyo, the *sinrit mosir koicarpa* service has now been regularly held since 2003. Both the *shakushain* memorial service and *nokamap icarpa* are memorial services for Ainu who were killed in battles with Japanese during the Edo era.

In addition, efforts are being made to revive the Ainu language with Ainu language classes being conducted in 14 locations around Hokkaido. Simultaneously, traditional Ainu dancing has been designated a vital intangible cultural asset of the Japanese nation, and preservation societies all around the country have initiated the passing down of this tradition. Kaneto Kawamura, Shigeru Kayano and other Ainu individuals have established and are operating memorial museums exhibiting Ainu history told by Ainu as well as displays of Ainu tools and other goods.

Many tangible and intangible cultural assets such as the Ainu language are being handed down in Ainu families across the many different Ainu regions. Ainu people also have a unique method for handing down Ainu culture, and furthering its development. Use of permanent land for the holding of ceremonies and gathering of materials is indispensable to the passing down of traditional culture. Culture is not something to be learned inside a classroom; it is passed down to children in their natural surroundings, as a part of their everyday life. Land is not simply capital or an asset to be owned, it is the space for learning

about one's culture, including all the resources that are a part of that land. That is why, with the banning of our traditional way of life since the Meiji era, and with our land and resources taken from us, that the continuation of Ainu culture has been increasingly difficult.

The enactment of the Ainu Culture Promotion Act in 1997 had the objective of the promotion and cultivation of Ainu culture. It is not a law that recognizes the basic rights demanded by the Ainu, nor does it recognize our economic or political rights. The definition of Ainu culture in the Ainu Culture Promotion Act is stated in the second article of this law<sup>2</sup>. This definition was created without any consultation with the Ainu people, and it does not contain any clauses stating that the responsibility for Ainu culture should be born by the Ainu people themselves. It is a law to promote Ainu culture, for which the Ainu people bear no responsibility, "in order to contribute to the development of Japan's diverse culture." Additionally, use of land and resources for the maintenance and further development of culture is not recognized in this law.

After the enactment of the Ainu Culture Promotion Act, a foundation<sup>3</sup> was established in accordance with this law. Every year, projects such as Ainu language projects are carried out with the objective of promoting Ainu culture. Because of that, a number of Ainu have gained the opportunity reestablish links touch with their traditional culture. Yet the majority of Ainu are unable to carry out cultural activities due to discrimination or difficulties in daily life. If Ainu culture continues to walk alone without the control of the Ainu themselves, the Japanese will consume traditional Ainu culture. This would be part two of the violation of our culture. Until the security of Ainu peoples lifestyles and rights as a people are fully discussed, it will be impossible to solve problems concerning the Ainu people.

### **Grounds for collective rights**

The campaign to enact the Proposal for Legislation concerning the Ainu People, which seeks to respect and guarantee the rights of the Ainu, commenced in 1980, and was centered on the Ainu Association of Hokkaido. The Proposal for Legislation concerning the Ainu People was the result of studies undertaken by the Ainu themselves.

This proposal demands the handling of problems concerning the Ainu as problems which concern all of Japan, not only Hokkaido and for the guarantee of rights as an indigenous

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<sup>2</sup> Article 2 (definition) "The Ainu Culture" in this law means the Ainu language and culture properties such as music, dance, crafts and other cultural properties which have been inherited by Ainu people, and other cultural properties develops from these.

<sup>3</sup> The Foundation for Research and Promotion of Ainu Culture (FRPAC)

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peoples for the Ainu in order to solve current discrimination and life hardships that the Ainu face.

The proposal for legislation is made up of six provisions. The first proposal is basic human rights – which provides for respect of basic human rights with the fundamental doctrine for the complete elimination of racial discrimination against Ainu people. It also clearly describes the means for achieving that. The second provision is for the rights to political participation – this proposes the securing of preferential Ainu seats to enable the Ainu people to recover from past humiliations, and to have the demands of the Ainu people reflected in government policy. In other words, it is a means of securing Ainu seats in the Diet and in local government to promote the institutionalization of the political demands of the Ainu. Preferential indigenous seats have been instituted elsewhere for example in Aotearoa, New Zealand where Maori have preferential seats in parliament.

The third provision is education / culture with the implementation of Ainu language education for Ainu children, as well as the passing down and preservation of Ainu culture, and enhancement of research into Ainu culture. This provision raises the need for research into the Ainu language and Ainu culture, and outlines concerns that, up until now, research concerning the Ainu has been carried out almost entirely from a Japanese perspective.

The fourth provision is for agriculture, fishery, and forestry, manufacturing and trading. This provision clearly describes the measures required to promote economic independence of the Ainu in each industry. In particular, for agriculture, the forced allocation of a maximum of 12 acres per Ainu household under the Hokkaido Former Aborigine (Natives) Protection Act has been sighted as the reason for the difficulties affecting Ainu farm management today. It suggests provision for the expansion of employment opportunities, necessary due to the clearly high levels of unemployment and seasonal work amongst the Ainu outlined in a survey on living conditions.

The fifth provision is the Ainu independence fund (AIF) described as indispensable to any fundamental policy to bring about the independence of the Ainu. The afore-mentioned Hokkaido Utari (Ainu) Welfare Measures are currently being implemented for Ainu located in Hokkaido, and are taken from the budget of the national government and the government of Hokkaido. In its place, it is proposed to have a system in two parts, the first, to have the National and Hokkaido governments carry out policies through regional governments for the Ainu, the second being those carried out under the responsibility of the Ainu themselves. Therefore it is necessary to establish the Ainu Independence Fund in order to effectively bring this about. The government would carry responsibility for creating this fund, on the premise that the Ainu makes use of the fund for independent activities.

The sixth provision is for the provision of an organ of consultation. A consultation organization must be established at a regional and national level in order for the discussion

of continuing problems concerning the Ainu. It is also stated that Ainu representatives should also be included as constituent members of a deliberative committee.

In this way, the Proposal for Legislation concerning the Ainu People is a proposal which puts the Ainu people in control of their own affairs, solves the inequality of over 150 years, and aims for the political and economic independence within Japanese society. Consideration of this proposal for legislation continued in Hokkaido and on a national level.

With the enactment of the Ainu Culture Promotion Act in 1997, the Hokkaido Former Aborigine Protection Act was abolished<sup>4</sup>. More than ten years after the Ainu Association of Hokkaido's adoption of the Proposal for Legislation concerning the Ainu People in 1984, the movement to enact a new law for the Ainu was concluded with the aforementioned enactment of the Ainu Culture Promotion Act, however discussions concerning the details of this law still continue.

Currently, nineteen concerned Ainu are taking the Secretary of the Hokkaido Government to the Sapporo High Court in the Ainu Peoples Communal Property Court Case. This is a court case, which demands that the Secretary of the Hokkaido Government take responsibility for the mis-management of the Ainu people's communal property<sup>5</sup> for over 100 years under the Hokkaido Former Aborigine (Natives) Protection Act. What this court case seeks to bring out into the open is verification of the Japanese government's policies towards the Ainu since the Meiji era. The head plaintiff Mr. Ryukichi Ogawa has stated that the communal property "is proof of the history of the discrimination and assimilation against the Ainu through the colonialist repression of Ainu moshiri - Hokkaido - by the Japanese government since the Meiji era"

The Ainu have up until now demanded the abolition of the Hokkaido Former Aborigine(Natives) Protection Act, and for the enactment of the Proposal for Legislation

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<sup>4</sup> The Asahikawa Former Aborigine Protection Land Disposition Act was also abolished

<sup>5</sup> In the beginning, various things were included as Communal property. In Makubetsu (a part of the district of Tokatchi) in 1875, before the establishment of the "Hokkaido Former Aborigine Protection Act", the Ainu and the Japanese united to form a Fisherman's Guild at the mouth of the Tokatchi River. However after the establishment of the Act, the profits from this Guild, and the money raised from the sale of fishing equipment were turned into Government controlled cash and bonds. This not only involved business profits, but also included the fishing rights for salmon and other fish, buildings such as storage facilities as well as facilities for the drying of seaweed. In Asahikawa, farmland was included as communal property in many cases. The money from the "All Hokkaido Former Aborigine Education Fund" set up by the Emperor and the Ministry of Education was also included as communal property. In addition, there was also money that the Emperor contributed to the Ainu when he visited Hokkaido.

concerning the Ainu People - a law providing for the respect of the basic human rights of the Ainu – to take its place. These demands led to the enactment of the Ainu Culture Promotion Act. Because of the enactment of that Act, there currently is no law for the Ainu people in Japan, and there are no remaining historical policies such as the Hokkaido Former Aborigine (Natives) Protection Act that provide direct historical evidence of the policy of discrimination against the Ainu. Because of this, the Ainu Peoples Communal Property Court Case which is currently being contested, is a vital court case in the history of the Ainu, in order to open a new chapter in the development of policy for the Ainu as indigenous peoples.

On the other hand, regarding the governments so called demand for the return of “the Northern Territories,” the government continues to ignore the historical existence of Kurile Ainu who lived in the Kuriles, a part of the Northern territories. The national border was unilaterally drawn between the Kamchatka peninsula and the Northern Kuriles, and in 1876 the Kurile-Sakhalin Exchange Treaty forced the Kurile Ainu to take Japanese citizenship. Then in 1884, the population of the Kurile Ainu was cut in half due to the forced immigration of Kurile Ainu from the Kamchatka peninsula, which was the central Ainu population in the Northern Kuriles, to the Shikotan Island, close to Hokkaido. Because of the unilateral territorial acquisitions by both Japan and Russia, one entire indigenous community was destroyed. It was also the same for the Sakhalin Ainu who were forced to immigrate to Hokkaido due to the Kurile-Sakhalin Exchange Treaty. Many people suffered hardships at the place where they were moved due to these forced immigrations.

Currently the Ainu Association of Hokkaido is claiming indigenous rights on the Northern Territories. The indigenous rights, claimed as Indigenous Ainu, are the political, social and cultural rights that existed as a matter of course prior to the coming of the colonialists. Collective rights as Ainu people are the foundation for the claim for these indigenous rights. The Ainu people would like to see the re-instatement of our rights of which we were progressively deprived of over the past 150 years. For this reason, we continue to campaign while carrying on with our traditions. But it is not possible for us to achieve this on our own, and we hope for Japanese Society to reconsider the events of history in addition to the formulation of a policy that respects the rights of the Ainu people.