

Observations on the State of Indigenous Human Rights in Japan

Prepared for:
The 28th Session of the United Nations
Human Rights Council
Universal Periodic Review
March 2017



Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

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I. Executive Summary

While the nation of Japan has made significant strides in addressing historical issues of marginalization and discrimination against the Ainu People, more work remains to be done. Ainu individuals continue to suffer greater rates of poverty and lower rates of academic success compared to non-Ainu Japanese citizens. The dialogue between the government of Japan and the Ainu People also continues to be problematic. Significant work remains to be done if the government of Japan aims to fulfill the aims of international legal instruments such as the United National Declaration on the Rights of Indigenous Peoples.

II. Background

The Ainu are an Indigenous Peoples in the northern region of the Japanese archipelago, and the island of Hokkaido.¹ Once separate from the nation of Japan, Hokkaido was annexed by Japan in 1869, leading to increased conflict between the Ainu and the nation of Japan. Like other Indigenous Peoples across the globe, the marginalization of the Ainu has been a lengthy historical process in Japan. This process began in earnest during the Meiji Restoration period in the mid-late 1800s.² The economic and social marginalization of the Ainu continues into the present era.

The Ainu have historically been the target of practices and policies which created systemic cultural and economic disenfranchisement. Policies which encouraged cultural assimilation and cultural and linguistic discrimination, as well as changing land ownership regimes, worked to impoverish and marginalize the Ainu people.³ The Ainu were encouraged to assimilate with prevailing Japanese culture, and adopt Japanese identity in favor of Ainu identity.⁴ On the history of the Ainu, the Ainu Association of Hokkaido wrote that:

“[I]n the course of modernization of Japan, Ainu people have been denied their unique culture and deprived of land and livelihood, had their very existence as a separate people refuted, and been driven into discrimination and poverty. Consequently, even today, the living standards of Ainu people are far below than those of the general Japanese population. The Hokkaido Ainu Survey on Living Conditions of 2006 and the Survey on Living Conditions of Ainu People of 2008 conducted by Hokkaido University demonstrate these facts. Findings of the surveys showed clear differences in annual incomes, percentage of welfare recipients, lifestyle, occupations and percentage of higher school enrolments among those from the Ainu community, when compared to the general public.”⁵

¹ “Final Report: Advisory Council for Future Ainu Policy.” Advisory Council for Future Ainu Policy. 2009. Available at http://www.kantei.go.jp/jp/singi/ainu/dai10/siryoul_en.pdf

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ “NGO Joint Submission for UPR of Japan: Minority Women.” Ainu Association of Hokkaido. 2012. http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/JP/JS11_UPR_JPN_S14_2012_JointSubmission11_E.pdf

In recent years Japan has taken legal and cultural steps to end systemic discrimination against the Ainu, and to promote a resurgence of Ainu culture. Japan is also actively engaged with the international human rights framework. In 1997 the Japanese government enacted the Ainu Culture Protection Act.⁶ However, the measures in the Cultural Protection Act were not derived from the fact that the Ainu are an Indigenous Peoples, nor are they predicated on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) or principals articulated therein.⁷ While the Ainu Culture Protection Act was an important step forward for the rights of the Ainu People, it did not go so far as to allow for self-determination or ownership of resources or mineral rights.⁸

In 2007, Japan voted for the adoption of UNDRIP.⁹ Japan has also ratified that International Covenant on Civil and Political Rights (ICCPR). In a 2009 report by the Japanese government, there is mention that some Ainu people were involved with the adoption of UNDRIP, which is noted within the report as part of the movement to improve the lives and protect the cultural heritage of the Ainu people.¹⁰ In 2008 the Japanese Diet adopted a resolution which recognized the Ainu as an Indigenous Peoples.¹¹ Given the historic marginalization of the Ainu, this recognition represented an important step forward. The Resolution required the Japanese government to recognize the Ainu as a historically marginalized group, that the Ainu were a People with a distinct cultural, religious, and linguistic history who have lived on and near Hokkaido, and to adopt comprehensive policy measures to further enhance existing Ainu policy with the aid of experts.¹² Following the resolution, it was the stated goal of the Japanese government to enact policy in line with the UNDRIP.¹³ However, efforts by the Japanese government to redress the historic marginalization of the Ainu are still incomplete.

III. Recommendations from Previous UPR Cycles

Japan has been through two previous Universal Periodic Review cycles, in 2008 and 2012.¹⁴ The majority of recommendations by other nations were presented during the 2008 Review cycle. During the course of these Reviews, a number of recommendations were presented by reviewing nations, including:

⁶ “Final Report: Advisory Council for Future Ainu Policy.”

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ “National Report Submitted in Accordance With Paragraph 15(a) of the Annex to the Human Rights Council Resolution 5/1. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/187/52/PDF/G1218752.pdf?OpenElement>

¹² “Final Report: Advisory Council for Future Ainu Policy.” 2009. Available at http://www.kantei.go.jp/jp/singi/ainu/dai10/siryou1_en.pdf

¹³ *Id.*

¹⁴ *Id.*

- *Review, inter alia, the land rights and other rights of the Ainu population and harmonize them with the United Nations Declaration on the Rights of Indigenous Peoples.* Algeria.¹⁵
- *Urge Japan to seek ways to initiating a dialogue with its indigenous peoples so that it can implement the United Nations Declaration on the Rights of Indigenous Peoples.* Guatemala.¹⁶
- *The Committee on the Elimination of Racial Discrimination (CERD) welcomed Japan’s support of the 2007 United Nations Declaration on the Rights of Indigenous Peoples, but expressed concern about the limited progress towards its implementation.*¹⁷

IV. Continuing Rights Violations

A. Poverty, Education, and Representation (Violation of UNDRIP Articles 5, 17, 18, 19, 21, 22, 26)

Japan has taken steps to implement recommendations from previous UPR reports, and has been responsive to the recommendations presented by various nations involved in the UPR, but there remains considerable work to be done. In 2012 the Ainu Association of Hokkaido presented a report for the UPR follow-up from the 2008 review cycle. They identified a number of issues on which they wished the Japanese government to take action in working to address the issues of women belonging to minority groups including the Ainu. These issues were education, employment, welfare, health, and violence.¹⁸

Economic marginalization continues to be an ongoing issue for Ainu people. A 2008 survey of Ainu people showed that Ainu households were about 2.5 times as likely to be receiving public assistance compared to households through the country.¹⁹ More than seventy percent of Ainu individuals who engaged in higher education reported financial difficulties, and three quarters of Ainu individuals who did not complete higher education reported financial difficulties as the primary barrier to success.²⁰

A 2013 survey of Ainu individuals found that “[a]pproximately 77.6% of residents said that life was ‘very difficult’ or ‘somehow difficult,’ showing a slight improvement from the last survey (81.1%). The number of the Ainu receiving welfare assistance is 1.6 times as many as the general Hokkaido residents however in terms of the ratio, indicating a slight deterioration.”²¹

There is also a gap in educational achievement between Ainu individuals and the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/JPN/CO/3-6), paras. 4 and 20.

¹⁸“NGO Joint Submission for UPR of Japan: Minority Women.” Ainu Association of Hokkaido. 2012.

¹⁹ “Final Report: Advisory Council for Future Ainu Policy.” 2009

²⁰ *Id.*

²¹ “Actual Living Conditions of the Hokkaido Ainu.” Ainu Association of Japan. Available at: <https://www.ainu-assn.or.jp/english/life.html>

Japanese population at large. The ratio of those going to high school is 92.6% compared with the general average of 98.6%, and the ratio of those progressing to university is a low 25.8% compared with the general average of 42.0%. As education plays an important role in the improvement of the Ainu's social standing, the alleviation of this disparity is an urgent priority.²² The problems with education of the Ainu People stand in direct contravention to rights established under the UNDRIP.²³

Furthermore, Ainu individuals continue to feel that they face discrimination from Japanese society. According to the previous survey, 23.4% of respondents indicated they had experienced discrimination since they can remember, and 9.6% indicated that they had not experienced discrimination against themselves but knew someone who had.²⁴ One of the principles included in the UNDRIP is that Indigenous Peoples shall, in the exercise of their rights, be free from discrimination.²⁵ Furthermore, the right of all peoples to be free from discrimination is enshrined in the ICCPR.²⁶

Another issue is that of political representation. Ainu individuals continue to have extremely limited representation in the parliamentary system of Japan.²⁷ There is no mechanism in place which allows the Ainu people to interact with the government of Japan as co-sovereigns, or through designated representatives, which stands in contravention of the ICCPR.²⁸ This lack of consultation stands in contravention to principles of Free, Prior and Informed Consent with regard to Ainu issues.²⁹ While the government of Japan has engaged with Ainu cultural groups, these groups do not necessarily speak for or represent the Ainu as a whole. As a result, the political willpower necessary to push the government of Japan to engage with Ainu issues remains limited.³⁰

B. Global Funding of Energy Projects

One important issue which relates to Japan and Indigenous Peoples does not directly relate to the Ainu, but to Indigenous Peoples in the United States. Major Japanese financial concerns, including the Mizuho Bank Ltd. and the Bank of Tokyo-Mitsubishi UFJ, have been financially involved with the development of the Dakota Access Pipeline (DAPL) in the United States.³¹ The impact of a major global financial power such as Japan extends beyond the boundaries of the nation. Funding for the controversial DAPL, which has been the target of large-scale protests in North Dakota because of its potential to negatively impact the water resources and cultural

²² *Id.*

²³ In contravention of UNDRIP Article 17.

²⁴ *Id.*

²⁵ United Nations Declaration on the Rights of Indigenous Peoples.

²⁶ International Covenant on Civil and Political Rights Article 16 (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

²⁷ *Id.*

²⁸ International Covenant on Civil and Political Rights.

²⁹ UNDRIP Article 19.

³⁰ *Id.*

³¹ "Global Call on Banks to Halt Loan to Dakota Access Pipeline." Banktrack, 2016. Available at: http://www.banktrack.org/show/article/global_call_on_banks_to_halt_loan_to_dakota_access_pipeline

heritage sites of the Standing Rock Sioux Tribe. These banks are part of an international loan syndicate which is led by four banks that are signatory to the Equator Principles, a risk-management framework designed to manage and limit environmental and social risk in projects.³² Given that Indigenous rights commitments are presumed to be respected by the Principles, specifically the right of indigenous communities to withhold consent to projects affecting their ancestral lands through the exercise of free, prior, and informed consent, the continued involvement of financial interests in the DAPL project stands against international human rights regimes which seek to protect the rights of Indigenous Peoples.

V. Questions

- Does the government of Japan have plans to continue with projects for the regeneration projects of traditional Ainu living spaces in Hokkaido?
- Current government regulations on land and resource use interfere or do not allow for Ainu people to access materials used in traditional activities such as gathering natural fibers for clothing. Does the government have plans to address this issue, have the Ainu people been involved in this process, and to what extent has it proceeded?
- One measure undertaken by the government Council for Ainu Policy Promotion was the development of the Symbolic Space for Ethnic Harmony. This appears to be imagined by the government as a center for a renaissance of Ainu culture, with public facilities for research and exhibition of traditional Ainu culture. What has the effect of the Symbolic Space been, and are there plans to continue this effort?
- It is unclear as to whether the Council for Ainu Policy Promotion is still meeting. From January 2009 to June 2014 the Council held six meetings. No meetings have been reported on the Council's website since June, 2014.³³ Is the Council still active, and does it remain a priority for the Japanese government?
- Another open question remains the status of Ainu outside of Hokkaido. The 2009 Final Report states that no survey of Ainu outside of Hokkaido had been conducted since a 1988 Tokyo survey.³⁴ This would be another interesting fact to learn from contacts on the ground.

VI. Recommendations

Cultural Survival urges the government of Japan to:

1. Continue to make strides to engage the Ainu people, and promote the resurgent development of Ainu culture and heritage.
2. Make a renewed commitment to the principles of Free, Prior and Informed Consent, as outlined in the UNDRIP, and in so doing continue to consult with the Ainu people to understand the needs of the Ainu community.

³² *Id.*

³³ *Id.*

³⁴ "Final Report: Advisory Council for Future Ainu Policy." Advisory Council for Future Ainu Policy. 2009.

3. Urge Japanese banks to consider adopting policies that will properly implement global contact and guiding principles, and reduce involvement in projects which do not comply with the principles of Free, Prior, and Informed Consent. As a signatory to the UNDRIP, it is important that the government perform due diligence and work to support the principles of the UNDRIP through both legislative and fiscal policy.
4. Use the opportunity of the Olympic Games to make improvements to address the needs and issues of Indigenous Peoples. The government of Japan should take this opportunity to address ongoing issues facing the Ainu people.
5. Consider measures to allow Ainu communities increased self-determination, and measures to promote increased political representation by seeking to engage with direct representatives of the Ainu People.
6. Ensure Indigenous participation in decision-making at all levels in all matters affecting them.
7. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit Japan.
8. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.