

**Observations on the State of Indigenous Human Rights in Light of the UN Declaration on the
Rights of Indigenous Peoples**

JAPAN

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CULTURAL SURVIVAL

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) nonprofit 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*; in a newspaper, *Voices*, that educates indigenous peoples about their rights; and on its website: www.cs.org. In preparing this report, Cultural Survival collaborated with Professor Theodore Macdonald, Jr. and Anne Siders of Harvard University and the Harvard College Student Advocates for Human Rights, and consulted with a broad range of indigenous and human-rights organizations, advocates, and other sources of verifiable information on Japan.

EXECUTIVE SUMMARY

Over the past 20 years, Japan has taken legislative and symbolic steps to recognize the Ainu as an indigenous people and to eliminate state-sanctioned racial discrimination. But the Ainu still experience discrimination from other sectors of society as a result of Japan's mono-cultural national identity, and the lack of judicial remedies to respond to discrimination. Ainu children face discrimination in school, which has led to high drop-out rates and limited job opportunities. Despite new laws to protect Ainu culture, the government has not followed through with appropriate implementation. Today, the Ainu possess only ten percent of their ancestral lands, and are greatly limited in their capacity to engage in traditional occupations. The government has pledged to protect the Ainu language but has not incorporated it into the educational curriculum for Ainu children. Because Japan's political system does not provide mechanisms for minority representation, the Ainu lack parliamentary representation. Japan needs to take proactive steps to ensure that the Ainu can retain their culture while participating in the political life of the country. Those steps should include educating all Japanese to respect the Ainu; strengthening laws to combat discrimination; ensuring that Ainu have political representation; and taking meaningful action to redress past abuse and discrimination.

BACKGROUND

The Ainu have resided for centuries on the northern Pacific island of Hokkaido. Numbering between 30,000 and 50,000, they are a tiny percentage of the total Japanese population of 127.7 million. The Ainu have had a painful relationship with Japan since its annexation of Hokkaido in 1869. After the passage of the Hokkaido Ex-Aborigines Act in 1899, the Ainu were subjected to systematic discrimination and assimilation policies. Ainu land was expropriated, villages were forcibly resettled, and the Ainu people were denied their rights to political participation and culture. Although state-sanctioned discrimination has ended, discrimination continues in mainstream Japanese society, which is built on a mono-ethnic national identity.

RECOGNITION AND MEASURES TO ELIMINATE DISCRIMINATION

In 1997, Japan adopted the Ainu Cultural Promotion Act (ACPA) which officially ended state-sanctioned discrimination and recognized the Ainu as an "ethnic minority."¹ This status assures the Ainu cultural protection, but does not go so far as to allow for self-determination or for ownership of natural resources. The Act repeals the Hokkaido Ex-Aborigines Act of 1899 and ends the official state policy of assimilation of the Ainu. It calls for the promotion of Ainu culture, including language, music, dance, crafts and "other cultural derivatives."² The Act does not grant the Ainu people the right to self-determination, traditional lands, political representation, or protection against racial discrimination. As such, its goals are inadequate to ameliorate the long-term effects of past assimilation policies.

The ACPA helped raise national awareness about the Ainu presence in Japan. But the narrow scope and neutral language of the Act have made it ineffective at altering Japanese society's view of itself as a mono-ethnic nation. Recurring statements by Japanese government officials reflect the mainstream belief that the Ainu are an historical people who have long-since been assimilated. In early 2007, Education Minister Bummei Ibuki referred to Japan as a "homogeneous country." Eighteen months earlier, now-Foreign Minister Taro Aso described Japan as having "one nation, one civilization, one language, one culture, and one race."³ Such statements by government officials may be hurtful, but they do not violate Japanese law. Article 4 of the Convention for the Elimination of Racial Discrimination requires states to punish the dissemination of ideas based on racial superiority or hatred. Japan, however, reserved to this article, agreeing to comply only when doing so is compatible with the protection of freedom of assembly, association, and expression and other rights under its constitution.⁴ Article 14 of Japan's constitution prohibits racial discrimination,⁵ but Japan has no law that allows individuals or groups to seek legal redress when they experience discrimination.⁶ Japan's lack of legal remedies for discrimination violates Article 27 of the International Covenant on Civil and Political Rights; Article 5 of the Convention on the Elimination of All Forms of Discrimination; and Article 8, and the spirit of Articles 18 and 19, of the UN Declaration on the Rights of Indigenous Peoples.

DISCRIMINATION IN EDUCATION AND THE WORKPLACE

Although the ACPA provides for the promotion and protection of the Ainu language, Japan does not offer bilingual education in Ainu.⁷ In the past, one hurdle to doing so was the lack of an Ainu script, but currently Ainu is written in a mixture of Roman alphabet and katakana characters, the Japanese phonetic syllabary. Several Ainu-Japanese dictionaries have been published and local Ainu associations now offer Ainu language classes.⁸

Many Ainu report that school is the most common setting for discrimination.⁹ Ainu children are often bullied and discriminated against by fellow students and occasionally teachers, and many Ainu youth drop out before graduating from high school. Only 16 percent of Ainu youth in Hokkaido attend university, compared to 34 percent for the prefecture as a whole.¹⁰

Across Japan, few pupils learn about Japan's colonization of the Ainu people. On average, Japanese high school social studies textbooks contain just two lines about the Ainu.¹¹ When last studied in 1993, out of 20 high school history textbooks, only 10 mentioned the background of contact between the Ainu and Japan, and only four mentioned the assimilation acts.¹² As the Special Rapporteur on Contemporary Forms of Racism has noted, changing the way history is taught is essential if discrimination in Japan is to be combated.¹³

Discrimination against Ainu also is common in workplaces and in institutions of higher education.¹⁴ At present, 57 percent of employed Ainu in Hokkaido work in the primary or secondary sectors of the economy, compared with 28 percent of the general population. Many Ainu rely on seasonal work or day labor, and as a result, many elderly Ainu are ineligible for social security.

POLITICAL DISCRIMINATION AND INADEQUATE LEGAL PROTECTION

To date, there has been only one Ainu parliamentarian in the 600-person Diet: Shigeru Kayano (1994-1998). In 1997, Kayano gave a speech in Ainu advocating a new law to protect Ainu rights. His subsequent push for the ACPA marked the first time Ainu politics were seriously discussed outside Hokkaido prefecture. As an author of books in and about the Ainu, a founder of Ainu language schools,

and a politician, Kayano helped raise awareness of the Ainu and their history among mainstream members of Japanese society by attracting the attention of the mass media. This, in turn, helped encourage the Diet to draft the ACPA.¹⁵ But since he left office, there have been no other Ainu Diet members and the Japanese government has done nothing to address this disparity.¹⁶ The lack of Ainu political representation increases the sense of discrimination and marginalization the Ainu experience.

LAND RIGHTS

Over the years, Ainu land holdings have been reduced to the point where, today, they live on just 10 percent of their traditional lands. Construction of the large-scale Nibutani Dam in 1997 drew attention to the issue of Ainu land rights. The project flooded Nibutani, one of the few towns in Japan whose population, at 70 percent, had an Ainu majority. Dam construction destroyed sacred and burial sites, including the *chipsanke* boat-launching ritual site.¹⁷ The dam also disrupted links between Ainu elders and the young and created other divisions within the Ainu community as poverty forced families to yield their lands to the government. The dam's construction also disrupted the upstream migration of salmon, a traditional Ainu dietary staple.¹⁸ The Ainu were not consulted by the government during the planning, design, or implementation phases of the project. Despite formal protests submitted by Ainu leaders, the Japanese government authorized the project and subsequent land expropriation; Ainu petitions were given no special consideration.¹⁹

After construction ended in March 1997, the Sapporo District Court ruled that the expropriation of Ainu land for the dam was illegal. The Court's decision established that both minority rights and indigenous rights are protected under Article 13 of the Japanese constitution, and that the Ainu are entitled to protection as an indigenous group.²⁰ The Court likewise ruled that "the Hokkaido Development Agency was at fault for not respecting and taking Ainu culture into account during the consultative process,"²¹ but found that because of the greater public interest, the dam should remain. There was one positive outcome. When the government decided to build a second dam on the same river, it included the Ainu in the process to assess and minimize the impact of the second dam on the region's Ainu people,

culture, and environment. The Ainu received modest reparation for their expropriated land, though the sum was considered vastly insufficient in the eyes of many Ainu leaders.²² Moreover, the government has provided no reparations that acknowledge the historic suffering of the Ainu people.

CONCLUSION

Japan needs to take even more proactive steps to ensure that the Ainu can both retain their land, language, and culture while fully participating in the political life of the country. This will require a national educational initiative to educate all Japanese to respect their indigenous minority; stronger legal measures to combat discrimination, new mechanisms to ensure that Ainu have adequate political representation, and meaningful action to redress past abuse and discrimination.

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- ¹⁸ Kawashima, *supra*, note 19.
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- ²² The government agreed to pay \$14,000 to return the money that the Hokkaido prefectural government managed on behalf of the Ainu under the Hokkaido Act. Ainu leaders have responded by arguing the government should pay out 2,500 times that much money to reflect inflation or should return the land. The government states that it has returned the land, though it admits the relevant documents have gone missing. "Meeting the First: On the Road from Sapporo to Surabaya," *Time*, Aug. 21, 2000.