

Ainu Policy Promotion Act: The Problem of Compliance With International Standards on the Rights of Indigenous Peoples

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Abstract

This article is devoted to the analysis of the Act on Promoting Measures to Realize a Society in Which the Pride of the Ainu People Is Respected (Act No. 16 of 2019). The problem of compliance of Japan's Ainu policy with international standards in the sphere of protection of indigenous peoples' human rights is actively discussed today by foreign researchers. However, it is hardly studied in the Russian historiography. The article discusses the main provisions of the new legislation and reveals the point of view of the Ainu representatives about the measures taken by the government. It has been found out that Japan's Ainu policy is greatly influenced by the position of international community towards the rights of indigenous peoples. International law has become the main lever of influence on the government for the Ainu people. It has been proven that the mechanisms for promotion and protection of the rights of the Ainu in Japan are imperfect and do not fully comply with the United Nations Declaration on the Rights of Indigenous Peoples. The main issues facing the Ainu are discrimination, collective rights, indigenous representation in the government, development of ethnic education, etc.

Keywords: Ainu, Japan, ethnic policy, indigenous people, international law

In 2019, Japan adopted new legislation regarding the Ainu, which was supposed to secure their status as an indigenous people and guarantee the corresponding rights. However, immediately after the adoption of the law, disputes began in academic circles over how it met the provisions of the UN Declaration on the Rights of Indigenous Peoples, issued in 2007. The purpose of this article is to analyze the positive and negative aspects of the new legislation, as well as to assess its compliance with international standards in protecting the rights of indigenous ethnic groups.

The Japanese government currently pays considerable attention to the protection of human rights. The state actively cooperates with various international human rights organizations. In reports to various UN committees, it was repeatedly emphasized that Japan is ready to comply with the “fundamental principles contained in international human rights instruments”.¹

However, it cannot be said that there are no cases of violation of these rights in Japan. The most pressing issue is the discrimination of the Ainu. An aggravating factor in this regard was the long absence of their recognition as an indigenous people, which was realized only in 2008. The non-recognition of the Ainu by the Japanese state made them “invisible” to international law.

The topic of the correspondence of Japanese policy to international standards in the field of protecting the rights of indigenous peoples is being actively discussed abroad. The UN periodically requests reports on the measures taken by the government to prevent discrimination and

¹ Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: Third periodic report of Japan (CCPR/C/70/Add.1). *United Nations: official website*. April 6, 2009.

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsmoBTkOuDPNIMXWauPwondGLXVHWQLri5duOzZurUViH%2BPqBhoaNOWfJdKLidSo9H%2BaPM37l%2F2%2BiHkvn2%2BTsXuLy7gBUoXND3mCc8APSoffb>

improve the living conditions of the indigenous people. Recently, more and more research works have appeared around the situation of Japanese ethnic minorities. One can note such authors as Y. Sugimoto, M. Weiner, J. Lie, S. Murphy-Shigematsu [Sugimoto 2010; Weiner 2008; Lie 2001; Murphy-Shigematsu 2013] and others. Some subjects are touched upon in the works by J. M. Bazhenova, E. V. Goryan, A. Yu. Levakovskaya, E. L. Frolova [Bazhenova 2014; Goryan 2017; Levakovskaya; Frolova et al. 2010], and others.

Start of Changes in Japanese Ethnic Policy

A significant impact on the socio-economic and cultural development of the Ainu was the fact that, in the post-war period, the mono-ethnicity of Japanese society began to be increasingly emphasized. There was also an erroneous point of view that the Ainu people had been assimilated and no longer existed in the country. Its spread was facilitated by the release of several studies that spoke of the Ainu as an “endangered race” [Hasebe 1946; Takakura 1943; Okuyama 1979]. J. M. Bazhenova in her works emphasizes that, in general, the homogeneity of the Japanese nation in the second half of the 20th century was assessed as a positive feature, since “it provided a high degree of solidarity and integrity of society, allowed Japan not only to overcome the post-war crisis, but also to perform an ‘economic miracle,’ remaining one of the few countries in the world that did not know the destructive influence of interethnic and interfaith conflicts” [Bazhenova 2014, p. 55].

However, as interest in ethnic minority issues worldwide increased, so did the attention to the Ainu. This sudden interest can be seen as the result of developing international trends in the protection of the rights of indigenous ethnic groups. Since the late 1980s, the Ainu have become active participants in the global Aboriginal human rights movement, and since 2002 they have participated in the Permanent Forum on Indigenous Issues. International recognition of the Ainu, as well as Japan’s desire to comply with global trends in internationalization and multiculturalism,

has led to a revision of Japanese ethnic policy. Consequently, the development of international activism by representatives of the people can be seen as a kind of leverage for the Tokyo government. Three events confirm the influence of international trends on indigenous policy: Japan's adoption of the UN Declaration on the Rights of Indigenous Peoples, the official recognition of the Ainu in 2008, and the adoption of the Act on Promoting Measures to Realize a Society in Which the Pride of the Ainu People Is Respected in 2019.

At the beginning of the 21st century, an important and long-awaited event occurred. In 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples, and Japan also voted for its adoption. The Declaration was the result of a long process that began in 1982. It is an international treaty of a comprehensive nature, the purpose of which is to democratize relations between indigenous peoples and states. It is not a formally binding document. However, since 148 countries voted for it and only 11 abstained, it has become an important guide for states in developing appropriate policies and laws.²

The outcome of the vote for the Declaration was not obvious. From Japan's point of view, the draft document was far from ideal. For example, it was argued that there should be a clear and objective definition of the term "indigenous people." Japanese Foreign Ministry officials who took part in the vote initially persuaded the government to abstain from adopting the declaration. However, as the voting date approached, Japan's representative in Geneva increasingly insisted that it would lead to criticism of the Japanese government from both the international community and the Japanese public, resulting in a change of decision [Larson 2008, p. 67].

The adoption of the 2007 Declaration led to new legislation and mechanisms for dialogue with indigenous peoples in many countries,

² Indigenous Peoples and the United Nations Human Rights System. Statement of Facts № 9/Rev.2. *Office of the High Commissioner for Human Rights*. Geneva: United Nations Office. 2013. https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2_ru.pdf

including Japan. In 2008, both houses of the Japanese Diet voted unanimously to adopt a resolution recognizing the Ainu as an indigenous people.³ Such a quick decision regarding the Ainu was not an accident. It was influenced by two international events. First, in May 2008, Japan reported to the UN Human Rights Council on the situation and legal status of the Ainu people. Second, in the summer of 2008, Hokkaido was to host the G8 Summit, and the Japanese government wanted to avoid additional attention to the problem of the ethnic minority. At the same time, shortly before the event, Hokkaido also hosted the Indigenous Peoples' Summit [Lewallen 2008].

According to Ainu activist Kaizawa Koichi, the authorities recognized the Ainu a month before the Summit, and the adoption of the 2007 UN Declaration did not play such an important role here [Kaizawa at all 2011, p. 196]. It is important to note that the Ainu are so far the only ethnic minority and indigenous people officially recognized by Japan. At the same time, there are also large Korean and Chinese diasporas. Japanese citizens include Filipinos, Brazilians, Vietnamese, etc. It is impossible not to mention the Okinawans (or Ryukyus), who define themselves as a separate ethnic group.

New Legislation Regarding the Ainu

After the recognition of the Ainu people in 2008, the drafting of legislation that would secure their indigenous status began. The Council for the Promotion of Ainu Policy became key in realizing this goal. It was composed of 14 members, including 5 representatives of the Ainu people, 5 experts on human rights and indigenous peoples, and 4 heads of national and local governments. It was established in December 2009 and is chaired by the Chief Cabinet Secretary.

³ Ainu minzoku o senju minzoku to suru koto o motomeru ketsugian [Resolution recognizing the Ainu as an indigenous people]. *House of Representatives: official website*. June 6, 2008. <https://www.sangiin.go.jp/japanese/ugoki/h20/o8o6o6-3.html>

The council began drafting the bill in 2017. Experts who participated in the drafting of the document say that, in the process of its preparation, the government tried to listen to the opinion of representatives of the people, and numerous talks were held with the Hokkaido Ainu Association [Tsunemoto 2019]. In February 2019, the Cabinet submitted a bill to the Diet, “On Promoting Measures to Realize a Society in Which the Pride of the Ainu People Is Respected.” It was passed by the House of Representatives and the House of Councillors in April 2019, before entering into force in May 2019. According to official Japanese statements, the law provides for a comprehensive approach, including measures for regional, industrial, and tourist development, in addition to the policies already in place to improve the well-being of the Ainu people and promote their culture.⁴

The document took quite a long time to develop and was adopted only a year before the Tokyo Summer Olympics. As has already been mentioned, Japan, not wanting to draw additional public attention to the problems of the Ainu people, often takes important measures concerning the people only in the run-up to important international events. Japanese researchers also note that the law was supposed to stimulate the development of the tourism industry in Hokkaido. The infrastructure built on the island as part of the new ethnic policy was expected to attract tourists who would visit Japan during the Olympics [Charbonneau, Maruyama 2019a].

The law consists of eight chapters, which are divided into forty-five articles, as well as nine additional provisions. The main purpose of the law is to promote a society “where the Ainu people live with pride in their ethnicity and where all citizens can mutually respect each other’s identity and individuality.”⁵

⁴ Overview of Ainu Policy in Japan. *Cabinet Secretariat. Government of Japan*. https://www.kantei.go.jp/jp/singi/ainusuishin/index_e.html

⁵ Ainu no hitobito no hokori ga sonjuu sareru shakai wo jitsugen suru tame no shisaku no suishin ni kansuru houritsu (Heisei sanjuu ichi nen houritsu dai juuroku gou) [Act “On Promoting Measures to Realize a Society in Which

The law reveals the specifics of the new ethnic policy, which involves “measures to promote culture and disseminate knowledge about the Ainu traditions”. Thus, it is primarily concerned with the cultural sphere, which includes “the Ainu language, way of life, music, dance, crafts, and other cultural products inherited by them, as well as cultural products created on their base” (Article 1). The law also provides for support for research on indigenous culture.

It is noteworthy that the law recognizes for the first time the need to promote Ainu policy and to take measures to “create a favorable environment” conducive to the development of their culture throughout Japan, not just Hokkaido. This is to be done in close cooperation between the state, local governments, and other interested parties (Article 2).

The new legislation speaks of non-discrimination: “No one shall discriminate against the Ainu people or otherwise infringe upon their rights and interests...” (Article 4). However, it does not provide for any penalties in case of an act of discrimination, which is undoubtedly a great omission.

In accordance with the law, the national government approves the basic Strategy, which is prepared in advance by the Council for the Promotion of Ainu Policy (Article 7).⁶ Municipalities should independently or jointly develop a Regional Action Plan based on the National Strategy. It should include projects for the preservation of Ainu culture; intra-regional, inter-regional, and international exchange; tourism development, etc. These initiatives may be proposed by any citizen and are included in the plan in consultation with the municipality. In turn, the local authorities, in developing the plan, are obliged to consult with all the parties who will implement it. They also undertake to conduct education and publicity campaigns to enhance inter-ethnic understanding (Article 5).⁷ The regional plan is approved

the Pride of the Ainu People Is Respected” (Act № 16 of 2019)]. <https://elaws.e-gov.go.jp/document?lawid=431AC00000000016>

⁶ Ibid.

⁷ Ibid.

by the Prime Minister, after which the municipalities receive grants to implement it (Articles 10-15).⁸

Significant progress is that the legislation includes special provisions related to traditional Ainu rituals. When included in the Regional Plan, timber and bark harvesting in national forests (this refers to “state-owned forest areas” specified in Article 2 of the National Forest Land Management and Administration Act No. 246 of 1951), salmon fishing in inland waters using traditional methods (i.e., inland waters according to Section 60.5 of the Fisheries Act No. 267 of 1949), trademark registration by local organizations (according to the Trademarks Act No. 127 of 1959), etc., are permitted. These activities are coordinated by the Ministry of Agriculture, Forestry and Fisheries, which, if necessary, must issue special permits in accordance with the above laws (Articles 16-18).⁹

A whole chapter of the law is devoted to the construction of a new museum complex in Shiraoi, which has been named “Symbolic Space for Harmonious Inter-ethnic Interaction.” The facility also has a name in Ainu that sounds like “Upopoi,” which can be translated as “singing in a large group.” The complex was built by 2020 on the basis of the former Museum of Ainu Culture. The Ministry of Land, Infrastructure, Transport and Tourism and the Ministry of Education, Culture, Sports, Science and Technology manage the facilities of the new museum (Article 9).¹⁰ The main mission of the National Ainu Museum and Park is to promote cultural projects, scientific research, and to raise awareness of the Ainu people in Japan.¹¹

In order to implement the law, the General Directorate for the Promotion of Ainu Policy was established under the Chief Cabinet Secretary (Article 32). Its members are government ministers

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Upopoi ni tsuite [About the “Upopoi”]. *Upopoi (minzoku kyousei shouchou kuukan)* [“Upopoy”: Symbolic space for harmonious inter-ethnic interaction: official website)]. <https://ainu-upopoy.jp/en/about/>

(Article 37). The Foundation for Ainu Culture, which was established in May 2019, is the main body for the promotion of Ainu culture, in addition to organizations established by representatives of the people.¹²

Evaluation of the New Legislation by Representatives of the Ainu People and Leading Researchers

It is important to note that the law was controversially received by the Japanese public. The criticism was due to the fact that, although the Japanese government had conferred on the Ainu their special status, it had in fact only partially recognized the relevant rights at the level of national legislation. At present, the most important substantive rights of indigenous peoples are recognized by the international community: the right to self-determination; rights to lands, territories and resources, including those which they have traditionally owned; environmental rights and the right to traditional natural resource use, which includes reindeer herding, fishing, hunting, gathering; collective rights; the right to equality and non-discrimination.¹³

Ainu representatives such as Shimizu Yuji, chairman of the Kotan Society, Hatakeyama Satoshi, head of the Mombetsu Ainu Association, and others sharply criticized the new legislation during a press conference in March 2019 and demanded that it be revised. The main drawbacks of the bill, in their opinion, are, firstly, that it does not reflect the interests of all Ainu communities: in particular, the interests of the Karafuto Ainu (*enchiu*), the statement of whose head was announced

¹² Overview of Ainu Policy in Japan. *Cabinet Secretariat. Government of Japan.*

¹³ Indigenous Peoples and the United Nations Human Rights System. Statement of Facts № 9/Rev.2. *Office of the High Commissioner for Human Rights.* Geneva: United Nations Office. 2013. https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2_ru.pdf

at the press conference, remained unrepresented.¹⁴ Second, the 2019 bill is narrowly focused on cultural development and ethnic tourism. Indigenous representatives regretted that there was no provision for special scholarships for the Ainu people who study at institutions of higher education, nor for specific anti-discrimination measures and activities aimed at improving the socio-economic situation of the people.¹⁵

In addition, the law is aimed at attracting the attention of municipalities to the government subsidies and grants that they can receive with the approval of the Regional Plan. Consequently, the law is not primarily aimed at improving the welfare of the Ainu people, but at the development of municipalities, services and industry (mainly the tourism industry), while the Ainu are used as a kind of “resource for the development of tourism”.¹⁶

Still troubling is the fact that many members of the Japanese government continue to support the idea of homogeneity. In 2020, Japanese Deputy Prime Minister and Finance Minister Asō Tarō gave a speech in which he said that “Japan is the only country where one nation, one people and one dynasty have existed for 2000 years”.¹⁷ The media assessed this statement as contrary to the policy, given that it was made only one year after the new law on indigenous people was adopted.¹⁸

¹⁴ Statement to the Government of Japan Demanding the Withdrawal of the New Ainu Bill. <http://ihaefe.org/files/news/2019/12-03/zayavlenieainov.pdf>

¹⁵ Press conference “Will the Ainu finally be recognized in Japan?”. <http://ihaefe.org/files/news/2019/12-03/press-conf-rus.pdf>

¹⁶ Rights Groups Blame Japan Gov't over Bill on Ainu Ethnic Minority. *Kyodo News*. March 1, 2019. <https://english.kyodonews.net/news/2019/03/617eaed1ce23-rightsgroups-blame-japan-govt-over-bill-on-ainu-ethnic-minority.html>

¹⁷ Aso Taro shi “Nihon wa nisenennen, hitotsu no minzoku” seifu houshin to mujun [Taro Aso's statement: “Japan is the only country where one nation has existed for 2000 years” contradicts government policy]. January 13, 2020. <https://www.asahi.com/articles/ASN1F67HDN1FTIPEooX.html>

¹⁸ Ibid.

The most controversial issue related to the passage of the 2019 law is the collective rights of the Ainu. The modern “Japanese approach” to the implementation of ethnic policy is based on Article 13 of the Japanese Constitution, which says that “everyone must be respected as an individual.” This article protects the rights of individual citizens by suggesting that the Ainu people as individuals are able to choose their way of life as long as it “does not interfere with the public welfare.”

This view, for example, is supported by Tsunemoto Teruki, Director of the Center for Ainu and Indigenous Studies at Hokkaido University, who notes that in Japan the subject of law is an individual, and it cannot be “the Ainu people,” belonging to whom is based only on self-determination. International law assumes that any person “belonging to that indigenous population by virtue of his identity (consciousness of belonging to the group), recognized and accepted by that population as its member (recognition by the group)” may be an indigenous representative.¹⁹ This leads to the impossibility of clearly defining the subject of law and entails contradictions in the Japanese legal system [Tsunemoto 2011]. Prof. Tsunemoto also justifies the inferiority of the Ainu policy by saying that the state should first take care of restoring the favorable environment lost during the assimilation policy, “in which the Ainu could learn about their traditional culture and feel their identity, if they wished” [Tsunemoto 2011].

Nakamura Naohiro, a researcher at the University of the South Pacific, holds a similar view on the issue of collective rights. He argues in his writings that Ainu rights are already protected by the present law, and the issue of granting collective rights can be resolved at the level of adoption of individual resolutions by local governments. Accordingly,

¹⁹ United Nations Declaration on the Rights of Indigenous Peoples: Guidelines for National Human Rights Institutions. *Asia Pacific Forum of National Human Rights Institutions and the Office of the United Nations High Commissioner for Human Rights*. 2013. https://www.ohchr.org/sites/default/files/Documents/Publications/UNDRIPManualForNHRIs_ru.pdf

there is no need to create a special law enshrining the collective rights of the people [Nakamura 2013].

However, not everyone agrees with this position. Studies by Maruyama Hiroshi, a professor at the Muroran Institute of Technology, openly criticize the Japanese government's current policy and its failure to draft a special law to fully ensure the rights of the indigenous ethnic group [Maruyama 2014]. He assessed the 2019 bill as "a law that preserves the legacy of the Japanese government's colonial attitude toward the Ainu" [Maruyama 2013]. Explaining his point of view, the professor draws attention to the fact that all measures concerning the Ainu are created exclusively for the economic benefit of the state or local authorities, and the development of the Ainu culture is only a cover [Charbonneau, Maruyama 2019a]. In addition, according to the scholar, in order to implement effective ethnic policies and achieve consensus with the communities, the authorities should apologize to the entire Ainu population for the discriminatory and assimilationist policies of the past. However, no formal apology has been made.

Professor Maruyama also criticized the Ainu Policy Promotion Council and emphasized the fact that this body was composed mainly of Japanese and that Ainu representatives, a minority in it, were not able to express the interests of all Ainu communities when drafting new legislation [Charbonneau and Maruyama 2019b].

Problem of 2019 Legislation Compliance with International Standards for the Protection of the Rights of Indigenous Peoples

Members of Ainu communities and organizations have repeatedly expressed their opinions on the need to recognize collective rights, saying that it is an integral part of the UN Declaration on the Rights of Indigenous Peoples. Moreover, the representatives of the people often oppose the procedure that requires a special permit from the local authorities to catch fish. As a result, poaching is on the rise, which only fuels the debate over the recognition of collective rights.

Although the 2019 bill would loosen restrictions on salmon fishing and timber harvesting in national forests for rituals, Ichikawa Mochihiro, an attorney, who spoke for Ainu representatives at a March 2019 press conference, said it was to preserve Ainu traditions and was not based on their collective rights.²⁰ The Citizens' Alliance for Ainu Policy Inspection in 2020 sent a written appeal to the governor of Hokkaido asking him to review the current salmon harvesting regulations. The appeal mentioned that police and local officials obstruct traditional Ainu rituals even though the events are agreed upon in advance.²¹ Thus, the issue of collective rights is one of the most painful for the Ainu communities. It is also closely connected with another important problem, the return and reburial of the remains of the Ainu ancestors, which were removed from graves by Japanese researchers for scientific purposes from the Meiji period until the 1970s.

In the late 20th and early 21st centuries, activists and organizations defending the rights of indigenous people (Citizens' Alliance for Ainu Policy Inspection, Urahoro Ainu Association, Karafuto Ainu Association, Kotan-no Kai Organization, etc.) began to advocate that the Ainu remains be returned directly to communities and buried where they had been removed by scientists. However, the Japanese government has its own views on the placement of anthropological material. It has decided to place all the remains in one place, a memorial complex at the National Museum and Ainu Park in Shiraoi. Many Ainu representatives oppose this because it is highly undesirable to move the remains to the memorial and to allow scientists to conduct further research. The disgruntled Ainu

²⁰ Rights Groups Blame Japan Gov't over Bill on Ainu Ethnic Minority. *Kyodo News*. March 1, 2019. <https://english.kyodonews.net/news/2019/03/617eaed1ce23-rightsgroups-blame-japan-govt-over-bill-on-ainu-ethnic-minority.html>

²¹ Mobetsu-gawa de no sake ryou wo megutte [About salmon fishing in the Mobetsu River]. *Ainu seisaku kentou shimin kaigi* [Citizens Alliance for Ainu Policy Inspection: Official Website]. <https://ainupolicy.jimdofree.com/市民会議の提案-声明/モベツ川でのサケ漁をめぐって>

follow Article 12 of the UN Declaration on the Rights of Indigenous Peoples, which affirmed their right to use ceremonial objects and to bury the remains of their dead in their homeland. It also obliged the State to ensure that ceremonial objects and remains of the deceased can be accessed and/or returned to their homeland through fair, transparent and effective mechanisms developed in conjunction with the indigenous peoples concerned.²² Ainu representatives filed several lawsuits, after which the problem began to be discussed. Despite the campaign to repatriate the remains, very few were returned to the descendants. Most of the anthropological material was moved to the museum's memorial because, according to official data, "there is little willingness among the Ainu to accept the remains" [Higashimura 2019]. Indigenous advocacy organizations provide different information and state that the return procedure is extremely slow and difficult. The fact is that, under the Japanese Civil Code, human remains can only be transferred to a direct descendant or blood relative of the deceased, which must be proven through DNA testing.²³ Consequently, a community or an organization cannot make a request or file a lawsuit. Such a principle contradicts indigenous peoples' right to collective property.

The above-mentioned problems are also aggravated by the fact that the local authorities are not always able to ensure the observance of indigenous people's rights at the proper level. On the one hand, this is related to discrimination and the dissemination of the idea of homogeneity in Japanese society, which is the result of insufficient awareness of the Japanese public about indigenous people's problems [Osakada 2021]. On the other hand, most Ainu live in rural areas and small towns, which

²² United Nations Declaration on the Rights of Indigenous Peoples: Adopted by General Assembly Resolution 61/295 of 13 September 2007. *United Nations: official website*. https://www.un.org/ru/documents/decl_conv/declarations/indigenous_rights.shtml

²³ Ainu fight for return of plundered ancestral remains. *The Japan Times*. <https://www.japantimes.co.jp/community/2013/08/12/issues/ainu-fight-for-return-of-plundered-ancestral-remains/>

are gradually disappearing due to urbanization. It is difficult for local governments to carry out their functions in villages distant from cities. The research literature emphasizes that, probably, over time, the rural municipal government will gradually disappear [Goryan 2017, p. 30].

As for the overall assessment of compliance of Japanese ethnic policy with international standards, in 2020, the University of Queens (Canada) conducted an independent study of the level of legal protection of the Ainu people as part of a study of the conditions for spreading the ideas of multiculturalism in different countries. The study analyzed the Japanese government's compliance with the following criteria:

- 1) recognition of the right of indigenous people to land, territory, and resources;
- 2) recognition of the right to self-government;
- 3) respect for previous treaties and/or new agreements relating to indigenous peoples;
- 4) recognition of customary law;
- 5) recognition of cultural rights (language, religion, traditional activities);
- 6) guarantee of representation in the national government;
- 7) legislative confirmation of the special status of the indigenous people;
- 8) support/ratification of international instruments on the rights of indigenous peoples;
- 9) implementation of measures to improve the well-being of the indigenous peoples.²⁴

The study found that Japan is in full compliance with items 3, 5, and 7. Partial compliance with points 6 and 8 of the above list was also revealed. In total, Japan scored 3 out of possible 9 points.²⁵ Consequently, Japan is approximately 33 percent in compliance with the universally

²⁴ Multiculturalism Policies in Contemporary Democracies. Japan. *Queen's University*. <https://www.queensu.ca/mcp/indigenous-peoples/resultsbycountry-ip/Japan-ip>

²⁵ Ibid.

recognized principles and norms of international law for the protection of the rights of indigenous peoples.

Various UN agencies (the Human Rights Council, the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on contemporary forms of racism, racial discrimination, anti-Semitism, xenophobia, and related intolerance) have made numerous human rights recommendations to Japan. Among the recommendations are the following: recognition of the right of the Ainu to compensation (including restitution) for lands, territories, and resources that traditionally belonged to them; the need to solve the problem of Ainu representation in government; overcoming the lower level of education and quality of life of Ainu; developing a law that would prohibit racial discrimination and could be a remedy for victims of racial discrimination, etc.²⁶

In 2019, current Japanese Prime Minister Abe Shinzō acknowledged the validity of criticisms of the lack of clear guarantees for the return of land, resources, and political power to the Ainu people in the text of the Act Promoting Measures to Achieve a Society in which the Pride of Ainu People is Respected. He agreed that, so far, the recognition of the Ainu people has occurred only in words and does not meet the conditions stipulated by international law. Abe also noted that all recommendations are being taken into account and that Japanese legislation will continue to improve.²⁷

However, the problem lies not only in the activities of the Japanese authorities. Speaking about the lack of full-fledged representation of the Ainu in the government, it is worth noting that it is largely due to the fact that the Ainu community itself is rather heterogeneous.

²⁶ Observations on the State of Indigenous Human Rights in Japan. *The 28th Session of the United Nations Human Rights Council Universal Periodic Review*. March 2017. <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4287&file=EnglishTranslation>

²⁷ From assimilation to recognition: Japan's indigenous Ainu. *Minority stories from around the globe*. <https://stories.minorityrights.org/japan/chapter/from-assimilation-to-recognition-japans-indigenous-ainu/>

At the beginning of the 21st century, a serious crisis appeared in the Ainu national movement. It manifests itself in a lack of consensus among communities and organizations representing their interests on many issues, including the return of remains. The Ainu Association of Hokkaido, for example, stands in solidarity with the government in this situation. At the same time, the authorities see the Association as the only serious representative of the indigenous people. Nevertheless, this organization does not represent the opinion of most of the Ainu people. It includes representatives of only 50 local associations, while there are about 200 of them in Hokkaido.

Accordingly, there is a problem of lack of an organization that would represent the interests of all Ainu communities, including the Karafuto Ainu Association, the Ainu Women's Association, etc. This also draws the attention of government officials, who say that of all the members of the Hokkaido Ainu Association, only 20 percent actually have Ainu blood [Higashimura 2019]. Researcher Osakada Yuko notes, however, that until the Ainu create a common representative organization, they will not be seen as bearers of collective rights [Osakada 2021].

At present, the Ainu are not represented in Japan's National Diet. The only Ainu who was elected to the National Diet as a member of its Upper House from the Socialist Party was Kayano Shigeru, and that was back in 1994. Furthermore, it is important to draw attention to the situation of ethnic education among the Ainu. Article 14 of the UN Declaration on the Rights of Indigenous Peoples states that "indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning".²⁸ Nevertheless, this article of the Declaration is also only partially observed by the Japanese government. The importance of

²⁸ United Nations Declaration on the Rights of Indigenous Peoples: Adopted by General Assembly Resolution 61/295 of 13 September 2007. *United Nations: official website*. https://www.un.org/ru/documents/decl_conv/declarations/indigenous_rights.shtml

ethnic education has been repeatedly raised by Japanese and Ainu scholars such as Kayano Shigeru, Maruyama Hiroshi, Maeda Koji, etc. In particular, Professor Maruyama Hiroshi considers the improvement of ethnic education and the inclusion of the Ainu language in the school curriculum to be extremely important for the preservation of identity and development of the people [Maruyama 2013]. Nevertheless, at present, the study of the Ainu language remains a hobby for most Ainu people [Dubreuil 2007], and its introduction into the educational program is difficult. However, it should be taken into account that, in Japan, the internationalization and promotion of multicultural trends in the sphere of education in general is rather slow.

Conclusion

Obviously, the problems of securing and protecting the rights of indigenous peoples are not unique to Japan. ILO specialist Martin Oelz argues that the process of improving indigenous peoples' living conditions has been slow in many states. In order to speed it up, "public policies must take into account the needs of indigenous peoples and reflect their aspirations, and the lack of an institutional and legal framework for indigenous peoples to participate in decision-making must be combated".²⁹ According to recent UN reports, despite international recognition and the adoption of numerous legal instruments, indigenous peoples around the world continue to face serious obstacles and their rights are often violated.³⁰ There is also the threat of the destruction of aboriginal cultures. UN representatives emphasize that systems for

²⁹ Urgent action is needed to combat poverty and inequality among indigenous peoples. *International Labor Organization: official website*. February 3, 2020. https://www.ilo.org/moscow/news/WCMS_735849/lang--ru/index.htm

³⁰ On Indigenous Peoples and Human Rights. *United Nations: Official Website*. <https://www.ohchr.org/ru/indigenous-peoples>

promoting the rights of indigenous peoples, ethnic, religious, and social minorities require continuous improvement.³¹

At the same time, it can be said that Japan has done much in the way of establishing mechanisms for the legal protection of indigenous people. The influence of global trends, which Japan is forced to follow while constantly looking at the opinion of the world community, has played a major role in this issue. A key event in the change in Japanese ethnic policy was the recognition of the Ainu as an indigenous ethnic group in 2008, which marked the beginning of the formation of a legal framework to safeguard their interests.

At present, however, the country still lags behind international standards. Japan only partially recognizes the rights of the Ainu, and ethnic policy is mainly focused on the promotion of culture and the development of tourism in Hokkaido. In addition, a clear shortcoming of the 2019 law is that it does not include specific anti-discrimination initiatives or measures to improve the socio-economic situation of the people. The situation with collective rights, representation of the Ainu people in government bodies, and the development of ethnic education remains unresolved. The dispute over the return of ancestral remains to Ainu communities and the possibility of salmon fishing by members of the people without special permission is particularly acute. These problems are deepened by the lack of unity among the Ainu people about the issues that affect them. This leads to the impossibility of creating constructive interaction between the Ainu people and government officials.

The opinion of the Japanese government on this issue is also contradictory. On the one hand, it recognizes the need to improve legislation. On the other hand, Japanese society continues to support the idea of ethnic homogeneity, which creates misunderstanding among Japanese citizens about the current ethnic policy. Nevertheless, the

³¹ Indigenous Peoples and the United Nations Human Rights System. Statement of Facts № 9/Rev.2. *Office of the High Commissioner for Human Rights*. Geneva: United Nations Office. 2013. https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2_ru.pdf

problem of realizing and securing the rights of indigenous people in Japan is very multifaceted and requires cooperation between the Ainu and Japanese sides. Only then can it be effectively resolved.

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