

The Seventh Session of the United Nations Permanent Forum on Indigenous Issues

21st April-2nd May, 2008

Yuuki Hasegawa

Ainu Resource Centre

Ainu.resource.centre@gmail.com

Item 5: Human rights

Demand for Japanese implementation of United Nations Declaration on the Rights of Indigenous Peoples

This is a joint statement with Ainu Association of Hokkaido and Shimin Gaikou Centre.

At the outset, we support the Asia Caucus Statement.

This statement is on our demands to the Japanese government in relation to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Firstly, we welcome the Japanese government for voting in favour of the United Nations Declaration on the Rights of Indigenous Peoples at the United Nations General Assembly last year. However, we are concerned that the government of Japan has made a few reservations on the collective rights and property rights in relation to the harmonization with the public interests.

At the House of Representatives plenary session on January 21 this year, Prime minister, Mr. Fukuda answered opposition MP, Mr. Hatoyama (Secretary General of Democratic Party of Japan)'s question by saying, "Regarding the Ainu, we are not in a position to conclude whether they are an indigenous people because there is no internationally established definition of the term *indigenous peoples*."

UN human rights committee and CERD has been concerned that the government does not recognize Ainu as indigenous peoples. The Ainu irrefutably constitutes an indigenous people according to the definition of the widely used Cobo Report and other documents. This is also clear in the Japanese government's official documents and the judicial decisions. (Please see the attached document.)

"The report of the Experts meeting concerning Ainu affairs (1996)" which was established as a private advisory body to the National Chief Cabinet Secretary to determine the future directions of Ainu measures, stated that it was necessary to review the discussions occurring at the UN, before then making a determination of future measures for the Ainu which fit the circumstances in Japan. Unfortunately, it is a pressing concern that after the adoption of the declaration, the Japanese government has failed to take any significant steps towards the implementation of the UN Declaration in Japan.

For more than 150 years the Ainu have suffered from both structural and direct discrimination as a result of colonization and assimilation policies of the Japanese government. To this day there is still an economical and social gap between the Ainu and other non-indigenous Japanese. Even so, in recent times, activities involving the transmission and development of Ainu language and Ainu Culture have been approached with immense enthusiasm. The adoption of the UN Declaration is a major step towards the implementation of the Declaration within Japan in order to facilitate the regaining of the use of land and resources taken during the processes of colonization and recovering Ainu culture held in contempt because of the policies of assimilation.

Following the adoption of the UN Declaration, the Ainu Association of Hokkaido as the largest Ainu organisation, has undertaken active appeals to the Hokkaido Governor and the Hokkaido assembly with respect to the government implementing their responsibilities under the Declaration. Petitions to the prefectural and municipal assemblies have also been made, presenting the demand for the establishment of an advisory panel of experts at the Prime Minister's Office for creating comprehensive measures for the Ainu people. At the same time, the Ainu Utari Liaison Group, an organisation of Ainu living in the Tokyo area, have presented a letter of demand to the Prime Minister with respect to the improvement of measures for indigenous peoples and the recognition of indigenous peoples in Japan, as well as conducting other activities including the collection of signatures for a petition and presenting legislators with a questionnaire.

We welcome the research entitled "Structures, procedures and mechanisms that currently exist or that might be established to effectively address the human rights situation of indigenous peoples" (E/C.19/2008/2), and fully support the creation of a Forum Committee on the United Nations Declaration on the Rights of Indigenous Peoples."

We make the following recommendations.

1. We request the Japanese government to recognize indigenous peoples' rights for Ainu to facilitate implementation of the Declaration in Japan and establish a national level deliberative organisation to implement comprehensive measures at a national level.
2. We request the Forum to recommend that the governments repeal their reservations made after the adoption of the declaration.
3. We request the Forum to recommend that the UN agencies provide the advise and technical assistance to the governments in order to promote the national implementation of the UN Declaration and the policy-making in accordance with individual country circumstances as determined under Articles 42 of the UN Declaration.
4. We request the Forum to recommend that the UN agencies provide the capacity building for the members of the indigenous communities in order to help their effective use of UN Declaration at a national level through the mobilization of the financial cooperation and technical assistance as determined under Articles 41 of the UN Declaration.

March 22, 2008

Mr. Yasuo Fukuda
Prime Minister of Japan

Petition

Dear Prime Minister,

I would like to express my sincere appreciation for your thoughtful consideration to the implementation of measures to improve the lives of the Ainu as well as the promotion of Ainu culture.

The Ainu Association of Hokkaido asked the national government to enact the law concerning the Ainu in 1988, and the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture, which is limited to cultural policy, was enacted in 1997.

However, with regard to the establishment of a comprehensive policy for the Ainu (which was sought through the Association's request to the national government to enact the law concerning the Ainu), we have not been able to initiate fundamental discussions about indigenous peoples in terms of the nation's legal history and international human rights law. This is because the United Nations Declaration on the Rights of Indigenous Peoples (referred to below as *the UN Declaration on the Rights of Indigenous Peoples*) was not adopted, despite the ethnicity and indigenousness of the Ainu being acknowledged in a report by the Advisory Committee of the Learned on the New Japanese Policy concerning the Ainu People (an advisory body to the Chief Cabinet Secretary). The national government has not yet begun deliberations on a comprehensive policy.

Last September, the UN Declaration on the Rights of Indigenous Peoples was adopted by a majority. At the House of Representatives plenary session on January 21, you answered Mr. Hatoyama's question by saying, "Regarding the Ainu, we are not in a position to conclude whether they are an indigenous people because there is no internationally established definition of the term *indigenous peoples*."

The Ainu have been recognized as an indigenous people at the UN and the ILO, and irrefutably constitute an indigenous people according to the definition of the widely used Cobo Report and other documents. This is also clear in the Japanese government's official documents and the judicial decisions below. Furthermore, as for the four nations that voted against the Declaration, rigorous measures are under way for the rights of indigenous peoples, regardless of the definition.

We would like to ask you to recognize the Ainu as an indigenous people falling under the UN Declaration on the Rights of Indigenous Peoples based on the above facts. We would also ask that you establish, as soon as possible, an advisory panel of experts at the Prime Minister's Office to deliberate on the rights included in the Declaration to enable the establishment of a comprehensive policy that will improve the Ainu's social and economic position through action supported by legislative measures.

1. Dai-Nihon Komonjo: Bakumatsu Gaikoku Kankei Monjo No.3, pp. 389 – 409, 1853
In territorial talks with Russia, Japan maintained: "The term 'Ainu' refers to the Ezo people. These people belong to Japan, then the place where they live is Japanese territory."
2. The law on land ownership by foreigners of 1910
The law concerning land ownership by foreigners was enacted in response to the revision of international conventions, and domestic laws were amended to allow land ownership by foreigners. The government exempted Hokkaido from this law by clarifying its status as a colony of Japan (like Taiwan and Sakhalin) during deliberations on a legislative bill at the Imperial Diet.
3. The North Pacific Fur Seal Treaty of 1911
In the treaty concluded between the U.S., the Soviet Union, Canada (then a British territory) and Japan, the Ainu were considered as "aborigens or native" in the same way as the Aleuts and Indians, and were given comparable hunting rights.
4. The Sapporo District Court Nibutani Dam Lawsuit of 1997
The lawsuit recognized the Ainu as an indigenous people as stipulated in Article 27 of the International Covenant on Civil and Political Rights, and acknowledged their right to the enjoyment of culture.

Sincerely yours,

Tadashi Kato
Executive Director
The Ainu Association of Hokkaido