

Ainu and the politics of recognition

Teresa Mili,
Jawaharlal Nehru University, India

Abstract

The recognition of Ainu took more than centuries and to gain recognition was not an easy task. About 80 per cent of Ainu lives in Nibutani in the Northern part of Japan in Hokkaido. Historically they faced lots of discrimination in every respect even the fundamental rights were denied. They were one of the most marginalized communities in Japan. The help of international human rights committee and their persistence handwork was fruitful for the recognitions. The Japanese government were wise even to hide those discriminating issue as it will bring bad portrait to Japan.

KEYWORDS: Discrimination, Indigenous, Hokkaido, Nibutani, Gaiatsu, United Nations, Burakumin

Introduction

The nature of the Ainu people was animist beliefs and their main occupations were hunting and fishing. By the increased waves of Japanese settlements their traditions and community ethos have been eroded and assimilating policies are being enforced. Currently the Ainu numbers are small in proportion and they are considered as the most marginalised group in Japan. In the 15th century Japanese settlers moved into Hokkaido and the Ainu were pushed to the North. Ainu population declined as they encountered diseases. In 1868, the pace of Japanese settlement in Hokkaido increased with the Meiji government coming into power. The government redistributed land to the Japanese farmers, prohibitions of Ainu languages; children were admitted to Japanese schools and where adoption of Japanese names was mandatory. In 1869, a year after the Meiji Restoration, the government gave Hokkaido its current name which was a part of the maintained and established by *Kaitakushi* (the development Commission) to rule and develop the prefecture.

From the early Meiji era, the Ainu were treated nominally as Japanese but in practice they were treated differently from the *Yamato* (dominant) Japanese. Discrimination soon came to be justified not on the grounds that the Ainu were alien barbarians but on the grounds that they were primitives. The concept of primitives was applied in a derogatory sense to separate them from the more technologically advanced and therefore superior *Yamato* Japanese who were held in high respect. (Henshall, 1999:58) In this period the policy of absorbing the Ainu without delay led to severe cultural depletion and unexpected hardships. Their life began to decay at its roots with the loss of exclusive rights over river fishing grounds. The Ainu were forced by the Japanese government to assimilate into the mainstream society. Tremendous changes had undergone in their society and culture because the policies of assimilation had been regulated by the Japanese Government. The enforcement of rules and regulations banning ancient Ainu customs and language was practiced. In the last hundred years traditional lifestyles of Ainu had been disappearing largely due to negligence of their rights which was happening within Japanese society. In the late 20th century the world became more aware about protecting indigenous rights; Japan faced many criticisms for negligence of its Ainu indigenous rights.

For century's annihilation of Ainu was contributed by the oppression, racism, policies of forced assimilation, intolerance and discrimination, social and political ethnic Japanese dominance. Modern socialization and marginalization fear had led negativity of Ainu identity in recent generations. The Ainu customs and traditions were abandoned by many Ainu generations. Urban Ainu faced problems of addiction alcoholism, homelessness, violence were common, hide their Ainu heritage and deny their Ainu identity, even to themselves; their culture is close to extinction. Only few elders speak the Ainu language.

The newly formed government after the Meiji restoration introduced an Act declaring officially Ainu as Japanese citizens and thus became one of indigenous groups. The Act was not out of kindness but it was a trick to control Ainu land by the Japanese and to have access to its resources. The security had been provided by the expanding Russians up to the North. With the possession of newly economically untamed land, the Japanese began to flock to the Ainu area for the establishment of their economy. On paper the Ainu were considered as Japanese citizens but in reality racial discrimination still continued. The worst was the forbidden situations to fish salmon in Hokkaido, the land that was their native, which was a major part in their culture. The inhuman slave like working conditions in the Japanese fishing industry and the prevailing forced assimilating policies were meted out to Ainu from the moment they were displaced from their own lands.

Their culture was not seen something to be celebrated or preserved. So many grew up ignorant or ashamed of their cultural heritage. Discrimination is still a problem in schools, workplace and in marriage where some Ainu choose not to reveal their background. Today there is gap in terms of standards of living and level of education between the Ainu and their compatriots. Japan modernized itself while denying its "diversity and multiculturalism". However, the nation which aspires to obtain a permanent seat on the United Nations Security Council has already risen to an international stage where they have to acknowledge the spirit of multiculturalism. The government's assimilation policy made many Ainu ignorant of their culture and history. Whether they are proud of being Ainu or they hide their identity makes a huge difference to their children.

The issue of Ainu discrimination was not isolated from the Global Human Rights frame since the 1993 International Year of the World's Indigenous People; the Ainu have more or less successfully built solidarity with other indigenous people of the world. The Movement had provided important support to the development of the Ainu as an indigenous people movement by recognizing and certifying the Ainu as an internationally legitimate indigenous people. The Ainu international involvement and recognition opened the Japanese government to international influences. However, we find that these influences are mediated by Japanese state structures which provide limited means for Ainu participation in governance. At the same time international visibility of Ainu as a discriminated indigenous population substantially increased. (Godefroy, 2011:10-30)

1.1 Organization of Ainu to gain recognition

1. The Ainu Association of Hokkaido:-

On 13th March 1946, months after the Second World War the "Ainu Associations of Hokkaido" was established with the aim of seeking equality and claiming their lands.

It was the only forum formed to represent Ainu in Hokkaido. It was formed and became active and presented to the Japanese Government the “petition for promotion and relief of Ainu peace”. The petition compiled in a great interest, recounts all the discriminatory treatment by the Japanese towards the Ainu and their conditions were presented. It also asked for more land, promotions of education and medical services. They do not expect much from Government to assist them but Ainu people themselves have taken the responsibility to do the best for solving their various problems, they all together collected the Ainu race strength. Thus, Ainu involvement had three goals.

- 1) During post war period, Japan’s policies were made for Agricultural land distribution. Land was given only for cultivation which was not fertile and if it was not cultivated then land should be returned to the Japanese Government authorities.
- 2) They wanted the land in Niikappu to be returned because in the Imperial era it was taken for the purpose of horse stable. The cultivated land areas of Ainu were also taken away for raising military horses without any compensation.
- 3) At the time of Second World War Ainu were evacuated from their land for the military purpose in a place called Asahikawa and land taken from them were never returned. In order to get their land back, the Ainu Associations of Hokkaido went to the Hokkaido prefectural government, Headquarter of the US forces, the Imperial Household Agency and the Department of agricultural and forestry to appeal for the restoration of their rights. However, those efforts were not fruitful with the exception that some Ainu successfully returned to their lands in Niikappu.

In 1970’s there was an awakening period for Ainu because much pressure was put on the Hokkaido Prefectural Government to undertake certain social welfare measures for the betterment of their life and some made were to counter the Hokkaido Former Aborigines Protection Act of 1899-1997. This Act was replaced by the Cultural Promotions Act of Ainu in 1997 but it did not define the Ainu as indigenous people and also it did not provide any indigenous rights. This indifference to the Ainu is own view of themselves as a distinct ethnic minority within the Japanese nation state. It prevailed led to a situation where they challenged the idea that indigenous people’s issues are the sole jurisdiction of the state. In the late 1970’s Ainu representatives travelled to China and Alaska (United States) for meetings concerned with indigenous affairs and in the early 1980’s they attended international indigenous conferences in Greenland. Such actions then made it difficult to deny their existence and in 1991 their status as a cultural and religious minority was conferred upon as Ainu by the government.

The Ainu Association of Hokkaido united among themselves for the improvement of the social schemes like standard of living and to achieve high education. In 1974 the Hokkaido Prefectural Government formed a policy package named Hokkaido *UtariKyokai* Welfare measures to improve the social welfare and education of Ainu and to promote their culture. The Preamble of the draft begins with an appeal for official recognition of Ainu indigenusness with due respect for their ethnic pride and protection of their collective rights under the constitution of Japan. The main text includes the following six objectives:-

- 1) To protect the Ainu identity under the Human rights cover there were Act to eradicate discrimination done by the mainstream Japanese.
- 2) Due to less in population getting elected in a Diet is a big task, number is less so no National Party can be formed and voice cannot be heard, reservations of seats in Diet is needed so their requirements can be known in the local and national government.
- 3) Assimilation has destroyed Ainu history, traditions and Language. Therefore concrete measures were adopted in terms of education and research of Ainu in the academic units by the support of Ainu teachers in higher studies.
- 4) Sustained alternative employments or occupations should be created for the Ainu engaged in primary activities.
- 5) The formation of some self-help group based fund for the sustainability instead of depending on the social welfare measures.
- 6) Special institutions should establish in the local and national level for the consultation of the Ainu. (Siddle, 1996:147-160)

2. Ainu Activists:-

In 1920's there was a growth in the social movements among the Ainu. Despite many constraints, the educated young Ainu organized a movement; they were united by the commitment to work for the welfare of their people. The advances made by the organized Ainu movement, by no means are all the people socially and officially categorized as Ainu themselves convinced by the politics of Ainu-ness. All these were succeeded by the Ainu leaders and activists like Nomura Giichi, Yuki Shoji, Narita Tokuhei, ShigeruKayano. Many undergo good experiences, as they are discovering that Ainu identity introduces new pride and meaning into their lives.

In 1980's and 1990's Ainu activists in the international level focused on applying pressure on Japanese government through Human Rights bodies. This was initially used to secure recognition of the Ainu as a minority and later in an attempt to secure recognition of the Ainu as an indigenous people with indigenous rights. Ainu are using International legal mobilization *gaiatsu* (outside pressure) which are giving an opportunity to achieve changes through the lobbying and political process of democracy. Ainu activists bring significant changes in the Japanese government position. TakemaraTeshima and Hideaki Uemura, an academia and Ainu activist fought for the Ainu recognitions and their rights.

The *ShiminGaikou Centre* (Citizen's diplomatic Centre for the rights of indigenous people) which is a non-government organisation also informed Ainu activists about UN mechanisms and facilitated submission to UN Human Rights bodies by providing indispensable translation and interpretation support. It has proven an important vehicle through various other Japanese academics involved in the study of international Human Rights laws. It has been able to provide on-going support for the Ainu legal mobilization both domestically and at UN forum. Both the Ainu culture and people started getting recognition and honour for the past bravery. All of this was achieved due to the hard-work, supports and efforts by the Ainu people themselves.

This resulted lobbying in Committee on the Elimination of Racial Discrimination, (CERD) referring Ainu as indigenous, drawing the Japanese Government's attention on the rights of indigenous people and also for the recognition of Ainu land rights. Whereas claims based on the indigenous rights were completely ignored by the Japanese government. For example, *gaiatsu* was not successful in changing Japan's domestic position. By the 1990's Japan had become accustomed to the reporting system under the International Human Rights Convention. As a result, the perceived international pressure to accept the recommendations of these treaty bodies and their *gaiatsu* value had declined subsequently.

These were able to refute the government's position through their participation in the working group on Indigenous population. It was the first opportunity for the Ainu representatives to attend in the United Nations to lobby in Human Rights bodies and this lobbying led the government to acknowledge. It was argued however, that they were not denied enjoyment of these rights like all other Japanese Nationals, they are guaranteed equality under the Japanese constitution. During this period, Ainu Activists and supporters at the international level began to employ sophisticated methods to lobby diversified UN Human rights bodies regarding their rights. (Larson, 2008:53-82)

Ainu Activists and the *ShiminGaiko* Centre began to utilize the ICERD to apply pressure on the Japanese Government to improve the Ainu domestic Human Rights situation. They had begun to participate in the United Nations forum established for indigenous people. Ainu elders from the *UtariKyokai* began to attend annual sessions of the United Nations Working Group on Indigenous Populations (WGIP) in 1987. Here Ainu Activists built networks with other indigenous people and presented annual updates on Ainu Human Rights issues including the progress of the domestic Ainu New Law Movement.

It used the word *gaiatsu* by naming and shaming the Japanese Government, which was sensitive to its perception and reputation in international level. Participation at the WGIP also served the purpose of having the international community and UN bodies for recognizing the Ainu as an indigenous people. This recognition was confirmed by the visit of the working Group's Chairperson Ms. Erika Irene Daes to Ainu communities in 1991 and also by the invitation given to *UtariKyokai* Executive Director Giichi Nomura to address the UN General Assembly at the launch of the 1993 International Year of the World's Indigenous people in December 1992. For many years the main work of WGIP was the "Declaration of the Rights of Indigenous People" which remained in draft form and little lobbying used by Ainu people? Japan easily ignored the developing of international norms, because it found problems domestically and non-compliance is not seen threatening to the international stature.

1.2 Support of international bodies for providing recognition to indigenous

The recognition of Ainu as an indigenous people by other UN human rights bodies included the Committee on the Elimination of Racial Discrimination (CERD), the special Rapporteur on the situation of Human Rights and Fundamental Freedoms of Indigenous People and the Human Rights committees (HRC) and Convention on the Elimination of Racial Discrimination (CERD). It was cited as international sources that justified Japan to recognize Ainu indigenous rights. This shows domestic climate, right recommendations by UN treaty bodies to hold *gaiatsu* or external certification of

Ainu claims for the indigenous rights and remain of value as a legal mobilization strategy.

The need to report back to CERD is the step to realize Ainu land and other Indigenous rights. However, it contributed to the national government's willingness to move forward with re-creation of *Iwor* "which means the symbolic space for ethnic harmony". The *Iwor* system was implemented in 1964 by the Japanese authorities called red tape which was a restriction to Ainu for using natural resources for the cultural practices. Now they need to get licence for the deer hunting and salmon fishing. This license system was limited with only one time permits for the traditional hunting and catching fish by the Ainu.

1. Human Rights Committee (HRC)

The Japanese Government generally viewed Human Rights as a matter of national sovereignty and keen to engage with international Human Rights bodies, it was concerned to meet the minimum acceptable norms of western developed states in order to demonstrate its integration into international society and to maintain equal status with such states. Adoption of these norms was seen as the necessary price for existence in the outside world or necessary for the country to maintain its place in the international system. Thus, outside pressure can be used by domestic groups like the Ainu to leverage their domestic agitation for changed. The potential result was the alternation of domestic policy to ensure that minimum internationally accepted norms are adapted. This dynamic has resulted in international Human Rights norms having a significant effect on domestic laws and Government policies in various areas within Japan, the sphere of Ainu rights was no exception.

Dramatically between 1980's and 1990's the Japanese government's official respect for Ainu changed rapidly and fairly as a result of UN scrutiny and the Ainu lobbying under Article 27 of the ICCPR (International Covenant of the Civil and Political Rights). In its initial periodic report under the covenant in 1980, the Japanese Government took a position that it did not had any obligation under the article as minority groups are mentioned in the covenant. The Japanese government stated that article 27 was not relevant to the Ainu because minority does not exist in Japan. They assumed that *UtariKyokai* was treated equally with Japanese. The Human Rights Committee based on its first Periodic Report stated by the Japanese, "establishment of a rapid communication system had made the difference in their way of life indiscernible". The Government conceded that the Ainu should be able to preserve their culture as any other Japanese could. In 1986, prior to the second periodic report being submitted by the opposition parties, the domestic groups began to question the government regarding its position over Ainu with reference to the ICCPR.

The court referred to the HRC documents and reports submitted to them by Japan before finding that the Ainu were an Indigenous minority with the right to enjoy their own culture as guaranteed. In 1991 Japan's third periodic report, the government referred the report under article 27 of the ICCPR it indicates that persons belonging to ethnic, linguistic and religious minorities can use their own language or enjoy their own culture. The motives were taken to help the Ainu Human Rights realizations such as the Hokkaido government *UtariKyokai* welfare measures. By its fourth periodic report in 1998 the Japanese government referred to policies relating to the Ainu

people including the conclusions of the expert Meeting which recommended a new policy and legislation to support the enjoyment of Ainu Cultural Rights.

In 2006 Human Right Council voting took place and Japan participated in the gathering. There was no change in the Japanese law regarding indigenous recognition for many decades. In Japan collective rights are denied to various minorities. Before the aforementioned resolution, the Ministry of land and infrastructure provides information about the Japanese constitution equality guarantee of the law. As per the Japanese constitution lines, the recognition of the Ainu as an indigenous people cannot be granted. The Japanese Government pointed out the meaning and conclusion of the indigenous people which was not concrete because it lacked a defining clause. In 1997 just to get the indigenous definition there has been debate for many years by the working group on indigenous populations.

The Japanese Government immediately accepted all the latest recommendations by the Human Rights Committee to recognise Ainu as indigenous people. In domestic legislation there were special measures to protect, preserve and promote their cultural heritage and traditional way of life. To recognise their land rights, to provide adequate opportunities for Ainu children, to receive instruction in order of their language and about their culture and to include education on Ainu culture and history in regular curriculum. The Japanese Government also should fully abide by the latest recommendations of CERD to take further steps in consultation with Ainu representatives, to translate consultations into policies and programmes with clear and targeted action plans. It also addressed the Ainu rights and the participations of Ainu representatives were increasing. In order to consult the Ainu representatives a third working group was established. It has the purpose of examining and implementing international commitments such as the International Labour Organization (ILO) convention No.169. And also the state should guarantee the collective rights of indigenous people including the Ainu over their traditions, cultures, languages and identities. (CERD, 2014:5-7)

2. United Nations Declaration on the Rights of Indigenous People (UNDRIP)

For 20 years the draft UNDRIP was not adopted by any of the UN political organs, Japan denied the relevance of indigenous rights norms to the Ainu people arguing that no agreed international definition of the term “indigenous People” existed. But in September 2007, the Japanese government voted in favour of UNDRIP with an overwhelming majority of states at the General Assembly of the UN following the adoption, the Ainu organizations including the Ainu Associations of Hokkaido, petitioned the Japanese Diet to implement the Declaration domestically. It was not a legally binding, enforceable law, but it demonstrates the commitment of the membership to set a standard for the treatment of indigenous people, eliminate Human Rights violations against them and assisted them in combating discrimination and marginalization. This led the Japanese Government in 2008 to pass a resolution to create a new law to help the Ainu people in recovering their status, regain their culture and rebuild their eroding communities between Ainu people and non-Ainu people in Japan.

The United Nations bodies reformulated Ainu claims that Japan had violated international Human Rights Obligations and cloak them with the legitimacy of UN to bring changed rapidly in the Japanese government position on these issues. Peng an

Ainu scholar has explained: “as a respected third party, the UN has provided legitimacy to the demands of the disadvantaged in Japanese society and held the Japanese government somewhat accountable for decisions not to comply with international standards”. Ainu began to lobby for change both at the United Nations and within Japan and also they have made official enquiries to the National Diet about their recognition issue. The UN Human Rights forum has performed an important certification function in this regard for the Ainu and other indigenous groups, providing the validation of actors, their performances and their claims by the authorities. Certification and the taking up of Ainu issues by UN bodies arguably has been more effective in the case of Japan due to Japanese government sensitivity to its reputation of being how it was perceived in the international community.

The resolutions of both Houses of Japanese parliament mentioned in the adoption of the UNDRIP in their introduction. The UN Human Rights watchdog body calls for the Japanese government to take concrete measures based on the purpose of the declaration. It was adopted in the first session of the Human Rights council in June 2006. After more than 20 years of draft work, UN passed a resolution at the UN General Assembly in September 2007. The declaration consists of 46 articles, stating:

- 1) That indigenous people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- 2) They have right not to be subjected to forced assimilation or destruction of their culture.
- 3) That states shall provide effective mechanism to prevent the dispossession of indigenous people’s lands and territories.
- 4) They have right to the lands, territories and resources which they have traditionally owned.
- 5) They have right to redress, by means that can include restitution, just fair and equitable compensation for the lands, territories and resources including those which were traditionally owned or used and which have been confiscated or damaged without their free, prior and informed consent among other things. Japan joined the adoption at the UN human rights council with supplementary comments on their collective rights and regulations concerning property.

Ainu identification as an indigenous group was officially reinstated in 2008. The Japanese Government is not known to prioritize minority issues. Sure, the Ainu people and their supporters have been trying for years to get the Japanese Government to overturn the 1899 Act. However, overturning the Act was probably a reactionary response to which a UN investigator calling Japan out on their profound racism and xenophobia. After being called out the government put together a panel to draft out a report and policy suggestions towards the Ainu. There were panels like this before, but this was the first time an individual of Ainu descent was allowed to participate in the drafting. This kind of racism publicity reactionary response (as opposed to being pro-active) does not help much for Japan, who has been trying to obtain a seat on the lucrative UN Security Council. Further, it declared to make efforts to facilitates existing Ainu policy and implement comprehensive measures with reference to the relevant provisions of the UNDRIP. (Porter, 2007: 3-7)

1.3 Problems of recognition

The first report by the Japanese government to the ICCPR in 1980 denied the existence of the Ainu. As a signatory to this covenant, the Japanese government was required to report about the measures it has adopted to ensure protection of the rights contained therein. (Sjoberg 2013: 12-13) About the estimate of populations no national-level survey of Ainu has been carried out yet, all though the Committee on the Elimination of Racial Discrimination urges the Japanese government to do so.

According to 2006 local government survey, the rate of the Ainu households that go on welfare scheme is 1.6 times higher than that of the other Japanese in Hokkaido that is 38.3 compared with the local average of 24.6 per cent and the Ainu children who go to university is nearly half of that of Japanese children. Moreover, only 17.4 per cent of the Ainu receive college education. Furthermore, one in five Ainu have directly experienced being discriminated against their ethnicity. The 1899 Hokkaido Aboriginal Protection Law Act stood for almost 100 years and successive governments avoids stating that there was no “Ainu issue” and also insisted that Japan did not have any ethnic minority groups. Efforts to revive language, traditional dances and music gathered steam, contributing to a more positive appreciation of Ainu Culture. But the government still neither recognize the Ainu as an indigenous people nor offer substantive proposals to support them on a day- to-day basis.

It appears that there was no doubt that people would hesitate to refer themselves as a vanishing race with a primitive lifestyles and that such as attribution was rather something coming from the outside. The Ainu position themselves in the Japanese nation state to a large extent, determined by this state of affairs. As a historical fact, the Japanese government had recognized the Ainu people as indigenously inhabited in Hokkaido and other areas but it had not clarified whether Ainu people were indigenous or not. Such measures have resulted in a somewhat nuanced picture of their customs and beliefs, notably in the publication of *Ainu: Spirit of a Northern people* as well as in the recognition of them as an ethnic minority, hereby challenging the state ideology of Japan as well as perceptions of the Hokkaido Ainu as a dying people.

The problems they face are in two ways 1) the consistent denial by the Japanese Government of their status as indigenous people of Japan. 2) The slow progress toward the recognition of indigenous people rights. The traditional approach of the Japanese government toward the Ainu people was ‘welfare colonialism’ that considered the Ainu as aboriginals. By 1992, when Japan filed its third report, as a result of Ainu mobilization at the UN, the Japanese government finally recognized the Ainu as an ethnic minority and suddenly shifted its area policy to ethnic policy. The problem of the advancement of the Ainu rights was not only a domestic one. There has yet to be a fight for the rights of indigenous people within the framework of United Nation Convention. Despite tremendous local and international mobilization the states could not agree on a declaration, much less a convention on indigenous people rights. (Siddle, 2003:447-462)

Nevertheless, the Japanese Government denied recognition of the Ainu as indigenous people in its report stage of the UN Treaty Bodies including the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. In the report stage of Japan at the committee in 2001, the government avoids making a clear

statement, claiming that there was no internationally concrete definition of indigenous people. On the other hand, the committee and the other treaty Bodies recommended that “Japan should take steps to further promote the rights of the Ainu as indigenous people. In the Universal periodic review of the UN Human Rights Council, several countries recommended that Japan should make substantial policies to implement the ‘UNDRIP’. Only 4 countries voted against Japan and they are US, Canada, Australia and New Zealand. But the government was denying recognition to the Ainu, claiming there was no official definition of indigenous people. The government was afraid of what the Ainu would demand if recognized as indigenous, referring to possible calls for the return of land or natural resources.

The Ainu people are still struggling for the full recognition and acceptance by the Japanese society of their culture and language and for the recognition in law of their rights as an indigenous people. They tried to protect their rights by filing cases in court such as the 1997 case demanding the cancellation of the expropriation to build the Dam in Nibutani, Biratori, along the Saru River in Hidaka district of Hokkaido and in 1999 questioning the management of their properties by the Governor of Hokkaido. Though these cases were ultimately dismissed, the ruling recognized the Ainu as indigenous people based on the United Nations definitions (Nibutani case) and accused the Hokkaido prefectural government for its mismanagement of the Ainu properties (Ainu common properties case).

The decision in this latter case has been appealed to the Supreme Court similarly while the Culture Promotion Law protects the Ainu language and culture, Ainu people still struggle for recognition as an indigenous people. The government has only recognized the Ainu people as an ethnic minority in the 1991 report to the UN Human Rights Committee. As a historical fact the Japanese government had recognized the Ainu people as indigenously inhabited i.e. Northern part of Japan but it did not take radical steps to eliminate disparities between them and other Japanese people. It also prevents discrimination against them and continuously engaged in recovering their Human Rights. Instead, the government simply established the Ainu cultural Promotion Law to enhance Ainu traditions.

Hiroshi Maruyama’s a scholar whose writing might cause confusion and misunderstanding about Japan’s Ainu policies. He discussed many ways in which the Japanese government has not recognised Ainu Indigenous rights but does not bother to explain the reasons. He highlighted some of the political, legal and social factors behind the Ainu issues, in which discussion are somewhat one-sided perspective. Specially, he blames the native government for lacking strong leadership to enact a new Ainu Law that would guarantee Indigenous rights. Some of the important questions asked by him are;

- 1; The Japanese government is reluctance of recognition of the existence of Indigenous people in Japan
- 2; The Japanese government’s reluctance to ratify the United Nations Declaration on the rights of indigenous people (UNDRIP) because it lacked a clear definition of the term Indigenous people
- 3; The Ainu Culture Promotion Act of 1997 (New Ainu Law) which excluded many aspects of indigenous rights and was weaker than the decisions of the Nibutani Dam law suit in the same year

4; Two other court decisions that rejected appeals by Ainu plaintiffs and

5; The final report of 2009 by the advisory council for future Ainu policy (ACFAP) which deferred a decision to enact a law directed at the Indigenous rights of the Ainu.

The author mostly discusses how the Japanese Government has failed to recognise Ainu indigenous rights by discussing a few pivotal events. Naturally authors should be free to criticise the Japanese government but as responsible academics opinion, the issues should be analysed in a wider context using sound reasoning and logic with constructive suggestions wherever possible. He simply blamed the government and the notion of Japanese constitution as considered being superior in International Law including UN Declarations. Thus, when the law disagrees with the constitution, it will be observed. Indigenous rights are considered to be privileged to a particular group of people, which was against article 14 of the constitution as it states that all of the people are equal under the law.

Maruyama also identifies the fundamental philosophy of the Japanese constitution was to guarantee individual rights and it does not always agree with the recognition of collective rights such as language, resource and land use. Furthermore, the constitution itself does not assume the existence of ethnic minority groups in Japan. Currently, the Ainu have no legal power or special political status as an indigenous people of Japan, they are merely Japanese citizens. The Ainu have some institutions for representations, for example, the Ainu Association of Hokkaido which is the largest Ainu organisation, but its membership is voluntary and less than half of the total Ainu population are its members.

1.4 Recognition of Ainu

The recognition of Ainu took many struggles for centuries. It was recognized only on 6 June, 2008 when massive protest was held in Hokkaido and Tokyo just before the G-20 meeting which was about to be held. Actually Japan never wanted to portray herself as a nation committing Human Rights violations to Ainu. To strengthen the position of recognition Ainu activists joined with other Japanese minority groups, such as the Burakumin, Okinawas and Zainichi Koreans to compile a comprehensive joint counter reports covering overall concerns of each specific minority group regarding racial discrimination. This joint report was submitted to the Committee on the Elimination of Racial Discrimination (CERD) which was established to oversee implementation of the convention, Ainu submissions calling for an anti-discrimination law, the guarantee of Ainu property rights and educational opportunities was ensured.

The *UtariTaisakushochoPenrakuKaigi* (Liaison council of Ministeries and agencies concerned with the Utari countermeasures) aimed at bringing the problem firmly back within the spheres of social welfare. Welfare minister Saito Kuniyoshi made the government's position clear in the Diet in March 1973: "Our basic attitude towards Ainu person *orutari* is that we definitely do not take the standpoint that the Ainu are a separate people (*minzoku*) within the citizenry of Japan. We strictly adhere to the view that they are equal Japanese citizens under the law". (Weiner, 1997:37-39)

The Nibutani Dam incident was one of the landmark cases for Ainu recognition. It began in the early 1993 when the Japanese Government (in the form of the Hokkaido Development Bureau) planned for the erection of two Dams on the Saru River, located in Southern Hokkaido. This town suddenly triggered for the increased

awareness of the Ainu people existence which was further solidified by the landmark legal case. The issue was that one of the proposed Dams was planned to be built near a prominently populated Ainu village, with historical and cultural importance. There was something about the Japanese building/authorizing construction of unwanted structures in areas where *Wajin* people are not much concentrated. Refusing the government offer to buy the land, a project authorization was granted to the bureau, effectively requiring all residents of the area to vacate. Shigeru Kayano and Tadashi Kaizawa, who were landowners refused to sell their land. The government implemented the land expropriation Act and took forcibly their lands. Obviously not happy with the situation, the Ainu took the case of the construction to the Sapporo District Court. Unfortunately, by the time in 1996 a verdict was drawn, the Dam was already completed and standing. Nevertheless, the claim set forth by the Ainu were recognized by the court, most importantly that the court recognized the group as indigenous people for the first time and that the Japanese nation has not been, but should be, responsible for taking care of its own Indigenous people.

1. Hard and soft strategy to recognize Ainu

In mid1990's the United Nations approach to racial problems has gone in this direction that indigenous people living in community had maintained their distinctive cultural identity despite their history of discrimination and assimilation. The conspicuous group of indigenous people strengthened their voice in demanding economic, cultural and political autonomy necessary by following a hard strategy. In 1980's the Ainu have demanded legal recognition of their distinctive rights. The Ainu claim that they need a declaration of basic Human Rights to eliminate discrimination, to protect participatory rights in the National Diet and Local bodies, to reinforce governmental protection of Human Rights, to promote Ainu economy and culture, to establish a fund for Ainu self-reliance and to establish consultative bodies at both national and local levels to pursue policies of Ainu concerns. Demand in special rights to get representation and self-determination in both houses of the Diet. (Tsunemoto 2001:2-3)

But the Ainu Culture Promotion Law does not recognize the Ainu as an indigenous people because the recognition of indigenous status was very controversial in Japan. The UNDRIP enhanced the Ainu status in Japanese society. It remains unclear how such instruments affect the Ainu political, economic, cultural and legal situation within Japanese society. The ineffectiveness of such instruments was related to the fact that the Ainu are in small number living in scattered communities, with a significantly diluted racial and cultural identity. In this way the Ainu resemble a limited mobility ethnic groups that often distinguished themselves from indigenous people. Because they are small in number, the Ainu were not ready to make specific political, cultural and economic demands on their own, resulting in conditions unfavourable for pursuing the hard strategy.

Hence a 'soft strategy' for recognition offers an alternative which was a pragmatic strategy and a venue for deploying enlightened localism. The right to cultural preservations was also relevant for special representation in political decisions and land recovery linked to economic autonomy. In fact, right to preserve indigenous culture constitutes only a small part of Ainu group rights. Pointing out that the United Nations Human Right Convention protects minority rights (under Articles 2-1, 26, 27). According to this approach, it was necessary for all the people to maintain a

cultural structure in a society as a basis on which they could make autonomous choices in their lives. But if a minority suffers racial inequality, this kind of structure was often insufficient to address the discriminations. For example, the economic or political activities of the Japanese people can easily destroy the cultural structure of the Ainu. (Hasegawa 2004:663-685)

2. Ethnic tourism in Hokkaido and the shaping of Ainu identity;

Today ethnic tourism plays a vital role in Japan for the representation of Ainu which centres a tourist village scattered in the Northern Hokkaido. Contemporary Ainu culture representations and to explore Ainu identity negotiations are occurring through ethnic tourism. It has enlightened the tourists as well as the native themselves about the culture and served as a means of cultural conservation; it also brought international attention to the political claims of oppressed minorities. It also provides employment, cross- cultural education, increasing visibility, formation of a unified and political Ainu ethnic identity and formation of diverse individual Ainu identities as a result of tourism can be used as important tools in promoting the current political agendas of the Ainu. Today the Ainu souvenirs shared the market in Hokkaido with Ainu communities that are significant for their renowned style and it attracts visitors. Proto Lake is famous for Ainu tourism because it consists of the Ainu Museum, a reconstructed Ainu village and a structure with souvenirs shops at the entrance. The village people entertain tourists with dance, shop and performance of 'Bear Festival'. In a year at Akan, which is a tourist place at Hokkaido, approximately 200 Ainu entertain 1,600,000 tourists. Nibutani, with 80 per cent of Ainu population, has become a tourist destination hosting around 20,000 visitors in the summer. Scholars have noted that many of the traditions have been well preserved due to Nibutani interior location and many students go there to study language and traditional aspects of the culture. Tourism in Hokkaido has changed the life of Ainu people economically, politically and culturally.

Economically it has given a source for food and survival of Ainu, politically it has helped increasing Ainu visibility in Japanese society, culturally it has resulted in creative responses by the Ainu and people involved in tourism that play an active role in the maintenance, dissemination, revival and development of Ainu culture and language. It has also influenced the life of Ainu in diverse ways and helped in actively adapting their ways of living. Tourism helped in widening open human consciousness and facilitated of raising voice against the injustice inflicted over them. A survey conducted by the Hokkaido prefectural office showed that 5.2 per cent of the Ainu populations are involved in manufacturing folk arts while 8.2 per cent are involved in their sales and thus about 13 per cent of the Ainu make a living out of tourism. Moreover, tourist art is "precisely what constitutes the livelihood and daily production of Ainu workers" in tourist centres making tourism an important aspect of the modern Ainu life that cannot be ignorant. (Hiwasaki, 2000: 394-397)

3. Ultimate recognition of Ainu

Aside from the efforts of small groups of dedicated Ainu people, there was a bigger organization of Ainu people which aims to eliminate Ainu discrimination. Formed in 1946, the Ainu Association of Hokkaido has been working to improve the livelihood and education level of Ainu people. But it recognized that these efforts are not enough. The Association prepared a draft *Ainu Shinpo* (New Ainu Law) in 1997

which provides the government to recognize the history of and responsibility for forcing a policy of assimilation on an ethnic group that has its own distinct culture and calls for indigenous people rights. Specifically, it requires

- 1) Protection of the Fundamental human rights of the Ainu people
- 2) Allocation of seats in the legislature based on ethnicity
- 3) Promotion of their education and culture
- 4) Support for the stability of their industries and economy
- 5) Creation of an ethnic self-support fund and
- 6) Consultative body for ethnic policies.

On 6 June, 2008 the Ainu celebrated a historic movement, as both the upper and lower houses of the Diet of Japan unanimously passed a resolution to recognize them as indigenous people of Japan. In a nation that has always preferred to perceive itself as ethnically homogenous, it was a highly significant move. It has taken the Japanese government 140 years to recognise them as an indigenous people. After a legal challenge, the Sapporo district court ruled that the government had illegally taken Ainu land to build a Dam and failed to consider “the unique culture of the indigenous Ainu minority”. It was the first official acknowledgment of any kind of separate Ainu identity and in the same year the Sapporo District Court recognized the Hokkaido Ainu as an indigenous minority within the Japanese Nation State. (Masayuki, 1991:282-290)

In 2008, the resolution recognizing the Ainu comes just weeks before the meeting of the Group of Eight (G-8) industrialized nations in Hokkaido. It was a coincidence that the decision came ahead of the meeting as Japan did not want any protests to detract from the high-profile gathering. Japan was among the 144 nations that supported the Declaration on the Rights of Indigenous People, which was adopted by the UN General Assembly on last September. While the resolutions were not satisfactory, they emphasised the government to refer to the UNDRIP. The recognition of the indigenous Ainu could also make them as interested party when it comes to the issue of the disputed Northern territories between Japan and Russia. The Ainu people also hope that the move could help in upgrading their living and educational standards.

There was a sling attack on “racial prejudice” (*jinshutekihenken*) the stereotypes of the dying race and welfare people. Young Ainu were addressed who have not been weakened by racial prejudice, despised and insulted or wept with rage as a result of social discrimination. In the enterprises undertaken in order to engage in society and fight in the struggle for survival, in the indication for the children, the many tragedies that arise because they are natives, have they not brought them to tears? Have they not stirred them to action? The Ainu must awaken, to abolish the Protection Act and raise their standards of living to eliminate such prejudice and discrimination. (Siddle, 2012:136)

On the same day 6 June 2008, Chief Cabinet Secretary of Japan Nobutaka Machimura released a comment on the resolution in which he acknowledged the suffering of the Ainu and recognised them as an indigenous people. There are currently an estimated 150,000 Ainu, but due to self-identification only approximately 16,786 Ainu (survey

in 2013) located mostly in the Northern region of the country. On June 1, 2008 he decided to establish the panel of experts for Ainu policy. The panel was now discussing measures to recognize the rights and promote the culture of the Ainu among other issues (Resolution on Recognition of Ainu as Indigenous People) in the No 169th Diet session, House of Representatives (June 6, 2008) and House of Councillors (June 6, 2008).

The resolution drafted by the 'Diet Members' group for considering the Rights of Ainu people states that the government must solemnly accept the historical fact that many Ainu were discriminated against and forced into poverty, despite being legally equal to Japanese people. The unprecedented resolution was adopted by both the chambers, acknowledging the Ainu hardships from discrimination and poverty. This was a historic event for us because the past injustices were finally put to an end," said Tadashi Kato, chairman of the Ainu Association of Hokkaido, who came to Tokyo to hear the Diet Resolution from the gallery. "I am so thankful that the light has shone on us, he said, with his voice full of emotion. The resolution states that the government recognized the Ainu as the indigenous people who have their own language, religion and culture. Moreover, the resolution calls for comprehensive measures, incorporating the opinions of specialists to recover the Ainu People rights in the light of the UNDRIP. It also calls on the government to take comprehensive steps to advance Ainu policies while gathering the opinion of specialists. After the resolution was passed, the government had recognized the Ainu as indigenous people and promised policy measures on behalf of an ethnic minority that had forced them to lead under privileged lives. Setting up an expert panel to discuss specific measures was also under consideration.

In 1992, President Nomura Giichi of the Ainu Association in Hokkaido to the UN General Assembly formally recognized the Ainu as Japan's indigenous people. The Japanese Government maintained that the Ainu people were one of Japan's cultural minorities and on the ground there was no fixed international definitions of the term "indigenous people".(Cotteril, 2011:20-26) They somehow successfully used international pressure to achieve national recognition from the government. Diet decision to recognize the ethnic Ainu as Japan's indigenous people was a major step for a country long proud of being ethnically homogeneous but many elected candidates were not happy with this recognition decision. This process leads to the Ainu recognition as an ethnic minority and the actions they have taken were in line with many similarities with other indigenous people in North America. While the prime concern of these people were political and economic matters.

"Saki Toyama, an 80 year old Ainu woman who lives in Urakawa, a serene outpost in Hokkaido, the Northern Island that the ethnic group had dominated for centuries. But she would also like the government to apologize and make way for the sake of the Ainu people. The Japanese government established Hokkaido Development Commission on this Island in 1869, which led to the migration of Japanese and the Island's acquisition. That was followed by the forced assimilation and relocation of the group, when she think of having been treated like trash and discriminated against because of our ethnicity. She feels like screaming at the sky".

The government would like to solemnly accept the historical fact that many Ainu were discriminated against and forced into poverty with the advancement of modernization despite being legally equal to Japanese people. Ainu activists and

supporters said the timing was significant, with the July G-8 Summit in Hokkaido demanded their homeland. Japan was among the 144 member states that voted for the UNDRIP which was adopted by the UN General assembly last September. Hideaki Uemura, Professor at Keisen University in Tokyo and a specialist in indigenous people rights said, "The resolution was important and historical yet it was not 100 per cents satisfactory. The resolution was weak in the sense of recognizing the historical facts, as the Ainu were forced to become Japanese in the first place".

4. Ainu women Movement

The situation of the Ainu women is serious as compared to the other women in Japan. The illiteracy is widespread as they lack equality of educational opportunities due to poor academic environment which adds to more poverty. For livelihood women are forced to pursue work with poor conditions as a result women were trapped in vicious circle and inability to provide good living and education to their offspring. When Ainu children were discriminated mothers did not know how to protect, they just weep. Some of the Ainu women were spirit broken as they were physically, sexually harassed of being Ainu. Women in the rural areas suffered more of poverty, more difficulties in finding appropriate employment, access to education, literacy programmes and other services. There are lots of problems in Ainu women, their social discrimination and prejudice can be seen in the surface but the actual problem is deeper and the true reality is difficult to see. The National Japan Women Associations (NJWA) was established in 1962 for better living conditions, women rights, peace and international solidarity. It has individual member of 200,000 and 300,000 subscribers to its weekly newspaper.

Ainu women position in Japan is a double form of discrimination for being Ainu women as well as the pervasive discrimination against women in Japanese society. Within Japanese society Ainu women directly suffer from Japan policies and discrimination and also suffer indirectly because of the formal and informal structures which led to the Ainu women marginalization. The Ainu precarious economic situation was created and sustained in a context of discrimination, often leads to an insecure home life for many children and Ainu women. The situation of Ainu women is worse because of the ways women are discriminated against within Japanese society. The more unequal structure of Ainu society have been reinforced as Ainu women became socialized in the Japanese culture which considers women as inferior to men. The Ainu Association of Hokkaido refer to the obligation upon the Japanese Government under article 14 of the convention, in particular sub-paragraphs a, c, d, e of that article. To give good education and restoring pride in oneself as all connected to the liberation of Ainu women.

UN Human Rights forum also used to fight for recognition of the special needs and rights of minority Ainu women under the "Convention to Eliminate All forms of Discrimination against Women" (CEDAW). Ainu women were supported and encouraged by the Japanese minority rights, NGO 'International Movement Against all forms of Racial Discrimination' (IMADR). In 2003 the lobbying of this committee was a part of wider campaign to ensure Japanese gender policy addressing the needs of minority women as they face multiple discrimination of being as women and members of the minority. It expressed their concerned about the government lack of data on the ethnic composition of the Japanese population and on economic and social indicators reflecting the situation of minorities. Request has been made on such data

to provide disaggregated by gender, national and ethnic group and include data on exposure to violence of minority women.

It has also requested data on education, employment, social welfare and health status of minority women and the Japanese government to ignore the act on these requested data. In response minority women took the initiative themselves with a coalition of Burakumin and Korean women working together in 2003, 2004 and 2005 to draw up and implement surveys containing a common set of 41 questions covering the above mentioned areas of education, employment, social welfare, health status and public expose to violence. In September 2007, the results of these surveys, together with proposals for policies to address the issues faced by minority women, were presented to the government representatives, including the gender equality bureau charged with formulating national policy on gender equality. Survey results demonstrated issues such as the low levels of post compulsory education for Ainu women particularly those over 40 years of age, higher than average levels of reliance on public welfare among those in the Burakumin community. Proposal has been made to the government for the introduction of legislation prohibiting discrimination, implementation of a government survey of minority women, on-going consultative processes between minority women and government, facilitation of the participation of minority women in decisions making bodies and respect and promotion of minority culture. (Steven, 2001: 181-198)

RyokoTahara, a councillor with the UtariKyokai, prepared a report on Ainu women situation for this committee, together with Burakumin and Korean women communities involved in lobbying with the committee in New York. These efforts saw some success and this committee expressed concern about the current situations and lack of information on minority women in Japan and issued a recommendation of Government disaggregated data on the education, employment, health, social welfare and exposure to violence of minority women in its next report. To increased societal awareness of the issues faced by minority women in Japan, the CEDAW lobbying and its results were compiled in a book and presented to International Movement Against all forms of Discrimination and Racism (IMADR) in the Human Rights seminar in 2005. Collaboration by Ainu, Burakumin and Zainichi Korean women with the coalition of women rights NGO when both minority women and the coalition were with this committee, it has raised awareness of minority women Human Rights issues in the mainstream women movement in Japan. This was the first time in history a minority women perspective had been incorporated in the Japanese women rights lobby.

CONCLUSION

As this study reveals, the discrimination of the Ainu population has a number of dimensions. These dimensions include the problem of recognition as well as of discrimination. In order to overcome both these problems, the Ainu people constantly attempted to assimilate into the mainstream population through marriage and other means. The process of social uplift has been rather slow.

The issue of recognition of the Ainu equality status was not an easy task as it took several struggles and bloodsheds for many centuries. The Hokkaido Former Aborigine Protection Act (1899-1997) was formed for Ainu with limited distribution of land. The historical discrimination of the Ainu has impacted the present

generations as they are ashamed of being referred to as Ainu. If their identity as Ainu is revealed, they are subjected to inexplicable humiliation. Therefore, they always try to hide their identity, names are changed into Japanese; they act and speak like Japanese.

In 1946, the Hokkaido Ainu Association was formed to declare that Japan is a multi-ethnic country with different group of people living. One of the main incidents which had helped in recognizing Ainu people was the Nibutani Dam Case where the construction was done for supplying electricity and pure water resources to the people of the city. It was an area where the Ainu populations mostly live even now, and their cultural practices take place. Ainu people tried very hard to stop the construction but by the time the verdict was notified by the Sapporo District Court, the construction had already been completed.

As this research clearly points out, international politics played a very important role in helping the indigenous group in attaining a recognizable status. The role of international politics can be seen through the efforts of various Non-Governmental Organizations as well as the mediation of the United Nations. The UNDRIP was formed at the right time in 2007 to support the world indigenous people for their recognition and to help them in every possible manner and in every respect. It was also the high time as G-8 meeting was about to be held at Hokkaido; protest at the right time demanding the status of indigenous people by Ainu. So to avoid negative publicity in the world through international media, Japanese Government was bound to recognize them.

There were many problems in the process of recognition because the Japanese political parties were not in favor of Ainu demanding indigenous rights. Many political leaders including the Prime Minister Nakasone said that Japan's success was due to the homogenous people and also there were an insignificant number of Ainu representatives in the National Diet. The Ainu recognition was much delayed tactically by the Japan in the Human Rights Committee and Committee on the Elimination of Racial Discriminations on the pretext that there was no concrete definition of the indigenous people.

Hiroshi Murayama an Ainu scholar who wrote covering many events on the Ainu challenges for recognition, also the Japanese Constitution fundamental philosophy is to guarantee individual rights but it does not agree collective right of recognition because the Japanese constitution did not recognize the existence of ethnic minority group in Japan. Some scholars have categorized the recognition into hard and soft strategies. At last, by the pressure from domestic and international side, the Diet on 6 June 2008 unanimously announced the Ainu as indigenous population of Japan.

REFERENCES

Books

Sjoberg, Katarina. (2013), *The Return of the Ainu: Cultural mobilization and the practice of ethnicity in Japan*, New York: Routledge.

Siddle, Richard M. (2012), *Race, Resistance and the Ainu of Japan*, Oxon: Routledge.

Weiner, Michael. (1997), *Japan's Minorities, the illusion of homogeneity*, London and New York: Routledge.

Articles

Cotterill, Simon. (2011), "Documenting Urban Indigeneity: Tokyo Ainu and the 2011 survey on the living conditions of outside Hokkaido", *The Asia-Pacific Journal: Japan Focus*, 45(9): 20-26

Hasegawa, Ko (2010), "Integration of the Ainu Minority in Japan: Enlightened localism combined with universalism", *Brill Publications*, 9(1): 663-685.

Henshall, G. Kenneth (1999), "Dimension of Japanese society: Gender, Margins and Mainstream", *Macmillan Press Ltd*, London, 54-58

Hiwasaki, Lisa. (2000), "Ethnic tourism in Hokkaido and the shaping of Ainu identity", *British Columbia*, 73(3): 393-412.

Larson, Erik. Et al. (2008), "Emerging Indigenous Governance: Ainu rights at the Intersection of Global norms and domestic Institutions", *Sage Publications*, 33(1): 53-82.

Masayuki, Takagi. (1991), "A Living Legacy of Discrimination", *Japan Quarterly*, 38(3): 283-290

Porter, Crystal. (2007), "After the Ainu Shinpo: The United Nations and the Indigenous People of Japan", *Australian National University*, 2: 201-219.

Siddle, Richard. (2003), "The limits to citizenship in Japan: multiculturalism, indigenous rights and the Ainu", *Citizenship Studies*, *Routledge*, 7(4): 447-462.

Stevens, Georgina. (2001), "The Ainu and human Rights: Domestic and international legal protections", *Routledge*, 21(2): 181-198.

Class lectures, conference papers, speeches or performances

Godefroy, Noemi. (2011), "Deconstructing and Reconstructing Ainu Identity from assimilation to recognition 1868-2008", Lecture delivered on 25 August 2011 at the Population Japanese, Research Group, Centre for European Association for European studies, Paris.

Tsunemoto, Teruki. (2001), "Towards Ainu and Japan specific Indigenous policies", Lecture delivered on 17 April 2001 at the LL.D. Centre for Ainu and indigenous studies, Hokkaido University: Japan.

NGO Network for the elimination of Racial Discrimination Japan (CERD Net) (2014), Civil society report on the implementation of the ICERD, Geneva