

NGO ALTERNATIVE REPORT
REGARDING THE SEVENTH PERIODIC REPORT OF
THE GOVERNMENT OF JAPAN
AT THE HUMAN RIGHTS COMMITTEE

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Raporo Ainu Nation

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Japanese Workers' Committee for Human Rights (JWCHR)

(NGO in Special Consultative Status with the ECOSOC)

We are the organization that consists of Ainu people living in Urahoro Town, Tocachi County, Hokkaido, Japan.

Our organization hereby expresses its opinion regarding paragraph 29 of the Japanese government's 7th report pursuant to Article 40(1)(b) of the International Covenant on Civil and Political Rights (ICCPR), referred to below as the "Periodic Report."

1. Concerning the signatory nation's reply:
 - A) Article 27 of the ICCPR provides that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture," and the United Nation's Human Rights Committee's (UNHRC's) 23rd General Comment (CCPR/C/21/Rev.1/Add.5 26 April 1994, para 7) recognizes ethnic minorities' right to perform traditional practices, such as fishing and hunting, and calls on signatory nations to enact affirmative legal measures to ensure the protection of these rights as well as the effective participation of ethnic minorities in decision-making processes that affect them.
As an ethnic minority people of Japan recognized by the signatory nation itself, the Ainu people practiced a traditional lifestyle that included hunting and harvesting salmon from the rivers, and therefore possesses the right to traditional salmon fishing in the rivers under Article 27 of the ICCPR. However, the Japanese government asserts that Article 28 of the Fisheries Resources Protection Act, as well as the Hokkaido Inland Waters Fisheries Adjustment Regulations on which it is based, prohibits anyone, including the Ainu, from catching salmon from rivers (i.e., inland waters) and, as we discuss below, clearly violates ICCPR Article 27 by asserting that signatory nations have no obligation to guarantee the hunting and fishing rights of ethnic minorities.
 - B) Concerning this point, the UNHRC stated in its preliminary questions for the Periodic Report that "concerning our findings based on the last report (paragraph 26), we request a report on the measures that are being taken to amend relevant legislation in order to fully guarantee the rights of the Ainu, as well as the Ryukyu and Okinawan communities, to their traditional lands and natural resources." In paragraph 29 of the signatory nation's Periodic

Report (entitled “Human Rights of Minorities”), the Japanese government replied that “Ainu people, Japanese citizens from Okinawa Prefecture, and other Japanese citizens are all equally Japanese citizens, and are therefore equally guaranteed rights as Japanese citizens” (226), and that the Ainu Policy Promotion Act enacted in April of 2019 “includes measures to support projects being implemented by municipalities to collect forest products from national forestland and to harvest salmon, et cetera, based on the wishes of Ainu people” (227).

Nevertheless, the content of the reply from the aforementioned 226 means that the Japanese Government believes that Ainu only possess “rights as Japanese citizens,” and not unique rights to “the community’s traditional land and natural resources” as an ethnic minority.

Furthermore, the measures regarding the harvesting of forest products and the harvesting of salmon that the signatory nation claims in 227 are only permitted on a limited basis. The measures only extend to “projects for the collecting of forest products in state-owned forests in order to conduct ceremonies that have been handed down in Ainu culture and to promote Ainu culture, et cetera.” (Article 10, Paragraph 4 of the Ainu Policy Promotion Law) and “activities that harvest salmon in inland waters for use in the preservation or transmission of Ainu ceremonies or fishing methods inherited by the Ainu people, or for the dissemination and promotion of knowledge related to such ceremonies” (ibid., paragraph 5). The measures do not recognize Ainu people's "traditional rights to the land and its resources." Such permission is limited to projects that aim to preserve rituals and promote culture, and the details of that permission are extremely restrictive. It does not allow Ainu people to harvest salmon for a living nor thereby to carry on their traditional lifestyles and culture, and disconnects their community lifestyles from resources. Separated from daily life, even if only rituals are to be handed down, they will be mere formalities, to be displayed in a museum.

2. Concerning the lawsuit demanding acknowledgment of the right to take salmon:
 - A) This Association is an organization composed of Ainu people living and working in Urahoro Town, Tokachi District, Hokkaido. Most of the current members are descendants of members of several kotans (Ainu groups) that existed along and around the eastern bank of the Urahoro Tokachigawa River

that flows through Urahoro Town. The above kotans have been harvesting salmon in the Urahoro Tokachigawa River for a living since ancient times, but today, Article 28 of the Fisheries Resources Protection Act, and the Hokkaido Inland Waters Fisheries Adjustment Regulations based on that Act, prohibit the catching of salmon in rivers.

In August 2020, this Association filed a lawsuit with the Sapporo District Court seeking confirmation of the fishing rights in question on the grounds of Indigenous title, treaties and other international laws, Declarations (Article 27 of the ICCPR, Article 15(1)(a) of the ICESCR, ILO Convention No. 169, Article 1(1) and Article 2(1)(c) of the Convention on the Elimination of All Forms of Racial Discrimination, Article 8(j) of the Convention on Biological Diversity, paragraph 7 and Article 26(3) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and other general opinions and precedents of other countries concerning each Convention, et cetera), the Constitution of Japan (Articles 13, 14, and 20), customary international law, and *naturalis ratio*.

B) The signatory nation and Hokkaido deny the Ainu fishing rights to harvest salmon in rivers and are in breach of the Convention.

In terms of this lawsuit, the signatory nation and Hokkaido (hereinafter referred to as “signatories”) have stated that Article 27 of the ICCPR is not a basis for the recognition of fishing rights in this case and have made the following arguments for that reason.

1. Article 27 of the ICCPR only stipulates the right of minorities to enjoy their own culture, and does not obligate signatory countries to guarantee rights such as the right to harvest salmon that are not regulated by the Fishery Resources Protection Act.
2. The General Comment (23) of the ICCPR Committee is not legally binding for ICCPR signatory nations and ICCPR signatory nations are not obliged to comply with it.
3. UN General Assembly resolutions such as the Declaration on the Rights of Indigenous Peoples are merely recommendations and are not legally binding on UN member states.

However, the “minorities’ cultural enjoyment rights” under Article 27 of the ICCPR include the fishing and hunting rights of Indigenous peoples, as stated in the Committee General Comment 23.

Article 27 of the Vienna Convention on the Law of Treaties clearly states that signatories may not invoke their own domestic laws as a justification for failure to uphold a treaty. The aforementioned assertion that Article 27 of the ICCPR “does not obligate signatory countries to guarantee rights such as the right to harvest salmon that are not regulated by the Fishery Resources Protection Act,” is exactly the same as using the Fishery Resources Protection Act, a domestic law, to restrict the right for minority groups to harvest salmon under the ICCPR covenant. This assertion is in contradiction to the Vienna Convention and Article 5 of the ICCPR above.

Additionally, the General Comments of the Committee including General Comment 23, are considered to be a competent interpretation of the Covenant, and in light of the authority, composition and work achievements of the Committee, it is clear these comments are “supplementary means of interpretation” as defined in the Vienna Convention above and that they have legal significance.

The assertion by the signatories that the General Comments of the Committee on the ICCPR are not legally binding on ICCPR signatory nations, including Japan, and that the ICCPR signatory nations are not obliged to follow them is a disregard of the interpretation of the Treaty by the Committee. This assertion demonstrates a lack of understanding of the above Vienna Convention and the General Comments of the Committee on the ICCPR and must be corrected immediately.

Moreover, even if the Declaration on the Rights of Indigenous Peoples itself is not immediately legally binding, the Declaration was concluded as a United Nations Declaration and, as stated in its preamble, was concluded in “recognizing the urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States.” The contents of these conclusions must naturally be taken into consideration in interpreting Article 27 of the ICCPR in accordance with Articles 31.3 and 32 of the Vienna Convention, and the attitude of disregard for international law by the signatories is remarkable.

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- A) Denial of Ainu rights to natural resources, despite receiving previous inquiry from the Committee which “requested a report about the measures taken to sufficiently ensure Ainu rights regarding land and natural resources”, and the

(ICCPR) signatory nation's response that the meager once-per-year salmon catch allowed for ceremony (a permission procedure which does not guarantee effective participation by Ainu people) is sufficient, disregards international human rights law and international human rights bodies, and denies the guaranteed rights of ethnic minorities, and for these reasons we urge the signatory nation to recognize the rights of Ainu to catch salmon.

B) The signatory nation, throughout the years 2001, 2014, and 2018, has also been advised by the Committee on the Elimination of Racial Discrimination to take measures to protect Ainu rights pertaining to land and natural resources (CERD/C/58/CRP(2001), CERD/C/JPCO/7-9, CERD/C/JPN/CO/10-11). However, the signatory nation's executive branch of government and legislative body deny the rights of the Ainu relating to land resources and with firm conviction continue to adopt responses that ignore the recommendations of the Committee, such that the current reality is that the only way remaining to achieve the conventions of the ICCPR in the signatory nation (Japan) is judicial redress.

Accordingly, regarding the signatory nation, we ask for a recommendation that Japan publicly reaffirm the "General Comments" and "Views", as well as the contents of similar international conventions, related judicial precedent and, as a supplementary resource, the interpretations of the ICCPR.