

# Indigenous People's Right to Traditional Fishing: International Human Rights Framework and Domestic Regulations in Japan. A Brief Assessment of Recent "Illegal" Fishing Case by an Ainu in Monbetsu Region in Hokkaido

*Kamrul Hossain\**, *Hiroshi Maruyama\*\** & *Leni Charbonneau\*\**

## 1. Introduction

A recent incident surrounding a fishing attempt by Hatakeyama Ekashi, an Ainu elder and the president of the Monbetsu Ainu Association, has provoked the tensions existing between Japan's domestic regulations for freshwater fishing and its obligations to respect, promote, and protect the rights of Indigenous peoples. In the fall of 2018, Hatakeyama Ekashi attempted to catch salmon in relation to Ainu rituals, only to be intervened by the police and ultimately prevented from fishing. It is under this context that this article

examines the rights of Indigenous peoples as outlined in the framework of international human rights law. It asks how traditional practices are advocated for as a right to culture, and how traditional fishing practices of Indigenous people are incorporated in the aforementioned framework. This article is founded on considerations of the Ainu people as an Indigenous people of Japan, who have for generations been practicing fishing for both ritual and subsistence, qualifying the practice as an integral component of their culture. Hatakeyama Ekashi's case is presented in order to postulate that if Japan's regulations do not comply with its international obligations arising from the human rights treaties to which it is party, then the Ainu are indeed deprived of their acknowledged rights as Indigenous people. Furthermore, this article also concludes that the presented case demonstrates a point at which Japan is in conflict between prefectural regulations and its constitutional obligations

## 2. Indigenous peoples' rights within the framework of international human rights law

At its conceptual core, the term Indigenous people is constituted by reference to the original inhabitants of a

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\* Northern Institute for Environmental and Minority Law (NIEM), Arctic Centre, University of Lapland.

\*\* Centre for Environmental and Minority Policy Studies (CEMiPoS), Sapporo, Japan.

given area. Generally, Indigenous peoples have a history of living on their territory for thousands of years. However, in many contexts and applications, the term “indigenous” also implies the social and political histories and contemporary effects on certain people groups which have been subjected to sovereign regimes following the rise of nation-states around the world. In other words, indigeneity conceptually incorporates histories of colonization or otherwise territorial expansion on the part of dominant state powers. In the process of nationalist or imperialist expansionist regimes, Indigenous peoples around the world were deprived of their own territories and resources, and pushed into the margins of the societies into which they were incorporated (though incorporation cannot be said to imply integration). Therefore, the distinctiveness of their cultures, languages, belief systems, subsistence practices, and ways of life have been continually jeopardized by dominant nation states, often under the guise of assimilationist practices. The recognition of Indigenous peoples varies, with some classified as “tribal groups” or ethnic minorities<sup>1</sup>, which can compromise the international rights and standards pertaining to Indigenous peoples.

As Indigenous peoples have been commonly subjected to nation-state expansionism, Indigenous social organizations or political structures were often historically disregarded. Thus, these communities were historically deprived of any negotiating body to express concerns externally. The 20th century saw the development of some transnational networks in which Indigenous communities could share their concerns.<sup>2</sup> Some of these groups brought their issues to international forums such as the League of Nations and its successor the United Nations. However, pleas for the rights of self-determination and land and resource rights amongst others were long overlooked by these organizations, as the common discourse was that their issues pertain solely to the states in which they live. However, insistent grassroots and transnational cooperation eventually garnered some level of success and popularity, eventually culminating in a number of human rights instruments claiming to ensure the rights of Indigenous peoples who have been subject to oppressive settler or imperial regimes.

While neither the 1948 Universal Declaration of Human Rights (UDHR) nor 1966’s International Covenant on Civil and Political Rights (ICCPR) and

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<sup>1</sup> Barten, U. (2015). What's in a Name? Peoples, Minorities, Indigenous Peoples, Tribal Groups and Nations. *E C M I Journal on Ethnopolitics and Minority Issues in Europe*, 14(1), 1-25.

<sup>2</sup>Vieira, A. C. A., & Quack, S. (2016). Trajectories of Transnational Mobilization for Indigenous Rights in Brazil. *Revista de Administração de Empresas*, 56(4), 380–394. <https://doi.org/10.1590/S0034-759020160403>

the International Covenant on Economic, Social and Cultural Rights (ICESCR) explicitly articulate rights of “Indigenous peoples”, a number of provisions have been identified as specifically applicable to Indigenous communities. In particular, Article 27 of the ICCPR has been clearly interpreted as applicable to indigenous peoples, by the Human Rights Committee (HRC) – the treaty monitoring body of the ICCPR. Article 27 reads as follows:

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, to profess and practise their own religion, or to use their own language.<sup>3</sup>

The HRC further indicated what is to be regarded as culture and cultural practice with the inclusion of the General Comment 23 under Article 27, which is applicable to Indigenous persons, particularly in the cases where they constitute minority communities. Among other points, the Committee

defined culture as “a particular way of life associated with the use of land resources, especially in the case of indigenous peoples... such traditional activities as fishing or hunting and the right to live in reserves protected by law”.<sup>4</sup>

Similar language is employed within the framework of ICESCR where General Comment No. 21 on Article 15 1(a) – the Article offers enjoyment of the right to take part in cultural life – expressly recognizes the traditional rights of Indigenous peoples in connection to their lands and natural resources. The General Comment explicitly articulates the “cultural values” of Indigenous peoples, and connected rights to such values as they relate to lands and their relationship with nature.<sup>5</sup> Therefore, their “particular way of life, including their means of subsistence, the loss of their natural resources”<sup>6</sup> have been placed decisively as part of the enjoyment of rights under Article 15 1(a) of the ICESCR.

The explicit reference to Indigenous peoples, and their collective entitlements, is likewise prevalent in the International Labour Organization (ILO) Convention No. 169.<sup>7</sup> To date, the

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<sup>3</sup> United Nations International Covenant on Civil and Political Rights (ICCPR) of 1966, Article 27.

<sup>4</sup> Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994), Para 7.

<sup>5</sup> Committee on Economic, General comment 21, Social and Cultural Rights (Forty-third session), E/C.12/GC/21, 21 December (2009), Para 36.

<sup>6</sup> Ibid.

<sup>7</sup> As of November 2018, 23 countries have ratified the Convention, Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169),

Convention is the only legally binding international instrument to address Indigenous peoples' rights. Article 5 of the Convention refers to "social, cultural, religious and spiritual values and practices" with reference to Indigenous peoples. These values are defined on a basis as both group rights and as individual rights. Article 2 (clause 2, section B) of the Convention, in reference to the state's responsibility, outlines the obligation for the promotion of the "full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions". By virtue of Article 23, members of a given Indigenous group enjoy rights to subsistence economy and traditional activities including hunting, fishing, trapping and gathering. Most importantly, Indigenous peoples are granted the right to be consulted in any matter that might be directly affecting them.<sup>8</sup>

The most significant instrument pertaining to this article is the UN Declaration on the Rights of Indigenous

Peoples (UNDRIP) adopted in 2007. The Declaration, which was received and ratified by a majority of states in the world, provides a normative framework and can be considered to form a "customary international law"<sup>9</sup> in respect to the realization of the rights of Indigenous peoples. The Declaration acknowledges the whole set of rights that Indigenous peoples are entitled to as distinct peoples. Despite the fact that the Declaration is not an internationally binding legal document, these rights are repeatedly endorsed as international standards by national courts.<sup>10</sup> For the cases at the focus of this paper, it is necessary to highlight the following stipulations of UNDRIP: the right of Indigenous peoples to carry out subsistence activities, as referred to in Article 20; the right to water resources as referenced in Article 25; the right to land outlined in Article 26; and the right to free, prior, and informed consent in all matters affecting their lands, traditional territories, and other resources provided by Article 32.2.

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[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312314](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314), accessed December 3, 2018.

<sup>8</sup> Indigenous and Tribal Peoples Convention (ILO Convention, C169) (1989), Art 6, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169), accessed December 3, 2018.

<sup>9</sup> Lenzerini, F., & Koivurova, T. (Eds.) (2016). Implementation of the rights of indigenous peoples: Committee on the Rights of Indigenous Peoples Report for the 2016 Johannesburg Conference. London: International Law Association, [https://lacris.ulapland.fi/files/1981281/ILA\\_CRIP\\_report\\_2016.pdf](https://lacris.ulapland.fi/files/1981281/ILA_CRIP_report_2016.pdf), accessed December 3, 2018.

<sup>10</sup> See for example, *Ángela Poma Poma Vs. Peru* Case, human rights committee, U.N. Doc. CCPR/C/95/D/1457/2006.

### **3. Traditional fishing forming a right to practice indigenous people's culture**

The fact that Indigenous communities have lived on their territories since time immemorial has generally allowed them to cultivate deep and comprehensive knowledge with respect to their surrounding physical environment. Relationships to the natural environment often form central tenants of Indigenous culture. Their cultures, then, are inextricably woven with the subsistence and ritual practices that have allowed them to ecologically sustain their livelihoods in their lands for generations. With consideration to the case at the focus of this article, a practice such as fishing then should not merely be regarded as a subsistence activity but also one that is saturated with spiritual significance and importance to cultural identity.

Under the context of the legal framework articulated in the previous section, Indigenous peoples are thus endowed with the right to enjoy and manage the land, water, and resources which they have traditionally owned, occupied or otherwise used or acquired.<sup>11</sup> To which the "free pursuit of economic, social, and cultural

development"<sup>12</sup> is concerned, traditional fishing plays a significant role to those Indigenous peoples inhabiting areas steeped in water resources. Traditional fishing forms the "material bases of Indigenous peoples' culture"<sup>13</sup>, and furthermore such activities safeguard their right to natural resources. Recognition of such a right is found in the authoritative statement – General Comment 23 – provided by the HRC.

The General Comment 23, for example, expressed that the provision of Article 27 of the ICCPR includes a positive obligation on part of the state. This means that states are not just to refrain from denying the right, but are obliged to adopt affirmative measures or actions for the protection and promotion of the stated rights. The positive measures would include adoption of legislative, judicial or administrative measure<sup>14</sup> in respect of Indigenous peoples exercising their right to fish. This also means that Indigenous peoples should be guaranteed a preferred position compared to non-indigenous population.<sup>15</sup> One way of fulfilling such privilege might be to adopt regulations or policies putting fishing quotas for Indigenous peoples' traditional and subsistence fishing, and putting

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<sup>11</sup> United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Article 26.

<sup>12</sup> *Ibid.*, Article 3.

<sup>13</sup> Indigenous and Tribal Peoples Convention (ILO Convention, C169) (1989), Art 15, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169), accessed December 3, 2018.

<sup>14</sup> Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994). Para 6.1.

<sup>15</sup> *Ibid.*

restrictions on non-indigenous and other commercial fishing. This would presumably occur within the framework of domestic regulation<sup>16</sup> in order to consistently give effect of international obligation under Article 27 of the ICCPR. The HRC has applied the framework as outlined above in the year 2000 with the *Apirana Mahuika* case.<sup>17</sup> The Committee acknowledged Indigenous traditional fishing by Maori people as a right to practice culture under the framework provided by Article 27 of the ICCPR. The Committee extended the argument further by articulating commercial fishing as a Maori traditional practice, as they are major shareholders in the modern industry. Consequently, based on the discussions presented here, authors of this paper argue that, right to traditional fishing in waters traditionally owned, acquired or otherwise used by Indigenous peoples is grounded in the acknowledged human rights legal framework applicable to Indigenous peoples.

#### **4. The Ainu is an indigenous people in Japan**

The island nation of Japan has successfully crafted a popular image of itself as a mono-ethnic, homogenous state. Inside and outside the country, it is often regarded unambiguously as the

land of the Japanese. However, several distinct populations endemic to the archipelago challenge such a taken-for-granted notion of the country. In addition to several minority groups, the country is also constituted by Indigenous peoples ethnically distinguished from the *Wajin* (ethnic Japanese). Among these are the varied peoples of Ryukyu, Okinawa and the Ainu; the latter are at the focus of this paper.

The northernmost island of Japan, called Hokkaido, is well-regarded today for its booming ski industry, agricultural production, and serene landscape. While these images are consistently perpetuated and promoted by the Japanese state, they suppress a longer-standing character of the land rooted in thousands of years of history. Before Japan's Meiji Restoration beginning in 1868, Hokkaido was known to its native inhabitants as *Ainu Mosir* or the land of the Ainu. Ainu Mosir was traditionally constituted by lands reaching beyond Hokkaido, into modern day Sakhalin (Karafuto), the Kuril Islands, and the Kamchatka Peninsula. Across these diverse tracts of land, the group collectively known as the Ainu have lived for centuries.

Though customs and practices varied amongst Ainu communities, there

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<sup>16</sup> *Indigenous Fishing Rights* (2016), The Fish Site, <https://thefishsite.com/articles/indigenous-fishing-rights>, accessed December 3, 2018.

<sup>17</sup> *Apirana Mahuika et al. vs. New Zealand* (Communication No. 547/1993, 15/11/2000), UN Doc. CCPR/C/70/D/547/1993 (2000).

existed ethnic commonalities such as subsistence practices (primarily hunting and fishing) and shared animistic beliefs. The Ainu participated in a sophisticated and well-established trade network in Eastern Eurasia, including with the Japanese. In recent centuries, the exploitative nature of Japanese trade practices with the Ainu increased. Following the establishment of the Meiji government this exploitation, matched with both assimilation and marginalization, became systematically institutionalized through official Japanese policy measures. The incorporation of Hokkaido into the Japanese state was made in geopolitical strategy against Imperial Russia's growing presence in the region.<sup>18</sup> Hokkaido subsequently underwent intensive developmental campaigns to support the imperialistic aspirations of Japan. As a result, the Ainu were removed from their homelands, forcibly relocated and placed into labour campaigns, and deprived of their traditional ways of living.<sup>19</sup>

Today, the Ainu still fight against the deeply sedimented discrimination and marginalization supported by years of Japanese colonization and rule. Ainu communities and individual activists work towards their due recognition of

rights as Indigenous peoples, guaranteed to them by state policy and international law.

### **5. Recent "illegal" fishing case carried out by Hatakeyama Ekashi**

Between 31 August and 1 September, Hatakeyama Ekashi- president of the Monbetsu Ainu Association- attempted to catch salmon for two traditional rituals: *Icharpa* (memorial service for ancestors) and *Ashiricheppunomi* (ceremony to welcome salmon) in the Mobetsu River without obtaining prior permission. The police intervened in and prevented his attempt citing the Hokkaido Regulations in the Freshwater Fishing Industry (hereafter the Hokkaido Regulations), which aim to govern the activities of fishermen in freshwater areas to conserve fishing stocks in the interest of commercial fisheries operating in the estuaries. The Hokkaido Regulations since 2005 have allowed the Ainu to catch salmon only for the purpose of performing cultural ritual if they get prior permission from the authorities.<sup>20</sup> However, Hatakeyama Ekashi has acted against these Regulations and attempted to fish without prior permission, which he states is justified on a basis of his right to

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<sup>18</sup> Kimura, H., & Ealey, M. (2008). *The Kurillian knot: a history of Japanese-Russian border negotiations*. Stanford, Calif: Stanford University Press.

<sup>19</sup> Walker, B. L. (2009). *The conquest of Ainu lands: ecology and culture in Japanese expansion, 1590-1800* (1. paperback ed., repr). Berkeley, Calif.: Univ. of California Press.

<sup>20</sup> Hokkaido Regulations in the Freshwater Fishing Industry [Hokkaido Naisuimen Gyogyo Chosei Kisoku], Article 52.

cultural practice. Hatakeyama Ekashi, an Ainu elder and activist, has long provoked the policies that infringe upon his people's cultural rights to fish. In September 2017, he was seen by the police catching 50 or 60 salmon, and was recommended to apply for permission. He replied to the police, saying: "If you want to arrest me, you should do it. I am prepared. The Japanese legislation does not matter for me".<sup>21</sup> There is a sequel to this event of 2017 as follows:

"The other day, the Monbetsu Fishermen's Union persistently persuaded me to submit the application to the authorities. Is that really valid? This year I announced in advance that I would fish salmon in our river for our rituals"

It led to the aforesaid event of 2018. On 16 September 2018, the Citizens' Alliance for the Examination of Ainu Policy held a meeting in Sapporo with Hatakeyama Ekashi to voice solidarity for his actions. More than 40 people participated in the meeting. On 9 October, the Citizens' Alliance coordinated a press conference in Sapporo for Hatakeyama Ekashi and Ishii Ekashi, a colleague who accompanied his efforts to fish salmon in the Mobetsu River. Hatakeyama Ekashi read a statement addressed to Prime

Minister Shinzo Abe, Hokkaido Governor Harumi Takahashi and the Monbetsu Police Station of Hokkaido Police. According to the statement, before the attempt, the authorities, including the police, visited him at home and urged him to get permission to catch salmon from them seven times. At the same time, the police parked its vehicle near his home for days and pursued him whenever they saw him leaving the home. Hatakeyama and Ishii Ekashi have championed the return of the traditional right to fish salmon to the Ainu people.

## **6. Japan's domestic regulations and Ainu fishing right**

In 1869, the Japanese government established the Hokkaido Colonial Commission in Sapporo to develop Hokkaido and exploit its natural resources, promoting the settlement of Japanese citizens in the region. Land was expropriated from the Ainu and offered at meagre sums to Japanese settlers; this was accomplished through policies such as the Land Regulation Act (1872) and the Hokkaido Ordinance for the Issuing of Land Certificates (1877). These policies were part of a scheme to forcibly relocate the Ainu, and the subsequent removal from their lands resulted in deprivations of their means of livelihood, including fishing, hunting,

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<sup>21</sup> Hatakeyama, S. (2018). *Update on personal activist activities following police intervention in salmon fishing attempt in the Mobetsu River, September 2018*, Presentation at Cemipos seminar, Sapporo Japan, 24 November 2018,. <http://cemipos.blogspot.com/>, accessed November 27, 2018



and small-scale farming. Furthermore, overfishing by Japanese settlers resulted in a sharp decline of salmon populations.

In 1876, the Colonial Commission issued Notice Number 9, which banned the Ainu from using their traditional salmon fishing net (called *tesu*) and from fishing at night. The notice applied to every river in Hokkaido. In 1878, the stipulations of the ban were expanded and further articulated under Notice Number 30. Notice Number 30 prohibited everyone from fishing salmon in any tributary of a primary river, but did allow for the use of a towing net to fish salmon for Japanese settlers. Thus, the Ainu were denied the right to fish salmon in any tributary or main river, which had a devastating effect on the Ainu communities and their abilities to engage in subsistence practices.<sup>22</sup> Similar restrictions were placed on other subsistence activities such as hunting, which demonstrated the Colonial Office's intention to situate the Ainu within the agriculture industry instead of allowing them to pursue traditional practices.<sup>23</sup>

In 1947, the Constitution of Japan was enacted, which is characterised by the stated sovereignty of the Japanese people, pacifism and respect for fundamental human rights. In 1951, the Act on the Protection of Fishery

Resources, which prohibits everyone from fishing salmon and trout in freshwater was enacted at the national level. In 1964, the Hokkaido Regulations in the Freshwater Fishing Industry came into force in Hokkaido in accordance with the Act. Prohibition was not laid on the artificial incubation of salmon and trout, fishing for research, and Ainu fishing for cultural performance, with the latter having the stipulation that prior permission from the authorities must be obtained.

In March 1997, in direct relation to the illegal planned construction of the Nibutani Dam, the Sapporo District Court ruled for the first time in an official setting that the Ainu people have a right to enjoy their culture.<sup>24</sup> This right is justified in accordance with Article 27 of the ICCPR and Article 13 of the Constitution of Japan. Article 27 was cited in the judgement of the Sapporo District Court as a protection of the Ainu people's right to enjoy their culture and consequently, obliges the Japanese government to faithfully observe it based on Article 98.2 of the Constitution providing the treaties concluded by Japan and established laws of nations shall be faithfully observed. Furthermore, Article 13 reads as follows:

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<sup>22</sup> Yamada, S. (2011). *Kindai Hokkaidō to Ainu Minzoku: shuryō kisei to tochi mondai [Modern Hokkaido and Ainu People]*. Sapporo-shi: Hokkaidō Daigaku Shuppankai, p. 171.

<sup>23</sup> *Ibid*, p. 175.

<sup>24</sup> The Sapporo District Court: Nibutani Dam Case, <http://www.geocities.co.jp/HeartLand-Suzuran/5596/>, accessed December 4, 2018.

All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

According to the judgement, Article 27 is applicable in Japan under Article 13 of the Constitution because Article 13 suggests: Culture is essential for ethnic minorities to maintain their ethnicity; ensuring the right to enjoy their culture means respect for individuals and agrees with the concept of democracy that a majority takes minorities into consideration.

Since 2005, the prohibition on fishing was reconfigured to state that fishing may be carried out with prior permission from the authorities. However, the application of the Hokkaido Regulations to Hatakeyama Ekashi and his Ainu colleagues infringed their rights to enjoy their culture protected by Article 13 of the Constitution, as the requirement to ask for permission compromises their rights as individuals and especially as an Indigenous people. Based on Article 98 of the Constitution stipulating the supremacy of the Constitution<sup>25</sup>, the application is invalid on the ground that

the Hokkaido Regulations are inconsistent with Article 13 of the Constitution.

### **7. Constitutional obligation to comply with international legal commitment**

The Constitution of Japan states in its preface: "Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people." It is followed by the sentence: "This is a universal principle of mankind upon which this Constitution is founded." As such the Constitution declares that Japan is going to join the international community as a democratic state. It further states:

"We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth."

The principle of international cooperation underlying the preface is condensed into this sentence. Based on this preface, Article 98 (2) of the

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<sup>25</sup> The stipulation of Article 98 is that this Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of the government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

Constitution provides that the international treaties concluded by Japan and established laws of nations shall be faithfully observed. Japan has so far ratified almost all international human rights treaties, including the ICCPR, ICESCR, and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Although Japan has not ratified ILO 169 Convention applicable to tribal and Indigenous peoples, the country has however, signed the UNDRIP – an instrument providing normative framework to protect and promote indigenous peoples rights despite its non-binding character.

As referred to elsewhere in this article, the HRC periodically issues concluding observations on how to deal with the implementation of the provisions of the ICCPR in response to state parties' reports on the current situation. The latest concluding observations issued in 2014 by the HRC for the Japanese government made the following recommendation in relation to indigenous peoples, and for the promotion of their acknowledged rights:

The State party should take further steps to revise its legislation and fully guarantee the rights of Ainu, Ryukyu and Okinawa communities

to their traditional land and natural resources, ensuring respect for their right to engage in free, prior and informed participation in policies that affect them...<sup>26</sup>

Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) – the treaty monitoring body of the ICESCR – also issues its concluding observations for the Japanese government. The latest one issued in 2013 states:

The Committee remains concerned that, in spite of the recognition of Ainu as indigenous people and other progress achieved, Ainu people remain disadvantaged in the enjoyment of economic, social and cultural rights.<sup>27</sup>

On 30 August 2018, the Committee of the Elimination of Racial Discrimination (CERD) – the monitoring body under ICERD – urged the Japanese government “to adopt measures to protect land and natural resource rights of Ainu people, and continue to step up efforts for the realization of the rights to their culture...”.<sup>28</sup> The Japanese government, however, has never adopted any legislation to recognise the right of the Ainu to culture, let alone

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<sup>26</sup> United Nations International Covenant on Civil and Political Rights. CCPR/C/JPN/CO/6, Para 26.

<sup>27</sup> United Nations Economic and Social Council. E/C.12/JPN/CO/3, Para 30.

<sup>28</sup> United Nations International Conventions on the Elimination of All Forms of Racial Discrimination. CERD/C/JPN/CO/10-11, Para 16 (c).

their rights to land and natural resources. The negligence of the Japanese government to ensure the right of the Ainu to culture thus subsequently led to the police intervention in Hatakeyama Ekashi's attempt to catch salmon in the Mobetsu river. Such an action disregarded the acknowledged rights of the Ainu as an Indigenous people within the framework of international human rights law, and the constitutional obligation of the Japan to respect legal commitments presented in international treaties.

## 8. Conclusion

Based on the discussions above, the authors' conclusions are as follows: Japan has ratified almost all the crucial human rights treaties, which shows a positive attitude towards its commitment to international human rights law. Such a behaviour also reflects

the spirit inherently rooted in the principles presented in the Constitution of Japan. The Ainu has also been officially recognized as an Indigenous people of Japan since the year 2008. However, as much as it is about protection and promotion of the rights applicable to the Ainu as Indigenous people, a failure on part of Japanese government is evident to comply with international standard. To remedy these shortcomings, authors of this article propose that Japanese government should enact its domestic law for the Ainu in compliance with international human rights standard, e.g. by enforcing the spirit of Article 27 of the ICCPR and Article 15 1(a) of the ICESCR as explained, and presented, in the authoritative statements, concluding observations, as well as in the jurisprudence, offered by the monitoring bodies of these treaties.

