HOKKAIDO UNIVERSITY

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SUMMARY OF CONTENTS

Implications of Ainu Indigenous People's Rights Protection and Related Apology based on the World Standard: From Civil Law and Intersectional Anthropological Perspectives

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1. Introduction

Historical past injustices against the Ainu people could be mainly understood as civil law matters, especially as their property and reparations issues. The bleak situation of the Ainu people, unnoticed by most civil law scholars, should be critically reexamined as a focus of serious civil law debates, as is the case in the U.S. and some other developed nations.

For example, first, their indigenous property right of traditional commons was ignored most drastically in the 1880s after the Meiji Restoration, quite similarly to the employment of the doctrine of 'terra nullius' to the land of other indigenous peoples across the world. Second, the Hokkaido Former Natives Land Protection Act (HFNLPA) of 1899, modeled on the Dawes Act in the United States, was a basic land law for the Ainu. However, it was categorically discriminatory for them: It allotted much smaller tract (5ha=12.38acres) of land to each Ainu family for promoting agriculture under the stringent condition of cultivation within 15 years. Most Ainu were unsuccessful, while others were displaced most sadly from coastal areas to mountainous barren lands in the 1910s to 1920s, as in the case of the Anesaru

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Ainu who lived adjacent to the Niikappu Imperial Farm site (in the Japanese version of the Trail of Tears). The HFNLPA furthermore restricted Ainu land transfer and business mortgage rights.

Third, Ainu indigenous fishing and hunting rights have been strictly prohibited until the current days, a situation which has been contrasted to world standards such as the Boldt decision which admitted collective rights to co-management of fisheries and to 50% of the fisheries harvest for American Indian tribes in the State of Washington.

2. Current Issues

There have been many current civil law issues seriously debated as 'unfinished business.' For example, first, the communal property issue as a sequel to the discriminatory Ainu Protection Act agenda mentioned above, especially for the Chikabumi Ainu, was litigated in the 1990s, but it has not been solved properly and the so-called 'nominalism' position taken by the Ainu Culture Promotion Act of 1997 in this regard was disparaging for the Ainu people.

Second, the protest movement for indigenous fishing and hunting rights has been generally subordinated by the Japanese central and local governments, except for Mr. Hatakeyama's strenuous efforts to catch salmons for religious purposes, that led to section 17 of the Ainu Park Act of 2019, officially called untruly the Ainu Policy Promotion Act, even though Hokkaido Governor Suzuki still ignores this movement even after this legislation.

Third, the most hotly debated issue has been the right to repatriation of Ainu ancestral remains and cultural artifacts to local Ainu communities, which has been supported by Art. 12 of the UNDRIP of 2007 [The U.N. Declaration on the Rights of Indigenous Peoples], but has been the object of litigation against Hokkaido University by several Ainu communities. More than a thousand Ainu ancestral remains were stolen by anthropological and archaeological scholars from almost all Ainu tombs across Hokkaido already in the 1880s, but mainly from 1930s through 1960s, and have been collected most notoriously in Hokkaido University and some other universities. The

similar grave injustice was perpetrated against the Ryukyu people, another indigenous people of Japan. None of the related universities including Hokkaido University have made sincere apologies. Most anthropologists collected these Ainu ancestral remains in accord with their prejudicial system of classification based in morphology, but Prof. Omoto who revolutionized human remains research methods by adopting genetic approaches and has consequently categorically confirmed the indigenous status of the Ainu and the Ryukyu people, is now sympathetic to reparations and reconciliation in regard to this research injustice.

The agenda of the recent Ainu legislation was the construction of Ainu park in Shiraoi by 2020. However, a grave injustice is hidden in this project and all ancestral remains have now been consolidated there to hide our past injustice, as opposed to repatriation. The commodification of Ainu sacred/genuine cultures is also serious: subsidies for the promotion of Ainu cultures, are given to local governments, not Ainu people themselves. The National Ainu Museum newly built there is quite different from, for example, the holocaust museum or the National Museum of the American Indian in Washington, DC, in light of the fact that Japan still denies reparations.

Fourth, regarding the environmental issues that are seriously prevalent among indigenous peoples across the world, the Ainu people also face the similar challenges: for example, (1) the famous Nibutani Dam that submerged Ainu sacred sites was built in the 1990s. Ainu people worked for its construction as day laborers due to their poverty; (2) a similar dam, the Biratori Dam, is now being constructed; (3) an industrial waste site has been constructed in Monbetsu upon a sacred mountain, without free prior informed consent of the Ainu people, and it contaminates the Toyooka River and blocks the upstream spawning of salmons there.

3. The Future Approach for the Ainu people

What should we do for the Ainu people? From the civil law perspective, it's clear: tort law remedies and reparations for mass torts. It is exactly the approach taken by the UNDRIP. However, even after signing the UNDRIP,

the Japanese government established the prominent scholars' commission [the Council of Experts on Future Ainu Policy], and the Commission's official report in 2009, spearheaded by former Hokkaido University professor Tsunemoto of constitutional law who was then the Director of the Hokkaido University Center for Ainu and Indigenous Studies, denied the reparations approach. This stance explains the denial of repatriation by Hokkaido University, negative suggestions on the content of Ainu sub-textbooks which would have extinguished descriptions of past injustice to the Ainu people, and the insufficient information displayed in historical exhibits at the National Ainu Museum in Shiraoi.

To put things differently, the reparations process for the past injustice to attain reconciliation in regard to past injustice has been put forth by many prominent reparations scholars such as former Dean Minow of the Harvard Law School: (I) truth finding and its recognition by perpetrators; (II) the recognition of historical responsibility by perpetrators; (III) sincere apology and supplementary monetary compensation; and (IV) forgiveness from the victims' sides in certain cases. In regard to Ainu reparations in light of this theoretical framework, all points are missing and insufficient. Especially, starting point (I) is avoided on purpose by the Japanese government and the related Council of Expert's report in 2009, despite the recent legislation for promotion of Ainu policies in 2019.

Thus, the UN Expert Mechanism should issue the warning to the Japanese government to implement the UNDRIP and to stop the recent legislative movement set by government officials and hired Hokkaido University professors across the heads of almost all Ainu people, especially its serious infringement of the right of self–determination (Art.3 of UNDRIP). Without a reparations approach based on their indigenous rights, the Ainu people still cannot live with racial dignity. Many Ainu people still don't want to identify themselves as Ainu. The recent Ainu statute proclaims non-discrimination of Ainu people (section 4), but in order to remove discrimination, Japan should take reparations approach advocated by UNDRIP. Otherwise, a so-called "reverse-discrimination" discourse is

prevalent among many people, including former Hokkaido University professor Tsunemoto.

Every country has challenges, but some achievements with regard to indigenous people's legal policy. However, Japan has attained almost nothing with regard to Ainu indigenous rights, by rejecting the UNDRIP reparations approach, and thus Japan is one of the most reprehensible countries amongst developed nations. Without any regional organs for implementation of international human rights of indigenous peoples in East Asia and Southeast Asia, the Ainu people needs immediate UN action to overcome this outdated theoretical and pragmatic situation.

4. Postscript

Incidentally, from the exceptional, but influential anthropological side, Prof. Omoto, in addition to reparations, is looking for a different direction. He puts emphasis on the core values of hunting and gathering people, including the Ainu, as opposed to so-called 'civilized' peoples whose economies are based on agriculture: (1) respect for the natural environment; (2) a shared economy and denial of accumulation of wealth; (3) peaceful thoughts and deliberative discussions to avoid wars; (4) the traditional commons, as opposed to individualistic private ownership, as a land use mechanism; (5) egalitarian benefit sharing; (6) shamanistic religious philosophy etc. such as that advocated by the Ainu Elder Ukaji.

Taking account of the long-term important roles of indigenous peoples across the globe as stewards of the world environment, those ideas might be precious guidelines for all humankind to face the climate change in the 21st century.