

Overview of the Ainu Policy Promotion Act of 2019

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1. Introduction

The first legislation on the Ainu people that was enacted under the current Constitution of Japan was the Ainu Culture Promotion Act (ACPA)¹. It was established in 1997—11 years before the Japanese government recognized the indigenous status of the Ainu—and was limited to the promotion of the Ainu language and cultural assets, such as music, dance and handicrafts with good cause. More than two decades later, in 2019, the government finally enacted a law recognizing the Ainu as an indigenous people.

On February 15, 2019, the Cabinet submitted to the Japanese Diet a bill for the Act on the Promotion of Measures to Realize a Society That Will Respect the Pride of the Ainu (hereinafter: “the Ainu Policy Promotion Act”). The bill was then passed by the House of Representatives on April 11 and by the House of Councilors on April 19 before being promulgated on April 26 and taking effect on May 24. With the enforcement of the new legislation, the ACPA was abolished.

2. Background to legislation

The history of the enactment of the Ainu Policy Promotion Act goes back to June 6, 2008, when both houses of the Japanese Diet unanimously passed a resolution urging the administration to recognize the Ainu as an indigenous people. In response to that resolution, the Chief Cabinet Secretary expressed the government’s position in his statement that “Not only will the government further enhance the Ainu policies taken so far, but it will also make efforts to establish comprehensive policy measures in reference to the relevant clauses of the UN Declaration on the Rights of Indigenous Peoples (“the UN Declaration”), with the recognition that the Ainu are an indigenous people who have lived in and around the northern part of the Japanese Archipelago, especially in Hokkaido, and who have a unique language as well as religious and cultural distinctiveness.” The government established the Advisory Council for Future Ainu Policy (“the Advisory Council”) in July of the same year to formulate a framework for a new Ainu policy, with its members including experts in constitutional law, international law, history and cultural anthropology; a former Minister of Education, Culture, Sports, Science and Technology; the Governor of Hokkaido; and the Executive Director of the Ainu Association of Hokkaido. The Advisory Council submitted its final report² to the Chief Cabinet

¹ Act on the Promotion of Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition, etc. (Act No. 52 of 1997)

² http://www.kantei.go.jp/jp/singi/ainu/dai10/siryou1_en.pdf

Secretary in July 2009.

The final report covered the historical background and current conditions of Ainu people, new principles for future Ainu policy and an overview of new measures for Ainu. Through the report, the Council presented a provisional definition of indigenous people by using discussions at the UN and elsewhere as a reference and maintained, in consideration of the historical background and current conditions of Ainu people, that the Ainu can be regarded as an indigenous people, and then stated that “future Ainu policy should be developed and implemented under the recognition that the Ainu are an indigenous people.”

Consideration of new principles for future Ainu policy required a reference to relevant clauses of the UN Declaration adopted in 2007, but the Advisory Council stated as follows: “Just as the histories and current situations of the world’s 370 million indigenous people are diverse, so are the countries in which they live. These individual conditions cannot be ignored as far as the UN Declaration is concerned. In this respect, Japan should establish its Ainu policy in line with the current conditions of the country as well as of Ainu people themselves.”

The development of Ainu policy required the consideration of the Constitution of Japan which involved the principle of equality but made no reference to the Ainu nor an indigenous people. It is noteworthy that the Advisory Council took notice of the philosophy of Article 13 of the Constitution, which addresses the right of the people to be respected as individuals: “if an Ainu individual willingly chooses to live with the identity of an Ainu, his/her choice should not be unjustly hindered by the government or any other individual”; and “the government should provide for measures that open doors for Ainu individuals to live with the identity of an Ainu”.

Based on these principles for future Ainu policy, various measures were recommended in the report. To ensure that the government would take responsibility for seeing the measures implemented, the Chief Cabinet Secretary established the Council for Ainu Policy Promotion, chaired by himself, in December 2009 as a forum of discussion so that the measures would reflect the opinions of Ainu and experts in relevant fields.

Positioned as the core of the whole final report by the Advisory Council was the development of “the National Ainu Museum and Park (a.k.a. Upopoy),” which is set to open as a national center for the revival of Ainu culture in the Hokkaido town of Shiraoi on April 24, 2020. It will include a national museum focused on Ainu culture as well as a theater, a crafts studio and *cise* (traditional houses).³

The report also stated that “it would be meaningful for the government to show its positive stance and willingness through legislation in order to ensure the steady

³ <https://www.ainu-upopoy.jp/en/>

implementation of the policy,” and there was a strong desire for new legislation that would replace the ACPA in order to lay the foundation for a policy based on the recognition of the Ainu as indigenous.

Based on discussions held at meetings of the Council for Ainu Policy Promotion, the Comprehensive Ainu Policy Office of the Cabinet Secretariat began drafting a bill around 2017. In finalizing the draft bill, the Office ensured that it would reflect the opinions of Ainu through many rounds of negotiations with the Ainu Association of Hokkaido, the largest organization of Ainu people, and through 36 information sessions held in Hokkaido and Tokyo to exchange opinions with local Ainu people.

3. Overview of the Ainu Policy Promotion Act

The Ainu Policy Promotion Act, consisting of 45 articles divided into eight chapters and nine articles of supplementary provisions, aims to “realize a society where Ainu people can live with pride in their ethnicity, an ethnicity that will be respected by others, and therefore realize a society where all citizens mutually respect each other’s identity and personality” based on the recognition of the Ainu as indigenous (Article 1).

The essence of the new legislation includes its provisions for the implementation of measures to “create an environment” conducive to cultural promotion from a national perspective, not just measures that will promote Ainu culture and disseminate knowledge about Ainu traditions (Article 2 and Article 3, paragraph (2)). The Act also bans discrimination against Ainu on the basis of ethnicity (Article 4), requires the national and local governments to launch educational and publicity campaigns to deepen public understanding of the Ainu (Article 5) and obliges citizens to make efforts to help realize the society envisioned by this Act (Article 6). It also provides that the national government shall approve, at a Cabinet meeting, a basic policy for comprehensive and effective Ainu policy promotion (Article 7) and shall promote a comprehensive Ainu policy that includes measures to promote regional development, industry and tourism in areas with Ainu populations, and not just the welfare improvement and cultural promotion measures that have been in place. The Act also requires that municipalities work independently or jointly to develop regional plans for Ainu policy promotion, including implementation plans⁴, and seek approval of the Prime Minister to ensure conformity with the basic policy (Article 10). When formulating implementation plans, municipalities are obliged to consult parties who will implement the plans⁵, and those

⁴ Various projects are envisioned, including those to support the revival of traditional culture and the reconstruction of traditional living spaces, to improve a supply system for materials of woodcrafts and other crafts, to promote the establishment of an Ainu brand, to promote tourism campaigns featuring Ainu culture, to operate buses for local residents, to develop facilities to promote exchanges between Ainu people and other local residents, to support community activities by elderly Ainu and to provide learning support for local children.

⁵ This provision practically guarantees that opinions and demands of local Ainu are reflected in

municipalities whose regional plans have been approved are entitled to grants to implement the plans⁶ (Article 15). The new legislation also includes special provisions to protect Ainu culture, including traditional rituals and lifestyles, by allowing special considerations, contingent on inclusion in regional plans, for the gathering of timber and bark from national forests for use in traditional rituals and cultural activities (Article 16), the catching of salmon in rivers using traditional methods (Article 17), the application for trademark registration by local organizations (Article 18) and the permission for municipalities to issue bonds to cover the costs of implementing the plans (Article 19).

The legislation also provides that the national government shall designate an organization as the operator of the National Ainu Museum and Park (Article 20 to Article 31)⁷ and shall establish the Ainu Policy Promotion Headquarters in the Cabinet to ensure comprehensive and effective Ainu policy promotion, a headquarters that is to be headed by the Chief Cabinet Secretary and that includes relevant Cabinet members such as the Minister of Land, Infrastructure and Transport and the Minister of Education, Culture, Sports, Science and Technology (Article 32 to Article 40).

Lastly, the new legislation provides that when five years have passed after this Act has taken effect, the government shall review the state of enforcement and, when it finds it necessary, take necessary measures based on the findings of that review (Article 9 of the Supplementary Provisions).

4. Delivery of Grants

The Cabinet Office announced the grants, a total of 660 million yen, would be delivered to 13 municipalities including one outside of Hokkaido on September 30. Looking at the types of granted projects, 470 million yen for tourism promotion and other industrial promotion projects; 150 million yen for promoting exchanges within and between regions and international exchanges; 20 million yen to promote understanding of Ainu culture and tradition; 20 million yen to preserve and inherit the Ainu culture. These include the operation of intercity and community buses, management of Ainu designs and patterns as intellectual property, human resource development for the succession of Ainu culture, the placement of learning supporters for the purpose of improving academic ability of Ainu schoolchildren and accumulation of Ainu elders' knowledge and experience.

The government will continue to accept applications from municipalities throughout the country until November 11, and plans to make a second grant delivery within the year.

regional plans for Ainu policy promotion because Ainu are expected to play a central role in implementing those plans.

⁶ One billion yen is expected to be appropriated in the budget for the first fiscal year following the enforcement of this Act.

⁷ The government has designated as the operating body of Upopoy the Foundation for Ainu Culture, which was originally established under the ACPA to implement measures to promote Ainu culture.