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Parallel Information

Concerning

The situation of economic, social and cultural rights of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF INDIGENOUS SMALL-NUMBERED PEOPLES OF THE NORTH,
SIBERIA AND THE FAR EAST OF THE RUSSIAN FEDERATION

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1 Executive summary

- The approximately 250,000 indigenous small-numbered peoples of the North, Siberia and the Russian Far East are among the most vulnerable segments of Russian Society. Their economies and traditional ways of life rely heavily on activities such as fishing, hunting, reindeer herding and gathering. The collapse of the Soviet Union and its infrastructure increased the dependency on these activities to an even greater extent. At the same time, their territories are severely affected by extractive industries, commercial fishing, timber harvesting and other forms of resource extraction.
- At present, the legal status of the indigenous small-numbered peoples of the North does not comply with the State party's obligations under Art. 1. As already noted in 2003, the federal Land Codex (*zemel'ny kodeks*) of 2001 rules out any form of land tenure other than rent and private property and thus is a major obstacle to any meaningful recognition of indigenous peoples' land rights.
- Furthermore, since the consideration of the 4th periodic report, the State party has made no progress regarding the implementation of the federal law "On Territories of Traditional Nature Use", which would afford at least a minimum level of recognition to indigenous land rights and protection to their territories as required by Art. 1.2. There is no indication as to when this step is going to be taken.
- Likewise there is no enforceable legislation regulating compensation to indigenous peoples for damage inflicted to their livelihood (Art. 11, Art. 1.2) nor is their Free Prior and Informed Consent required before industrial operations affecting their territories are launched, despite the fact that these activities have potentially profound impacts on their enjoyment of their rights. (Art. 1.2)
- At the same time alienation of indigenous territories continues unabated. Many industrial projects are underway, impacting directly on indigenous territories and endanger their livelihoods. As a rule, the Free, Prior and Informed Consent of the indigenous peoples is not sought. A prominent case is the Yakutia-Khabarovsk gas pipeline, planned by Russia's largest gas producer Gazprom. According to Gazprom's current plans it will run through the heartland of the Evenki population of Southern Sakha (Yakutia). Despite unanimous opposition from the Evenks, the regional government has recently given the go-ahead for the exploration phase. (Art. 1.2, 5, 11, 15)
- Indigenous people tend to receive extremely low salaries if any at all when hired by entrepreneurs as fishermen, hunters, etc. (Art. 5). At the same time, *obshchinas*, i.e. small community-based indigenous enterprises, are on the brink of collapse. Since 2008 their fishing grounds have been put out for tender and licensed to private businesses. At present a draft amendment to the federal law "On Fishery", redefining the scope of "traditional fishing" to cover fishing for immediate personal needs only threatens to further jeopardize the ability of *obshchinas* to realise their rights to work, livelihoods and subsistence (Arts. 5, 1.2) by virtually barring them from selling their produce
- As a legacy of the Soviet Union, special boarding schools to which children from the age of 7

continue to be admitted serve to disrupt the integrity of indigenous families, especially nomadic families, and adversely affect the children's physical and mental health (Art. 10)

- Russia still fails to adequately protect and respect the right of indigenous peoples to feed themselves in accordance with their customs and traditions. (Art. 1.2, 11, 15) Indigenous peoples still have to go through highly bureaucratic and inaccessible procedures to receive fishing permits for their personal needs. The determination of per-capita limits on quotas remains non-transparent and non-participatory. Quotas remain wholly insufficient to satisfy their cultural and nutritional needs. Sometimes, nonsensical regulations bar indigenous communities altogether from exercising their rights under Art. 11.
- The State party also fails to fulfil its obligation to protect the indigenous peoples' right to feed themselves by ensuring that third parties do not inflict ecological damage that denies them the opportunity to pursue their livelihoods. (Art. 11)
- The state of the indigenous peoples' health remains precarious. Life expectancy, incidence of disease, child mortality and virtually all others indicators reflect the indigenous peoples' extreme marginalisation and vulnerability. Insufficient access to traditional types of food has had serious ramifications for the indigenous peoples' mental and physical health. Due to a policy sometimes labelled "optimisation", many remote villages have lost medical care facilities along with other public services. (Art. 12)
- Global warming is a major emerging challenge, demanding a comprehensive response by the State party, as it affects the Arctic stronger than any other region of the planet and is expected to have major impacts on the environment, the indigenous peoples' health and their ability to pursue their traditional ways of life. (Art. 11, 12)
- The State party fails to adequately protect indigenous peoples' sacred sites from desecration, disturbance or destruction by extractive industries operating in their territories. (Art. 15)

2 Preface

RAIPON¹, the national umbrella organisation representing more than 40 indigenous small-numbered peoples of the Russian North, Siberia and Far East, together with IWGIA, the International Work Group for Indigenous Affairs (Copenhagen) present this parallel report at the occasion of the consideration of Russia's Fifth Periodic Report to the Committee on Economic, Social and Cultural Rights. This report, while examining and commenting on the information provided in the report submitted by the State party, is also a follow-up to shadow-reports regarding the situation of indigenous peoples in the Russian North, submitted by RAIPON, FIAN and INFOE in 2003² and 1997³, to CERD and by RAIPON and IWGIA to the UPR in 2008⁴. Thus, the authors would like to take this opportunity not only to report about the present status of the rights of indigenous peoples in the Russian North, but also review issues brought to the attention of the Committee in earlier years and to assess to which extent the State party has complied with its obligation to adopt "measures to the maximum of its available resources to reach progressively the full realisation of the rights enshrined in the Covenant" as stipulated by Art. 2. Since the consideration of the previous periodic reports, Russia has gone through a period of significant economic growth, thus the quantity of economic resources at the disposal of the Russian government to address concerns and recommendations issued by CESRC and other human rights bodies including CERD and the UN Special Rapporteur on the Situation of Rights and Fundamental Freedoms of Indigenous Peoples has objectively increased considerably. However, it is with regret that the submitting organisations note that the situation of indigenous communities has not improved accordingly, reflecting a failure of the State party to comply with its obligations under the Covenant

3 Background: The indigenous peoples of the Russian North

The term "indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation"⁵ is a collective name for more than 40 indigenous peoples with a population of less than 50,000 each, inhabiting the Arctic and Asian expanses of Russia. Together, these peoples number little over 250,000 individuals. Their traditional livelihoods are based on fishing, hunting, reindeer husbandry and gathering. More than two thirds of them live in rural environments, where these activities continue to constitute indispensable sources of food and income. While they have managed to survive under some of the harshest climate conditions anywhere on the planet and also to adapt to profound climatic, environmental and political changes, the Soviet period followed by the introduction of free-market economy severely tested their ability to adapt.

During the Soviet period, state interventions were detrimental to the maintenance and functioning of

¹ Full name: Russian Association of Indigenous Peoples of the North, Russian: Assotsiatsiia korennykh, malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii

² <http://www.infoe.de/report-2003.pdf>

³ <http://www.fian.org/resources/documents/others/the-right-to-adequate-food-art-11-and-violations-of-this-right-in-the-russian-federation/pdf>

⁴ http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/RU/RAIPON_IWGIA_RUS_UPR_S4_2009anx_Indigenous_Peoples_Russia_RAIPON_INFOE_2008.pdf, and http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/RU/RAIPON_IWGIA_RUS_UPR_S4_2009_TheRussian_AssociationofIndigenousPeoplesoftheNorth_InternationalWorkGroupforIndigenousAffairs_J.pdf

⁵ Korennye, malochislennye narody Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii

internal social structures in a variety of ways: Traditional elites who had previously been able to assert leadership in accordance with the communities' customs and practice, and thereby maintain united communities, were eliminated. Persecution of shamans and wealthy reindeer owners virtually destroyed indigenous societies. Families were torn apart by a boarding school system, which disrupted the intergenerational transmission of traditional knowledge and language. The indigenous peoples' own customary regimes of land and resources management were replaced by a system of collective enterprises, which worked to fulfil state-imposed plans thereby ignoring indigenous knowledge, traditions and customary law.

The second half of the 20th century brought an unprecedented industrial transformation devastating much of the Arctic and Siberian environment that constituted the basis of the indigenous peoples' livelihood. Fishing in the Ob', one of Eurasia's largest streams, had to be terminated. Oil spills, forest fires, large dams and even nuclear explosives used for seismic tests left behind a legacy of devastation. Simultaneously, industrialisation compounded the cultural, economic and political marginalisation of indigenous peoples, as they became vastly outnumbered in their own territories as a result of the waves of industrial workers sent to Siberia from other parts of the Soviet Union.

In the post-Soviet phase, the indigenous peoples' economies suffered another major blow. The collapse and disintegration of state-owned fur farms and fishery and reindeer breeding enterprises eliminated the wage earning opportunities that had been available to indigenous communities. As a result, the post-Soviet era has seen many indigenous peoples surviving in virtually non-cash environments with a significantly increased dependency on natural resources for their subsistence.

4 Cases of violations of Economic, Social and Cultural Rights

As indigenous peoples, their well-being and the full realisation of their rights to adequate food as enshrined in Art. 11 of the Covenant and the right not to be denied their own means of subsistence (Art 1.2) as well as the full enjoyment of other rights guaranteed by the Covenant depends on guaranteed and sustainable access to sources of food and income, in accordance with their cultural traditions and aspirations. For the indigenous peoples of the North, hunting, fishing, gathering and reindeer husbandry are not only markers of cultural identity and sources of food but also vital providers of economic opportunity and sustainable development. Therefore, the creation of a legal environment which ensures full respect for indigenous peoples' traditional ownership, access and use rights has been the main aspiration of indigenous organisations since the inception of the Russian indigenous movement in the late 1980s. As the cases highlighted in this section demonstrate, this aspiration has yet to become reality and its realisation appears to be more urgent than ever.

4.1 The Right to Self-Determination (Art. 1)

4.1.1 Insufficient legal framework regarding indigenous peoples' land rights (Art. 1.2)

Currently, the Russian Federation does not have a functioning land rights regime which meets its obligations of Art. 1.2 and 15 of the Covenant to recognise and protect indigenous peoples' right over those territories which they traditionally inhabit or use and which constitute the basis for their collective survival and development.

The central legal act governing land tenure and ownership in the Russian Federation is the 2001 edition of the Land Code⁶ (*zemel'nyi kodeks*). § 12 declares that “*land is to be preserved as the basis of the life and the activities of the peoples, inhabiting the respective territory*”, thus it defines land as a public good. However § 20 of the same law defines land as a commodity, in that it rules out forms of land tenure other than rent or purchase: “*Citizens cannot be granted permanent (indefinite) use [rights] over plots of land. Judicial persons, except those named under item 1 of this provision are obliged to have their right to permanent (indefinite) use of land plots transferred into the right to rent (pravo arendy) the given plots or to obtain the plots as property*”.

This provision runs contrary to forms of land ownership enshrined in indigenous peoples' own customary law and it provides no room for the recognition of an indigenous people or community as a collective rights-holder in line with the State party's obligations under Art. 1 of the Covenant and international human rights law as it pertains to indigenous peoples. It implies that indigenous people, using land for purposes such as herding their reindeer, are to be charged by the state for using land, which they have inhabited and used since time immemorial.

Furthermore, this provision acts as a major obstacle to the realisation of land use rights of indigenous peoples, enshrined in other federal laws, namely

- the Federal law “On Guarantees of the Rights of Indigenous Small-Numbered Peoples”⁷, which provides certain privileges regarding land tenure and use of natural resources, including the right of indigenous peoples to use land free of charge at places traditionally inhabited and used by them; and
- the Federal law “On Territories of Traditional Nature Use of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation”.⁸

Recommendation issued by CERD⁹ and the UN Special Rapporteur on the Right of Indigenous Peoples¹⁰ to remove this obstacle to the realization of indigenous peoples land rights have not been implemented by the State party.

While Russia has failed to institute a working regime of indigenous land titles, the reporting period was marked by a number of legislative changes, which substantially endangered their continued access to their sources of subsistence, food and income. In accordance with three federal laws adopted or revised after 2001, the Forest Codex¹¹ of 2005; the 2006 revision of the law “On Fishing and the preservation of aquatic biological resources”¹² and the federal law “On Hunting and the preservation of hunting resources and on the introduction of revisions into several legal acts of the Russian Federation”¹³ of 2009 all forest, hunting and fishing plots without any exception, including those located in territories inhabited and used by indigenous peoples, are now eligible to be leased out to private businesses under long-term license agreements, based on purely commercial tenders

⁶ Federal Law 137-FZ of 25.10.2001

⁷ Federal law «O garaniyakh prav korennykh malochislennykh narodov Rossiiskoi Federatsii» (On guarantees of the rights of indigenous small-numbered peoples of the Russian Federation) 30 April 1999, № 82-FZ

⁸ Federal law 49-FZ of 7 May 2001

⁹ CERD/C/RUS/CO/19, para 24

¹⁰ A/HRC/15/37/Add.5, para 84

¹¹ “Lesnoi kodeks”

¹² “O rybolovstve i sokhraneni vodnykh biologicheskikh resursov”

¹³ “Ob okhote i sokhraneni okhotnicheskikh resursov i o vnesenii izmenenii v otdel'nye zakonodatelnye akty Rossiiskoi Federatsii”

and auctions. The licenses usually cover periods of 20 years or more, which means that even if the State party should finally embark to implement the Law on Territories of Traditional Nature Use, many of the territories will already be under the control of private businesses, whose rights are protected by legally binding long-term agreements. The indigenous peoples of the North were not provided with the opportunity to participate in the drafting of this legislation and their consent was not sought in relation to those provisions which impact directly on their subsistence rights and as well as their cultural, spiritual and physical well-being.

4.1.2 Deprivation of means of subsistence (Art 1.2)

The territories inhabited by indigenous peoples of the North are affected by an ongoing expansion of industrial, mostly extractive, operations, without their Free, Prior and Informed Consent and very often without prior consultation in relation to, or even awareness of, the planned activities. In addition adequate compensation is frequently not provided. In addition to the failure of Federal bodies to inform, consult and obtain consent of indigenous peoples for these activities, local government or self-administration bodies typically sign agreements allowing industrial companies to use indigenous peoples territories for construction and resource exploitation without even informing the indigenous inhabitants and users of these territories. In doing so they violate not only Russia's obligations under the Covenant but also the Russian land codex (§ 31) as well as § 8 of the Federal Law “On the guarantees of the right of indigenous, small-numbered peoples of the Russian Federation”.

These violations occur frequently because these legislative provisions carry no sanctions and are therefore treated as being ‘non-binding’ or lacking force by local government officials. This is compounded by the fact that the rights of indigenous peoples are only enshrined in Russian legislation in declaratory manner with indigenous peoples having no legal title over the territories they inhabit or traditionally use for purposes such as reindeer herding, fishing, hunting or gathering. Therefore, third parties which are granted long-term licenses to indigenous territories are not obliged by Russian legislation to seek the Free, Prior and Informed Consent of their traditional owners or to consult with them.

No enforceable regulations exist regarding fair and adequate compensation for the loss of reindeer pasture, hunting grounds, fish stocks and other resources. The Federal Law “On Guarantees of the Rights of Indigenous Small-Numbered Peoples Peoples of the Russian Federation” of 30 April 1999 (Law 82-FZ) proclaims a right to compensation in § 8.1. However, it provides no details regarding this, except for assigning regulatory responsibility to the Federal authorities (§ 5.6). At the same time, the laws governing natural resources, which generally prevail in practice, foresee compensation only for the formally recognized legal land rights holders, which in most cases will be the administration or a company.

Recent reports of industrial operations in indigenous territories without consultation, consent or even information have come from Tomsk oblast, Yamal Nenets okrug, Altai republic, the Republic of Sakha (Yakutia), Kamchatka territory and Sakhalin oblast. The following cases are illustrative of such situations facing indigenous communities in these regions.

4.1.2.1 Case study: The East-Siberia-Pacific gas pipeline

Currently, Russia's largest gas producer Gazprom is planning the construction of a gas pipeline

route leading from Yakutia to Khabarovsk and Vladivostok on the Pacific coast.¹⁴ Earlier approved plans for this project foresaw a route paralleling the already existing 4,857 km long East-Siberia-Pacific Ocean oil pipeline, which is already in operation. Recently, Gazprom has presented a modified route¹⁵, which the company prefers as it is significantly shorter and thus cheaper to build. However, the proposed route will cut through three districts in the South of Sakha (Yakutia), which are home to more than 4,000 indigenous Evenks: The Olekminski, Neryuginski and Aldanski districts. The association representing the indigenous Evenks of Yakutia has appealed to president Medvedev and to Gazprom to change the route. In an open letter, it expressed grave concern that “for the sake of saving 49 billion roubles¹⁶ it has been proposed to build the pipeline straight through the territories of traditional nature use of the Evenk people (...), [and] through the nature reserve “Cheroda¹⁷”. In December 2010, 213 inhabitants of the village Tyanya in Olekminski district sent a letter of appeal to the presidents and governments of Russia and Yakutia, urging them to spare their territories stating:

“Industrial projects which were constructed earlier affected only the outskirts of our territories, we always found ways to lead our reindeer to other places, directed our hunters to other lands, i.e. much of our territories remained unaffected and nature preserved its original beauty. Now it is different. Under the second proposed route, the gas pipeline will run straight through the very heart of our land. In fact, this will be a blow into the heart. i.e. our entire existence will be put at stake. Gazprom insists on the second route, pointing to a cost advantage of 49 billion roubles. Is money more important than an entire people whose language, culture and way of life are priceless?”¹⁸

The signatories explicitly state that they are not opposed to economic development as such, they merely demand that Gazprom refrain from the newly proposed route and revert to the original plans.

In Olekminski district, Evenks held village assemblies where they expressed strong protest against the new pipeline route. Nonetheless, on 24 January 2011 the Ministry of Nature Protection of Sakha (Yakutia) adopted a decree authorising 11 months of exploration works by VNIPIgazdobycha, one of Gazprom's contractors, including a permit for timber harvesting.

The authorities have announced a public hearing in only one of the three affected districts.¹⁹ This was scheduled for 11 March 2011 in Nyurenginski district. Given the vast distances and the poor connections between the districts of Yakutia, the residents of the other districts affected by the project were not able to express their views at the hearing. This amounts to their de-facto exclusion from any consultation process due to its physical inaccessibility.

Thus, the State party has failed to seek or obtain the free, prior and informed consent (FPIC) of the population affected by the rerouted Yakutia-Khabarovsk gas pipeline and has thereby denied them the potential to exercise their right to self-determination. Furthermore, by failing to seek their FPIC and to conduct the associated meaningful good-faith consultation processes, the extent to which the rights and interests of the Evenk people will be prejudiced as a result of the project remains undetermined. The Evenks fear that these impacts may be catastrophic and that their traditional way

¹⁴ Russian title of the project: Magistralnyi gazoprovod Yakutiya-Khabarovsk-Vladivostok”

¹⁵ The route proposed by Gazprom would run along the towns Chayanda, Lensk, Innyakh, Larba, Purkan, Skovorodino to Khabarovsk

¹⁶ appr. 1,7 billion USD

¹⁷ The nature reserve is located in the Olekminski district and inhabited by indigenous Evenks, maintaining a traditional way of life

¹⁸ Information received from the Yakutian Association of Indigenous Small-Numbered Peoples of the North

¹⁹ The hearing is a mandatory precondition for the Environmental Impact Assessment

of life may suffer a terminal blow as a result of what is merely a cost saving measure on behalf of Gazprom. Therefore the current process, unless significantly modified, constitutes a clear violation of the State party's obligations under Art. 1 of the Covenant. If it proceeds as currently envisaged by Gazprom without the consent of the Evenks, the project will also severely disrupt access to sources of food and income (Art. 11) and limit their ability to pursue their current occupations (Art. 5) and enjoy their culture (Art 15).

Failure to respect indigenous peoples' right to Free, Prior and Informed Consent is not limited to large projects, but it is a frequent companion of extractive industry operations anywhere in Russia as the following examples demonstrate.

4.1.2.2 Example : Taimyr – Companies fail to consult, act with impunity, administration fails to take action

The ombudsman for indigenous peoples rights in Krasnoyarsk territory reports:

*“The ombudsman was approached by Ms B. with a request to find out who and under what basis had erected four drilling platforms in the vicinity of the river Vargan'yakha, which is within the area of their nomadic migration. According to her words, the drilling platforms had been brought over from [neighbouring] Tyumen oblast, no prior consent had been obtained from the local inhabitants. The tundra cover had been destroyed and thus the food basis for the domestic reindeer disrupted. According to testimonies from the reindeer herding cooperative 'Yara-Tanama' (village Nosok), around the gas extraction site 'Pelyatka', reindeer refuse to take in food, because the reindeer moss and lichen had become inedible”*²⁰ A. Bolin notes: “In the Tukhardskaya Tundra, reindeer herders noted illegal activities by a geological exploration team, which dumped written-off equipment in the nearest river. The Beregovoi family wrote to various bodies, but up to the present moment, no investigation has been undertaken. The reason for this are the financial limitations and the shortage of labour force in the law-enforcement organs, along with an ineffective system of environmental protection.”²¹

4.1.2.3 Example: Tomsk oblast – Frequent oil-spills, administration fails to take action

Indigenous Selkup people from the village Novyi Vasiugan in Kargasok district of Tomsk oblast report of frequent oilspills followed by cover-up efforts by the authorities and the companies., Upstream from the village situated on the river Yagylyiak (Krapivinskoye oil field), an oil pipeline broke recently. The pipeline ran along the river and for approximately one month, crude oil has been streaming into the river. Several thousand cubic metres of crude spilled out, contaminating 200-300 km of the river's course. Only by 12 February 2011 (one month after the spill happened), the prosecutor of Kargasokski district, started to investigate the matter. The oil well is owned by the company “Tomskneft”.

About one year earlier, several thousand cubic metres had been spilled in the same district, at the Dvurechenskoye oil field. The case was sealed with a report which noted that 4.9 metric tonnes of crude had escaped into the river. The local inhabitants were angered: “*Oil spills are always covered*

²⁰ *O soblyudenii konstitutsionnykh prav i svobod korennykh malochislennykh narodov na territorii Krasnoyarskogo Kraja v 2010 godu*, available at http://www.narodsevera.ru/dat/bin/files/107_doklad_palxcina.doc (verified 1 March 2011)

²¹ A. Bolin: “*Analiz nekotorykh rezultatov likvidatsii avtonomii na Taimyre i Evenkii*”, in: Zhivaya Arktika. Mir korennykh narodov vol. 25, 2010, pp 88-95“

up. Even if a fine is passed, it does not exceed 40,000 roubles.²² It is us who has to live here, to hunt and fish. Where will we go when there is nothing left – half of the territories has been given to businessmen the other is 'murdered' by the oil industry. Who is going to help us?!" they wrote in an appeal.²³

4.1.3 Lack of recognition and demarcation of indigenous peoples' territories (Art. 1.1; 1.2)

The only form of land title currently foreseen in Russian Federal legislation for indigenous peoples is the so-called Territories of Traditional Nature Use (TTNU). Although the law does not amount to full recognition of indigenous ownership of their given territories, it would at least serve to institute co-management regimes, granting indigenous communities certain decision-making powers over a given territory and install a minimum level of protection against unmitigated industrial exploitation by third parties. The law governing the creation of these territories was adopted in May 2001. However, a decade later, not a single such territory has been created, despite numerous applications by indigenous communities from all parts of Russia. The Russian authorities have cited the absence of the necessary administrative by-laws as the main reason for this situation. However, the State party has had almost a decade to close any regulatory gap and has failed to do so despite its awareness of the issue and its implications.

In its fifth periodic report (para. 12), the State party declares that "*The Ministry of Regional Development is preparing regulatory documentation on the establishment of Territories of Traditional Natural Resource Use (TTNU) of the small indigenous minorities of the North*". This statement echoes similar pledges made by the State party in 2006 in its 19 periodic report to CERD²⁴, para. 51.-52. As far back as 2003, the CESRC called on the Russian Government to implement the federal law on Territories of Traditional Nature Use²⁵ (Federal law 49-FZ, 7 May 2001). CERD repeated this call in 2008²⁶. At the 4th session of the UPR, in February 2009, the representative of the Russian Ministry of Regional Development declared, that Russia had adopted a national plan for the implementation of the CERD recommendations of 2008 and that the first interim report on the realisation of this plan would be presented by the end of that year.²⁷ However, such a plan has never been presented nor has any substantial progress been achieved regarding the implementation of the federal law on Territories of Traditional Nature Use (TTNU).

Russia's fifth periodic report to the CESCR session in 2011 further states in para. 12: "*A draft text on a model TTNU of such minorities in Bikin (Primorsky Territory) has been prepared*". However, already in its 19th periodic report to CERD in 2006 the Russian Government stated in para. 52: "*In partnership with the Association of Small Indigenous Peoples of the North, Siberia and the Russian Far East, the Russian Academy of Natural Sciences has prepared draft regulations on the "Bikin" model federal area of traditional resource use for small indigenous peoples in Primorsky Territory,*

²² Approximately 1000 €

²³ Olesya Seliverstova: "Zhiteli poselka Tomskoi oblasti krychat o pomoshchi", 15.02.2011, <http://www.raipon.info/dokumenty/1-novosti/1645-zhiteli-poselka-tomskoj-oblasti-krichat-o-pomoschi.html> (Verified 7 March 2011)

²⁴ CERD/C/RUS/19

²⁵ E/C.12/1/Add.94, 12 December 2003, para. 39

²⁶ CERD/C/RUS/CO/19, 20 August 2008, para. 24

²⁷ Statement by Mr Alexandr Zhuravski (Juravskiy) for the Russian Federation available at <http://www.un.org/webcast/unhrc/archive.asp?go=090204>

which will be submitted to the Government for approval.” Since October 2006, when the report was submitted, the TTNU has still not been approved by the Russian government and there are no indications that this is going to happen in the near future if at all.

Since 2008, the Ministry for Regional Development claims to have been working on amending the law in order to make it workable, however as of February 2011, no draft has been submitted to the State Duma, the Federal Parliament. This failure defies the recommendation by UN Special Rapporteur James Anaya to “urgently bring coherence, consistency and certainty to the various laws that concern the rights of indigenous peoples and particularly their access to land and resources”²⁸.

Meanwhile, indigenous traditional territories continue to be alienated and indigenous communities continue to be deprived of access to those resources on which they depend for their very survival, as exemplified by the cases presented in section 4.1.2. Indigenous organisations in Russia unanimously regard the implementation of this law on TTNU as the most important single prerequisite to provide them with some degree of control over these ongoing developments in their territories and to ensure the protection and full realisation of their right to Adequate Food (Art 11) and to subsistence (Art 1.2).

4.2 Progressive Realisation and Non Discrimination (Art. 2)

4.2.1 Failure to comply with the principle of Progressive Realisation

Art. 2 of the ICESCR states that each Member State to the Covenant commits itself to adopt “measures to the maximum of its available resources to progressively achieve the full realisation of the rights enshrined in the Covenant”. It logically implies that where the resource base has increased there is a corresponding increased obligation on the state to progress with the realization of the rights in the convention. This principle of ‘progressiveness’ implies the state obligation to show significant developments in relation to the realisation of Economic, Social and Cultural rights particularly where increased means to do so are available. In Russia there has been a significant increase in the economic capacity of the state to progressively realize the rights in the ICESCR. However, experience of communities illustrates that there have been no meaningful efforts to do so. A blatant example of this failure is the fact that indigenous settlements in remote areas are stripped of public infrastructure and left without supplies during a period of overall economic growth in the country as a whole. (see section 4.5.4)

4.2.2 Discrimination and prejudice

Art. 2.2 CDESCR establishes the principle of non-discrimination. This principle is particularly relevant for all indigenous groups who have long been deprived of their land. The restoration of indigenous groups’ rights to ancestral land is part of the commitment by the State to overcome historical discrimination. In this context, the failure of the State party to install a working regime of indigenous land-rights (see section 4.1.3) constitutes failure to comply with its obligations under Art. 2 of the Covenant.

‘Public leadership and programmes to raise awareness about systemic discrimination and the

²⁸ A/HRC/15/37/Add.5, para. 83

adoption of strict measures against incitement to discrimination are often necessary' - this notion from General Comment 20, para 39, holds true for the Russian Federation, as for most countries with indigenous populations. Indigenous peoples continue to be vulnerable to condescending attitudes held by many citizens, including public servants, some of whom treat them in patronising ways and lack awareness of their rights, enshrined in Russian and international law. In Russian media, indigenous peoples are sometimes portrayed in a stereotype manner, as unproductive members of society, who use their special status to blackmail excessive compensation money out of government and corporation coffers. Specific measures to counter prejudice against indigenous peoples held by public servants and members of the public are lacking.

4.3 The Right to Work (Art. 5)

4.3.1 Insufficient wages of indigenous hired labourers

The overwhelming majority of indigenous people live in rural places and are engaged in traditional economic spheres such as fishing, hunting and reindeer herding. Salaries and working conditions in these sectors often fail to meet basic legal requirements. The ombudsman for the rights of indigenous peoples of Krasnoyarsk territory writes in his report:

*“Entrepreneurs which have received fishing rights in indigenous peoples' traditional settlement areas usually do not carry out fishing themselves. Instead they hire [indigenous] fishermen for alcohol and food. Very often the salaries paid by the employer are below the legal minimum wage for the district. Collective labour agreements are extremely rare in enterprises engaging in traditional economic activities of indigenous peoples. Labour unions are virtually non-existent.”*²⁹

Wages and incomes are substantially below the poverty line. A. Bolin notes that the average incomes of the 1200 indigenous reindeer herders in the Tukhardskaya and Noskovskaya Tundras around Karaul village in Taimyr are 3-4,000 roubles/months, while the average wage in that district is around 30,000 roubles.³⁰ Commodity prices are generally exceedingly high in the Russian Far North.

4.3.2 Indigenous *obshchinas* deprived of means of production

In many regions, indigenous peoples have created their own community-based enterprises, known as *obshchinas*.³¹ These constitute the sole sources of employment and income generation in many predominantly indigenous villages. Since 2008, *obshchinas* have lost access to fishing grounds in many regions, following the implementation of a series of governmental decrees, which led to their

²⁹ O sobulyudenii konstitutsionnykh prav i svobod korennykh malochislennykh narodov na territorii Krasnoyarskogo Kraya v 2010 godu”, available at http://www.narodsevera.ru/dat/bin/files/107_doklad_palxcina.doc (verified 1 March 2011)

³⁰ A. Bolin: “Analiz nekotorykh rezultatov ...”

³¹ *Obshchina* literally means “community”. Indigenous *obshchinas* were introduced in the early 1990s and were originally intended to assume both economic functions and functions of self-administration of indigenous peoples. In practice, however, their economic function has been much more significant. Their status is governed by a special federal law “Ob obshchikh printsipakh organizatsii obshchin korennykh malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii » “(On General principles of the organisation of *obshchinas* of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation)”

eventual privatisation and transfer into the control of private entrepreneurs. (see section 4.5.2)

Such policies affect not only the right to adequate food (Art. 11) but similarly the right to work, given the absence of alternative employment opportunities, as the following testimony illustrates:

In an open letter to Russian president Medvedev, indigenous representatives from Nizhnekolymski district of Sakha (Yakutia) republic, whose fishing grounds were given to third parties, stated: *“In Yakutsk we are told: Just apply for other fishing grounds’, but we cannot just step over other people. On all plots people have been living since time immemorial, they have their homes there, their land [...] and what are they [the authorities] even thinking? Should we just abandon the places where we have our equipment, where we live, where we have our huts, our households and our freezers?”*. As the letter indicates, authorities fail to recognise the inherent right of the indigenous peoples to subsistence, work and to adequate food. In the same letter a public servant is quoted telling the petitioners: *“Change to other business, find yourselves a different work”*, to which they respond: *“If there were factories or enterprises in our district, we might consider changing to another occupation. But here in the North, we have nothing except for traditional fishery and reindeer husbandry. And why should we be the ones to leave because of the arrival of someone from who-knows-where?”*³²

To compound this the federal Ministry of Regional Development is currently promoting changes to federal fishery legislation, which de-facto ban *obshchinas* from selling their produce and thus from generating income for their employees. In October 2010, the Ministry published on its website draft amendments to § 25 of Federal Law 166-FZ “On fishery”, which also have been discussed during two sessions of the governmental commission. The proposed changes would remove the current definition of “fishery for purposes of maintaining the traditional way of life and pursuing traditional economic activities of indigenous, small-numbered peoples of the North” with a newly coined term “traditional fishery”, which is limited to personal consumption by individuals and families and explicitly rules out any business activity. There has been no consultation with the impacted indigenous peoples in relation to this proposed measure and no attempt made to obtain their Free Prior and Informed Consent. As it limits the indigenous peoples ability to economic development and to exercise their right to work, the proposed change must be deemed a retrogressive measure. As a result indigenous communities, which lack the financial means to acquire commercial fishing licenses, would effectively be banned from engaging in fish trade, which historically constituted an essential part of their livelihood.³³ Since in most places of indigenous settlement, alternative job opportunities are virtually non-existent, this limitation, if adopted by the State party, would make it even more difficult for many indigenous people to realise their right to work, thus it would be in violation of the State party's obligation under Art. 5 of the Covenant. In addition this proposed legislation is inconsistent with:

- The notion of special measures required to address discrimination (Art. 2). The CESCR has pointed out in its General Comment No 20 that ‘Individuals and groups of individuals, who may be distinguished by one or more of the prohibited grounds, should be ensured the right to participate in decision-making processes over the selection of such measures’. As also pointed out by CERD in its general recommendation No 32 ‘States parties should ensure

³² Quoted in: Larisa Gabaidullina: *Rybaki Kolymy i indigirki dovedeny do otchayania*, In: Zhivaya Arktika. Mir Korennykh Narodov, Vol. 25, 2010, pp 81-84

³³ cf. Olga Murashko: *Traditsionnyi obraz zhizni i realizatsiia produktsii traditsionnogo rybolovstva*, In: Mir Korennykh narodov, Zhivaya Arktika, Vol. 25 (2010), pp 78-80

that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.³⁴

- The requirement for FPIC in relation to legislative and administrative measures that directly impact on indigenous peoples (UN Declaration on the Rights of Indigenous Peoples / UNDRIP, Art. 19 read together with Art. 1 of the CESCR and Art. 3 of the UN DRIP).
- The goal of enabling self-governance, job creation and self-sufficiency, as expressed in the recommendation by UN Special Rapporteur James Anaya, to ensure “an overall legal and policy regime that is forward looking, taking into account the evolving nature of indigenous cultures, land use patterns and economic relationships“ and implement and strengthen „protections for reindeer herding and other traditional economic activities“ and to provide „support for indigenous entrepreneurship in economic activities not necessarily limited to smaller-scale traditional activities, as a way of strengthening communities“.³⁵
- With Russia’s obligations as a State Party to the ILO Convention 111 on Discrimination (Employment and Occupation). In its report on the applicability of the convention to the situation of indigenous peoples the ILO has affirmed that this convention is applicable to indigenous peoples’ livelihoods.³⁶ According to the ILO’s interpretation of the convention, restrictions such as these on traditional activities of indigenous peoples constitute discrimination in relation to their right to employment and occupation.³⁷
- With the right to culture enshrined in Article 15. The CESCR has interpreted the right to culture and identity in light of the right to self-determination affirmed under Art. 1 of the Covenant as being relevant to contexts such as ‘the recognition and protection of the right of indigenous peoples to their ancestral lands’, the indigenous cultural and intellectual property’ and the preservation of their traditional languages.³⁸ This is consistent with General Comment 23 on the right to Culture by the Human Rights Committee (HRC) which affirms that 'culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. The right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.' (para. 7)
- In the cases of *LANSMAN et al v FINLAND*10/26/94, the HRC affirmed that indigenous peoples should not be prevented from adapting their traditional livelihoods to contemporary circumstances such as the use of modern technology in the conduct of these activities. By attempting to impose a restrictive definition on ‘traditional fishing’ Russia seeks to limit indigenous peoples' capacity to pursue their fishing livelihoods in a manner consistent with the HRC’s recognition of the right of an indigenous people to adapt practices to modern contexts.

³⁴ Committee on the Elimination of Racial Discrimination Seventy-fifth session, August 2009 General Recommendation No. 32 The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination para 18

³⁵ A/HRC/15/37/Add.5, para 91

³⁶ *Eliminating discrimination against indigenous and tribal peoples in employment and occupation A Guide to ILO Convention No. 111*(ILO 2007 Geneva)

³⁷ Ibid page 4-5

³⁸ Australia: E/C.12/AUS/CO/4, 22 May 2009 paras 32, 33

4.4 Protection of the Family (Art. 10)

As was the practice in countries such as Austria and the USA, the Soviet Union introduced a system of boarding schools, where children of nomadic families were kept for most of the year. These schools have survived the collapse of the Soviet Union, and in addition to nomadic children, an increasing number of indigenous children from small settlements are attending these schools, as education facilities in their areas have been closed due to the enforcement of certain state regulations (cf. Section 4.7). This means that from the age of seven, children have to part with their parents and their cultural environments. Commenting on the effects of this educational system on the children A. Bolin writes: “*The presence of the children of the Tundra dwellers in the boarding school in Dudinka*³⁹ adversely affects their mental health. The children want to go home, over the last year, more children have run away from the boarding school (according to information from the commission on the affairs of minors).”⁴⁰ Similar histories of separating indigenous children from their families in other countries have shown the devastating impact on the very survival of indigenous peoples and the potential for intergenerational transmission of their culture.

4.5 The Right to Adequate Food (Art. 11)

The fundamental idea of the concept of the right to adequate food, recognised in Article 11 of the CESCR, is that access to food should occur in a dignified and sustainable manner. Groups should not become dependent on food aid, but remain or become self-sufficient to feed themselves. There are three types of obligations, stemming from the Covenant:

The obligation to respect: In terms of the right to food, States may not deprive a vulnerable group of its livelihood. In the case of the indigenous peoples of the North this includes territories, waters, forests and other resources which they traditionally use to feed themselves.

The obligation to protect: This State party is under the obligation to protect vulnerable groups against deprivations by third parties. This, for example, means that the State has to protect an indigenous community when their right to feed themselves is threatened as a consequence of operations of resource extracting corporations which afflict damage to their livelihood or limit access to them.

The obligation to fulfil: The third state obligation is to fulfil the right to food of those groups not yet in a position to do so due to their lack of productive resources or earning a living wage. This includes indigenous communities living in extreme poverty in remote parts of the Russian North, which are largely disconnected from the Russian market and receive very little supply of basic food, if at all.

Reports received from various regions of Russia indicate that during the reporting period, the State party has breached all three obligations vis-à-vis the indigenous peoples of the North in numerous ways. For the indigenous peoples, the realisation of their human right to adequate food depends on guaranteed and sustainable access to land and resources such as waters, fish stocks, hunting grounds, forest and reindeer pasture. Since 1997, CESCR, CERD as well as the UN Special Rapporteur on the rights of indigenous peoples have repeatedly issued recommendations to the State party regarding its obligations under Art. 11 to ensure access to food in a manner that respects indigenous peoples’ rights and their cultural survival. Nevertheless, there has been no progress in

³⁹ Dudinka is the administrative centre of the Taimyr district

⁴⁰ A Bolin: “*Analiz rezultatov likvidatsii avtonomii na Taimyre I v Evenkii*”. In: *Mir Korennykh Narodov. Zhivaya Arktina. Vol 25, 2010, pp. 88-95*

terms of implementation of these recommendations. Instead measures taken by the State party since 2008 have significantly limited indigenous peoples' abilities to feed themselves in accordance with their needs and traditions.

4.5.1 Failure to respect – administrative and legislative restrictions

In many regions, fish is the single most important source of nutrients as well as an integral part of traditional ways of life. Reports from various regions indicate that the State party is in continued breach of its obligations under Art. 11 and Article 1.2 which protects the right to subsistence. Federal Law “On Fishing and on the Protection of Aquatic Biological Resources”⁴¹ stipulated in § 2.

”consideration (Russian: uchët) of the interests of the population, for whom fishing constitutes the basic livelihood, in particular indigenous small-numbered peoples of the North, Siberia and the Far East [...] according to which they have to be provided access to aquatic biological resources, belonging to fishery objects, allowing the population to carry out their subsistence activities.”

§ 25. further specifies that individuals belonging to the indigenous peoples of the North, Siberia and the Far East have the right to fish for purposes of pursuing their traditional way of life with or without having a license or title over a dedicated fishing site and that no permission is required for them to fish without such a title.

However, this legal guarantee has never been observed by administrations and fishing authorities. Instead, they pursue fishing policies which are highly restrictive and impose often arbitrary and non-transparent restriction on indigenous fish-dependent communities, which make any meaningful perpetuation of traditional fishing practices impossible and amounts to violations of the State party’s respect-bound obligations under the Covenant (cf. section 4.5.3).

4.5.2 Failure to protect - Privatisation and alienation of indigenous fishing grounds

In 2008, the Russian Federal government issued a series of decrees, concerning the management of fishing rights, which had grave consequences for indigenous peoples in a number of regions. While parallel reports submitted to CESRC in 1997⁴² and 2003⁴³ already highlighted the government's failure to respect the right of fish-dependent indigenous communities to feed themselves, the decrees have significantly aggravated the situation. Since 2008, many indigenous *obshchinas* have lost the ability to engage in traditional fishery, which is the basis of their livelihood and their economic development. This is the result of the decision of the regional administrations to adopt a register of sites for commercial fishing by which, as expressed in an open letter of RAIPON to president Medvedev “a large portion of those sites, where the indigenous population of Kamchatka had engaged in traditional fishing practices and protected the spawning grounds for centuries was transferred into the register of sites designated for commercial fishery and was to be redistributed between commercial organisations.”⁴⁴ Following this decision, the administration announced a commercial tender for long-term licenses over the sites listed in the register. While 350 indigenous

⁴¹ Russian: “*O rybolovstve i sokhranenií vodnykh biologicheskikh resursov*”

⁴² Available at: <http://www.fian.org/resources/documents/others/the-right-to-adequate-food-art-11-and-violations-of-this-right-in-the-russian-federation/pdf>

⁴³ Available at <http://www.infoe.de/report-2003.pdf>

⁴⁴ Open letter of RAIPON president Sergei Kharyuchi to Russian president Dmitri Medvedev, published 15 May 2009.

obshchinas submitted their bids, only 18 of them were successful. The others' bids were allegedly disqualified by the authorities without explanation. Furthermore, indigenous people raised doubts about the legitimacy of the successful bidders. The main concern, however, is that almost all indigenous *obshchinas* of Kamchatka have lost the ability to legally engage in traditional fishing practices and generate income for their members.

4.5.3 Discriminatory practice regarding fishing permits

Even though the law “On fishing” says that indigenous peoples do not require fishing permits for private consumption, the practice of the Russian authorities is that annually certain per-capita quotas are determined for ecological reasons, and indigenous people are usually required to obtain individual permits, even for personal consumption. The policy is very restrictive and sanctions, including fines and confiscation of equipment are frequently reported. The breaches of the State party’s obligations under Art. 11 in connection with this system have been brought to the attention of the CERSC first in 1997. The problems noted by FIAN and INFOE in their 1997 shadow report persist virtually unchanged. The principal flaws of the system are

- Inaccessibility: The procedures are often either prohibitively bureaucratic or require travel to a distant central settlement or town, which indigenous people may be unable to afford;
- Insufficient quotas: The annual quotas often constitute just a fraction of what would be an acceptable minimum with regards to the indigenous peoples' nutritional and cultural needs;
- Lack of transparency and participation: Quotas and allowed dates and places for fishing are determined by the authorities without participation of the indigenous peoples. Decisions may come at short notice and appeals may not be heeded or even answered;
- Inadequate and unrealistic conditions attached to the quota: Permits may be issued partly or exclusively for species which do not occur at a given place; places may be assigned which are inaccessible; fishing permits may be received only after the season has ended, etc. Failure to comply with the imposed restrictions is sanctioned by fines or confiscation of equipment.
- Denial of permits: In some regions, the authorities withhold issuance of fishing permits unless a person is able to document their indigenous identity. Since the removal of the “nationality” entry from Russian passports, there is no standard way of doing so.

The following cases have been reported by RAIPON's regional chapters and information centres. They are in many ways typical; many similar reports are aggregated in RAIPON's information centre every year. Their cumulative effect is that indigenous people are barred from practising fishing in accordance with their customs and traditions.

4.5.3.1 Khabarovsk territory

In 2010, the Khabarovsk branch of the federal fishing authority (Rosrybolovstvo) fixed the per-capita limit at 50 kg per annum, less than 20% of what would be a sufficient amount for indigenous people pursuing a traditional way of live (cf section 4.6.2). In addition to that, it stopped allocating lump amounts to indigenous settlements which would then take charge of distributing them among their members. Instead, it introduced a highly bureaucratic regime, where every indigenous person, including infants and elderly, would have to produce documentation individually to receive the permits. These applications were to be considered by the federal authorities in Moscow, which have very little insight into the living conditions of indigenous village dwellers in Russia's Far East. The

vice director of the Amur territorial administration of Rosrybolovstvo, Sergei Mikheev, concedes that many applications were rejected for formal errors, and most inhabitants of villages along the Amur learnt about the new procedure only at the beginning of the fishing season. Therefore in 2010 just one in every ten Nanai, Nivkh or Ul'ch village dwellers was legally entitled to fish for his personal consumption. This means that in 2010, the majority of indigenous peoples in Khabarovsk region were forced to engage in poaching in order to enjoy the subsistence aspect of their right to self-determination (Art. 1.2) and culture (Art 15) and the right to feed themselves (Art. 11), risking fines and confiscation of fishing equipment.⁴⁵

4.5.3.2 Taimyr, Krasnoyarsk territory

In Taimyr district, in the Arctic North of Krasnoyarsk territory, indigenous people report that fishing for the purpose of pursuing their traditional way of life is impossible, namely because a decree by the administration of Krasnoyarsk territory allows only the catch of certain fish species which does not occur in the rivers of Taimyr. Multiple appeals of indigenous peoples' organisations, asking to rectify this oddity remained unsuccessful.⁴⁶

4.5.3.3 Chukotka

The inhabitants of the village Uelkal' are currently left without any traditional foodstuff. In 2010, the sea hunters of this village did not receive permission to embark on sea hunting. Petitions by the villagers to the district administration, the food and agricultural and the indigenous affairs directorate of the region led to no results. Therefore, the indigenous village will remain without meat and fat of sea mammals until the summer of 2011, as the Chukotka Association of traditional hunters reports.⁴⁷

4.5.3.4 Primorski territory

The indigenous people of Olginski district found themselves in a difficult situation in summer 2010, when at the peak of the migration period of the Keta, a pacific salmon species, the controlling authorities suddenly decided to prohibit the catch of salmon.⁴⁸

4.5.3.5 Sakha republic

In Sakha (Yakutia) republic, news sources reported a "fishermen's insurrection" in Allaikha district in the North-East of the republic. A member of parliament reported in Yakutsk that only those who had offered to pay the highest price were granted fishing grounds, while fishermen who were unable to obtain a fishing quota were fined, their boats and nets were being confiscated.⁴⁹ Since the local indigenous Even and Yukaghir have very few alternatives to fishing, the current regulatory

⁴⁵ News Agency Vostok Media: Aborigeny Dal'nego Vostoka vozmushcheny novym printsipom razpredelenia ryby, 31 May 2010 <http://www.vostokmedia.com/n75693.html>, verified 8 March 2011

⁴⁶ A. Bolin: *Analiz resul'tatov* ..

⁴⁷ Mir korennykh narodov. Zhivaya Arktika, Vol 25 (2010), p 42

⁴⁸ Information agency PTP: *Razreshat li malochislennym korennyim narodam lovit' rybu v Primore?* 19 October 2010 <http://ptr-vlad.ru/news/ptrnews/37372-razreshat-li-malochislennym-korennyim-narodam.html>, verified 8 March 2011

⁴⁹ News portal Sakha News: "V Allaikhe delo dokhodit do 'rybnykh buntov'", 1.11.2010, <http://www.1sn.ru/43312.html>, verified: 25 February 2011

practices, which effectively bar them from pursuing their main economic activity is a further failure of the State party to respect the rights under Art's. 1.2, 5, 11 and 15.

4.5.3.6 Kamchatka

In addition to denial of fishing rights and alienation of traditional fishing sites, over-exploitation by third parties puts the indigenous peoples' livelihood at risk, constituting a failure of the State party's obligation to protect the indigenous peoples' access to adequate food. As reported from the village Kovran on the North-western coast of Kamchatka peninsula, the village council held an emergency session on 31 May 2010, where it was established that, after the administration introduced commercial fishing sites on the river Kovran, the salmon stocks sharply deteriorated. None of the residents' appeals to the authorities, including one to the Russian president, were heeded. Therefore the residents currently describe their situation as an emergency. The indigenous Itelmen people of Kovran are presently denied the right to feed themselves in the way which they have done since time immemorial.⁵⁰

4.5.3.7 Buryatia

Like in many other regions, traditional fishing sites of indigenous peoples in Buryatia have recently come under the control of commercial fishing enterprises, who had won in the public auctions announced by the authorities. The animal husbandry department countered criticism of this policy by responding to the media that *"Nobody is taking anything away from the Evenks. Tenders will be announced for fishing sites [...], in which everyone can participate. [After that], one will have to ask for permission for fishing from the person who won the tender."*⁵¹ However, lease-holders of fishing sites are under no legal obligation to let indigenous people fish on their places and are unlikely to do so, because they are in direct competition for the same resources.

4.5.4 Failure to fulfil: The situation of remote indigenous settlements

Remote settlements inhabited predominantly by indigenous peoples find themselves increasingly abandoned and disconnected from supplies. One case to gain publicity was Paren, a Koryak village of 60 inhabitants in Penzhinski district in Northern Kamchatka territory. In October 2009, the indigenous information centre "Lach" reported that the inhabitants of Paren were left without food, other than fish and wild plants, without access to medicine and clothing. For two years neither adults nor children had been attended by any doctor or nurse. No treatment is available for sick children. When the report was published, the children had suffering from an unknown virus for a number of months. Young mothers had nothing to eat and to feed their babies. In the winter months, the inhabitants had come close to starvation. After a complaint was submitted to the UN Special Rapporteur on the rights of indigenous peoples, a single load of food and other products was delivered to the village, however, by spring 2010, no further supplies had reached the village. On the one hand the disturbing conditions in Paren are related to the liquidation of the Koryak Autonomous Okrug, which was merged into the new Kamchatka territory by 2006. Reportedly, the administration of the new bigger territory is devoting very little attention to the conditions in remote

⁵⁰ Information Centre Lach, Published in "Zhivaya Arktika. Mir Korennykh Narodov", 25, pp. 27-28

⁵¹ Inform polis, "Evenki ostanutsya bez ryby?", 23.07.2010, <http://www.infpol.ru/news/673/38387.php>, verified 25 Feb 2011

indigenous villages in the formerly autonomous North. On the other hand, it is indicative of the state of affairs in many small indigenous villages in the North, Siberia and the Far East⁵² and thus it illustrates the systematic failure of the State party to live up to its fulfilment-bound obligations under Art. 11 and 12.

4.6 The right to the enjoyment of the highest attainable standard of physical and mental health (Art. 12)

4.6.1 Overview

All figures available corroborate that the state of health of the indigenous peoples of the North continues to be significantly worse than that of the non-indigenous population. However, as noted in earlier submissions, including a submission to CERD at the occasion of its 73rd session, the poor availability of data greatly limits our ability to fully and reliably assess ongoing developments. Anecdotal evidence from various regions often reveals a very grim picture. In two so-called national (i.e. predominantly indigenous) villages of Magadan oblast, Yamsk and Takhtoyamsk, results of a preliminary census undertaken in 2010 indicated that the village population had decreased by a quarter since 2002. Inhabitants blamed both poor medical services and alcohol abuse for the dramatic decrease.⁵³ For the entire indigenous population, the latest comprehensive dataset is as old as 2002, when the last national census was undertaken. The overall trends that can be derived from comparing these figures to those of the preceding census of 1995 gives cause for serious concern. It shows a decrease in the number of newborn children by 69% while in the same period mortality had increased by 35.5%. Furthermore, the average life expectancy of indigenous males had dropped to 49.1 years, which was five years less than the figure for the year 1989 and more than ten years below the national average (59,6). The life expectancy of indigenous women in 2002 was 60.5 years and thus 11.4 years less than the national average (72,4).⁵⁴ Little more than one in three indigenous men (37,8%) live to celebrate their 60th birthday. Whether the situation has improved since 2002 cannot be determined due to the lack of available data. However, information reaching RAIPON from the regions suggests, that the state of health is particularly dire in remote and inaccessible Northern regions, including the Nenets Autonomous Okrug, the Taimyr and Evenkia districts of Krasnoyarsk territory and the former Koryak Autonomous Okrug. Levels of alcoholism and poverty-related diseases such as tuberculosis are significantly increased among the small indigenous peoples, compared to the national average. External causes such as injuries, suicides and homicide account for 37% of all fatalities as compared to a national average of 14%.⁵⁵ The regions with the highest level of suicides include the Nenets Autonomous Okrug and the former Koryak Autonomous Okrug, where 133.6 suicides occur in 100,000 people, exceeding the Russian average of 27 per 100,000 inhabitants fivefold. In the village Kovran which is

⁵² Some descriptions of similar situations in other Northern settlements are available at <http://npolar.no/ipy-nenets>

⁵³ News agency "Vostok-Media": *Perepischiki shokirovaniy rezultatami predvaritelnoi perepisi v Magadanskoj oblasti*: 17.06.2010, <http://vostokmedia.com/n77077.html>, verified 1 March 2011

⁵⁴ Cf. Revich, Boris (ed.): *Climate Change Impact on Public Health in the Russian Arctic*. Moscow (United Nations Office in the Russian Federation) 2008, available at: <http://www.unrussia.ru/doc/Arctic-eng.pdf> (verified 12 March 2011)

⁵⁵ Bogoiavlenskii, Dmitri: "Vymirayut li narody Severa?", In: COTsIS: *Sotsiologicheskie issledovaniya*, 2005, N. 8, pp. 55-61

predominantly inhabited by indigenous Itelmen people, of 330 inhabitants, five took their own lives within just one year. Four of these were in their early adulthood.⁵⁶

The mortality rate from infectious diseases constitutes 60 in 100,000 people, more than twice the Russian average of 23 in 100,000 which is a completely inadequate figure for the 21st century.⁵⁷

Salavat Suleimanov, Dean of the Postgraduate Institute for Public Health Workers in Khabarovsk notes:

*“We are concerned by the high morbidity rate among the indigenous peoples and the specific character and course of the diseases as well as the availability of adequate medical help. [...] We have to consider the small peoples critically ill. Physically, they suffer from disease more and more often, the diseases turn into chronic illnesses. If life is in disarray and there are no jobs, and people worry every day how to survive the next day, how can there be mental and spiritual health?”*⁵⁸

4.6.2 The link between adequate food and mental and physical health

Among the causes contributing to the worrying state of health of the indigenous peoples, insufficient access to adequate food (Art. 11) plays a considerable role. Fish is the basis of the diet of most indigenous peoples of Siberia, the North and the Russian Far East (cf. Section 4.5).

The report of the ombudsman for the rights of indigenous peoples in Krasnoyarsk territory establishes a direct connection between deteriorating health and insufficient access to adequate food: *“According to testimonies by medical personnel, diabetes has been spreading among the indigenous peoples of the North in recent years. According to experts, this is related to changes in the composition of the diet, particularly the reduction in the share of traditional foodstuff – fish and meat”*.⁵⁹ A. Bolin noted that lack of adequate food increases the negative impact of alcohol onto the organism many times.⁶⁰

Professor Vyacheslav Khasnulin of the Russian Academy of Medical Science explains that the stress caused by the harsh environmental conditions significantly increases the need for animal proteins in the diet. Based on the results of extensive research, he calculated that in order to preserve their physical health, indigenous peoples of Khanty-Mansiyski Autonomous Okrug should take in 128 gram of animal protein per day, which equals 292 kg of fish per annum. *“In the absence of the necessary quantity of animal proteins from the diet of indigenous peoples of the North, they develop stress conditions of misadaptations, which leads to psychic disorders, fatigability, irascibility, headache, depression, apathy and decreased working capacity.”*⁶¹

4.6.3 Impact of climate change

The critical state of their health along with worrying demographic indicators make the indigenous peoples of the North particularly vulnerable to the impact of global climatic changes. As universally

⁵⁶ Source: Indigenous peoples' information centre “Lach” (<http://www.lach-kamatka.ru>), also published as *“Strashnaya statistika samoubiisstv”* in *Mir korenykh narodov. Zhivaya Arktika* vol 25, 2010, p. 28

⁵⁷ Revich (ed), p. 17

⁵⁸ News agency Interfax: *“Malye narody Sibiri i na Dal'nem Vostoke chashche vsego stradaiut boleznyami organov dykhaniia - ekspert”*, 27.10.10, <http://www.interfax-russia.ru/Siberia/main.asp?id=185360>, Verified 1 March 2010

⁵⁹ cf. *O soblyudenii konstitutsionnykh prav i svobod ...*

⁶⁰ A. Bolin: *Analiz nekotorykh rezultatov...*

⁶¹ V.I. Khasnulin: *Zdorov'e, severnyi tip metabolizma i potrebnost' ryby v ratsionne pitaniia na Severe*. In: *Problemy sokhraneniia zdorov'ia v usloviakh Severa i Sibiri*. Moskva 2010, p. 58-76, http://old.iea.ras.ru/conferences/2009/medanrtho_summer_school/texts/hasnulin_metabolism.pdf

recognized, the Arctic is the planet's fastest warming region. The grave environmental damage which oil and metallurgical industries, mines, processing plants, landfills, nuclear weapons testing sites, radioactive waste dumps and other ecologically dangerous objects are causing, are likely to be compounded by an increase in temperatures. Warming temperatures may cause chemical and radioactive waste to be released from thawing ice and permafrost into the human environment.⁶² Pipelines are more likely to break when the ground is becoming unstable, as are any other industrial constructions.

Indigenous peoples of the North are particularly affected by increased pollution, as their diet consists by more than 80% of local products and they have no other source of drinking water other than water bodies within their territories. At the same time, the observed changes in migratory routes of wild reindeer and decreases in marine animals will limit the availability of the traditional diets, which are crucially important for their health (see above). Warming also makes food preservation more difficult, resulting in a possible increase in the number of infectious diseases.⁶³

4.7 The Right to Education (Art 13)

Indigenous peoples in the Russian North are affected by insufficient access to educational opportunities. Presently, the State party fails to live up to the obligation under Art. 13 to implement the right to education in a culturally and socially adequate manner. For the indigenous peoples of the North, the main obstacles to the full realisation of the right to education are related to

- insufficient consideration of geographic and demographic conditions, i.e. of the fact that indigenous communities are small in numbers and geographically highly dispersed.
- failure to provide adequate education opportunities to nomadic communities
- insufficient consideration of cultural needs in areas such as language, diet, traditional knowledge

In recent years, the State party has been enforcing rules enshrined in the Federal law “On Education” (“*Ob Obrazovanii*”), which stipulate the closure of schools in settlements with less than a minimum required number of students. In doing so it fails to take into consideration that standards which are based on the demographic and geographic conditions of Central Russia are out of place in the Far North, where conditions are very different and the population density is much lower.⁶⁴

In such cases, children are deprived of access to primary education, unless they are sent to boardings schools starting at the age of seven. The broad use of boarding schools as the only available provider of primary education constitutes a breach of the State party’s obligation to accord “the widest possible protection and assistance [...] to the family, which is the natural and fundamental group unit of society” (Art.10.1)

⁶² Cf. Kokorin A.O; Karelin D.V.; Stetsenko A.V (eds.): *The impact of climate change on the Russian Arctic: analysis and paths to solving the problem*. Moscow (WWF-Russia) 2008, available at http://www.wwf.ru/data/climate/wwf_arctica_eng_1.pdf, verified 12 March 2011

⁶³ For a comprehensive overview of the anticipated health impact of global warming in the Arctic population, see Revich (ed.) 2008

⁶⁴ See also the: report of the Special Rapporteur on the situation of humanrights and fundamental freedoms of indigenous people, James Anaya on the situation of indigenous peoples in the Russian Federation (A/HRC/15/37/Add.5) Par. 70

The following report from Yakutia exemplifies the need for special measures by the State party regarding access to education for children from nomadic families: “*The families of Yakut reindeer herders, hunters and fishermen, leading a nomadic way of life following the sources of their existence, the reindeer along the tundra and taiga. The majority of these families do not have a stationary home in the settlement where they are registered. When school begins, children from the age of seven are torn away from their families and transferred into boarding schools. This leads to an intergenerational rift and the alienation of the youth from traditional economic activities [хозяйствование] and [failure to acquire] those skills which can only be obtained through permanently living in a reindeer brigade from early infancy*”⁶⁵ In Yakutia, a draft law “On the nomadic family” is currently being prepared for the second hearing. This initiative is an important step and it should be followed by other regions and by the Federal Government, which bears the primary responsibility for fulfilling the obligations under Art. 13 and 10, taking into account the recommendation on education by UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, from the report on his recent visit to the Russian Federation to “*support indigenous peoples’ efforts to establish educational institutions that best suit their Communities*” and to “*continue to experiment with new models of education more suited to indigenous peoples’ needs and priorities*”. The submitting organisations furthermore fully support the Special Rapporteur’s view that “*Reports of school closings and the negative effects of these on small indigenous communities should be thoroughly investigated and remedied, and any government policies that have the effect of encouraging such closings or reduced educational opportunities for communities should be closely reviewed.*”⁶⁶

4.8 The right of everyone to take part in Cultural Life (Art. 15)

Many development projects and extractive industry operations have a very direct impact on indigenous peoples' cultural practices, most prominently by desecrating or destroying indigenous peoples' sacred sites. Russian legislation makes no specific provisions regarding the right of indigenous peoples to protect and have exclusive access to their sacred and culturally significant sites or to participate in decision-making regarding measures for their protection. Presently, such sites are not included in any register of cultural heritage and not subject to any special protection regime, so that violations and desecrations of sacred places occur regularly.⁶⁷

A survey of traditional land use in the Nenets Autonomous Okrug undertaken in 2009 by the Norwegian Polar Institute established that two thirds of the respondents had preserved knowledge of sacred sites. Of these, many reported instances of desecration of sacred places by oil workers and their permanent disturbance by constructions of oil rigs or pipelines.⁶⁸ Similar reports exist from many other regions, indicating that the State party is in constant breach of its obligation under Art. 15 to protect the cultural heritage of the indigenous peoples of the North against violations by third parties.

⁶⁵ Media service of the Il Tumen, the parliament of Yakutia, 11 October 2010, <http://il-tumen.sakha.ru/?id=15799&y=2010&m=10>, verified 2 March 2011

⁶⁶ A/HRC/15/37/Add.5, para 92-93, cf. Also para 67

⁶⁷ *Znachenie i okhrana sviaschennyh mest Arktiki: Issledovanie korennykh narodov Rossiiskogo severa*. Moskva (RAIPON) 2004

⁶⁸ Dallmann, Winfried; Murashko, Olga; Peskov, Vladislav (eds): *Monitoring of Development of Traditional Land Use Areas in the Nenets Autonomous Okrug, North-West Russia*, Project Report January 2010, Available at: <http://npolar.no/ipy-nenets/>, Verified: 12 March 2011

5 Conclusions and Recommendations

As a State Party to the International Covenant on Economic, Social and Cultural Rights, the Russian Federation is duty-bound to respect, protect and fulfil the economic, social and cultural rights of all groups of its population, including the indigenous small-numbered peoples of the North, Siberia and the Far East. As the information presented in this report indicates, during the reporting period, breaches of all three types of obligations are to be deplored. Since Russia last reported to the CESCR, it has not taken sufficient practical steps to progressively realize the rights of its indigenous peoples using the maximum available resources, as stipulated by Art. 2.1, even though its increased economic strength has increased the amount of resources at the State party's disposition considerably. Instead, the indigenous peoples have become more vulnerable due to the failure to implement laws, which would afford a bare minimum of protection to land and resource use rights. At the same time, Russia has enacted new laws and regulations that serve to undermine indigenous peoples' subsistence rights, restrict their access to sources of food and income and allow their territories to be put under the control of third parties and therefore must be considered retrogressive measures.

These policies serve to aggravate the existential threats posed to indigenous peoples by developments such as the ongoing degradation of their environment caused by resource exploitation, the deteriorating state of their health, the rapid loss of culture, language and traditional knowledge, the impoverishment of indigenous rural populations and the profound environmental changes which will be brought about by global warming. Any meaningful response to each of these challenges requires first and foremost full respect and protection of the indigenous peoples' rights under the Covenant, allowing them to make their own choices regarding their development, as required by Art. 1, and to find their own answers to the profound changes they are confronted with, as they have done many times before throughout their eventful history.

In order to reverse the seriously disturbing negative trends noted in this report it is suggested that the State party should

take all necessary means to harmonize existing legislation relevant to indigenous peoples. In particular, the Federal Land Code (Federal Law 137-FZ of 25.10.2001) should be amended to allow for forms of land tenure adequate to indigenous peoples' needs, traditions and customary law. Indigenous peoples' land tenure and land use should not be subject to any rent or licence fees (Art. 1.2, 11);

- urgently grant indigenous peoples permanent legal titles over the land which they traditionally use and inhabit. As an immediate step in that direction, it should implement Federal Law 49-FZ of 7 May 2001 "On Territories of Traditional Nature Use of Indigenous Small Numbered Peoples of the North, Siberia and the Far East of the Russian Federation" (Art. 1.2);
- oblige third parties wishing to operate in indigenous peoples' territories to seek and obtain their FPIC in accordance with Art 1.1 of the Covenant and the norms elaborated on in the UN Declaration of the Rights of Indigenous Peoples. In addition, in keeping with the norms of international human rights as they pertain to indigenous peoples, it should ensure fair and adequate compensation for damages to their territories and loss of opportunity;

- refrain from approving the planned gas pipeline along the proposed route Lensk-Khabarovsk. Furthermore, it should engage in full and meaningful consultation with the Evenki populations of Olekminski, Neryungrinski and Aldanski districts of Sakha (Yakutia), who have expressed their strong opposition to the project, due to the anticipated effect on their livelihood. The purpose of this consultation should be to obtain the FPIC of the impacted indigenous communities (Art. 1.2, 11);
- adopt measures to ensure that indigenous people employed as labourers in the agricultural sector (hunting, fishing etc.) are paid adequate wages and enjoy acceptable working conditions in accordance with Art. 7 of the Covenant;
- not deprive indigenous *obshchinas* of access to fishing grounds and other resources needed to maintain their business. Restrictions of indigenous peoples' fishing rights to immediate personal needs should not be introduced. The effects of the issuing of long-term licenses on fishing grounds used by indigenous peoples to third parties since 2008 should be carefully examined and, insofar they violate the State party's obligations under articles 1.2, 6,7, 11 and 15, reversed.
- take immediate measures to ensure that indigenous peoples are guaranteed full and sustainable access to their traditional sources of food, including fish. (Art. 11) Indigenous people should not be required to file individual applications to obtain fishing permits for their personal consumption. If for reasons of biodiversity conservation, limits on personal consumption are established, the process should be fully transparent and participatory. The State party's obligation to respect and protect the indigenous peoples' right to food (Art. 11) should take precedence over other considerations;
- take all steps necessary to ensure the protection of the integrity of indigenous families and to prevent that indigenous children are being separated from their parents at an early age (Art. 10). Small and remote settlements should be allowed to maintain at least primary ungraded schools (*malokompleknyye shkoly*), which should be exempted from requirements regarding the minimum necessary number of students established by the Federal Law "On Education". Furthermore, the State party should provide access to primary education for children, whose families lead a nomadic way of life (Art. 13). Admission into boarding schools should be avoided wherever possible (Art. 10);
- take all necessary steps to ensure that indigenous peoples have access to adequate medical services, including inhabitants of remote and small villages. Urgent measures should be adopted with regards to small and remote settlements in regions such as the Nenets Autonomous Okrug, the Evenkia and Taimyr municipal districts of Krasnoyarsk territory and the Koryak district within Kamchatka territory. (Art. 12)
- take all steps necessary to ensure the protection of indigenous peoples' sacred sites from violations by third parties such as extractive industries operating in indigenous peoples' territories. A comprehensive protection regime for indigenous peoples' cultural heritage sites should be developed with their full participation. (Art. 15)