

Parallel Information:
**Civil and political rights of indigenous small-numbered peoples of the
North, Siberia and the Far East of the Russian Federation**

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1. This submission addresses the situation of the civil and political rights of 41 indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation. These peoples together number approximately 280,000 persons and their historical homelands cover about two-thirds of the land mass of the Russian Federation. They are highly dependent on subsistence activities such as fishing, hunting and nomadic reindeer herding for their livelihood and therefore massively affected by the operations of extractive industries and other businesses who extract resources from the fragile Arctic environment. They are politically and socially one of the most marginalised and disempowered groups in the Russian Federation.

2. The legal framework protecting the basic rights of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation comprises Art. 69 and 72.1(M) of the Constitution and three federal framework laws: the Federal Laws "*On guarantees of the rights of indigenous small-numbered peoples of the Russian Federation*" of 30 April 1999, "*On Territories of Traditional Nature Use of indigenous small-numbered peoples of the North, Siberia and Far East of the Russian Federation*" of 7 May 2001 and "*On General principles of the organisation of communities [obshchinas] of indigenous small-numbered peoples of the North, Siberia and Far East of the Russian Federation*" of 20 July 2000. These laws were enacted to protect the rights of the indigenous peoples of Russia to self-determination, the development of self-government, their economic, social and cultural development, protection of their ancestral land and their traditional way of life.

3. Essential rights of indigenous peoples protected either under national or international law include, among others:

- The right to self-determination and to indicate one's national (ethnic) identity (Constitution, Art. 26),
- The right to participate in decision-making on issues concerning the protection of indigenous peoples' ancestral lands and traditional ways of life,
- The right to establish bodies of territorial civic self-administration,
- The right to freely dispose of land in places of traditional residence and economic activities for the perpetuation of traditional subsistence activities,
- The right to Territories of Traditional Nature Use (TTNU), which are to be established by the state authorities and local bodies of self-administration, in accordance with applications from citizens,
- The right to community (*obshchina*) self-government.
- The right of access to international technical cooperation and assistance (UNDRIP, Art. 39)

4. Over the reporting period, the State party has taken a number of legislative measures arbitrarily limiting the rights of indigenous peoples. Legal experts have noted that, since the adoption of the three framework laws on indigenous peoples, completed in 2001, no new major achievements have been accomplished in the field of federal legislation regarding indigenous peoples. This development has been characterised as "legal stagnation", with a lack of implementation and a continuous erosion of legal guarantees in a variety of fields ranging from the right to certain social benefits through rights to land and resources to political representation. Some new policy measures have been adopted; however, their targets have, for the most part, not been met, which has led experts to characterise legislative activity regarding indigenous peoples as "unsustainable, contradictory and often amounting to mere simulation, in many ways remaining at its initial stages and not corresponding to the requirements of international law."¹ Furthermore, administrative and judicial organs have frequently resorted to arbitrary interpretations of indigenous

¹ Vladimir Krazhkov: *Rossiiskoe zakonodatel'stvo o severnykh narodakh i pravoprimentitel'naya praktika: Sostoyanie I Perspektivy*. In: *Gosudarstvo i pravo*, 2012, vol 5, pp. 27-35

rights, which have had a detrimental impact on their enjoyment.

Deprivation of the right to self-determination and of means of existence (Art. 1):

5. During the reporting period, the State party has not only failed to take decisive measures to fulfil the indigenous peoples' right to freely dispose of their ancestral territories and natural resources but has also taken a number of steps that severely weaken or abolish existing protections. Reversing this trend is a matter of the utmost urgency for the indigenous peoples of the North, given the rapidly shrinking land base due to the intrusion of extractive industries and other business enterprises into indigenous territories.

6. Since the adoption of the Federal Law "On Territories of Traditional Nature Use of indigenous peoples of the North, Siberia and the Far East of the Russian Federation" in 2001, which is the only federal act establishing a mechanism to demarcate territories customarily inhabited and/or used by indigenous peoples, the Federal Government has not established a single Territory of Traditional Nature Use (TTNU) of federal status, despite repeated pledges and plans to do so, stated *inter alia* in Russia's periodic reports to the CERD and the CESRC.² In most cases, TTNUs would need to be established with federal status rather than regional or local because much, if not most, of the land used by indigenous peoples is vested in the Federal Administration, including all land assigned to the "forest fund". The establishment of federal-status TTNUs was also stipulated in the action plan for the implementation of the Federal Outline of Sustainable Development of the Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation for 2009-2011.³ However, like most other goals set out in this action plan, it has not been implemented.

7. To work around the lack of progress at federal level, about 600 TTNU have been established by regional administrations and local bodies of self-government in the Northern regions, most of them in Khanty-Mansi Autonomous Okrug. They are, however, considered illegitimate by the Federal Government because, in accordance with the Land Code, the boundaries and management plans of said territories must be approved by the Federal Government, which it has not done. Even where indigenous peoples' rights to dispose of their ancestral land enjoys some form of recognition, this recognition could therefore be overturned by the Federal Government at any point in the future.

8. To make matters worse, the status of TTNUs has been recently changed in such a way as to remove key safeguards. The Federal Act dated 30 December 2013, "*On amendments to the Federal law 'About specially protected conservation areas' and various legislative acts of the Russian Federation*" changed the definition of TTNU in Art. 5 from "specially protected conservation areas"⁴ to "specially protected areas", a status which is not defined anywhere in Russian legislation and thus does not imply any safeguards. In the past, indigenous peoples' organisations often relied on the safeguards associated with the status of TTNU as "specially protected conservation areas", including prohibitions regarding the construction of roads, pipelines, transmission lines and other transport infrastructure, as well as the construction and operation of industrial and commercial facilities. In the absence of mandatory human rights impact assessments or requirements for Free, Prior and Informed Consent, the requirement that industrial projects in protected conservation areas undergo a mandatory state ecological expert review was another important safeguard which no longer applies. The same is true for the right of local inhabitants to participate in decision-making regarding the territory.

² cf. CERD/C/431/Add.2, para 25, page 7, UN doc CERD/C/RUS/19, Para 52, CERD/C/RUS/20-22, Para 277, E/C.12/RUS/5, Para. 12-13,

³ Rasporjazhenie Pravitel'stva RF ot 28.08.2009 N 1245-r: *Ob utverzhenii plana meroprijatij po realizacii v 2009 - 2011 godah koncepcii ustojchivogo razvitija korennyh malochislennyh narodov Severa, Sibiri i Dal'nego Vostoka Rossijskoj Federacii, utverzhdennoj rasporjazheniem Pravitel'stva RF ot 04.02.2009 N 132-r*

⁴ Russian: *osobo okhranyayemye prirodnye territorii (OOPT)*

9. Indigenous peoples' right of priority access to fishing and hunting grounds is a vital element in ensuring that indigenous peoples are able to enjoy their rights under Art 1 and Art 27 of the CCPR, along with their rights enshrined in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. Despite recommendations by CERD to safeguard and reinstate this right where it has been removed, it has today been virtually abolished,⁵ such that the indigenous peoples' special relationship to, and dependency on, their territories and natural resources is no longer acknowledged in those federal acts which regulated access to and ownership of land and resources. On June 18, 2014, the State Duma adopted the final version of draft Federal law N 444365-6 "*On amendments to the Land Codex of the Russian Federation and various legislative acts of the Russian Federation*". This draft includes a provision, introducing a very narrow and limited land use right, restricted to the construction of facilities related to their traditional way of life and limited to ten years, thus clearly insufficient to fulfill the provisions of Art. 1 and 27 or the norms of the three federal framework laws on indigenous peoples.

10. Due to arbitrary bureaucratic hurdles to accessing land and resources, indigenous peoples - especially those living in remote locations - are exposed to the risk of severe fines and persecution. Due to a federal regulation, even fishing for mere personal consumption requires submitting individual applications, which have to be received by the authorities before 1 September of the preceding year. Residents of remote villages who have difficulties in completing and submitting applications on time regularly forfeit the right of access to their most basic foodstuff. Since fish is the basis of their diet, the affected communities simply cannot afford to refrain from fishing in the absence of permits, and are thus exposed to mounting legal risks in addition to the risk of confiscation of equipment, boats etc. if they are caught fishing without all the required permits being in place. On 28 December 2012, the Federal Ministry of Agriculture issued an order⁶ barring individuals, including indigenous peoples, from submitting applications for salmon catch rights. When the ministry finally agreed to reverse the change, the deadline for 2014 had already passed⁷ and thus most of the indigenous peoples of Kamchatka, for whom salmon is an essential component of their diet, were left without any salmon fishing rights for the whole of 2013, facing a choice between malnutrition or persecution.⁸

11. In recent years, many of the ancestral territories of indigenous peoples, including forest land, reindeer pastures, fishing and hunting grounds, have been signed into private hands for long-term commercial use through auctions and tenders.⁹ Indigenous communities (*obshchinas*) are compelled to submit their bids to these auctions or tenders if they intend to continue their traditional subsistence activities. In most such instances, they lose out to better resourced commercial competitors. Currently, in places of traditional residence and for the economic activities of indigenous peoples, most indigenous populations find themselves in a critical socio-economic state as they have lost access to their traditional natural resources, which form their means of existence.

⁵ See, for example, amendments to Article 48 of the Federal law of 24 April 1995, introduced by the Federal law of 28 December 2010 // collected legislation of the Russian Federation. 2011. No. 1. St. 32; the Federal law On hunting and the protection of hunting resources and on amendments to certain legislative acts of the Russian Federation" dated 24 July 2009 // collected legislation of the Russian Federation. 2009. № 30. St. 3735

⁶ Prikaz RF No. 660 at <http://www.rg.ru/2013/04/19/zayavki-dok.html> The later changes were published on 20 September 2013, too late for the prospective applicants, see <http://www.rg.ru/2013/09/20/ribolovstvo-dok.html>

⁷ The amendment is dated 16 September 2013, while the deadline for applications is 1 September, cf. <http://www.rg.ru/2013/09/20/ribolovstvo-dok.html>

⁸ Cf. <http://www.fishkamchatka.ru/?cont=long&id=49690&year=2014&today=18&month=06>

⁹ Federal Act № 166-FZ, dated 20 December 2004, stipulated that indigenous peoples and their communities were entitled to use rights to fishing grounds without having to go through a commercial tender. By January 2008, however, Art. 39, para 2 had been voided. Cf. "*O rybolovstve i sokhranении vodnykh biologicheskikh resursov*", <http://base.garant.ru/12138110/>

Prohibition of servitude (Art. 8)

12. In practice, the circumstances described above force indigenous peoples living on land that has been signed over to third parties to obtain the respective license holder's permission, under crippling conditions which, in some instances, have been found to amount to serfdom and bonded labour. One such case has been reported from the remote village of Vorontsovo in Taimyr District, Krasnoyarsk territory. According to the residents, the entire local population is indebted to a local entrepreneur, who has a virtual monopoly over trade and runs the only local shop. Commodities are sold at prohibitive prices, while the local populations live in a virtual non-cash situation. To pay off their debt, they have to hand over their entire yield to the merchant, without ever receiving any payment in return.¹⁰

Freedom of association (Art. 22), Access to technical cooperation (UNDRIP Art. 39)

13. The revised law "On non-profit organisations" obliges organisations engaged in "political" activism and receiving foreign funding to register as "foreign agents", both stigmatising them and subjecting them to additional checks and verifications. This has a paralysing effect on indigenous peoples' organisations that are cooperating with international partners, particularly as the Ministry of Justice has been issuing directives which substantially broaden the definition of "political activities". This also contradicts Article 39 of the UNDRIP, which affirms the right of indigenous peoples to access financial and technical assistance from states and international cooperation.

Rights to take part in the conduct of public affairs, directly or through freely chosen representatives (Art. 25)

14. In 2008, three Autonomous districts of indigenous peoples (Dolgano-Nenets, Evenk and Koryak Autonomous districts) were abolished as fully-fledged subjects of the Russian Federation and replaced by administrative-territorial units subordinate to other federal areas. This has had severe consequences for their indigenous inhabitants. The affected peoples lost their legislative and other state bodies, their budgetary independence, their direct representation in the parliament of the Russian Federation, and their direct financial and other relations with the Federal Administration. The result has been a noticeable decline in the well-being and social and other rights of the indigenous peoples of these territories.¹¹

15. Art. 11 of the Federal Law "On Guarantees of the rights of indigenous small-numbered peoples of the Russian Federation" sets out the right of indigenous peoples to establish, in areas of compact settlement, forms of "*territorial civic self-administration with consideration of their national, historic and other traditions*". The stated goal of such bodies is to deal with matters relating to their economic, social and cultural development, protection of their ancestral land and traditional way of life, their economic activities and crafts. Additionally, the Federal Law "*On general principles of the organisation of communities [obshchinas] of indigenous small-numbered peoples*" sets out a "communal form of self-government" (Art. 1) based on indigenous *obshchinas*, with the same set of goals. In addition, as long as they were considered specially protected conservation areas, indigenous "Territories of Traditional Nature use" (TTNU), warranted the establishment of public oversight and management bodies involving the indigenous communities. The realisation of these provisions hinges on the indigenous peoples' ability to assert control over their territories. However, much of the indigenous peoples' ancestral land is today controlled by

¹⁰ Report of the Ombudsman for indigenous peoples in the Krasnoyarsk territory for 2013, available from <http://ombudsmankk.ru/doc.php?id=628>, p. 14

¹¹ The decline of the situation in formerly autonomous Taimyr and Evenkia is thoroughly documented in the reports of the indigenous rights ombudsman of Krasnoyarsk territory, available from <http://ombudsmankk.ru>

extractive industries and other third parties, making effective indigenous self-administration impossible. This development is, to a large extent, the fault of Russia's long-standing failure to put the Federal Law on TTNU into practice. The recent decision to change their status from "specially protected conservation areas" to "specially protected areas" has further massively undermined the possibility of establishing such self-administration.

16. On 18 June 2014, the State Duma adopted the final version of draft Federal law N 444365-6 "*On amendments to the Land Codex of the Russian Federation and various legislative acts of the Russian Federation*". This draft bill voids Article 31 of the Land Code, which sets out the right of indigenous peoples to participate in decision-making on the allocation of land plots for construction in places of their traditional residence and economic activity. This right is partially reinstated in a newly-introduced Article 39.14 but, here, it applies only in cases where land is allocated for construction without a tender. In other words, indigenous peoples' right to participate in decision-making regarding their ancestral land and their traditional way of life is significantly restricted without any compelling reason.

Rights of minorities (Art 27), Right to nationality (UDHR Art.15)

17. For indigenous peoples in the Russian Federation, the right to state their nationality (which in the Russian context refers to ethnic identity, not to citizenship) and to receive documentary proof of this nationality is a vital precondition for the enjoyment of many indigenous-specific rights set out in legislation. Since the abolition of the "nationality" entry from passports, no new standard procedure for indicating and documenting ethnic nationality has been introduced. As a consequence, indigenous peoples are often faced with a denial of fishing rights and other access and use rights to natural resources, based on their inability to produce documentary proof of their nationality. On many occasions, including in recommendations passed by several all-Russian Congresses of indigenous peoples of the North, indigenous peoples have expressed their urgent need for a procedure that would allow them to indicate their nationality in accordance with Art. 26 of the Russian Constitution and to obtain documentary proof thereof. During the reporting period, no steps have been taken to remedy this situation. Additionally, by its ruling dated 23 November 2010, No. 27, the Supreme Court makes the recognition of a person's declaration of their indigenous identity subject to their association with their national culture, language, traditions and way of life, thus clearly violating Art. 26 of the Constitution.¹² In the absence of indigenous bodies of self-administration, acknowledging or denying person's affiliation is a prerogative of the State, so that the indigenous peoples' right to freely determine their nationality is effectively voided.¹³

18. Furthermore, Russia has taken no steps to track the demographic development and social well-being of indigenous peoples, despite repeated requests by CERD to provide data disaggregated by ethnicity. On the contrary, in 2009, annual monitoring of indicators on the demographic and socio-economic development of indigenous small peoples of the North was discontinued at the Federal and regional levels.

¹² <http://www.rg.ru/2010/12/01/bioresursy-dok.html>

¹³ See the ruling at <http://www.rg.ru/2010/12/01/bioresursy-dok.html>