

Parallel Information

Economic, social and cultural rights of indigenous minority peoples of the North, Siberia and the Far East of the Russian Federation

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Introduction

This submission focuses on the situation of the 41 indigenous minority¹ peoples of the North, Siberia and the Far East, who number approximately 260,000 individuals. They inhabit around two-thirds of Russia's territory, from the Kola peninsula in the European North to the Chukchi peninsula on the Bering Strait. They are a highly marginalised group, politically, economically and socially. The majority live in rural remote communities and remain dependent for their income on their traditional subsistence activities, such as fishing, hunting, gathering and nomadic reindeer herding.

At the same time, most of the resources, such as timber, oil, gas, gold, diamonds and coal, which account for most of the country's export revenues, are extracted from indigenous peoples' territories, often with a catastrophic impact on the local communities. Due to their marginalisation, it is difficult for indigenous peoples to address this situation and defend their rights. As a State Party to the CESCR, Russia is therefore duty-bound to take special targeted measures to ensure that their rights are properly protected, respected and fulfilled, using the maximum available resources. Measures have to be enforced in a timely manner and subjected to continuous monitoring of their effectiveness on the ground.

Unfortunately, as the following observations demonstrate, the State Party has failed to take such steps during the reporting period. It has largely ignored previous recommendations from CESCR, CERD, CRC and HRC pertaining to indigenous peoples as well as from the UPR and the UN Special Rapporteur on the rights of indigenous peoples. As in previous periodic reports, the current report from the Russian Federation lacks specific information on the state of indigenous communities. At the same time, the indigenous peoples' own ability to track and document their situation has been severely affected by repressive measures taken against civil society during the reporting period, which is illustrated by the fact that organisations registered inside Russia deemed it too risky to officially appear as co-authors of this submission.

This submission highlights the principal issues being faced by indigenous peoples and contains suggested questions and recommendations to the Russian government. A more detailed, updated report will be submitted in time for the 62nd session.

Indigenous peoples' land rights (Art. 1 and 11)

The Report by the State Party contains no information on the changes in legislation on land and on indigenous peoples that have enabled violations of the rights set out in the ICESCR, including Art. 1 and 11. As in preceding periodic reports, it mentions in para 386 the Federal Act on Territories of Traditional Resource Use (or Territories of Traditional *Nature* Use which was the translation used in previous reporting cycles, TTNU²), the only Russian law providing a mechanism for (limited) recognition of indigenous land tenure. It fails, however, to mention the fact that, even though the law was adopted as far back as 2001, not a single TTNU has been confirmed by the Russian government since then. TTNU created by local and regional authorities therefore have no clear legal

¹ A literal translation of the Russian word "malochislenny" would be "small-numbered". As this is not a common term in English, the word "minority" is used here.

² *O territoriyakh traditsionnogo priorodopolzovaniya Korennykh, Malochislennykh Narodov Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii*, The law was mentioned i.a. in the previous Concluding Observations of CESCR, in 2011 E/C.12/RUS/CO/5, Para 7 and 2003, E/C.12/1/Add.94, para 11 and CERD from 2013, CERD/C/RUS/CO/20-22, para 20 and 2008, para 24.

status and are constantly in danger of being revoked, which has already happened in a number of instances, as evidenced below. This has been deplored by many observers, including by the CESC and CERD in their respective concluding observations from the previous two reporting cycles.³

Despite repeated calls to implement the law, steps taken by the State Party have actually been in the reverse direction. Two acts passed in 2014 significantly weakened the law, these being Federal Law 171-FZ dated 23.06.2014⁴ and 499-FZ, dated 31.12.2014⁵. Notable changes include the downgrading of TTNU from “Specially Protected Conservation Areas”⁶, which is a term defined in environmental legislation that sets out i.a. the specific participation and consultation rights of the local populations, to “Specially Protected Areas”, a term which is entirely undefined such that these legal safeguards have fallen away.⁷

These changes, along with the government’s failure to confirm TTNU created by local and regional authorities, have caused these territories to be shrunk in size or cancelled altogether. On 15 January 2015, a Court of Appeal thus denied an appeal by the administration of Oleneksky district challenging the legality of licenses issued by ‘Yakutnedra’⁸ for exploration and extraction of mineral resources within a TTNU created by the Oleneksky district local authorities. The court cited one reason as being that the complainant had failed to provide evidence that the boundaries of the given TTNU had been determined by the Federal Government. In its ruling, the court referred to the latest revision of the Land Code, which cancelled the very article that had explicitly stated that, in places of traditional residence and traditional activities of indigenous peoples, local authorities should decide on the prior determination of locations for the placing of objects (that is: industrial facilities, oil drilling rigs, pipelines etc), based on the results of meetings or referenda of the indigenous and local communities⁹. The court concluded that “current legislation does not stipulate mandatory agreement with the local authorities regarding the list of subsoil deposits offered for exploitation, decisions on the holding of tenders and auctions for the right to use the subsoil or on the approval of results of a tender or auction for the right to use subsoil resources”¹⁰.

On 30 September 2016, without prior notification of the authorised representatives and organisations of indigenous peoples, the acting Governor of Khabarovsk territory issued an order

³ The Land Codex, Art 97, item 5 still considers indigenous territories “other land of conservational value” and obliges the Federal government to create TTNU within them: “*In places of traditional residence and economic activities of indigenous minorities of the Russian Federation and ethnic communities, in the cases stipulated by Federal laws on indigenous peoples, a Territory of Traditional Nature Use of indigenous peoples can be formed. The rules of nature use in these areas shall be established by Federal laws, and their boundaries are determined by the Government of the Russian Federation.*”, Russian text at http://www.consultant.ru/document/cons_doc_LAW_33773/

⁴ Federal'nyj zakon ‘O vnesenii izmenenij v Zemel'nyi kodeks Rossijskoi Federatsii i otdel'nye zakonodatel'nye akty Rossijskoj Federatsii’ ot 23.06.2014 N 171-FZ http://www.consultant.ru/document/cons_doc_LAW_164516/, last accessed 19 January 2017

⁵ Federal'nyi zakon ot 31 dekabria 2014 g. N 499-FZ ‘O vnesenii izmenenii v Zemel'nyi kodeks Rossijskoi Federatsii i otdel'nye zakonodatel'nye akty Rossijskoi Federatsii’, <http://base.garant.ru/70833160/>, last accessed 19 January 2017

⁶ Osobo okhranyayemye prirodnye territorii, OOPT

⁷ Further changes include the cancellation of a norm in Article 12 stipulating that equivalent land plots and natural objects must be provided in the event of land being withdrawn for state needs. Further, these changes have deprived indigenous peoples of the right to participate in monitoring the use of land in places of their traditional settlement and traditional economic activities and weakened the responsibility of the state and business for the use of these lands.

⁸ The state agency in Yakutia in charge of natural resources.

⁹ Item 3 of Art. 31 of the Land code of the Russian Federation before entry into force of the changes made by 171-FZ

¹⁰ *Olenekski raion proigral protiv ‘Yakutnedr’*, 16 January 2016, <http://news.ykt.ru/article/38946>, last accessed 18 January 2017

changing the boundaries of the 13 TTNU that had been created by regional or local authorities. This has shrunk the TTNU area to less than half its prior size. The Khabarovsk Krai government said the decision was necessary because it had to allocate land for distribution under the so-called 'Far Eastern Hectare' programme¹¹. In response, the indigenous peoples of Khabarovsk Krai threatened a mass hunger strike¹².

The failure of the Russian government to fulfil its obligations regarding implementation of the Federal law "On territories of Traditional Nature Use of indigenous minority peoples", together with the latest amendments, thus represent a violation of the rights of indigenous peoples as set out in Arts. 1, 6, 11 and 12, namely:

- to freely pursue their economic, social and cultural development (Art 1)
- to freely dispose of their natural wealth and resources. (Art 1)
- to the opportunity to gain his living by work which he freely chooses or accepts (Art 6)
- to adequate food (Art 11) and
- to the highest attainable standard of physical and mental health (Art 12).

In preceding state reports, the State Party has routinely declared that it was developing the necessary by-laws for implementation of the Law on TTNU or that it was currently developing a model TTNU¹³ and yet none of these announcements have led to tangible results in 16 years.

Suggested questions:

- **What obstacles are preventing the creation of TTNU by the Russian Federal Government? Please provide a timeline for the removal of these obstacles.**
- **Please update the committee on the progress in measures mentioned in earlier periodic reports. (E/C.12/RUS/5, para 12 and CERD/C/RUS/19, 23 October 2006 paras 50-52).**

¹¹ A programme of the Russian Government providing the free distribution of 1 hectare of land to each Russian citizen wishing to move to the Far East, enshrined in: Federal law 119-FZ *Ob osobennostiakh predostavleniia grazhdanam zemel'nykh uchastkov, nakhodyashchikhsya v gosudarstvennoi ili munitsipal'noi sobstvennosti i raspolozhennykh na territoriyakh sub"ektov Rossijskoj Federatsii, vkhodyashchikh v sostav Dal'nevostochnogo federal'nogo okruga, i o vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossijskoj Federatsii*, 1 May 2016, <http://base.garant.ru/71388648/>, last accessed 19 January 2017

¹² Aborigeny Khabarovskogo kraia gotovy ob"javit' massovuyu golodovku, 14 October 2016, <http://www.vostokmedia.com/r3/14-10-2016/n301596.html>, last accessed 18 January 2017; in the case of one TTNU, the administration seems to have used the Far East Hectare campaign to illegally transfer the territory to a logging company, see 'V Khabarovskom krae territorii traditsionnogo prirodopol'zovaniya korennykh narodov iz"jali dlya lesozagotovok', 18 December 2016, <http://www.csipn.ru/glavnaya/novosti-regionov/2949-v-khabarovskom-krae-territorii-traditsionnogo-prirodopolzovaniya-korennykh-narodov-iz-yali-dlya-lesozagotovok>, last accessed 18 January 2017.

¹³ See for instance the 19th periodic report to CERD (CERD/C/RUS/19, 23 October 2006), paras 50-52 or the 5th periodic report to CESCR (E/C.12/RUS/5), Para 12.

Indigenous cooperatives severely economically constrained by Non-Profit status and restrictions on “traditional” activities

In remote indigenous settlements, indigenous peoples’ cooperatives (obshchina¹⁴) are often the sole means of income and employment. Economically successful obshchinas remain the rare exception, however, firstly because many of the feasible fishing and hunting grounds have, in recent years, been transferred to non-indigenous business enterprises and, secondly, because their activity remains severely constrained by the stipulation given in Article 5 of the Federal Act “On general principles of the Organisation of Communities of Indigenous Minority Peoples of the North, Siberia and the Far East of the Russian Federation”¹⁵ that their activity must be non-profit-making by nature. This stipulation is fundamentally in conflict with the kinds of economic activities they engage in, including fishing, hunting, gathering and reindeer herding, which can only guarantee a decent standard of living for their members if they are allowed to make a profit. The need to encourage indigenous entrepreneurship in Russia has been pointed out i.a. by the former UN SR on the rights of indigenous peoples, James Anaya¹⁶. Anaya also recommended that Russia stimulate indigenous entrepreneurship in non-traditional areas but the law clearly confines obshchinas to traditional subsistence areas such that, in the reporting period, the economically highly successful obshchina ‘Dylacha’ in Buryatia was closed down on the grounds that part of its activities were deemed non-traditional¹⁷.

Proposed question:

- **What measures is the State Party taking to implement the recommendation of the UN Special Rapporteur to support indigenous entrepreneurship? Does the State Party hold data on the impact of the non-profit status on the economic development of obshchinas?**

Criminalisation and harassment of indigenous rights defenders

The risk of indigenous activists and human rights defenders being criminalised for their actions to defend indigenous peoples’ economic, social and cultural rights has increased greatly during the reporting period. Some indigenous activists have left the country, seeking asylum abroad, some attempt to stay under the radar in order to protect their families and some have been subject to criminal prosecution, including the Khanty reindeer herder, Sergey Kechimov, who has been opposing the regional oil company Surgutneftegaz and is facing attempted murder charges¹⁸ as well as Sergey Nikiforov, leader of the Evenks of Ivanovskoye village in Amur oblast, who has been leading their resistance against the British mining company Petropavlovsk and is currently serving

¹⁴ The term ‘obshchina’ literally means ‘community’ and was originally a term for the Russian peasant communities in Tsarist Russia. The indigenous ‘obshchinas’ that emerged after the break-up of the Soviet Union are mostly functioning as kinship-based cooperatives, although the federal act on indigenous obshchinas also stipulated that they were bodies of indigenous self-administration.

¹⁵ Federal'nyi zakon ot 20 iuliya 2000 g. N 104-FZ *Ob obshhikh printsipakh organizatsii obshhin korennykh malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossijskoj Federatsii* (s izmenenijami i dopolnenijami) <http://base.garant.ru/182356/>, last accessed 19 January 2017.

¹⁶ See report on country visit A/HRC/15/37/Add.5 (23 June 2010), para 91.

¹⁷ See: Johannes Rohr: *Indigenous Peoples in the Russian Federation*. IWGIA Report 18, p. 20, http://www.iwgia.org/publications/search-pubs?publication_id=695

¹⁸ See *Russia: Guardian of Khanty sacred lake facing prison for defending himself against stray dogs brought in by oil workers*, 15 July 2015, http://www.iwgia.org/news/search-news?news_id=1232

five years in a penal colony.¹⁹ Nikiforov has been recognised as a prisoner of conscience by both the Russian civil rights organisation ‘Memorial’ and Amnesty International.

Below the level of criminal prosecution, indigenous activism has been stifled by the 2013 amendments to the law on non-profit organisations, which branded those groups receiving foreign funding and engaging in ‘political’ activity as ‘foreign agents’. The label ‘foreign agent’ has a toxic effect on the willingness of local and regional authorities to cooperate with indigenous organisations. Several indigenous organisations have already been declared ‘foreign agents’ and have consequently shut down because of the high legal risk associated with this status. This *de facto* cuts indigenous organisations off from accessing financial and technical assistance from states or through the international cooperation to which they, according to Art. 39 of the UN Declaration on the Rights of Indigenous Peoples, have a right.

Proposed question:

What measures is the State Party taking to ensure that indigenous peoples have continued access to financial and technical assistance from states and through international cooperation in accordance with Art. 39 of the UNDRIP?

Lack of civic oversight of extractive industries

Some of the regions inhabited by indigenous peoples, such as the Yamal Nenets Autonomous Okrug, Taiymr, and the Chuchi AO, are classified as ‘border zones’ (*pogranichnye zony*), meaning that foreigners need special permits from the intelligence service to enter the area, and Russian citizens from other parts of the country may also often find it very difficult to gain entry. If they do, they will be under tight supervision from the local authorities and the intelligence service. Typically, interviewees will be afraid to speak out, fearful of repercussions after the visitors have left. In some cases, Russian indigenous peoples’ supporters and environmentalists who try to visit sites in such regions have been stopped and turned back.²⁰ This makes civic oversight of the activities of extractive and other industries working in these areas very difficult, including the impossibility of verifying claims of having obtained local indigenous communities’ consent to the projects.

Suggested recommendation:

- **The State Party should take measures to ensure that civic oversight of business operations on indigenous peoples’ land can be carried out without harassment, denial of entry or repercussions for informants and whistle-blowers.**

- **Suggested recommendation to third parties:**

Foreign companies, creditors and export credit agencies should also comply with their respective obligation to respect the rights of the indigenous peoples by ensuring that civil society organisations are not barred entry to project regions and that informants and whistle-blowers are protected.

¹⁹ *Russia: Evenk community leader opposing UK based gold mining company sentenced to 5 years*, 16 October 2015 http://www.iwgia.org/news/search-news?news_id=1271

²⁰ The recent experience of a Greenpeace Russia expedition to Taimyr is reported in the article “*Ekologi grinpis rasskazali o masshtabnom sabotazhe i slezhke v ekspeditss na Taimyr*”, dated 8 September 2016, <http://www.rosbalt.ru/russia/2016/09/08/1548466.html>, last accessed 16 January 2017.

Disaggregated data still absent

As in preceding reports, the State Party has still failed to provide any disaggregated data on the state of the indigenous peoples' well-being, including their health, employment, income, life expectancy, child mortality and other key indicators, even though it has been requested to do so by both CERD and CESCR at multiple opportunities. Furthermore, no such data has been made public by the government on other occasions.²¹ While national censuses were undertaken in 2002 and 2010, they do not contain a breakdown of the above indicators by ethnicity, and so there is no official data on e.g. child mortality among the Evenks or life expectancy among the Nenets. Some data is available by region but since, in most regions, the indigenous peoples constitute small minorities, the situation of the indigenous population cannot be discerned from this.

The “development and introduction of a system of indicators for the quality of life of the indigenous minority peoples of the North in order to monitor their compliance with the Russian average” was one of the measures stipulated by the 2009-2011 action plan for the implementation of the outline of sustainable development of the indigenous minority peoples of the North²², but this has not been implemented. To date, Russia still has no official statistics with which to keep track of the socio-economic conditions of indigenous minority peoples and, despite repeated requests for disaggregated data coming not least from the treaty bodies, no appropriate initiative is underway.

Suggested recommendation: The State Party should, as a matter of urgency, develop and implement a mechanism for compiling and tracking disaggregated data on the well-being of the indigenous minority peoples of the North, as stipulated by the 2009-2011 action plan on implementation of the strategy outline for the sustainable development of indigenous peoples of the North, Siberia and the Far East.

Loss of autonomies (Art. 1, Right to self-determination)

The number of Autonomous Okrugs (areas) inhabited by the indigenous peoples of Russia decreased over the 2005-2008 period due to their incorporation into neighbouring entities. The abolition of Autonomous Okrugs on the basis of referenda did not reflect the opinion of the titular nations because, due to their population size, these peoples constituted minorities in the respective electorates. The effects of abolishing six autonomous okrugs over the reporting period was that the basic needs of the respective regions, which are among the most remote and inaccessible in Russia, have been neglected, leading to violations of basic social rights, including to food, health and work. It has become much more difficult for them to assert their rights to territories and resources vis-à-vis the new and much more removed regional administrations, which also do not prioritise the maintenance of vital social infrastructure in remote indigenous settlement areas.

Suggested questions:

²¹ One of the few sources are the indigenous rights ombudsmen that exist in some regions and which are formally subordinate to the national human rights institution. Regions include Kamchatka, Krasnoyarsk and Yakutia. Their resources are very limited, however, so they cannot fill the gap left by the lack of disaggregated data on indigenous peoples in official records.

²² “*Ob utverzhdenii Konceptsii ustojchivogo razvitija korennykh malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossijskoj Federatsii. Pravitel'stvo Rossijskoj Federacii. Rasporjazhenie ot 4 fevralia 2009 goda N 132*”, Available from <http://docs.cntd.ru/document/902142304>, last checked 17 January 2017.

- **What disaggregated data does the State Party hold regarding the impacts of the mergers of autonomous okrugs on their titular nations since 2005?**
- **What measures is the State Party taking or planning to take to mitigate the observed negative impacts of the abolition of several autonomous okrugs on their titular nations since 2005?**