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Implementation of Indigenous Rights in Russia: Shortcomings and Recent Developments

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Abstract

After more than 20 years of active engagement in Indigenous issues, RAIPON, the umbrella organization of the Indigenous peoples of the North, Siberia, and the Far East, was ordered to suspend its activities by the Russian Ministry of Justice in November 2012. Eventually, this order was withdrawn provided that RAIPON changed its statute, which subsequently took place in early 2013. Why such sudden and definitive decisions? Apparently, the measures taken against RAIPON were due to its active engagement to defend Indigenous peoples' rights especially vis-à-vis the Russian extractive industry. A starting point for all possible explanations is thus the existing gap between the legal protection of Indigenous peoples' and its enforcement. The aims of this article are thus to gain a deeper understanding of the legal protection of Indigenous peoples' rights in the Russian Federation, and to explore the interests and the politics lying behind the government attitude vis-à-vis Indigenous peoples.

Keywords

Indigenous peoples, Russian Federation, North, Siberia, the Far East, RAIPON, oil and gas industry, fishing rights

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Implementation of Indigenous Rights in Russia: Shortcomings and Recent Developments¹

After more than twenty years of active engagement in Indigenous issues, the Russian Association of Indigenous Peoples of the North (RAIPON), the umbrella organization of the Indigenous peoples of the North, Siberia, and the Far East, was ordered to suspend its activities by the Russian Ministry of Justice in November 2012. After a global campaign with a wide international echo,² this order was eventually withdrawn, provided that RAIPON changed few formalities in its statute, which subsequently occurred in early 2013 (Survival International, 2013). Why such a sudden and definitive decision? Apparently, the measures taken against RAIPON were due to its active engagement to defend Indigenous peoples' rights especially vis-à-vis the Russian extractive industry (Novaya Gazeta, 2012). One possible explanation for these events can be understood to lie in the existing gap between the legal protection of Indigenous peoples and the enforcement of relevant legislation. In fact, despite a promising formal legal framework protecting Indigenous peoples, the lack of law enforcement *de facto* deprives Indigenous peoples of their rights and, in particular, of their safeguards vis-à-vis the massive extractive industry in Russia. Therefore, this article aims to gain a deeper understanding of the legal protection of Indigenous peoples' rights in the Russian Federation and to explore the interests and the politics underlying the government's attitude with regard to Indigenous peoples and the exploitation of natural resources. Understanding is achieved, first, through the analysis of the legal framework and its failed implementation in the period from 1999 to 2012 by looking at the three federal laws specifically addressing Indigenous peoples that were adopted between 1999 and 2001 ("On Guarantees," 1999; "On Obshchina," 2000; and "On Territories," 2001). In addition, other provisions directly or indirectly affecting Indigenous peoples are analysed. Secondly, thanks to the information provided by six interviewees, the implementation of overall legal protection of Indigenous peoples in Russia is subsequently critically assessed.

Who Are the Indigenous Small-Numbered Peoples of the North, Siberia, and the Far East?

To date, 46 peoples have been legally recognized as "Indigenous small-numbered peoples of the North, Siberia, and the Far East" in the Russian Federation.³ Four specific conditions have to be met by the peoples in order to obtain such a status. First, the number of members must not exceed 50,000. Second, they have to maintain a traditional way of life. Third, they have to live in areas that have traditionally

¹ In the course of the common elaboration of the present article, the first three sections were written by Anna Koch, and the following three, including subsections, by Alexandra Tomaselli. In addition, the questionnaire on which the interviews were based was prepared by Ms. Tomaselli, while the interviews were conducted, transcribed, and translated into English by Ms. Koch. Ms. Tomaselli is particularly grateful to Ms. Koch for her

² *Inter alia*, a global campaign against RAIPON's closure, was realized by Cultural Survival to which many organizations across the world adhered (Cultural Survival, 2012b).

³ In the Decree No.536-r issued in 2006 the government of the Russian Federation recognized 40 peoples as "Indigenous Small Peoples of the North, Siberia and the Far East." Two acts, No.255 ("On the Common List of Numerically Small Indigenous Peoples of Russia," 2000), which was subsequently amended by Act No.1145 ("On the Common List of Numerically Small Indigenous Peoples of Russia," 2011) states that in total 46 numerically small Indigenous peoples are living in the Russian Federation.

been inhabited by their ancestors. Finally, they have to self-identify as a distinct ethnic community (“On Guarantees,” 1999, art.1, para.1, section 6).

Comparable to Anaya (2010), we also address small-numbered indigenous groups as defined by Russian legislation. In particular, the numerical threshold is rather unique worldwide and creates asymmetrical legislative protection among groups who share similar challenges and characteristics, but are not ultimately recognized as Indigenous peoples. This is exactly what happened with the following groups: the Altai Kezhi, the Nogay, the Komi-Izhemts, and Izvatas. All of these groups are excluded because their numbers exceed 50,000 (Anaya, 2010). Although these groups are not directly addressed in this article, the general considerations discussed here may also be applicable to them.

The total number of Indigenous peoples is estimated to be around 250,000, with the Nenet peoples representing the largest group with 41,000 individuals. This number represents approximately 2% of the total Russian population and is dispersed across 28 regions of Russia (Anaya, 2010; International Working Group for Indigenous Affairs [IWGIA], 2012; for a map of the Russian Federation see Figure 1). However, it is difficult to determine the exact number of Indigenous peoples in Russia. For instance, during the Census of 2010, around 5.6 million people, or 4% of the entire Russian population, did not indicate their nationality. Among these, there may be Indigenous peoples unwilling to self-identity for various reasons. Another factor that further complicates the situation is what ethnographers call the “change of ethnic identification,” which mainly occurs in mixed Indigenous and Russian families (IWGIA, 2012).

A large number of Indigenous peoples live in *obshchinas*, or community owned land holdings. Most Indigenous peoples worked together in community-based groupings, but without formal recognition, until it was granted and regulated by the law (“On Obshchinas,” 2000). Many of the Indigenous peoples pursue their traditional work such as reindeer breeding, fishery, hunting, and gathering. Since there are almost no current statistics that could help to clarify the present-day living conditions of Indigenous peoples, one can only derive a trend using available datasets from 2002. According to 2002 data, the living standards of the Indigenous peoples have deteriorated significantly over the years. For example, the life expectancy of Indigenous peoples dropped; there is a high rate of mortality caused by infections, mainly tuberculosis; and the birth rate has decreased rapidly over the last 40 years. Furthermore, alcohol abuse, inadequate medical treatment, and unemployment have also become more prevalent over the last few years. The unemployment rate has reached a startling 50% in certain communities (Anaya, 2010).

Indigenous Peoples and the Oil and Gas Industry in Russia

Russia is one of the biggest oil and gas producers in the world with one-quarter (25.2%) of discovered global gas reserves, 6.5% of world oil reserves, and the second largest coal deposit in the world (19%). The country executes 20% of global total gas production and 12% of the overall oil production (Auswärtiges Amt, 2012). The Russian Federation is planning to increase its production capacity by 2015 through the construction of more oil and gas pipelines (Heinrich, 2011). In 2012, the state’s budget revenue consisted mainly of oil and gas sales (Assenova, 2013).



Figure 1. Map of the Russian Federation.

Oil and gas extraction in the Soviet North began in the 1930s when the Soviet authorities started to perceive the traditional activities of the northern peoples (herding, hunting, and fishing) as an industry that could be used for producing meat and fish. They envisaged it becoming a supporting branch of oil and gas extraction companies (i.e., supplying the workers with fish and meat). The main tool for enforcing this policy was collectivization. Thus, in this period, the Indigenous peoples grew accustomed to trading with workers from the extraction companies (Stammler & Forbes, 2006).

According to Stammler and Forbes (2006), the economic development of the North was accompanied by a mass migration of workers and the marginalization of the Indigenous peoples in the areas where they had previously been the majority. Furthermore, pollution of rivers and lakes also occurred due to pipeline leakages and waste left behind by the companies. An additional problem was that after the collapse of the Soviet Union repairs to facilities such as oil pipelines were delayed, causing even greater environmental damage. In 1999, it was estimated that more than 45,000 km of the pipeline system needed replacement. This number dropped to 3,257 in the beginning of the 21st century. The flaring of waste gas has also led to an increase in forest fires. All of these factors have brought about a decline in fish and wild game in the territories inhabited by Indigenous peoples, thereby aggravating the ability to pursue a traditional way of life. In addition, the lack of ecological consciousness and the drive of companies to maximize profit have led to the pollution of the living environment of the Indigenous population. Over time, oil and gas extraction has posed a threat to the living conditions of Indigenous communities. The regions that have the highest number of oil and gas extraction sites are: Khantia-Mansia, Sakha Republic, Sakhalin Oblast, Yamalo-Nenets Autonomous Okrug and Nenets Autonomous Okrug.

The empowerment of Indigenous peoples is closely linked to protests against the oil and gas extraction companies. It seems that in most cases, as in the case of the East Siberian-Pacific Ocean Pipeline,⁴ the northern peoples do not entirely reject the projects; rather, they want to ensure that ecological standards are met and that they profit from the construction works either through the compensation payments or employment opportunities (Fadhal & Sirina, 2006). Even though provisions regarding compensation and benefits sharing are contained in the three above-mentioned laws, they have remained ineffective due to lack of implementation. As a result, in most cases northern peoples are insufficiently compensated if their homelands are polluted or taken away by companies.

The Legislative Framework vis-à-vis Indigenous Rights in Russia

In this section, the three federal laws that formally protect Indigenous peoples are analysed in detail along with other provisions that directly or indirectly affect Indigenous peoples in Russia. In addition, Russia has ratified the main United Nations human rights treaties, which, according to art.15(4) of the Constitution of the Russian Federation (1993), may prevail over national law. In particular, the 1995 Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) was

⁴ This oil pipeline project should bring oil from oil fields in eastern Siberia to the Pacific Ocean and thereby connect Russia to its markets in Asia (Fadhal & Sirina, 2006).

ratified by the Russian Federation in 1998.⁵ However, Russia did not sign the International Labour Organization (1989) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which is the sole binding and effective international treaty concerning Indigenous rights. Finally, Russia abstained from voting for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2008) adopted in 2007.

Constitutional Recognition and the Three Federal Laws Addressing Indigenous Peoples' Rights

Indigenous peoples are constitutionally recognized in art.69 of the Constitution of the Russian Federation (1993), which states that “[t]he Russian Federation shall guarantee the rights of indigenous small peoples in accordance with the universally recognized principles and norms of international law and international treaties of the Russian Federation.”⁶ This article was legally implemented by the adoption of three federal laws, which specifically address Indigenous peoples recognized between 1999 and 2001, namely: “On Guarantees” (1999), “On Obshchina” (2000), and “On Territories” (2001).

Formally, these laws provide Indigenous peoples with a number of individual and collective rights and guarantees, *inter alia*, the right:

- To freely use land and renewable natural resources in their traditionally occupied territories and areas where they engage in traditional economic activities (“On Guarantees”, art.8, para.1);
- To establish self-government bodies where densely populated settlements are in place, and to form communities and other organizations (“On Guarantees,” 1999, arts.11 and 12);
- To revise their educational institutions in line with their traditional way of life (“On Guarantees,” 1999, art.8, para.9);
- To obtain compensation in the event that their traditional environment is damaged by industrial activities (“On Guarantees,” 1999, art.8, para.8);
- To consider customary law in court proceedings as long as it does not contradict federal or regional legislation (“On Guarantees,” 1999, art.14).

However, problems seem to lie in the effective execution of the laws (Anaya, 2010). The same problems were acknowledged and underlined by our interviewees as well.

⁵The Advisory Committee (AC) of the FCNM also provides a system for monitoring a state party’s application of the convention’s provisions. This system also allows for the observation of Indigenous issues. See the State and AC reports, as well as the resolution by the Committee of Ministers of the Council of Europe, available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp

⁶The articles of the Constitution cited throughout this article are reported in the official translation provided by the Russian Government available at <http://www.government.ru/eng/gov/base/54.html>

In particular, the law “On Guarantees” (1999) was amended by the federal law, “On Changes in Federal Acts of the Russian Federation” (2004), which entered into force in 2005. The amendment removed the following articles and clauses from the original law: (a) art.4 on socio-economic and cultural development; (b) clauses nos.1, 6, 9, 11, 12 of art.6, which dealt with the establishment of forms of self-government in areas inhabited by IPs, administrative liability in case of violation of legislation regarding IPs, and the issuing of licenses and setting of quota of employment in traditional crafts of IPs; (c) clauses nos.1, 4, 5 of art.7 on the protection of the original habitats, traditional ways of life, economic systems, and crafts of Indigenous peoples; and (d) art.13 on the rights of Indigenous peoples to representation in the legislative organs of power. “On Changes in Federal Acts of the Russian Federation” (2004) also amended the law “On Obshchina” (2000) removing economic support for *obshchinas* and benefits for their individual members while limiting decision-making power at the local level (the previous clauses nos.2, 3, 8 of arts.7 and para.2 of art.18).

Other Laws Involving Indigenous Peoples’ Rights

In addition, other laws affect Indigenous rights and ways of life, including the following federal laws: “On Hunting” (2009), “Water Code” (2006), “On the Animal World” (1995), “On Fishery” (2004), “Forest Code” (2006), “Land Code” (2001), “On General Principles of Local Self-Government in Russia” (2003), and “On Education” (1992).

To illustrate, a partially new system of auctioning both hunting and fishing licenses has recently been enforced. The federal law “On Hunting” (2009) affirmed that all hunting grounds without any exemption are to be distributed for long-term lease, based upon the results of tenders (arts.27, 28, and 42). Consequently, this law will hinder access to fishing for various Indigenous peoples and serve as another impediment to their traditional way of life. Despite an exception clause included in art.25 of the federal law “On Fishery” (2004), Indigenous peoples are often prevented from routine daily fishing. This clause allows Indigenous peoples to be exempt from the requirement of holding a fishing permit if fishing is done for subsistence needs and follows traditional practices at a community-level while avoiding fishing as *obshchinas* or at other forms of company or industrial levels. However, this clause is not well-known among the Indigenous peoples’ communities and is applied neither by federal subjects nor the central government,⁷ but rather solely litigated in courts.

Furthermore, in 2010, the federal law “On the Animal World” (1995) was amended. In particular, in art.48, the word “fishing” was eliminated and substituted with the general concept of “objects of the animal world.” This amendment created confusion and uncertainty about Indigenous peoples’ rights to the prioritized use of fishing resources. Although some fishing and hunting quotas have been established for Indigenous peoples, they barely meet the nutritional needs of the communities concerned. In other cases, the fishing or hunting grounds were located far away from the settlements of the Indigenous peoples. Thus, Indigenous peoples are essentially forced to participate in further auctions in which they

⁷The Russian Federation is a federal, semi-presidential republic composed by 83 constituent subjects or political administrative units, which are commonly called federal subjects. In the 1993 Constitution, 89 subjects were listed (The Constitution of the Russian Federation, 1993, art.65). On the basis of the federal constitutional law passed in 2001 ‘On the procedure of the acceptance into and the creation of new federal subjects in the Russian federation’ No. 6-FKS the number of federal subjects was reduced to 83.

are faced with the difficulty of competing with more powerful enterprises due to both required documentation and budgetary availabilities (Anaya, 2010).

In addition, according to the federal “Land Code” (2001, arts.1, para.1) and “Forest Code” (2006, art.1, para.11), the use of land and forest is allowed solely upon payment of licenses. The provisions were in contrast with the original text of the law “On Territories” (2001) since its art. 11 stated that the use of the “Territory of Traditional Natural Use” (hereinafter in its Russian acronym TTP)⁸ should be free of charge. Hence, the article was amended by the federal law “On the Introduction of Amendments in Law-Making Acts” (2007) and now affirms that the use of the TTPs should comply with other laws of the Russian federation (i.e., the Land and Forest Codes). Thus, TTPs are also subject to auctions to assign the rights of use.

Finally, the federal policy of Russian “optimization,” that is the grouping of specific municipal services such as schooling according to the local self-government reform under the federal law “On General Principles of Local Self-government in Russia” (2003), also affects Indigenous peoples. In fact, this policy has resulted in the closure of local schools in Baklaniha village in Krasnoyarsk Krai, and a Shor village in the Kemerovo Oblast (Anaya, 2010). In addition, on the basis of the federal law, “On Education” (1992) and following yearly amendments (the last entered into force in December 2012), many regions have eliminated positions for teaching extracurricular activities (Anaya, 2010). Thus, Indigenous arts, handicraft, and other performances previously included in school activities were abolished *de facto*.

Recent Developments

In 2009, the federal government adopted a “Concept Paper on the Sustainable Development of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation” (2009; hereafter, “Concept Paper”). This is the basis for fostering the socio-economic development and improving the living conditions of Indigenous peoples over the following 15 years (until 2025). Despite this important step at the formal level, an overarching criticism of the Concept Paper is that its many initiatives appear far too general to be applied in a timely and consistent manner, as has been seen in the last two years (Anaya, 2010). In fact, the government’s plans for Russia’s Indigenous peoples were not fulfilled and the expected legislative reform regulating Indigenous peoples’ rights was never adopted. In addition, the very same annual funds already allocated elsewhere were now to serve to meet the seven objectives of the Concept Paper mentioned above (IWGIA, 2012). This casts another shadow over the real implementation of this instrument, since—as already discussed—the available funds are insufficient.

Finally, the sole remaining state body at the federal level dealing with Indigenous peoples, namely the Committee on Problems of the North and Indigenous Peoples of the Federation Council of the Federal Assembly of the Russian Federation, was shut down in 2011 (Berezhkov, 2012).

Implementation of Indigenous Rights: A Qualitative Analysis

This section presents a qualitative analysis and presents the main outcomes of six interviews, conducted between August and October of 2011, assessing the failed implementation of the Indigenous peoples’

⁸ In Russian: Territorii Tradicionnogo Prirodopola' zovanija.

rights at a grass-roots level. The interviewees are well-known experts and practitioners in the field and are referred to by numbers for their privacy and personal security reasons. The interviews were conducted in Russian via the software Skype® and were recorded. The authors of this article take the sole responsibility for any eventual English translation errors from the interviews. The interviews were based on a questionnaire prepared by the authors, although the interviewees spontaneously added additional information. First, given the formally extensive protection of Indigenous peoples guaranteed by the three federal laws specifically addressing it, we were keen to verify the implementation of the laws at national and regional levels and to acknowledge the problems lying behind their application. Second, we decided to focus on the competing economic interests over natural resources and the rush to their exploitation that, in Russia as well as elsewhere, may heavily affect access to land for many Indigenous communities and/or cause irreversible river and land contamination. Thus, the second part of this section aims to assess whether and how the extraction of oil and gas or other non-renewable energy resources fuelled social tensions or otherwise affected Indigenous ways of life and the surrounding environment.

The authors are aware of the limited number of interviews that were conducted. Nevertheless, we consider that these six detailed interviews gave sufficient grounds and information to form the core of this article.⁹

Implementation of Russian Legislation Protecting or Involving Indigenous Issues

As seen above, the three laws provide Indigenous peoples with extensive formal protection. Indigenous peoples are increasingly aware of their rights (interview 1),¹⁰ although generally the urbanized Indigenous peoples are better informed than those living in rural areas (2, 3, 4, 5). Nevertheless, Indigenous peoples are often unfamiliar with the details of their legal protection. This is also due to the low educational attainment that prevents Indigenous peoples from understanding the content and the meaning of their rights (1). Efforts to disseminate legal information are made by NGOs and other organizations (e.g., by RAIPON) (1, 4, 6); however, the legal technical terms used to explain these rights in magazines and leaflets, as well as the remoteness and budgetary restraints of Indigenous peoples' communities put a strain on the dissemination of such information (1, 4, 6) (see also Anaya, 2010).

More specifically on the application of the three laws, there is general agreement over the lack of implementation by public institutions at both the central and regional levels (1, 3, 4, 5, 6)¹¹. For instance,

⁹ This is for the following reasons: First, all the interviewees have a high profile and a sound expertise in the field, and they boast collaborations and recognitions both at national and international levels. Second, although some of them know each other, they were contacted and interviewed individually and in different timeframes. Third, there were no monetary incentives for the interviews (i.e., the interviewees were not paid a fee since we wanted unbiased and voluntary information). The experts that requested an honorarium were not interviewed. Fourth, the responses of the six interviewees are homogenous and it was found that they did not contradict each other. This is particularly relevant in the case of those interviewees coming from a different background. Last, but not least, the statements reported here are in line with other literature cited in this article or otherwise used to integrate this overview.

¹⁰ From here on just the number of the interviewer will be written.

¹¹ To refer to the Russian "subject of the federation" or "federal subject" or "constituent entities" or their governments, the terms federal subject, region and regional will be used in this text similarly to Anaya (2010).

in 10 years, no fully-fledged territory of traditional natural use (TTP) has yet been established under federal law (1, 3) (see also Anaya, 2010). In fact, according to art.95, para.5 of the “Land Code” (2001), the boundaries of a TTP have to be determined by an act of the Russian federal government.¹²

The federal subjects of Khabarovsk Krai, Yamalo-Nenets Autonomous Okrug, Sakha Republic, and Khanty-Mansi Autonomous Okrug started the procedure to create TTPs within public lands (i.e., lands managed by the region or the municipality) (1). Indeed, Anaya (2010) reported the creation of TTPs in 28 federal subjects¹³ and, in particular, of 523 TTPs in the Khanty-Mansi Autonomous Okrug. The latter have regional status and are the former patrimonial lands, which had been created in 1992 through the regional directive, “On the Statutes of Primordial Lands” (1992).¹⁴ Later, the lands were transformed into TTPs by the federal law “On Territories” (2001) (4). Despite these attempts, there are many controversies since the lands are considered public lands (1). In fact, when TTPs are established by federal subjects or by municipalities, they also include land owned by the State. In some cases, if a governor supports Indigenous peoples, the TTP will be created regardless of whether it includes state-owned land. There was an attempt to create a TTP in Kamchatka Krai, which failed due to the lack of support from the appointed governor (1). Moreover, if oil or gas is found on TTPs, then the State is free to reclaim the area in question. Thus, the status of such TTPs is not yet well defined (1), and, as Anaya (2010) reports, the majority of Indigenous communities do not benefit from such designated territories.

A lack of centralized coordination and motivation by the state vis-à-vis the overall protection of Indigenous peoples is perceived (3, 5, 6). In fact, the level of enforcement of the three laws seems to vary from region to region (3) (see also Anaya, 2010). Some federal subjects adopted regional legislation,¹⁵ especially on Indigenous culture and education (6), whereas others (e.g., Khabarovsk) carried out small development projects for Indigenous peoples (1). Despite the adoption of these acts, it remains unclear whether some regions provide better protection than others. The goodwill or availability of each governor is another factor that comes into play in both positive and negative terms (1, 6). For instance, in Yamalo-Nenets Autonomous Okrug, the governor organizes a monthly meeting with Nenets Indigenous leaders to discuss any problems in their communities, while in Kamchatka Krai a council was

¹² According to art.9 of the Constitution of the Russian Federation (1993), private parties, the State, and the municipalities may own land and other natural resources (see also art.1, para.9 of the Land Code (2001) that states that such divisions shall be determined by federal laws). Moreover, issues concerning possession, utilization, and management of land and of subsurface, water, and other natural resources are one of the shared competences between the State and the federal subjects (art.72 Russian Constitution, letter c and j). Basically, the State mainly owns land and natural resources such as forest, tundra, etc. The federal subjects and municipalities mostly own streets, infrastructures, etc.

¹³ These are documented in an official federal listing Act No.631-p of 2009 called “List of Places of Traditional Lifestyles and Traditional Livelihood of Numerically Small Indigenous peoples of the Russian Federation” (cited in Anaya, 2010).

¹⁴ In Russian: Поло́жение о статусе родовых угодий.

¹⁵ The federal subjects that have adopted regional legislations are the following: Republic of Buryatia, Republic of Karelia, Sakha Republic, Republic of Khakassia, Tyva Republic, Primorskiy Krai, Krasnoyarsk Krai, Khabarovsk Krai, Amur Oblast, Arkhangelsk Oblast, Irkutsk Oblast, Kamtchatka Krai, Kemerovo Oblast, Magadan Oblast, Murmansk Oblast, Sakhalin Oblast, Sverdlovsk Oblast, Tomsk Oblast, Tymen Oblast, Nenets Autonomous Okrug, and Khanty-Mansi Autonomous Okrug.

created to deal with regional indigenous issues (6).¹⁶ Finally, civil servants at both the central and/or regional levels are not fully informed about Indigenous issues, programs, and legislation (3, 5, 6).

Another influential element is the frequent amendment of the three laws, as well as of other laws directly affecting indigenous issues (4, 5). For instance, the Ministry of the Regional Development in charge of Indigenous affairs at the state level recently proposed the redefinition of the status of TTPs to no longer consider them subject to special protection and restricted use by Indigenous peoples (3). Another example is illustrated by the laws “On Hunting” (2009) and “On the Animal World” (1995) according to which hunting licenses are assigned by open tenders on a basis of long-term leases of specific territories (3) (see also Anaya, 2010). This generates significant competition, which then goes beyond the financial means of many Indigenous communities. Indeed, a case was brought before the Supreme Court in which it was ruled that a fishery ground’s auction carried out in Kamchatka Krai violated Indigenous peoples rights (1, 3).

Land, Natural Resources, and Rising Conflicts

Interviewees reported actual and recent oil extractions in Murmansk Oblast, Nenets Autonomous Okrug, Yamalo-Nenets Autonomous Okrug, Sakha Republic, Chukotka Autonomous Okrug (3), and Kamchatka Krai (1). Furthermore, they reported gas and oil extractions in Khanty-Mansi Autonomous Okrug (4) and Yamalo-Nenets Autonomous Okrug (5) (see also Anaya, 2010) and a planned gas pipeline to be built in the Altai Republic (2). As far as hydroelectric plants are concerned, there were plans to build two dams in Sakha Republic and Krasnoyarsk Krai, but in the end these plans were abandoned (4). The former project Kankunskaya GES in Sakha Republic was frozen in 2012 because it was found to not be profitable (Russian Gazette, 2012). The latter dam was to be built by the RosHydro Company in Evenkia (Evenk Autonomous Okrug, which is nowadays part of the Krasnoyarsk Krai), and it would have flooded an area consisting of 1.200 square meters. This case concerned a large number of Indigenous peoples villages that were at risk to be submerged in the city of Krasnoyarsk Krai. The Russian Public or Civic Chamber, which is a sort of Ombudsman,¹⁷ organized several public meetings and events during which the consequences of the dam’s construction were explained. Finally, a referendum was carried out among the population, and the 85% opposed the project (3). Anaya (2010) also mentioned this project and reported that the national and international concern and debate on this project contributed to stopping, or at least postponing, construction on the dam. However, one interviewee reported that there were many actors involved in this dispute and the main reason for the shelving of this project are most likely technical and economic ones (4).

¹⁶ The main Indigenous peoples in the region are Even and Italmen.

¹⁷ The Public or Civic Chamber was created by the federal law “On the Russian Chamber” (2005). The Chamber is formed by 126 members. The first group of members consisted of 42 persons appointed by presidential decree among “Russian citizens who had performed special services to the state and society”. This first group selected further 42 members among nominees proposed by Russian NGOs and other organizations. Finally, other 42 members were chosen among representatives from regional and inter-regional organizations. According to the aforementioned Law No.32, the Chamber acts as a sort of ombudsman having the following tasks: facilitating coordination between the state or local authorities and civil society organizations; protecting human rights and fundamental freedoms of Russian citizens; protecting the interests of the Russian citizens vis-à-vis the government and the politics pursued by it; ensure “national security” in respect of democratic principles and of the Russian constitutional values (Civic Chamber of the Russian Federation, 2012).

Apart from this case in Krasnoyarsk Krai, another dam (Boguchanskay GES) is under construction in the same federal subject. Building of this dam started in 1974. The main companies involved in the construction of the dam are RosHydro and RUSAL. In the course of this project, 29 towns and villages are at risk of flooding (24 in Krasnoyarsk Krai and 4 in Irkutsk Oblast). The resettlement of people started initially in the 1980s and continued into the 1990s. It is estimated that approximately 12,000 Indigenous and non-Indigenous people will have been resettled by the end of the construction (Boguchanskay GES, n.d.).

Gas and oil exploitation often cause irreparable damage to the surrounding flora and fauna, thus affecting Indigenous peoples' means of livelihood linked to the natural habitat (1, 3, 4, 5). For instance, oil spills and waste disposal in watercourses or lakes inevitably cause water pollution, environmental harm, and kill fish (1). Another example can be seen with regard to the tundra, which is a habitat that tends to absorb liquids and thus absorbs leakages of oil and other toxic substances (3).

Furthermore, many Indigenous communities who employ reindeer herding and grazing are affected by the construction of oil pipelines that intersect reindeer pastures and interrupt migratory patterns (5). In some cases, reindeer have also been injured by abandoned remnants of the oil-plants (5). In other cases, pipelines run over territories usually crossed by nomadic peoples and their cattle (2), thus affecting their traditional way of life.

Coal and gold mining activities also have adversely affected the living conditions of Indigenous peoples because many companies improperly treat the mines' waste and leave open-air dumps close to Indigenous peoples' settlements (5). In addition, in the Altai Republic, one of the interviewees (2) reported that a number of rocket pieces had fallen onto the Indigenous peoples' lands, apparently releasing toxic substances that contaminated the surrounding flora and fauna, resulting in the Indigenous peoples losing the ability to hunt in the affected areas.

Indigenous peoples' sacred sites may have also been damaged, since there is no register of Indigenous sacred sites or places of worship (2). Although the sites may be recreated (2), they still lack basic (legal) protection. For instance, in the Altai Republic, a new gas pipeline to be built by the Russian company Gazprom will cross the entire Republic and will include lands considered holy by the Indigenous Telengit people, with no regard for Indigenous peoples' beliefs and sentiments (2). This is the equivalent of building a pipeline through the walls of a church. To find a solution for this problem, a UNESCO Delegation travelled to the Altai Republic to study and propose alternative routes for the pipeline (2); however, despite crossing sacred sites, the project has been recently approved (Cultural Survival, 2012a) and the planned pipeline will run over the Ukok plain in the Altai Republic. In the same region in 1993, archaeologists found a well-preserved mummy, claimed by Indigenous peoples as one of their ancestors. Later, the media gave the mummy the name "the Altai princess," the age of whom was dated to circa 500 BCE. Shortly after the discovery of the mummy, archaeologists concluded that she must have belonged to the Pazyryk culture instead and she was taken to Novosibirsk to conduct further research. The discovery of the mummy was not a novel occurrence as several mummies belonging to that culture had been found there previously. However, in the following weeks, an unidentified spokesman, most likely one of the archaeologists, commented on the discovery of the mummy as "the greatest archaeological discovery of the end of the 20th century" (Konyaev, 2010, Contested princess, para 2). This statement had a significant impact on the Altai Republic's citizenry, who became

increasingly aware of the mummy's discovery and its alleged value. In addition, it became common opinion that the mummy did not belong to the Pazyryk culture, but rather that the mummy was the famous "Kydyr," a powerful enchantress and the oldest ancestor of the whole Altai people. However, this assertion remained unclear and very highly contested; researchers reiterated that the mummy was of the Pazyryk culture, which apparently has European features and not Indigenous ones. This fuelled the Indigenous peoples' discontent. In 1998, a regional law was passed prohibiting further archaeological excavations in the Ukok plains in order to decrease the social tension around the contested discovery and the mummy's transfer to Novosibirsk. The regional law was reversed in 2010 due to an agreement signed between the research centre in Novosibirsk in charge of the studies and the museum in Altai. The princess mummy was returned to the Altai Republic in 2012 after being kept in Novosibirsk for 19 years. Currently, the mummy is the most famous and popular exhibit in the museum, which is allowed to temporarily store the "biological object" according to the above agreement. The agreement also stipulates that further research will be conducted on the mummy (Konyaev, 2010).

According to one interviewee (2 in August, 2011), Gazprom stepped into the dispute between the Indigenous peoples and the Altai government. In exchange for completion of its pipeline, Gazprom promised to facilitate the return of the "princess" to Altai and to modernize the museum in which the mummy could be displayed (2). In fact, prior to the return of the mummy, the national museum of the Altai Republic was renovated and enlarged. The total cost of the project amounted to nearly 750 million Russian roubles, covered by Gazprom. The inaugural ceremony of the new museum was held on September 26, 2012 ("Princessu Ukoka," 2012).

Prior to any approval and construction, the elaboration of an Environmental Impact Assessment (hereinafter, EIA)¹⁸ is required by art.3 of the EIA Federal Law (1995).¹⁹ In addition, according to the federal law "On Guarantees" (1999, art.8, para.6), Indigenous peoples have a general right to participate in an EIA study whenever construction is likely to directly affect them. According to the abovementioned federal law (EIA: Federal Law No.174-FS, 1995), an EIA is a particular requirement for projects in territories under special protection and where there has already been significant damage due to previous activities (see art.11, para.6).²⁰ Interestingly, an EIA governmental study has to be financed by the company responsible for pursuing and completing the project (art.14, para.2). In other words, the government appoints experts but receive their honorariums from the company eventually responsible for any damage caused to the land, suggesting that companies could exercise pressure on the experts. Hence, the system in place for the EIA reports is not a transparent one and has an increased likelihood of bias. In particular, the EIA requires two open public presentations and hearings to illustrate the main aspects and consequences of the planned work. Notwithstanding this requirement, such

¹⁸ In Russian: Ob èkologièskoj èkspertize.

¹⁹ See also federal law, "On the Protection of the Environment" (2001), art.1 on the definition of the EIA and the Decree, "On the Acknowledgment of the Direction on the Environmental Impact Assessment Caused by Economic and Other Activity in the Russian Federation" (2000), which provides the list of documents required when preparing an EIA and the procedure to be followed, included the abovementioned public presentations and hearings.

²⁰ See also art.14, para.5 of the EIA (1995) Federal Law on the composition of the governmental commission elaborating the EIA. For further details on the procedure see the decree, On the Acknowledgment of the Direction on the Environmental Impact Assessment Caused by Economic and Other Activity in the Russian Federation (2000).

presentations and hearings are often held in remote and unknown places, which are physically far away from the work site or publicized very late (1, 3, 4, 5). One of the interviewees (5) reported that in southern Yakutia the announcement to participate in an EIA public presentation scheduled for the *following* day was placed on a marginal notice board in the concerned village. The presentation took place with extremely low community participation since the majority of community members did not read the notice and were not aware of the presentation. Such practices by companies seeking to execute controversial projects suggest an intention to bypass the legal requirement and prevent criticism or protests. On other occasions, Indigenous participants concerned by the planned projects do not intervene during the public hearings because they are afraid to openly criticize the companies (4). In addition, there is high risk that the EIAs are biased since, as mentioned earlier, the companies remunerate the experts in charge of the study (2). Although the studies are expected to be run independently, they often lack this independence due to their ties to the companies in question. Nevertheless, in some cases, the results of the EIA generated a public debate on planned energy projects and thanks to such debates, these projects were withdrawn (1). However, it seems likely that they were stopped due to decreased estimated revenues rather than because of environmental concerns (1).

Another peculiarity regards a so-called “Ethnological Impact Assessment,” which examines the effects on the culture of an Indigenous community close to which an energy project is to be built although this type of assessment is not required by any federal law. Sakha (Yakutia) is the exception to this trend: A similar regional law was adopted in 2010 that prescribes such an assessment (Regional Law of Sakha, 2010). However, many companies do not consider it binding due to the fact that it is a regional law and, therefore, not applicable to projects carried out on a federal or supra-regional level (i.e., when involving more than one federal subject) (3).

In practice, an Ethnological Impact Assessment has been recognized by some civil society organizations (3, 4) and by some oil and gas companies (1). In particular, the company OAO Ternejles conducted one and reached a compensation agreement with the community concerned (6). OAO Ternejles, located in Primorskiy Krai, operates in wood processing, forest clearing, forest plantations, and the production of wholesale wood products and electric saws. In 2004, the company and the Indigenous peoples’ organization of Primorskiy Krai signed an agreement according to which the company recognized the necessity to carry out an environmental and ethnological impact assessment in accordance with Russian law, existing international standards, and the international Convention on Biological Diversity. Furthermore, the company agreed to financially support the Indigenous organization and the Krai’s northern peoples, who reside in the territories in which the company carries out its projects. Ternejles also underlined its willingness to minimize any negative impacts of projects and to inform the Indigenous population about all planned projects. In addition, a body was set up to improve the negotiation process. In 2010, Ternejles compensated the *obshchina* Agsu with 1,575,000 Russian roubles and the Indigenous organization of Primorskiy Krai with 300,000 Russian roubles (“Blagotvoritel’ Nost,” 2012).

However, the instances of compensation to Indigenous peoples in case of forced relocation or other damages, such as the abovementioned ones, are generally infrequent (6). In some cases, buyers profit at the expense of the Indigenous peoples by paying them less than the market price (4); while in other situations, especially where communities are well organized, Indigenous peoples succeed in benefitting from revenues of oil and gas production (e.g., in Yamalo-Nenets Autonomous Okrug) (5).

The interviewees reported other examples of cooperation and negotiation between Indigenous communities and the oil and gas companies. For example, the case of the Sakhalin Energy Investment Company Ltd. (an international consortium; hereinafter, Sakhalin Energy) involved the Indigenous peoples of the Sakhalin Island and can be defined as a “best practice” (6) (see also Anaya, 2010). An interviewee confirmed that agreement was reached in a rather coherent and transparent way (5), especially when compared with other cases. Nevertheless, interviewees still expressed their criticism (4, 5). In 2005, the Sakhalin II project, which aimed to extract oil and gas both on and offshore of Sakhalin Island, raised widespread concern. Environmental and Indigenous organizations had mobilized since early 2005. Because the company hoped to receive funding from the European Bank for Reconstruction and Development, it had to follow the bank’s operational policy on Indigenous peoples. A council of Indigenous representatives was formed to negotiate with Sakhalin Energy. The immediate result was a tripartite agreement amongst the Indigenous peoples, Sakhalin Energy, and regional authorities. As part of the agreement, the “Sakhalin Indigenous Minorities Development Plan” would finance development programs to a total amount of USD 300,000 (IWGIA, 2007). On the one hand, the fund offered the Indigenous movement some new equipment (computers, etc.) and reinforced its network. On the other hand, other planned actions and concrete needs of Indigenous peoples (e.g., the economic empowerment of *obshchinas* according to the law “On Obshchina,” 2000) were not met. Thus, the plan partially failed in realizing its intent. For instance, according to the Indigenous leaders, the criteria for submitting a project proposal were too demanding (IWGIA, 2007) and Indigenous peoples’ original claims were not respected. Consequently, an overall ethnological impact assessment was not completed and the determined pipeline routes were not diverted (4).

Apparently, foreign oil and gas companies are generally more willing to cooperate with Indigenous peoples (1, 6); however, there are some exceptions to this, such as the Sakhalin Energy example discussed above. Russian companies are slowly becoming more concerned about their corporate image (1). Contentious situations have also involved the company Gazprom, which, according to the interviewees, collaborated with Indigenous peoples in Yamalo-Nenets Autonomous Okrug (6), but failed to do so in Kamchatka Krai or Sakha Republic. In the former region, the Indigenous movement is well organized and has a stronger input at the regional level, enabling it to enter into negotiations with Gazprom. In the latter case, the company simply stated that it has no responsibility to deal with Indigenous issues because these matters are to be addressed by the state (6). This is a common understanding among other Russian companies as well (3).

Other tensions were observed in the northern part of the Altai Republic: The regional government tried to expand the tourism, against the will of the local Indigenous peoples, into areas traditionally inhabited and used them (2). The logging exploitation in the Taiga forest in Primorskiy Krai, which the Udege people have fiercely opposed for many years, is also provoking hostilities (6). Another factor that aggravates tension is the flow of Russian migrants towards Indigenous territories in search of job opportunities. Such territories are rich in natural resources and are likely to be exploited by extraction companies (4, 5).

However, the majority of the Russian population is concentrated in urban areas and the conflicts are perceived as being too far away both in terms of physical distance and culture. There is also a predominant belief amongst both Indigenous peoples and a majority of the population that oil and gas extraction is a positive factor for the country’s economy (2, 4, 5, 6). The energy mega-projects are often

located in remote areas and therefore people remain unaware of the immediate environmental damage (4). In some cases, regional governors have tried to influence public opinion by emphasizing the positive consequences of such exploitation plans (1) without stating the disadvantages that these projects may involve (5). Moreover, economic interests often prevail over indigenous claims and issues resulting from these projects (1) (see also Advisory Committee on the Framework Convention for the Protection of National Minorities [ACFC], 2002).

Another issue concerns the perception of Indigenous peoples by mainstream Russian society, which still views them as an “exotic” people (3, 4, 5, 6) (see also Anaya, 2010). Even public officials are rather oblivious to the harsh living conditions and the other issues Indigenous peoples face (3, 4, 5, 6). Thus, there is widespread misunderstanding of claims (3, 4, 5, 6). This is also due to the stereotypically negative image of Indigenous peoples that is frequently portrayed by the media (4, 6). Rarely has a positive collaboration with the media been reported (5). Another relevant aspect regards confrontation between Indigenous peoples and other poor sectors of the society, especially in the rural areas, which may see the former as more privileged than themselves in terms of the programs or policies addressed toward improving their living conditions (4, 5). However, one interviewee reported a case of solidarity in Tomsk Oblast, where there is a mutual support between the Indigenous and non-Indigenous communities, both of whom live in equally difficult conditions (5).

Concluding Remarks & Recommendations

As shown in this article, Indigenous rights in the Russian Federation are poorly implemented. Moreover, there is a lack of political will to support Indigenous peoples’ rights and cultures that has created confusion and legal uncertainty created by numerous amendments to the three laws (“On Guarantees,” 1999; “On Obshchina,” 2000; “On Territories,” 2001), as well as other relevant laws discussed above. Additionally, the Russian Indigenous protection system lacks clear policies and there is a deficiency of transparent, central, and coordinated administration. The most glaring examples are the improper use of funds by the federal subjects and the missed implementation of the Concept Paper on the Sustainable Development of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation (2009), which was adopted in 2009, but essentially still remains unexecuted.

Therefore, despite a promising formal legal framework protecting Indigenous peoples, the lack of law enforcement deprives Indigenous peoples of their rights, and particularly of their safeguards vis-à-vis the massive extractive industry in Russia. In general, as in many other parts of the world, economic interests tend to prevail over Indigenous needs. Consequently, Indigenous peoples are directly and indirectly affected and become victims of prioritized industrial interests. At times, Indigenous peoples are forcibly relocated or their sacred sites are destroyed or placed under serious threat. The compensation for damages of such relocations is rare. Furthermore, pollution deriving from oil spills or mining activities affects the natural habitat, thus adversely affecting living conditions and means of subsistence. In addition, environmental legislation may also fail to safeguard Indigenous peoples since the Environmental Impact Assessment provided by law is essentially circumvented in practice. Finally, mainstream Russian society perceives Indigenous peoples as an exotic people and considers oil and gas extraction a priority for the country’s economy and development. Thus, Indigenous peoples seem to stand alone against both the extractive industry and the State. In fact, as affirmed at the beginning of this article, the umbrella association defending and dealing with Indigenous rights, RAIPON, after an order

of closure was finally reopened in early 2013 following a global campaign and an amendment of its statute. In sum, the necessary dialectics when balancing national economic interests and potentially affected human rights seem unilaterally driven by the regions and the central government in a clear breach of law and thus essentially sacrifice Indigenous peoples and their rights.

The following recommendations, *inter alia*, may serve as a basis for improving the protection for Indigenous peoples in Russia:

- Put pressure on the Russian government to fully execute Indigenous peoples' protection as foreseen by the domestic legislation in force. The Russian case represents a clear paradox since it counts on a well-developed legislation vis-à-vis Indigenous peoples, but neither this is implemented, nor it is known by stakeholders and public officials.
- Promptly create and demarcate Indigenous territories of traditional use (TTP). Land rights are vital to Indigenous peoples as widely recognized both in academia (Gilbert, 2006; Xanthaki, 2007) and in the United Nations Declaration on the Rights of Indigenous Peoples (2008; see for example art.26). Land rights imply land's possession and usufruct, thus means of subsistence. Additionally, traditional lands are also part of Indigenous peoples world vision and, as seen above, of their religion.
- Carry out viable Environmental Impact Assessments (EIA); also in this case, the Russian legislation on the subject is potentially a good instrument, but it is circumvented *de facto*. Pressure may be exerted onto both national and international companies to properly follow the EIA's procedure.
- Fairly inform Indigenous peoples on upcoming projects of natural resources' exploitation onto or close to their territories; this is required by the Russian EIA's legislation. However, the right to the free, prior and informed consent is becoming a widely respected standard (e.g., at UN and World Bank level) (Doyle & Cariño, 2013).
- Whenever a planned project is unavoidable, fairly compensate Indigenous peoples whenever they would suffer a damage in terms both of land's loss and pollution over their territories; some experiences have been successful also in Russia as seen in this article.
- Run educational activities not only to Indigenous peoples vis-à-vis their rights, but particularly to the wider Russian population and the civil servants in order to make them aware of the richness of Indigenous peoples' cultures as well as of the set of problems they face in their daily life.
- Litigate Indigenous peoples' rights before domestic courts and, in particular, to claim the application of art.25 of the Law "On Fishery" (2004). This norm provides for an exception clause that allows Indigenous peoples to be exempt from the requirement of holding a fishing license. Indigenous peoples have to meet two requirements in order to make use of such exemption, as follows: To fish for subsistence needs by following traditional practices at a community-level, and to fish at community and not at *obshchinas* or at other forms of

company or industrial levels. This has shown to be particularly successful in some recent cases before Russian Courts (see “*Russian General Court of Second Instance*,” 2011; see Koch & Tomaselli, in press).

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