

PEER REVIEWED

Russian Federation: Indigenous Peoples and Land Rights

By Liubov Suliandziga and Rodion Sulyandziga

“Indigenous land – its mountains, rocks, rivers, and specific places – may hold religious and ceremonial significance – comparable to the significance that the great religions place in their sacred places in Jerusalem or Mecca.” (Downing et al., 2002, p. 9)

ABSTRACT

Within the course of the past decades, many achievements have been made with reference to indigenous rights standards, primarily through indigenous engagement and dedication within global society. After 50 years of active participation in the global arena, indigenous rights movements continue to gain momentum transforming into one of “the most visible civil society grouping across the UN” (Morgan, 2011, p.2). As a result of adoption of international standards and guidelines in addition to the establishment of institutions that specifically target the concerns of indigenous people, today indigenous peoples are more mobilized than any other time. With the notable exception (among the Arctic states) of the Russian Federation where despite a rather promising beginning of professional indigenous activism in the early 2000s, Russian indigenous groups saw even further division — yet more separate paths in contrast to international indigenous development (Eckert, 2012). While the protection of indigenous peoples’ rights and interests is becoming an important global goal and the essential sphere of international cooperation, domestically there are still some fundamental imbalances in power, rights and inclusion of indigenous peoples in decision-making process.

This article is an attempt to raise fundamental questions about the nature of contemporary Russian policy towards its indigenous population and shed light upon the various characteristics that have come to define Russia’s response to indigenous problematics.

Keywords: Indigenous peoples, indigenous rights, Russian Federation, Arctic, land rights, disempowerment, RAIPON

In 2011, the Russian mining company “Yuzhnaya” started its activities near Kazas settlement in Kemerovo region in Southwest Siberia – one of the major coal districts of the Russian Federation (see Figure 1 and Figure 2). Kazas, the territory of traditional residence of Russia’s indigenous peoples - the Shors, has been subject to decades of environmental destruction and fatal

effects of the coal industry (IWGIA et al., 2017). At the end of 2012, “Yuzhnaya” started buying households in Kazas to expand its industrial activities. By 2013, only five families refused to sell their houses and leave the ancestral lands. On 2 November 2013, at the meeting with the villagers, the CEO of the company threatened to set on fire all the remaining houses if the families refuse

to sell them to the company. The first house was burnt a week later. At the end of December, the second one was set on fire. In January 2014 two houses burnt down. The last one was struck in March 2014 (Sulyandziga, 2016).



Figure 1: Yuzhnaya Coal Mine next to Kazas
(Photo by Anti-Discrimination Centre)

In 2012, Sergei Nikiforov, the leader of the Amur Evenki people, was sentenced to four years in prison for allegedly extorting money from the “Petropavlovsk” gold mining company after he led a protest movement against company’s attempts to take over native reindeer pastures and hunting grounds (IWGIA et al., 2017).

In 2013, 1 million tons of oil was discovered on the bottom of Lake Imlor in Khanty-Mansi Autonomous Okrug, Russia’s leading oil-producing region. The same year, Surgutneftegaz company obtained a license to explore oil and gas deposits under the lake which happen to be sacred for the indigenous Khanty people. With their land under threat and alternative job prospects, the majority of Khanty people has left the ancestral land. In 2015, Sergei Kechimov, a Khanty shaman, the only person left living near the lake, got accused

of uttering death threats to a worker of Surgutneftegas oil company and sentenced to imprisonment (Stamatopoulou, 2017; Lerner et al., 2017).



Figure 2: Russian Exploitation of Indigenous Peoples

Just a couple of months before the launch of criminal investigation against Kechimov, the 113th Session of UN Human Rights Committee was attended by an unprecedented number of representatives of the Russian Federation, “presenting their shadow reports denouncing a wide range of human rights violations” (IWGIA, 2015). A couple of months after Kechimov’s hearings in the court, the Russian Federation also attended the Third Committee of UN General Assembly, where it was stated that the “Russian Federation has always supported and continue to support indigenous peoples in full and effective implementation of their rights.... We are confident that the main instrument for the practical implementation of the UNDRIP provisions and the outcome document of the World Conference on Indigenous Peoples should be the goodwill of states, coupled with the daily hard work to support the indigenous population and protect their rights and freedoms, as it is done in Russia.” (Statement by the

representative of the Russian Federation/Agenda Item 70 “Indigenous peoples rights” of the Third Committee of UN General Assembly, 2015). A closer look at Russian indigenous legislation, particularly that on land rights, would help to fall the described cases into place.¹

Legal Disempowerment

Since the beginning of the 2000s, with the increasing presence of resource extraction activities on indigenous homelands in Russia (see Figure 3), discussions of management of nature use, industrial development of indigenous lands in the context of ethnic and environmental problems, the legacy of state development policies, indigenous participation in the management of their lands, and resources have been on the rise

(Fondahl and Sirina, 2006; Xanthaki, 2004; O’Faircheallaigh, 2013; Wilson, 2003; Tulaeva and Tysiachniouk, 2017).



Figure 3: Yuzhnaya Coal Mine next to Kazas (Photo by Anti-Discrimination Centre)

¹ Among indigenous claims, one of the most significant presuppositions held by indigenous peoples is that their inalienable rights to lands and resources override the subsequent claims by dominant societies (Rogers 2000). In fact, land issues have always been fundamental in indigenous struggles with the restitution of indigenous lands seen as an act of overcoming historical injustice. This assertion is grounded in the fact that indigenous livelihoods are inseparable from the lands and resources, which form a basis for traditional activities such as hunting, fishing, gathering, and nomadism, as well as religious, spiritual, and ceremonial practices (Minde, 2008).

As James Anaya (2004, p. 396) states, as follows: “They are indigenous because their ancestral roots are embedded in the lands much more deeply than others. They are peoples because they represent distinct communities and have culture and identity that link them with their nations of the ancestral past.”

In other words, many indigenous communities see themselves as part of the land they have resided on for centuries. Natural resources, in turn, are not only the sources of livelihoods for many indigenous peoples but also a source of their identity and a means to preserve their traditions and customs. The loss of land would thus mean the threat to their entire culture. Henceforth, securing access to these territories and natural resources and legal recognition of land tenure rights are an essential foundation to empower indigenous peoples with civil, social, cultural, political, and economic rights (Alcorn, 2013).

The indigenous peoples’ strong attachment to the environment and surrounding ecosystems have resulted in complex and distinct tenurial arrangements, that are often at odds with the formal legal management regimes of the state. Whereas indigenous peoples have not operated under the concept of private land ownership (Berg-Nordlie, 2015), which means that indigenous land was instead governed by customary tenure based on the principles of long-term and uninterrupted land use, inheritance and oral agreements with neighbors (Kasten, 2005), governments viewed indigenous lands as *terra nullius* (“nobody’s land”) or previously ownerless, and, therefore, open for utilization by newcomers. Particularly, albeit indigenous peoples constitute one of the most vulnerable populations on earth as a result of centuries of marginalization and discrimination, their territories often contain abundant natural resources. As a result, indigenous territories become objects for land acquisition for agriculture, biodiversity conservation, appropriation by outside interests, and other development initiatives, both private and governmental ones (Alcorn, 2013). From the perspective of the industries in particular these lands are frequently regarded as a source of income generation “rather than as heritage to be cherished” (Glennie, 2014). Indigenous peoples, in turn, have to live adjacent to extractive facilities that generate enormous wealth for their owners and do not stand to gain economically or socially from the projects, neither collectively nor as individuals (O’Faircheallaigh, 2013). The compensation, that is sometimes provided by companies cannot cover the deterioration inflicted to the land, which frequently becomes unfit for indigenous practices (Stamatopoulou, 2017).

Historically, the question of indigenous land ownership has been complex. Indigenous territory has never been regarded as a form of private property by aboriginal population; instead, indigenous land was used and managed collectively (Kasten, 2005). With attention to Russia, the approach to land has been developed differently from other Arctic states, such as Canada or USA, where a legally-binding contractual evidence supporting indigenous peoples' rights to land exists. Contrary, Russian indigenous peoples had not been involved in legal relationships with the state on the matter of the land ownership; they had neither sold their lands, nor received any compensations or delegated the right to supervise their lands to a third party. Since there were never any treaties signed between indigenous peoples and the Russian Empire, the best outcome indigenous groups can hope for was a long-term lease, i.e. "the title to land is not even on the table" (Eckert et al., 2012, p.45). After the Russian revolution, all land was considered the state property. The Soviet Union, therefore, simply declared indigenous territories the state lands and managed them at its own discretion.² Henceforth, Russia's indigenous groups' claims are much more modest than those of indigenous communities in the West, focusing on the right to preserve a traditional lifestyle and some type of limited property rights to land and resources (ibid.).

First and foremost, the Russian legal framework does not employ a concept of "indigenous peoples". Instead, it proposes its own definition of "indigenous small-numbered people". These two categories are entitled to dramatically dif-

ferent conditions of peoples' legal imaging and protection. Definition "indigenous small-numbered people" is notably different from the UN and other international instruments' definitions which contain no reference to size and population of the given community, but instead emphasizes historical aspects such as discriminative experiences, and expression of indigenous self-identification (Rohr, 2014). Developed concept of "small-numbered peoples" points up the artificial legal category with rather "arbitrary demographic limit" that has been introduced by the state (Overland, 2005, p. 108). Such an exclusive term limits the recognition of indigenous rights to the smallest possible subset of ethnic groups and excludes peoples with larger populations that

² Although the Soviet Union was officially built on an ethnic principle and cemented on the concept of "nationalities," already in the second half of the 1930s a moderate ethnic discourse and an earlier toleration of the Russian state for the quasi-independence of indigenous societies was replaced with forced integration. The state priority was to assist the indigenous peoples into becoming modern Soviet nations, liquidate economic backwardness of aboriginal communities as well as economic and cultural inequality and unite all nations under the socialist state. Developed slogan "ethnic in form, socialist in content" implied eventual merge of all nationalities into a single Soviet nation and "brotherly family," that offered an alternative to "the world's prior imperial, colonial, caste-based, universalist, and melting-pot ideologies" (Moore, 2001, p.27). This Soviet identity meant to prevail over a narrower ethnic one (Kuzio, 2002). Official Soviet narratives celebrated ethnic differences through aggressive promotion of colorful folkloristic aspects of culture that emphasized the existing unity and friendship of the peoples of the USSR but—at the same time—concealed any forms of cultural difference that would threaten the state dominant discourse (The International Bank for Reconstruction and Development/ The World Bank, 2014). Assimilationist policies were presented as a nations-bonding based on voluntary, equality and brotherhood. Yet, while the USSR was conceived as a union of distinct nations, in reality it represented a multi-layered hierarchy with Russian ethnicity at the top (ibid). Within this discourse, Russians were attributed the status of the "elder brother" and the "leading nation" of the Soviet multi-national state. For indigenous peoples of Russia, the period from the 1940s to 1980s came to be referred to as the dark years of indigenous history (Vakhtin, 1992).

have expressed their self-identification as indigenous (Nikolaeva, 2017). According to Miller, “these sorts of bureaucratic circumscriptions of indigeneity are deployed by the states to control, manage, and contain indigenous populations in designated areas, minimizing the threat posed by their assertions of difference, reducing a number of beneficiaries, and necessarily causing a conflict between recognized indigenous and would-be but not yet recognized groups” (2003, p. 209). In this sense, the unambiguous and categorical recognition of indigeneity ignores the necessary complexities of indigenous experiences, consequently benefitting the interests of the state authorities, marginalizing and disregarding indigenous peoples’ rights, their potential grievances and struggles (Nikolaeva, 2017).

Nevertheless, experts note that Russian legislation includes rather strong state obligations to protect indigenous peoples’ rights. The Russian Federation adopted three national framework laws establishing the framework of cultural, territorial and political rights of indigenous communities (Federal Law on the Guarantees of the Rights of the Indigenous Small-Numbered Peoples of the Russian Federation adopted in 1999, Federal Law on General Principles of Organization of Obshchina of Small-Numbered Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation adopted in 2000, Federal Law on Territories of Traditional Nature Use of the Small-Numbered Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation” adopted in 2001). Russian Association of Small-Numbered Indigenous peoples of the North established in 1990 as a

non-governmental umbrella organization served a critical role in developing above-mentioned laws. The solution to indigenous struggles was once seen in the hands of RAIPON as a representative of Russia’s indigenous groups; organization was hoped to lead indigenous self-government (Monique Lerner et al., 2017; Semenova, 2007). In the 1990s and beginning of 2000s RAIPON assisted indigenous communities against industrial exploitation and the state apparatus and was perceived as “a political union to lead and guide the national movement of indigenous peoples and to transform political decisions into practical solutions” (ibid, p. 17). Already in 2009, RAIPON became the target of increasingly closer watch of the state (Berg-Nordlie, 2015). In 2012, Russian Ministry of Justice decided to stop all RAIPON activities. A year later, however, indigenous representative body was allowed to reopen after strong international pressure. In 2013, Gregory Ledkov, federal government’s favored candidate, member of Putin’s United Russia Party and the State Duma became RAIPON president (ibid.).

Originally, national framework laws guaranteed indigenous peoples’ rights to use the land; to participate in the implementation of control over land use, and in decisions about protecting their traditional lands and way of life, economy, and activities through conducting ecological and ethnological expertise; and to be compensated for damages to their traditional lands resulting from industrial and economic activity (On Guarantees, Art.8). Although these laws have offered the basis for indigenous population to make claims to preferential use lands rights, recent years have been marked by intense efforts to legally disem-

power and exclude indigenous peoples from the management of their ancestral territories. Recent amendments to all these laws have made virtually impossible full implementation of indigenous peoples' collective rights to land and resources (Zaikov, Tamitskiy and Zadorin, 2017). Even already modest provisions that were included in these legislations, today lost their power.

Attempts to create a legal framework for indigenous peoples' land rights date back to the early 1990s when several Russian regions elaborated their own indigenous land rights regimes. The earliest attempt was the introduction of "patrimonial lands" adopted in 1992 in Khanty-Mansi Autonomous Okrug (On the Statutes of Primordial Lands of Khanty-Mansi Autonomous Okrug, 1992).³ Later, in 2001, the state initiated the creation of the so-called "Territories of Traditional Nature Use" (TTNU) designed to protect indigenous land from industrial encroachment, exclude these lands from the real estate trade, and provide indigenous population with secure plots of land "in perpetuity" assigned to traditional economic sectors - reindeer herding, fishing, marine animal hunting, harvesting, etc. - that provide the main employment and main source of income for indigenous communities (Turaev, 1998; Colchester, n.d.; Miggelbrink, Habeck and Koch, 2016). Under the legislation, companies which pursue industrial activity within the officially designated TTNU should reach an agreement with the indigenous population about land use and are obliged to compensate for damaging traditional lands. The law also provides indigenous peoples the right to participate in assessments of sociocultural impact on the indigenous communities by extractive

companies (Article 6.8).

In 2001, at the same time when the Law on TTNU was adopted, the Russian Federation enacted the Land Code, which ruled out any form of land tenure other than rented and private property: "*Citizens cannot be granted permanent (indefinite) use [rights] over plots of land. Judicial persons, except those named under item 1 of this provision are obliged to have their right to permanent (indefinite) use of land plots transferred into the right to rent the given plots or to obtain the plots as property*" (Article 20). This effectively means that indigenous lands can become the private or long-term leasehold property of industrial companies (Vinding, 2002). Given that nomadic indigenous communities typically migrate with their herd throughout the year in search of pastures following the cycle of reindeer herding and, hence, use substantial areas, up to several thousand hectares (300 hectares for 1 reindeer) (Etnic.ru, n.d.), neither purchase nor rent are financially viable options for indigenous groups (Basov, 2018).

The hierarchy of Russian legislation means that the Land Code – which does not recognize indigenous traditional resource or land rights – will override the indigenous rights legislation. Thus, in practice, if a traditional resource use area is threatened by an oil, gas or mining pro-

³ Around 500 TTNU have been designated in 1992 in Khanty-Mansi Autonomous Okrug. Yet, although many territories have been marked for traditional natural resources use of indigenous groups, in recent years, 56% of these territories were withdrawn for extraction of mineral resources, with hundreds of extraction licenses issued to dozens of companies (Alferova, 2006).

ject, no real protection is offered by regulations (Murashko 2008; Wilson and Swiderska, 2019). Furthermore, in 2007 the word “in perpetuity” disappeared from the TTNU Law (Gilberthorpe and Hilson, 2014).⁴ In 2014, the Land Code stipulated that lands in perpetuity can be granted to indigenous peoples only for the construction of building or other facilities needed for development and conservation of indigenous traditional lifestyle for the period of no more than ten years. The provision in Land Code that had explicitly stated that in places of indigenous traditional residence, authorities decide on location of industrial objects (i.e.: infrastructure, extraction facilities etc.), based on the results of information gathered from indigenous communities was removed at all (CESCR, 2017).

Another problem is that almost all lands that might be candidates for TTNU status are either partly or wholly situated on federal land (70% of Russia territory is categorized as forest fund, which is also federal property); therefore, local and regional organs do not have the authority to transfer control over such lands to indigenous peoples and determine the boundaries of all TTNU. Only the federal government has the authority to do so (Eckert et al., 2012). As a result, since the adoption of the law on TTNU by the State Duma in 2001, no TTNU has been designated on the federal level at all. And while regional authorities have, however, created over 500 TTNU, none of them has been confirmed by the federal government. The existing TTNU, therefore, have “no guaranteed legal status and no effective protection from being dissolved or downsized, as often happens.” (CESCR, 2017,

p.5). In effect, due to the government’s failure to confirm existing TTNU, their status is open to changes at any time.⁵

The situation aggravated furthermore in 2013, when the federal law “On amendments to the federal law ‘On specially protected nature areas’ (Articles 5 and 6) was approved without public discussion, despite the positions from lawyers and ecologists. One of the most significant pitfalls was the downgrading of the TTNU status from ‘Specially Protected Conservation Areas’ to ‘Specially Protected Areas’ (CESCR, 2017).⁶ As a result, the word “conservation” (alluded to “nature”) was removed from the TTNU definition. While “specially protected conservation areas” is a term stipulated in environmental legislation of the Russian Federation which creates the specific safeguards for indigenous participation and consultation rights, the designation “specially protected areas”

⁴ All these contradictions in laws make it hard to reveal whether indigenous peoples pay for the use of land (IP representatives contend that they do pay such fees, and even if these are small, they nonetheless impose an economic burden on indigenous communities; In Sakha, for instance, they need to register their claim to use the land for traditional natural resource use, and bureaucracy around registration is complex. In order to register an area as a TTNU, an applicant needs to conduct a technical land assessment that costs \$570 per hectare. Since commune cannot match the amount required, it leads to the failure to register the lands. (Gilberthorpe and Hilson, 2014).

⁵ On 15 January 2015, the Court of Appeals rejected an appeal by the administration of Oleneksky district of the Sakha Republic challenging the legality of a license issued by the regional resource authority, Yakutnedra, for the exploration and extraction of mineral resources in TTNU that had been established by the local authorities in Oleneksky district. The court rejected the appeal because the boundaries of the specified TTNU had not been determined by the federal government. As noted above, this is true for all currently existing TTNU, such that they are all unprotected from similar encroachments.

⁶ Two acts passed in 2014 significantly weakened the law on TTNU, these being Federal Law 171-FZ dated 23.06.2014 and 499-FZ, dated 31.12.2014.

does not exist in Russian law and, as such, is not identified in state legislation. As a result, now, allocation of land and projects for economic activity (construction of roads, pipelines and industrial facilities) are no longer subject for ecological assessment and evaluation of negative impacts on indigenous lives by industrial projects is no longer required (Miggelbrink, Habeck and Koch, 2016).

The amendment also changed the rules for the removal of land plots from TTNU. Originally, in the event of indigenous peoples' removal from their ancestral land, the state was obligated to provide indigenous communities with equivalent plot of territory and natural objects in exchange. After the revision, expression 'Compensation for losses in case of alienation of plots of land for state or municipal needs' disappeared from the entire land legislation.

When the Law on *obshchinas*⁷ was introduced in 2001, many indigenous peoples organized into communes to pursue their traditional activities (Colchester, n.d.). The original intent behind the introduction of the *obshchina* concept was multifaceted: for one thing, *obshchinas* were supposed to carry out functions of local self-administration, participate in decision-making processes of the interests of indigenous peoples, provide services in the domain of culture and education and, at the same time, function as economic cooperatives through which indigenous peoples could pursue their traditional economic activities in a viable and sustainable manner (Rohr, 2014). *Obshchina* was seen as a rightful unit of property management. Initially, indigenous peoples had the right to use *obshchinas* lands in perpetuity and without

charge (Miggelbrink, Habeck and Koch, 2016). In 2004 the law was changed; the notion "in perpetuity and without charge" has been revoked and the rent has been introduced. Since then, many communities have lost their rights to the lands granted to them for traditional subsistence practices (Evengard, Larsen and Paasche, 2015; Stamatopoulou, 2017). In many regions, indigenous *obshchinas* are now regarded as competitors by private businesses, especially in the fishing industry, some of which are affiliated with the local administrations and spare no effort to push indigenous communities out of business. Another troublesome aspect of the law is the restriction to pursue 'traditional' types of activity (which are determined by the state and outlined in the List of Forms of Traditional Activity of Indigenous Peoples). They can be terminated if they stop engaging in traditional economic activities (Eckert et al., 2012). In contrast to the initial idea, *obshchina* lands do not provide a comprehensive solution to either indigenous land rights nor environmental protection of indigenous homelands. More importantly, they cannot become self-governing bodies without given an authority over a territory, natural resources and economic independence (Turaev, 2018).

In like manner, the provisions on preferential allocation and free use of various categories of land by indigenous peoples, originally stipulated in the Land, Forest, and Water Codes of the

⁷ Obshchina (or obshchinas for plural) is a form of kinship or territory-based community organization of indigenous peoples, usually translated as "community" or "commune" that is modeled after the pre-Soviet form of socio-territorial organizations of traditional economies of most indigenous peoples of the North.

Russian Federation, have been withdrawn. Originally, some provisions of sectoral legislation (e.g., land, forest, and water codes as well as acts on subsoil) stipulated the rights of indigenous peoples for preferential use of resources in areas of their traditional residence. With regard to one of the main economic activities of many indigenous communities, fishing, already in Soviet times, the interest in economically profitable fishing attracted the attention of business. As a result, indigenous communities have been gradually pushed out of the activity. The initial provision that gave a permission to indigenous peoples to preferential use lands for fishing without competition was recognized invalid (Article 39 FZ-166, 2004). Now fishing grounds now belong to people or business who won the quotas to pursue commercial activities (Mamontova, 2012).

In fact, since 2008 all indigenous territories for hunting or fishing have to be distributed through auctions only and there are no exceptions for the indigenous communities inhabiting those territories. Indigenous peoples are obliged to compete in commercial tenders for hunting and fishing grounds with usually more competitive private businesses who lease these lands for long-term tenure (up to forty-nine years). As a result, traditional fishing, reindeer herding and hunting grounds can now be shared with other users and many indigenous communities lost their traditional lands since that time. The above-mentioned amendments have created grounds for endless conflicts and lawsuits where indigenous peoples have to defend their right to pursue traditional activities on their lands. In

realities where economic intensives outweighs the importance of indigenous interests, indigenous rights have been entirely ignored. By clearing a way for businesses opportunities, these provisions substantially endanger indigenous access to their sources of subsistence, food, and income, and have been identified as one of the principal obstacles preventing indigenous peoples from enjoying their rights. Needless to say, requiring indigenous peoples to purchase or rent their own ancestral lands clearly violates their most fundamental right to self-determination.

All in all, the period from the 2000s onwards has been referred to as “legal stagnation for indigenous rights” in Russia (Kryazhkov, 2012, p.29; Miggelbrink, Habeck and Koch, 2016). Major organs dealing directly with indigenous peoples in Russia have been liquidated as well. During the 1990s, responsibility for indigenous minority policy shifted rapidly between different State Committees and Ministries, leaving indigenous policy field institutionally “homeless” in the period 2000–2004. In 2001, the Ministry of Federal Affairs, National and Migration Policy was disbanded. In 2004, indigenous policy was handed to the Regional Development Ministry, which was responsible for elaboration of state policy on indigenous peoples and normative relations of socioeconomic development of indigenous groups in regions with indigenous population and also managed ethnic interrelations that for security reasons were much higher on the political agenda (Chyebotaryev et al., 2015). RAIPON and this ministry established relatively good working relations. In 2014, however, the Ministry was dissolved, its functions

were distributed between different Ministries (Berg-Nordlie, 2015) while indigenous policy was transferred to the Ministry of Culture. As it was stipulated by indigenous peoples, this change placed limitations on indigenous affairs, that were now framed within constraints of sponsorship for “singing and dancing”, “whereas rights, land and development would be off the table” (IWGIA, 2014a). Martin (2011, p.13) described this approach as a strategy of depoliticizing ethnicity “*through the aggressive promotion of symbolic markers of national identity: folklore, museums, dress, food, costumes.*” While specific programs are actively supported by both local and central governments, the measures are limited to cultural events without any rights granted. In other words, indigenous customs and traditions are treated as valuable, yet, they are not identified as sources of rights. Under those circumstances, permitted only to celebrate limited markers of identity, indigenous peoples in Russia have to “incarcerate themselves in a certain “traditional” lifestyle” (Donahoe, 2011, p.413). As such, the Russian state came to promote exclusionary categories of its ethnic diversity to narrowly frame indigenous rights by focusing on state support on traditional cultures while taking the focus away from more substantive discussions regarding the reclamation of indigenous territories, livelihoods, natural resources, and self-government (Corntassel, 2008). In this context, one can observe an enduring continuity of highly restrictive indigenous policy that is limited to cultural rights while indigenous demands for special representation and political rights have little room for maneuver – the suppressive strategy that was employed by the

Soviet state and adopted by its successor (Etkind, 2014; Nikolaeva, 2017).⁸ Legal stagnation created an organizational void and institutional capture of indigenous agency incapable of developing self-defense mechanisms. As of today, on the federal level, indigenous policy remains poorly institutionalized. Indigenous issues lost the ministerial level, and Federal Agency for Ethnic Affairs is responsible for all indigenous issues at the national level.

Due to the lack of normative and legal mechanisms that provide for indigenous rights’ realization, the existing system of Russian domestic legal regulation is full of gaps, inconsistencies and contradictions and has yet to be redeveloped according to current international standards. Legislative decrees and presidential edicts are often left ignored by most regional jurisdictions. In other cases, authorities implement federal laws in a very selective way, especially with respect to natural resources and lands issues. In particular, even at times when indigenous peoples were seemingly backed up by already modest, yet existing, legislation, the state moved the finish line by withdrawing and changing the few laws designed for indigenous protection. Existing norms exist in isolation from each other and, often, fragmentary and sparse on both federal and regional levels. All in all, as Kryazhkov (2012, p.35) stated, “Russian

⁸ Certain scholars argue that the demise of USSR has not led to the end of a political system that employed it (Inozemtsev, 2017). In fact, some researchers came to the conclusion that substituting one empire with another, Russian Federation found itself “between the dead empire and the newly emergent one”: “a dynastic empire fell, a socialist one followed, and a third is now consolidating its institutions along familiar trajectories” (Spivak et al., 2005, p.830).

legislation concerning indigenous peoples could be characterized as unstable, contradictory, often imitational, only initially developed, and not enough adjusted with international law.”

Summary Assessment

According to numerous scholars, recognition of land rights is prerequisite for the effective implementation of indigenous rights. Crucially, land is an integral part of indigenous peoples' self-determination which entails not only rights of autonomy, self-governance and political participation, but also rights to lands and resources and numerous economic, social and cultural rights.

Without land rights and rights over natural resources, the right of self-determination and other rights would be meaningless or merely become “paper” rights as happened in the case of Russia (Corntassel, 2008, p.108). Clear tenure helps to ensure and secure property rights, as well as the right to access natural resources. Land rights are also a basis for claiming benefits. Clear tenure facilitates their allocation and lowers the potential for conflicts over benefits linked to resources. Unclear or insecure tenure in turn has long been known as a factor that impedes proper natural resource management, whereas the conflicts over land are recognized as a barrier to indigenous empowerment.

While the Constitution of the Russian Federation allows for varied forms of land and natural resources ownership (private, state, municipal and otherwise), most of the land and subsoil resources in Russia remain under the state control.⁹ Importantly, there is no the same sort of legally binding contractual evidence

supporting indigenous peoples' rights to land that there is in the Canadian and US contexts. There were never any treaties signed, and the question of native title to land “is not even on the table” (Eckert et al., 2012, p.45). In other words, whereas indigenous peoples are afforded rights to use the land and its resources, title ownership remains with the state. At most, indigenous peoples participate in guarding the territories, they may use their lands, but they are not allowed to be in full control of the territory.

Federal laws do not grant any special rights that let indigenous peoples participate in the decision-making process concerning the lands and resources. Similarly, there is no regulated system ensuring cooperation, agreements, consultations with indigenous peoples on decisions affecting them and other forms of indigenous participation are not legally secured (Anaya, 2010).

TTNUs served as a guarantee for the future solid self-development of indigenous territories (Turaev, 1998). The original idea behind their creation was that these lands would be mostly off-limits to industrial development (Evengard, Larsen and Paasche, 2015). These lands were meant to be managed, or at a minimum co-managed, by indigenous communities. Importantly, TTNU and obshchinas were created not only to fulfill economic rights of indigenous

⁹ 92% of Russian land is publicly owned, either at federal, regional or municipal level (the rest is held by legal entities and individuals) (OECD, 2015). Agricultural, forest, pasture and other land parcels utilized by private entities are primarily leased from the government.

groups by giving them possibility to ensure their traditional economic activities. Their creation reflected the existing link of indigenous culture and the traditional economy; as such, allocation of lands to indigenous groups was crucial to preservation of their unique traditions. In this regard, the TTNU was seen as an “indivisible foundation” of indigenous community aimed at preservation of environment in which that community has been formed. In the same vein, established obshchinas were seen as a sole subject of use (ownership) in TTNU management as an institution of economic autonomy and environmental management (Turaev, 1998). In practice, however, obshchinas have been formalized not as decision-making or land-owning bodies but something more akin to civil society formations instead of indigenous self-governing bodies (Øverland and Blakkisrud, 2006; Berg-Nordlie, 2015).

Neither the creation of TTNU, nor obshchinas was supported by a set of measures for the development of the traditional economy, and mechanisms for the socio-economic development of territories. As a result, the formation of the TTNU and obshchinas are seen mainly as a political action, turning out to be merely products of the era of the democratic “romanticism” of the 1990s.

Some regional regulations provide considerably more opportunities for indigenous participation. However, because of jurisdictional uncertainty and weak regional power vis-à-vis the federal government, the federal government usually overrides regional law in areas of shared

jurisdiction – land use, natural resources, and indigenous peoples (Newman, Biddulph and Binnion, 2014). Thus, insufficient regulatory potential, lack of mechanisms to implement the declared rights, jurisdictional vagueness and non-concreteness, and authoritative federal power represent the biggest obstacles for indigenous communities seeking adequate protection (Anaya, 2010; Newman et al., 2014; Gladun and Ivanova, 2017). Exemptions to legal norms can be seen in companies’ ignorance of obligations to assess possible negative impacts of projects on the traditional way of life of indigenous peoples or the permission to define, downsize and resize TTNU. Often, these exemptions are claimed to act upon federal approval.

By looking at the legislative system and existing institutions dealing with indigenous issues in the country, the major role of law in indigenous disempowerment becomes apparent. As a result, fragmented governmental systems, instead of providing an opportunity for responsive change, become an instrument for control (Cunneen, 2011).

Skyrocketed demand for natural resources has enabled a rapid advancement of the so-called “resource colonialism” defined as the rhetoric of development that benefits the extractive communities and “understood as economically driven discourses, programs, and policies promoting extractive activity” (Gritsenko, 2016). In this context, indigenous resource-rich lands have become one of the main platforms and the backbone of big business in Russia. In realities where industrial groups and interests

represent a majority in legislative bodies of state power, indigenous empowerment is doomed to failure. And as long as the interests of the indigenous peoples clash with the interests of big business, the government will side with business (Heininen, Sergunin and Yarovoy, 2014). This phenomenon has been referred to as “resource curse” or “ecology of the pipe”, that uses “material, financial, and human resources with the purpose of strengthening the ruling elite, because the pipes demand an increasing number of managers, engineers, construction workers, and most of all guards, that are loyal to the regime” (Vladimirova, 2017, p. 301). By conveniently converting “resource curse” into “resource blessing,” Kremlin actively promotes and pushes forward big extractive projects to cover growing social inequalities, highly unequal distribution of wealth, low life standards and economic malaise (Charron, 2017). Russia’s dependence on the resource-rich regions with more than 55% of federal revenues derived from the use and export of natural materials, has resulted in the curious situation with Russian central regions feeding off a periphery that itself remains largely underdeveloped. On its steady way of becoming the largest oil and gas producer and increasing its production capacity of oil and gas pipelines (located primarily on indigenous lands) coupled with a powerful lobby of extractive industry and business representation in political structures, Russia’s authorities have been largely unsuccessful in protecting indigenous rights (Nikolaeva, 2017).

It has been frequently observed that indigenous peoples have captured the world’s

attention and conscience (Watt-Cloutier, 2019). How does Russia’s approach to its indigenous peoples fit in the four decades of what was labeled “the most progressive stage in the history of development of indigenous peoples’ rights and freedoms”? Unfortunately, Russia’s declarative laws do not translate into progress in its domestic indigenous policy. State and industrial actors do not hesitate to use a variety of instruments to disempower indigenous communities legally, economically and politically. Indigenous peoples are left without powerful counterbalance to dominant players, trapped between misplaced responsibilities of thirsty-for-profit companies and unactionable authorities (Petrov and Francis, 2015). With more companies circling closer and closer around indigenous territories and becoming richer, and government siding with business, indigenous peoples have become outcast on their own lands.

Indigenous empowerment is not a matter-of-course, but political achievement. Perpetual crisis that indigenous peoples found themselves trapped in, does not refer to the crisis of indigenous rights, struggles and determination per se, but points to a perpetual failure of policy reforms. A brief revival of rights-based conversations in the 1990s turned out to be a mere temporary detour.

Current Russia demonstrates the regression of indigenous peoples’ rights; promising laws sooner or later were made ineffective, changed or withdrawn. Already modest and fragile progress made after the USSR demise has eroded away. Twenty-eight years after the disintegration of the Soviet Union, it is evident that the Russian Federation is not in a search for a more inclusive

indigenous policy, and what is more, it is neither an aspiration nor a political ideal of the federal government.

What is the future fate of Russia's indigenous peoples? Some scholars claim that what is going to happen next is in the hands of indigenous peoples themselves, and depends on the path they choose. Is it true? In realities created by the Russian state that not only turns a blind eye to indigenous peoples, but nullifies any progress, indigenous groups are not in the position to lead decision-making processes in the country. Like no other peoples, indigenous communities depended

“for their security and prosperity on the skills and good intentions of those who rule them” (Scott, 2009, p.324). The current indigenous policy seemingly aimed at the conservation of indigenous cultures, ignores the actual challenge indigenous peoples face - survival at a sheer physical level- and is doomed to failure. Even if communities have the greatest, and most direct, stakes in preserving their cultures, in Russian realities, they are often run into the kind of ill-will hidden in state strategies which claim to be to the benefit of indigenous peoples. As of today, Russia's approach to indigenous accommodation is characterized by the unrivaled subtlety, unmatched adroitness, or even malice of the state policies.

REFERENCES

- [1] Alferova, L. (2006). Legal Provisions for Safeguarding the Rights of Indigenous Minorities of the North in the Khanty-Mansiisk Autonomous Region (Yugra), in Relation to Protection of Their Ancestral Lands, Traditional Ways of Life, and Livelihood Activities. *Sibirica*, 5(2).
- [2] Anaya, J. (2010). Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. UN General Assembly Report No. A/HRC/15/37. United Nations: Geneva, Switzerland
- [3] Berg-Nordlie, M. (2015). Two Centuries of Russian Sámi Policy: Arrangements for Autonomy and Participation Seen in Light of Imperial, Soviet and Federal Indigenous Minority Policy 1822–2014. *Acta Borealia*, [online] 32(1), pp.40-67. Available at: https://munin.uit.no/bitstream/handle/10037/11405/paper_IV.pdf?sequence=10&isAllowed=y [Accessed 4 Mar. 2019].
- [4] CESCR. (2017). Sixth periodic report of the Russian Federation on the implementation of the provisions of the International Covenant on Economic, Social and Cultural Rights (E/C.12/RUS/6, 16 September 2016). In: CESCR 62nd Session. [online] CESCR. Available at: https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28706_E.pdf [Accessed 11 May 2019].
- [5] Colchester, M. (n.d.). Indigenous peoples and communal tenures in Asia. [online] Fao.org. Available at: <http://www.fao.org/3/y5407t/y5407t07.htm> [Accessed 28 Apr. 2019].

- [6] Corntassel, J. (2008). Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse. *Alternatives: Global, Local, Political*, 33(1), pp.105-132.
- [7] Cunneen, C. (2011). *Postcolonial Perspectives for Criminology*. In: M. Bosworth and C. Hoyle, ed., *What is Criminology?* 1st ed. Oxford: Oxford University Press.
- [8] Donahoe, B. (2011). On the creation of indigenous subjects in the Russian Federation. *Citizenship Studies*, 15(3-4), 397-417. doi: 10.1080/13621025.2011.564803
- [9] Downing, T., Moles, J., McIntosh, I. and Garcia-Downing, C. (2002). Indigenous Peoples and Mining Encounters: Strategies and Tactics. No. 57. [online] International Institute for Environment and Development, pp.1-41. Available at: <https://pubs.iied.org/pdfs/G00548.pdf> [Accessed 28 Apr. 2019].
- [10] Eckert, J., Donahoe, B., Strümpell, C. and Biner, Z. (2012). *Law Against the State: Ethnographic Forays Into Law's Transformations*. 1st ed. Cambridge: Cambridge University Press.
- [11] Etkind, A. (2014). Post-Soviet Russia: The Land of the Oil Curse, Pussy Riot, and Magical Historicism. *Boundary 2*, 41(1), pp.153-170.
- [12] Evengard, B., Nymand Larsen, J. and Paasche, Ø. (2015). *The new Arctic*. Cham, Switzerland: Springer.
- [13] Fedina, M. (2017). *Oil spills: A public organizations and indigenous peoples' perspective. The cases of the Komi republic and Nenets Autonomous okrug (Russia)*. MA. University of Eastern Finland.
- [14] Gilberthorpe, E. and Hilson, G. (2014). *Natural Resource Extraction and Indigenous Livelihoods: Development Challenges in an Era of Globalization*. Surrey: Ashgate.
- [15] Gritsenko, D. (2019). Arctic future: Sustainable colonialism? | The Arctic Institute. [online] The Arctic Institute. Available at: <https://www.thearcticinstitute.org/arctic-future-sustainable-colonialism/> [Accessed 28 Apr. 2019].
- [16] Heininen, L., Sergunin, A. and Yarovoy, G. (2014). *Russian Strategies in the Arctic: Avoiding a New Cold War*. [online] Moscow: Valdai Discussion Club. Available at: https://www.uarctic.org/media/857300/arctic_eng.pdf [Accessed 28 Apr. 2019].
- [17] IWGIA (2014a). *Russia: Ministry in charge of indigenous affairs to be dissolved*. [online] Available at: <https://www.iwgia.org/en/russia/2120-russia-ministry-in-charge-of-indigenous-affairs-to> [Accessed 19 Apr. 2019].

- [18] IWGIA (2014b). Russia: Sakhalin authorities and Exxon playing Divide and Conquer. [online] Available at: <https://www.iwgia.org/en/russia/2047-russia-sakhalin-authorities- and-exxon-playing-divi> [Accessed 1 May 2019].
- [19] IWGIA, INFOE, Myski local civic organisation “Revival of Kazas and the Shor people”, Greenpeace Russia. (2017). Discrimination against indigenous minority peoples of the North, Siberia and the Far East of the Russian Federation. In: CERD 93rd Session. [online] Geneva: CERD. Available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_NGO_RUS_28209_E.pdf [Accessed 28 Apr. 2019].
- [20] Kryazhkov, V. (2012). Russian Legislation about Northern Peoples and Law Enforcement Practice: Current Situation and Perspective. *State and Law Magazine*, (5)
- [21] Kryazhkov, V. (2013). Development of Russian legislation on Northern Indigenous Peoples. *Arctic Review on Law and Politics*, [online] 4(2), pp.140–155. Available at: <http://site.uit.no/arcticreview/files/2014/10/Development-of-Russian-legislation-on-Northern-Indigenous-Peoples.pdf> [Accessed 28 Apr. 2019].
- [22] Kuzio, T. (2002). History, Memory and Nation Building in the Post-Soviet Colonial Space. *Nationalities Papers*, 30(2), pp.241-264.
- [23] Lerner, M., A., Koshurina, V., Chistanova, O. and Wheeler, A. (2017). Mitigating the Risks of Resource Extraction for Industrial Actors and Northern Indigenous Peoples. *Arctic Review on Law and Politics*, 8(0).
- [24] Lerner, M., A., Koshurina, V., Chistanova, O. and Wheeler, A. (2017). Mitigating the Risks of Resource Extraction for Industrial Actors and Northern Indigenous Peoples. *Arctic Review on Law and Politics*, 8(0).
- [25] Miggelbrink, J., Habeck, J. and Koch, P. (2016). *Nomadic and Indigenous Spaces*. Georgetown: Routledge.
- [26] Miller, B. G. (2003). *Invisible Indigenes: The Politics of Nonrecognition*. Lincoln and London: University of Nebraska Press.
- [27] Moore, D. (2001). Is the Post- in Postcolonial the Post- in Post-Soviet? Toward a Global Postcolonial Critique. *Globalizing Literary Studies*, [online] 116(1), pp.111–128. Available at: <http://monumenttotransformation.org/atlas-of-transformation/html/p/postcolonial-post-soviet/is-the-post-in-postcolonial-the-post-in-post-soviet-toward-a-global-postcolonial-critique-david-chioni-moore.html> [Accessed 2 Jun. 2019].

- [28] Morgan, R. (2011). *Non-State Actors in International Law, Politics and Governance Series: Transforming Law and Institution: Indigenous Peoples, the United Nations and Human Rights*. 1st ed. Farnham: Ashgate.
- [29] Murashko, O. and Rohr, J. (2017). Economic, social and cultural rights of indigenous minority peoples of the North, Siberia and the Far East of the Russian Federation. In: CESCR 60th Session, Pre-Sessional Working Group. [online] CESCR. Available at: https://www.ecoi.net/en/file/local/1406831/1930_1487853141_int-cescr-ico-rus-26470-e.pdf [Accessed 28 Apr. 2019].
- [30] Newman, D., Biddulph, M. and Binnion, L. (2014). Arctic Energy Development and Best practices on Consultation with Indigenous Peoples. *Boston University International Journal*, [online] 32(2), pp.101-160. Available at: <https://www.bu.edu/ilj/files/2014/06/Newman-Arctic-Energy-Development.pdf> [Accessed 29 Apr. 2019].
- [31] Nikolaeva, S. (2017). Post-soviet melancholia and impossibility of indigenous politics in the Russian North. *UMASA Journal*, [online] 34, pp.116-125. Available at: http://www.umasa.org/uploads/9/0/0/7/9007267/2017_journal_final.pdf [Accessed 28 Apr. 2019].
- [32] Overland, I. (2005) Poverty and international aid among Russia's indigenous peoples. In: Robyn Eversole, John-Andrew McNeish and Alberto D. Cimadamore (eds.) (2005) *Indigenous peoples and poverty: an international perspective*, Zed Books, London, New York, pp. 108-125.
- [33] Petrov, A. and Francis, E. (2015). Resources and Sustainable Development in the Arctic: Can, Should and Will Resource-Based Development Be Sustainable? In: NSF Arctic- FROST Annual Network Meeting. [online] St. Petersburg, Arctic-FROST. Available at: https://arctic-frost.uni.edu/wp-content/uploads/2017/04/ReportFROST_2015.pdf [Accessed 28 Apr. 2019].
- [34] Rohr, J. (2014). *Indigenous Peoples in the Russian Federation*. IWGIA Report 18. [online] Copenhagen: IWGIA. Available at: https://www.iwgia.org/images/publications//0695_HumanRights_report_18_Russia.pdf [Accessed 28 Apr. 2019].
- [35] Scott, J. (2009). *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*. 1st ed. New Haven: Yale University Press.
- [36] Semenova, T. (2007). Russian Indigenous Peoples of the North as Political Actors. [online] Arctic Centre. Available at: <https://www.arcticcentre.org/loader.aspx?id=e35b5283-1275-4c0b-beef-d2654ce3cfff> [Accessed 29 Apr. 2019].

- [37] Stamatopoulou, E. (2017). *Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace*. 1st ed. New York: Columbia University.
- [38] The International Bank for Reconstruction and Development/ The World Bank (2014). *Indigenous Peoples of Russia. Country Profile*. [online] Washington: The International Bank for Reconstruction and Development/ The World Bank. Available at: <http://documents.worldbank.org/curated/en/537061468059052611/pdf/891510WPOBox38ogualoflipbookOGBoWEB.pdf> [Accessed 28 Apr. 2019].
- [39] Turaev, V. (2017). Traditional fishery as a conflict of interest among aboriginal communities, business and government. *Russian and Pacific Rim*, [online] 2, pp.178-194. Available at: http://www.riatr.ru/2017/2/Russia_and_ATR_2017-2_177-194.pdf [Accessed 28 Apr. 2019].
- [40] Turaev, V. (2018). Self-determination and Self-government of Indigenous of Few Peoples of the Far East: from Hope to Reality. *Bulletin of the Irkutsk State University. Geoarchaeology, Ethnology, and Anthropology Series*, 23, pp.164-185.
- [41] Vakhtin, N. (1992). *Native Peoples of the Russian Far North*. [online] London: Minority Rights Group. Available at: <https://files.eric.ed.gov/fulltext/ED354117.pdf> [Accessed 2 Jun. 2019].
- [42] Vinding, D. (2002). *Indigenous World. 2001-2002 Series*. Copenhagen: International Work Group for Indigenous Affairs (IWGIA).
- [43] Vladimirova, V. (2017). Politics of the green economy in Russia's European North. *Journal of Political Ecology*, 24(1), pp. 296-323.
- [44] Watt-Cloutier, S. (2019). Testimony of Sheila Watt-Cloutier. In: *Inuit Circumpolar Conference* [online] Inuit Circumpolar Conference. Available at: <https://www.ciel.org/Publications/McCainHearing-Speech15Sept04.pdf> [Accessed 29 Apr. 2019].
- [45] Zaikov, K., Tamitskiy, A. and Zadorin, M. (2017). Legal and political framework of the federal and regional legislation on national ethnic policy in the Russian Arctic. *The Polar Journal*, 7(1), pp.125-142.

This Article may be cited as:

Suliandziga, L. and Sulyandziga, R. (2020) Russian Federation: Indigenous Peoples and Land Rights. *Fourth World Journal*. Vol. 20, N1. pp. 1-19

ABOUT THE AUTHORS



Liubov Suliandziga

Liubov Suliandziga, prior to completing her Ph.D. at Kyushu University, Japan, graduated from Moscow State Linguistic University as a specialist in International Relations and Social-political Studies. She holds two Master Degrees in European Studies from Leuven University, Belgium and Comparative Studies and Administration in Asia from Kyushu University, Japan. She worked as a Research Associate at the Department of Integrated Science for Global Society, Kyushu University. Liubov is currently a member of the Young Arctic leaders in Research and Policy program supported by the Arctic-COAST NSF research coordination network, USA. Her current research interests include indigenous peoples' history and empowerment, indigenous rights and impacts of the extractive industries on indigenous peoples. Liubov has published articles in *Polar Science Journal* and several edited collections dedicated to issues of indigenous rights in Russia's Arctic.



Rodion Sulyandziga

Rodion Sulyandziga is an Udege ("Forest People"), one of the small-numbered indigenous peoples from the Eastern Siberia community of the Russian Federation. Their total population is 1587. Rodion Sulyandziga is a director of the Center for Support of indigenous peoples of the North, indigenous-led organization aiming to protect the rights of Northern peoples of the Russian Federation. He is an acting member of the United Nations Expert Mechanism on the rights of indigenous peoples. His main research and study are focusing on self-determination and self-governance issues, climate change impacts and sustainable development of Northern communities.