

**Shadow report:**  
**indigenous minority peoples of the North, Siberia and the Far East of**  
**the Russian Federation**

**FCNM 4<sup>th</sup> Review Cycle**

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# Excutive Summary

- The State report does not provide disaggregated data on the indigenous minority peoples of the North, no systematic data collection takes place, that would allow to discern socio-economic trends affecting the indigenous peoples beyond the development of their total population
- During the reporting period, many indigenous organisations have been labelled foreign agents and eventually closed down. Others have lost their independence and are no longer able to intervene on behalf of indigenous communities involved in local conflicts.
- The reporting period has seen a surge in criminalisation and harassment against indigenous activists, which ranged from the seizure of passports and threats to imprisonment. Some activists have fled the country to avoid harassment. Overall, surveillance, pressure and harassment of indigenous activists have risen to unprecedented levels.
- The federal government has failed to create any federal-level Territories of Traditional Nature Use (TTNU) or to confirm any of the over 500 TTNU created by local or regional administrations. Meanwhile, several amendments have further weakened the protective function of TTNU and courts and regional governments in various regions have taken steps reducing TTNU sizes and taking areas which are key to indigenous peoples' subsistence activities and culture out of TTNU for the benefit of extractive industries and other third parties.
- Large scale third-party operations on land customarily occupied or used by indigenous peoples such as the Yamal LNG project evidently have been approved without good-faith consultation with the affected indigenous land-users and without their free and informed consent.
- Federal and regional policies and administrative practices are discriminatory in that they impose strong restrictions on indigenous fishers and indigenous peoples' cooperatives (obshchinas), while the same restrictions do not apply to commercial or recreational fishing.

# Introduction

1. This submission focuses on the situation of the 41 indigenous minority<sup>1</sup> peoples of the North, Siberia and the Far East, who number approximately 260,000 individuals. They inhabit around two-thirds of Russia's territory, from the Kola peninsula in the European North to the Chukchi peninsula on the Bering Strait. They are politically, economically and socially highly marginalised. About two thirds live in rural remote communities and remain dependent for their food supply and income on their traditional subsistence activities, such as fishing, hunting, gathering and nomadic reindeer herding.
2. At the same time, most of the resources, such as timber, oil, gas, gold, diamonds and coal, which account for most of the country's export revenues, are extracted from indigenous peoples' territories, often with a catastrophic impact on the local communities. Due to their marginalisation, it is particularly difficult for indigenous peoples to address this situation and defend their rights.
3. Unfortunately, as the following observations demonstrate, Russia has largely failed to take steps necessary to significantly improve the human rights situation during the reporting period. It has largely ignored previous recommendations from the previous review cycle as well as from CERD, CESCR, CRC and HRC, the UPR and the UN Special Rapporteur on the rights of indigenous peoples. The current report from the Russian Federation contains almost no disaggregated data on the state of indigenous communities. The indigenous peoples' own capacity to track and document their situation has been severely affected by repressive measures taken against civil society during the reporting period. At the same time, new vast extractive projects such as the multi-billion Yamal LNG projects have been launched, directly affecting the very means of existence of indigenous communities, in an environment where civic oversight is virtually impossible and where good-faith consultations and FPIC processes are very unlikely to have taken place.

## Lack of disaggregated data

4. In the 3<sup>rd</sup> review cycle, the recommendation was made to Russia to “*intensify efforts, including financial, to implement the objectives contained in the Concept Paper on the Sustainable Development of Numerically Small Indigenous Peoples of the North, Siberia and Far East, in close co-operation with the persons concerned*” One of the key stipulations of the action plan for the realisation of the Concept paper on the Sustainable Development was the creation of a “system of indicators measuring life quality of indigenous small-numbered peoples” and its integration into the state statistics system ; however, while the then Ministry of Regional Development commissioned a study for the development of such indicators, no further action was taken, leaving this item of the action plan uncompleted. In its report published in late 2011, the Federal Accounts Chamber (*schetnaya palata*) identifies this failure as one of the root causes

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

of the limited effect of the socio-economic measures taken to support indigenous peoples.<sup>2</sup> While the ministry has meanwhile been dissolved, systematic data collection has still not been instituted, so that there is no official data on e.g average income, child mortality or life expectancy of the indigenous peoples. Consequently, the report fails to provide disaggregated data on the socio-economic state of the indigenous peoples.

5. According to limited information which is available from various sources and which is patchy, non-systematic and not up-to-date, average life expectancy of indigenous minority peoples is 10-15 years below the average, their levels of child mortality, suicide, poverty-related diseases such as tuberculosis are significantly above average. According to 2011 figures, infectious diseases such as tuberculosis, a typical indicator of extreme poverty, caused 60 deaths per 100,000, which is almost three times the national average of 23 per 100,000.<sup>3</sup> Sources for such figures are the reports by regional indigenous rights ombudsmen, which exist in Kamchatka and Krasnoyarsk territories and Sakha republic (Yakutia), however, no systematic data collection is taking place at federal level.

**Suggested recommendation: The Russian Federation should collect and provide disaggregated data for the indigenous minority peoples, as stipulated in the action plan implementing the Outline for the sustainable development of the indigenous minority peoples of the North for 2009-2011<sup>4</sup>**

## Foreign agents

6. Due to the revised law on non-profit organisations, many indigenous organisations have been labelled as “foreign agents” during the reporting period. This has stifled indigenous activism and contravened the recommendation to “*take further steps to ensure that representatives of indigenous peoples are closely consulted on all issues of relevance to them*”. While the original law stipulated that organisations have to register themselves as foreign agents, the current practice is, that the Ministry of Justice includes them in the register on its own initiative. During the reporting period, several indigenous organizations have been included into or threatened to be included in the register of foreign agents, by the Ministry of Justice, which led them to either dissolve themselves or severely downscale their level of activity. This included entirely apolitical organizations such as the Chukotka Association of Traditional Hunters (ChAZTO),<sup>5</sup> the Nenets

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2 Federal Accounts Chamber of the Russian Federation: *Otchet o rezultatakh kontrolnogo meropriyatiya “Proverka ispolzovaniia budzhetnykh sredstv, napravlennykh na podderzhku ekonomicheskogo i sotsialnogo razvitiya korennykh malochislennykh narodov Severa, Sibiri i Dalnego Vostoka Rossiiskoi Federatsii za 2009-2010 gody”*, pp 82-83 [http://www.ach.gov.ru/userfiles/bulletins/2012-07-05-buleten\\_doc\\_files-fl-2246.pdf](http://www.ach.gov.ru/userfiles/bulletins/2012-07-05-buleten_doc_files-fl-2246.pdf)

3 United Nations in the Russian Federation, loc. cit. .

4 The action plan for the outline (in the current periodic report translated as “roadmap”) stipulates that a system of indicators measuring life quality of indigenous small-numbered peoples should be developed and incorporated into the state statistics system; however, while the Ministry of Regional Development commissioned a study for the development of such indicators, no further action was taken, leaving this item of the action plan uncompleted. In its report published in late 2011, the Federal Accounts Chamber (schetnaya palata) identifies this failure as one of the root causes of the limited effect that the socio-economic measures taken by the Ministry of Regional Development to support indigenous peoples are having. Federal Accounts Chamber of the Russian Federation: *Otchet o rezultatakh kontrolnogo meropriyatiya “Proverka ispolzovaniia budzhetnykh sredstv, napravlennykh na podderzhku ekonomicheskogo i sotsialnogo razvitiya korennykh malochislennykh narodov Severa, Sibiri i Dalnego Vostoka Rossiiskoi Federatsii za 2009-2010 gody”*, pp 82-83 [http://www.ach.gov.ru/userfiles/bulletins/2012-07-05-buleten\\_doc\\_files-fl-2246.pdf](http://www.ach.gov.ru/userfiles/bulletins/2012-07-05-buleten_doc_files-fl-2246.pdf)

5 Russia: Indigenous hunters association pressured to register as “foreign agents”, 11 December 2014 [http://www.iwgia.org/news/search-news?news\\_id=1139](http://www.iwgia.org/news/search-news?news_id=1139), last accessed 27 June 2017

information centre Yasavey-Manzara<sup>6</sup> and the Batani development fund for indigenous peoples.<sup>7</sup> The Centre for the Support of Indigenous Peoples of the North (CSIPN) was not only declared foreign agent but also fined the amount of 300,000 roubles. Appeals against the fine have been rejected by court.

7. Other organizations have severely downscaled their level of activity in the hope of being spared inclusion into the register of foreign agents. All in all, civic engagement of indigenous peoples has been stifled during the reporting period, leading to constructive dialogue between authorities and indigenous peoples being discontinued in many cases and indigenous peoples' participation in decision-making being impeded.
8. Project work using foreign grants or involving foreign partners, regardless of its contents and goals, is now perceived as too risky to the degree of being toxic, so that joint projects of indigenous peoples in Russia and foreign partners have become a rare exception. As there is no exclusive definition as to what constitutes "political" activity, the experience and expectation is that the presence of foreign funding alone is sufficient to warrant inclusion into the register of foreign agents, regardless of the designation of the funds.
9. The State party has also, according to reports, massively interfered with the Russian Association of Indigenous Peoples of the North (RAIPON), where a new government-obedient president was installed in March 2013, in what observers have described as a severely flawed election process and effectively a coup, as a different candidate had already won the absolute majority in two preceding voting rounds.<sup>8</sup> After this, the federal government has interfered with regional associations in regions such as Murmansk, Primorye, Kemerovo in order to ensure full state-control of indigenous peoples throughout the country.
10. During the reporting period, some indigenous activists have faced harassment and criminalisation in ways which were unprecedented in post-Soviet Russia. This includes a number of indigenous activists, who in various ways were prevented from exiting the country for the 2014 World Conference on Indigenous Peoples (WCIP) by having their passports stripped, stolen or invalidated. In some incidents, border protection officials were involved, while in others, unknown attackers, however all incidents occurred in close succession.<sup>9</sup>
11. During the reporting period, criminalisation of indigenous activists included: the sentencing of Sergey Nikiforov, head of the Ivanovskoye Ewenki settlement in Amur oblast to five years in penal colony in 2015. Nikiforov was the leader of resistance of its community against industrial gold mining by the UK based company Petropavlovsk and has been recognised a prisoner of conscience by Memorial and Amnesty International.<sup>10</sup> His health has reportedly

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6 Trude Pettersen: First indigenous foreign agents in Barents, The Barents Observer, 24 September 2015, <http://barentsobserver.com/en/society/2015/09/first-indigenous-foreign-agents-barents-24-09>, last accessed 27 June 2017

7 Trude Pettersen: Indigenous peoples' organization declared as foreign agents, The Barents Observer, 28 January 2016, <https://thebarentsobserver.com/en/society/2016/01/indigenous-peoples-organization-fined-law-foreign-agents>, last accessed 27 June 2017

8 Thomas Nilsen: Moscow staged RAIPON election thriller, The Barents Observer, April 03, 2013, <http://barentsobserver.com/en/politics/2013/04/moscow-staged-raipon-election-thriller-03-04>, last accessed 27 June 2017

9 Communications report of Special Procedures A/HCR/28/85, 19 February 2015

10 Russia: Evenk community leader opposing UK based gold mining company sentenced to 5 years, October 16 2015, [http://www.iwgia.org/news/search-news?news\\_id=1271](http://www.iwgia.org/news/search-news?news_id=1271)

deteriorated in detention. Another case that gained prominence in the reporting period was that of Sergey Kechimov, a Khanty reindeer herder who is regarded the keeper of the sacred lake Imlor and who has been charged with attempted murder after defending himself against stray dogs introduced by workers of the oil company Surgutneftegas.<sup>11</sup> While Mr Kechimov at the time of writing has not been sentenced to prison time, court proceeding are still not closed.

12. During the reporting period, other leading indigenous activists have left the country and sought asylum in Europe or North America to avoid detention.<sup>12</sup> Overall, the level of surveillance by intelligence service that indigenous peoples are subjected to is exceedingly high, so that e.g. activists report that when returning from trips abroad, they are routinely summoned by the services and questioned about the purpose of their trip, about whom they met, what they talked about etc.

**Proposed recommendation:**

**The State party should revoke legislation designating non-profit organisations, including indigenous peoples' organisations that accept foreign funding, as “foreign agents” in order to ensure that indigenous peoples can freely enjoy their right to access financial and technical assistance from States and through international cooperation. (UNDRIP, Art. 39) If the stated law is not revoked, a clear exception should be made for indigenous peoples’ organisations in order to comply with this provision of the UNDRIP**

## **Land Rights / Territories of Traditional Nature Use**

13. The recommendation to “*ensure that the aim of promoting the sustainable development of indigenous peoples is not jeopardised by simultaneous legislative developments that undermine their preferential access to land and natural resources*” has overall not been complied with. On the one hand, important stipulations in federal legislation have not been implemented, on the other hand, a string of legal amendments has undermined land rights and resource use rights legislation.
14. In 2001, the Russian Federation had adopted the Federal law ‘On territories of traditional Nature Use of indigenous minority peoples of the Russian Federation’. According to this law, territories of traditional nature use (TTNU) can be established in places of traditional residence and economic activities of indigenous peoples by decision of the federal authorities, regional or local authorities on the basis of proposals from persons belonging to indigenous peoples and their communities. Since its adoption, federal authorities have failed to establish any TTNUs. The approval of a model TTNU on the Bikin river in Primorye announced in 2008 in Russia’s 19 Periodic Report to CERD was never completed.<sup>13</sup> Local and regional authorities however created

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11 Russia: Guardian of Khanty sacred lake facing prison for defending himself against stray dogs brought in by oil workers

July 15 2015

[http://www.iwgia.org/news/search-news?news\\_id=1232](http://www.iwgia.org/news/search-news?news_id=1232)

12 <http://barentsobserver.com/en/society/2013/08/berezhkov-seeks-political-asylum-norway-16-08>,

Berezhkov seeks political asylum in Norway, August 16, 2013

<http://www.bbc.com/russian/features-40194010> Прочь из России: защитник коренных народов - о бегстве в США, 8 June 2017

13 See CERD/C/RUS/19, Para 52: “In partnership with the Association of Small Indigenous Peoples of the North, Siberia and the Russian Far East, the Russian Academy of Natural Sciences has prepared draft regulations on the “Bikin” model federal area of traditional resource use for small indigenous peoples in Primorsky Territory, which

over 500 TTNUs, none of which was confirmed by the Federal government, as required by the Land code of the Russian Federation.<sup>14</sup> Therefore, these existing TTNUs have no guaranteed legal status and no effective protection against being dissolved or downsized, as it happens frequently. Another problem is, that federal land, which includes all land belonging to the “forest fund”, cannot be included into regional or local TTNU. These federal lands are, however, often precisely those lands which are the basis for indigenous communities’ livelihood.

15. Two acts passed in 2014 significantly weakened the law on TTNU, these being Federal Law 171-FZ dated 23.06.2014<sup>15</sup> and 499-FZ, dated 31.12.2014<sup>16</sup>. Notable changes include the downgrading of TTNU from “Specially Protected Conservation Areas”<sup>17</sup>, which is a term defined in environmental legislation that sets out i.a. the specific participation and consultation rights of the local populations, to “Specially Protected Areas”, a term which is entirely undefined such that these legal safeguards have fallen away.<sup>18</sup>
16. The amendment also changed the rules for the withdrawal of land plots from TTNUs: A clause was excluded from article 12 that said that in case of such withdrawal, the state is obliged to provide equivalent land and natural objects in exchange to indigenous peoples. This followed from changes to article 57 of the Land Code of the Russian Federation, which until the revision has been titled ‘Compensation of losses in case of alienation of plots of land for state or municipal needs, deterioration of land quality, temporary occupation of land plots, restriction of rights of land owners, users of land, tenants and lessees of plots of land’ introduced by the mentioned above Federal Law 499-FZ. The expression ‘Compensation of losses in case of alienation of plots of land for state or municipal needs’ disappeared from the title of article 57 as well from the text, and hence from the entire land legislation. Now, article 57 is called ‘Compensation of damages in case of deterioration of the quality of lands, temporary occupation of land plots, restriction of rights of land owners, users of land, tenants and lessees of plots of land’<sup>19</sup>. Accordingly, the rules for compensation for damages changed. Now land users are left alone when concluding agreements with ‘a person in favour of whom a temporary occupation of land is carried out’.<sup>20</sup>

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will be submitted to the Government for approval.”

14 The land code says: “The boundaries of all TTNU are to be determined by the Government of the Russian Federation” See *Zemel’ny kodeks Rossiiskoi Federatsii*, (Land code of the Russian Federation), 25 October 2001 , Paragraph 97, Item 6: “5. [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_33773/](http://www.consultant.ru/document/cons_doc_LAW_33773/)

15 Federal’nyj zakon ‘O vnesenii izmenenij v Zemel’nyi kodeks Rossiiskoi Federatsii i otdel’nye zakonodatel’nye akty Rossijskoj Federatsii’ ot 23.06.2014 N 171-FZ [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_164516/](http://www.consultant.ru/document/cons_doc_LAW_164516/), last accessed 19 January 2017

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

17 Osobo okhranyayemye prirodnye territorii, OOPT

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

19 Возмещение убытков при ухудшении качества земель, временном занятии земельных участков, ограничении прав собственников земельных участков, землепользователей, землевладельцев и арендаторов земельных участков [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_164774/](http://www.consultant.ru/document/cons_doc_LAW_164774/)

20 See Правительство Российской Федерации: Постановление от 31 Марта 2015 Г. N 299 О Внесении изменений в Постановление Правительства Российской Федерации от 7 Мая 2003 Г. N 262 и признании утратившим силу Постановления Правительства Российской Федерации от 3 апреля 2013 Г. N 294 [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_177498/#utm\\_campaign=nw&utm\\_source=consultant&utm\\_medium=email&utm\\_content=body](http://www.consultant.ru/document/cons_doc_LAW_177498/#utm_campaign=nw&utm_source=consultant&utm_medium=email&utm_content=body)



17. Thus, failing its duty to protect human rights, the state has removed itself from its role in the relationship of indigenous communities with businesses, potentially impacting their territories and means of existence. Yet their operations are made possible by licenses which have been issued by the government. This means that the State-party fails to fulfil its duty to protect human rights, and it diminishes incentives for businesses to respect rights and reduces access to remedies for the potential victims.
18. The changes to the Law on TTNU and the Land Code of the Russian Federation by Federal Law 171-FZ, which entered into force on 1 March 1 2015 revoked Art 31 which had explicitly stated that in places of traditional residence and traditional activities of indigenous peoples, local authorities decide on locations for the placement of objects (that is: infrastructure, extraction facilities etc), based on the results of gatherings or referendums among the indigenous and local communities.<sup>21</sup> This has also contributed to the erosion of the rights of indigenous peoples and their bodies of local self-government to participate in land use monitoring in settlement territories and land used for their traditional economic activity.
19. At the same time, the Government of the Russian Federation continues to issue license for lands in areas inhabited by indigenous peoples to commercial businesses, for industrial development of mineral resources, logging of forests, fishing, hunting areas.
20. As a result of inaction of the government of the Russian Federation with respect to the establishment of TTNUs and the mentioned changes to the Federal law ‘On territories of traditional nature use of indigenous minority peoples of the North, Siberia and the Far East of the Russian Federation’ and in the land law, indigenous peoples in recent years have lost vast areas of their traditional lands and the right of access to traditional natural resources on these lands.

### **Examples**

21. In several cases, the weakened protections of rights to participation in decision-making and to compensation along with the failure of the federal government to confirm any TTNU established by local or regional administrations have enabled businesses to have the protected status for areas they seek to exploit lifted by courts, regardless of their significance for the indigenous communities depending on them.
22. Thus, the court of appeals on 15 January 2015, rejected an appeal by the administration of Oleneksky district of the Republic of Sakha(Yakutia), challenging the legality of the issuing by the regional resources authority Yakutnedra for exploration and extraction of mineral resources in territories of traditional nature use, established by the local authorities in Olenekski Evenkiski district. The court rejected the appeals because the boundaries of the specified TTNU has not been determined by the Federal Government, as is the case with any existing TTNU. In addition, based on the amendments to the Land code of the Russian Federation in 2015 the court concluded that ‘the current legislation does not stipulate a mandatory agreement with the local authorities about the list of subsoil resources offered for exploitation, decisions on holding tenders and auctions for the right to resource exploitation and decisions approving the result of a tender or auction for the right to use subsoil resources’.<sup>22</sup>

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21 Item 3 of art. 31 of the Land code of the Russian Federation prior to entry into force of act 171-FZ

22 Oleneksky district lost in court against the "Yakutnedr" <http://news.ykt.ru/article/38946>. Last accessed. 26.12. 2016

23. Due to the government's failure to confirm existing TTNU, their status is highly dependent on the goodwill of the particular administration and can change at any time. On 30 September 2016, the acting Governor of the Khabarovsk Krai signed a decree, changing the boundaries of the previously formed 13 TTNU, without prior notification to authorized representatives and organizations of indigenous peoples. The decree decreased the area of the TTNU to less than half its prior size. The Khabarovsk Krai administration justified the decision with the so-called Far Eastern hectare programme, under which each citizen who resettles to the far East is entitled to be given one hectare of land for free.<sup>23</sup> In response, indigenous peoples of Khabarovsk declared a mass hunger strike.<sup>24</sup> As it turned out, the administration has used the Far Eastern hectare programme to illegally transfer the territory to a logging company.<sup>25</sup> Following protests, the administration has eventually softened its measures and issued a new Decree, which now reduces the TTP area by only 15 per cent.<sup>26</sup>
24. In October 2016, the administration of the Khanty-Mansi Autonomous Area - Yugra (KhMAO) passed a decree which changed the boundaries of the nature Park Numto that had been established in 2001, incorporating the TTNU of indigenous Khanty and Nenets which existed prior to it.<sup>27</sup> For the benefits of the company 'Surgutneftegaz' seeking to expand its oil extraction operations, territories belonging to the conservation zone of the Park Numto were seized, where there is the greatest concentration of biodiversity, of traditional nature use and historical and cultural heritage of indigenous peoples. The surroundings of lake Numto are sacred to the Khanty, Nenets and Mansi. They are an ancient centre of worship, regarded the place of the earthly incarnation of the supreme god Num, who created the earth and the people, and dwelt on the lake Numto. The indigenous people living on the Park's territory were unanimous in their opposition to the change of the boundaries. 'Nothing can replace the nature conservancy and sacred atmosphere of the entire landscape around the lake Numto', the members of the 'Aborigen Forum', an informal Association of indigenous peoples wrote in an appeal to the area's Governor in February 2017. But the concerns of the indigenous representatives have been ignored, in another demonstration that the currently existing TTNUs have no real protective function, as long as the Federal government fails to take the actions which the Federal Law on TTNU obliges it to take.<sup>28</sup>
25. In addition, after the 2007 removal of the regulations on the provision of land plots within territories of traditional nature use of indigenous peoples to free-of-charge use, from the law on TTP, the question of the form of use by indigenous peoples land and resources in TTP (free use? property? rent?) remains unresolved. The right of free-of-charge use of land necessary

23 Federal'nyj zakon ot 1 maja 2016 g. N 119-FZ "Ob osobennostjah predostavlenija grazhdanam zemel'nyh uchastkov, nahodjashhihsja v gosudarstvennoj ili municipal'noj sobstvennosti i raspolozhennyh na territorijah sub'ektov Rossijskoj Federacii, vhodjashhih v sostav Dal'nevostochnogo federal'nogo okruga, i o vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossijskoj Federacii" (Federal law 'On the peculiarities of providing citizens with land plots in state or municipal ownership and located in the constituent territories of the Russian Federation within the far Eastern Federal district, and on amendments to certain legislative acts of the Russian Federation') 1 May 2016 N 119-FZ. <http://base.garant.ru/71388648/>

24 <http://www.vostokmedia.com/r3/14-10-2016/n301596.html> Last accessed 26 December 2016

25 <http://www.csipn.ru/glavnaya/novosti-regionov/2949-v-khabarovskom-krae-territorii-traditsionnogo-prirodopolzovaniya-korennykh-narodov-iz-yali-dlya-lesozagotovok>

26 Decree no. 226-PR of 06 June 2017

27 O polozhenii o prirodnom parke 'Numto' (About the Statutes of the Nature Park Numto) Resolution 415-p of October 28, 2016, <http://docs.cntd.ru/document/429068777>

28 [http://www.csipn.ru/images/stories/publications/Mir\\_k\\_n/MKN-2016.pdf](http://www.csipn.ru/images/stories/publications/Mir_k_n/MKN-2016.pdf) p. 115-120.

for indigenous peoples to exercise their traditional use of natural resources is still contained in section 1 of article 8 of the Federal law "On guarantees of rights of small indigenous peoples of the Russian Federation", but is purely declarative, as access to forest, hunting and fishing areas are regulated by different laws, where this right is not provided.

## Consultation / Consent

26. Evidence suggests, that during the reporting period, the recommendation to “*take further steps to ensure that representatives of indigenous peoples are closely consulted on all issues of relevance to them*” has also been ignored in decision-making processes affecting their ancestral territories and means of existence. Large extractive projects on indigenous peoples’ ancestral land have gone ahead without adequate consultation, let alone free, prior and informed consent of the affected communities. Especially indigenous people leading a nomadic or semi-nomadic way of life in remote places seem to not have been reached by administrations and companies intending to extract resources from territories customarily used or occupied by them. The traditional land tenure of these peoples is typically not recognised by the state, so that they don’t hold formal title and usually, administrations do not have sufficient information on the land use e.g. migration routes of traditional private reindeer herders, who are not organised in state-owned enterprises, so that while granting licenses to gas companies, they tend to overlook the indigenous land users and their needs. Claims of consultation or consent are typically very difficult to verify, because many Arctic regions are classified as ‘border zones’ and have access restrictions in place, visitors are typically subject to surveillance and heightened attention by administrations, furthermore, the affected people are often extremely difficult to reach due to their remoteness.
27. One such project is the multi-billion Yamal LNG project on the North-East of Yamal peninsula, which is the home of the world’s largest fully nomadic reindeer herding community and the planet’s biggest domestic reindeer population. The Yamal LNG project is operated by Russia’s second gas producer Novatek, together with partners from France (Total) and China (China National Petroleum Corp.) and aims for a share of 7 per cent in the global Liquefied Natural Gas market. While the construction is not yet complete, substantial negative effects for the reindeer herding Nenets population in Northeastern Yamal are already visible. Locals report of a substantial decrease in the amount of fish in the rivers and lakes. Especially for those herders which due to the shortage in pasture land or other reasons have limited yield from reindeer herding, fishing is a vital source of food and income. Also, wide swaths of land previously used for pasture and migration are cordoned off by now and officially prohibited for the reindeer herders. As much of Yamal is swampy in the frost free months, reindeer herders rely on the few elevated relatively dry patches which are now used by the gas companies to place their facilities. Pipeline construction cutting through migration routes of herders without their knowledge have in the past had catastrophic impacts on reindeer herding communities, some of which were forced to give up herding altogether and settle down, after which most former herders died of various causes within a few years.<sup>29</sup>
28. The project’s Environmental and Social Impact Assessment and Stakeholder Engagement Plan claim that the company has “*obtained the free, prior, and informed consent for the*

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29 These alarming findings have come from Varandei area in Nenets Autonomous Area

*implementation of the Project and approval of the Indigenous Peoples' Development Plan that was signed by all authorized representatives of the nomadic population that lives in the area directly and indirectly affected by the Yamal LNG Project.*"<sup>30</sup> It is not clear, who those representatives were and what they have consented to. Local responses make it extremely unlikely that good faith consultations have taken place prior to the project and that there had been a genuine free, prior and informed consent (FPIC), i.e that consent was obtained in a culturally appropriate manner and that representatives acted free of pressure and understood what they were signing. During a village meeting in Seyakha in May 2016, a local woman raised concerns about the way consent was obtained. She said that when the company had been gathering information in connection with the new houses, she filled in and signed a form, and when she looked on the reverse side the form, it said 'I have no complaints'. "*What is that I gave my consent to then?*" she asked the gathering. It is also doubtful whether the company complies with its stated intention to "*facilitate public awareness and cooperation with the stakeholders and local communities*" by holding "*regular on-site workshops throughout the region, during which key business unit managers meet and converse with people from the tundra.*" While no informants knew of any representatives of Yamal LNG Project to have ever travelled to the tundra dwellers, they acknowledged that district officials and the Yamal LNG representatives conduct occasional hearings in the village of Seyakha. It is however unlikely that any nomadic herders attend these meetings. One herder who happened to be stuck in Seyakha for several months said "*Even if I went to a meeting, I probably would not understand.*" Reportedly, all the hearings are held in Russian without Nenets interpretation. Another Nenets woman in Seyakha said: "*They come to inform the people of the progress, regulations or laws that have been passed, so I do go to the meetings. But they often speak in their own language, scientifically. There is much I don't understand. The herders don't stand a chance. So they don't go.*" Another respondent said: "*In those meetings, they just put us before facts, No one asks, what we think.*" The level of information in the tundra is extremely low. According to the residents of Seyakha, there are no information boards at the trading posts in the tundra, where the herders come with their herds.

### **Proposed question**

**What measures has the Russian Federation taken to ensure that prior to the approval of large projects such as Yamal LNG, affecting territories customarily used or occupied by indigenous minority peoples, Good-faith consultations are held and the informed consent of those affected is obtained free of pressure and in a culturally appropriate manner?**

### **Proposed recommendation**

**The State-party should create the legislative and administrative conditions, ensuring that projects affecting territories customarily used or occupied by indigenous minority peoples are subject to their Free, Prior and Informed Consent, which is obtained in a culturally appropriate and transparent manner**

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<sup>30</sup><http://yamallng.ru/en/progress/social-responsibility-new>, retrieved 9.04.2017 20:54

## Land Use, hunting and fishing rights

29. In his report, the UN Special Rapporteur on the Rights of Indigenous Peoples has stressed the importance of stimulating indigenous entrepreneurship in both traditional and non-traditional areas.<sup>31</sup> In remote indigenous settlements, indigenous peoples cooperatives (*obshchinas*<sup>32</sup>) are often the sole providers of income and employment. However, economic success remains the rare exception for *obshchinas*, one because many of the feasible fishing and hunting grounds have in recent years been transferred to non-indigenous business enterprises,
30. Furthermore, their activity remains severely constrained by the stipulation in article 5 of the Federal Act “On General Principles of the Organisation of Communities of Indigenous Minority Peoples of the North, Siberia and the Far East of the Russian Federation”<sup>33</sup> that their activity is non profit-making in nature. This stipulation fundamentally limits the kinds of economic activities they engage in, including fishing, hunting, gathering and reindeer herding, which can only guarantee a decent standard of living for their members, if they are allowed to generate revenues to support their community.
31. Anaya also recommended that Russia stimulate indigenous entrepreneurship in non-traditional areas, however the law clearly confines *obshchinas* to ‘traditional’ subsistence activities, which are inventorised in a dedicated federal list<sup>34</sup>, so that in the reporting period the economically highly successful *obshchina* ‘Dylacha’ in Buryatia was closed down on the grounds that part of its activities were deemed non-traditional.<sup>35</sup>
32. Generally, indigenous fishers and hunters tend to be severely disadvantaged vis-à-vis their commercial competitors. In the reporting period, authorities have imposed restrictions with regard to permitted fishing gear, boats, times, etc., e.g. prohibiting the use of fishing nets, which do not apply to either commercial or recreational fishing.<sup>36</sup>

### Proposed recommendation:

**The Russian Federation should review legislation and administrative practice regarding indigenous peoples’ economic activities to identify and eradicate discrimination, especially possibly discriminatory restrictions imposed on indigenous fishers and hunters and their cooperatives (*obshchinas*)**

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

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

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

34 *Ob utverzhdenii perechnja mest tradicionnogo prozhivanija i tradicionnoj hozjajstvennoj dejatel’nosti korennykh malochislennykh narodov RF i perechnja vidov ih tradicionnoj hozjajstvennoj dejatel’nosti* (On approving the list of locations of traditional residence and traditional economic activities of indigenous minorities of the Russian Federation and the list of types of their traditional economic activities) Decree of the Government of the Russian Federation dated may 8, 2009 No. 631-p, <http://www.garant.ru/products/ipo/prime/doc/95535/>, last accessed 4 July 2017

35 See: Johannes Rohr: *Indigenous peoples in the Russian Federation*. IWGIA Report 18, p. 20, [http://www.iwgia.org/publications/search-pubs?publication\\_id=695](http://www.iwgia.org/publications/search-pubs?publication_id=695)

36 *Russia bans indigenous peoples’ traditional fishing*, June 14 2016, [http://www.iwgia.org/news/search-news?news\\_id=1373](http://www.iwgia.org/news/search-news?news_id=1373)