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Indigenous Peoples' Rights in Russian North: Main Challenges and Prospects for Future Development

by Ruslan Garipov*

I. INTRODUCTION

Beginning with the Alaska colonization period by Russians (1732-1867) and the exploration of California (Fort Ross in Northern California, 1812-1841), American Indian's culture became popular in Russia and was reflected in Russian art and literature. In 1872, Duke Alexey Alexandrovich Romanov visited America, where he hunted buffalos in the West with well-known General G. Custer and Buffalo Bill.[1] In Buffalo Bill's show "Wild West" alongside the American Indian's part of show, were Russian Cossacks, whose part proved very popular. North American Indian images were very popular among well-known Russian artists and painters such as: Nicolai Ivanovich Fechin (1881-1955), who immigrated later to the USA, and Nikolai Konstantinovich Rerikh (1874-1947), the author of the Rerikh Pact, and others. American Indians were popular among Russian writers and revolutionary leaders: Pushkin, Chekhov, Lenin and many others passed through that stage. Ivan Alekseyevich Bunin (1870-1953) translated into Russian the well-known poem "The Song of Hiawatha," which was written by American poet Henry Longfellow.

In East Germany,[2] "Red Westerns", produced by DEFA Studios as a part of anti-American propaganda, featured Native Americans as the heroes, rather than white settlers as in John Ford's Westerns in the USA. Many people in the Soviet Union fell in love with American Indian culture and history because of German and American writers, such as: Karl May, Liselotte Welskopf-Henrich, James Willard Schultz, James Fenimore Cooper, Thomas Mayne Reid, Henry Longfellow and others. An American Indians Society was created in the USSR. With these films and publications, the interest in Indians transformed from a small group episodic phenomenon to one of a larger scale at the beginning of the 1980s.[3] Soviet

anti-American propaganda aggressively proclaimed Native Americans as oppressed peoples whose cultures had been destroyed by the unstoppable and ruthless march of capitalism. Newspapers publicized the events about American Indian uprising at Wounded Knee in South Dakota in 1876. People collected signatures for a petition in support of Leonard Peltier, an Indian activist jailed for the killing of two FBI agents in 1977. American Indians' image for use in anti-American propaganda was chosen not by accident, but as a result of accurate and deeply laid policy. This policy resulted in an interesting phenomenon in the Soviet Union that continues to persist in contemporary Russia.

At the same time, people in Russia are often unaware or indifferent to its own indigenous communities that inhabit Russian Northern territories. As indigenous people possess non-typical Russian features and have different ways of life became targets of racist stereotyping and numerous jokes and anecdotes.[4] Discrimination is still one of the major problems for indigenous peoples in Russia that affects their living standards and reflects in the disparity of wages, unemployment and death rates among indigenous peoples.[5] In 1999, the UN Committee on the Rights of the Child referred to the growing incidence of societal discrimination against children belonging to ethnic minorities, including indigenous peoples, and asked the Russian Federation to take all appropriate measures to improve the situation.[6]

II. WHO ARE INDIGENOUS PEOPLES IN RUSSIA?

Indigeneity is a very important and sensitive issue in modern Russia with its multi-ethnic and multicultural nature of the nation with almost two hundred different ethnicities living within the Russian Federation. The definition of indigenous peoples in the Russian Federation relies on several cumulative requirements,

outlined in the Law About Guaranties of the Rights of Indigenous Small-Numbered Peoples of the Russian Federation (1999): (1) living in the historical territories of their ancestors; (2) preserving their traditional way of life, occupations, and folk art [handicrafts]; (3) recognizing themselves as a separate ethnicity; and (4) numbering at most 50,000 people within Russia. [7] Due to the numerical threshold, indigenous peoples in Russia are called “indigenous small-numbered peoples.”[8] It is rather unique worldwide and “creates asymmetrical legislative protection among groups who share similar challenges and characteristics, but are not ultimately recognized as indigenous peoples”.[9] There is a unified list of indigenous peoples in Russia, which currently enumerates a list of 47 indigenous peoples, 40 of which inhabit territories of Siberia, North and the Far East of Russia.[10]

Constituting up to 0.3 percent of Russia’s population, indigenous peoples of the North represent one of the poorest and most disenfranchised segments of society. [11] This isolates them from decision-making processes. The difficulty in access of information used to be the main reason for the limited international awareness about indigenous communities in Russia,[12] and the situation has changed partly due to the monitoring process of human rights treaties and partly due to the growing number and increased activities of regional and local nongovernmental organizations.[13]

It is also important to highlight that indigenous peoples are not intrinsically vulnerable, but because of external factors brought by the modern society. Considering the climate change and industrial development in the Northern territories, many indigenous groups are now in danger of disappearing because of a high risk of pollution and threats to their traditional way of life.[14] Many of them move to the cities, where they often face social exclusion, discrimination, and, finally, assimilation. Indigenous peoples are highly susceptible to unemployment, face a variety of socioeconomic challenges, find it difficult to preserve their traditional activities, and often lose their native language and culture. Of all of the problems facing indigenous peoples, the most concerning is the right to their lands and to their traditional way of life.

III.ABORIGINAL LAW IN RUSSIA

According to the Article 69 of the Constitution, the

Russian Federation shall “guarantee the rights of the indigenous small-numbered peoples according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation”.[15] This provision became an innovation for the Russian constitutional law is for the first time indigenous peoples were mentioned in the supreme legal authority. Article 9 of the Russian Constitution declares that land and other natural resources shall be utilized and protected in the Russian Federation as the basis of life and activity of the people living in corresponding territories.[16] But this provision was not further developed by federal law to address natural resources, animal husbandry, and specially protected territories of the North.

The Constitution of the Russian Federation, the Federal Law About Guaranties of the Rights of Indigenous Small-Numbered Peoples of the Russian Federation (1999), the Federal Law About General Principles of Organization of the Communities of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation (2000), and the Federal Law About Territories of Traditional Nature Use of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation (2001) set the basic legal system for the protection of the rights of indigenous peoples in the Russian Federation. Regrettably, this set is filled with legal gaps and contradictions, and needs to be advanced according to international values.[17] There is a considerable gap between general relevant standards of international law and the real situation of these peoples in Russia. The “ultimate lack of political will and focus on national economic development maintain discriminatory patterns, discourage any real participation of these communities in decisions that affect them, prolong the violations against their land rights and ultimately endanger their survival”.[18]

Aboriginal legislation in Russia has not yet had the expected positive impact on the lives of indigenous peoples and “the main problem appears to be lack of implementation at the regional and local level”.[19] It is often when the goodwill and availability of the local executive branch of power is more important than rule of law and plays in both positive and negative terms. For instance, in Yamalo-Nenets Autonomous Okrug, the governor organizes a monthly meeting with Nenets indigenous leaders to discuss any problems in

their communities, while in Kamchatka Kray a Council was created to deal with regional indigenous issues. [20] Aboriginal law improvement in Russia is a crucial and important task today to bring the rule of law and justice back to the people.[21]

IV. INDIGENOUS PEOPLES' RIGHTS IN RUSSIA

A rights-based, equitable dialogue between the government and indigenous peoples is mostly absent in recent years in Russia. Indigenous peoples' rights are considered something which are "granted" by the state and revoked again when needed.[22] Unlike some other industrialized nations, Russia has never acknowledged that indigenous peoples have been subjected to conquest, exploitation, oppression and marginalization and, thus, has never begun to address the legacy of the historical injustice they have suffered.[23]

During the Soviet era, the Committee of the North had created autonomous administrative regions (national acreage) and districts (national raiony) in order to protect indigenous peoples.[24] Nevertheless, the ambitious measures of such representation has not been achieved and indigenous peoples do not participate in governance of their territories.[25] Article 6 of the ILO Convention 169 requires governments to consult indigenous peoples whenever consideration is being given to legislative or administrative measures which may affect them directly and establish means by which these peoples can freely participate at all levels of decision-making in institutions and bodies responsible for policies and programs which concern them. [26] The 1999 "Guaranties" law allows for representation quotas for indigenous peoples within legislative bodies of the regional and local level.[27] Currently though, no such quota system, nor permanent seats for indigenous representatives exist in the federal or the regional level. Indigenous peoples asked for the establishment of an Indigenous Parliament, in the same manner as the Saami Parliaments in Scandinavian countries, but the first relevant draft federal law submitted to the Russian Parliament was rejected.[28]

A. Land Rights

Land rights is still the most important issue for indigenous peoples living in Russia. The economic transformation in Russia needs to be supported through institutional development, especially through the

allocation of property rights in a manner that protects local economies and allows the indigenous population to participate in decision making as well as share in the benefits of development.[29]

The separation of competences concerning land rights between the federal and the regional authorities is still not clear.[30] According to the Article 72 of the Russian Constitution, the subjects of the Russian Federation have joint responsibility with the Russian Federation over issues of possession, use and management of the land, natural resources, and water.[31] At the same time, Article 36 asserts that the conditions and the order of the use of land are to be subject to federal law.[32] This framework has led to conflicting legislation and a legal vacuum in land law in Russia.[33] The 1999 "Guaranties" law protects the right of indigenous peoples to own and use, free of charge, various categories of land required for supporting their traditional economic systems and crafts.[34] In other words, the land is not protected just for the mere fact that indigenous peoples have been living there, but because the land is necessary for the traditional economic system of the indigenous community.[35]

The Federal Law "about Territories of Traditional Nature Use of the Indigenous Minorities of the North, Siberia and the Far East of the Russian Federation" is also ineffectual. No single territory of traditional nature use was created on federal level since that law was adopted.[36]

Possibly the main problem in creating such territories is that the decision-making process is concentrated in the hands of the government, and little attention is given to the interests of indigenous peoples. The law on territories of traditional nature use does not give indigenous peoples any role in identifying the size of such territory. Article 9 of the law states that borders of the territory of traditional nature use are provided by authorities only.[37] Such an approach ignores indigenous people's interests, disregards their special connection to the land, and excludes them from participating in defining the borders of the territories of traditional nature use.[38] These issues have a particular urgency because of the increasing interest among extractive businesses in the Russian North.[39]

B. Traditional Activities



KHANTY BEAUTY WITH CHUCKA GIRL BY FLICKR USER IRINA KAZANSKAYA CC-BY-2.0.

Setting land ownership aside, indigenous rights to traditional activities are also currently under severe threat.[40] There is a problem with indigenous peoples' right to priority licensing implementation and therefore the licenses to fish and hunt often go to commercial stakeholders rather than indigenous peoples. Such a practice became the norm in Russia and gave rise to a recent complaint from Sami, an indigenous people living in the North of Russia, to the UN against the actions of the regional government about the transfer of the pasturelands in a long-term lease to a hunting club.[41] Traditional activities and access to natural resources is a part of the right to a healthy environment and an essential part of the right to life for indigenous peoples.

Article 15 of the ILO Convention 169 fixes indigenous peoples' rights to participate in the use, management and conservation of the natural resources pertaining to their lands.[42] Even though the 1999 "Guaranties" law complies with the abovementioned standards, there are no proper consultations with indigenous peoples about exploration or exploitation of natural resources in areas where they live, no compensation for the lands utilized by the state or business entities, and no environmental assessments take place.[43]

Indigenous peoples often have no participation in the benefits of commercial activities on their territories as the benefits are usually divided between the federal, regional, and local governments, to which indigenous communities do not have access.[44]

The 1999 "Guaranties" law declares that indigenous peoples have the right to protect their lands and traditional way of life.[45] Ecological and ethnological examination should be done before any resource extraction is commenced on the lands of indigenous peoples. Nevertheless, this provision is ineffective, for the reason that the mechanism for such examinations has not been defined and developed on the federal level.

In the Republic of Sakha (Yakutia), one of the northern territories of Russia, a regional law was adopted in 2010 on ethnological expertise[46] that is supposed to be held prior any commercial projects on the territories of indigenous peoples to research the socio-cultural context of the development on the particular ethnic group.[47] However, many companies do not consider it binding due to the fact that it is a regional law and, therefore, not applicable to projects carried out on a federal or supra-regional level.[48]

V. CONCLUDING REMARKS

It is a significant challenge to find a way to combine economic benefits with the preservation of unique ecosystems and indigenous communities in the North. It is, therefore, important to emphasize indigenous peoples' connection to the land and subsistence off its natural resources. Their lifestyle, which is rooted in sustainable development, requires a different way of thinking compared to most modern-day populations which do not rely on subsistence.

While Russia may have positive intentions and solid laws on the books, operationalization and implementation of these laws in terms of actual consultation and participation outcomes for indigenous communities is still lags behind.[49] Rapidly evolving indigenous industry relationships and different stakeholders' expectations raise many important issues, such as human rights, negotiation processes regulation, and corporate social responsibility. "Something must be done to align the purposes of, and incentives at play in the gulf between, international investment law and indigenous

rights".[50]

Apart from developing national legislation and implementing international standards, it is significant to strengthen local management capacity and provide for the enforcement of laws designed to protect rights of indigenous peoples in Russia. It is critical to ensure that indigenous peoples have a proper governance structure, decision-making power, and capacity to participate effectively in the achievement of their development goals.

It is vital to bring to the fore the internationally recognized principle of free, prior and informed consent of indigenous peoples concerning any proposed commercial development on their territories in Russia. Commercial enterprises must recognize indigenous peoples as equal partners and allow them opportunity to co-manage profitable projects. It is indispensable to protect the environment and lands of indigenous peoples as well as their traditional way of life and traditional natural resource use. Indigenous peoples should benefit from natural resources' possession on their land instead of becoming a hostage of it and suffer oppression and degradation from its exploitation. International law provides efficient tools and mechanisms to protect indigenous peoples' interests in face of any threats connected to the exploitation of natural resources on their territories.

In 2019, the ILO celebrates the 100 year anniversary of its formation in Geneva. It is also the 30 year anniversary of the ILO Convention 169 that was signed on June 27, 1989. This Convention remains the pinnacle achievement of the trade union movement's legacy of solidarity with indigenous and tribal peoples.[51] The ILO Convention 169 remains the only international Convention that can be ratified that deals directly with the rights and cultures of indigenous peoples.[52] The principles enshrined in the Convention formalized a more expansive view of the rights of indigenous peoples in international law, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[53] The Convention has also influenced the World Bank's operational guidelines on indigenous peoples, OD 4.20.[54]

And even if a country has not ratified the Convention yet, it can still use its provisions as guidelines. For instance, Germany has not ratified Convention 169,

but its development policy for cooperation with indigenous and tribal peoples in Latin America is based on the Convention.[55] Finland has not yet ratified Convention 169, but it has tried to meet many of the provisions of the Convention in the Saami Act of 1995.[56] Russia has not ratified ILO Convention 169, arguing the definition of indigenous peoples and the land ownership rights in the Convention do not meet the requirements of Russian legislation.[57] Undoubtedly, it is a good time to reevaluate the legacy of the ILO Convention 169 for indigenous peoples' rights development and take the steps necessary to meet its provisions in the Russian Federation and further its ratification.

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24 Gail Osherenko, Property Rights and Transformation in Russia: Institutional Change in the Far North, 7 EUR.-ASIA STUD., 1083-85 (1995).

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29 Osherenko, supra note 22, at 1077.

30 Xanthaki, supra note 5, at 88.

31 Constitution of the Russian Federation, 1993 (Art. 72).

32 Id. at Art. 36.

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