



International Work Group for Indigenous Affairs

Reference: The Fifth Periodic Report of the Russian Federation to the Committee on Economic, Social and Cultural Rights (UN Doc E/C.12/RUS/5, 25 January 2010)

Proposed questions to the Government of the Russian Federation
Regarding
Economic, Social and Cultural Rights of indigenous small-numbered peoples of the
Russian North, Siberia and the Far East

Copenhagen, 29 April 2010

Submitted at the occasion of the Pre-Sessional Working Group, 25-28 May 2010 of the Committee on Economic, Social and Cultural Rights by:

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Introduction

This submission has been prepared by RAIPON, the Russian Association of Indigenous Peoples of the North, a national umbrella organisation in consultative status with ECOSOC, representing 41 indigenous peoples of the Russian Federation and IWGIA, the International Work Group for Indigenous Affairs, based in Copenhagen, an international, membership-based NGO in special consultative status with ECOSOC, founded 1968, working world-wide to protect and promote indigenous peoples' human rights. RAIPON was founded in 1990 during the first congress of Russia's indigenous small-numbered peoples. It comprises of regional branches in all Russian regions and represents the interests of Russia's indigenous peoples regionally, nationally, as well as at the international level. Its leadership is democratically elected by several hundred delegates at the national congress of indigenous small-numbered peoples of the north, which is held every four years.

Our submission is a response to Russia's Fifth Periodic Report. It focuses on a the so-called as "Indigenous, Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation".¹ This term is enshrined in Russian legislation and describes 41 indigenous peoples with a population of less than 50,000 each, which traditionally inhabit about two thirds of Russia's Land mass, namely the extreme North and much of the Asian territories of the country. Together these peoples number approximately 250,000 individuals. Traditionally their economies are based on subsistence activities such as fishing, hunting, reindeer husbandry and gathering. Their ways of life and cultures are closely adapted to the harsh environmental conditions within which they managed to survive and develop for millennia. Therefore, the full realisation of their rights to self-determination, including the right not to be deprived of their means of subsistence, the right to an adequate standard of living, including their right to food depends on guaranteed and sustainable access to as well as adequate protection of those natural resources on which these ways of life depend, including hunting territories, forests, waters and fish stocks and reindeer pasture. The collapse of the Soviet Union and the subsidised Northern infrastructure deprived the indigenous peoples of alternative sources of income and thus increased the dependence on these subsistence activities. At the same time, extractive industries have turned much of their traditional territories into environmental disaster zones. In the absence of a working system of indigenous land titles, there are no legal remedies, restricting the expansion of extractive industries and other businesses into indigenous territories. Therefore, the question of binding land and resource rights is currently more acute then ever. Although these issues were already addressed by CESCR in its concluding observations of 1997² and 2003³, the state-party has failed to implement the recommendations by the committee.

The Right to Self Determination (Article 1) Adequate Food (Art. 11)

Comments and observations regarding the responses to §§ 11 and 39 of the concluding observations of 12 December 2003 (UN doc E/C.12/1/Add.94) in the fifth periodic report of the Russian Federation

In § 39 of its 2003 concluding observations, CESCR affirmed indigenous peoples right to self-determination and urged the Russian Federation "to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence." In particular, it asked the government "to ensure the effective implementation of the Law on Territories and Traditional Nature Use". Both recommendations are of the utmost significance with regards to the protection and realisation of the indigenous peoples' right to self-determination and the enjoyment of their 'own means of subsistence' as protected under Article 1(2). For the indigenous peoples of the North fundamental to the enjoyment of this aspect of their right to self-determination,

¹ Коренные малочисленные народы Севера, Сибири и Дальнего Востока Российской Федерации

² E/C.12/1/Add.13, 20 May 1997

³ E/C.12/1/Add.94, 12 December 2003

together with the right to adequate food, and its requirement for *accessibility* to sources of food, is access to territories which provide these food sources and culturally appropriate means of subsistence.⁴

Paragraph 13 of the 2010 government report states that “a number of strategic tasks regarding the protection of the rights of indigenous small numbered peoples are being developed”⁵, while § 12 says that “work towards the development of normative documentation regarding the creation of Territories of Traditional Nature Use of indigenous small-numbered peoples of the North” is being undertaken.⁶ However, despite the fact that the Federal Law 49-FZ of 7 May 2001 “On Territories of Traditional Nature Use of Indigenous, Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation”⁷ was adopted nine years ago, not a single Federal Territory of Traditional Nature Use has been created so far.

Proposed questions:

1. What are the obstacles currently preventing the creation of Territories of Traditional Nature Use, nine years after the adoption of the respective law? Which steps is the State-party taking to overcome these obstacles?
2. Why has the draft statute⁸ on the Model Territory of Traditional Nature Use (TTP) “Bikin” (Primorski krai), mentioned in para 12 of the Fifth period report, which has been under preparation since 2006 and which was already mentioned in Russia’s 18th and 19th Periodic Report to CERD of 23 October 2006⁹ still not been approved by the Government and the TTP “Bikin” still not been created? When does the government intend to approve this legislation?

While Russia has failed to institute a working regime of indigenous land titles, the reporting period was marked by a number of legislative changes, which substantially threatened their continued access to their sources of subsistence, food and income. In accordance with three federal laws adopted or revised after 2001, the Forest Codex¹⁰ of 2005; the 2006 revision of the law “On Fishing and the preservation of aquatic biological resources”¹¹ and the federal law “On Hunting and the preservation of hunting resources and on the introduction of revisions into several legal acts of the Russian Federation”¹² of 2009, all forest, hunting and fishing plots without any exception, including those located in territories inhabited and used by indigenous peoples, are now eligible to be leased out to private businesses under long-term license agreements, based on purely commercial tenders and auctions. This leads to more and more instances where indigenous peoples are cut off from access to those resources, which constitute the prime prerequisite for the realisation of their human right to feed themselves. The licenses usually cover periods of 20 years or more, which means that even if the state party should finally embark to implement the Law on Territories of Traditional Nature Use, many of the territories will already be under the control of private businesses, whose rights are protected by legally binding long-term agreements. The indigenous peoples of the North were not provided with the opportunity to participate in the drafting of this legalisation and their consent was not sought in relation to those provisions which impact directly on their subsistence rights and as well as their cultural, spiritual and physical well-being.

⁴ cf General comment „The Right to adequate food (Art. 11)”, 12/05/99, UN doc E/C.12/1999/5, Para 13.

⁵ “В настоящий момент Правительством разрабатывается ряд стратегических задач в области защиты прав коренных малочисленных народов: “

⁶ „Правительством РФ проводится работа по подготовке нормативной документации по созданию территорий традиционного природопользования коренных малочисленных народов Севера.”

⁷ «О территориях традиционного природопользования коренных, малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации»

⁸ положение

⁹ CERD/C/RUS/19, Para 52

¹⁰ «Лесной кодекс»

¹¹ «О рыболовстве и сохранении водных биологических ресурсов»

¹² «Об охоте и о сохранении охотничьих ресурсов и о внесении изменений в отдельные законодательные акты Российской Федерации»

Proposed questions

1. Which steps does the State-party take to ensure that indigenous peoples are protected from violations of their rights including their rights to self-determination, to adequate food and to culture, caused by long-term licensing of biological resources such as forests, fishing and hunting grounds which they traditionally use, to third parties such as private businesses?
2. Why have no provisions been included into the Forest code of 2001, the federal law on hunting of 2009 and the revised fishing law of 2006, protecting land and biological resources in territories inhabited and used by indigenous peoples from being transferred to commercial business organisations without their free prior and informed consent and safeguarding the indigenous peoples' preferential right to those resources as recommended by CERD in its concluding observations of August 2007?¹³
3. Which measures are taken by the State-party to ensure the possibility of the creation of Territories of Traditional Nature Use in cases where these territories have already been leased out, in part or entirely, to third parties under long-term license agreements without the free prior and informed consent of the impacted indigenous peoples? What measures will be taken to provide redress to indigenous peoples to ensure that their inherent rights to these lands, territories and resources are respected and the effects on the enjoyment of these rights of tenders and auctions which resulted in the existing lease agreements reversed?

The right to the highest attainable standard of health (Art. 12)

Remarks pertaining to sections of the Fifth Periodic Report responding to §§ 31, 33, 59 and 61 of the concluding observations regarding the state of the indigenous peoples' health.

The information provided by the State-party in §§ 294-298,300 and 319 of the fifth periodic report is ambiguous with regard to which measures have actually been implemented to improve the health of the indigenous peoples of the North and what concrete indicators exist to support the claimed improvements in health.

Publicly available statistical data for 2008 on individual districts of the North reveals a very high percentage of unnatural causes of death, such as suicides and accidents, constituting up to 35% of all fatalities. Additionally, certifiable diseases, mostly tuberculosis, are rife among the peoples of the north with 60 cases in 100,000, as compared to a Russian average of 23 in 100,000.

Proposed Questions:

1. Which measures is the State-party taking to ensure the availability of sufficient statistical data on the state of health of the indigenous peoples of the North?
2. Which specific steps for the improvement of the health of the indigenous peoples inhabiting the districts of the Extreme North mentioned in the fifth periodic report have already been implemented?
3. Which measures to ensure the quality and accessibility of medical care, as mentioned in § 297, have already been implemented?
4. Which indicators support the alleged decrease in tuberculosis rates, stated in § 319?
5. Could the critical state of health of the indigenous peoples and their high mortality be linked to lack of access to traditional sources of subsistence and food and the inaccessibility of medical care for inhabitants of remote settlements?

¹³ CERD/C/RUS/CO/19, Para 24 'The Committee recommends that the State party take legislative and other effective measures to implement the Federal Law on Territories of Traditional Nature Use (2001); reinsert the concept of free-of-charge use of land by indigenous peoples into the revised Land Code and the Law on Territories of Traditional Nature Use, and the concept of preferential, non-competitive access to natural resources into the Forest and Water Codes; seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licences to private companies for economic activities on territories traditionally occupied or used by those communities; ensure that licensing agreements provide for adequate compensation of the affected communities; and withdraw support for the Evenkiiskaya dam and other large scale projects threatening the traditional lifestyle of indigenous peoples.'

6. How is the state ensuring that indigenous peoples participate in the formulation, planning and implementation of culturally appropriate measures to ensure their enjoyment of the highest attainable standard of physical and mental health?

Involuntary resettlement (Right to housing, Self Determination and Culture)

The current energy strategy, adopted by the Russian authorities and valid until the year 2020, includes projects involving mass resettlement of indigenous peoples. Contrary to the contemporary international customary norm¹⁴ requiring consent of indigenous communities prior to the authorization of projects involving their resettlement or relocation, Russian legislation does not require the indigenous peoples' Free Prior and Informed Consent, nor prescribe the conduct of social impact assessments as an element of the project approval procedure.

One of these projects is the programme for the construction of the Evenkiiskaia hydroelectric dam on the Lower Tunguska river in Krasnoyarsk province, implemented by RusHydro. This dam will create the world's largest artificial lake, submerge a number of Evenki settlements as well as Tura, the regional centre, potentially destroy much of the fish resources, forest and reindeer pasture, which constitute the main sources of livelihood of the Evenki population. It has also been widely criticised for the uncontrollable environmental risks involved. According to RAIPON's information, an overwhelming majority of the impacted population strongly opposes the project. In its concluding observations of September 2007, CERD specifically asked the Russian government to 'withdraw support for Evenkiiskaya dam and other large scale projects threatening the traditional lifestyle of indigenous peoples'.¹⁵

Proposed Questions:

1. Is the government considering the implementation of the CERD recommendation of September 2007 to withdraw its support for the proposed Evenkiiskaya Hydroelectric Dam?
2. What other large scale projects which threaten the traditional lifestyle of indigenous peoples is the government currently reviewing in light of the CERD recommendation?
3. What actions is the State-party taking to ensure that indigenous peoples affected by proposed large development projects are duly consulted and their consent sought and that the relevant international standards are applied at every stage of planning and execution?
4. What legal redress is available to indigenous peoples affected by displacement and forced evictions?
5. Given the lack of legislation requiring the FPIC of indigenous peoples in the context of forced relocation what legislation or guidelines does the government have that strictly define the circumstances and safeguards under which it permits such evictions to take place and how are these consistent with the rights of indigenous peoples and the Committee's general comment No. 7 (1997) on forced evictions?

Right to Social Security/Education/Health/Food of inhabitants of remote settlements

Indigenous peoples of the North, inhabiting remote regions of the Russian North and Far East are increasingly being excluded from access to social services and public infrastructure. RAIPON has received alarming information from regions such as Taimyr and Koryakia, both formerly autonomous, now incorporated into Krasnoyarsk resp. Kamchatka krai, where remote villages are reportedly neglected by the regional

¹⁴ This norm is reflected in the ILO Convention 169, the UN Declaration of the Rights of Indigenous Peoples and the jurisprudence of the UN Treaty bodies as well as the Inter American and African Systems. Consent required where there are significant physical or cultural impacts on indigenous peoples of development projects in their lands. Relocation of indigenous peoples is widely recognized as having both profound physical and cultural impacts on them.

¹⁵ CERD/C/RUS/CO/19, Para 24 (see footnote 13 above for full text of recommendation)

administrations, which order the closure of schools and health care facilities. Subsequently, inhabitants of these villages, which are sometimes hundreds of kilometres away from the nearest large settlement have the choice between trying to survive without any state support or resettling. However, since the administrations do not officially order the closure of the villages themselves but only dismantle vital infrastructures therein, no state support for resettlement is provided. In 2009, the 60 remaining inhabitants of the village Paren in Northern Kamchatka submitted a complaint to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, which eventually led to the once off shipment of a single load of food and other products, however, no further supplies have reached the village since.

Proposed questions:

1. What data does the state have in relation to the provisions of health-care facilities and other goods and services in these remote and rural areas?
2. What measures is the state-party taking to ensure that inhabitants of remote Northern villages have access to adequate and appropriate health care, education and social services?
3. Is the State-party considering supporting the institution of small ungraded schools in these villages as well as nomadic schools, as proposed by the 6th Congress of Indigenous peoples of the North in April 2009 as a means to realise the right of the indigenous population to education?

Self-determination, Subsistence and the Right to Development

The UN Special Rapporteur following his 2009 country visit to Russia noted the need to implement existing framework laws aimed at upholding indigenous peoples' rights and to ensure that these laws were effectively harmonized with other laws and development policies that favor commercial development of natural resources such that indigenous peoples rights were not negatively impacted. To this end the Special Rapporteur recommended that the Russian Government, in a spirit of cooperation, use the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP) as a benchmark for the development of government policies and action regarding indigenous peoples in order to strengthen the rights of indigenous peoples.¹⁶

Proposed questions

1. In light of this recommendation what measures is the government taking to uphold indigenous peoples rights to 'maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.' and not to be 'deprived of their means of subsistence and development are entitled to just and fair redress' (UN DRIP article 20) in the context of their self-determination (UN DRIP article 3) and their associated right to right to autonomy or self-government in matters relating to their internal and local affairs (UN DRIP article 3 and 4)?
2. Is the government is considering the adoption of ILO Convention 169?

¹⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9529&LangID=E>