
HUMAN RIGHTS QUARTERLY

Indigenous Rights in the Russian Federation: The Case of Numerically Small Peoples of the Russian North, Siberia, and Far East

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ABSTRACT

There has been very little research on the rights of numerically small peoples of the North, Siberia, and Far East of the Russian Federation. Even though legislation has recently passed that improves their legal rights and notwithstanding the respect for indigenous cultures, the article reveals a considerable gap between general relevant standards of international law and the real situation of these peoples. 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.

I. INTRODUCTION

Indigenous rights have become a very topical issue in international law. The transnational network of indigenous peoples has created an unparalleled excitement about indigenous rights and has imposed indigenous rights on the international agenda. Despite the intense interest in indigenous rights, very little has been written on the rights of the numerically small indigenous

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peoples of the North, Siberia, and Far East of the Russian Federation; yet, their situation has been described as “critical.”¹ The Russian numerically small peoples number approximately 300,000 persons² and live in areas covering more than half of the territory of the Russian Federation.³ Great difficulty in access of information appears to be the main reason for the limited international awareness about these communities.⁴ Fortunately, the situation seems to be changing gradually, partly due to the monitoring process of the human rights treaties the Russian Federation has signed in recent years and partly due to the growing number and increased activities of regional and local nongovernmental organizations.⁵

There is no accurate information about the numbers or names of the indigenous communities in the Russian North, Siberia, and Far East, mainly because of the confusion created by the wide use of “external” names and nicknames.⁶ Yet, the distinction between the “numerically small peoples of the North, Siberia, and Far East” and the other indigenous groups living within the Russian Federation is well-known and grounded in the Russian system. Currently, the numerically small peoples, namely sixty-five communities as included in a 2000 Government Resolution⁷ each comprised of less than 50,000 persons, are subject to special legislation⁸; although the underlying reasons are difficult to comprehend, some laws do not apply to non-numerically small, albeit indigenous, peoples living in the same territory.

This article focuses on the specific situation of the numerically small indigenous peoples; yet, to a large degree it also applies to the other

1. INTERNATIONAL WORKING GROUP FOR INDIGENOUS AFFAIRS (IWGIA), *THE INDIGENOUS WORLD 1999–2000*, at 36. In 2003, the UN Committee on the Elimination of Racial Discrimination expressed its concern about “the difficult situation facing indigenous peoples’ in the Russian Federation. See Concluding Observations of the Committee on the Elimination of Racial Discrimination: Russian Federation 21/03/2003 U.N. CERD, Comm. on Elim. Of Rac. Discrim., 62 Sess., 20, U.N. Doc. CERD/C/62/CO/7 (2003).
2. Olga Murashko, *Introduction*, in *TOWARDS A NEW MILLENNIUM, THE YEARS OF THE INDIGENOUS MOVEMENT IN RUSSIA 20*, 25 (Thomas Kohler & Kathrin Wessendorf eds., Vladislav Tsarev et al. trans., IWGIA, 2002) (hereinafter *TOWARDS A NEW MILLENNIUM*).
3. According to NIKOLAI VAKHATIN, *NATIVE PEOPLES OF THE RUSSIAN FAR NORTH 7* (Minority Rights Group 1992).
4. Mattias Åhrén, *Racism and Racial Discrimination Against the Indigenous People of Scandinavia and Russia—The Saami People*, in *RACISM AGAINST INDIGENOUS PEOPLES 136*, 139 (Suhās Chakma & Marianne Jensen eds., Elaine Bolton trans., IWGIA 2001).
5. MINORITY RIGHTS GROUP, *WORLD DIRECTORY ON MINORITIES 306* (1997).
6. VAKHATIN, *supra* note 3, at 7.
7. Government Resolution No. 255, adopted Mar. 2000 (on The List of Indigenous Peoples of the Russian Federation), available at www.minelres.lv (also on file with author). See also *TOWARDS A NEW MILLENNIUM, supra* note 2, at 24.
8. *TOWARDS A NEW MILLENNIUM, supra* note 2, at 26. However, twenty of these communities living in North Caucasus do not wish to be part of this special legislation.

indigenous communities living currently in the Russian Federation. The article illustrates the legal and actual situation of numerically small peoples and explores the answers international law offers to their problems. At the beginning, the article offers a general overview of the relevant international and national instruments. Several relevant federal laws have recently been adopted, but their positive impact on indigenous rights is still unclear. Subsequently, the article focuses on specific indigenous rights, namely, the prohibition of discrimination, indigenous rights to consultation and participation, land rights, and finally cultural rights.

II. LEGAL FRAMEWORK

Currently, only one international instrument protects the rights of indigenous peoples: the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, No. 169 (ILO Convention 169), adopted by the International Labour Organisation (ILO) in 1989.⁹ Although the Russian Federation showed interest in this convention, unfortunately it has not signed the instrument, despite pressure by international bodies,¹⁰ even though in 1998 Russia initiated the ratification procedure for the convention. Still, given the interest of the Russian Federation in the convention and the convention's position as the sole current instrument on indigenous rights, it is interesting to apply its standards to the situation of the numerically small peoples. Even if the convention does not become binding for the Federation, it still constitutes a solid political tool to provide pressure for the development of indigenous rights.

9. See Convention Concerning Indigenous and Tribal Peoples in Independent Countries (I.L.O. No. 169), adopted 27 June 1989 (entered into force 5 Sept. 1991), reprinted in IAN BROWNLEE, BASIC DOCUMENTS IN HUMAN RIGHTS 303 (3d ed. 1992) (hereinafter ILO Convention 169). The other ILO Convention on the rights of indigenous peoples, Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (I.L.O. No. 107), adopted 26 June 1957, is not open to new signatories anymore. The draft Declaration on the Rights of Indigenous peoples is not yet law.
10. For example, in 2003 the UN Committee on Economic, Social and Cultural Rights asked the state representatives why the Russian Federation has not signed ILO Convention 169. See Question 21 in *Replies by the Government of the Russian Federation to the List of issues (E/C.12/Q/RUS/2/Rev.1) to be taken up in connection with the consideration of the fourth periodic reports of the Russian Federation concerning the rights referred to in articles 1–15 of the International Covenant on Economic, Social and Cultural Rights*, 3–5, U.N. Doc. HR/CESCR/NONE/2003/5. Also, during the 1996 discussion on Russia, the International Committee on the Elimination of Racial Discrimination (CERD) asked the government why the ILO Convention 169 had not been signed. See Committee on the Elimination of Racial Discrimination: Summary of the 1134th Meeting, U.N. CERD, Comm. on Elim. of Rac. Discrim., 48 Sess., ¶ 3, U.N. Doc. CERD/C/SR/1134 (1996).

In any case, the Russian Federation is bound to protect indigenous rights by its signing or ratification of international minority instruments, such as the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),¹¹ the European Charter for Regional and Minority Languages,¹² and the Framework Convention for the Protection of National Minorities of the Council of Europe (Framework Convention).¹³ The applicability of minority instruments to indigenous rights has been a matter of concern for some indigenous communities. The Saami of Norway have rejected the use of minority instruments for the protection of their rights on the basis that "as an indigenous people the Saami have legal and political rights that exceed those covered by the provisions of the convention."¹⁴ Currently, it is widely accepted that indigenous peoples can use the protection provided by minority instruments without harming their claims as indigenous peoples. In definitional terms, both minorities and indigenous peoples have some common denominators: they both have a distinct culture that they want to preserve and transmit to new generations and they both are the non-dominant groups in the state in which they live.¹⁵ The descriptive overlap leads to an overlap in protection: although minority instruments do not cover all aspects of indigenous rights, they do cover several, and thus they can be used by indigenous peoples. Indeed, minority rights have been repeatedly used by indigenous communities and UN bodies. The UN Human Rights Committee has in several cases used Article 27 of the International Covenant on Civil and Political Rights (ICCPR),¹⁶

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11. International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* 21 Dec. 1965, 660 U.N.T.S. 195 (*entered into force* 4 Jan. 1969), *reprinted in* 5 I.L.M. 352 (1966) (hereinafter ICERD).
 12. The European Charter for Regional or Minority Languages, *opened for signature* 5 Nov. 1992, Council of Europe, Europ. T.S. No. 148 (1992) (hereinafter ECRML), *reprinted in* COUNCIL OF EUROPE, EXPLANATORY REPORT—EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES 41 (1993) (the Convention was signed but not ratified).
 13. The Framework Convention for the Protection of National Minorities, *opened for signature* 1 Feb. 1995, Council of Europe Parliamentary Assembly, EUR. PARL. DOC. 157, *reprinted in* 16 HUM. RTS. L.J. 98 (1995) (hereinafter Framework Convention).
 14. *Report submitted by Norway pursuant to the Framework Convention*, art. 25, ¶ 1, received on 2 Mar. 2001, ACFC/SR (2001) 1, ¶¶ 1.1 & 3.1.
 15. At the same time, elements of indigenous descriptions—such as precedence and historical continuity, a special relationship with the land, the strong sense of community, a cultural gap between the dominant groups in the State and the indigenous group and the colonialist context—cannot be found in descriptions of minorities. Indigenous peoples and Minorities: Reflections on Definitions and Description, Paper commission by Minority Rights Group from Patrick Thornberry, submitted to the 1996 session of the Working Group on Indigenous Peoples (WGIP).
 16. International Covenant on Civil and Political Rights, *adopted* 19 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) (hereinafter ICCPR).

which refers to minority rights, to decide indigenous cases.¹⁷ The Advisory Committee of the Framework Convention has also argued that the recognition of a group as an indigenous people does not exclude that group from benefitting at the same time from the protection offered to minorities.¹⁸

Therefore, the Russian Federation must ensure that indigenous peoples living within its territory enjoy the rights enshrined in the minority instruments. Also applicable of course are the general human rights instruments; the provisions of both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁹ legally binding for the Russian Federation, are particularly useful for indigenous rights. Compliance with these instruments is confirmed by Article 69 of the Constitution of the Russian Federation, which safeguards the rights of indigenous peoples "in accordance with the generally accepted principles and standards of international law and international treaties of the Russian Federation."²⁰

The Russian Federation has recently taken several steps to safeguard indigenous rights and comply with relevant international standards. The 1999 Federal Law on the Guarantees of the Rights of Indigenous Numerically Small Peoples of the Russian Federation (1999 Indigenous Rights Law) has been a fundamental step forward: the law establishes a wide range of rights for the numerically small peoples.²¹ Other important federal laws that protect indigenous rights include the 1996 Federal Law on National Cultural Autonomy,²² the 2000 Federal Law on General Principles of the

17. See Human Rights Committee, *Lovelace v. Canada*, Communication No. 24/1977, A/36/40 (1981); Bernard Aminic, Chief of the Lubicon Lake Band v. Canada, Communication No. 167/1984, views in A/45/40 (1990); Kitok v. Sweden, Communication No. 197/1985, views in A/43/40 (1988); Ilmari Lämsman et al. v. Finland, Communication No. 511/1992, A/50/40 (1994); Hopu v. France, Communication No. 549/1993, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1 (1997).
18. See Opinion on Denmark, ¶ 17, ACFC/INF/OP/1 (2001), adopted 22 Sept. 2000, in relation to the position of the Far-Oese persons and Greenlanders. Similar was the Committee's approach to the report of Finland, see esp. ¶¶ 21–23, 34, 45, 50 of the Opinion on Finland, ACFC/INF/OP/1 (2001)005, adopted 22 Sept. 2000, where the Committee analyzes rights of indigenous peoples using minority instruments. Reports available at www.coe.int (under Human Rights heading go to National Minorities).
19. ICCPR, *supra* note 16; International Covenant on Economic, Social and Cultural Rights, adopted 19 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force 3 Jan. 1976) (hereinafter ICESCR).
20. KONST. RF, art. 69.
21. Russian Federation, Federal Law on the Guarantees of the Rights of Indigenous Numerically Small Peoples of the Russian Federation, adopted by State Duma, 16 Apr. 1999 and approved by Council of the Federation, 22 Apr. 1999 (hereinafter 1999 Indigenous Rights Law).
22. Russian Federation, Federal Law on National-Cultural Autonomy, adopted by State Duma, 22 May 1996 and approved by Council of the Federation, 5 June 1996, available at www.minelres.lv (under National Legislation, go to Russia).

Organization of Communities of Indigenous Peoples of the North, Siberia, and the Far East,²³ as well as the 2001 Federal Law on the Territories of Traditional Nature Use by Indigenous Numerically Small Peoples of the North, Siberia, and the Far East.²⁴ The 2001 Federal Land Code²⁵ is also expected to have an important impact on indigenous land rights.

The recent activity concerning the legal protection of indigenous peoples in the Russian Federation highlights the recent state awareness of the rights of these communities. Nevertheless, these laws have not yet had the expected positive impact on the lives of Russian indigenous peoples. The main problem appears to be lack of implementation at the regional and local level. International bodies and experts have repeatedly expressed their concerns about the implementation of such federal provisions²⁶ and their consistency with regional and local laws.²⁷ The recent report of the European Commission against Racism noted:

[T]he authorities of many constituent units of the federation often violate the Constitution, federal laws and international obligations of the country in the area of human rights, in practice the federal authorities have limited opportunities of influencing the subjects of the Federation, and even these opportunities are generally not used systematically or effectively.²⁸

The following section will analyze the most important issues facing the numerically small peoples of the North, Siberia, and Far East.

A. Discrimination

The Russian Federation has a constitutional framework that prohibits discrimination on the basis of race. Article 19 of the Constitution guarantees

23. Russian Federation, Federal Law on General Principles of the Organization of Communities of Indigenous Peoples of the North, Siberia, and the Far East, adopted in Federal Act No. 104-FZ, 20 July 2000, available at www.minelres.lv (for Russian text, under National Legislation, go to Russia).
24. Russian Federation, Law on the Territories of Traditional Nature Use by Indigenous Numerically Small Peoples of the North, Siberia, and the Far East, adopted 7 May 2001. See also *TOWARDS A NEW MILLENNIUM*, *supra* note 2, at 281.
25. Russian Federation, 2001 Federal Land Code, contained in Federal Act No. 197 of 30 Dec. 2001 (as amended and supplemented on 24 and 25 July 2002). Text of the Code in Russian available at www.worldlii.org/catalog/2171.
26. European Committee Against Racism and Intolerance, Annual Report on ECRI's activities covering the period from 1 January to 31 December 2000, released 2 May 2001, CRI (2001) 20, at 41, ¶ 10 (hereinafter ECRI Report), available at www.coe.int (under Human Rights heading go to Combating racism, then to ECRI); see also, *THE INDIGENOUS WORLD*, *supra* note 1, at 34.
27. *Summary Record of the 1247th Meeting: Haiti, Russian Federation*, U.N. CERD, Comm. on Elim. of Rac. Discrim., 52 Sess., ¶ 28, U.N. Doc. CERD/C/SR.1247 (1998).
28. ECRI Report, *supra* note 26, at 41, ¶ 14.

equal rights regardless of, *inter alia*, race, nationality, language, and residence and prohibits any restriction of citizens' human rights on these grounds.²⁹ Article 13(5) prohibits the establishment of public associations aiming at inciting racial, national, and religious strife, and Article 29(2) prohibits any such propaganda or campaigns.³⁰ Finally, Article 26(1) gives the right to everyone to determine and indicate his national affiliation.³¹ Based on these constitutional guarantees, the 1996 Penal Code provides protection against acts of discriminatory nature as well as acts aimed at inciting racial hatred.³² Nevertheless, discrimination is still the major problem for indigenous peoples of the Russian North, Siberia, and Far East. The difference in living standards between the indigenous and the non-indigenous peoples is vast. Currently, over 30 percent of the indigenous population lives in substandard housing or traditional tents, often because housing in rural areas and along migration routes is not available.³³ One of five unemployed in Russia is a resident in the North and death rates among indigenous of the North are one and one-half times the average in the country.³⁴ The disparity in wages and unemployment, in mortality and death statistics, and in social benefits confirm the existing patterns of discrimination.³⁵ 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.³⁶

In international law, the right not to be discriminated against on the basis of race constitutes *jus cogens*, a preemptory norm from which no derogation is permitted.³⁷ In its Advisory Opinion on *Minority Schools in Albania*, the Permanent Court of International Justice noted that "equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations."³⁸

29. KONST. RF, *supra* note 20, art. 19.

30. *Id.* arts. 13(5), 29(2).

31. *Id.* art. 26(1).

32. 1996 Penal Code of the Russian Federation (translated from Russian text).

33. Arctic Monitoring and Assessment Programme (AMAP), Arctic Pollution Issues: A State of the Arctic Environment Report, available at www.amap.no (Use search terms like Arctic Environment Report and select Popular (non scientific) Reports to download the 1997 report, look under *People of the North*, 66 (1997)).

34. *Summary Record of the 1246th Meeting: Russian Federation*, U.N. CERD, Comm. on Elim. of Rac. Discrim., 52 Sess., CERD/C/SR.1246, ¶ 42, U.N. Doc. CERD/C/SR. 1246 (1998).

35. VAKHATIN, *supra* note 3, at 26.

36. UN Committee on the Rights of the Child, *General Recommendation on the Administration of Juvenile Justice*, 2d Sess. U.N. Doc. CRC/C/90 (Sept. 1999).

37. MAURIZIO RAGAZZI, THE CONCEPT OF INTERNATIONAL OBLIGATIONS ERGA OMNES 124-30 (1997).

38. PCIJ (series A/B), No. 64, 19 [1935] The ICJ affirmed this principle in the South West Africa Cases (Second phase), 6 ICJ Reports, 303-04 [1966].

Positive measures are urgently needed to ensure the survival of the numerically small peoples. International law instruments cautiously encourage states to take positive measures for the protection of minorities. Article 2(2) of the ICERD allows for positive measures, when "circumstances so warrant."³⁹ In its General Recommendation on Article 1(1) of the Convention, CERD noted that: "A differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of Article 1, paragraph 4, of the Convention."⁴⁰

Arguably, Article 27 of the ICCPR⁴¹ also poses an affirmative obligation for positive action to protect minority and indigenous groups.⁴² Only if states take affirmative action can the rights of Article 27 be realized.⁴³ Indeed the Human Rights Committee has followed this view: in its General Comment 23(50), the Committee notes that states need to take positive measures to implement Article 27, not only against the acts of the state party itself, but also against acts of other persons in the state.⁴⁴ Also, during the monitoring process, the Human Rights Committee often includes within the scope of Article 27 questions on any positive measures the states have taken concerning minorities and indigenous peoples.⁴⁵ The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Declaration on Minorities),⁴⁶ an authoritative interpretation of

39. ICERD, *supra* note 11, art. 2, ¶ 2.

40. *Definition of Discrimination*, CERD, General Recommendation XIV, U.N. CERD, Comm. on Elim. of Rac. Discrim., 42 Sess., art. 1, ¶ 2, of the Convention, U.N. Doc. A/48/18 (1993).

41. ICCPR, *supra* note 16, art. 27.

42. See ATHANASIA SPILIOPOULOU-ÄKERMANN, JUSTIFICATIONS OF MINORITY PROTECTION IN INTERNATIONAL LAW 128 (1996). Spiliopoulou-Äkermann discerns between two approaches: the radical or active school, represented by Capotorti, Thornberry, Sohn, Ermacora, and Cholewinski, that supports that states are required to take affirmative action; and the minimalist or passive school represented by Nowak and Tomüschat that maintains that the article does not create positive obligations for the states; Higgins takes a more cautious approach. See also Ryszard Cholewinski, *State Duty Towards Ethnic Minorities: Positive or Negative?*, 10 HUM. RTS. Q. 344-71 (1988); PATRICK THORNBERRY, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES 185-86 (1991).

43. See Francesco Capotorti, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, New York, U.N. 1992, Human Rights Series, No. 5, ¶ 588.

44. Human Rights Committee, General Comment by CCPR, Comment No. 23(50), U.N. Doc. No. A/49/40, vol. I, CCPR/C/21/Rev.1/Add.5, ¶ 6.2 (1994).

45. See Reports of the Human Rights Committee, General Assembly, 33rd Sess., Supp. No. 40, at ¶ 538, U.N. Doc. A/33/40 (1978); 35th Sess., Supp. No. 40, at ¶ 186, U.N. Doc. A/35/40 (1980); 38th Sess., Supp. No. 40, at ¶¶ 200 & 218, U.N. Doc. A/38/40 (1983); 40th Sess., Supp. No. 40, at ¶¶ 514-15, U.N. Doc. A/40/40 (1985); 48th Sess., Supp. No. 40, at ¶ 509, U.N. Doc. A/48/40 (1993); 50th Sess., Supp. No. 40, at ¶ 303, U.N. Doc. A/50/40 (1995).

46. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, adopted 18 Dec. 1992, G.A. Res. 47/135 U.N. GAOR, 47th Sess., Annex, U.N. Doc. A/Res/47/135/Annex (1992), reprinted in 32 I.L.M. 911 (hereinafter Declaration on Minorities).

Article 27 of the ICCPR according to Brownlie,⁴⁷ also supports the adoption of appropriate measures for the protection of the existence and identity of minorities⁴⁸ and requires that states adapt their legislation in order to make the protection "effective." Measures to promote "full and effective equality" are also required "where necessary" by the Framework Convention for the Protection of National Minorities.⁴⁹ Legal measures are not adequate if not followed by implementation.

Indigenous instruments are clearer about the positive obligations of the states concerning indigenous peoples. ILO Convention 169 establishes special measures for safeguarding the "persons, institutions, property, labour, cultures and environment of the peoples concerned,"⁵⁰ provided that these measures are according to the indigenous wishes. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly insisted that states need to guarantee special protection to indigenous populations.⁵¹

Russian federal legislation embraces the idea of positive measures for the elimination of discrimination against indigenous peoples. The 1996 Outline of the Russian State Policy on Nationalities proclaims equal rights for indigenous peoples irrespective of nationality, equal rights for all entities of the Russian Federation, and promotion and development of national cultures and languages.⁵² The Outline sought to improve the conduct and coordination of ethnic policies towards ethnic minorities or nationalities by combining the efforts of federal and constituent authorities with the ethnic communities. Within this framework, the 1999 Indigenous Rights Law establishes positive rights for indigenous peoples that take into account their specific characteristics.⁵³ The law provides for a wide range of rights for

47. IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 699 (4th ed. 1990).

48. Declaration on Minorities, *supra* note 46, art. 1 states that: "States shall protect the existence and national or ethnic, cultural, religious and linguistic identity of minorities" within their territory and "adopt appropriate legislative and other measures to achieve those ends."

49. Framework Convention, *supra* note 13, art. 4.2; guarantees against discrimination are also included in: Council of Europe, Rights of National Minorities, Doc. No. 8943, 23 Jan. 2001, Doc. 8943, Rec. 1201 (1993), art. 11 (hereinafter Council of Europe, Rec. 1201).

50. ILO Convention 169, *supra* note 9.

51. For instance, in an individual observation published in 1994, the Committee criticized Colombia on the basis that there was a "certain movement in the country away from a recognition of special rights for indigenous peoples, or from programmes specially adapted to their needs." CEACR, *INDIVIDUAL OBSERVATION CONCERNING CONVENTION 107 INDIGENOUS AND TRIBAL POPULATIONS* ¶ 2 (Colombia, 1994).

52. The Concept/Outline of the State National Policy was approved 15 June 1996 by Decree No. 909 of the President of the Russian Federation. It is not a legally binding document.

53. 1999 Indigenous Rights Law, *supra* note 21.

indigenous peoples, including judicial protection of their rights; protection of their cultures, lifestyles, and languages; protection of the indigenous environment; guarantees for the indigenous economy and self-government; and alternative military service.⁵⁴

However, the legal guarantees against discrimination are not effective and their implementation of these guarantees has been weak. A notable example is that thus far no federal funding has been assured for the realization of indigenous rights,⁵⁵ even though in 1998, the state proclaimed that the small peoples of the North and Far East would be provided with state support under a presidential program which was to be implemented by the year 2000 by the competent federal committee.⁵⁶ "Addressing the fourth congress of the numerically small peoples of the North, Siberia, and the Far East, State Duma Deputy Chairman (Fatherland-All Russia) Artur Chilingarov declared that "the federal program for the economic and social development of the small people has fallen apart" and that "entire raions and remote villages . . . have not received their northern delivery for the last three years."⁵⁷ Moreover, the federal laws discussed above are of declaratory nature, and have not been supported by national, regional, and local enforcement laws.⁵⁸ In general, regional implementation of federal laws concerning minorities and indigenous peoples is difficult: although some constituents have adopted such laws, this is not the norm. Other initiatives to combat discrimination against indigenous peoples also need to be taken. For example, although the laws have condemned any reference to the person's nationality in official documents, such references still persist in some documents and lead to discriminatory practices.⁵⁹ Practical measures to enforce the laws in this respect are needed; sole legislative guarantees fall short of international standards. In Article 2(1) of the ICERD, state parties

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54. *Id.* For example, Article 14 guarantees the judicial protection of their rights; Article 4 authorizes public authorities to ensure the development of indigenous peoples and protect their ways of life and systems; Article 5 allows for positive measures; Articles 6 and 7 establish measures for the protection and promotion of indigenous rights; and Article 8 gives extensive rights of participation to indigenous peoples.
55. THE INDIGENOUS WORLD, *supra* note 1, at 34.
56. *Summary Record of the 1247th Meeting: Haiti, Russian Federation, supra* note 27, ¶ 28.
57. Russian Federation Report, *Federal Government's Policy Toward the North Lambasted* (18 Apr. 2001), available at www.rferl.org/russianreport/2001/04/14-180401.
58. Parliamentary hearings in 2000 noted the lack of laws implementing the 1999 federal law. Statement of Russian Association of Indigenous Peoples of the North (RAIPON) in the IV Arctic Parliamentarians Meeting, Rovaniemi (28 Aug. 2000), available at www.raipon.org/english/library/ipw/number4/article1.
59. ECRI Report, *supra* note 26, at 41.
60. ICERD, *supra* note 11, art. 2, ¶ 1(a). In its 2003 Report, Amnesty International recommends several practical measures to combat discrimination, at chapter 9. See AMNESTY INTERNATIONAL REPORT, DOKUMENTY! DISCRIMINATION ON GROUNDS OF RACE IN THE RUSSIAN FEDERATION (2003).

have agreed to “engage in no act or *practice* of racial discrimination against persons, [or] groups of persons.”⁶⁰ The right of non-discrimination should be established not just in its formal form, in law, but also in its substantial form, in practice.⁶¹ In 2001, the responsibility of indigenous affairs was shifted from the Ministry for the Affairs of the Federation, National and Regional Policy to the Ministry of Economic Development and Energy; since the transfer of powers, no real positive action has been taken on indigenous rights.⁶² Such lack of implementation of the federal legislation on equality has tragic consequences in all aspects of indigenous lives.

B. Participation Rights

The legislation of the Russian Federation offers extensive political rights to the small peoples of the North, Siberia, and the Far East. According to the 1999 Indigenous Rights Law, indigenous peoples can establish “the territorial bodies of public self-government” and enjoy the right “on the voluntary basis to organise [their] communities . . . for the social, economic and cultural development, protection of their traditional habitat and the environment, lifestyle, economy and aboriginal activities.”⁶³ Even during the Soviet era, the Committee of the North had created autonomous administrative regions (national *acrea*) and districts (national *raiony*) in order to protect indigenous peoples.⁶⁴

Notwithstanding the ambitious legal provisions, a roundtable discussion on the participation of indigenous peoples in legislative assemblies and elective local governance agencies confirmed in July 2001 that such representation has not been achieved.⁶⁵ Indigenous representatives have noted that “the problem of representation of indigenous peoples . . . is important and topical for northern peoples for addressing the questions of ethnic development and regulating interethnic relations and guaranteeing constitutional rights and freedoms of man and citizen.”⁶⁶

International law establishes the right of every citizen to take part in the conduct of public affairs on a basis of equality and in circumstances in which persons “are able to develop and express their identities as members

61. Advisory Opinion on *Minority Schools in Albania*, PCIJ, *supra* note 38.

62. THE INDIGENOUS WORLD, *supra* note 1, at 38.

63. 1999 Indigenous Rights Law, *supra* note 21.

64. Gail Osherenko, *Property Rights and Transformation in Russia: Institutional Change in the Far North*, 7 EUR.-ASIA STUD. 1077–108, 1083–85 (1995).

65. “You need to deserve the right to represent your people,” Bulletin No. 41 of the L’AURAVELT’AN INDIGENOUS INFORMATION CENTER, available at www.indigenous.ru/english/english.

66. *Id.*

of different communities within larger societies.⁶⁷ Although groups do not have an unconditional right to choose the modalities of their participation in the conduct of the public affairs,⁶⁸ the Human Rights Committee has emphasized in its General Comment 23(50) the importance of effective participation of members of minorities in decisions that affect them.⁶⁹ The Committee has noted that "indigenous populations should have the opportunity to participate in decision making in matters that concern them,"⁷⁰ and has commented positively on examples of devolution concerning indigenous communities.⁷¹ Effective participation has become an important prerequisite for minority participation: it is encouraged by the UN Minority Declaration,⁷² the 1992 Organization for Security and Co-operation in Europe (OSCE) Helsinki Document,⁷³ as well as the Framework Convention for National Minorities.⁷⁴ The Flensburg Proposals also emphasize that decisionmakers must proactively consult members of minorities that are affected by their decisions and must also create opportunities for them to effectively participate in the decisionmaking process.⁷⁵ Human rights bodies pay special attention to whether minorities have been included in decisionmaking in matters that affect them and that any decisions have been taken after real public debate.

Indigenous participation and cooperation with states also constitutes one of the main principles of ILO Convention 169.⁷⁶ Article 6, the "key-article of the whole Convention"⁷⁷ requires consultation and participation of indigenous peoples "whenever consideration is being given to legislative and administrative measures which affect [them] directly."⁷⁸ Consultations must be in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. The draft UN Declaration on Indigenous Rights goes even further: indigenous

67. ICCPR, *supra* note 16, arts. 25, 26, 27.

68. Human Rights Committee, *Marshall v. Canada*, Communication No. 205/1986, U.N. Doc. CCPR/C/43/D205/1986 (1991), esp. ¶¶ 5.4, 5.5.

69. Human Rights Committee, General Comment by CCPR, *supra* note 44, ¶ 7.

70. Report of the Human Rights Committee, *Mexico*, 49th Sess., ¶ 182, U.N. Doc. A/49/40, vol. I (1994).

71. *Norway*, *id.* ¶ 89.

72. Declaration on Minorities, *supra* note 46, art. 2(3).

73. Conference for Security and Co-operation in Europe (CSCE) 1992 Helsinki Document, the Challenges of Change, ¶ 24, CSCE Summit, Helsinki, 9–10 July 1992, available at www.osce.org/docs/english/1990-1999/summits/hels92e.

74. Framework Convention, *supra* note 13, art. 15.

75. *Proposals of the ECMI Seminar, Towards Effective Participation of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., 5th Sess., ¶ 20, U.N. Doc. E/CN.4/Sub.2/AC.5/1999/WP.4 (1999).

76. ILO Convention 169, *supra* note 9.

77. *Id.* art. 6(1)(a).

78. *Id.*

peoples have the right to maintain their distinct political characteristics and identities (Articles 4 and 8); to determine the selection of "the membership of their institutions in accordance with their own procedures"; "the responsibilities of individuals to their communities" (Article 34); and "their own citizenship in accordance with their customs and traditions" (Article 32).⁷⁹

Participation of a group may take various forms: the establishment of advisory and decisionmaking bodies in which minorities are represented; elected bodies and assemblies of national minority affairs; or local and autonomous administration.⁸⁰ The Russian 1999 Indigenous Rights Law allows for representation quotas for numerically small peoples within legislative bodies of the regional and local level,⁸¹ currently though, no such quota system, nor permanent seats for indigenous representatives exist in the federal or the regional level. Although there are some representatives of the numerically small peoples in the regional and local bodies, there is an overwhelming absence of an indigenous "voice" in the main legislative bodies in all levels.⁸² The 1999 Indigenous Rights Law also prescribes that indigenous peoples may participate in the review and development of laws and the implementation of programs that affect them;⁸³ this does not happen often in practice either. Ultimately, indigenous peoples asked for the establishment of an Indigenous Parliament, in the same manner as the Saami Parliaments; unfortunately, the first relevant draft federal law that representatives of the numerically small indigenous peoples submitted to the Russian Parliament was rejected.⁸⁴

Because of the minimal participatory rights northern indigenous people have in practice, several communities have opted for autonomy following the 1996 Federal Law on National Cultural Autonomy⁸⁵ and the 1999

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79. Drawing from the Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), at 71, U.N. Doc. A/810 (1948), *reprinted in* 43 Am. J. Int'l L. 127 (Supp. 1949) (hereinafter UDHR).
 80. See CSCE, Report of the CSCE Meeting of Experts on National Minorities (Geneva 1991).
 81. 1999 Indigenous Rights Law, *supra* note 21.
 82. Statement of Russian Association of Indigenous Peoples of the North (RAIPON), *supra* note 58.
 83. See Articles 5 and 8 of the 1999 Indigenous Rights Law, *supra* note 21. In 2003, Federal Act No. 21-FZ on Temporary Measures to Secure the Representation of the Small Indigenous Peoples of the Russian Federation in Legislative (representative) Organs of Government in the Constituent Entities of the Russian Federation, was adopted.
 84. See Report by the President of RAIPON, *On Activity of the RAIPON Co-ordination Council: The Analysis of the Past Activity, Strategy and Tactics for the Future by the Organisations of the Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation Till 2005* (12 Apr. 2001), available at www.raipon.org/english/events/4conference/report.
 85. Russian Federation, Federal Law on National-Cultural Autonomy, *supra* note 22.

Indigenous Rights Law.⁸⁶ It is reported that since the 1990s, the number of autonomous regions has increased.⁸⁷

Autonomy is not a right in international law;⁸⁸ rather, it is an application of the rights of participation and self-determination. The UN Declaration on Minorities does not expressly provide minorities with autonomy; yet, the condition of “effective participation” through local and national organizations seems to include the possibility of self-government.⁸⁹ European instruments are more vocal on this option. Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe supports minority autonomous authorities or special status in areas that such minorities constitute a majority, if historical conditions prescribe so.⁹⁰ The 1990 OSCE Copenhagen Document has a reference to autonomous administrations as a means to protect and promote minority identities.⁹¹ Any autonomous models must match the specific situation and be in accordance with the domestic legislation of the state.

Gudmundur Alfredsson points out that “the degree of autonomy of indigenous peoples within states becomes an indicator of the probability of their survival.”⁹² It is doubtful whether the degree of autonomy for Russian indigenous peoples can guarantee their survival; the system has serious drawbacks. The autonomies that have been created are mostly self-supporting, and thus do not have the means to operate.⁹³ This follows the pattern of the Soviet Union era, when the state never adequately funded the autonomous villages and the only sources of revenues came from native taxes. Another serious drawback of the autonomous regimes is the common reluctance of regional governors to implement local self-government in their territory, either by marginalizing the powers and functions of local

86. Russian Federation, Federal Law on the Guarantees of the Rights of Indigenous Numerically Small Peoples of the Russian Federation, *supra* note 21.

87. For example, the Baikal and Verkheangarsk Evenk rural settlements in the Republic of Buryatia, *Report of the Russian Federation on the implementation of provisions of the Framework Convention for the Protection of National Minorities, received on 8 Mar. 2000*, ACFC/SR (2000) 2, art. 15 (hereinafter Protection Implementation Report).

88. Hans-Joachim Heintze, *On the Legal Understanding of Autonomy, in* AUTONOMY: APPLICATIONS AND IMPLICATIONS 7–32 (Markku Suksi ed., 1998).

89. Declaration on Minorities, *supra* note 46, art. 2(3).

90. Council of Europe, Rec. 1201, *supra* note 49, art. 11.

91. CSCE: Document of the Copenhagen Meeting of the Conference on the Human Dimension, *adopted 29 June 1990* ¶ 35, *reprinted in* 29 I.L.M. 1305 (1990). It reads:

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural and linguistic identity of certain minorities by establishing as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

92. As *quoted in* Heintze, *supra* note 88.

93. ECRI Report, *supra* note 26, at 41, ¶ 6.

governments or by creating a parallel system or opposing any transfer of powers.⁹⁴ In addition, there is a great deal of confusion regarding the powers of local self-government in the sub-national level and general lack of information about the developments in the federal level; all these factors have led to the diminution of the indigenous self-government policy in the Russian Federation.⁹⁵ Formal declarations aside, the state has so far failed to provide effective self-government to the indigenous communities.⁹⁶

C. Land Rights

Land rights is the most fundamental issue for indigenous peoples living in Russia. Currently, the property system of the state has not been finalized. The system of property rights that will emerge will certainly have a powerful impact on the economy and the development of Russian indigenous peoples. Gail Osherenko has noted:

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.⁹⁷

The reform of the land system is a difficult and painful process in the Russian Federation. The recent economic changes have affected indigenous peoples: supply lines have been disrupted and many people are not adequately fed, especially with respect to imported foods. Reorganization of collectives and state farms along with depletion of fish stocks, closure of forest plots, and reduced investments have led to increased unemployment among northern indigenous peoples, reversing a previous upward trend in employment. Conflicting interests and ideas concerning the land reform have resulted in confusing and contradictory legislation on the subject. The lack of a comprehensive framework is an important obstacle for the realization of land rights of numerically small peoples. Currently, the separation of competences concerning land rights between the federal and the regional authorities is not clear. Under 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, mineral resources, water and other natural resources, delimitation of state, protection of the environment, protection of historical and

94. Peter Kirkow, *Local Self-government in Russia: Awakening from Slumber?*, 49 EUR.-ASIA STUD. 43, 48 (1997).

95. *Id.* at 49.

96. *Id.* at 54.

97. Osherenko, *supra* note 64, at 1077.

cultural monuments, ecological safety, and traditional way of life of small ethnic minorities.⁹⁸ In case of conflict with federal law, Article 74 of the Constitution gives considerable deference to the law of the constituent.⁹⁹ However, Article 36 asserts that the conditions and the order of the use of land are to be subject to federal law.¹⁰⁰ What is meant by “conditions” and “order of the use of the land” and how this provision fits with the above provisions has not been clarified. Also, regarding specifically land rights of minorities and indigenous peoples, Article 71(c) and (f) of the Constitution give the authority to the Federation to regulate and protect the rights of national minorities, to determine basic principles of national policy and programs in the fields of the economy and the environment, and the social, cultural, and national development of the Russian Federation.¹⁰¹ This framework has led to conflicting legislation and a legal vacuum in land law. Although the Federation still retains quite considerable power, the constituent entities enjoy greatly expanded rights to adopt legislation particular to their regions.¹⁰² Many regions have embraced the possibility to regulate important areas of law without consulting the federal lawmakers.¹⁰³ As Skyner has noted, “the absence of clearly designated criteria for the formulation of legislation, and abrupt changes in the political aspects of the land question in Russia, have ensured that there are disparities in the legislation of the regions regulating questions of land ownership and land use.”¹⁰⁴

Within this framework, land is legally “public,” owned by the state with management authority increasingly resting with the *okrug*, rather than the federal government. The land resources or the land reform committee of the *okrug* allocates use rights and determines the transfer of lands to private herders or for industrial purposes.¹⁰⁵ The language of the 1999 Indigenous Rights Law differs from the language of the international instruments: the 1999 law protects the right of numerically small peoples “to own and use, free of charge, various categories of land required for supporting their traditional economic systems and crafts,” rather than the lands on which they have been living.¹⁰⁶ In other words, the land is not protected just for the mere fact that indigenous peoples have been living there; the land must be

98. KONST. RF, *supra* note 20, art. 72.

99. *Id.* art. 74 § 6.

100. *Id.* art. 36.

101. *Id.* art. 71(c) & (f).

102. Osherenko, *supra* note 64, at 1090.

103. Louis Scanner, *Political Conflict and Legal Uncertainty: The Privatisation of Land Ownership in Russia*, 53 EUR.-ASIA STUD. 983–85 (2001).

104. *Id.* at 985.

105. Osherenko, *supra* note 64, at 1091.

106. See 1999 Indigenous Rights Law, *supra* note 21, art. 8.4.

necessary for the traditional economic system of the indigenous community. This could hinder indigenous communities that do not use their lands in a traditional way; on the other hand it could prove beneficial to most of the numerically small peoples who are nomadic and semi-nomadic. In any case, so far lack of implementation has obstructed the realization of this provision.

The new Land Code envisages the right to acquire land as private property.¹⁰⁷ The law gives a priority right to acquisition of land to those already having possession rights on this land, a priority right which is beneficial for indigenous communities.¹⁰⁸ Unfortunately, indigenous communities often cannot take advantage of this provision: many are dispersed across vast areas, cut off from administrative centers, and left uninformed of the legal developments concerning their lands. On the contrary, private companies that also have some rights to indigenous lands take advantage of the priority clause. Therefore, the process of leasehold legalization, practically without payment, of the land in industrial use on traditional subsistence territories of indigenous peoples has become extremely intensive since 2000. The specific conditions of Russian indigenous peoples are not addressed in the Land Code. The system envisaged is focused on the dichotomy between state and individual property rights, rather than collective property rights of a group. Yet, a focus on privatization without the development of the underlying framework of property rights will have a negative impact on indigenous lives, threatening the security of their land rights and their aim of creating "reserved territories."¹⁰⁹ In addition, the contradictions found in the Land Code with other national legislation, and especially the Civil Code, its vague points, and the lack of regulations for the implementation of the Code; are serious problems that weaken the benefits the code offers indigenous peoples.

International law does not provide indigenous peoples great support on securing their collective ownership rights. International instruments have been very reluctant to establish standards on property rights; moreover, even those instruments that include provisions on property rights favor individual rights.¹¹⁰ The Universal Declaration of Human Rights could be helpful for the indigenous peoples of the North, Siberia, and Far East.¹¹¹ Article 17(a)

107. 2001 Federal Land Code, *supra* note 25.

108. *Id.*

109. WORLD DIRECTORY ON MINORITIES, *supra* note 5, at 306.

110. See e.g., Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Enforcement of certain Rights and Freedoms not included in Section 1 of the Convention (entered into force 18 May 1954)*, reprinted in BASIC DOCUMENTS ON HUMAN RIGHTS 341 (Ian Brownlie ed., 3d ed. 1992).

111. UDHR, *supra* note 79.

establishes the right of everyone "to own property alone as well as in association with others," whereas 17(b) prescribes that "no one shall be arbitrarily deprived of his property."¹¹² Therefore, the declaration recognizes that if an indigenous group ever enjoyed property rights in a specific piece of land and was arbitrarily deprived of those rights, then their rights would have been violated. However, indigenous peoples of the north have never had ownership over the lands where they live, since all the lands were owned by the state. Also, the declaration prohibits only *arbitrary* deprivation of property, in other words deprivation without any reasonable cause or justification imposed by the mere exercise of power, without giving those affected the right to be heard and to have their interests considered.¹¹³ It would be very difficult to prove that a system of individual ownership on indigenous lands would be against this rule, especially since the code establishes a general right for everybody with previous possession rights to buy the lands on which they have been living.

Another possibly useful instrument could be the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).¹¹⁴ Article 2 of the Convention defines genocide as: "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."¹¹⁵ Indeed, in the last century several indigenous nationalities of the north have been extinguished, whereas others are currently on the verge of extinction.¹¹⁶ It can be argued that this situation will worsen if the lands are taken over by private persons or companies. Yet, the Genocide Convention sets as an intrinsic element of genocide the "intent to destroy" a distinct group of people.¹¹⁷ It would be very difficult to prove that destruction of these natives groups was and still is the intention of the Russian Federation, especially since the state has taken several measures for the protection of their rights. It is interesting to note here that in its current form, the draft Declaration on the Rights of Indigenous Peoples establishes that the determining criterion for genocide is

112. *Id.* art. 17(a) & (b).

113. Eric Lucas, *Towards an International Declaration on Land Rights*, 33 INT'L COMM. JURISTS REV. 64 (1984).

114. Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 Dec. 1948, 78 U.N.T.S. 277 (entered into force 12 Jan. 1951) (entered into force for U.S. 23 Feb. 1989) (hereinafter Genocide Convention).

115. *Id.* art. 2.

116. Statement by the Social Organizations and Movements of Indigenous peoples of the North, *Discrimination against Indigenous peoples of the North in the Russian Federation*, released 4 Mar. 1996, available at arcticcircle.uconn.edu/SEE/russia_indig.

117. Genocide Convention, *supra* note 114.

“aim or effect” to destroy indigenous communities rather than only the intent.¹¹⁸

A more realistic option would be the use of the ICERD which specifically includes nondiscrimination concerning “the right to own property alone as well as in association with others.”¹¹⁹ Yet, the Russian Land Code establishes the same system for everybody; and consequently does not directly discriminate against indigenous peoples.¹²⁰ A case can be made for indirect discrimination, arguing that this system of private ownership indirectly hinders the development of an appropriate framework to protect indigenous land rights. To this end, voices raised in favor of some flexibility concerning the land systems of the constituents of the Russian Federation should be seriously taken into account.¹²¹ A balance needs to be found between the individual right to ownership and the collective right of indigenous northerners to own the lands on which they have been living.

Lately, the United Nations system has become more engaged in indigenous land rights. In 1997, CERD issued General Recommendation XXIII (51) concerning indigenous peoples, encouraging states to:

recognise and protect the right of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.¹²²

Although the 1999 Indigenous Rights Law recognizes the right to indigenous peoples to own land that supports “their traditional economic systems and crafts as well as common mineral resources in accordance with the procedure established by the federal legislation and legislation of subjects of the Russian Federation,”¹²³ no such measures have been taken yet.

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118. Commission on Human Rights Intersessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples, 18 Oct. 1999, art. 7. On the question of possible genocide concerning violations of indigenous lands, see Martin A. Geer, *Foreigners in Their Own Land: Cultural Land and Transnational Corporations—Emergent International Rights and Wrongs*, 38 VA. J. INT'L L. 359–64 (1998) (hereinafter Draft Declaration on the Rights of Indigenous Peoples).
 119. ICERD, *supra* note 11, arts. 5 (c), (d)(v).
 120. 2001 Federal Land Code, *supra* note 25.
 121. Among them, representatives of different regions of the State Duma, the Tula deputies, and in early May 2000 President Putin. See Scanner, *supra* note 103, at 989.
 122. *Committee on the Elimination of Racial Discrimination, General Recommendation XXIII Indigenous Peoples*, U.N. CERD, Comm. on Elim. of Rac. Discrim., 51 Sess., ¶ 5, U.N. Doc. A/52/18, annex V (1997).
 123. 1999 Indigenous Rights Law, *supra* note 21, article 8.4.

This inactivity is contrary to ILO Convention 169, which sets clear standards for indigenous collective ownership.¹²⁴ After emphasizing the special relationship of indigenous peoples with the lands "and in particular the collective aspects of this relationship," Article 14 of ILO Convention 169 recognizes "the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy."¹²⁵ The Draft Declaration on the Rights of Indigenous Peoples also provides a wide range of land rights to indigenous peoples, including collective ownership to lands they "traditionally owned or otherwise occupied or used."¹²⁶

In 1998, the Governing Body of the ILO commented on the importance of collective indigenous land ownership in a representation concerning an alleged violation of the Convention by Peru,¹²⁷ which raised very similar questions to those discussed with respect to indigenous peoples of the North, Siberia, and Far East. The Peruvian Land Titling Act for the Rural Communities of the Coastal Region authorized individuals living in the Peruvian Coastal Region (an area inhabited mostly by indigenous peoples) to sell lands to other individuals, although the land was owned by the indigenous community as a whole.¹²⁸ In adopting this act, Peru did not consult with the affected indigenous community, but went ahead on the ground that individual ownership was better for the development of the area. In its opinion, the ILO Governing Body noted that when lands held collectively by indigenous and tribal peoples are divided and assigned to individuals, the exercise of indigenous rights tends to be weakened and, in general, they ultimately lose all or most of their lands.¹²⁹ The International Labour Conference noted that although it is not the Governing Body's function to determine whether collective or individual property was the most appropriate arrangement for indigenous or tribal peoples, involving indigenous peoples in the decision as to whether this form of ownership should change is extremely important.¹³⁰

Putting land ownership aside, indigenous rights to traditional activities are also currently under severe threat. The State Duma recognized in the 1995 Decree "on the crisis situation of the economy and culture of the small in number indigenous peoples of the North, Siberia and Far-East" that

124. ILO Convention 169, *supra* note 9.

125. *Id.* art. 14.

126. Draft Declaration on the Rights of Indigenous Peoples, *supra* note 118.

127. Report of the Committee set up to examine the representation alleging non-observance by Peru of ILO Convention 169, I.L.O. Constitution, art. 24, General Confederation of Workers of Peru (CGTP), Submitted: 1997, GB.270/16/4 & GB.273/14/4.

128. Peruvian Land Titling Act No. 26845 of 26 July 1997.

129. Report of the Committee set up to examine the representation, *supra* note 127, ¶ 26.

130. CEACR, Individual Observation concerning ILO Convention 169 (Peru ¶¶ 3–6).

traditional economic activities were continuing to collapse which lead to unemployment and impoverishment.¹³¹ Reindeer breeding/herding, fur farming, hunting, dairy and livestock breeding as well as fish factories remain the backbone of indigenous peoples' economy.¹³² These activities are not protected in practice. For example, in 2001, the State Fishing Committee issued a regulation giving rights to fish anadromous species on a tender basis. Although indigenous peoples' rights to priority licensing had been envisaged in the federal law "on fauna," no such rights were given to indigenous peoples.¹³³ This is just another example of primary legislation benefiting indigenous peoples that was not implemented. This lack of implementation has serious consequences for indigenous peoples: they cannot compete with multinational corporations' equipment or organization of fishing and fish processing; since the regulation does not give them priority rights, the licenses to fish go to multinational corporations rather than indigenous peoples.

Positive measures need to be taken for the protection of indigenous traditional activities. Commenting on the Swedish report in 1995, the Human Rights Committee noted that equal rights to fishing and hunting in Sweden may have adverse consequences for the traditional activities of indigenous peoples and indirectly gave priority to the traditional rights of indigenous peoples.¹³⁴ Priority rights to fishing need to be ensured for Russian indigenous peoples. According to the *Lubicon Lake Band* judgment,¹³⁵ violation of the indigenous right to engage in traditional economic activities amounts to a violation of the right to enjoy their culture. In *Ivan Kitok v. Sweden*,¹³⁶ the Human Rights Committee noted that while the regulation of an economic activity is normally a matter for the state, if the activity in question is "an essential element in the culture of an ethnic community," there is a violation of Article 27 of the ICCPR.¹³⁷

ILO Convention 169 explicitly recognizes the right of indigenous peoples to traditional activities.¹³⁸ The Convention urges states to take

131. In Bill Bowring, *Ancient Peoples and New Nations in the Russian Federation: Questions of Theory and Practice*, in *ACCOMMODATING NATIONAL IDENTITY* 223 (Stephen Tierney ed., 2000).

132. Osherenko, *supra* note 64, at 1080.

133. INTERNATIONAL WORKING GROUP, *supra* note 1, at 38.

134. 1995 report discussed in Spiliopoulou-Åkermann, *supra* note 42, at 154–55.

135. *Lubicon Lake Band v. Canada*, *supra* note 17.

136. *Id.*

137. *View of the Human Rights Committee Under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights*, CCPR, Communication No. 197/1985, U.N. Doc. CCPR/C/33/D/197/1985 (1988). ICCPR, *supra* note 16, art. 27.

138. ILO Convention 169, *supra* note 9, art. 14(1).

measures to safeguard indigenous rights to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular reference is made to the situation of nomadic peoples and shifting cultivators, an important inclusion for the numerically small peoples of the Russian North, Siberia, and Far East. The Draft Declaration includes even wider protection of indigenous rights to traditional activities.¹³⁹

Undoubtedly, the main threat to indigenous traditional activities are the multinational corporations.¹⁴⁰ Their attraction to the Russian north is mainly owed to its rich natural resources, including timber, oil, gas, coal, and minerals. The rights to the subsurface are owned by the government, but transferred to companies with a royalty payment.¹⁴¹ Indeed, CERD has commented that the life of the small peoples of the North, Siberia, and Far East continues to worsen, not least because non-indigenous persons are taking control of the natural resources of the lands where they live.¹⁴²

The use of natural resources is one of the most controversial issues concerning indigenous rights. Article 1(2) of both the ICCPR and the ICESCR recognize the right to “freely dispose of their natural wealth and resources” and to not “be deprived of its own means of subsistence,” whereas Article 47 of the ICCPR gives peoples the right “to enjoy and utilise fully and freely their natural wealth and resources.”¹⁴³ Contrary to many states who do not recognize indigenous as “peoples,” the Russian Federation does so. As seen above, indigenous are called “peoples” in federal and regional laws. Recognizing indigenous peoples as such, but denying them the rights of Article 1(2) is discriminatory.

The Human Rights Committee has also recognized indigenous peoples as beneficiaries of this provision: in its comments concerning the latest periodical reports of Canada, Mexico, and Australia, the Committee dealt with the right of natural resources of indigenous peoples by calling upon their right to self-determination, as enshrined in Article 1 of both the ICCPR and the ICESCR.¹⁴⁴ Although all three states, in their reports, had themselves

139. Draft Declaration on the Rights of Indigenous Peoples, *supra* note 118, arts. 26, 30.

140. The government acknowledged in 2002 that industrialization has had adverse effects for indigenous lands and rights. *Fifth Periodic Report of the Russian Federation* on action taken and progress towards respect for the rights set forth in the International Covenant on Civil and Political Rights, ¶ 187 UN Doc. CCPR/C/RUS/5.

141. Osherenko, *supra* note 64, at 1091.

142. *Summary Record of the 1246th Meeting: Russian Federation*, *supra* note 34, ¶ 42.

143. ICCPR, *supra* note 16, art. 1(2); ICESCR, *supra* note 19, art. 1(2).

144. For Canada, see UN Committee on Human Rights, Consideration of Reports submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Canada. 07/04/99. U.N. Doc. CCPR/C/79/Add. 105, ¶ 8. For Mexico, see UN Committee on Human Rights, Consideration of Reports submitted

linked indigenous peoples with the right to self-determination, the endorsement of this view by the Committee and the expressed view that Article 1 concerns indigenous natural resources is important. Traditionally though, in cases concerning the negative effects of multinational companies on indigenous rights, the Committee has sidestepped the controversial issue of indigenous rights to natural resources and has used the “safer” right to culture of minorities.¹⁴⁵ In *Ominayak v. Canada*,¹⁴⁶ the Committee found that a Canadian government lease of Indian land that was to be used for commercial timber activities would violate Article 27 because it would destroy the traditional life of the Lubicon Lake Band. Although no violation was found in *Länsman v. Finland*,¹⁴⁷ the Committee warned that any future mining activities on a large scale “may constitute a violation of the authors’ right under Article 27, in particular of their right to enjoy their culture.” Making a shift, in *Hopu v. France*¹⁴⁸ the Committee used the right to family and privacy. As they could not use Article 27 of the ICCPR,¹⁴⁹ the Committee held that construction of a hotel located on indigenous ancestral grounds would violate the right to family and privacy because it would destroy the owners’ traditional burial grounds, which can play an important role in a person’s identity.¹⁵⁰

ILO Convention 169 is as helpful as it is realistic concerning indigenous peoples’ rights to natural resources. Article 15 of the Convention recognizes that governments often retain some natural resources for their own exclusive ownership, but still provide indigenous peoples with rights “to the natural resources pertaining to their lands. These rights include the right of these peoples to participate in the use, management and conservation of these resources.”¹⁵¹ Paragraph 2 provides for consultations—of the kind provided for by Article 6—before permitting exploitation or even exploration. Thus, while recognizing the principle of state sovereignty over resources, the provision also recognizes the need for prior consultation with indigenous peoples.

by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Mexico. 27/07/99. U.N. Doc. CCPR/C/79/Add. 109, ¶ 19. For Australia, see UN Committee on Human Rights, Consideration of Reports submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Australia (Advanced unedited version), U.N. Doc. CCPR/CO/69/AUS, ¶ 9.

145. ICCPR, *supra* note 16, art. 27.

146. See generally, *supra* note 17.

147. *Id.*

148. *Id.*

149. ICCPR, *supra* note 16, art. 27. France has made a reservation to Article 27, thus, no finding was possible on this ground.

150. *Id.* art. 11.

151. ILO Convention 169, *supra* note 9, art. 15.

The ILO Governing Body decided in 1999 that Bolivia had violated indigenous rights to land and consultation in matters that concerned those rights when administrative decisions established forestry concessions for mining and petroleum exploitation in areas where indigenous peoples lived, without consulting them.¹⁵² The Committee in charge of the case held that states must undertake to ensure that the indigenous communities concerned are consulted promptly and adequately on the extent and implications of exploration and exploitation activities, whether these are mining, petroleum, or forestry activities.¹⁵³

The ILO Governing Body suggested that environmental, cultural, social, and spiritual impact studies, conducted jointly with indigenous peoples,¹⁵⁴ and appropriate consultations with indigenous peoples, should take place before any exploration and exploitation of natural resources in areas they have traditionally occupied.¹⁵⁵ The Committee of Experts of the ILO also has commented, in several of its observations, on projects that had negative impacts on indigenous peoples.¹⁵⁶

Participation of indigenous peoples over issues concerning their natural resources is mainly based on the international standards concerning participation and consultation of minorities and indigenous peoples analyzed previously.¹⁵⁷ The 1999 Indigenous Rights Law complies with all these standards.¹⁵⁸ Article 8.1 provides indigenous peoples with the right to participate in exercising control over the use of land that is necessary for their traditional economic systems; in environmental protection, when these lands and the resources are industrially used; in development and adoption of decisions that concern them; and in environmental and anthropological assessments in the development of state programs of natural resource

152. Report of the Committee set up to examine the representation alleging non-observance by Bolivia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under art. 24 of the I.L.O. Constitution by the Bolivian Central of Workers (COB), ILO Governing Body Docs. GB.272/8/1 & GB.274/16/7 (1998).

153. *Id.* ¶ 38.

154. *Id.* ¶¶ 39 & 44.

155. *Id.*

156. See CEACR, Individual Observation concerning Convention 169 on Indigenous and Tribal Peoples, Mexico, 1997, ¶ 7; CEACR, Individual Observation concerning Convention No. 169, Indigenous and Tribal Peoples, Colombia, 1999, ¶ 2; CEACR, Individual Observation concerning Convention No. 169, Indigenous and Tribal Peoples, Mexico, published: 1999, ¶ 11; CEACR: Individual Observation concerning Convention No. 169, Indigenous and Tribal Peoples, Peru, 1999, ¶ 7; CEACR, Individual Observation concerning Convention No. 169 on Indigenous and Tribal Peoples, Mexico, 2000, ¶ 4.

157. See *esp.* ICCPR, *supra* note 16, arts. 25–27; Framework Convention, *supra* note 13, art. 15; Declaration on Minorities, *supra* note 46, art. 5.

158. See 1999 Indigenous Rights Law, *supra* note 21.

exploration.¹⁵⁹ The law also provides rights to compensation for indigenous peoples as well as state, regional, and local support for the realization of these rights.¹⁶⁰ Also, the 2001 Federal Law on Territories of Traditional Natural Use (*Traditional Subsistence Territories*) of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation, regulates the establishment, maintenance, and development of “especially conserved wildlife areas formed for the purposes of traditional nature management and peaceful enjoyment of settlement land by the indigenous peoples of the North, Siberia and the Far East of the Russian Federation.”¹⁶¹

However, reality is much bleaker: first, although since 1999 relevant local normative acts that apply the Indigenous Rights Law have been adopted in a few areas of the Federation, such as Buryatia, Yakutia-Sakha, the Tyumen Oblast, and Khabarovsk Krai,¹⁶² most often no action has been taken; in truth, recent temporary instructions and enactments even contradict the above law.¹⁶³ For centuries the resources have been exploited and today they provide one-fifth of Russia’s gross national product; development in this area is expected to increase even more.¹⁶⁴ Contrary to the law, consultation with the Russian indigenous peoples about exploration or exploitation of natural resources in areas they live does not take place. Moreover, no compensation is made for the lands utilized by the state or international companies in traditional land use areas; no funding is provided for the realization of its provisions;¹⁶⁵ and no environmental assessments take place.¹⁶⁶ Indigenous peoples have no participation “in the benefits of such activities,”¹⁶⁷ since any benefits are divided between the federal, regional, and local governments, to which indigenous communities often do not have access; nor do they get any “fair compensation for any

159. *Id.*

160. *Id.* Article 8.4 gives indigenous peoples the right to material and financial resources by the international, federal, regional, and local authorities and Article 8.8 gives them the right to compensation.

161. Article 1 of the Law On the Traditional Nature Management Territories of the Indigenous People of the North, Siberia and Far East of the Russian Federation, *in* TOWARDS A NEW MILLENIUM, *supra* note 2, at 281.

162. ECRI Report, *supra* note 26, at 41, ¶ 51.

163. THE INDIGENOUS WORLD, *supra* note 1, at 38.

164. AMAP, *supra* note 33, 65.

165. Statement by Mikhail Todyshev of the Association for the Shor People in the 2001 session of the working group on indigenous populations, 25 July 2001, on file with author. See also THE INDIGENOUS WORLD, *supra* note 1, at 34.

166. THE INDIGENOUS WORLD, *supra* note 1, at 41. IWGIA reports that no environmental assessment nor public hearing took place before the start of the construction of a gas pipeline in the south of the Tkhsanom territory, even though the pipeline goes through indigenous subsistence areas.

167. See ILO Convention 169, *supra* note 9, art. 15.

damages which they may sustain."¹⁶⁸ Finally, since the adoption of the 2001 law on Territories of Traditional Natural Use, not even a single traditional natural use territory has been established. According to the government, this is because of the "unavailability of essential legislative acts regulating the order of establishing traditional subsistence territories of federal significance as well as specification of the system of rules applicable to their functioning."¹⁶⁹ Yet, the government has taken no steps to reverse the situation. At the same time, cases of hasty abolition of the formerly established traditional subsistence territories have come to the attention of the international community.¹⁷⁰

D. Cultural Rights

Fortunately, cultural rights of the numerically small peoples of the North, Siberia, and Far East are better protected than land rights. Certainly, we have recently witnessed dramatic positive changes. The historical past of indigenous peoples, their culture, religious beliefs, customs, and traditions have begun to receive considerably more coverage. Attempts have been made to incorporate the history of culture and religion in educational programs and to create regional textbooks published in all constituent entities of the Russian Federation.

International law protects a generic individual right to a culture. Article 27(1) of the Universal Declaration recognizes the right of everyone "to freely participate in the cultural life of the community"¹⁷¹; Article 15 of the ICESCR establishes the states' duty to protect culture¹⁷² and Article 30 of the Convention of the Rights of the Child protects the right of the indigenous child "to enjoy his or her own culture."¹⁷³

Members of minorities have the right "to enjoy their culture,"¹⁷⁴ to profess and practice their own religion and to use their own language, in private and in public, freely and without interference or any form of discrimination¹⁷⁵; to "express, preserve and develop in complete freedom

168. *Id.*

169. Quote from letter #29/22-1 dated Jan. 2001, written by the First Deputy Minister of Economic Development, S.N. Kharyuchi, quoted in *THE INDIGENOUS WORLD*, *supra* note 1, at 44, n.1.

170. *Id.* at 39-40.

171. UDHR, *supra* note 79, art. 27(1).

172. ICESCR, *supra* note 19, art. 15. Several UNESCO instruments also protect culture.

173. Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, art. 30, U.N. Doc. A/44/49 (1989) (entered into force 2 Sept. 1990), reprinted in 28 I.L.M. 1448 (1989) (hereinafter CRC).

174. ICCPR, *supra* note 16, art. 27; Declaration on Minorities, *supra* note 46, art. 2.

175. Declaration on Minorities, *supra* note 46, art. 2.

his/her religious, ethnic, linguistic and/or cultural identity, without being subjected to any attempt of assimilation against his/her will,¹⁷⁶ individually or in association with others. By signing the relevant documents, the Russian Federation has undertaken these obligations as well as to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions, and cultural heritage.¹⁷⁷

ILO Convention 169 goes further and requires positive measures for the participation of indigenous peoples to promote the full realization of indigenous cultural rights with respect to their cultural identity, their customs and traditions, and their institutions.¹⁷⁸ In general, the recognition, protection, and promotion of indigenous values and practices must be an important factor when applying all the provisions of the Convention.¹⁷⁹

The Russian Federation has adopted legislation in accordance with the standards of ILO Convention 169. The Concept of the State National Policy, adopted in 1996, is committed to "the promotion of development of national cultures and languages of the peoples of the Russian Federation."¹⁸⁰ The 1992 Federal Law on Fundamentals of the Russian Federation Legislation on Culture guarantees the right of peoples and other entities to preserve and develop their cultural and ethnic identity and to protect, reconstruct, and maintain native culture.¹⁸¹ More than this, Article 21 of the law guarantees the right to cultural and ethnic autonomy to all ethnic communities living in a compact way outside their state entities.¹⁸² The 1996 Federal Law on National Cultural Autonomies gives the possibility of cultural autonomy to all stateless minorities¹⁸³ and provides for a system of associations called national cultural autonomies at the federal, regional, or local level as a form of national and cultural self-determination and self-organization for the preservation and development of lifestyles, traditions, language, and self-awareness of ethnic groups. The law provides these cultural autonomies with the right to ask for support necessary to preserve

176. Council of Europe, Rec. 1201, *supra* note 49, art. 3.1.

177. Framework Convention, *supra* note 13, art. 5.1; Concluding Document of the Vienna Meeting of the CSCE, adopted 19 Jan. 1989, ¶ 19, available at www.unesco.org/most/rr4csce3.

178. ILO Convention 169, *supra* note 9, arts. 2(b) & 4.

179. *Id.* art. 5.

180. Protection Implementation Report, *supra* note 87, at 2.

181. The Federal Law on Fundamentals of the Russian Federation Legislation on Culture, adopted by Federal Act No. 3612-I, 9 Oct. 1992 and amended and supplemented on 23 June 1999, 27 Dec. 2000, 30 Dec. 2001, 24 Dec. 2002.

182. KONST. RF, *supra* note 20, art. 21.

183. See National-Cultural Autonomy Law, *supra* note 22.

the national way of life, the development of the mother tongue, and national culture; to put forward national and cultural interests to the legislative powers and local authorities; to create mass media and transmit and receive information in the mother tongue; to preserve and enrich the historical and cultural heritage, and follow traditions and customs; to create educational and cultural institutions¹⁸⁴ and cultural bodies; and to develop and maintain cross-frontier contacts.¹⁸⁵

Notwithstanding the wide protection established by this federal legislation, an important point must be addressed here: autonomy is not a requirement for indigenous cultural rights; effective participation, however, is.¹⁸⁶ In other words, the proclamation of cultural autonomy cannot release the federal state and its constituents from the positive obligations they have under international law to protect and promote indigenous cultural rights. These obligations also include funding as well as steps to make indigenous participation effective.¹⁸⁷ The Committee on Economic, Social and Cultural Rights has insisted that states should take "deliberate, concrete and targeted"¹⁸⁸ steps for the implementation of cultural rights. Poverty of states cannot be an excuse for inaction.¹⁸⁹

Specific aspects of culture are also protected by international law. Concerning language, the Constitution of the Russian Federation protects the right of everyone to use his or her native language and freely choose his/her language of communication, upbringing, education, and creative work.¹⁹⁰ The Constitution also "guarantee[s] to all of its peoples the right to preserve their native language and to create conditions for its study and development,"¹⁹¹ with specific reference to the guarantees of the rights of numerically small indigenous peoples. These guarantees are in accordance with existing standards of international law.¹⁹² The Law on the Languages of

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184. The National Minorities Act also urges states to take appropriate legislation that will allow the creation of cultural and educational establishments of minorities.
185. See Bill Bowring, *Austro-Marxism's Last Laugh? The Struggle for Recognition of National-Cultural Autonomy for Rossians and Russians*, 54 EUR.-ASIA STUD. 229-50 (2002), for a critique of the law.
186. See CSCE, Helsinki Final Act, CSCE Summit, Helsinki, 1 Aug. 1975, ¶ 26, "all peoples" have the right to cultural development whereas the United Nations Declaration on Minorities requires effective participation of minorities to the cultural life and matters that affect them.
187. Declaration on Minorities, *supra* note 46, art. 2.2, 2.3.
188. See General Comment 3 (1990) on "the nature of states' obligations," U.N. Doc. HR/PUB/91/1, 43-47, ¶ 2.
189. *Id.* See also, Patrick Thornberry & Diana Gibbons, *Education and Minority Rights: A Short Survey of International Standards*, 4 INT'L J. MIN. & GROUP RTS. 144 (1997).
190. KONST. RF, *supra* note 20, art. 26(2).
191. *Id.* art. 68.
192. In particular, they comply with the ICCPR, *supra* note 16, art. 27; Declaration on Minorities, *supra* note 46, art. 4.3; Council of Europe, Rec. 1201, *supra* note 49, art. 8; Framework Convention, *supra* note 13, art. 14.

the Peoples of the Russian Federation¹⁹³ gives the right to members of dispersed minorities and indigenous peoples to learn their own languages and the 1999 Indigenous Rights Law establishes the right of indigenous peoples to preserve and develop indigenous languages, receive and disseminate information in the indigenous languages, and establish indigenous media.¹⁹⁴ Indeed, newspapers and radio stations in indigenous languages operate in indigenous territories.¹⁹⁵ Provisions in federal laws also guarantee minority and indigenous language rights in judicial proceedings. The 1999 Indigenous Rights Law proclaims that customs and traditions of such peoples can be taken into account in trials concerning indigenous peoples, and participation of authorized representatives of numerically small peoples in defense of indigenous accused persons is possible.¹⁹⁶ Following these safeguards, several constitutions of the constituent states of the Federation also guarantee the protection of minority and indigenous cultures and languages.¹⁹⁷

Provisions have also been made for the education of indigenous peoples. The 1992 Education Act grants to citizens the right to primary education in their national language, subject to the resources available to the educational system, and the right of indigenous peoples and minorities to protect and develop their culture and their historical habitat.¹⁹⁸ Apart from establishing the right of everyone to education,¹⁹⁹ international standards set a framework for minority education,²⁰⁰ in which participation, choices, and resources are essential.²⁰¹ The law establishes that the purpose of education shall be to "enable all persons to participate effectively in a free society."²⁰² Education must apply without discrimination²⁰³ and positive

193. Law on the Languages of the Peoples of the Russian Federation (as amended by the Federal Law, 24 July 1998).

194. 1999 Indigenous Rights Law, *supra* note 21.

195. See *Report of the Russian Federation on the Framework Convention art. 9, supra* note 87, at 2.

196. *Id.*

197. For example, Article 12 of the Law of the Republic of Buryatia on the Languages of the Peoples of the Republic of Buryatia establishes the right of the numerically small peoples to use the language of the majority of the population of that area in the work of government bodies, document processing, conducting elections and referenda in case of compact residence. *Id.*

198. The Russian Federation Education Act was adopted 13 Jan. 1996.

199. UDHR, *supra* note 79, art. 26; ICESCR, *supra* note 19, art. 13; CRC, *supra* note 173, arts. 28 & 29; Protocol 1 European Convention on Human Rights, *supra* note 110, art. 2.

200. CRC, *supra* note 173, art. 30; Declaration on Minorities, *supra* note 46, art. 4.5; Helsinki Final Act, *supra* note 186; Framework Convention, *supra* note 13, art. 6.

201. Thornberry & Gibbons, *supra* note 189.

202. ICESCR, *supra* note 19, art. 26(2).

203. ICERD, *supra* note 11, art. 5(e)(v) specifically refers to discrimination on education and training; see also Protocol 1, European Convention on Human Rights, *supra* note 110, at 14.

measures can be taken to this end.²⁰⁴ As with all cultural rights, cultural autonomy cannot take away the responsibility of the state to take steps for the fulfillment of such rights. Education must be in conformity with one's religious and philosophical beliefs²⁰⁵ and must teach about the person's own culture; however, it must also teach the national values of the state in which the person is living.²⁰⁶

At the same time, states should not forget the contribution of minorities to the general society. Thus, they should encourage knowledge of the history, traditions, language, and culture of the minorities existing within their territory.²⁰⁷ Indigenous distinct culture, history, language, and way of life must be recognized as an enrichment of the state's cultural identity.²⁰⁸ "Intercultural dialogue" and mutual understanding and cooperation must be advanced through education²⁰⁹ and states must take measures "in the field of education and research to foster knowledge of the culture, history, language and religion" of national minorities and the majority.²¹⁰ The value of interculturalism and multiculturalism is also emphasized by the European Charter for Regional or Minority Languages.²¹¹

According to the explanatory report to the European Charter, a "crucial factor in the maintenance of regional and minority languages is the place they are given in the educational system."²¹² The Russian state has addressed the real problem of indigenous languages' survival by establishing departments in higher educational institutions that train teachers in native languages.²¹³ In 1998, the Russian Ministry of Education elaborated a framework entitled the Concept of Reforming the System of Pre-school and General Secondary School and Training of Personnel from among the Indigenous Small Peoples of the North.²¹⁴ Within this framework, a State Polar Academy has been set up in St. Petersburg with a view to educating the indigenous small peoples of the North²¹⁵ and educational and methodological support for teaching indigenous languages is provided by the federal authorities.²¹⁶ Nevertheless, tertiary education in minority languages

204. ICERD, *supra* note 11, arts. 1(4) & 2(2).

205. Protocol 1, European Convention on Human Rights, *supra* note 110, art. 2.

206. CRC, *supra* note 173, art. 29.

207. Declaration on Minorities, *supra* note 46, art. 4.4.

208. *Committee on the Elimination of Racial Discrimination, General Recommendation XXIII*, *supra* note 122.

209. Framework Convention, *supra* note 13, art. 6.

210. *Id.* art. 12.

211. ECRML, *supra* note 12, at ¶ 29.

212. *Id.* ¶ 63.

213. For instance, the Buryat State University has an Evenk section, see *Report of the Russian Federation on the Framework Convention*, *supra* note 87, art. 12.

214. 1999 Indigenous Rights Law, *supra* note 21.

215. *Id.*

216. *Id.*

should not be restricted only to teacher training, because it does not adequately deal with the range of group needs.²¹⁷ Expressing this principle, the Russian government has noted that it gives "special attention to the problems of educating small peoples of the North pursuing their distinctive way of life."²¹⁸

Moreover, the system does not seem to incorporate indigenous participation into the design of education. Although the possibility of cultural autonomy allows indigenous initiatives, consultation and participation are not necessarily ensured. The education process can be used to work towards assimilation. Therefore, the wishes and desires of indigenous peoples unfortunately can be disregarded and lost among regional and local bodies when designing the curriculum and the textbooks they will use.²¹⁹

III. CONCLUSIONS

This article contrasted the rights of numerically small indigenous peoples of the Russian North, Siberia, and Far East with the existing international standards. The Russian Federation has recently signed several human rights instruments that are relevant to indigenous rights. Following its international obligations, the state has adopted important legislation concerning the numerically small peoples of the North, Siberia, and Far East. Currently, constitutional guarantees ensure the prohibition of discrimination on the basis of race, language, and religion, whereas further legislation promises the development and promotion of indigenous cultures, languages, and lifestyles. *Indigenous communities are given wide cultural rights and the option of creating autonomous administrative regions. They can participate in the development of laws and the implementation of programs that affect them, whereas constituent authorities can allow a quota system in order to ensure that indigenous peoples have a voice in legislative bodies. Moreover, the new land system guarantees a right of priority for indigenous ownership of the lands they have been using and assures the participation of indigenous peoples in land management and environmental protection.*

Nevertheless, numerically small peoples are still in a critical situation and do not enjoy the rights guaranteed by the federal state. Implementation of the federal laws protecting indigenous rights is very weak. Lack of familiarity with the new laws as well as lack of political will by the regional

217. See Thornberry & Gibbons, *supra* note 189, at 147.

218. *Report of the Russian Federation on the Framework Convention, Framework Convention, supra* note 87, art. 12.

219. See Thornberry & Gibbons, *supra* note 189, at 143.

and local authorities are to blame for this. Consequently, there is an urgent need for secondary, regional, and local legislation that will implement the principles of the federal legislation. Also, the judiciary, regional, and local authorities as well as the enforcement authorities need to be educated about indigenous rights. Most importantly, practical and realistic steps need to be taken to inform indigenous peoples of their rights.

The system of indigenous autonomy regimes cannot lead to inactivity by the state. Positive measures, including funding, have to be taken to improve these peoples' rights. International standards require the real protection of these peoples, not just the legal protection. Also, autonomy cannot be used to isolate indigenous peoples from the society; on the contrary, they must be encouraged to contribute to the life of the Russian society. This can only happen through effective participation of these peoples in decisionmaking bodies and consultation in matters that affect them. Therefore, mechanisms must be developed to ensure the participation of indigenous peoples in decisions and projects that affect them; steps must be taken to ensure indigenous participation in the local decisionmaking bodies in areas where they have a strong presence; guarantees must be enforced for the participation of indigenous in land management.

If these measures are taken, the new legislative framework can prove very valuable and the situation of these communities, many of whom are near extinction, will improve considerably. Through newly established organizations, numerically small peoples have recently reached out to ask for help for their acute problems. The Russian society needs to address these problems and help their indigenous peoples maintain and develop their identities, for the benefit of indigenous peoples as much as the benefit of the society as a whole.