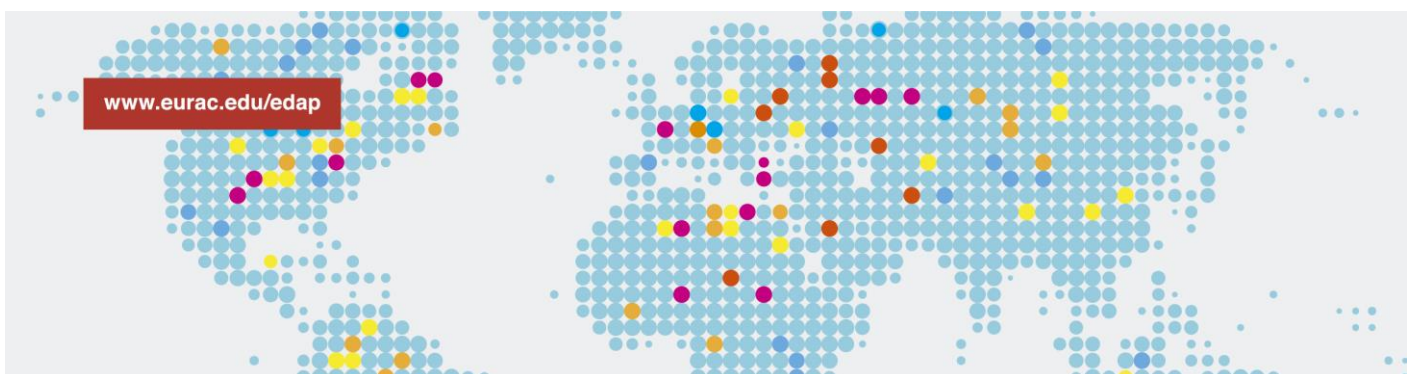


# Indigenous Peoples' Rights and their (new) Mobilizations in Russia

Anna Koch and Alexandra Tomaselli



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## Abstract

Issues concerning indigenous peoples (IPs) in Russia have become a “hot topic” despite the fact that they represent only 0.2 percent of the population. Constant amendments to the laws affecting the life of IPs and lawsuits filed before local Courts denouncing the violations of IPs’ rights are signs of the struggle surrounding these indigenous peoples. Moreover, between 2012 and 2013, the Russian Association of Indigenous Peoples of the North (RAIPON), the umbrella organization of IPs in the country, was ordered to shut down and subsequently given the permission to reopen by the Russian Ministry of Justice within the course of less than six months. This article aims to gain a deeper understanding of the recent developments vis-à-vis indigenous peoples’ legal protection and IPs’ increasing efforts to exercise their rights.

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## Key words

Indigenous peoples - Russian Federation - Fishing rights - Exploitation of natural resources - Russian Association of Indigenous Peoples of the North (RAIPON).

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# Indigenous Peoples' Rights and their (new) Mobilizations in Russia<sup>1</sup>

Anna Koch and Alexandra Tomaselli<sup>2</sup>

## 1. Introduction

In November 2012, the Russian Ministry of Justice announced unilaterally that the Russian Association of Indigenous Peoples of the North (RAIPON), the umbrella organization of the Indigenous Peoples of the North, Siberia and the Far East had to close down. Soon after a massive campaign led by Survival International which was supported by other non-governmental organizations and leading experts on indigenous issues worldwide, and eventual amendments to RAIPON's charter, the Russian authorities granted the organization permission to reopen.<sup>3</sup>

Since 1990, RAIPON has been one of the main players in enhancing and advancing the protection of indigenous peoples (hereinafter, IPs or "northern peoples") in Russia. Even though one may speculate ad infinitum on the direct cause for the announcement of the closure of the organization, the measures taken by the Ministry of Justice show that issues concerning IPs in Russia have become a hot topic in the current political environment. The conflict between two interest groups, the oil and gas extraction industry, which promotes resource exploitation and the IPs who claim their right to maintain a traditional way of life, has reached a new level of tension.

By exploring the problematic situation that IPs face in Russia and by looking at selected case law, the aim of this article is to gain a deeper understanding of the existing gap between IPs' legal protection and its enforcement, the role of indigenous organizations (especially RAIPON) in claiming such implementation, and, thus, the (new) mobilization of the indigenous peoples. The article firstly presents the role of RAIPON as a group of indigenous organizations working in unison defending indigenous rights. Secondly, it analyzes the claims brought before the Courts by IPs themselves and the evolutionary jurisprudence vis-à-vis indigenous fishing rights.

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<sup>1</sup> A former version of this paper was presented at the conference "Russian Politics from below" held on 26 April 2013 at the University of Edinburgh, UK. Parts of sections 2 and 3 have also appeared in Alexandra Tomaselli and Anna Koch, "Implementation of Indigenous Rights in Russia: Shortcomings and Recent Developments", 5(4) *International Indigenous Policy Journal* (2014), pp.1-21, at <http://ir.lib.uwo.ca/iipj/vol5/iss4/3>.

<sup>2</sup> Sections 2 and 4 (including subsections) were written by Anna Koch, section 3 (including subsections) and 6 by Alexandra Tomaselli, sections 1 and 5 by both.

<sup>3</sup> Survival International, "Success: Russia's indigenous organization reopens" (2013), at <http://www.survivalinternational.org/news/9069>.

## 2. Facts and Figures on the Indigenous Small-Numbered Peoples of the North, Siberia and the Far East

In the Russian Federation, 46 peoples have been legally recognized as “indigenous small-numbered peoples of the North, Siberia and the Far East” with additional groups aiming at the legal recognition of their status as a distinct community.<sup>4</sup> Four specific conditions must be met by the peoples in order to obtain such a status. Firstly, the number of members cannot exceed 50,000. Secondly, they need to maintain a traditional way of life. Thirdly, they must live in areas traditionally inhabited by their ancestors. Finally, they need to self-identify as a distinct ethnic community. In particular the numerical limit is rather unique worldwide and creates asymmetrical legislative protection among groups that share similar challenges and characteristics but are not recognized as IPs. The total number of IPs is estimated to be around 250,000 (around 2% of the total Russian population), dispersed across 28 regions of Russia.<sup>5</sup>

A large number of IPs live in *obshchinas* - community-owned land holdings. Many of them pursue their traditional work such as reindeer husbandry, fishery, hunting and gathering. As there are almost no current statistics that could help to clarify the present-day living conditions of IPs, one can only derive a trend from the available datasets of 2002. According to this data, the living standards of IPs have deteriorated significantly over the years. In 2002, the life expectancy of indigenous males had dropped to 49.1 years in comparison to the national average of 59.6 years. The life expectancy of indigenous females was 60.5 years, which is significantly shorter than the national average of 72.4 years. For both males and females, the average life expectancy for IPs is ten years shorter than for their non-indigenous counterparts. Mortality caused by infections, mainly tuberculosis, was 60 per 100,000 among the IPs of the North. In the period 1998-2002, there were over 100 suicides per 100,000 in comparison to the national average of 38 per 100,000. Furthermore, alcohol abuse, lack of medical treatment and unemployment have also heightened over the last years. The unemployment rate has risen to a startling 50% in certain communities.<sup>6</sup> Additionally, the children of IPs are disadvantaged with regards to their education: according to the data from 2002, about 48% of IPs of the Russian Federation had only

<sup>4</sup> In the Decree No.536-r issued in 2006, the government of the Russian Federation recognized 40 peoples as “Indigenous Small Peoples of the North, Siberia and the Far East.” Act No.255 of 2000 “On the common list of numerically small Indigenous Peoples of Russia” amended by Act No.1145 of 2011 states that in total 46 IPs are living in the Russian Federation.

<sup>5</sup> Anaya, James, “Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples. Addendum: Situation of Indigenous Peoples in the Russian Federation”, Fifteenth Session of the Human Rights Committee, 23 June 2010, UN Doc. A/HRC/15/37/Add.5., at [http://unsr.jamesanaya.org/docs/countries/2010\\_report\\_russia\\_en.pdf](http://unsr.jamesanaya.org/docs/countries/2010_report_russia_en.pdf), and <http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/CountryReports.aspx> (searching for the corresponding document No.); International Work Group for Indigenous Affairs (IWGIA), *The Indigenous World 2012* (IWGIA, Copenhagen, 2012), 29.

<sup>6</sup> Anaya, Report of the Special Rapporteur... , 18.

elementary education and 17% of the peoples of the North were illiterate. The corresponding figures at the national level were 8% and 0.5%,<sup>7</sup> i.e., five and 34 times less, respectively. Finally, the peoples of the North face extinction of their native languages as only a small number of schools teach the native languages of IPs.

One reason for these developments can be seen in the history of IPs of the Russian Federation, and especially in the rise and fall of communism, which heavily affected the structure of their communities, culture and economies of subsistence, first through “collectivization” and later by the abrupt transition to a market economy.<sup>8</sup> During the Soviet period, the government forced IPs to sell their reindeer and to create collective reindeer farms, which stood in opposition to the worldview of the reindeer nomads. From the late 1950s until 1990, the soviet state pursued a policy of resettlement. In particular, between 1968 and 1990 approximately 232,000 people were forced into settlements.<sup>9</sup> This meant that the IPs were prevented from pursuing a traditional way of life and were forced into taking underpaid jobs. In the 1980s, with the beginning of glasnost and perestroika, the development of ethnic self-consciousness was reinforced. Alongside this, the first associations of IPs were formed, aiming at revitalizing the languages and the cultures of the peoples of the North. In 1989, the collapse of the Soviet Union meant the curtailment of welfare programs set up by the state to support the cooperative farms. With the introduction of the market economy, these cooperative farms had to compete with, and were eventually replaced by, private enterprises. Consequently, a great number of IPs returned to a subsistence way of life, which was also regulated by the Law No.104-FS of 2000 “On General Principles of Organization of Obshchina of Numerically Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation” (“On Obshchina”).<sup>10</sup>

Between 1999 and 2001, the Russian government passed three laws aimed at protecting IPs’ rights and the improvement of their living conditions (see next paragraph). However, the living standards of the IPs have further deteriorated over the past years due to the weak implementation of the laws by the state. The rights of the northern people are increasingly violated in their most vital areas, such as their right to land as will be explored further in the following pages.

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<sup>7</sup> Anaya, Report of the Special Rapporteur..., 16-18.

<sup>8</sup> Pika, Alexander, “The small peoples of the North: from primitive communism to “real socialism””, in Pika, Dahl and Larsen (eds.), *Anxious North. Indigenous Peoples in Soviet and Post-Soviet Russia*, 15-35, 17 (IWGIA, Copenhagen, 1996).

<sup>9</sup> Diatchkova, Galina, “IPs of Russia and political history”, 21(2) *The Canadian Journal of Native Studies* (2001), 217-233, at 220.

<sup>10</sup> Povoroznuk, Olga, “Evenks of Chitinskaya province. Society and economy (still) in transition”, 2-3 *Indigenous Affairs* (2006), 68-74, at 69.



### 3. Lack of protection of indigenous peoples' rights

IPs are constitutionally recognized in Art.69,<sup>11</sup> which states that “[t]he Russian Federation shall guarantee the rights of indigenous small peoples in accordance with the universally recognized principles and norms of international law and international treaties of the Russian Federation”.<sup>12</sup> This article was legally implemented by the introduction of three federal laws specifically addressing IPs which were adopted between 1999 and 2001, namely: the Law No.82-FS “On Guarantees of the Rights of Numerically-small Indigenous Peoples of the Russian Federation” (“On Guarantees”) adopted in 1999; the Law No.104-FS “On General Principles of Organization of Obshchina of Numerically Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation” (“On Obshchina”) adopted in 2000; and the Law No.49-FS “On Territories of Traditional Nature Use of the Numerically-small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation” (“On Territories”) adopted in 2001.

Formally, the three aforementioned laws provide for a number of individual and collective rights and guarantees. *Inter alia*, the following rights are recognized: the right to freely use land and renewable natural resources in their traditionally occupied territories and areas where they engage in traditional economic activities (Law “On Guarantees”, Art.8, para.1); to establish self-government bodies in densely populated settlements, and to form communities and other organizations (Law “On Guarantees”, arts.11 and 12); to revise their educational institutions in line with their traditional way of life (Law “On Guarantees”, Art.8, para.9); to obtain compensation in the event that their traditional environment is damaged by industrial activities (Law “On Guarantees”, Art.8, para.8); to consider customary law in court proceedings as long as it does not contradict federal or regional legislation (Law “On Guarantees” Art.14). However, problems seem to lie in the

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<sup>11</sup> In addition, Russia has ratified the main United Nations human rights treaties, which, according to Art.15(4) of the Constitution, may prevail over national law. In particular, the 1995 Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) was ratified by the Russian Federation in 1998. The FCNM provides also for a monitoring system by the Advisory Committee (AC) of the FCNM also provides a system for monitoring a state party's application of the convention's provisions. This system also allows for the observation of indigenous issues (see the State, and AC reports as well as the resolution by the Committee of Ministers of the Council of Europe available at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp)). However, Russia did not sign the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989), which is the sole binding and effective international treaty concerning indigenous rights. Finally, Russia abstained from voting for the United Nations Declaration on the Rights of IPs. See also the analysis by Xanthaki, Alexandra, “Indigenous rights in the Russian Federation: The rights case of numerically small peoples of the Russian North, Siberia and Far East”, 26(1) *Human Rights Quarterly* (2004), 74-105.

<sup>12</sup> The articles of the 1993 Russian Constitution cited throughout this article are reported in the official translation provided by the Russian Government at <http://www.constitution.ru/en/10003000-01.htm>.

effective execution of these laws. The same problems were acknowledged and underlined in the case law.

### 3.1 Right to freely use land/possibility to pursue a traditional way of life

Article 11 of the original text of the law “On territories” stated that the use of the territory of traditional natural use (in Russian: *Territorii Tradicionnogo Prirodopol' zovanija*, hereinafter TTP) shall be free of charge. However, the Russian government has undermined the right of the IPs to free land use by amending Art.11 by the Federal Law No.118-FS of 2007 (“On the introduction of amendments in law-making acts of the Russian Federation to be in accordance with the land code of the Russian Federation”). The respective article now shall comply with other laws of the Russian Federations, i.e., the Land and Forest Codes.<sup>13</sup> According to these codes (Art.1, para.1, and Art.1, para.11, respectively), the use of land and forest is allowed solely upon payment of licenses. Thus, TTPs have also become subject to auctions to assign the rights of use. The northern people are forced to participate in auctions in which they have to compete with enterprises that have a clear advantage with respect to budgetary availabilities. Furthermore, the IPs' right to land is undermined by the fact that since the introduction of the Law “On Territories” no fully-fledged TTP has yet been established on land owned by the state.<sup>14</sup> More specifically, in several federal subjects TTPs have been created on “public land”, managed by the region or the municipality. Nevertheless, due to several factors the legal status of such TTPs is uncertain. Firstly, the boundaries of a TTP would have to be determined by an act of the government of the Russian Federation. Secondly, when TTPs are established by the federal subjects or the municipalities they also include land owned by the State. Consequently, the state could claim ownership of this land and drive out IPs if natural resources such as oil and gas were found on its territory.

Finally, a remodeled system of auctioning both hunting and fishing licenses has been recently enforced. The Federal Law No.209-FS “On hunting and the preservation of hunting resources and on the introduction of revisions into

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<sup>13</sup> Federal Law No.136-FS adopted in 2001 “Land Code of the Russian Federation”, and Federal Law No.200-FS adopted in 2006 “Forest Code of the Russian Federation”, respectively.

<sup>14</sup> According to Art.9 of the Russian Constitution, land and other natural resources may be owned by private parties, the State, and the municipalities (see also Art.1, para. 9 of the Land Code that states that such divisions shall be determined by federal laws). Moreover, issues concerning possessions, utilization and management of land and of subsurface, water and other natural resources and land in general are one of the shared competences between the state and the federal subjects (Art.72 Russian Constitution, letters c and j). This means that the state mainly owns land and natural resources such as forest, tundra etc. The federal subjects and municipalities mostly own streets etc.

several legal acts of the Russian Federation” (Hunting Law) adopted in 2009, affirms that all hunting grounds without any exemption are to be distributed for long-term lease, based upon the results of tenders (arts.27, 28 and 42). Consequently, this law will hinder access to hunting for various IPs and serve as another impediment to their traditional way of life. As for fishery, despite an exception clause included in Art.25 of the Federal Law No.166-FS of 2004 “On fishery and the protection of biological water resources” (hereinafter, Fishery Law), IPs are often prevented from fishing in their daily life. Indeed, this clause allows IPs to be exempt from the requirement of holding a permission as long as fishing is carried out for subsistence needs and follows traditional practices at a community-level and as long as they avoid fishing as *obshchinas* or at other forms of “company” or industrial levels. However, this clause is poorly known among the IPs and it is misapplied by both federal subjects and the central government (see below in section 5).

### 3.2 The right to participation in public affairs affecting IPs / access to remedies

Each indigenous person, as a Russian citizen, has the right to file a lawsuit if his or her rights are violated. However, legal praxis is (usually) far from theory. The sad reality is that only few lawyers in the country are familiar with indigenous issues and know in detail the legal framework that protects or otherwise concerns IPs. Most importantly, indigenous communities generally do not have access to legal services and cannot afford a lawyer. Many of them have neither sufficient experience to prepare the relevant legal documents in order to file a lawsuit, nor the access to other relevant documents (e.g., the updated version of amended laws, case law precedents, etc.), because these are mostly only available upon payment.

When it comes to the right to participation in public affairs affecting IPs, we refer to the rights to consultation and participation in the decision-making process in the Environmental Impact Assessment (EIA) study whenever a project for the exploitation of natural resources is likely to affect the northern people directly. The EIA study must be carried out prior to any approval and construction as required by Art.3 of the Federal Law No.174-FS on “Environmental Impact Assessment” adopted in 1995.<sup>15</sup> According to this law, an EIA is required particularly for projects in territories that are under special protection and have already incurred significant damages due to

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<sup>15</sup> See also Federal Law No.7-FS of 2001 “On the protection of the environment”, Art.1 on the definition of the EIA, and the Decree No.372 of 2000 of the federal committee of the Russian Federation on environmental protection “On the acknowledgment of the direction on the environmental impact assessment caused by economic and other activities in the Russian Federation”, which provided the list of documents required when preparing an EIA and the procedure to be followed, included the public presentations and the hearings mentioned infra.

previous activities (see Art.11, para.6). According to Art.4, the EIA may be composed of two studies. The first is mandatory and is prepared by a commission appointed by the government,<sup>16</sup> while the second is optional and may be executed by registered non-governmental organizations, civil society organizations or other entities (e.g., municipalities or even *obshchinas*; see also Art.20), and submitted either before or alongside the governmental study (Art.22).<sup>17</sup> In particular, the EIA requires two open public presentations and hearings to illustrate the main aspects and potential consequences of the projects. The goal of such hearings is to allow the people affected by the construction to express their criticism and doubts regarding the implementation of a project. The EIA study should also incorporate critical perspectives. Notwithstanding these requirements, often such presentations and hearings are held in remote and unknown places, physically distant from the work site, or publicized very late. All these actions lead to a low level of participation in the presentations, and prevent IPs from taking part in the decision making process regarding the implementation of projects. Ultimately, despite the existence of these safeguards, constructions and projects that pollute the environment and prevent the IPs from pursuing a traditional way of life can still be carried out. Oil and gas extraction has consistently posed a threat to the living conditions of indigenous communities as it is only driven by the desire to maximize profits, and lacks ecological consciousness. The pollution of rivers and lakes due to pipeline leakages and the hazardous waste left behind by the companies brought about a decline of fish and wild game in the territories inhabited by IPs, thereby reducing their possibilities to pursue a traditional way of life. This situation is unlikely to change in the coming years as Russia remains one of the biggest oil and gas producers in the world.<sup>18</sup>

#### 4. Bottom-up mobilization, part I: The Role of RAIPON

The Russian Association of Indigenous Peoples of the North (RAIPON),<sup>19</sup> founded in 1990, is the umbrella organization of IPs in Russia and is the main promoter of the rights of the northern people. RAIPON is of particular importance for the bottom-up mobilization of the northern peoples since it is the primary source of information for all IPs about their rights. In addition, RAIPON has unified almost all indigenous organizations by cooperating with

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<sup>16</sup> See also Art.14, para.5 of the Federal Law No. 174-FS on the composition of the governmental commission elaborating the EIA.

<sup>17</sup> For further details on the procedure see the Decree of the Federal Committee of the Russian Federation on Environmental Protection No.372 of 2000 "On the acknowledgment of the direction on the environmental impact assessment caused by economic and other activities in the Russian Federation".

<sup>18</sup> Auswärtiges Amt, "Russische Föderation Wirtschaft" (2012), at [http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Laenderinfos/RussischeFoederation/Wirtschaft\\_node.html](http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Laenderinfos/RussischeFoederation/Wirtschaft_node.html).

<sup>19</sup> For further details, please see the web site of the organization at <http://www.raipon.info>.

regional organizations of the northern peoples and by introducing a number of regional offices in many federal subjects (e.g., Primorskiy Krai, Kamtchatka Krai, Sakhalin Oblast). All regional organizations take part in general meetings on a regular basis during which a common strategy is decided upon. The organizational structure of RAIPON resembles a pyramid. Leaders of the regional offices are elected by the IPs in the regions. RAIPON also cooperates with international organizations such as the International Work Group for Indigenous Affairs (IWGIA), the Arctic Council and the Sami Council making the voice of the IPs in Russia heard on an international level.<sup>20</sup>

As a high number of IPs live in remote areas without access to communication media such as the internet, it is difficult for the umbrella organization to reach all of its members. In order to improve the communication between the central and regional levels, the magazine “The Living Arctic” has been published and distributed on a regular basis to the remote regions since 1999. The main goal of the magazine is to inform the northern peoples about the latest legal developments in Russia and its federal subjects and to explain to them the rights they are entitled to.<sup>21</sup> In addition to the printed version, the journal is also accessible on the organization’s website. The website also contains the latest news and developments in the federal subjects concerning the IPs. Furthermore, RAIPON organizes various seminars in order to provide the northern peoples with information about their rights and the changes in legislation, which relate to said rights. This activity is of particular importance as the legislation affecting IPs seems to have been under constant revision in the past few years. To allow the northern peoples living in remote areas to attend these courses, RAIPON tries to offer subsidies for travel funds.

In the last few years, the relationship between the organization and the Russian government has deteriorated drastically. This is most likely due to RAIPON’s critical stance on certain legal processes that have lately occurred in the Russian Federation. The organization also went so far as to openly criticize the lack of IPs’ rights protection at an international level. It participated in the preparation of the shadow report on “The situation of economic, social and cultural rights of indigenous small-numbered peoples of the North, Siberia and the Far East” for the fifth periodic report of the Russian Federation to the UN Committee on Economic, Social and Cultural Rights (CESCR) in 2011.<sup>22</sup> In this report, RAIPON underlined the insufficient legal framework regarding land rights of IPs, the discriminatory practices with

<sup>20</sup> For further information, please visit the web sites of the organizations: IWGIA at <http://www.iwgia.org>; Arctic Council at <http://www.arctic-council.org>; Sami Council at <http://www.samicouncil.net>.

<sup>21</sup> RAIPON, “Mir korennykh narodov. Zivaja Arktika” (2009) at <http://www.raipon.info/biblioteka/21-2009-03-27-11-44-14/65-2009-03-27-11-47-27.html>.

<sup>22</sup> RAIPON and International Work Group for Indigenous Affairs (IWGIA), “Parallel Information Concerning the Situation of Economic, Social And Cultural Rights of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East”, at [http://www2.ohchr.org/english/bodies/cescr/docs/ngos/IWGIA\\_RAIPON\\_RussianFederation\\_CESCR46.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/ngos/IWGIA_RAIPON_RussianFederation_CESCR46.pdf).

respect to fishing permits, as well as the failure of the Russian State to grant the IPs the opportunity to increase their health standards. RAIPON concluded, that the Russian Federation, as party of the International Covenant on Economic, Social and Cultural Rights, did not comply with its obligations. In addition, it underlined that Russia has not taken “sufficient practical steps to progressively realize the rights of its IPs using the maximum available resources”.<sup>23</sup>

Besides this, RAIPON has been under increased scrutiny after the federal Ministry of Justice declared that the statutes of the organization are in breach of federal law. RAIPON attempted several times to amend its statutes to meet the requirements of the Ministry of Justice and filed a lawsuit on two separate occasions against the actions taken by the Ministry of Justice. Despite these efforts, in November the Ministry of Justice unilaterally decided to close the organization for a period of five months. The Ministry of Justice argued that their reasons for ordering RAIPON’s closure arose from the amendments to the statute, which the Ministry viewed as unauthorized. However, some sources suggest otherwise. For example, an article in the newspaper *Novaya Gazeta* indicated that the measures taken against RAIPON were due to its active engagement in defending IPs’ rights especially vis-à-vis the Russian extraction industry. Additionally, it underlined that the IPs are up against a new wave of industrialization of the northern territories. Hence, the newspaper article concluded that all these events seem to point to the strategy pursued by the Russian authorities, i.e., the dismantling of all existing barriers that could possibly hamper the Russian extraction industry.<sup>24</sup>

Finally, on 24 January 2013 RAIPON held an extraordinary Congress in Moscow in which 49 regional organizations took part. The goal of this congress was to amend the organization’s charter to meet the requirements of the federal Ministry of Justice.<sup>25</sup> Two months later, on 25 March 2013, the Russian government granted the organization the permission to reopen.<sup>26</sup> Another rejection of the amendments to the organization’s charter by the Ministry of Justice would have meant the definitive closure of RAIPON.<sup>27</sup>

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Novaya Gazeta*, “Narod tol”ko mesaet: v pervye ob etom zayavleno otkryto” (15 November 2012) at <http://www.novayagazeta.ru/economy/55433.html>; Staalesen and Nilsen, “Moscow orders closure of IPs organization”, *Barents Observer*, 12 November 2012, at <http://www.barentsobserver.com/en/arctic/moscow-orders-closure-indigenous-peoples-organization-12-11>.

<sup>25</sup> Arctic Peoples, “Extraordinary RAIPON Congress today” (24 January 2013), at [http://www.arcticpeoples.org/index.php?option=com\\_k2&view=item&id=543%Aextraordinary-raipon-congress-today](http://www.arcticpeoples.org/index.php?option=com_k2&view=item&id=543%Aextraordinary-raipon-congress-today).

<sup>26</sup> Survival International, Success: Russia’s indigenous...

<sup>27</sup> Arctic Peoples, Extraordinary RAIPON...

## 5. Bottom-up mobilization, part II: Litigating fishing rights

Thanks to the efforts of IPs organizations (especially RAIPON), an increasing number of the northern peoples have started to file lawsuits when their rights have been violated.

In the following paragraphs, three decisions involving indigenous issues will be presented and analyzed. The rulings concern IPs' fishing rights and have been issued not only by Arbitrazh and the General Courts, but also by the Russian Supreme Court.<sup>28</sup> One case, in which the fishing rights of indigenous communities were indirectly protected, is analyzed first. Following that, two more recent cases are presented. In these last two cases, indigenous fishing rights were implied more directly and the acts taken against them were found to be in breach of the law.

Overall, the Courts have shown an active role and a proper application of IPs' rights and an evolving jurisprudence in indigenous fishing rights. Despite this positive application by the courts, many obstacles remain, which impede a full guarantee of indigenous protection. For example, many indigenous rights' violations remain untold, and, when recognized, whether or not the decision will be enforced remains uncertain.

### 5.1. *Obshchina "Kignach" v the governor of Kamchatka Krai, 2009*

The case of *Obshchina "Kignach" v the governor of Kamchatka Krai* (2009) before the Supreme Court regards the issuing of fishing grounds for industrial fishing by the Governor of Kamchatka Krai Act No.144-r, which was adopted on 21 February 2008. The *obshchina "Kignach"* argued that the governor of Kamchatka Krai's decree, which issued the list of fishing grounds aimed at industrial fishing, should be recognized as legally void because it did not take IPs' interests into consideration. Undeniably, the list included fishing grounds that previously belonged to the *obshchina* and which were of utmost importance for the IPs as it enabled them to maintain a traditional way of life.

Due to procedural mistakes made by the governor of Kamchatka Krai, the Court of Second Instance ruled the decree to be legally void starting retroactively from the day of entering into force. However, the law continued to be applied until the court's decision, since the fishing grounds had already been leased to companies for industrial fishing. Therefore, the *obshchina* asked the Supreme Court to declare the act legally void with retroactive effects from the day of its adoption, but the Supreme Court confirmed the

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<sup>28</sup> For the aim of this article, it is necessary to specify that according to the Russian Courts system, the General Courts deal with cases regulated by the Russian Civil Code, with the exception of the commercial disputes, which fall under the Arbitrazh Courts competence. Moreover, each court system is subject to regional legislation given the subdivision of the Russian Federation into 83 federal subjects (republics, krais, oblasts, raion). In addition, according to arts. 125-127 of the Constitution, the Russian Higher Courts are the following: the Constitutional Court, the Supreme Court and the Higher Arbitrazh Court. The Supreme Court has jurisdiction over civil, criminal and administrative legislation (Art.126).

ruling of the Court of Second Instance. Hence, the fishing grounds leased to companies for industrial fishing were considered valid, while simultaneously the system for issuing fishing grounds was considered void.

In spite of this, the Supreme Court stated in its decision that the settlements of IPs shall be taken into consideration prior to the elaboration and issuing of the fishing grounds used for industrial fishing as in accordance to Art.6, para.3 and Art.8, para.5 of the Federal Law “On Guarantees”; Art.54 of the Law No.74-FS of 2006 “Water Code”; and Arts.9, 48 and 49 of the Law No.52-FS of 1995 “On the animal world”.

### 5.2. *Obshchina Saur v Fishery Agency of Amur oblast, 2011*

In the case of *Obshchina Saur v Fishery Agency of Amur oblast* (2011), both the Arbitrazh of First and Second Instance found that this Fishery Agency had violated the law “On Guarantees”. The fishery agency had rejected the request of the *obshchina Saur* to fish ten tons of biological water resources (i.e., fish and other marine life) in order to maintain their traditional way of life. The Fishery Agency stated that the application documents had been incorrectly completed. Therefore, the *obshchina* filed a lawsuit to the Arbitrazh Court of First Instance of Khabarovsk Krai requesting the Court to revoke the decision of the Fishery Agency of Amur Oblast.

The Arbitrazh Court of First Instance found that the Fishery Agency had violated the members of the *obshchina*'s right to pursue their traditional business according to the law “On Guarantees” that grants the IPs the right to maintain a traditional way of life (Art.4). In response, the Fishery Agency filed an appeal before the 6th Arbitrazh Court of Appeal, which confirmed the decision of the Court of First Instance.

Notably, the Arbitrazh Court of Appeal, on the one hand, stated in its ruling that according to Art.8 of the law “On Guarantees”, IPs are entitled to use land free of charge. In addition, Art.2 of the Fishery Law states that the interests of the IPs –for whom fishery is the main source of livelihood– must be taken into account. On the other hand, directive No.166 of 2009 of the Federal Agency for fishery (“On the affirmation of the form and the rules for the application for biological water resources for the maintenance of a traditional way of life and the pursue of traditional business of the IPs’) contains all the regulations that have to be considered during the preparation of the application forms and also indications regarding the potential reasons for declining such a form. However, neither this directive nor the Fishery Law nor Decree No.765 of 2008 of the Russian government (“On the procedures of decision making for the allocation of biological water resources for fishery”) establish clauses that allow for the declination of applications for the usage of biological water resources submitted by IPs since this would automatically represent a violation of the law “On Guarantees”. Therefore, the rejection of the application submitted by the *obshchina Saur* was clearly in breach of the law.



### 5.3. *Prosecutor of Primorskiy Krai v four individuals belonging to an indigenous people of Primorskiy Krai, 2011*

In the case of *Prosecutor of Primorskiy Krai v four individuals belonging to an indigenous people of Primorskiy Krai* (2011),<sup>29</sup> the General Court of Second Instance went even further, recognizing not only the rights contained in the law “On Guarantees” but also the exception for IPs that do not possess a territory as per Art.25 of the Fishery Law. Before this case was brought to court, the four indigenous persons involved had received permissions to fish according to the standard procedure in different neighboring towns or regions. However, due to flooding and other natural obstacles, they were not able to use the licenses to fish. One of the accused had even contacted the Federal Fishery Agency to ask for permission to fish in a different region. She was told by a member of the Federal Fishery Agency that the legislation had changed allowing the IPs to fish for their own needs in their areas of settlement without needing a special permission, as stated in Art.25 of the Fishery Law. This was thus also valid for the federal subject Olginskij Raion. According to the four indigenous individuals, a meeting between the employees of the Federal Fishery Agency and the IPs of the region was held in September 2009 during which the members of the Federal Fishery Agency explained the new legislation and the new procedures. Therefore, the four accused, after having notified the authorities of Olginskij Raion, decided to fish. Despite having taken all of these steps, the four individuals were arrested and prosecuted.

The General Court of First Instance found the accused not guilty. However, the prosecutor of Primorskiy Krai did not accept this decision and therefore filed an appeal arguing that the legislation according to which IPs do not need to have permission in order to fish (as according to the abovementioned Art.25 of the Fishery Law had been misinterpreted by the court. The prosecutors held that the rules issued by the Federal Fishery Agency titled “Rules for fishery in the Far Eastern water basin” contradict Art.25 of the Fishery Law, which should thus have been considered inapplicable. Nevertheless, the General Court of Second Instance confirmed the ruling of the Court of First Instance. In addition, the Court remembered that according to Art.8 para.1 of the law “On Guarantees”, IPs living in densely populated settlements are allowed to use different types of land free of charge in order to maintain their traditional way of life. Furthermore, Art.25 of the Fishery Law states that IPs do not need permission in order to fish if they do not possess a territory that is used for industrial fishing. Indeed, after verification of the evidence through testimonies of the four accused, the Court concluded that a meeting between the indigenous peoples and the Federal Fishery Agency had taken place. Therefore, the four indigenous individuals were acting in good faith and under the authorization of the Federal Fishery Agency.

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<sup>29</sup> The four individuals involved are kept anonymous in the decision itself.

This last case is particularly relevant as the Court recognizes the exception clause for IPs that do not possess a territory contained in Art.25 of the Fishery Law. As previously seen in section 3.1, this guarantee is usually ignored by the federal subjects (as well as by the central government) as highlighted in this case. Thus, IPs rather rely on a more effective application by Courts litigating for their rights. However, as mentioned above, IPs face many difficulties in filing lawsuits, which suggests that, in most cases, violations of indigenous rights are ignored. In addition, it remains unclear whether the subsequent rulings are fully executed

## 6. Conclusions

As shown in this article, the Russian indigenous protection system lacks clear policies and there is a deficiency of transparent, central and coordinated administration. In addition, as the case law shows, there is a dichotomy between the improper application of IPs rights by the acts of central government and the federal subjects on the one hand, and the evolving jurisprudence of the Courts on the other.

Regardless of the insufficient access to remedies, IPs' mobilization and awareness vis-à-vis their rights is increasing, although urbanized IPs are generally more informed than those living in rural areas. On the one hand, the Ministry of Justice's dramatic act of closing RAIPON, and the massive campaign that followed, showed that indigenous issues in Russia, although they mainly remain in the shadow, are gaining more and more international and domestic attention. More interestingly, the internal mobilization requires a closer look. By presenting RAIPONs actions and the IPs attempts to obtain their own rights in the courts, this article gives a glimpse of the resilient actions undertaken by the IPs themselves in the struggle for their rights. More research should be undertaken regarding how IPs may contribute to drafting politics in the Russian Federation; however, this is particularly challenging, especially for non-Russian speakers. For instance, no indigenous expert outside Russia could have accessed the aforementioned case law, which clearly illustrates a recent and new stance of Russian Courts vis-à-vis indigenous issues.

In sum, although Russia seems to prioritize economic revenues instead of enhancing the development of the IPs living within its boundaries, IPs and their organizations are raising their voice both internally and internationally.

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