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ILO 169 convention as a vector for the aboriginal legislation development in Russia

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ABSTRACT

The article determines the ILO 169 Convention as one of the most crucial international legal acts on indigenous peoples' rights and possible vector for the aboriginal legislation development in Russia. Authors examine the USSR and Russian Federation's attempts to ratify this international act and speculate on its future progress and importance for the aboriginal law in Russia. Moreover, the article demonstrates the ILO 169 Convention impact on Russian legislation about indigenous small-numbered peoples with its deficiencies and scope for improving according to the Convention's requirements.

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1. Introduction

Constituting up to five percent of the world's population, indigenous peoples represent one of the poorest and most disenfranchised segments of society. This isolates them from decision-making processes. Moreover, indigenous peoples are not intrinsically vulnerable, but because of external factors brought by the modern society. Considering the climate change and industrial development in the Northern territories, many indigenous groups are now in danger of disappearing because of a high risk of pollution and threat to their traditional way of life. Many of them move to the cities, where they often face social exclusion, discrimination, and finally assimilation. Indigenous peoples are highly susceptible to unemployment, face a variety of socioeconomic challenges, find it difficult to preserve their traditional activities, and often lose their native language and culture.¹

If previously international law could be considered an instrument of colonialism and territorial conquest, today it is an important benchmark and a powerful driver in the development of national legislation aimed at protecting the rights of indigenous peoples.² This is precisely the function of the International Labour Organization (ILO) Convention No 169 on Indigenous and Tribal Peoples in Independent Countries.³ In Russia it directly affects the interests of 40 indigenous peoples in the North, in Siberia, and in the Far East – all interested in preserving their traditional ways of life.⁴ At the same time, however, the convention has not been ratified by Russia, despite her influence being reflected in many of its provisions. The problem stems from questions of how the convention aligns with Russia's national norms and regulations, particularly with regard to

indigenous peoples' right to land, natural resources, environmental management priorities, the allowance of traditional economic activities, compensation rights, and the right to consultation where their interests are at stake. The recognition of traditional values, customary law and indigenous peoples' institutions is also a big problem in contemporary Russia. Russian legislation provides some rights to indigenous peoples, but the complexity of the legislation, its frequent changes, the imperfection of the existing norms and other factors often complicate the realisation of the objectives of the legislation.⁵

2. Historical background: signing and the main provisions of the ILO 169 convention

Practically since it was founded in 1919, the ILO has been concerned with the social and economic issues of ethnic communities whose culture, customs, and language distinguish them from the rest of the population in a given country.⁶ In 1957 the organisation adopted Convention No 107 'On the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Peoples in Independent Countries.'⁷ This convention was the first attempt to codify the rights of indigenous peoples in international law, covering the right to land, working conditions, health and education. It was ratified by 27 different countries.⁸

In the 70s and 80s of the XX century the United Nations intensified its efforts to protect the rights of indigenous peoples. With the goal of improving the provisions of Convention No 107 and recognising the need to develop standards for the protection of the rights of indigenous peoples, the International Labour Organization began its revision process in 1985. In 1986 the ILO convened a meeting of experts, which included representatives of aboriginal organisations. As a result, it was recognised that the integration approach, as the basic idea of Convention No 107, neither met the needs of indigenous peoples nor reflect the latest thinking on the subject. The possibility of self-determination in economic, social, and cultural areas and the need to enshrine this right in the new norms of the ILO were among the issues most emphasised during the revision process.⁹ It was also concluded that state seizure of indigenous or tribal lands – or to evict peoples from those lands – should be limited to only the most exceptional circumstances, and, moreover, only occur with given indigenous peoples' express consent.¹⁰

ILO Convention No 169 was adopted in June of 1989 and entered into force on the 5th of September 1991. By that time, the convention had been ratified by four states: Bolivia, Colombia, Mexico, and Norway. In subsequent years it was ratified by Costa Rica, Chile, the Central African Republic, Denmark, Ecuador, Fiji, Guatemala, Honduras, the Netherlands, Paraguay, Peru, Argentina, Brazil, the Dominican Republic, Nepal, Nicaragua, Spain, Venezuela, and Luxembourg. Thus, to date, the convention has been ratified by 23 states.¹¹

The document is a rather voluminous international legal accord – consisting of a preamble and 44 articles – divided into ten sections: general policy, land, employment and employment conditions, vocational training, handicrafts and artisanry, social security and health, education and means of communication, international contacts and cooperation, management, general provisions, and final provisions. Convention 169 supersedes Convention 107, although a number of countries which have ratified Convention No 107 but have not ratified Convention No 169 continue to be parties to the first one.

ILO 169 Convention is legally binding and one of the most comprehensive document on indigenous peoples' rights.¹² According to Convention 169, indigenous peoples are not seen as temporary, disappearing communities (which was the assumption on which Convention 107 relied on), rather, indigenous peoples are seen as political entities that have the right to maintain and develop on the basis of their own aspirations and desires.¹³ Among the most important rights conferred upon indigenous peoples by Convention 169 are: the right to prioritise the issues they want in the process of economic development; the right to participate in the preparation, implementation and evaluation of plans and programmes that affect them; the right to preserve their own customs and institutions; the right of ownership of the land they traditionally occupy; the right to use and manage the natural resources located on those lands; the right to compensation for losses and damages caused to them in connection with the use of those lands; the right to preserve customs or customary law (they must be considered in the application of national laws); the right to establish their own educational institutions, as well as many other positive rights.

The convention prohibits discrimination against these peoples (art. 3) and stipulates that special measures shall be applied, as appropriate, to protect persons belonging to indigenous communities, and the institutions, property, labour, culture, and the environment of these communities.¹⁴ Moreover, the social, cultural, religious, and spiritual values and practices of indigenous peoples are recognised and protected. Governments are bound to consider the nature of problems that indigenous groups face as communities and as individuals and are obliged to establish procedures through which indigenous peoples are able to participate in decision-making processes in elected and administrative institutions responsible for the policies and programmes that affect them.

The convention in its articles 13, 15, and 23(1) emphasises the significance of indigenous peoples' reliance on traditional occupations including hunting and fishing, and importance of their territories and resources for economic, social and cultural development. Article 23(1) of the convention declares:

Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.¹⁵

Article 15 protects indigenous peoples' rights to the natural resources pertaining to their lands and if the state retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to the lands, governments should consult indigenous peoples before any exploration or exploitation of such resources pertaining to their lands. Indigenous peoples can participate in the use, management and conservation of these resources. Moreover, indigenous peoples may participate in the benefits of such activities and shall receive fair compensation for any damages as a result of such activities. The concept of 'lands' has a broader meaning as it was stated in a legal definition in article 13(2) affirming that: 'The use of the term lands in articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.'¹⁶ Therefore, the article 15 shall embrace offshore sea areas that indigenous people use, and thus is applicable with regard to their coastal fisheries and

hunting grounds. As an outcome indigenous people should have the right to participate in state regulation of quota management, the size of vessels in various sectors of the sea, and the use of fishing and hunting equipment.

In addition to the rights conferred upon indigenous peoples, the convention reflects the responsibilities governments are tasked with in states which have ratified the convention. Governments should promote the full utilisation among indigenous peoples of the social, economic, and cultural rights they enjoy and consult with them when legislation affecting their rights and interests is being considered; create conditions for the development of their institutions; work with them to protect and preserve the environment and the territories they inhabit; provide them with adequate healthcare or provide them with the means to seek independent care; and take measures to preserve the national languages of these peoples. A distinct feature of the convention is the duty to consult requirement, which obligates governments to consult with indigenous peoples in decisions that directly affect their interests.

Educational measures should also be enacted to eliminate and counter anti-indigenous prejudices among other groups in the national community. To this end, steps are being taken to ensure that history textbooks and other educational and scientific materials provide a fair, accurate and informative picture of the indigenous societies and their cultures.

The critical difference between Conventions No 107 and No 169 is the replacement of the concept of 'population' in the former with the concept of 'people' in the latter. However, the new instrument also states that the use of the term 'peoples' in the convention is not regarded as having any meaning with regard to the rights that may be contained in that term under international law. Such a reservation means that the realisation of the rights of indigenous peoples is quite specific (linked to their cultural, spiritual and economic needs) and is not equivalent to the right to self-determination of peoples, which would imply the free choice of their political status, territorial isolation and the formation of their own statehood.

The standards set out in ILO Convention No 169 provide a framework for the protection of the fundamental rights of indigenous peoples in accordance with international law and define the fundamental obligations of state parties, on the basis of which each state ratifying the convention takes specific measures that are fine-tuned to the specifics of each country.

Russia has not ratified the ILO 169 yet, mainly because of the indigenous people's definition and the land rights in the convention do not correspond the domestic legal requirements.¹⁷ In particular, the definition of 'indigenous people' does not meet the numerical criteria of less than 50,000 people in Russian legislation, and the indigenous peoples' rights of ownership and possession over the lands which they traditionally occupy is not recognised by the Russian legislation. However, as ILO Convention does not prohibit reservations to the treaty, it is possible for Russian Federation to accede to it making such reservations in order to meet domestic legal requirements.

3. How the ILO 169 convention was viewed in the late USSR

The USSR participated in the development of the draft and voted for the adoption of the Convention 169. Subsequently, however, in the 18-month period defined by the ILO

Constitution¹⁸ (art. 19, section 5b), it was not ratified by it. At the expiration of this specified time, as stated in section 5e of the art. 19 of the Constitution, a member of the organisation does not assume any further obligations, except the obligation to provide the Director-General of the International Labour Office information on the situation of the legislation in his country and relevant practices on the matters to which the convention relates, that may have been taken to give effect to any provisions of the convention through legislative or administrative measures, collective agreements or any other way, as well as those circumstances that prevent the ratification of the convention or delay it.

However, attention should be drawn to the fact that the issue of ratifying Convention 169 was raised in the USSR. In particular, People's Deputy of the Supreme Council of the USSR R. Rugin addressed the Government of the USSR with a request to ratify the convention, but he did not receive a clear answer one way or another. Moreover, in 1990, the President of the Association of Indigenous People 'Yamal to Descendants,' S. Haryuchi addressed the Government of the USSR with the same request. In response, the Deputy Chairman of the Council of Ministers of the USSR on Social Affairs V. Lakhtin explained that the government intends to consider the question of ratification in the same year. In 1991, the Chairman of the Committee on National Policy and Interethnic Relations of the Supreme Council of the USSR G.S. Tarasevich received a letter signed by the Minister of Foreign Affairs N.N. Bessmertniy, which contained a positive answer to his request to the Ministry of Foreign Affairs of the USSR on the possibility and expediency of ratification of the Convention 169.¹⁹ On this basis, some researchers insisted that the USSR in 1991 was very close to ratifying Convention 169.²⁰

The benevolent attitude in the late USSR towards the convention is exemplified in contemporary legislation adopted during that period that reflects many of the convention's ideas. This is seen, for example, in the Resolution of the Supreme Council of the USSR of 27 November 1989 'On Urgent Measures of Ecological Improvement of the Country,'²¹ which recommended to carry out, in 1990, the consolidation of the territories of traditional nature management, not subject to alienation for industrial development, for the indigenous peoples of the North, Siberia and the Far East; and also in the Resolution of the Cabinet of Ministers of the USSR and the Council of Ministers of the RSFSR of 11 March 1991 No 84 'On Additional Measures to Improve the Socio-Economic Conditions of the Small-Numbered Peoples of the North for 1991–1995,'²² which recognised the need: to provide each family of the small-numbered peoples of the North with housing; to create conditions for the development of traditional economic activities of these peoples through the consolidation of their exclusive right and privileges for the use of biological resources in their places of residence, hunting and fishing grounds and reindeer pastures; the formation of territories of traditional nature management for their traditional crafts; to develop standards and procedures for compensation for environmental damage from the economic development of the territories of the Northern peoples; to reserve up to 10 percent of the total number of places for the work of these peoples; to complete the creation of alphabets and spelling rules for peoples without a written language; to guarantee target places for representatives of these peoples in higher educational institutions and in graduate schools; to support specialised editions in the languages of the peoples of the North and the publication of relevant literature; and to approve the state programme for the development of small-numbered peoples of the North for 1991–1995.

Another example is the USSR Law of 26 April 1990 'On Free National Development of the USSR Citizens Living Outside Their National-State Entities or Without Such Entities on the Territory of the USSR'.²³ This law contains some provisions on the small-numbered peoples' rights, in particular it fixes the duties on indigenous small-numbered peoples' habitat conservation in their traditional living areas, promotion their activities and handicraft, creation of regional funds for socio-economic and cultural development of indigenous small-numbered peoples and ethnic groups (art. 5). It gives opportunity to create ethnic villages and councils in the areas of traditional habitat of indigenous small-numbered peoples even if they are minorities there (art. 8). These provisions are in the framework of the ILO 169 Convention demands and meet its requirements.

4. Attempts to ratify the ILO 169 convention in the Russian Federation

Russia is a member of the ILO and the legal successor of the USSR. It does not have a direct obligation to introduce the rules of Convention 169 into its legal system. However, attempts to do so have been repeatedly tried. This happened even before the adoption of the Russian Constitution of 1993. In particular, the Resolution of the Congress of People's Deputies of the Russian Federation of 21 April 1992 'On the Socio-Economic Situation of the Regions of the North and Equated Localities'²⁴ ordered that the Supreme Council of the Russian Federation consider ratifying Convention 169. The Russian President also recognised the need to make such a decision.²⁵ At the initiative of People's Deputy A.V. Krivoschapkin, elected from the Republic of Sakha (Yakutia), the ratification of the convention was included in the agenda of the fourth session of the Supreme Council of the Russian Federation,²⁶ but its consideration was later postponed.

The Constitution of the Russian Federation of 1993 was clear: 'The Russian Federation guarantees the rights of indigenous peoples in accordance with universally recognised principles and norms of international law and international treaties of the Russian Federation' (art. 69).²⁷ This has provoked numerous attempts to have Convention 169 ratified. In particular, on 22 November 1994, the State Duma of the Federal Assembly of the Russian Federation held large-scale parliamentary hearings on this issue with the participation of representatives of the federal executive bodies, subjects of the Russian Federation, the ILO, and indigenous small-numbered peoples. During this discussion, proposals were made both for and against the convention's ratification. Specifically, doubts were raised in the following areas: it is not clear who in the Russian Federation can be covered by the convention; whether its provision on the recognition of indigenous peoples' ownership and ownership of the land they traditionally occupy is compatible with the Russian legal tradition; whether ratification of the document is permissible in the absence of the necessary regulatory framework; Russia is able to successfully resolve the problems of indigenous small-numbered peoples without ratifying the convention. The recommendations adopted at the end of the hearings stated that the provisions of the convention correspond to the essence and spirit of the Constitution of the Russian Federation, its ratification meets the aspirations of the indigenous peoples of Russia, and it will strengthen the legal basis of relations between peoples and the state. It was proposed to the President of the Russian Federation to submit the convention for ratification, to the Federal Assembly – to bring the current legislation in line with it, and to the Government of the Russian

Federation – to determine the specific beneficiaries of the rights of this act.²⁸ Subsequently, the State Duma in its resolution No 816-I of 26 May 1995 ‘On the Crisis Situation of the Economy and Culture of the Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation’ confirmed the proposal addressed to the President of the Russian Federation to consider the possibility of submitting Convention 169 for ratification.²⁹

Ratification nevertheless did not follow these hearings. However, the discussion has continued. On 22 November 2002, at the initiative of the Federation Council Committee on the North and Small Peoples, a round table was held on ‘Prospects for Ratification by the Russian Federation of ILO Convention No 169 on Indigenous and Tribal Peoples in Independent Countries.’ The participants of the discussion, according to their official recommendations, agreed that before the decision to ratify the convention, it is necessary to work out the issues of ethnic groups to which it will be addressed, as well as the issues of land use and environmental management of indigenous peoples in the context of the provisions of this document, combining the terminology of Russian domestic legislation and the convention.³⁰

The last concrete discussion of convention’s ratification by the Russian Federation occurred within the framework of a round table organised by the Public Chamber of the Russian Federation on 23–24 November 2006, which was attended by representatives of the ILO, the government of Norway, Guatemala, and Denmark (governments which have already ratified the convention), federal and regional authorities, organisations of indigenous peoples, and experts. As a result of this discussion, it was recognised that:

The provisions of the convention on the rights of indigenous peoples to lands and natural resources, can, in the light of the experience of these states, be applied in a flexible manner, using the form of long-term gratuitous use of land by these peoples;

beneficiaries of the rights of the convention in the Russian Federation have already been identified, if we take into account the unified list of indigenous small-numbered peoples of the Russian Federation;³¹

it is necessary to establish an interdepartmental group to prepare an opinion on the ratification of Convention 169 by the Russian Federation and hold parliamentary hearings on this issue.³²

To add to this, the indigenous small-numbered peoples of the North, Siberia, and the Far East of the Russian Federation and their associations directly insist on the ratification of Convention 169.³³ This is supported and justified in scientific literature.³⁴

And yet, despite all efforts, Russia has not ratified Convention 169. We believe, however, that the discussions on this issue have been useful. They have made it possible to delve deeper into the content of this document and have helped to draw attention to the problems of indigenous peoples and the legal regulation of relations with them.

At the moment, given the expectations of these peoples and the state of their rights, the ratification of the convention has not lost its relevance. These issues have been mentioned in international level as well. For instance, in 2009 the Human Rights Committee (HRC) voiced its concerns about the ‘alleged adverse impact upon indigenous peoples of ... the exploitation of lands, fishing grounds and natural resources traditionally belonging to indigenous peoples through granting of licenses to private companies for development projects such as the construction of pipelines and hydroelectric dams.’³⁵ Thus, the HRC

emphasised the problem on business interests' predominance over indigenous peoples' interests in Russia.

In 2009 the UN Special Rapporteur on the rights of indigenous peoples visited Russian North. In his final report he also emphasised that indigenous people in Russia would like to have the opportunity to discuss and negotiate all terms of their agreements with oil companies, rather than being presented with a model and an inflexible contract, pre-printed and ready to be signed.³⁶ The same opinion was delivered before by the leaders of the Russian Association of Indigenous Peoples of the North (RAIPON).³⁷ As professor Xanthaki also claimed before – contrary to the provisions of the law, there has been no consultation with or compensation for indigenous groups under the law, the government provides no funds to implement its provisions, and indigenous groups receive no benefits from resource extraction activities on their traditional lands.³⁸

In 2015 according to the concluding observations on the seventh periodic report of Russian Federation the HRC again concerned about the fact that insufficient measures are being taken to respect and protect the rights of indigenous peoples and to ensure that members of such peoples are recognised as indigenous.³⁹ HRC concerned also that no territory of traditional nature use has been established under the 2001 FL 'On Territories of Traditional Nature Use'.⁴⁰ And, uttered its worries that territories of traditional nature use 'are largely unprotected from desecration, contamination and destruction by extractive, development and related activities, that consultation with indigenous peoples on matters of interest to their communities is insufficiently enforced in practice and that access to effective remedies remains a challenge'.⁴¹

Indigenous issues raised by the HRC's concluding observations were not answered in Russia's written response, although the state party has to take an extensive range of measures to reach compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR).⁴² And Russia participates in the ICCPR as a successor state of the USSR who ratified it in 1973.⁴³ Thus, provisions of this convention, including article 27, are binding for Russia.

In 2017 the UN Committee on the Elimination of Racial Discrimination (CERD) paid attention to the situation with indigenous peoples in Russia, emphasising that numerical ceiling of 50,000 individuals beyond which a self-identified indigenous group may not be classified as indigenous prevents them from enjoying legal protection of their lands, resources and livelihoods.⁴⁴ It also emphasises the failure to establish any federally protected territories of traditional nature use for indigenous peoples, failure to respect the principle of free, prior, and informed consent of indigenous peoples, and various bureaucratic barriers indigenous fisheries face for obtaining fishing rights in addition to unnecessary restrictions on how to practice fishing, such as the prohibition to use nets.

In line with its General Recommendation No 23,⁴⁵ the Committee urgently called upon the state party to undertake the necessary legal revision to ensure that all indigenous peoples enjoy their rights and to establish federally protected territories of traditional nature use for indigenous peoples. It also points the importance to ensure the application of the free, prior and informed consent principle and to remove any discriminatory restrictions on indigenous fisheries. Moreover, CERD recommends Russia to consider ratifying the ILO 169 Convention, and formally endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

ILO 169 Convention ratification is consistent with the requirements of the Constitution of the Russian Federation (part 1 of art. 17, art. 55, art. 69). It will help to increase confidence in the public authorities among indigenous peoples, will strengthen state control over the preservation of appropriate conditions of their lives. It will give acceleration, comprehensiveness and interrelatedness of law-making and law-enforcement practice in the sphere of protection of the rights of indigenous small-numbered peoples and will ensure stability of the domestic legislation concerning these peoples.

Thus, it is necessary to proceed from the assumption that:

- (a) Doubt exists related to the fact of whether Convention 169 is compatible with the Constitution of the Russian Federation and would survive judicial review in the Constitutional Court, the powers of which include inspecting international treaties of the Russian Federation which have not yet entered into force (section 'g' of part 2 of art. 125 of the Constitution of the Russian Federation);
- (b) The absence of necessary laws or their non-compliance with the convention cannot be considered as an obstacle to its ratification: within the meaning of the Constitution of the Russian Federation (part 4 of art. 15, art. 69), if the convention does not contradict the Constitution and increases the standard of rights and guarantees of indigenous small-numbered peoples, it can be introduced into the Russian legal system, and the legislation must be brought into line with it;
- (c) In determining the nature and scope of the measures to be taken to apply the convention, flexibility is shown, taking into account the conditions specific to each country (art. 34 of the convention);
- (d) The implementation of the convention in the Russian legal system cannot destroy the accumulated positive potential of the rights and benefits of indigenous small-numbered peoples, since its provisions do not have retroactive force, do not compete with international legal norms and norms of domestic legislation establishing higher standards of the rights of these peoples (art. 35 of the convention).

5. The ILO 169 convention impact on the aboriginal legislation in Russia

Currently, the Russian Federation has a significant body of laws aimed at protecting indigenous small-numbered peoples. The basis of this legislation is the provision of the Constitution of the Russian Federation (art. 69), according to which the Russian Federation undertakes to guarantee the rights of these peoples in accordance with generally recognised principles and norms of international law and international treaties of the Russian Federation. This provision became an innovation for the Russian constitutional law as for the first time indigenous peoples were mentioned in the supreme legal authority. But this provision has a declarative character and does not name specific rights.⁴⁶ In the same time this rule suggests that Russia considers the communities of indigenous small-numbered peoples to be in need of state support and special rights commensurate with international standards, which should contribute to the preservation of their identity and development in modern society. Defining legal status of indigenous small-numbered peoples international law has a special role as the rights of indigenous small-numbered peoples should fit international standards.⁴⁷

The Constitution of the Russian Federation also establishes that the protection of indigenous peoples' habitat and traditional way of life is a special subject of joint jurisdiction of the Russian Federation and its subjects (section 'm' of part 1 of art. 72). According to it, legal regulation on these questions is performed by federal laws and the laws issued according to them and other regulations of subjects of the Russian Federation (part 2 of art. 76 of the Constitution). To date, only at the federal level, dozens of such acts have been adopted,⁴⁸ among them are: Federal laws 'On Guarantees of the Rights of Indigenous Small-Numbered Peoples of the Russian Federation',⁴⁹ 'On General Principles of Organization of the Communities of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation',⁵⁰ and 'On Territories of Traditional Nature Use of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation'.⁵¹ They have a decisive importance.

How does the current legal regulation in this area relate to the key provisions of the Convention 169?

5.1. What peoples are covered by the ILO 169 convention in Russia

The definition of indigenous peoples in Russian Federation relies on several cumulative requirements, outlined in the Law 'On Guarantees': (1) living in the historical territories of their ancestors; (2) preserving their traditional way of life, occupations, and folk art [handicrafts]; (3) recognising themselves as a separate ethnicity; and (4) numbering at most 50,000 people within Russia.⁵² Following the provisions of this law, the Government of the Russian Federation, as mentioned above, on the proposal of the state authorities of the constituent entities of the Russian Federation, approved the lists of these peoples – a unified list of 47 indigenous small-numbered peoples with the allocation of the list of 40 indigenous small-numbered peoples in the North, Siberia and the Far East of the Russian Federation. Subsequently, federal legislation was developed exclusively in relation to the peoples of the North, Siberia and the Far East, as they most meet the objective criteria of the peoples covered by the Convention 169 (part 1 of art. 1). At the same time, it should be understood that the Russian Federation as a sovereign state independently determines specific groups of peoples that require special state support from the standpoint of international standards, as well as their name and definition.⁵³

The inclusion or non-inclusion of communities in the list of indigenous small-numbered peoples is at the sole discretion of public authorities. For example, inclusion was denied to the Komi-Izhemtsy and Pomors, who sought to acquire the status of these peoples, for the reason that they are not separate ethnic groups.⁵⁴ In order to rationalise these issues, it would be good to regulate the procedure of ethnic identification, based on the following:

- (a) Ethnic communities, if they meet the established criteria, could decide on their own whether to classify themselves as indigenous peoples, i.e. the criterion of self-identification of peoples, to which the Convention 169 points (part 2 of art. 1), should be taken into account;
- (b) The desire to be included in the list of indigenous small-numbered peoples should be confirmed by the decision of the relevant community or bodies (organisations) authorised to represent them;

- (c) The public authorities of the Russian Federation are called to monitor compliance with procedures, to exclude falsification of compliance of indigenous peoples with the established criteria, and to send the necessary documents to the Government of the Russian Federation;
- (d) The Government of the Russian Federation decides to include the ethnic community in the list of indigenous small-numbered peoples taking into account the opinion of the Association of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation. A negative decision on this issue may be challenged in court.

Despite the fact that the Constitution of the Russian Federation (art. 26) guarantees everyone the right to determine and indicate their nationality, the problem for many years remains the issue of individual ethnic identification of persons among indigenous small-numbered peoples. As a result, they have difficulties with the implementation of special rights to traditional hunting and fishing, land use, replacement of military service with alternative civil service, social pension, etc. Various measures have been proposed to address the situation (recently, the idea of establishing a state register of persons belonging to indigenous small-numbered peoples has been actively promoted). However, the most simple and understandable, in our opinion, would be to recognise the issuance by the authorised state body of a document (insert in the passport) confirming the belonging of a person to the community of indigenous small-numbered peoples, if there is a corresponding requirement coming from him, as well as evidence of his belonging to these peoples, as which it is necessary to consider the origin, language, lifestyle, conduct of traditional economic activities, observance of customs and traditions.⁵⁵

5.2. The rights of indigenous small-numbered peoples to maintain their institutions and to express their views on issues affecting them

Ensuring these rights is a guarantee of the right of these peoples to self-determination in the Russian Federation, which is considered as a principle of the federal structure of Russia (part 3 of art. 5 of the Constitution). Its realisation for some indigenous peoples (Nenets, Khanty, Mansi, Chukchi) are historically Autonomous (in the past – national) districts – Nenets, Khanty-Mansi, Chukchi and Yamal-Nenets,⁵⁶ having the status of subjects of the Russian Federation, and also administrative and territorial units with the special status formed in places of habitation of Dolgans, Evenks and Koryak instead of the abolished Autonomous districts of the specified people.⁵⁷ In addition to this, the federal law on the guarantees of the rights of indigenous small-numbered peoples of the Russian Federation enshrines the rights of indigenous small-numbered peoples to participate in monitoring the use of land, in compliance with environmental legislation, to participate in the protection of their native habitat, traditional lifestyles, management and fisheries, in environmental and ethnological examinations, the creation of communities and other associations, and territorial public self-government (arts. 8, 11, 12). Calls for the formation of councils of representatives of indigenous peoples in the bodies of executive power of subjects of the Russian Federation and bodies of local self-government. The possibility of holding gatherings, referendums of citizens in a situation when there is a need to

allocate land for the construction of objects in places of traditional economic activity of indigenous peoples for purposes not related to this activity and traditional crafts (section 9 of art. 39.14 of the Land code of the Russian Federation).⁵⁸

At the same time, the relations connected with formation or abolition of subjects of the Russian Federation and administrative-territorial units providing autonomy of indigenous small-numbered peoples are not regulated by law. The provisions on the participation of these peoples in governance are general, whereas Convention 169 requires that this should take place through established procedures, systematically (whenever legislative or administrative measures that may affect these peoples are considered) and at all levels of public authority, through indigenous representative institutions (they should be recognised and guaranteed resource support), in good faith and in a manner appropriate to the circumstances, with a view to reaching agreement or agreement on the proposed measures (art. 6). These are the issues where Russian legislation on indigenous small-numbered peoples is necessary to develop.

5.3. The rights of indigenous small-numbered peoples over the lands

The Federal law 'On Guarantees' stipulates that indigenous small-numbered peoples, their associations and persons belonging to these peoples have the right to use free of charge in places of traditional residence and traditional economic activities of indigenous small-numbered peoples lands of different categories necessary for realisation of their traditional management and occupation of traditional crafts (section 1 of part 1 and section 1 of part 2 of art. 8). In other words, the land is not protected just for the mere fact that indigenous peoples have been living there, but because the land is necessary for the traditional economic system of the indigenous community.⁵⁹

The Federal law 'On the Territories of Traditional Nature Use' guarantees to persons belonging to indigenous peoples and their communities the right to create local, regional and federal specially protected areas for their traditional nature use and traditional way of life. Within the boundaries of these territories, a special legal regime of nature use is established, land plots are provided to persons who belong to indigenous small-numbered peoples and their communities in accordance with the current legislation, and the seizure of these plots for state and municipal needs is allowed when providing equal land plots with compensation for losses caused by such seizure. No single territory of traditional nature use was created on federal level since that law was adopted.⁶⁰ Possibly the main problem in creating such territories is that the decision-making process is concentrated in the hands of the government, with little attention given to the interests of indigenous peoples. The law on territories of traditional nature use does not give indigenous peoples any role in identifying the size of such territory. Article 9 of the law says that borders of the territory of traditional nature use are provided by authorities only.⁶¹ Such an approach ignores indigenous people's interests, disregards their special connection to the land, and excludes them from participating in defining the borders of the territories of traditional nature use.⁶² These issues have a particular urgency because of the increasing interest among extractive businesses in the Russian North.⁶³

The Land Code of the Russian Federation of 25 October 2001⁶⁴ provides for granting to persons who belong to indigenous small-numbered peoples and their communities of the

parcels of land in free use for placement of buildings and constructions for the term of no more than for ten years (section 13 of part 2 of art. 39.10).

The Federal law of 24 July 2002 'On the Circulation of Agricultural Land'⁶⁵ recognises admissible transfer of the parcels of land from lands of agricultural purpose to communities of indigenous small-numbered peoples of the North, Siberia and the Far East for preservation and development of a traditional way of life, economic activity and crafts of these people in rent, and deer pastures in regions of the Far North – only on the right of rent or on the right of free use for the term not less than for five years (sections 5, 6 of art. 10).

Forest Code of the Russian Federation of 4 December 2006⁶⁶ permits the reindeer husbandry on the basis of forest lease agreements, and if this is done for indigenous peoples' own needs, the forest plots are provided for free use for a fixed term (art. 38).

The Federal law of 14 March 1995 'On Specially Protected Natural Territories'⁶⁷ establishes that in the territory of national parks the zones of traditional extensive nature use are allocated intended for ensuring traditional activities of indigenous small-numbered peoples. Realisation of traditional economic activities and other affiliated types of inexhaustible nature use is allowed within the borders of these zones (section 'e' of part 1 of art. 15).

It should be added that the Order of the Government of the Russian Federation of 8 May 2009 No 631-p⁶⁸ listed the approved places of traditional residence and traditional economic activities of indigenous small-numbered peoples of the Russian Federation. Thus, the historically formed territories (areas) of the native habitat of these peoples, within which they carry out their cultural and household activities and engaged in traditional economic activities are fixed. But it does not necessarily contain or connected to their right to use land (land plots).

If we compare these provisions with Convention No 169, we can say that the Russian legislation does not recognise indigenous peoples' property right and ownership over their lands, but enshrines their right to the free fixed-term use of land and to use land on a lease basis (for a fee, which is hardly fair). This right is interpreted from the standpoint of ordinary property relations, and not from the standpoint of public law, derived from the recognition of the fact of residence of these peoples on the relevant lands since time immemorial.

Land rights is still the most important issue for indigenous peoples living in Russia. The economic transformation in Russia needs to be supported through institutional development, especially through the allocation of property rights in a manner that protects local economies and allows the indigenous population to participate in decision making as well as share in the benefits of development.⁶⁹ Moreover, there are still issues not regulated by Russian domestic legislation but reflected in the convention, such as:

- (a) The prohibition of eviction of indigenous small-numbered peoples from occupied lands, and if this happens, only with their free and informed consent, on the basis of laws and established procedures, with the possibility of returning to the seized land, obtaining equal land and compensation for losses and damage;
- (b) The transfer of land rights between persons belonging to indigenous small-numbered peoples;

- (c) The inadmissibility of the alienation of indigenous small-numbered peoples' lands or other forms of transfer of their rights to these lands outside their own community without consultation with these peoples;
- (d) The adoption of measures that would protect indigenous small-numbered peoples, their representatives and communities from unfair actions of persons to obtain the lands of these peoples in the ownership, possession or use;
- (e) The imposition of sanctions for unlawful invasion of indigenous small-numbered peoples' lands;
- (f) The increment of land, if necessary, to ensure the normal functioning of indigenous small-numbered peoples, providing them with funds for the development of land they own (use).

It is important to emphasise indigenous peoples' connection to the land and subsistence off its natural resources. Their lifestyle, which is rooted in sustainable development, requires a different way of thinking compared to the most modern-day populations which do not rely on subsistence.

5.4. The rights of indigenous small-numbered peoples over the natural resources

Setting land ownership aside, indigenous peoples' rights over the natural resources and traditional activities are also currently under severe threat.⁷⁰ There is a problem with indigenous small-numbered peoples' right to priority licensing implementation and therefore the licenses to fish and hunt often go to commercial stakeholders rather than indigenous peoples. Such a practice became usual in Russia and gave rise to a recent complaint from Sami, an indigenous people living in the North-West of Russia, to the UN against the actions of the regional government about the transfer of the pasturelands in a long-term lease to a hunting club.⁷¹ Traditional activities and access to natural resources is a part of the right to a healthy environment and an essential part of the right to life for indigenous small-numbered peoples.

Russian legislation recognises following rights of indigenous small-numbered peoples:

- (a) For free use of common minerals (clay, sand, etc.) (part 1 and 2 of art. 8 of the Federal law 'On guarantees');⁷²
- (b) On priority use of fauna (art. 49 of the Federal law 'On Wildlife').⁷³ In this connection, the rights of indigenous small-numbered peoples and their communities are guaranteed to traditional fishing⁷⁴ and hunting,⁷⁵ and on the use of objects of fauna and objects of water biological resources without tax encumbrances;⁷⁶
- (c) On the use of water objects for traditional nature use (art. 54 of the Water code of the Russian Federation);⁷⁷
- (d) On free harvesting of wood for one's own needs (art. 30 of the Forest code of the Russian Federation);⁷⁸
- (e) For the use of natural resources within the boundaries of national parks and state nature reserves (arts. 15, 24 of the Federal law 'On Specially Protected Natural Areas').⁷⁹

Constitutional Court of Russian Federation referring to the issue of indigenous small-numbered peoples' right to traditional fishing confirmed that this right does not affect or restrict the right of other people's access to the aquatic biological resources.⁸⁰ Thus, this right does not violate constitutional rights of non-indigenous individuals. This rule, to our opinion, has an important meaning as it was proved that the special legal framework indigenous small-numbered peoples have in nature use is constitutionally permitted and does not violate other people's rights.

In September 2014 a group of indigenous small-numbered people shoot 217 wild reindeers for all members of the community taking into consideration that the quota is eight reindeers per person. They were found guilty of illegal hunting committed by an organised group in conspiracy. Mr. Shchukin claimed in the Constitutional Court that current legislation doesn't cover quotas of those community members, who do not have a hunting permit or ability to hunt, and they can assign their quotas to the hunters. In May 2019 Constitutional Court of Russian Federation had an unprecedented ruling in favour to indigenous small-numbered peoples' hunting rights. Court confirmed that traditional hunting is different from other kinds of hunting as it has a special meaning for existence and identity of indigenous small-numbered peoples.⁸¹ This ruling also confirmed that all members of the indigenous community have this right regardless if they have or not hunting permit or ability to hunt.⁸² Therefore they can assign their quotas to the hunters within the assigned limits of their personal needs.

The consolidation of these rights is consistent with Convention 169 (arts. 2, 4, 23). However, their importance is offset by the fact that, for example, the rights to traditional fishing and hunting are not linked to the right of indigenous peoples to the priority use of wildlife, are not adequately specified in terms of quotas for the biological resources harvesting and realisation of fishing and hunting in a free regime (without allocation of relevant sites). Traditional fishing and hunting, in fact, are replaced by commercial hunting and industrial fishing.

The issue of the rights of indigenous small-numbered peoples in the context of extractive businesses in their traditional areas of residence and impact on traditional economic activities has not been legally resolved yet. The federal law 'On Subsoil'⁸³ gives the state bodies of constituent entities of the Russian Federation the power to protect the interests of indigenous small-numbered peoples (section 10 of art. 4) but does not provide such power of the federal bodies. The law does not mention any rights and guarantees of indigenous small-numbered peoples to express their opinion on the realisation of subsoil use or to claim compensation for damage caused by such activities. Subsoil users are not burdened with social and other obligations towards indigenous small-numbered peoples and their communities when obtaining permits to conduct relevant work. This approach is at variance with the requirements of Convention 169 (art. 15).

Article 15 of the ILO Convention 169 fixes indigenous peoples' rights to participate in the use, management and conservation of the natural resources pertaining to their lands.⁸⁴ Even though the 1999 'On Guarantees' federal law complies with the abovementioned standards, there are no proper consultations with indigenous small-numbered peoples about exploration or exploitation of natural resources in areas they live, no compensation for the lands utilised by the state or business entities, and no environmental assessments take place. Indigenous small-numbered peoples often have no participation in the benefits of commercial activities on their territories as the benefits are usually divided between the

federal, regional, and local governments, to which indigenous communities do not have access.⁸⁵

The 1999 'On Guarantees' federal law declares indigenous small-numbered peoples have the right to protect their lands and traditional way of life.⁸⁶ Ecological and ethnological examination should be done before any resource extraction is commenced on the lands of indigenous small-numbered peoples. Nevertheless, this provision is ineffective, for the reason that the mechanism for such examinations has not been defined and developed on the federal level. In the same time in Republic of Sakha (Yakutia), one of the northern territories of Russia, a regional law was adopted in 2010 on ethnological expertise⁸⁷ that is supposed to be held prior any commercial projects on the territories of indigenous small-numbered peoples to research the socio-cultural context of the development on the particular ethnic group.⁸⁸ However, many companies do not consider it binding due to the fact that it is a regional law and, therefore, not applicable to projects carried out on a federal or supra-regional level.⁸⁹

5.5. Socio-cultural rights of indigenous small-numbered peoples

The federal law 'On Guarantees' generally recognises the need to promote the socio-economic and cultural development of indigenous small-numbered peoples, to provide state assistance for the reform of all forms of education and training of the younger generations of these peoples, as well as to guarantee persons belonging to them the right to replace military service with alternative civil service,⁹⁰ to preserve and develop native languages, to receive and disseminate information on them, to create mass media,⁹¹ foundations, cultural centres and national cultural autonomies,⁹² training groups for instruction in traditional management and crafts, preservation of their traditions and religious rites, maintenance and protection of places of worship, development of relations with representatives of indigenous small-numbered peoples living in other regions of the Russian Federation and abroad (arts. 8, 9, 10). The right to receive a social pension on preferential terms is provided for indigenous small-numbered peoples – upon reaching the age of 55 for men and 50 for women.⁹³ It is also fixed in legislation that Russian Federation guarantees its protectionism (protection) in relation to the preservation and restoration of cultural and national identity of small ethnic communities through exceptional measures of protection and stimulation provided by the federal programmes of socio-economic, environmental, national and cultural development.⁹⁴

However, most of these provisions are not supplemented by specific rules and actions from the standpoint of the Convention 169 spirit. In particular, there are currently no special measures for the recruitment and employment of indigenous peoples, no special legislation and programmes aimed at preserving and protecting the indigenous culture and the rights of these peoples to their cultural values, traditional knowledge and practices, education and health, taking into account the life of indigenous small-numbered peoples.

5.6. Customs of indigenous small-numbered peoples and their incorporation into judicial practice

The preservation of customs is one of the characteristics of the traditional way of life of indigenous small-numbered peoples. Recognising this, Russian legislation legalises

custom as value and source of law when applied to indigenous small-numbered peoples.⁹⁵ Their customs, if they do not contradict the federal legislation and the legislation of the subjects of the Russian Federation, can be used in regulating intra-community organisation, solving issues of education, protection and use of territories of traditional nature use and traditional way of life, and can also be taken into account in court cases in which persons belonging to indigenous small-numbered peoples act as plaintiffs, defendants, victims or accused.⁹⁶ These provisions are consistent with the requirements of the Convention 169 (arts. 8, 9, 10, 12).

However, the rule on the incorporation of the customs of indigenous small-numbered peoples in judicial practice is not specified in procedural legislation. As a result, it is not applied by the courts. They ignore these customs, do not take into account the economic, social and cultural characteristics of these peoples, which affects the individualisation and fairness of the resolution of cases with their participation.⁹⁷

6. Conclusion

Caring for indigenous small-numbered peoples (aborigines, Northern peoples) is a good tradition of the Russian state.⁹⁸ Today Russian Federation, considering itself as part of the global community, guarantees the rights of these peoples in accordance with universally recognised principles and norms of international law and international treaties of the Russian Federation. The ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries is a fundamental instrument in this regard. It has not been ratified by Russia, because the definition of indigenous peoples and the land ownership rights in the convention do not meet the requirements of Russian legislation,⁹⁹ but in fact served as a guideline for the inclusion in the Constitution of article 69 on the rights of indigenous small-numbered peoples and the formation of relevant legislation.

However, the analysis showed that the aboriginal legislation in Russia has accepted only certain provisions of the convention and is currently characterised as inconsistent, contradictory and incomplete. It lags far behind international legal standards on the rights of indigenous peoples, especially in relation to the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),¹⁰⁰ which developing the ideas of the convention has marked a new level of protection of the rights of indigenous peoples for states, including the Russian Federation. While Russia may have positive intentions and good laws on the books, operationalisation and implementation of these laws in terms of actual consultation and participation outcomes for indigenous communities is still lag behind.¹⁰¹ Rapidly evolving indigenous-industry relationships and different stakeholders' expectations raise many important issues such as human rights, negotiation processes regulation, and corporate social responsibility. Something must be done to align the purposes of, and incentives at play in the gulf between, international investment law and indigenous rights.¹⁰²

In 2019, the ILO celebrated the 100 years anniversary of its formation in Geneva. It was also 30 years anniversary of the ILO Convention 169 that was signed on June 27, 1989. This convention remains the pinnacle achievement of the trade union movement's legacy of solidarity with indigenous and tribal peoples.¹⁰³ The ILO Convention 169 remains the only international convention that can be ratified, which deals directly with the rights and cultures of indigenous peoples.¹⁰⁴ The principles enshrined in the

convention formalised a more expansive view of the rights of indigenous peoples in international law, including the UNDRIP.¹⁰⁵ The convention has also influenced the World Bank's operational guidelines on indigenous peoples, OD 4.20.¹⁰⁶ And even if a country has not ratified the convention yet, it can still use its provisions as guidelines. For instance, Germany has not ratified Convention 169 but its development policy for cooperation with indigenous and tribal peoples in Latin America is based on the convention.¹⁰⁷ Finland has not yet ratified Convention 169, but it has tried to meet many of the provisions of the convention in the Saami Act of 1995.¹⁰⁸ Undoubtedly, it is a good time to reevaluate the legacy of the ILO Convention 169 for indigenous peoples' rights development and take the steps necessary to meet its provisions in Russian Federation and its further ratification.

Notes

1. Ruslan Garipov, 'Labour Market Integration of Indigenous Youth in the Republic of Karelia, Russia', *International Journal on Minority and Group Rights* 27 (2019): 2.
2. James Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 2004), 4.
3. International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries No 169 (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383 (hereinafter ILO 169 Convention).
4. There is a list of these peoples approved by the Directive of the Government of the Russian Federation (RF) of 17 April 2006 No 536-p 'On the List of Indigenous Small-Numbered Peoples of the North, Siberia, and the Far East of the Russian Federation' (*Распоряжение Правительства РФ от 17 апреля 2006 No 536-р 'Об утверждении перечня коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации'*). They live in 28 constituent entities of the Russian Federation situated in Northern territories in their ancestral domains. Overall number of the named peoples is approximately 280,000.
5. Ekaterina Zmyvalova and Ruslan Garipov, 'The Right of Indigenous Peoples in Marine Areas in Russia', in *The Rights of Indigenous Peoples in Marine Areas*, ed. Stephen Allen, Nigel Banks and Oyvind Ravna (Bloomsbury Publishing Plc, 2019), 271–2.
6. *Indigenous Peoples: A Global Quest for Justice: A Report for the Independent Commission on International Humanitarian Issues* (London: Zed Books, 1987), 179–81.
7. International Labour Organization Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries No 107 (adopted 26 June 1957, entered into force 2 June 1959) 328 UNTS 247 (hereinafter ILO 107 Convention).
8. *Indigenous and Tribal Peoples: A Guide to ILO Convention No 169*, eds. Manuela Tomei and Lee Swepston (Geneva: ILO, 1996), 1.
9. Russel Lawrence Barsh, 'Revision of ILO Convention No 107', *The American Journal of International Law* 3, no. 81 (1987): 756.
10. В.А. Кряжков, Р.Ш. Гарипов, Конвенция МОТ 169 и российское законодательство о коренных малочисленных народах, 9 *Государство и право* (2019) 53 [V.A. Kryazhkov and R.Sh. Garipov, 'ILO 169 Convention and Russian Legislation on Indigenous Minorities', *State and Law* 9 (2019): 53].
11. Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), https://www.ilo.org/dyn/normlex/en/?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314 (accessed November 25, 2019).
12. Anaya, *Indigenous Peoples in International Law*, 58.
13. Bradford W. Morse, 'The Rights of Indigenous and Minority Peoples', in *Convergence of Legal Systems in the 21st Century. General Reports delivered at the XVIth International Congress of Comparative Law* (Brisbane, Australia, 14–20 July 2002: Published by Bruylant Bruxelles, 2006), 59–60.

14. ILO 169 Convention, See note 3 above.
15. Ibid.
16. Ibid.
17. *IWGIA Report 18: Indigenous Peoples in the Russian Federation* (2014): 56.
18. Constitution of the International Labour Organization (adopted by the Peace Conference in 1 April 1919, entered into force 28 June 1919) 15 UNTS 40. In 1954, just twenty years after first becoming a member, USSR re-joined ILO. See: Harold Karan Jacobson, *International Organization* 3, no. 14 (1960): 402.
19. Kryazhkov and Garipov, 'ILO 169 Convention and Russian Legislation on Indigenous Minorities', 55.
20. А. Пик, Международные правовые нормы политики государств в отношении аборигенных народов, 1 *Живая Арктика. Информационный бюллетень* (1996) 6 [A. Pik, 'International Legal Framework of the States towards Aboriginal Peoples', *Alive Arctic Newsletter* 1 (1996): 6].
21. Decree of the Supreme Council of the USSR of 27 November 1989 'On Urgent Measures of Ecological Improvement of the Country' (*Постановление ВС СССР от 27 ноября 1989 'О неотложных мерах экологического оздоровления страны'*).
22. Resolution of the Cabinet of Ministers of the USSR and the Council of Ministers of the RSFSR of 11 March 1991 No 84 'On Additional Measures to Improve the Socio-Economic Conditions of the Small-Numbered Peoples of the North for 1991–1995' (*Постановление Кабинета Министров СССР и Совета Министров РСФСР от 11 марта 1991 No 84 'О дополнительных мерах по улучшению социально-экономических условий жизни малочисленных народов Севера на 1991–1995 годы'*).
23. USSR Law of 26 April 1990 'On Free National Development of the USSR Citizens Living Outside Their National-State Entities or Without Such Entities on the Territory of the USSR' (*Закон СССР от 26 апреля 1990 'О свободном национальном развитии граждан СССР, проживающих за пределами своих национально-государственных образований или не имеющих их на территории СССР'*).
24. Resolution of the VI Congress of People's Deputies of the Russian Federation of 21 April 1992 No 2707–1 'On the Socio-Economic Situation of the Regions of the North and Equated Localities' (*Постановление VI Съезда Народных Депутатов Российской Федерации от 21 апреля 1992 No 2707–1 'О социально-экономическом положении районов Севера и приравненных к ним местностей'*).
25. Decree of the President of RF of 5 February 1992 No 118 'On Association of Autonomous Districts of Russian Federation' (*Указ Президента РФ от 5 февраля 1992 No 118 'Об Ассоциации автономных округов Российской Федерации'*).
26. Resolution of the Supreme Council of RF of 13 February 1992 No 2347-I 'To Include Additional Questions in the Agenda of the Fourth Session of the Supreme Council' (*Постановление Верховного Совета РФ от 13 февраля 1992 No 2347-I 'О включении в повестку дня четвертой сессии Верховного Совета Российской Федерации дополнительных вопросов'*).
27. Constitution of the Russian Federation, 1993 (art. 69).
28. О ратификации Конвенции No 169 Международной организации труда 'О коренных народах и народах, ведущих племенной образ жизни в независимых странах' (Материалы Парламентских слушаний от 22 ноября 1994. Москва, 1995) 69–70 [About ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries Ratification (Moscow: Materials of the Parliamentary Hearings of 22 November 1994, 1995), 69–70].
29. Resolution of the State Duma of the Federal Assembly of RF of 26 May 1995 No 816-I ГД 'On the Crisis Situation of the Economy and Culture of the Small Indigenous (Aboriginal) Peoples of the North, Siberia and the Far East of the Russian Federation' (*Постановление Государственной Думы Федерального Собрания РФ от 26 мая 1995 No 816-I ГД 'О кризисном положении экономики и культуры малочисленных коренных (аборигенных) народов Севера, Сибири и Дальнего Востока Российской Федерации'*).

30. Материалы круглого стола 'Перспективы ратификации Российской Федерацией Конвенции МОТ No 169 о коренных народах и народах, ведущих племенной образ жизни в независимых странах' (Москва, 2002) [Materials of the Round Table 'Prospects for Ratification by the Russian Federation of ILO Convention No 169 on Indigenous and Tribal Peoples in Independent Countries' (Moscow, 2002)].
31. There is unified list of indigenous peoples in Russia, which currently enumerates a list of 47 indigenous peoples, 40 of which inhabit territories of Siberia, North and the Far East of Russia. It is approved by Decree of the Government of RF of 24 March 2000 No 255 'On the Unified List of the Indigenous Small-Numbered Peoples of the Russian Federation' (*Постановление Правительства РФ от 24 марта 2000 No 255 'О Едином перечне коренных малочисленных народов Российской Федерации'*).
32. Материалы круглого стола 'О ратификации Конвенции МОТ No 169 о коренных народах и народах, ведущих племенной образ жизни в независимых странах' (Москва, 2006). [Materials of the Round Table 'About ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries Ratification' (Moscow, 2006)].
33. Доклад о положении коренных малочисленных народов Севера в Российской Федерации (АКМНССДВ РФ, Москва, 1997) 33 [Report on the Situation of Indigenous Small-Numbered Peoples in the Russian Federation's North (RAIPON, Moscow, 1997) 33]; Рекомендации VI съезда коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации от 24 апреля 2009 [Recommendations of the VI Congress of the Indigenous Small-Numbered Peoples of the North, Siberia, and the Far East of Russian Federation of 24 April 2009], <http://www.raipon.info/documents/biblioteka/24.pdf> (accessed November 25, 2019).
34. А.А. Ткаченко, А.В. Корюхина, К проблеме ратификации Российской Федерацией Конвенции МОТ No 169 О коренных народах и народах, ведущих племенной образ жизни в независимых странах, 3 *Этнографическое обозрение* (1995) 122–32; Т.В. Заметина, *Конституционный статус коренных малочисленных народов России* (Энгельс, 2009) 213–4; Концепции развития российского законодательства (Под ред. Т.Я. Хабриевой, Ю.А. Тихомирова, Ю.П. Орловского. М., 2004) 182–3. [A.A. Tkachenko and A.V. Koryuhina, 'Towards the Problem of ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries Ratification by Russian Federation', *Ethnographic Review* 3 (1995): 122–32; T.V. Zametina, *Constitutional Status of Indigenous Small-Numbered Peoples in Russia* (Engels, 2009), 213–4; *The Concept of Russian Legislation Development*, eds. T.Y. Khabrieva, Y.A. Tihomirov, and Y.P. Orlovskiy (Moscow, 2004), 182–3].
35. HRC, Concluding observations of the Human Rights Committee. Russian Federation, 24 November 2009, CCPR/C/RUS/CO/6.
36. Report of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya, Situation of indigenous peoples in the Russian Federation, UN Document A/HRC/15/37/Add.5. 2010.
37. Report of the RAIPON first vice-president Rodion Sulyandziga at the Tenth Session of the UN PFII in 2011: See the Report at <http://www.raipon.info/biblioteka/37-2009-12-16-12-39-43/581-2009-12-16-13-00-23.html> (accessed November 25, 2019).
38. Alexandra Xanthaki, 'Indigenous Rights in the Russian Federation: The Case of Numerically Small Peoples of the Russian North, Siberia, and Far East', *Human Rights Quarterly* 26 (2004): 74, 98–9.
39. HRC, Concluding observations of the Human Rights Committee. Russian Federation, 28 April 2015, CCPR/C/RUS/CO/7.
40. Federal Law (FL) of 7 May 2001 No 49-FZ 'On Territories of Traditional Nature Use of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the RF' (hereinafter FL 'On Territories of Traditional Nature Use') (*Федеральный Закон (ФЗ) от 7 мая 2001 No 49-ФЗ 'О территориях традиционного природопользования коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации'*).

41. HRC, 'Concluding observations of the Human Rights Committee'.
42. Information from the Russian Federation on the implementation of the recommendations contained in the concluding observations of the Human Rights Committee following its consideration of the seventh periodic report of the Russian Federation on its implementation of the International Covenant on Civil and Political Rights, 21 April 2016, CCPR/C/RUS/CO/7/Add.1
43. Decree of the USSR Supreme Council Presidium No 4812-VIII of 18 September 1973 'On Ratification of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights' (*Указ Президиума Верховного Совета СССР No 4812-VIII от 18 сентября 1973 'О ратификации Международного пакта об экономических, социальных и культурных правах и Международного пакта о гражданских и политических правах'*).
44. CERD, Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation, 20 September 2017, CERD/C/RUS/CO/23-24.
45. General Recommendation No 23: Indigenous Peoples, Fifty-first session, 1997 (A/52/18).
46. It is worth to mention that during the discussions on the Constitution draft at the Constitutional assembly (June-November, 1993) the representatives of indigenous small-numbered peoples' unions (E.A. Gaer, V.V. Starikov and others) insisted on making explicit the indigenous peoples' rights, especially in the part of land using rights recognition. These ideas were also connected to the possibility of subsequent ratification of the ILO 169 Convention. See: Constitutional Assembly Transcripts, Volume 4 (Moscow, 1995), 281–4; Volume 17 (Moscow, 1996), 177, 201–4, 337; Volume 20 (Moscow, 1996), 311–2, 429–31.
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