

Title

Dr.

Last Name of PRESENTING Author

Kaplin

Middle Name or initials of PRESENTING Author**First Name of PRESENTING Author**

Nikita

Email of PRESENTING Author

kaplinik@bk.ru

Country of PRESENTING Author

Russian Federation

Institution, organization or general address

Indigenous Community Association in Evenkia

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Author list (in order)

Nikita Kaplin

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Monitoring of Indigenous Law Enforcement in Evenkia, Russia

Abstract - text box

Nineteen native communities in the heart of Siberia have been united into the Arun (Revival) Association in 1989 to guide own destiny and sustain their traditional land use and lifestyle in the modern world. The same year, the International Labour Organization has adopted a vital international legal document – the ILO Convention No. 169. It really reflected hopes of all indigenous peoples in the world for their survival and the future self-determination. Two years later, Arun Association along with the other indigenous groups and activists in the Soviet Union has supported the establishment of the Russian Association of Indigenous Peoples of the North (RAIPON) – the leading organization of the indigenous movement and driver of the aboriginal cooperation in the Arctic Council. One of the important tasks in this networking process was targeting comprehensive knowledge about legal and political changes in their homeland. This knowledge is an important resource for native population to share and constantly apply in their struggle for the spiritual, cultural and economic development. The Arun Association is strongly interested in both assessment of the legal instruments and their operational use on land. This monitoring at the ground level provides information available for a range of other users, including researchers and policymakers.

Process of indigenous legislation development in Russia was most active during the democratization period when the state had demonstrated that the protection of the rights of indigenous peoples of the Russian Federation was one of the important constitutional tasks of a democratic and social state that had revised its Constitution and adopted Article 69 that guarantees the rights of the indigenous small-numbered peoples according to the universally recognized principles and norms of international law and international treaties. Ratification of the Framework Convention for the Protection of National Minorities (FCNM) by the Russian Federation should be also attributed to the achievements of this period under review. By 2001 there has been developed and adopted 3 principal Federal Laws:

- On the guarantees of the rights of small-numbered indigenous peoples (1999);
- On the general principles of the organization of the communities of small-numbered indigenous peoples of the North, Siberia and the Far East of the Russian Federation (2000);
- On the territories of traditional nature management of the small-numbered indigenous peoples of the North, Siberia and the Far East of the Russian Federation (2001).

These federal laws, in accordance with the Constitution, reflect the universally recognized principles and norms of international law and the international treaties of the Russian Federation, and establish the legal basis for guarantees of the original socio-economic and cultural development of the indigenous peoples, protection of their ancestral habitat, traditional way of life, husbandry and craftsmanship. Federal legislation is of primary and priority order (in view of the fact that the subject of this regulation is the rights and freedoms of a person and a citizen of the Russian Federation), while the regional legislation is complementary, concretizing human rights (specific issues of protection of rights and freedoms of the person and the citizen, rights of national minorities, natural environment and habitat and traditional way of life of the ethnic communities).

At the same time, after 2001 the stagnation in the Russian legal development has become highly noticeable, especially in the area of the indigenous laws' enforcement. In the last 15 years, the main positive achievements are to be considered only in the area of legislative settlement of the issue of registration of persons from the indigenous

peoples of the North, Siberia and Far East, leading a nomadic and (or) nomadic way of life, as well as the approval of the following documents:

- a) List of indigenous peoples of the North, Siberia and the Far East of the Russian Federation;
- b) List of places of traditional residence and traditional economic activity;
- c) List of the types of traditional economic activity of the indigenous peoples;
- d) Methods of calculating the losses affecting associations of the indigenous peoples of the North, Siberia and the Far East as a result of economic and other activities of organizations of all forms of ownership and individual entrepreneurs;
- e) Rules of provision and distribution of subsidies from the federal budget to the regional budgets to support the economic and social development of the indigenous minorities of the North, Siberia and the Far East, as well as support for reindeer herding;

Still, in the law enforcement there is practice of silencing or ignorance of the provisions of the UN Declaration on the rights of indigenous peoples (2007); in the national legal relations there is lack of implementation of almost all important rights proclaimed by the ILO Convention 169 (not ratified by the Russian Federation): the right to choose its own priorities in the process of development; the right to participate in the preparation, implementation and evaluation of plans and programs that affect their interests; the right to preserve their own customs and institutions; ownership of the lands they traditionally occupy; the right to establish their own educational institutions etc.

Enforcement of the federal law “On territories of traditional nature use of the indigenous peoples of the North, Siberia and the Far East of the Russian Federation” was practically blocked – all attempts to register or approve the regional or local initiatives just failed at the federal level. Legislation researchers write about ‘imitation of legal intentions’ connected with regulation of aboriginal relations. Unfortunately, this becomes the rule in the state bodies, for example, the failure of specific federal ministries to launch a number of specific legal actions in the plan of activities of socio-economic development of the regions of the North, (e.g. development of the mechanism for harmonization and decision-making on the relationship between the indigenous minorities of the North and Economic; elaboration of a pilot project for the establishing by 2010

traditional land use areas of indigenous small-numbered peoples, preparation of proposals for the position of an authorized representative of the indigenous minorities of the North and a plan of action for the implementation of the concept of sustainable development of indigenous peoples). Acute conflicts on resource distribution in the regions and land use at the territories where indigenous small-numbered peoples of the North, Siberia and the Far East live require urgent measures for preparation of legal acts providing their priority access to the hunting grounds and quotas on hunting animals and aboriginal fishing. At the regional level it is necessary to regulate rights in the sphere of renewable natural resources and an organization of land use and administration in the places of residence and economic activity of indigenous peoples, to establish model territories of traditional nature use both at local and regional levels.

However, attempts, contrary to the requirements of the Russian Constitution and international standards, continue to block the domestic policy of granting special rights to national minorities, although at the international level Russia consistently condemns any manifestations of discrimination against ethnic minorities. Additionally, ignorance of judges and other lawyers in the courts (partly because of lack of legal institutions and the system of advanced professional training on indigenous rights) distorts the basis of aboriginal legislation, and causes its interpretation and application ignoring the local situation in the indigenous communities, with no regard of their culture, customs and traditions. Taking into consideration all these circumstances, it is necessary, through regional regulation and law enforcement, to ensure the binding of the federal legal standard of rights to specific legal relations, taking into account the specific situation of the respective ethnic communities.

The objectives of the on-going monitoring are as follows:

- Supervision of compliance with legislation on indigenous rights shall become one of the special tasks of the prosecutor's office;
- The courts, by cases involving small-numbered indigenous peoples of the North, shall take into account their status, customs and traditions, relying on the opinion of experts and authorized representatives to ensure the correct interpretation of the proceedings, affected facts, relations and phenomena of cultural and anthropological specificity;
- Citizens from among the indigenous peoples and their associations shall be able to defend their special rights as derivatives of the fundamental

rights and freedoms of citizens in the Constitutional Court of the Russian Federation, as well as in constitutional courts of the subjects (regions) of the Russian Federation (in the Republic of Sakha (Yakutia), where such a court has been operating for over 20 years, its role in defending the rights of the northern peoples is very noticeable);

- The Human Rights Ombudsman in the Russian Federation has to follow the practice of respecting the rights of the indigenous minorities of the north and reflect it in the annual reports (unfortunately this only happened in 2001, 2002 and 2011); there might be a need to establish an institution of the Ombudsman for the Rights of indigenous peoples in Russia;

- The constituent entities (regions) of the Russian Federation, which are home to the small-numbered indigenous peoples of the North, are to establish the position of Commissioner for the rights of these peoples, taking into account that such a post is regarded as a model, based on the experience of the Commissioner for the Rights of the indigenous peoples in Krasnoyarsk Kray, Russia;

- Representatives of small indigenous peoples and officials shall have more opportunities to better understand and apply indigenous legislation. This could be facilitated by the publication of relevant collections of legal acts, court decisions, commentaries to laws, teaching courses (Aboriginal Law) in law universities, in the system of professional advancement of judicial specialists, state and municipal employees (at least in the regions of the North), legal education of indigenous leaders and activists. The Internet networks and possibilities shall be fully utilized for the dissemination of legal information and the relevant case studies.

The on-going monitoring in Evenkia is geared primarily for practitioners to use, recognizing the overwhelming number of legal problems on land that currently exist and lack of legal support in the indigenous communities.

Based on this monitoring, Evenk communities are able

- to document problems at specific locations arising from law enforcement practice, and also to share solutions. Shared resources can be in the form of published documents or videos and photos.

- to connect through an interactive forum for discussion, solution finding, and problem identification. These public forums can be used for effective research and policy that is sourced from on-the-ground witnesses.

- to explore problems and solutions of other Arctic communities. The monitoring outcomes provide Arctic communities with solution-finding tools to community problems that stem from positive legal actions.

- to initiate legal actions and improve situation on site.