

Chapter 14

Preservation of Territories and Traditional Activities of the Northern Indigenous Peoples in the Period of the Arctic Industrial Development

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Abstract In Russia the right to traditional use of lands, biological and other resources such as reindeer pastures, harvesting fauna, fish, non-wood resources of forest including wild plants is declared with due regard to the priorities of indigenous peoples. However, in practice the northern indigenous communities can hardly get an access to their traditional lands. They cannot become owners of hunting lands, fishing areas, cannot obtain long-term licenses for the wildlife use rights, quotes for fishing. Due to many reasons the northern indigenous peoples are not able to compete with major industrial companies. As a consequence, the indigenous peoples do not conduct traditional economic activities, nor do they preserve their traditional lifestyle, values and language. Alongside with guaranteed rules concerning indigenous rights, in the Russian legislation there is a gap in proper regulations of traditional territories use. In the current period of intensive industrial development of the Arctic the legal rules should be revised and supplemented with effective mechanisms of granting and protection of traditional territories and activities of the northern indigenous peoples.

14.1 Introduction

The Russian Federation is a multiethnic society and home to more than 180 peoples. Of these, 40 are legally recognized as “indigenous, small-numbered peoples of the North, Siberia and the Far East”. This status is tied to the conditions that a people has no more than 50,000 members, maintains a traditional way of life, inhabits

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certain remote regions of Russia and identifies itself as a distinct ethnic community (International Work Group for Indigenous Affairs IWGIA 2016). The population of indigenous peoples of the North, Siberia and Far East of Russia is 243,982 peoples which makes 0.2 of the total population. In Russia the northern indigenous peoples include the Aleuts, Koryak, Eskimos, Chukchi, Evenks, Yakuts, Yukagirs, Dolgan, Selkup, Nanai, Khanty, Mansi, Nenets, Saami and others (News Agency “Arctic-Info” 2016a, b). The northern indigenous peoples traditionally inhabit huge territories stretching from the Kola Peninsula in the west to the Bering Strait in the east, which make up about two-thirds of the Russian territory. They inhabit more than 20 federative regions (called “subjects of the Russian Federation”), including the Republic of Sakha (Yakutia), the Kamchatka Territory, the Krasnoyarsk Territory, the Khabarovsk Territory, the Magadan Region, the Murmansk Region, the Chukotka Autonomous Area, the Nenets Autonomous Area, the Khanty-Mansi Autonomous Area -Yugra and the Yamalo-Nenets Autonomous Area (Batyanova et al. 2009). (Fig. 14.1)

It is clear that the northern indigenous peoples have undergone significant changes, which have distanced them from their forefathers in economic, social, cultural, and even anthropometrical respects. However, certain groups of the contemporary indigenous population still preserve both the cultural identity and the economic activities which are considered to determine a traditional lifestyle and pattern of settlement (nomadic or semi-nomadic lifestyle, etc.). Many of them have traditionally been hunters, gatherers, fishermen and reindeer breeders, and these activities still constitute vital parts of their livelihoods (IWGIA 2016).

The features which characterize the northern indigenous peoples are determined by their environment. Their small population size also results from external factors and does not indicate either under-development or inherent population decline. On the contrary, for their specific geographic environment and economy type, a small population size represents an optimal solution (Gumilev and Kurkchi 1989). Their life-support system is closely linked to traditional lands and land use, to the challenging climate and geography conditions – severe weather, limited natural resources, and dispersed settlements. In small groups the indigenous peoples can easily respond to major climatic and environmental changes by altering group sizes, relocating, and being flexible with seasonal cycles in hunting or employment (Park 2008). They preserve the national identity and traditional knowledge, while living in the small villages or separate remote *chums* (living tents made of reindeer skins that are laid over a skeleton of long wooden poles), engaged in traditional activities. Therefore, their number is almost not growing, while the birth rate is high enough (Artyunov 2015). Here it’s interesting to mention the results of studies provided by Ljudmila Osipova, the Head of Laboratory of Population Genetics in the Russian Academy of Sciences. In 1990s, conducting the research of the Far North indigenous peoples, she argued that the peoples of the North are “a genetic reserve of the country”: for thousands of years in the North they have undergone through the hard natural selection, and the most stable and strong people could only survive (Judina 2010). However the same factors which ensured the high degree of adaptability of northern populations to their extreme living conditions, also made it difficult for

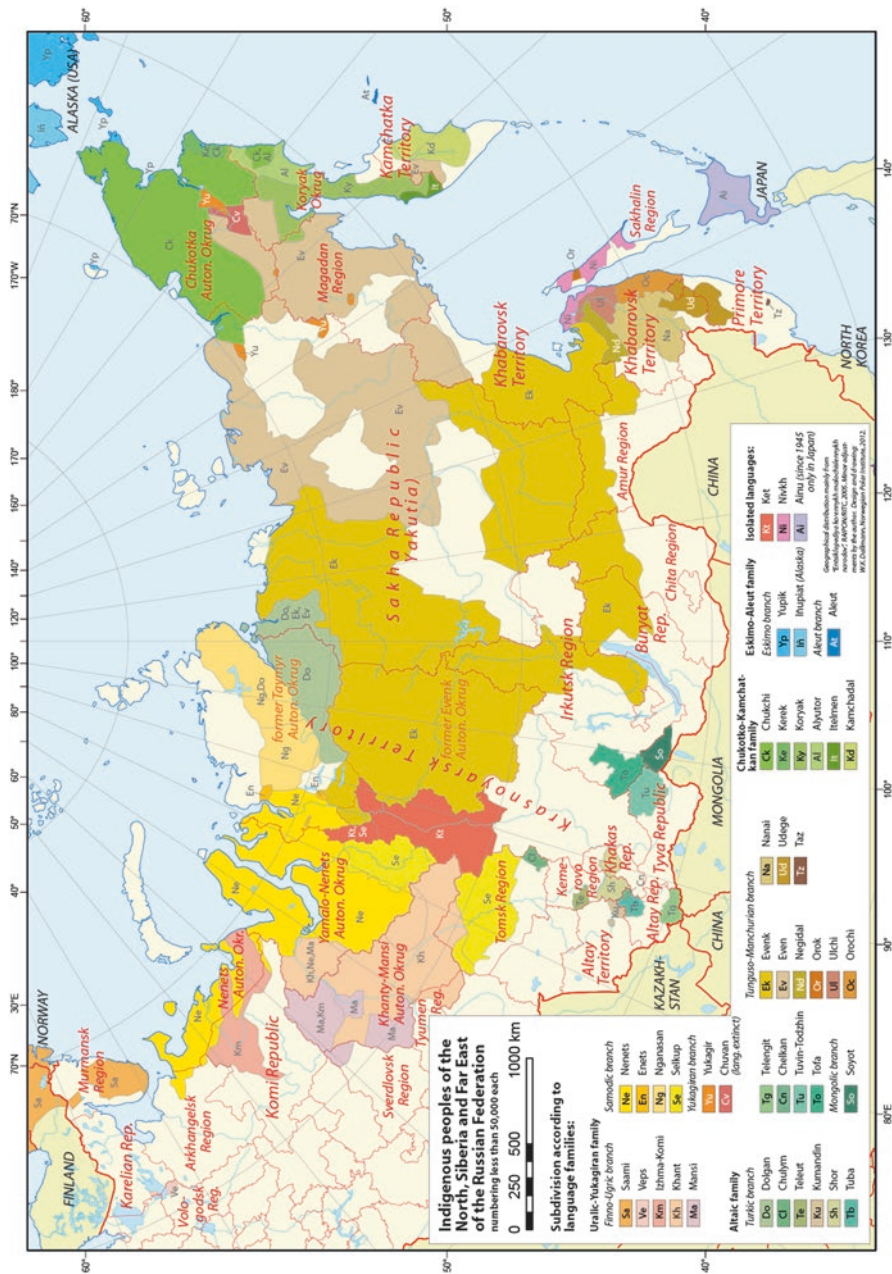


Fig. 14.1 Indigenous peoples of the North, Siberia and Far East in the subjects of the Russian Federation (Goble, Paul. 2016. Numerically Small Indigenous Peoples of the Russian North an Ever Bigger Problem for Moscow. <http://upnorth.eu/numerically-small-indigenous-peoples-of-the-russian-north-an-ever-bigger-problem-for-moscow/>. Accessed 10 Jan 2017)

them to integrate with other cultures and to adjust to continuing development of their primordial territories.

Notwithstanding cultural and ethnographic differences, indigenous peoples in the Arctic share a common history of assimilation into their various mother states and a lack of recognition of rights on traditionally occupied territories. On this background these peoples have united in working steadfastly towards self-determination. Their primary objective has been to safeguard that development and activity on traditional lands and waters takes into consideration indigenous peoples' traditional way of life, as well as their fair share of the economic benefits of development on these territories (Fløistad 2010).

14.2 Changing Conditions in the Arctic Territories

Traditional use of natural resources – fish, forests, wildlife – is a way of life for the indigenous communities of the Arctic. Indigenous peoples continue to rely on the sustainable use of renewable resources and this dependence puts them at great risk from industrial objects and pollutants that find their way in the period of the intensive economic development. Nowadays the indigenous peoples in Arctic regions have to use alternative ways of their economic development, at the same time they are seeking to balance these emerging opportunities with their traditional lifestyle and values closely connected with the land and wildlife. A good example here is the indigenous peoples of the Yamalo-Nenets Autonomous Area with 40% leading a traditional nomadic life, living right in the forest tundra (News Agency “Arctic-Info”. 2016a, b) and sharing their traditional territories with the major Russian oil and gas companies (Gasprom, Rosneft and others) (Gasprom official site 2008). The relations between industrial companies and indigenous peoples today are built on the basis of cooperation agreements and dialogue so that the indigenous peoples receive some short-term benefits of the projects at the stage of arrangement and the operation of oil and gas fields. The public authorities and companies identify the necessary measures to reduce the burden on traditional habitat and traditional economic activities of indigenous peoples of the North. Also the compensation is paid for loss of profit when hunting, fishing, gathering and pastures areas are withdrawn for industrial needs (Bykovskii 2013). On the one hand, this model contributes to improving the quality of life and economic benefits of the indigenous peoples, and on the other it is the path to degradation of peoples accustomed to traditional activities on their lands, who with the arrival of a large number of new people and non-traditional activities have become more vulnerable financially and spiritually (Fig. 14.2).

The economic policy of Russia in the new century focuses on the exploration of mineral resources in the northern Arctic territories and the development of the Arctic energy resources (The Foundations of Russian Federation Policy in the Arctic until 2020 and beyond 2009). Much more than benefits the indigenous peoples of the Russian North face threats from intensive mineral, oil, and gas development, and the resulting conflicts with intensive industrial development model of the



Fig. 14.2 Nenets peoples sharing their lands with modern industrial objects (Foto taken by E. Gladun. 2004)

northern territories have affected all aspects of their life, including social, cultural and spiritual integrity. Yet in April 2005 the 5th Congress of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation took place in Moscow and gathered more than 300 delegates from 28 subjects of the Russian Federation. The main theme for the Congress was modern social, economic and political processes in the northern territories of Russia and changes in the life of the northern indigenous peoples. Some negative consequences were outlined by indigenous peoples themselves, for example (Gladun and Chebotarev 2015):

- the destruction of the social infrastructure and the public system of medical, cultural, goods, social and transport provision in the places inhabited by the northern indigenous peoples, as a result of which the indigenous peoples involved in reindeer herding and handicrafts, leading a permanent nomadic or semi-nomadic way of life, became completely isolated;
- a deep crisis in the traditional branches of economy, which form the basic life-support of the northern peoples, as a result of ill-considered and swift privatization of the main traditional means of production;
- a decrease of the amount of the indigenous peoples pursuing traditional occupations, as a result of which a general, permanent unemployment is reported, which has led to impoverishment, abrupt increase of morbidity, especially through tuberculosis, and, as a consequence, to a mortality increase and a reduction of the life expectancy for northern indigenous peoples (Gladun and Chebotarev 2015).

In addition, some legal issues were discussed at the Congress – guarantees for the rights of the indigenous peoples and the effective interaction between indigenous communities and organizations with the authorities and industries to imple-

ment federal and regional programs of economic and social development of the indigenous peoples (BCJYX.RU 2005). However, significant changes in legislation have not happened afterwards. In fact, many of the achievements of the federal legal regulation made after enactment of 1993 Russian Constitution were annulled by a series of amendments in 2004. The conditions of life and activities of the indigenous peoples of the North in the mid-2000s became significantly different in various regions of Russia. The considerable political, legal and economic efforts to guarantee indigenous rights and to provide support for indigenous communities have been undertaken by regional authorities in such subjects of the Russian Federation as the Republic of Sakha (Yakutia), the Nenets Autonomous Area, the Khanty-Mansi Autonomous Area –Yugra, the Yamalo-Nenets Autonomous Area. In some regions the living conditions and opportunities to maintain traditional activities, to preserve traditional culture and languages continued to deteriorate.

Facing an unprecedented combination of rapid and stressful changes involving environmental forces like climate change, socioeconomic pressures associated with globalization (Arctic Human Development Report (AHDR) 2004; Nuttall 2000) and intensive industrial development (Gladun and Chebotarev 2015) the indigenous peoples in the Arctic have felt a need to safeguard their culture and traditional way of life.

14.3 Legal Regulations on the Indigenous Peoples in the Russian Federation

The existence of legislation on indigenous peoples of the North is an official acknowledgement of their specific legal status by the state. This ensures both the assumptions to preserving of their culture, and promotes a better adaptation of those peoples to present social and economic conditions (Kryazhkov 2013). In the Russian Federation over the last 20 years legislation on indigenous peoples of the North has been formulated as a specific multisectoral development of Russian law. In view of the federal system of government in Russia and related constitutional provisions (arts. 71, 72, 76) (The Constitution of the Russian Federation 2014), this legislation is a two-level, i.e. consists of two blocks of laws and regulations – federal and regional (of so-called “subjects” of the Russian Federation). Federal laws regulate human and civil rights and freedoms of the indigenous peoples, general principles of organizing their traditional territories and activities, the state guarantees for traditional way of life – these and some other issues currently fall in the competence of the federal authorities.¹ The regional regulative level is supplemental, more specific, and remedial. The content of regional indigenous legislation varies to a big

¹ Federal legislation on indigenous issues consists of the Concept for the Sustainable Development of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation (2009), the Federal Law “Guarantees of Rights of Indigenous Peoples in the Russian Federation” (1999), the Federal Law “Territories of Traditional Resource Use” (2001) and some rules and regulations in the specific laws such as the Land Code (2001), the Water Code (2006), the Forestry Code (2006).

extent, but, generally speaking, the regional acts regulate the structure and activities of indigenous communities, formation of territories of traditional resource use, participation of the indigenous peoples in public affairs, traditional economic activities, preservation of aboriginal culture and languages.² As mentioned above, the gaps in the federal legislation are sometimes filled in the regional acts.

For example, the Statute of the Yamalo-Nenets Autonomous Area (Ustav (Osnovnoi Zakon) Yamalo-Nenetskogo Avtonomnogo Okruga 1998) guarantees the right of indigenous peoples to participate in the work of regional authorities, local governments according to their national traditions and customs. Public authorities are obliged to take into account the indigenous peoples' opinion when dealing with issues that affect their interests (Устав (Основной закон) Ямало-Ненецкого автономного округа [Charter of the Yamalo-Nenets Autonomous Area] 1998).

The legislation on the indigenous peoples in the Khanty-Mansi Autonomous Area - Yugra is recognized the most developed in the country in the related issues. Thus, the regional authorities provide the guarantees of the indigenous rights and interests by the following means:

- assist for self-government development in accordance with national traditions and customs of indigenous peoples;
- involve the indigenous communities into decision-making process;
- support and finance traditional indigenous activities;
- support indigenous arts, culture and languages;
- preserve and give the priorities for using traditional lands and territories (Устав (Основной закон) Ханты-Мансийского автономного округа – Югры [Charter of the Khanty-Mansi Autonomous Area - Yugra] 1995).

In the Yamalo-Nenets Autonomous Area a new law was enacted in 2016 providing for some measures of social support to the indigenous peoples maintaining traditional lifestyle. These measures include medical support, financial support, and educational support. The most significant achievement of the region is that supportive measures are provided for the indigenous peoples in accordance with their nomadic way of life – new medical centers and schools are organized in the reindeer migration routes and traditional villages of the indigenous communities (Закон Ямало-Ненецкого автономного округа “О гарантиях прав лиц, ведущих традиционный образ жизни коренных малочисленных народов севера в Ямало-Ненецком автономном округе” [On Guarantees of Rights of Peoples Leading Traditional Way of Life in the Yamalo-Nenets Autonomous Area] 2016). Much effort in the region is taken for establishing the dialogue between the indigenous peoples and oil and gas industry (Smorchkova 2015).

²Examples of regional laws are: “State Support to Indigenous Peoples, to their Communities and the Northern Organizations Involved in Traditional Occupations in the Territory of Yamalo-Nenets Autonomous Area” (2005) The Law “Protection of Traditional Habitat and Traditional Way of Life of Indigenous Peoples of the North in Yamalo-Nenets Autonomous Area” (2006), “Development of Reindeer Herding in the Khanty-Mansi Autonomous Area – Yugra” (2004), “On Reindeer Breeding in the Yamalo-Nenets Autonomous Area” (1998), “Northern Domestic Reindeer Herding in the Republic of Sakha (Yakutia)” (1997) and many others.

In spite of all positive results, the regions are quite restricted by the federal legislation. Both on the federal and regional levels there is a lack of mechanisms to implement the northern indigenous peoples' rights, guaranteed by the Constitution and the federal legislation related to land use, self-government, development of traditional occupations and cultures; there is no well-considered system of regional and branch laws and other normative legislation, which has made it impossible to implement the declared rights. As the result, both federal and regional regulations are fragmentary, there is no system of public authorities providing for protection, guarantees, cooperation, and other forms of preservation of territories and traditional activities of the northern indigenous peoples. That is the reason why despite provided legal regulation there is still a high demand to support northern indigenous peoples, to regard the high vulnerability of their traditional activities, culture and ethnic identity under the conditions of globalization and Arctic industrial development.

We must admit that not only the Russian Federation is facing such challenges. High unemployment, along with health, social, and economic problems, has become a serious issue in other Arctic states (Arctic Climate Impact Assessment (ACIA) 2004). Among the greatest problems for many northern indigenous peoples' are: permanent settlement, relocation, urbanization, climate change as well as the northward advancement of agriculture, introduction of elaborate infrastructure and migration from the South (e.g. fossil fuels extraction, new jobs in public services and tourism) (Arctic Human Development Report (AHDR) 2004; Nuttall 2000, 2002)

Focusing to Russia, the current situation is exacerbated by 'legal stagnation' and a step back from former positions of the state's participation and protection of the territories and traditional activities of the northern indigenous peoples (Kryazhkov 2013). The following examples illustrate the point:

- The lack of any new notable legal acts in this area. During the last decade the main positive achievements were the legal settling of the issue regarding registration of persons, pertaining to indigenous peoples, and the maintaining of the nomadic or semi-nomadic way of life (Federal Law 2011). The Federal law "Territories of Traditional Nature Use of the Indigenous Peoples of the North, Siberia and Far East of the Russian Federation" adopted in 2001 has not been observed and amended for 8 years (Federal Law 2001).
- The repeal in 2004 of the Federal Law "The Basics of the State Regulation of Social and Economic Development of the North of the Russian Federation" (Federal Law 1996). This political decision may be characterized as a denial by the state of the special policy considering the specifics of the northern regions and indigenous peoples living there (Kryazhkov 2013).
- The withdrawal of several provisions related to indigenous peoples from the federal legislation in the period of 2004–2016.³ As the result, at present, it is no longer possible for indigenous peoples to obtain plots of land for lifetime ownership with hereditary succession and be able to use them free of charge; the allotment of lands for traditional fishing and hunting are provided on the general legal basis.
- The main federal law regulating aboriginal land rights – "On Territories of Traditional Natural Resource Use" – lacks effective mechanisms of legal protec-

³SZRF: 35 (3607).

tion of traditional territories and activities of the northern indigenous peoples. In its articles the law sets out the legal regime of traditional territories and refers to other federal laws that regulate the land rights and resource-related rights. However the law doesn't set the conditions under which land rights are provided and protected because this is the scope of the federal legislation on land issues. Thus, in Russian legislation there are no norms granting specific rights to lands and resources for indigenous people who need these for traditional occupations (Gladun 2015).

- By the current federal law fishing and hunting areas are subject to tendering and bidding procedure and there are no exceptions for the indigenous communities inhabiting those territories. As the result, fishing and hunting areas are leased for long-term tenure to fishery and industrial companies (Naikanchina 2010).

Commenting on the present situation Vladimir Kryazhkov, a famous Russian researcher of the indigenous peoples rights and legal regulations,⁴ wrote: “The Federal Government does not fulfill its obligation to adopt the necessary regulations; for a long time it rejects requests on organizing traditional territories, focusing on law amendments it does not take particular measures and does not involve practical mechanisms for traditional territories’ organization. De facto: the policy of the Federal Government violates the rights of indigenous peoples to traditional resource use and a traditional lifestyle” (Kryazhkov 2008). This opinion is shared by Sergei Kharjuchi, the ex-President of Indigenous Peoples of the North, Siberia and Far East Association. He says: “Up to now there have not been any traditional territories organized on the federal level and the number of regional traditional territories is too small. Moreover, there is only one federal law with a few instruments protecting indigenous rights to traditional lands and lifestyle and this law is not enforced properly because of the inaction of federal authorities” (Отчетный доклад Президента Ассоциации коренных малочисленных народов Севера, Сибири и Дальнего Востока С.Н. Харючи [Annual Report of the President of the Russian Association of Indigenous Peoples of the North, Siberia and Far East S.N. Kharjuchi] 2009). As the result, the northern indigenous peoples in Russia cannot enjoy their rights to traditional land and resource use. The lands used by indigenous peoples may at the same time be used by the oil and gas industry, agriculture industry, land-owners. The oil and gas industry and indigenous peoples have been increasingly coming into contact with each other and more exploration and development takes place in lands that indigenous peoples have traditionally occupied.

14.4 Conclusion

To protect indigenous rights to land, natural resources and traditional activities means to set rules and standards for proper regulation of these issues in legislation. As mentioned above, the Russian federal legislation fails to recognize the need for indigenous peoples to use lands freely to maintain their traditional way of life. Legal

⁴Vladimir Kryazhkov is a professor of constitutional and administrative law in National Research University “Higher school of Economics”.

rules concerning indigenous rights to lands, territories and resources are characterized as non-compliant with constitutional provisions, incomplete, declarative and they do not imply mechanisms for their enforcement.

To safeguard the legal rights and interests of indigenous peoples especially in the period of the Arctic development, it is essential to create additional mechanisms for the industrial exploitation of traditional territories and nature use areas of indigenous peoples:

1. To provide and secure gratuitous long-term use of land and traditional natural resources by the northern indigenous peoples, which is important for the preservation and development of their traditional way of life (Resolution of the 5th Congress of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation 2005).
2. To conduct environmental impact assessment in any case of industrial use of lands and natural resources as well as of land acquisition for public purposes in the territories of traditional habitat and occupation of the northern indigenous peoples.
3. To regulate social and economic development of the indigenous peoples on the regional level and eliminate their unemployment through state support of modern development of the traditional livelihoods, like thorough reshaping of reindeer herding, fishing, sea fishing, gathering of wild plants and handicraft, and the marketing of their products (Resolution of the 5th Congress of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation 2005).
4. To take into consideration the uniqueness of the traditional way of life and culture of the indigenous peoples when organizing medical services, the education system and other social services (Resolution of the 5th Congress of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation 2005). There are some good examples of how it might be implemented – nomadic schools and hospitals which have been introduced in the Yamalo-Nenets Autonomous Area in Russia.⁵
5. To provide for representation of indigenous peoples in public authorities so that the indigenous peoples in their residence areas can be represented in electoral committees and can nominate members to legislature and recommend people from their communities to be included in the corresponding party lists (Resolution of the 5th Congress of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation 2005).

The rights for preserving traditional lifestyle, native language, original culture and transfer of traditional knowledge are inseparable from the basic right of the indigenous peoples – to use their traditional territories and lands freely. The primary objective of the state is to guarantee this right and to provide opportunities for the indigenous

⁵Implementation of the regional project “Nomadic School”, aimed at quality improvement in education and maintenance of traditional lifestyle of indigenous peoples of the North continues in Yamalo-Nenets Autonomous District. <http://www.uarctic.org/news/2015/8/nomadic-school-project-in-yamal>. Accessed 20 Dec 2016.



Fig. 14.3 Nenets peoples in the Yamalo-Nenets Autonomous Area (Foto taken by E. Gladun, 2004)

communities. This should be done without paternalism and imposing modern models of cultural development under new economic conditions. The point is that without the right to free use of lands and natural resources, the right of access for using them in compliance with effective legal mechanisms and procedures, there is little sense in constitution guarantees and general international regulations (Fig. 14.3).

Summing up, to ensure the continuous prosperity of the Arctic region Russia needs to follow the main principle stated at the article 22 Rio Declaration on Environment and Development. Indigenous peoples and their communities have a vital role in the Arctic development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

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