

## Ethnological Expertise in Yakutia: Regional Experience of Legal Regulation and Enforcement

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**Abstract:** This paper analyzes the peculiarities of formation of Russian regional legislation relating to Indigenous small-numbered peoples of the Russian North, Siberia, and Far East. The experience of legal regulation concerning the state ethnological expertise (ethnological expert reviews) of the places of traditional residence and economic activity of Indigenous peoples is considered. The paper is part of a special collection of brief discussion papers presented at the 2014 Walleye Seminar, held in Northern Saskatchewan, which explored consultation and engagement with northern communities and stakeholders in resource development.

### **Introduction**

The socio-economic development of Indigenous peoples in various regions of the planet is a global issue. The fundamental nature of this issue is explained by the pressure of the dominant culture of industrial and post-industrial society, which leaves fewer opportunities for the preservation of Indigenous peoples' traditional ways of life, the material bases of their cultures, and the peoples themselves as ethnic communities. Herein, Indigenous peoples cannot count on compensation that is fair, from their point of view, as state legal systems tend to ignore details of peoples' traditional way of life when calculating and assessing the degree of impact.

In 1999, the Russian Federation federal law "On guarantees of the rights of Indigenous small-numbered peoples of the Russian Federation" was passed. Article 1 defines Indigenous small-numbered peoples of the Russian Federation: "peoples, who live on the territories of the traditional settlement of their ancestors, who keep their traditional way of life and economy, and

who are numbered in the Russian Federation less than 50,000 people and who identify themselves as an independent ethnic community” (Russia, 1999).<sup>1</sup>

In 2000, the Russian government approved the uniform list of Indigenous small-numbered people, which includes forty-five peoples; among these, forty peoples live in the North and have a nomadic way of life, and they are known as peoples of the North. In the public mind of Russia, peoples of the North are not considered as equal subjects of law, as are the districts and regions.<sup>2</sup> However, the requirement to respect the rights of peoples of the North is dictated by provisions of the Russian Federation Constitution and by historical experience.

The Constitution guarantees the rights of small-numbered peoples in accordance with generally accepted principles and norms of international law and international agreements (Art. 69), including protection of their original environment and traditional way of life (Art. 72, part 1, para “m”). This provision also references the protection of the traditional residence and way of life of small-numbered ethnic communities to the joint jurisdiction of the federal and regional authorities. Through this, the Constitution has created preconditions for the participation of RF subjects (i.e., regional governments) in the regulation of relations connected with small-numbered peoples (Kryazhkov, 2011).

In connection with industrial development of the Russian Arctic, protecting the traditional residence and traditional way of life of Indigenous peoples, and fair estimates and the payment of compensation to northern peoples for damages caused by industrial corporations, are becoming issues of the day.

First, the experience of Yakutia regarding the organization and conduct of “state ethnological expertise” (ethnological expert reviews) shows that peoples of the North can become equitable partners with industrial companies, along with the active participation of the “independent” side—that is, the state authorities and the scientific community. Herein, Indigenous peoples can be sure that their interests will be considered in the industrial development of their traditional territories and the calculations of fair compensation for damages.

### **Ethnological Expertise**

The idea of conducting “ethnological expertise” in Russia has historical roots. In the days of the Russian Empire, and then after in the Soviet years, a practice had developed in which researchers of Siberia and the Arctic made reports

for state authorities. These reports covered social-cultural issues, as well as issues of economic development of peoples of the North, and the reports gave recommendations for various solutions. Some of these documents are now published in special collections entitled *Ethnological Expertise: Peoples of the North of Russia* (1956–1958, 2004; 1959–1962, 2005; 1963–1980, 2006; 1985–1994, 2007).

By request of the government authorities, many scientific institutions now research specific issues concerning peoples of the North; and the Institute of Anthropology and Ethnography of the Russian Academy of Science is more tightly engaged in issues of ethnological expertise—it is considered as a field that is a cross between historical, cultural, archaeological, ethnological, legal, and anthropological studies (Adayev, n.d.).

The definition of “ethnological expertise” is given in Article 1 of the Federal Law “On guarantees of the rights” (Russia, 1999). In particular, ethnological expertise is a scientific study of the influence of changes to the traditional homeland and to the socio-cultural situation of Indigenous peoples. Many specialists note shortcomings in this definition, but it has become an element of the public sense of justice of peoples of the North (Novikova, 2008: 1). However, up to the present time, legislation regarding ethnological expertise has not been passed at the federal level.

Where there is an implementation of large-scale industrial projects on the traditional territories of Indigenous peoples of the North, the subjects of the Russian Federation—Yamalo–Nenets Autonomous Okrug, Sakhalin Oblast, the Republic of Sakha (Yakutia)—have to pass regional legislation on ethnological expertise, thereby filling the gaps in the federal legislation. In this analysis of the currently underdeveloped practice of conducting ethnological expertise in the subjects of the Russian Federation, one can identify the four main variants: public ethnological expertise, such as in Yamalo–Nenets Autonomous Okrug (Bogoyavlenskyi et al., 2002); ethnological expertise as a part of the state ecological expertise, as in Yamalo–Nenets Autonomous Okrug and Sakhalin Oblast (Murashko, 2002); ethnological expertise as a part of the state historical-cultural expertise, such as the Ural-Siberian region (Adayev, n.d.); and state ethnological expertise, such as in the Republic of Sakha (Yakutia). Based on an analysis of conducting ethnological expertise in Yamalo–Nenets Autonomous Okrug, it is evident that the public ethnological expertise has a significant disadvantage; namely, its results are not legally binding and are not compulsory. In cases where conducting ethnological expertise is a part of ecological and historical/cultural state expertise, such as in Yamalo-Nenets and Sakhalin Oblast, it is impossible to properly and fully conduct the ethnological expertise. In addition, in any of

the combined variants of expertise, complexities are inevitably connected with the inclusion of superfluous and/or inadmissible information (Adayev, n.d.). Based on discussions in this article, and the experience of legislative activity and the law enforcement practice of Yakutia, it is possible to say that the state ethnological expertise is certainly the most effective in terms of qualitative research. Ethnological, sociological, economic and legal materials, and materials on assessing damage to traditional economies, become the basis of expert opinion and are not just part of other research reports. Most importantly, the results and recommendations of the state ethnological expertise have law enforcement power (that is, are legally binding) and are mandatory.

During development of the regional law of Yakutia “On ethnological expertise in the places of traditional residence and traditional economic activity of the peoples of the North of the Republic of Sakha (Yakutia),”<sup>3</sup> the main issues for me, as the initiator and author of the legislation, were the following: Who can be a customer and initiator of ethnological expertise? What is the source of funding for the expertise (i.e., from the state budget or from the customer)? What is the status of the ethnological expertise—public or state? To what extent do representatives of Indigenous peoples participate in the research? Should the ethnological expertise be compulsory? What are the legal grounds of ethnological expertise? What are the objects and subjects of expertise? How to ensure the unconditional implementation of the expert review’s recommendations? And, how to ensure subsequent control and monitoring of the project’s implementation?

After analyzing the experience of ethnological expertise in Russia, as well as during the heavy and long negotiation stage of the bill in the state departments and industrial companies, I have concluded that the ethnological expertise must originate from the state and it should be conducted in the territory of Yakutia on a mandatory basis. Furthermore, it should be conducted before any decision making regarding the implementation of the proposed project in places of traditional residence and economic activities of Indigenous peoples.

There was a long debate in the Parliament of Yakutia. The participants included representatives of industrial companies engaged in business activities in traditional territories, representatives of local and national municipalities, and representatives of nomadic tribal communities of Indigenous peoples. As a result of the debate, social compromise was established and the regional law of the Republic of Sakhu (Yakutia) “On ethnological expertise” was adopted on April 14, 2010. This law sets out regulations that the state ethnological expertise shall be conducted on the

territory of Yakutia before any decisions are made about the implementation of proposed economic and development activities in places of traditional residence and economic activities of Indigenous peoples.

The outputs of the state ethnological expertise are defined as: normative legal acts, materials, and other documentation on the implementation of the planned economic and other activities; potential impacts from the planned activity on people in the area and on their traditional homelands; and on the socio-cultural conditions in the area affected by the planned activity. Thus, for conducting state ethnological expertise, the entire volume of documentation connected with the industrial development project is required. These documents are analyzed; scientific and expert research on the demographic, ethno-cultural, and socio-economic condition of the Indigenous population should be implemented; and possible results from the project's realization are estimated. The subjects of the scientific research are the possible scenarios of positive and negative impacts to Indigenous peoples during and after the project's realization.

The “customer” is defined as the initiator of the ethnological expertise—a legal entity that intends to carry out economic or other activities (e.g., mining or oil and gas development) in places of traditional residence and economic activities of Indigenous peoples. Here, the customer of the ethnological expertise contacts the Government of Yakutia with a request for the ethnological expertise. The customer funds the conduct of these studies on the basis of estimates that are prepared by the department of the government of the Republic of Sakha (Yakutia) that is authorized in the field of ethnological expertise.

The Department of the Affairs of the Peoples of the Republic of Sakha (Yakutia) is defined as the authorized body of the Government of the Republic of Sakha (Yakutia) in the field of ethnological expertise. According to law, small-numbered peoples and their associations have the right to delegate their representatives to the expert committee of the ethnological expertise, as well as to participate in the reviews during the development of federal and regional governmental programs relating to natural resource development and environmental protection in their areas.

One of the main outcomes of the ethnological examination is a comprehensive damage assessment of all types of traditional nature use (economy) of Indigenous peoples. When performing an ethnological expert review, special attention should be given to traditional knowledge of peoples of the North, as well as maximum consideration of their concerns. The results of the ethnological expertise should be disclosed to stakeholders, primarily to representatives of the peoples of the North. After a review of

the information, it needs to be registered by the local government. Disputes about the amount and type of compensation of the damages and losses should be resolved by the conciliation commission or by the court.

A resolution of the Government of the Republic of Sakha (Yakutia) approved the regulations on organization and conduct of ethnological expertise, the provision of the Expert Committee of Ethnological Expertise at the Government of the Republic of Sakha (Yakutia).” The expert committee, on the basis of the summary from the scientific research and opinions of experts, prepares a report about ethnological expertise, which can be positive or negative. A positive report must contain recommendations about the compliance of the planned (ongoing) activity to requirements of the established normative acts (legislation) of the Russian Federation and the Republic of Sakha (Yakutia) on guaranteeing the rights of small-numbered Indigenous peoples. The report must also contain recommendations of the acceptability of planned or ongoing exposure to the traditional territories of Indigenous peoples. Finally, it must also include a conclusion regarding the possibility of the project’s realization. In contrast, a negative conclusion may contain findings of two types: first, the necessity for the customer to modify the submitted materials based on comments and suggestions set out in the conclusion by the expert commission; and second, the inadmissibility of the project proceeding. The report and conclusions of the expert committee should be submitted to the Government of Yakutia. Finally, after approval, the report should take effect and be legally binding.

In 2011, at the request of companies JSC Yakutugol and JSC Timir, state ethnological expert reviews were conducted with respect to two projects: the construction of a railroad to the Elga coal field from Ulak station in the Neryungri district, and the construction of the railway line Hani – Tarynnakhsliy GOK in Olekminsk district. The first results of the state ethnological expertise in Neryungri and Olekminsk districts generally satisfied both industrial companies and the associations of peoples of the North. This was a success of the regional legislation, as before this moment, peoples of the North could get modest compensation based only on the good will of the corporation’s management. This experience of conducting expert reviews showed the necessity of carrying out scientific research for the development of clearly defined documents to determine the amount of damages according to regional calculations.

In February 2012, the management of the federal company JSC “RusHydro” contacted the Government of the Republic of Sakha (Yakutia) with an application to conduct a state ethnological expertise of the documentation for constructing the Cancun HPS (hydroelectric station),

in accordance with the requirements of regional law. On March 27, 2012, the first meeting of the Expert Committee on Ethnological Expertise for the Government of the Republic of Sakha (Yakutia) was held. At this meeting, there was discussion about issues regarding the conduct of state ethnological expertise. At this stage of forming the expert committee, the association of Indigenous small-numbered peoples of Yakutia officially delegated its representatives to serve as members on the committee. In addition, representatives of the Union of Nomadic Tribal Communities of Yakutia and the Association of Peoples of the North were actively involved in the ethnological impact assessment, mainly through the provision of economic, social, historical, and cultural information about the peoples living on these territories and leading a nomadic way of life. The experts noted that the company's employees who conducted the impact assessment did not present information about the development of the ethno-demographic, ethno-social, and ethno-cultural situation in the case of the project's implementation. Also, there wasn't an assessment of the possible changes and disturbances to the traditional lifestyle of the Indigenous population. In the damage assessment, there were no calculations of losses on areas of indirect impact. Thus, the presented schedule of compensation payments was considered to be greatly underestimated. At the end of the discussion, the expert committee made a preliminary decision to return the submitted materials to the customer (the company). Also, the expert committee recommended that a full environmental and social impact assessment be conducted during the construction of the Cancun HPS.

In May 2012, the expert committee made a positive conclusion on "the impact assessment on ethnological environment (IAEE) as part of the design documentation for construction of the Cancun HPS on the Timpton River," in which the previous remarks of the experts were taken into account and corrected.

In 2013, the state ethnological expertise of the project documentation for the construction of two power lines in Aldan and Olekminsk districts of Yakutia was conducted successfully. In 2014, the state ethnological expertise was also conducted of the documentation for "complex geological and geophysical works in the joint area of the Lena-Tunguska petroleum province and Laptev potential oil field in Bulunskii region of Yakutia."

## **Conclusion**

It is necessary to define two different terms—"state ethnological expertise" (expert review) and "ethnological impact assessment"—which are implemented during the conduct of the state ethnological expertise.

The “state ethnological expertise” is a tool of the state authority and its results have legal consequences in the form of permission or prohibition with respect to a proposed project of economic activity (for example, related to oil & gas or mining). The state ethnological expertise considers materials of the ethnological impact assessment,” which are provided by the customer (the industrial company) to the government of the Republic of Sakha (Yakutia).

The impact assessment refers to documentation of the customer, which contains information regarding estimates of possible positive and negative impacts on ethnological conditions during and after implementation of the proposed activity in the places of the traditional residence.

The use of state ethnological expertise, and the assessment of impacts from proposed projects promote the adoption of science-based managerial decisions with respect to the implementation of proposed resource development projects. These decisions use calculations of possible adverse impacts, assessments of possible damage to the distinctive culture of peoples of the North, public opinion considerations, and information about measures to reduce and prevent (mitigate) negative impacts.

It is noteworthy that during the conduct of the state ethnological expertise, one of the complex problems was that of defining the criteria for assessing the impact of industrial projects on the traditional way of life of peoples of the North. In addition, the study revealed evidence of improper execution of documents (such as documents on the management of the economic activity and financial statements) by nomadic tribal communities, as well as evidence of a lack of data about state registration of real estate. These circumstances made it difficult to draw expert conclusions.

Experience from these examples in Yakutia has shown that during the conduct of state ethnological expertise, the relationships between industrial companies and the peoples of the North are transferred to a legal framework, with the participation of the government of the Republic of Sakha (Yakutia) and public and scientific institutions, which provides for the realization of constitutional guarantees that are aimed at protecting the traditional residences and traditional ways of life of these distinctive peoples.

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## Notes

1. In this paper, the terms “Indigenous peoples” and “small-numbered peoples” are intended to be synonymous with “Indigenous small-numbered peoples of the Russian North, Siberia, and Far North.”
2. The Subjects of the Russian Federation comprise constituent states united under the Russian Federation. Each constituent state holds administrative jurisdiction over its defined territory and forms the regional government within that defined territory. As documented in the Constitution of the Russian Federation (Chapter 3, Article 65), there are 89 subjects of the Russian Federation.

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