



CHALLENGES ASSOCIATED WITH THE LEGAL ENFORCEMENT OF LAND USE BY INDIGENOUS SMALL-NUMBERED PEOPLES OF THE NORTH

Elena Mihaylovna Burundukova

Associate Professor, The Institute of Digital Economy, Yugra State University, Khanty-Mansiysk (Russia). <https://orcid.org/0000-0002-1492-4912>

Olga Vladimirovna Kostina

Associate Professor, Department of Business and Economics, Yugra State University, Khanty-Mansiysk (Russia). <https://orcid.org/0000-0003-2126-9407>

ABSTRACT

Objective: This article aims at studying the legal enforcement of land use by indigenous small-numbered peoples of the North. **Methods:** The theoretical basis of the study includes legislative and regulatory legal acts that determine the traditional nature management of indigenous peoples. The study presents the results of interviews with the authorities, heads of reindeer farms, heads of national communities, representatives of ethnic peoples. The surveys were carried out as part of the expedition survey in Surgut, Nizhnevartovsk and Kondinsk districts of Khanty-Mansi Autonomous Okrug-Yugra (Russia) from April to September 2019. **Results:** In the course of the study, the authors have revealed the impossibility of realizing the rights of indigenous peoples in relation to land and land plots that are territories with the traditional use of natural resources. **Conclusion:** This is conditioned by legal changes in the field of land use under the influence of neoliberal practices at the federal level and the paternalistic model at the district level. One more cause is the general ignorance of law and law enforcement by ethnic minorities.

Keywords: Territories with the traditional use of natural resources. Land relations. Land use regulation. Land tenure.



PROBLEMAS DE POSSE DE TERRA PARA OS POVOS NATIVOS DE MENOR NÚMERO DO NORTE

RESUMO

Objetivo do estudo: Este estudo tem como objetivo estudar a prática de aplicação da lei sobre o uso da terra por menor número dos nativos do Norte. **Metodologia:** A base teórica do estudo inclui atos jurídicos normativos que definem as questões de uso da natureza tradicional. **Resultados:** O estudo apresenta os resultados de entrevistas com as autoridades, chefes de fazendas de renas, chefes de comunidades nacionais e representantes de povos de menor número. As pesquisas foram realizadas como parte da pesquisa de expedição nos distritos de Surgut, Nizhnevartovsk e Kondinsk de Khanty-Mansi Autônomo Okrug-Yugra (Rússia), de abril a setembro de 2019. Com base no estudo, concluiu-se que o povo aborígine não pode realizar plenamente seus direitos sobre a terra e as parcelas de terra que são locais de uso tradicional da natureza. **Conclusões:** Isto se deve a mudanças na estrutura legal para o uso da terra em nível federal sob a influência de práticas neoliberais e do modelo paternalista em nível municipal. Conclui-se que existe uma falta de conscientização sobre a estrutura legislativa e suas práticas de aplicação entre as minorias étnicas.

Palavras-chave: Territórios com o uso tradicional dos recursos naturais. Relações com o território. Regulamentação do uso do solo. Propriedade da terra.

INTRODUCTION

While studying the Russian works on the rights of indigenous peoples, we have highlighted five stages of their evolution in international law:

- The Colonial period. The International Labor Organization developed documents combating discrimination against indigenous peoples in the field of labor relations;

- The Post-war period. ILO Convention No. 107 "On the Protection and Integration of Indigenous and other Tribal and Semi-Tribal populations in Independent Countries" was adopted in 1957;

- The 1960s. The collapse of the colonial system. The UN adopted international documents on granting independence to colonial countries and peoples, and proclaimed the right of peoples to self-determination;



– The 1970-1990s. The UN scientific research of the issues faced by indigenous peoples;

– From the early 21st century to the present day. The development of international standards and national laws. In 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples, with provisions and norms for states where indigenous peoples live. From July 1, 2018, the international standard GRI 411 – "Indigenous peoples (Global Reporting Initiative)" (Garipov, 2013) is in effect.

In Russia, the regulation of the rights of indigenous peoples, including the ownership of land, is within the competence of public authorities. Article 9, Article 69, and Clause "m" of Article 72 of the Constitution of the Russian Federation indicate the legal status of indigenous peoples (Konstitutsiya Rossiiskoi Federatsii, 1993). The prerogative of such authorities is "to protect the original habitat and traditional way of life of national minorities" (Article 72). The provisions of these articles were further developed in the following federal legislative acts: "On Guarantees of the Rights of the Indigenous Minority Peoples of the Russian Federation" (State Duma of the Federal Assembly of the Russian Federation, 1999), "On the General Principles of Organizing Communities of the Indigenous Scanty Peoples of the North, Siberia and the Far East of the Russian Federation" (State Duma of the Federal Assembly of the Russian Federation, 2000) and "On territories of traditional nature management of scanty indigenous populations of the North, Siberia and the Far East of the Russian Federation" (State Duma of the Federal Assembly of the Russian Federation, 2001a).

Order of the Government of the Russian Federation of May 5, 2017 No. 876-r approved the Concept for developing public non-financial reporting and an action plan for its implementation (hereinafter referred to as the Concept). The implementation of its provisions will allow the parties involved to develop their special policies, including in relation to indigenous peoples, with due regard to international standards, namely the GRI 400 Series Social Standards or the GRI 411 standard "Rights of Indigenous Peoples" (Government of the Russian Federation, 2017).

The current federal laws provide for:

– Certain benefits and preferences in areas of compact settlement and economic activity of indigenous peoples of the North;



- A special legal regime for the use of land, water resources, and forest management (State Duma of the Federal Assembly of the Russian Federation, 2001a);
- Tax incentives and quotas for the use of biological resources.

The analysis of regional legislation allows concluding that there is no effective mechanism for ensuring and protecting the rights of indigenous peoples: having benefits and guarantees, they cannot exercise them and experience difficulties in understanding the modern legal system of exercising their rights.

N.I. Kalinin (2011) and V.A. Kryazhkov (1996) investigated the rights of indigenous peoples of the North to land. M.V. Mikhailova and T.G. Kharamzin (2015) studied the traditional management of indigenous peoples of the North. A.A. Tranin (2010) analyzed the importance of such territories for indigenous peoples of the North. At the same time, some legislative issues in the sphere of land use of indigenous peoples of the Russian Federation remain unresolved.

To ensure the legal support of indigenous peoples in the field of free land use, it is necessary:

- To study the regulatory legal framework in the field of land relations of indigenous peoples of the North;
- To determine the consequences of legal contradictions at various levels, affecting the land use of indigenous peoples of the North.

MATERIALS AND METHODS

For preparing this article, we used publicly available official sources: legislative and regulatory legal acts that determine the traditional nature management of indigenous peoples of the North, scientific works of the Russian scholars on these issues. The research materials include the results of expeditionary studies in the Surgut, Nizhnevartovsk, and Kondinsky districts of the Khanty-Mansiysk Autonomous Okrug – Yugra, interviews with indigenous peoples of the North conducted from April to September 2019. Questions for the interview were selected by a group of scientific and pedagogical workers of the Institute of Digital Economy of the Ugra State University and agreed with representatives of the Russian Association of Indigenous Peoples of the North.



To draw theoretical conclusions, we used theoretical and empirical methods focused on the legal provision of land plots to indigenous peoples of the North, the comparative-legal method in the study of the federal and regional legislation, as well as the methods of scientific observation (grouping, generalization, and sampling). At the same time, we used the materials of three expeditions, in which we interviewed representatives of public authorities (the head of the village of Sarandaul), heads of reindeer farms, heads of national communities, representatives of ethnic peoples. A total of 15 interviews were collected and processed.

RESULTS

Within the Concept of Sustainable Development of Indigenous Peoples of the North, Siberia, and the Far East of the Russian Federation, the main task is to preserve their original habitat and traditional nature management to ensure and develop the traditional way of life of indigenous peoples of the North (Government of the Russian Federation, 2009). Most principles presented in the Concept refer to the management of territories with the traditional use of natural resources:

- The importance of land, other natural resources (including biological), and the integrity of the environment as the basis of the traditional way of life and traditional economic activity of indigenous peoples of the North;
- The rational use of land and other natural resources in areas of traditional inhabitation and traditional economic activity;
- The recognition of the right of indigenous peoples of the North to priority access to fishing and hunting grounds, as well as other biological resources;
- The need for representatives and associations of indigenous peoples of the North to participate in decision-making on issues affecting their rights and interests in the development of natural resources;
- The compensation for the damage caused to the traditional inhabitation, way of life, and health of indigenous peoples of the North (Ministry of Regional Development of the Russian Federation, 2009).

We should also study legislative acts of the federal and regional levels, as well as subjects of natural resource management.



The traditional inhabitation and way of life common to indigenous peoples are protected by federal and regional laws. Thus, Clause 3 of Article 7 of the Land Code of the Russian Federation establishes a special legal regime for the category of land in areas of the traditional inhabitation and economic activity of indigenous peoples (State Duma of the Federal Assembly of the Russian Federation, 2001b). This legal regime is conditioned by documents approved by executive authorities at all levels, with the participation of indigenous peoples of the North, communities of ethnic minorities, or their authorized representatives (State Duma of the Federal Assembly of the Russian Federation, 2001a).

According to Clause 1 of Law of the Khanty-Mansiysk Autonomous Okrug – Yugra of December 28, 2006 No. 145-oz "On the territories of traditional nature management of indigenous peoples of the North that are of regional significance in the Khanty-Mansiysk Autonomous Okrug – Yugra", territories with the traditional use of natural resources of indigenous peoples of the North are publicly protected territories of regional significance formed for the conduct of traditional nature management and the traditional way of life of indigenous peoples of the North by legal subjects of traditional nature management (Duma of the Khanty-Mansiysk Autonomous Okrug, 2006).

Clause 4 of Article 94 of the Land Code of the Russian Federation describes the procedure for assigning lands to publicly protected areas of regional and local significance and establishes their use by public authorities of the constituent entities of the Russian Federation and local self-government bodies.

Law of the Khanty-Mansiysk Autonomous Okrug – Yugra of October 17, 2018 No. 88-oz "On the regulation of certain relations in the field of organization, protection and use of publicly protected natural areas of regional significance in the Khanty-Mansiysk Autonomous Okrug – Yugra" defines the categories of publicly protected areas (Article 2), including natural parks, state nature reserves, natural monuments, dendrological parks and botanical gardens (Duma of the Khanty-Mansiysk Autonomous Okrug, 2018).

The other articles of this law determine regimes and functional zones that allow traditional economic activities and types of traditional nature management associated with them (Table 1).



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Table 1: Comparing various categories of publicly protected lands and zones of possible nature management

Categories mentioned in Article 2	Modes/functional zones	Definition of functional zoning
Natural parks	The functional zone of traditional extensive nature management, which is intended to ensure the vital activity of the population and within which it is allowed to carry out traditional economic activities, as well as the related types of traditional nature management (Article 7)	Regulations on natural parks approved by the Government of the Khanty-Mansiysk Autonomous Okrug – Yugra in agreement with the authorized federal executive bodies and the relevant local self-government bodies of the municipalities within the constituent entity
State nature reserves	In the territories of state nature reserves located in areas of the traditional inhabitation of indigenous peoples of the North, it is allowed to carry out traditional economic activities, as well as the types of traditional nature management associated with them, ensuring the preservation of the traditional way of life and protection of the traditional inhabitation of indigenous peoples of the North (Article 9)	Regulations on state nature reserves
Natural monuments	In the territories where natural monuments are located, and within the boundaries of their protected zones, any activity that entails a violation of the preservation of natural monuments is prohibited (Article 11)	The Statute on natural monuments
Dendrological parks and botanical gardens	In the territories of dendrological parks and botanical gardens, any activity not related to the fulfillment of their tasks and entailing a violation of the preservation of floral objects is prohibited (Article 13)	Regulations on dendrological parks or botanical gardens

Based on Table 2, only two categories (natural parks and state nature reserves) allow various types of traditional nature management. 13,825,236 hectares of Yugra lands are currently recognized as territories with the traditional use of natural resources. In total, there are 477 territories and 4,075 people have the right to use them. Consequently, 477 territories in the district belong to publicly protected lands. According to Clause 4 of Article 3 of Law No. 88-oz, decisions on the creation of publicly protected natural areas are made with due regard to the rules of territorial planning and land use, standards of zone planning, forestry regulations, data from the



state register, and other documents issued by the Government of the Khanty-Mansiysk Autonomous Okrug – Yugra (Duma of the Khanty-Mansiysk Autonomous Okrug, 2018).

It is difficult and expensive for indigenous peoples of the North to conduct the landmarking of forest areas (aerial photography) with due regard to the above-mentioned facts.

We undertook surveys (expeditions) on the issues of law enforcement in relation to territories with the traditional use of natural resources (areas of traditional inhabitation) of indigenous peoples and their impact on traditional economic activities: the village of Ugut, the Surgut district – the "Yagun-Yakh" community (respondent 1); the village of Mulymya, the Kandinsky district – the community of the "Mansiysk village Staraya Mulymya" (respondent 2).

The latter community has land plots, whose legal status is life-long inherited use. Their boundaries are approved (passed the land survey procedure) and are legally formalized. The lands are located on the territory of the village council, the village of Mulymya (informant 1).

The "Yagun-Yakh" community of indigenous peoples of the North includes 25 "ancestral land plots". The legal status of such land is a communal area. Acts were issued for 11 land plots that are included in the register; boundaries are not officially defined for the rest of the land plots. The land plots are located in the territory that belongs to the council of the village of Ugut (informant 2).

Under Article 8 of Law No. 145-oz, the Register of territories with the traditional use of natural resources is maintained to protect the rights and legitimate interests of legal subjects involved in traditional nature management, consider the formed territories of traditional nature management and ensure safeguard stakeholders.

The general scheme for registering territories with the traditional use of natural resources and entering data into the Register is shown in Figure 1.

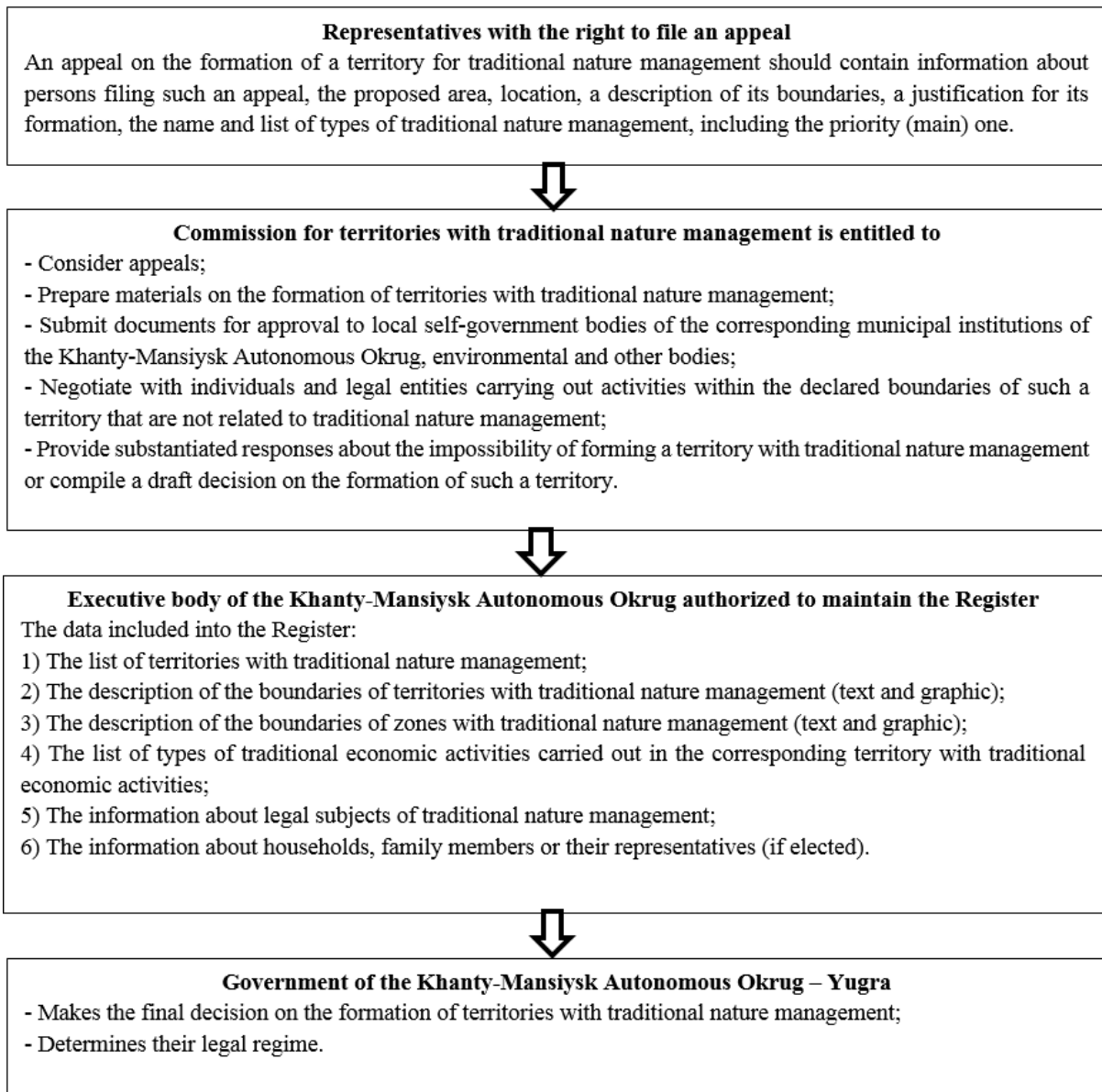
As follows from Figure 1, the legal regime of such territories is established by the Regulation, which includes:

- Information about the area, location, and its boundaries;
- The description of functional zones within territories of traditional nature management and their boundaries, as well as the specifics of their use and protection.



Thus, the Regulation on the Legal Regime of Territories with Traditional Nature Management is the main document confirming the right of traditional land users to use natural resources located within the boundaries of this territory.

Figure 1: The procedure for registering territories with the traditional use of natural resources and entering data into the Register



Article 11 of Federal Law No. 49-FZ also stipulates that land plots and other isolated natural objects located within the boundaries of territories with traditional nature management are provided to persons belonging to indigenous peoples of the North and communities of indigenous peoples in conformity with the legislation of the Russian Federation. Land and land plots in areas of traditional inhabitation and



economic activity can also be used by indigenous peoples of the North and their communities based on a permit from a state authority or local self-government body issued in accordance with the procedure established by the Land Code of the Russian Federation.

Due to the legal changes of 2018, no territories with traditional nature management were formed between 2018 and 2020.

The main obstacles to reducing the time required for making a decision on the formation of a territory with the traditional use of natural resources are as follows: a documentation package, including a description of the boundaries of such territories (text and graphic); the term for considering applications in the commission and the Government of a particular entity.

According to Clause 2 of Article 11 of Law No. 145-oz, users of territories with the traditional use of natural resources are not entitled to dispose of them.

In conformity with the Land Code of the Russian Federation, state or municipal executive authorities own land and land plots, and can transfer objects of land relations for free use, for rent, etc.

In other words, the executive authorities have the right to transfer the right to use any object of nature management to other parties. Therefore, there is a conflict of interests in the same territory of traditional nature management between indigenous peoples of the North and the tenants of water use objects; indigenous peoples of the North and the owners of subsoil plots.

Various organizations can fish on the reservoirs and rivers of territories with traditional nature management as land tenants. In this case, legal practice protects their rights, regardless of any interests and boundaries of such territories (Duma of the Khanty-Mansiysk Autonomous Okrug, 2007).

The right to use water bodies is determined by Article 9 based on a water use agreement (Article 11) and to extract water resources from surface water. According to Clause 2 of Article 12, the lease provisions stipulated by the Civil Code of the Russian Federation apply to water use agreements. Article 13 defines the content of this contract. Clause 2 of Article 13 allows to include other contractual terms (for example, on the part of a constituent entity of the Russian Federation, clauses protecting or making exceptions in relation to indigenous minorities). The lessee has no right to prohibit fishing since they do not breed this fish, which means that it is not



their property (Article 209 of the Civil Code of the Russian Federation). In accordance with the Civil Code of the Russian Federation, only the owner can use the veto power in relation to their property. If the owner of a water body puts fish into the reservoir, they become the owner of this fish, therefore this person or organization has the right to dispose of it at their discretion. In addition, such a water user has the right to prohibit fishing and charge a fee for the fish caught. Thus, the owner of the reservoir can significantly worsen the living conditions and economy of indigenous peoples of the North in territories with traditional nature management.

Respondent 1 commented on the situation and emphasized their legal insecurity caused by such lease relations. He said, "...The current legislative system is such that you can sell and take a forest plot near me, lease it to yourself, how can I be protected then? Unlike you, I do not have the money to maintain this plot. You will take it and carry on business there, and tell me "go back to your village and sit still". My grandfather used to pick mushrooms and go fishing there. Even lakes are taken away. This is a huge problem. Fishing grounds and fishing plots are distributed without asking us... I live 5 kilometers away from the lake, in a forest. Someone from Kurgan rented the lake. They won and can fish, we are not allowed there. How can one feel protected? In no way". The financial aspect highlighted by respondent 1 is confirmed by the conditions for conducting electronic auctions on a general basis with millions of lot payments.

Another restriction of rights is introduced by Article 18 of Federal Law of July 2, 2013 No. 148-FZ "On Aquaculture (Fish Farming) and Amending Certain Legislative Acts of the Russian Federation" (State Duma of the Federal Assembly of the Russian Federation, 2013). This article introduces amendments to the Federal Law "On Fishing and Conservation of Aquatic Biological Resources". Under Article 23, fishing is carried out by legal entities and sole proprietors based on decisions on the provision of aquatic biological resources for use. Such decisions are taken in accordance with Article 33.2 of Federal Law No. 148-FZ. Thus, this type of activity can be conducted by communities of indigenous peoples of the North with the status of a legal entity and high financial capabilities, rather than their members.

The Land Code of the Russian Federation (Article 39.10) provides for the conclusion of an agreement for the free use of a land plot between the owner and indigenous peoples of the North (or their communities) in areas of their traditional



inhabitation and economic activity for the placement of buildings, structures necessary to preserve and develop the traditional way of life, economic activities and industries of indigenous peoples of the North for a period not exceeding ten years.

Consequently, the content of legislative acts complicates the procedure for obtaining the right to use natural resources.

At the same time, the purchased license allows oil and gas companies to extract minerals, which also affects the interests of indigenous peoples living in territories with traditional nature management. The study of the boundaries of the licensed areas and territories with traditional nature management has brought the following results: the "Lukoil" Oil Company (the Kondinsky district) develops the territory of the community of the "Mansiysk village Staraya Mulymya" and the territory of Lyudmila Antonovna Knezyanova; the "Rosneft" Oil Company (the Surgut district) develops the territory of the "Yagun-Yakh" community.

Since 2016, Yugra has been using the Methodological Recommendations for Behavior in the Territories of Traditional Nature Management of Indigenous Peoples of the North. There are also rules for the legal subjects of traditional nature management covering the interaction between individuals and subsoil users (companies), within the boundaries of the territories with traditional nature management of indigenous minorities of regional significance aimed at protecting the rights and traditional way life of indigenous peoples of the North. However, the recommendatory nature of this document makes it inapplicable.

DISCUSSION

Over the past ten years, there have been no appeals from indigenous peoples of the North (the Khanty-Mansiysk Autonomous Okrug – Yugra) to courts regarding the violation of their rights to use land.

Decree of the Government of the Khanty-Mansiysk Autonomous Okrug – Yugra No. 350-p of October 5, 2018 approved the regional program "The sustainable development of indigenous peoples of the North". The term for implementing the new program is 2019-2025 and 2030. The primary objective is to create an environment for the dynamic development of traditional economic activities and traditional nature management. The tool for achieving this goal is the subprogram entitled "The



development of traditional economic activities of indigenous peoples of the North and increasing their adaptation to modern economic conditions, as well as protecting their original inhabitation and traditional way of life". The total amount of financing is 442,836.5 thousand rubles. Its implementation should increase the number of users of such territories from 4,572 to 5,197 people (by 13.7%). Consequently, the number of such users among indigenous peoples should also increase from 4,171 to 4,736 people (by 13.6%) (Government of the Khanty-Mansiysk Autonomous Okrug, 2018).

However, the question arises about the implementation of this indicator due to amendments in federal laws that limit the terms of free use of territories with traditional nature management. In addition, the intersection of the interests of indigenous peoples of the North, representatives of subsoil use (large business), and tenants of aquatic biological resources (small and medium-sized business) on one land plot solves issues not in favor of indigenous peoples.

CONCLUSION

In the course of the study, we have drawn the following conclusions:

- Not all changes in federal legislation were reflected in regional acts (for example, Article 39.10 of the Land Code of the Russian Federation);
- Indigenous people cannot fully exercise their rights in relation to land and land plots that are territories with the traditional use of natural resources;
- The lack of recommendations on the application of international standards by oil and other companies in the regional legislation, in particular, the GRI 400 Series Social Standards or the GRI 411 standard "Rights of Indigenous Peoples";
- The lack of data on claims of indigenous peoples of the North against the executive authorities or subsoil users regarding the violation of their land rights.

Thus, the Russian legislation begins to lose important provisions, securing special rights and guarantees in the use of natural resources by indigenous peoples of the North, Siberia, and the Far East of the Russian Federation.



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