

Submission to the United Nations Human Rights Council

Universal Periodic Review Session 16: Russian Federation October 2012

In Resolution 17/4 of 6 July 2011, the United Nations Human Rights Council (HRC) endorsed the *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (UN Guiding Principles). In order to encourage constructive dialogue on private sector-related issues in the HRC Universal Periodic Review Process, this submission addresses implementation by the Russian Federation of the *UN Guiding Principles* in relation to the state duty to protect against human rights abuses by or involving transnational corporations or other business enterprises.

In making this submission, the Institute for Human Rights and Business (IHRB) acknowledges the role of the Government of the Russian Federation (“Russia”) in co-sponsoring Resolution 17/4, supporting previous resolutions relating to business and human rights, and in hosting the visit of the former UN Special Representative on Business and Human Rights to Russia in March 2010. The preparation of this submission included informal consultations with representatives of non-governmental organisations in Russia. The views expressed here are those of IHRB alone.

The submission is organised as follows:

- Part I addresses the international human rights context for Russia and relevant regulatory and policy positions relating to business and human rights.
- Part II describes a select number of key ongoing issues of specific relevance to the business and human rights agenda in Russia.
- Part III offers recommendations in particular areas of concern for follow-up action.

Part I. Relevant regulatory and policy provisions relating to business and human rights

The Government of Russia has signed or ratified most of the core UN human rights treaties with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has signed but not ratified International Labour Organization Convention No.169 on Indigenous and Tribal Peoples and abstained from voting for the United Nations Declaration on the Rights of Indigenous Peoples. The country is a non-party state to the International Criminal Court.

The Russian Constitution of 1993 protects a wide range of human rights. The Constitution also states that universally recognized norms of international law and international treaties become a direct part of the Russian legal system.ⁱ

Although there is no specific legislation in place addressing human rights abuses by, or involving, transnational corporations or other business enterprises (hereafter referred to as “business” or “companies”), there are several pieces of relevant legislation, which regulate the conduct of companies operating within Russia. For instance, environmental protection against harms caused by business operations is legislated for in local Russian law. The federal law N174-1995 “On ecological expertise” calls for both a state Environmental Impact Assessment (EIA) and a “social” EIA (initiated by the public)ⁱⁱ. An executive order (N372) by the State Committee on Ecology regulates the EIA process. Other federal laws including N7-2001 “On protection of the natural environment”, N52-1999 “On sanitary and epidemiological well-being of the population”, N195-2001 “Code of the Russian Federation on administrative offences”, and N73-2002 “On objects of cultural heritage of peoples of the Russian Federation”, provide for the protection of the environment and the social rights of citizens from inappropriate conduct of business resulting in a negative impact on the environment.

The legal and regulatory system in Russia provides for public consultations and disclosure as well as environmental and social impact assessments. However, in some cases, failed public consultation processes have acquired a political dimension and even resulted in violenceⁱⁱⁱ. Over the past 20 years, there has been criticism of the way the Government has dealt with what are described as economic crimes, and questions have been raised about the impartiality of such trials. This has included high-profile cases where corporations, or their legal representatives, have been prosecuted, and human rights groups have criticized the way the defendants have been treated. As such, the recent creation of the post of Commissioner for the rights of entrepreneurs to focus on the rights of local and foreign investors is a welcome development.^{iv}

The 2002 Corporate Governance Code for Russia recommends that company supervisory boards should develop internal ethical standards in line with stated social responsibilities.^v It stresses the need for companies to comply with environmental and safety regulations. In addition, non-binding guidelines relating to corporate governance recommend that corporate executive bodies take into consideration the interests of third parties including employees and state and municipal bodies.^{vi} In cases where a company is the main enterprise in a particular locality, the guidelines recommend that the interests of the local population be considered as well.^{vii}

While the state strategy of pursuing development and modernization with a simultaneous strengthening of the social security system has so far not been made clear enough to business and no official government documents exist to clarify it, a number of policy articles published by President Vladimir Putin in the run-up to the 2012 presidential elections provided an overall framework.^{viii} Business and human rights issues have not been specifically addressed in this framework. However, under the broad heading of ‘social justice’ the country’s leadership explained its understanding of upholding the state duty to protect social and economic rights. In this regard, President Putin stated that the Russian Government should aim to upgrade provisions for social responsibility, ensuring a level-playing field and equal opportunities, create ‘social lifts’ for workers, teachers, doctors, and creative professionals, update the professional qualifications system in cooperation with businesses, as well as study the ways (jointly with trade unions) to widen the scope for workers to take part in the management of enterprises through corresponding changes in legislation. This would help raise salaries effectively, address the problem of worsening health and safety in the workplace, and improve the level of protection and opportunities for people with disabilities.

In August 2012, President Putin spoke in favour of strengthening the office of the regional human rights ombudsman, acknowledging that in some places such an office does not exist or remains unfilled. He recommended rapid changes in the legislation to make the offices of ombudsman mandatory in all regions and discussed how to facilitate their work.^{ix} The ombudsman may represent a vehicle for citizens to bring forward human rights complaints involving private actors, such as business.

The Russian Union of Industrialists and Entrepreneurs (RUIE) has been taking the lead in the dialogue between the state and companies, especially on advancing corporate social responsibility issues. The Social Charter of Russian Business^x (adopted in 2004 and updated in 2008) currently has 242 member organisations. The Charter contains a chapter on human rights stating that businesses signing up to the charter need to respect, engage in protection of, and make decisions taking into account the obligation to act in accordance with human rights standards including, among others, non-discrimination, safety and security, healthy environment, education, and other social and economic rights.

In addition, the RUIE promotes voluntary non-financial reporting by companies and has released guidance notes to inform company reports. The organization also maintains a register of non-financial reports by Russian corporations^{xi}. A draft national standard on corporate social responsibility has also been developed, which may play a positive role, if the majority of large companies especially in the energy and mining sectors adopt it and adjust internal policies accordingly.

Part II. Notable practices in business and human rights

A range of important issues in Russia in the sphere of business and human rights require further attention. Among them is raising the national minimum wage to a level commensurate with the right to an adequate standard of living, upholding health and safety regulations, ensuring gender equality in the workplace, providing adequate maternity leave compensation, regulating and protecting the rights of migrant labour, and ensuring the protection of the rights of indigenous populations.

One of the key challenges in relation to labour protection is the lack of independent and influential trade unions and the negative attitudes of both Russian national and foreign employers to the registration of new unions. Industry-wide agreements limiting the scope for union activities, as seen amongst coal-mining companies for instance, make it difficult for independent unions to take action on their own, such as going on strike, under existing laws and regulations.^{xii}

Migrant labour

Issues relating to the rights of foreign migrants in Russia are regulated by the Federal Migration Service (FMS) as well as the Governmental Commission on Migration Policy created in 2009, which has coordinating functions to ensure alignment among different government bodies^{xiii}. According to the Federation of Migrants in Russia, over 5 million migrants are in illegal employment in Russia (with 3 million of them working in Moscow)^{xiv}. The FMS is planning to introduce stricter punishments for those organizing illegal migration and tighter legislation is expected by the Russian Parliament in Autumn 2012 to address the problem^{xv}.

Human rights monitors have registered multiple cases of abuses of migrant worker rights, especially in the construction industry^{xvi}. Employers have repeatedly been accused of non-payment of wages, absence of employment contracts, and denial of access to remedy as being among the most frequent violations. Concerns with respect to health and safety at the workplace as well as poor housing conditions provided by employers have also been reported. Undocumented foreign migrants are regularly detained during routine raids by FMS exercising checks of immigration status^{xvii}. Migrants lack access to legal assistance and normally find it difficult to protect their rights in the process of obtaining work permits, registration at the place of residence, etc.

There is anecdotal evidence of confiscation of passports and non-payment of wages at the construction sites for the 2014 Winter Olympic Games in Sochi. It is encouraging to note that Russia recently joined Brazil, the United Kingdom, and South Korea, in an initiative among Olympic Games host nations to uphold human rights standards.

Indigenous peoples

The Russian Government adopted a strategy on indigenous peoples' development in 2009. It envisages three phases of development until 2025 and integrates inputs from the Russian Association of Indigenous People of the North, Siberia, and the Far East (RAIPON). At the same time, a number of norms providing for the realization of traditional land-use rights and livelihoods have been removed from the legislation^{xviii}. This also concerns the removal of privileges as far as the realization of traditional economic activities are concerned (e.g. priority allocation of land-plots and ranges for fishing and hunting).

These rights are regulated by the 1999 federal law "On guarantees of the rights of the indigenous people of the Russian Federation" (N82) amended in 2009 by another federal law^{xix} prescribing tighter measures on protection of the listed territories of residence and traditional economic activities by means of including them in the state register set up by the Government for the purpose of their protection.

Indigenous people in Russia have been able to defend their rights and special status in courts, and a number of precedents of litigation by indigenous peoples' associations and organizations have been registered. These relate not only to the business conduct that might have caused negative impacts on their natural environment, but also to state inaction which has led to infringement of the realization of indigenous peoples' rights to create territories for traditional economic activities in accordance with Russian legislation^{xx}. There have been some successful examples of cooperation between extractive companies and indigenous groups for instance in the Khanti-Mansiysky Autonomous Region and on Sakhalin Island following an initially difficult relationship.

As a rule, however, indigenous peoples have not been able to prevent forced resettlement and land acquisition, and they have suffered from negative environmental and social impacts. Allegations of intimidation and manipulation by businesses have been made and indigenous peoples' organisations and activists protecting the traditional territories of the Evenki people in the Evenkiya district of Krasnoyarsky Krai have been accused of 'extremism'^{xxi}.

Several United Nations treaty bodies have expressed concern at the granting of licenses for lands traditionally owned by indigenous people to private enterprises for development projects such as the construction of pipelines or hydroelectric dams.^{xxii} The UN Committee on Economic, Social and Cultural Rights called on the Government to:

- Seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licenses to private companies for economic activities on territories traditionally occupied or used by those communities;
- Ensure that licensing agreements with private entities provide for adequate compensation of the affected communities;

Additionally, following a visit to Russia in 2009, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, recommended specific federal legislation to regulate the relationship between indigenous communities and business to ensure effective consultation and compensation/mitigation measures. It should be noted that the Russian Government, as well as the governor of the Nenets region, participated in a multi-stakeholder discussion on the extractive sector and impacts on indigenous peoples in the Arctic region together with the Norwegian, Swedish and Finnish Governments held in Tromsø in September 2012.

Internet censorship

In July 2012, the Russian Parliament approved a bill designed to protect children from web content that is considered harmful to them or that has been termed “extremist” by a court.^{xxiii} In practice, this could mean that internet-hosting services would be forced to block particular websites. The bill provoked protests from various Internet companies including Wikipedia, Yandex and Livejournal. The law is due to enter into force in November 2012 by which time a list of banned websites will be made available to these organisations. The law places significant pressure on web-hosting companies to remove sites identified by the Government and the language of the law could lead to a risk of wider censorship.^{xxiv}

Furthermore, in 2009 and 2010, Russian authorities took action against several human rights groups using unlicensed software, ostensibly implementing Russia’s anti-piracy laws.^{xxv} Owners of intellectual property, such as Microsoft Corporation, discussed the issue within the Global Network Initiative and decided to offer licensed software without cost to the affected human rights groups, making it impossible for the Government to prosecute the case.^{xxvi}

Security forces

Plans to build a high-speed road between St Petersburg and Moscow, which would run through the Khimki forest, have resulted in protests and clashes between environmental activists and the authorities over the past few years. Following significant protests, the project was suspended in December 2010 to allow for a review of the project, but later work resumed. In May 2011, private security agents attacked protesters violently. To date, investigations have not taken place into these violent incidents.^{xxvii}

Sochi Winter Olympics

In addition to the concerns regarding the treatment of migrant workers at the 2014 Winter Olympics construction site, problems have also been raised regarding forced evictions and expropriation of property to make way for Olympic venues. It has been noted that hundreds of families living in the Adler region of Sochi have lost their properties to state expropriation.^{xxviii} While compensation has been provided, in several cases the amounts provided did not match the value of the property and were not transparent. In addition, at least 1,500 homeowners and their families have been forcibly resettled.^{xxix} As stated earlier, Russia has signed the new initiative of Olympic host nations to uphold human rights.

Access to remedy

Access to remedy is another area where reviews of current practices are required. For example, the federal ombudsman has limited ability to pursue adjudication on business and human rights cases. The situation makes it difficult for concerned citizens to obtain effective redress and compensation for rights abuses. This is particularly noticeable for indigenous peoples, vulnerable groups (e.g. people with disabilities, the elderly, etc) and people residing in the North Caucasus republics of the Russian Federation, due to significant regional differences in law enforcement and legal practice. In relation to non-legal mechanisms, the work piloting the UN Guiding Principles on Business and Human Rights within the oil industry on the island of Sakhalin should be noted.^{xxx}

Part III. Recommendations

The following recommendations are made to the Government of the Russian Federation in relation to the above concerns:

1. Develop a national business and human rights policy framework, which would clearly set out government commitments and expectations regarding the implementation of the UN Guiding Principles on Business and Human Rights.
2. Inform companies of their responsibilities under the UN Guiding Principles on Business and Human Rights, including when operating in indigenous territories.
3. Ratify ILO Convention 169 and enact specific legislation to more effectively regulate key industrial sectors such as extractive companies to ensure protection of the rights of indigenous peoples.
4. Make a commitment to joining leading multistakeholder initiatives, which would support commitment to implementing the UN Guiding Principles including the Extractive Industries Transparency Initiative and the Voluntary Principles on Security and Human Rights.
5. Create an enabling environment for independent trade unions to ensure protection of workers' rights in practice.
6. Address the need for improved access to effective remedies for victims of human rights abuses involving companies.
7. Ensure that legislation aimed at preventing the organisation of illegal migration protects the rights of migrant workers in the country.

ⁱ Article 15(4)

ⁱⁱ 23.11.1995 N 174-ФЗ (ред. от 19.07.2011)

ⁱⁱⁱ See for example the situation concerning the protection of Khimki forest in the Moscow region. Furthermore, recent reports suggest preparatory construction work for a power plant in Sochi is taking place before the legal requirements for environmental assessment and public consultation have been met. See: <http://www.hrw.org/news/2012/09/06/russia-arrests-intimidation-mar-sochi-olympic-prep>

^{iv} Boris Titov has been appointed as Commissioner and will take up full functions in December 2012. He noted that he will also look at illegal prosecutions and court decisions that are biased against businessmen. <http://finance.yahoo.com/news/russian-ombudsman-pledges-support-businessmen-145135771--finance.html>

^v Chapter 3, section 4.12

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- ^{vi} Chapter 4, section 3.3
- ^{vii} Ibid.
- ^{viii} V. Putin "Building Justice: Social Policy for Russia", *Komsomolskaya Pravda*, 12 February 2012.
- ^{ix} http://www.gazeta.ru/politics/news/2012/08/16/n_2487993.shtml
- ^x Social Charter of Russian Business:
http://www.roscomsys.ru/data/content/content_files/socialnaja_khartija__rossijskogo_biznesa.pdf
- ^{xi} Register of corporate non-financial reports at Russian Union of Industrialists and Entrepreneurs:
<http://pcnn.pф/library/view/11?s=1>
- ^{xii} Federal industry-wide agreement for coal-mining in the Russian Federation 2010-2012
<http://www.kadis.ru/texts/index.phtml?id=49542>
- ^{xiii} Federal Migration Service and the Statute of the Governmental commission on migration policy:
<http://www.fms.gov.ru/about/migrate/condition/>
- ^{xiv} <http://www.rg.ru/2012/04/05/migranty.html>
- ^{xv} FMS: there will be no amnesty for undocumented migrants, *Vedomosti*, 3 August 2012
http://www.vedomosti.ru/politics/news/2491561/fms_amnistii_dlya_nelegalnyh_migrantov_ne_budet
- ^{xvi} See <http://www.hrw.org/reports/2009/02/09/are-you-happy-cheat-us>
- ^{xvii} http://www.fms.gov.ru/press/news/news_detail.php?ID=53121
- ^{xviii} Report by S. Kharyuchi of RAIPON at the VI Congress of indigenous people of the North, Siberia and the Far East in the Russian Federation 23 April 2009 "The state and indigenous peoples: partnership at the new level". Russian Civil Service Academy under President of Russian Federation, 2009
- ^{xix} See <http://www.rg.ru/2009/04/08/korennye-narody-dok.html>
- ^{xx} See the examples listed by the International socio-ecological council: <http://ecopravo.seu.ru/precedent/2-29.html>, Federal law N49 on the territories of traditional land use: <http://base.garant.ru/12122856/>
- ^{xxi} See RAIPON news article on case involving allegations of pressure put on activist groups:
<http://www.raipon.org/Новости/tabid/428/mid/1276/newsid1276/3997/-----/Default.aspx>
- ^{xxii} See for example E/C.12/RUS/CO/5; CCPR/C/RUS/CO/6; CERD/C/RUS/CO/19;
- ^{xxiii} Federal Law 139-FZ of 28 July 2012 "On Protection of children from information harmful to their health and development"
- ^{xxiv} See <http://en.rian.ru/russia/20120711/174549486.html>
- ^{xxv} <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Msoft-Russia-report.pdf>
- ^{xxvi} <http://www.humanrightsfirst.org/2010/12/06/human-rights-first-praises-new-microsoft-licensing-policy-urges-u-s-government-to-stand-with-tech-companies-combating-abuses/>
- ^{xxvii} <http://www.hrw.org/news/2011/07/27/letter-prosecutor-moscow-district-anikin-aa-re-violence-khimki-forest-moscow>
- ^{xxviii} <http://www.hrw.org/world-report-2012/world-report-2012-russia>
- ^{xxix} <http://www.hrw.org/news/2012/07/17/russia-olympics-launch-sochi-abuses-loom>
- ^{xxx} A/HRC/17/31/Add.1