

THE SYSTEM OF INDIGENOUS PEOPLES' PROTECTION IN BRICS STATES: AN OVERVIEW OF LEGAL AND LITIGATION SUPPORT

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This article provides an overview of the international obligations of the BRICS member states related to the protection of indigenous peoples' rights, as well as discusses the current trends in the ethno-national policies of those countries. The authors arrive at the conclusion that though the majority of the BRICS states are parties to the basic human rights agreements, there is no full-fledged agreement on the protection of indigenous peoples within the BRICS framework specifically addressing the rights of indigenous people, even though the countries collectively have aboriginal communities. One of the primary and major reasons why the BRICS countries are reluctant to assume obligations under the existing agreements compared to the Euro-Atlantic bloc of Western states is the motley ethno-cultural "palette" of these countries, which complicates public administration in this area of legal relations. Both India and China are state parties to the International Labor Organization Convention 107, which provides for "paternalism" and "integration" of the indigenous population without explicitly recognizing their "right to self-determination" and development within the framework of this right. The main problems associated with ethno-politics in the BRICS countries are those pertaining to the provision of legal frameworks and litigation support to uphold the right to self-identification, protection of the native language and the preservation of traditional uses of natural resources.

Keywords: BRICS; indigenous peoples; ethno-politics; self-determination; integration; ILO Convention.

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Introduction

The BRICS association is one of the most promising platforms in the field of political, economic, social and cultural cooperation among countries that are not members of the North Atlantic Alliance (the so-called "Western ecumene") and one which offers an alternative scenario for international development and cooperation, multiculturalism and other similar issues.

Each of the BRICS countries has its own indigenous peoples as well as its own ethnic policies. In essence, the BRICS countries seek to demonstrate a traditionalist rather than an expansive course of development (primarily liberal modernist or "cultural Marxist"), based on such important social institutions as family, religion and tradition. These political trends are supported by legal initiatives and prominently portrayed in the media, clearly manifesting that society demands the protection of "traditional culture," "traditional knowledge," "traditional values" and "cultural sovereignty."

However, because the situation in each country has its own unique circumstances, it cannot be unequivocally said that the entire "pentarchy" of the BRICS countries is consistent in decisions related to the traditional way of life, management and crafts of the indigenous (aboriginal) communities. Russia, Brazil and South Africa, for example, exhibit comparable ethno-political regimes with less cultural assimilation. On the other hand, India, with its strong bias towards ancient and fundamental religious systems and still supporting social stratification, and China, with a very strong communist ideology and "root" Confucianism, represent rather different systems. The different approaches towards regulating ethnic relations are a kind of barrier to the international cooperation of these states.

The primary objective of this article is to provide an overview of the international regime and obligations of the BRICS countries in the field of indigenous peoples' rights. Additionally, the article seeks to propose potential scenarios for both

multilateral and bilateral cooperation across the BRICS countries, as well as to suggest political and legal recommendations in the areas of development and cooperation in ethno-political regimes.

1. International Obligations of the BRICS States Related to Indigenous Rights

International obligations are established on the basis of international treaties, covenants and agreements, which are mainly of a multilateral nature.

Undoubtedly, the key conventions that first introduced the terms “indigenous population” and “indigenous people” were the ILO Convention No. 107 of 1957 and the ILO Convention No. 169 of 1989. The ILO Convention No. 107 introduced the paternalistic approach to regulating indigenous communities based on the following:

- assimilation and rejection of traditional social institutions (cl. “b” and “c,” Art. 4);
- special integration programs (item 2, Art. 7);
- provisions for the gradual transition from one’s native language to the national (state) language (item 2, Art. 23).

ILO Convention No. 169, in turn, determined some essential rights of indigenous peoples, including the right to:

- self-determination (cl. 3, Art. 1);
- non-discrimination (Art. 3);
- consultation and consent, as well as the right to freely participate in the decision-making process (Art. 6);
- land rights (cl. 2, Art. 13);
- education programs and to their own educational institutions (Art. 27);
- maintain traditional crafts and a subsistence economy (cl. 1, Art. 23);
- preservation of the native language (cl. 1, Art. 28), etc.

The U.N. Declaration on the Rights of Indigenous People is the most comprehensive instrument detailing the rights of indigenous peoples in international law and policy, containing minimum standards for the recognition, protection and promotion of these rights. It establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of indigenous peoples around the world. Specifically, it reaffirms the following rights:

- the right to self-determination, autonomy or self-government (Art. 4);
- the right to participate in political, economic, social and cultural activities of their states (Art. 5);
- the right not to be subjected to forced assimilation or destruction of their culture (Art. 8);
- the right to practice and revitalize their cultural traditions and customs (Art. 11).

Thus, the 2007 Declaration promotes a full spectrum of the rights of indigenous people and suggests national mechanisms for guaranteeing those rights.

Relevant international documents that directly or indirectly address issues of national (including racial, ethnic and religious) minorities had begun to be adopted long before the 2007 U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP)¹ and the 1989 International Labor Organization Convention No. 169 (ILO 169).²

These documents contain unconditional references to such fundamental aboriginal rights as the right to self-determination, the right to development and the right to a traditional way of life, traditional culture and native languages.

The two most basic documents are the “U.N. Charter” of 1945³ and the “Universal Declaration of Human Rights” of 1948.⁴ They serve as the “foundation” of all other international norms written in the wake of the countless deaths of the Second World War. Then, of course, comes the “Genocide Convention” of 1948,⁵ which enshrines in the first paragraph of Article 2, protection from the physical extermination of a particular racial and ethnic group.

Following this, the protection against “ethnic segregation” was established by the first paragraph of Article 2 of the “Apartheid Convention” in 1973.⁶ The “Convention on Racism” of 1965⁷ prohibits the policy of racism or any other forms of racial and ethnic

¹ Декларация Организации Объединенных Наций (ООН) о правах коренных народов (принята резолюцией 61/295 Генеральной Ассамблеи от 13 сентября 2007 г.) // Организация Объединенных Наций [United Nations Declaration on the Rights of Indigenous Peoples (2007), United Nations] (Aug. 5, 2023), available at https://www.un.org/ru/documents/decl_conv/declarations/indigenous_rights.shtml.

² Конвенция о коренных народах и народах, ведущих племенной образ жизни в независимых странах [Конвенция 169] (принята 27 июня 1989 г. Генеральной конференцией Международной организации труда на ее семьдесят шестой сессии) // Организация Объединенных Наций [Indigenous and Tribal Peoples Convention (1989), United Nations] (Aug. 5, 2023), available at https://www.un.org/ru/documents/decl_conv/conventions/iol169.shtml.

³ Устав ООН // Организация Объединенных Наций [United Nations Charter, United Nations] (Aug. 5, 2023), available at <https://www.un.org/ru/about-us/un-charter/full-text>.

⁴ Всеобщая декларация прав человека (принята резолюцией 217 А (III) Генеральной Ассамблеи ООН от 10 декабря 1948 г.) // Организация Объединенных Наций [United Nations Declaration of Human Rights (1948), United Nations] (Aug. 5, 2023), available at https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.

⁵ Конвенция о предупреждении преступления геноцида и наказании за него (принята резолюцией 260 (III) Генеральной Ассамблеи ООН от 9 декабря 1948 г.) // Организация Объединенных Наций [Convention on the Prevention and Punishment of the Crime of Genocide (1948), United Nations] (Aug. 5, 2023), available at https://www.un.org/ru/documents/decl_conv/conventions/genocide.shtml.

⁶ Международная конвенция о пресечении преступления апартеида и наказании за него (принята резолюцией 3068 (XXVIII) Генеральной Ассамблеи ООН от 30 ноября 1973 г.) // Организация Объединенных Наций [International Convention on the Suppression and Punishment of Apartheid (1973), United Nations] (Aug. 5, 2023), available at https://www.un.org/ru/documents/decl_conv/conventions/apartheid1973.shtml.

⁷ Международная конвенция о ликвидации всех форм расовой дискриминации (принята резолюцией 2106 (XX) Генеральной Ассамблеи от 21 декабря 1965 г.) // Организация Объединенных Наций [International Convention on the Elimination of All Forms of Racial Discrimination (1965), United Nations] (Aug. 5, 2023), available at https://www.un.org/ru/documents/decl_conv/conventions/raceconv.shtml.

“discrimination.” Thus, we see an upward trend in the movement against racism which led to segregation and genocide. In order to prevent the policy of racism and provide a “restitution of rights,” states can pursue a policy of “positive discrimination” (otherwise known as “affirmative actions”) (cl. 4, Art. 1 of the Convention on Racism).

In addition, the “UNESCO Convention on Education” of 1960⁸ requires that education at the national level contribute to interethnic harmony (subpara. “a,” item 1, Art. 5).

One of the first international environmental documents called “Agenda 21” of 1992⁹ defines the rights of indigenous peoples to land (item 26.4), and the Vienna Declaration and Program of Action of 1993 introduces the term “sustainable development” for the first time (item I.20).

The Genocide Convention was signed and ratified by all the BRICS member states, but China made a reservation stating that the ratification of the said Convention by the local authorities of Taiwan on 19 July 1951 on behalf of China is illegal and therefore invalid. It was also stated that the People’s Republic of China does not consider itself bound by Article IX of the said Convention.¹⁰ Thus, China confirmed that it does not recognize the independence of Taiwan, adheres to the concept of “one China” and that it rejects Article IX on the jurisdiction of the International Court of Justice on the recognition of an international crime as an act of genocide, in which China could potentially be considered the defendant. India also made a reservation under the same article, indicating that the consent of both parties to the dispute is necessary for the dispute to be referred to the International Court of Justice.

With regard to the Apartheid Convention, both Brazil and South Africa have not ratified it.¹¹ India specified that the Convention would enter into force from 1977.

The Convention on Racism (hereinafter the Convention) has been signed and ratified by all BRICS countries, but they have also expressed some reservations. In particular, Brazil recognizes the competence of the Committee on the Elimination of All Forms of Racial Discrimination to receive and consider complaints of violations of human rights, as provided for in Article XIV of the Convention.

⁸ Конвенция о борьбе с дискриминацией в области образования (принята 14 декабря 1960 г. Генеральной конференцией ООН по вопросам образования, науки и культуры на ее одиннадцатой сессии) // Организация Объединенных Наций [Convention Against Discrimination in Education (1960), United Nations] (Aug. 5, 2023), available at https://www.un.org/ru/documents/decl_conv/conventions/educat.shtml.

⁹ Повестка дня на XXI век (принята Конференцией ООН по окружающей среде и развитию, Рио-де-Жанейро, 3–14 июня 1992 г.) // Организация Объединенных Наций [Agenda 21 (1992), United Nations] (Aug. 5, 2023), available at https://www.un.org/ru/documents/decl_conv/conventions/agenda21.shtml.

¹⁰ Convention on the Prevention and Punishment of the Crime of Genocide (1948), United Nations Treaty Collection (Aug. 5, 2023), available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsdg_no=IV-1&chapter=4&clang=_en.

¹¹ International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), United Nations Treaty Collection (Aug. 5, 2023), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsdg_no=IV-7&chapter=4&clang=_en.

Russia, represented by the Union of Soviet Socialist Republics (USSR), stated that the provisions of paragraph 1 of Article 17 of the Convention, according to which the right to sign the Convention is given only to U.N. member states, parties to the Statute of the International Court of Justice, and at the invitation of the U.N. General Assembly, is discriminatory and violates the principle of equality of states. According to them, the Convention should be completely open to all interested states without any restrictions or discrimination.

Moreover, in 1983, Russia made a very blunt statement that the ratification of the Convention of the so-called “Government of Democratic Kampuchea” referred to as “the Pol Pot clique of hangmen overthrown by the Kampuchean people” is completely illegal and has no legal force. It is noted that only representatives authorized by the State Council of the People’s Republic of Kampuchea can act on behalf of Kampuchea. The ratification of the Convention by “a puppet clique representing no one” is described as a “farce” that is “a mockery of the norms of law and morality” and “a direct insult to the memory of the millions of Kampuchean victims of the genocide committed against them.”

Additionally, in 1991, it was declared that the USSR recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications on situations and events that have occurred since the adoption of this declaration from individuals or groups of individuals within the jurisdiction of the USSR who claim to have been victims of a violation by the USSR of any of the rights set forth in the Convention.

India, similar to its stance in the Genocide Convention, stated that the referral of a dispute under Article 22 to the International Court of Justice requires the consent of both parties. It is also noted that Pakistan rejected India’s said reservation.

China refused to recognize the provisions of Article 22 of the Convention and again pointed to the recognition of the signing and ratification of this treaty by Taiwan.

South Africa noted that under paragraph 1 of Article 14, it recognizes the competence of the Committee on the Elimination of Racial Discrimination, but only after the resident applicants have exhausted all domestic remedies, and that under paragraph 2 of Article 14, it identifies the South African Commission on Human Rights as the main body for the consideration of these issues at the national level.

The UNESCO Education Convention has been signed and ratified by all BRICS members except India. China has made a reservation that this convention has special rules for territorial application, namely the Macau Special Administrative Region.

It is also important to note that the U.N. Special Rapporteur on the Rights of Indigenous Peoples operates within the U.N., and as part of his or her activities, the Special Rapporteur has conducted visits to three BRICS countries during different years, namely Brazil, Russia and South Africa.¹² For these countries, relevant recommendations

¹² Country Visits: Special Rapporteur on the Rights of Indigenous Peoples, U.N. Human Rights Office of the High Commissioner (Aug. 5, 2023), available at <https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples/country-visits>.

have been made to improve the situation of indigenous peoples, which is also something that will be highlighted in the subsequent paragraphs.

2. Intergovernmental Levels of BRICS Cooperation

The BRICS group is an international community of states that combine their efforts primarily from an economic perspective. Since 2006, a total of 14 summits have already been held within the BRICS group, at which various joint statements, communiqués and declarations have been adopted.

Among the provisions of the declarations that directly or indirectly relate to the ethno-national policy of the BRICS countries, the following can be noted:

- condemnation of ethnic terrorism as well as any acts of terror based on racial or ethnic ideology (item 48 of the Fortaleza Declaration, Fortaleza, Brazil, 15 July 2014);¹³
- full support for cultural human rights without politicizing this issue (item 10), concern about flagrant violations of cultural and religious human rights in Iraq, including due to foreign intervention (item 38), encouraging the convergence of cultures of all BRICS countries and the integration of intercultural cooperation (item 64) (VII BRICS Summit: Ufa Declaration, Ufa, Russia, 9 July 2015);¹⁴
- encouragement of cultural exchanges between the BRICS countries (item 100);¹⁵
- promoting the creation of a number of alliances, encompassing libraries, museums, art museums and national galleries and theaters for children and youth (item 61) (BRICS Leaders Xiamen Declaration, Xiamen, China, 4 September 2017);¹⁶
- encouragement of the development of BRICS tourism (item 85), recognition of the importance of culture as one of the driving forces of the 4th industrial revolution (item 92) and joint development of the BRICS film industry (item 93) (BRICS in Africa: Collaboration for Inclusive Growth and Shared Prosperity in the 4th Industrial Revolution, X BRICS Summit: Johannesburg Declaration, Johannesburg, South Africa, 26 July 2018);¹⁷
- a ban on the association of terrorism with any ethnic group or religion (item 37);¹⁸

¹³ VI BRICS Summit: Fortaleza Declaration, Fortaleza, Brazil, 15 July 2014, BRICS Information Centre (Aug. 5, 2023), available at <http://www.brics.utoronto.ca/docs/140715-leaders.html>.

¹⁴ VII BRICS Summit: Ufa Declaration, Ufa, Russia, 9 July 2015, BRICS Information Centre (Aug. 5, 2023), available at http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html.

¹⁵ VIII BRICS Summit: Goa Declaration, Goa, India, 16 October 2016, BRICS Information Centre (Aug. 5, 2023), available at <http://www.brics.utoronto.ca/docs/161016-go.html>.

¹⁶ BRICS Leaders Xiamen Declaration, Xiamen, China, 4 September 2017, BRICS Information Centre (Aug. 5, 2023), available at <http://www.brics.utoronto.ca/docs/170904-xiamen.html>.

¹⁷ BRICS in Africa: Collaboration for Inclusive Growth and Shared Prosperity in the 4th Industrial Revolution, X BRICS Summit: Johannesburg Declaration, Johannesburg, South Africa, 26 July 2018, BRICS Information Centre (Aug. 5, 2023), available at <http://www.brics.utoronto.ca/docs/180726-johannesburg.html>.

¹⁸ Московская декларация XII саммита БРИКС (Москва, Россия, 17 ноября 2020 г.) // Страны БРИКС [XII BRICS Summit Moscow Declaration (2020), BRICS Countries] (Aug. 5, 2023), available at <https://brics-russia2020.ru/images/11483/1148395.pdf>.

- eradication of poverty (BRICS Economic Partnership Strategy until 2025);¹⁹
- support for “traditional knowledge” and “traditional cultural expressions” (item 54) (XIII BRICS Summit: New Delhi Declaration),²⁰ etc.

Thus, there are no direct references to indigenous peoples in key documents; yet, all these items, either directly or indirectly, affect the rights and guarantees of indigenous peoples.

3. National Level: Legislation and Perspectives

3.1. Brazil's Ethno-Politics and its International Evaluation

The following minority groups live in Brazil:

1. predominantly ethnic and linguistic, such as the Kaingang, Terena, Xavante, Pataxó, Sateré-Mawé, Mundurukú, Múra, Xucuru and Bare;

2. small-numbered (threatened), such as the Kayapó, Arará, Guarani Kaiwa, Yanomami, Afro-Brazilians, Makuxi, Wapixana, Nambiquara, Tikuna, Tukano and Urueu-Wau-Wau.²¹

According to the International Work Groups for Indigenous Affairs (IWGIA)²² and the 2010 census conducted by the Brazilian Institute of Geography and Statistics, there are 896,917 indigenous people in Brazil. The uniqueness of Brazil lies in the fact that there are a large number of so-called “non-contact” tribes, namely 67 different “non-contact” tribes living in Brazil now, which is a notable increase compared to the 40 documented in 2005.²³

The country voted in favor of the UNDRIP Declaration and the American Declaration on the Rights of Indigenous Peoples (2016).²⁴ But more importantly, Brazil is a state party to ILO Convention No. 169. As part of monitoring the implementation of the treaty provisions, the Committee for the Implementation of the Convention (CEACR), in 2019 (last updated in 2022), determined the need for the Government of Brazil to provide the following information:²⁵

¹⁹ Стратегия экономического партнерства БРИКС до 2025 года // Страны БРИКС [BRICS Economic Partnership Strategy until 2025, BRICS Countries] (Aug. 5, 2023), available at <https://brics-russia2020.ru/images/114/81/1148133.pdf>.

²⁰ XIII BRICS Summit: New Delhi Declaration, 9 September 2021, BRICS Information Centre (Aug. 5, 2023), available at <http://www.brics.utoronto.ca/docs/210909-New-Delhi-Declaration.html>.

²¹ Brazil: Minority Rights, Minority Rights Group International (Aug. 5, 2023), available at <https://minorityrights.org/country/brazil/>.

²² According to an excerpt from the official website, “IWGIA was founded in 1968 by anthropologists alarmed about the ongoing genocide of Indigenous Peoples taking place in the Amazon.” International Work Group for Indigenous Affairs (IWGIA) (Aug. 5, 2023), available at <https://www.iwgia.org/en/about.html>.

²³ Indigenous People of Brazil, Atlas of Humanity: Exploring the Cultural Diversity (Aug. 5, 2023), available at <https://www.atlasofhumanity.org/indios>.

²⁴ The American Declaration on the Rights of Indigenous Peoples, Indian Law Resource Center (Aug. 5, 2023), available at <https://indianlaw.org/adrip/home>.

²⁵ Indigenous and Tribal Peoples Convention, 1989 (No. 169) – Brazil, International Labour Organization (ILO) (Aug. 5, 2023), available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4325862,102571.

- on the implementation of the Thematic Program for the Protection and Promotion of the Rights of Indigenous Peoples, indicating the measures taken to achieve the goals set, including on the evaluation of the implementation of the program and the results achieved, as well as the ways in which indigenous and tribal peoples were involved (Arts. 2 and 7);

- on the number of indigenous and tribal families that are part of the “Bolsa Familia” social welfare program and the extent to which their inclusion has affected their access to medical (including vaccination) and educational services (Art. 2(2)(b);

- on the access of indigenous and tribal peoples to the development of these programs in the fields of medicine and education (Arts. 7 and 15);

- on the cooperation with indigenous and tribal peoples in relation to measures taken to protect and conserve the environment in the territories they inhabit (Arts. 7 and 15);

- on the results achieved in the context of the conciliation procedure, the results of the hearings and the provision of compensation (restitution) for the indigenous peoples during the implementation of the “Belo Monti” hydroelectric project (in the Para state, where 11 villages were affected) (Arts. 7 and 15);

- on the methods by which indigenous peoples participate in the implementation of the PBA-CI (Basic Environmental Project for Indigenous Communities) and related programs (Arts. 7 and 15);

- on the means available to carry out activities to monitor the situation with the violation of the rights of the Sinta Larga people in connection with the illegal mining of minerals on their lands of residence (National Park – Parque do Aripuanã (Mato Grosso State), as well as on legal proceedings brought against persons illegally entering the lands and exploiting the resources of the Sinta Larga people and, where appropriate, sentenced (Arts. 7 and 15);

- on measures to ensure that indigenous peoples and the Quilombola (Afro-Brazilians of the Quilombu area) have access to quality education at all levels on an equal basis with the rest of the national community and to jointly develop educational programs with these peoples (Arts. 26 and 27);

- on school attendance rates of indigenous children at the primary, secondary and higher levels, as well as school dropout rates, if any, disaggregated by ethnic group, sex and age (Arts. 26 and 27).

In 2016, the Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil was presented, within the framework of which recommendations were made, including the following:

1. Strengthen the FUNAI Institute.
2. Solve the problem of structural discrimination.
3. Launch the process of inclusion for indigenous peoples.
4. Protect indigenous leaders from unjust persecution and murders.
5. Pay special attention to indigenous youth due to the high risks associated with health and mortality.
6. Complete all processes of demarcation of the lands of indigenous communities on an equitable basis.

7. Develop a national plan for the implementation of the provisions of the UNDRIP.
8. Take measures to protect the interests of indigenous peoples in the implementation of mining and agribusiness projects.
9. Adopt the experience of Colombia on issues of legal support for indigenous peoples and on the basis of established judicial practice.
10. Accumulate financial instruments from the Brazilian Development Bank (BNDES) to support various programs on the rights of indigenous peoples and so on.²⁶

In June 2023, the U.N. Special Rapporteur on the Rights of Indigenous Peoples issued a press release stating that the Brazilian legal system's concept of "time frame" ("Marco Temporal") limits the recognition of indigenous ancestral lands to only those lands that were occupied by indigenous people on the day the Constitution was promulgated on 5 October 1988. The Special Rapporteur notes that the doctrine of "time frame" has been used to invalidate the processes of administrative demarcation of indigenous land, as in the case of the indigenous "Guarani Kaiwa" community.

International organizations, indigenous peoples and human rights activists have repeatedly challenged this decision as a prime example of ignoring the rights of indigenous peoples to the lands from which they were forcibly expelled, particularly from 1945 to 1988, a period of great political upheaval and widespread violations of human rights in Brazil, including the period of dictatorship. The Special Rapporteur urges the Supreme Federal Court not to apply the above doctrine in this case and instead to decide in accordance with existing international standards on the rights of indigenous peoples, since the application of this doctrine in this instance may affect almost 300 cases on this issue under the bill 490/07.²⁷

3.2. Russia's Ethno-Political Regime

Russia, unlike many other countries, has not signed the UNDRIP 2007 and is not a state party to ILO Conventions No. 107 and 169 because the "national question" is extremely sensitive for the world's largest federation. An analysis of the most recent changes to Russian legislation strongly demonstrates a policy of "ethnic integration" pursued by the state, which is associated with the formation of a "single all-Russian civic identity," the promotion and protection of "traditional values,"²⁸ as well as "cultural sovereignty."²⁹

²⁶ U.N. Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil*, A/HRC/33/42/Add.1, 8 August 2016 (Aug. 5, 2023), available at <https://www.refworld.org/docid/57cd740e4.html>.

²⁷ Brazil: UN expert concerned about legal doctrine threatening Indigenous Peoples' rights, U.N. Human Rights Office of the High Commissioner, 13 June 2023 (Aug. 5, 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/06/brazil-un-expert-concerned-about-legal-doctrine-threatening>.

²⁸ Указ Президента Российской Федерации от 9 декабря 2022 г. № 809 «Об утверждении Основ государственной политики по сохранению и укреплению традиционных российских духовно-нравственных ценностей» // Президент России [Decree of the President of the Russian Federation No. 809 of 9 November 2022. On Approval of the Fundamentals of State Policy for the Preservation and Strengthening of Traditional Russian Spiritual and Moral Values, President of Russia] (Aug. 5, 2023), available at <http://www.kremlin.ru/acts/bank/48502>.

²⁹ Указ Президента Российской Федерации от 25 января 2023 г. № 35 «О внесении изменений в Основы государственной культурной политики, утвержденные Указом Президента Россий-

All of these ideas are formalized in the by-laws of the president and the government. At the same time, Russia has introduced the most developed legislative systems in terms of constitutional guarantees of indigenous rights. These frameworks include specialized federal laws such as "On Guarantees,"³⁰ "On Indigenous Communities"³¹ and "On Traditional Nature Management"³² as well as relevant articles in Civil, Water and Forest Codes, such as the Law "On Hunting"³³ and "On Animal World").³⁴

Integration processes in the state ethnic policy are conditioned not only by the number of indigenous peoples, which currently stands at 47, of which 40 live in the regions of the North, Siberia and the Far East of the Russian Federation, but also by the current international foreign policy situation, in which individual and especially collective rights serve as "bargaining coins" in the "political bargaining" of states.

When regarded from a purely historical perspective, an issue such as "colonization" takes on a political context in the relationship between the state and indigenous communities, which can lead to the destabilization of interethnic peace and harmony. That is why in Russia, these issues remain predominantly within the framework of domestic regulation, where the term "indigenous" is used only as "indigenous small-numbered," and the focus of attention of higher courts is shifting

ской Федерации от 24 декабря 2014 г. № 808» // Президент России [Decree of the President of the Russian Federation No. 35 of 25 January 2023. On Amendments to the Fundamentals of State Cultural Policy, approved by Decree of the President of the Russian Federation No. 808 of 24 December 2014, President of Russia] (Aug. 5, 2023), available at <http://www.kremlin.ru/acts/bank/48855>.

³⁰ Федеральный закон от 30 апреля 1999 г. № 82-ФЗ «О гарантиях прав коренных малочисленных народов Российской Федерации» // Электронный фонд правовой и нормативно-технической документации [Federal Law No. 82-FZ of 30 April 1999. On Guarantees of the Rights of Indigenous Small-Numbered Peoples of the Russian Federation, Electronic Fund of Legal and Regulatory Technical Documentation] (Aug. 5, 2023), available at <https://docs.cntd.ru/document/901732262>.

³¹ Федеральный закон от 20 июля 2000 г. № 104-ФЗ «Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации» // Электронный фонд правовой и нормативно-технической документации [Federal Law No. 104-FZ of 20 July 2000. On General Principles of Organizing Communities of Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation, Electronic Fund of Legal and Regulatory Technical Documentation] (Aug. 5, 2023), available at <https://docs.cntd.ru/document/901765288>.

³² Федеральный закон от 7 мая 2001 г. № 49-ФЗ «О территориях традиционного природопользования коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации» // Электронный фонд правовой и нормативно-технической документации [Federal Law No. 49-FZ of 7 May 2001. On the Territories of Traditional Nature Management of the Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation, Electronic Fund of Legal and Regulatory Technical Documentation] (Aug. 5, 2023), available at <https://docs.cntd.ru/document/901786770>.

³³ Федеральный закон от 24 июля 2009 г. № 209-ФЗ «Об охоте и о сохранении охотничьих ресурсов и о внесении изменений в отдельные законодательные акты Российской Федерации» // Электронный фонд правовой и нормативно-технической документации [Federal Law No. 209-FZ of 24 July 2009. On Hunting and Conservation of Hunting Resources and on Amendments to Certain Legislative Acts of the Russian Federation, Electronic Fund of Legal and Regulatory Technical Documentation] (Aug. 5, 2023), available at <https://docs.cntd.ru/document/902167488>.

³⁴ Федеральный закон от 24 апреля 1995 г. № 52-ФЗ «О животном мире» // Электронный фонд правовой и нормативно-технической документации [Federal Law No. 52-FZ of 24 April 1995. On Animal World, Electronic Fund of Legal and Regulatory Technical Documentation] (Aug. 5, 2023), available at <https://docs.cntd.ru/document/9011346>.

from protecting ethnic and cultural rights to protecting communities living in harsh climatic conditions.

The “indigenous small-numbered” peoples of Russia include a diverse range of groups, such as the Abazin, Aleut, Alyutors, Besermens, Vepsians, Vod, Dolgans, Izhorian, Itelmens, Kamchadals, Kerek, Ket, Koryaks, Kumandins, Mansi, Nagaybaks, Nanais, Nganasans, Negidals, Nenets, Nivkhs, Oroks (Ulta), Orochs, Saami, Selkups, Setu (Setos), Soyots, Tazis, Telengits, Teleuts, Tofalars (Tofa), Tubalars, Tuvans-Todzhans, Udyges, Ulchis, Khanty, Chelkans, Chuvans, Chukchis, Chulyms, Shapsugs, Shors, Evenks, Evens (Lamuts), Enets, Eskimos and Yukagirs. Of all the above-named groups, it is noteworthy that only seven, namely the Abazins, Besermens, Vod, Izhorian, Nagaybak, Setos and Shapsugs, are among those not living in the regions of the North, Siberia and the Far East of Russia.

In general, all key issues related to the implementation of state ethnic policy and the guarantees of indigenous rights are supervised by the Federal Agency for Ethnic Affairs (FADN) and the “umbrella” organization for the protection of the rights of indigenous peoples, namely the Association of Indigenous Peoples of the North, Siberia and Far East of the Russian Federation (RAIPON).

The current “ethnic agenda” includes support for native languages, the training of specialists and the publication of textbooks in native languages, standards for ethnological assessment³⁵ at the federal level, regulation of reindeer herding,^{36/37} health protection of indigenous peoples,³⁸ adherence to customary law,³⁹ subsidies for traditional economic activities⁴⁰ and the preservation of territories of traditional nature management.⁴¹

³⁵ Antonina Gorbunova et al., *Legislative Process in the Field of Ethnological Expert Examination in Russia*, 258 E3S Web Conf. (2021).

³⁶ Konstantin Zaikov et al., *Legal and Political Framework of the Federal and Regional Legislation on National Ethnic Policy in the Russian Arctic*, 1(7) Polar J. 125 (2017).

³⁷ Antonina Gorbunova et al., *Arctic Reindeer Herding and Ecology: When Economy is Impossible without Safeguarding Ethnocultural Distinctiveness*, 941 IOP Conf. Ser.: Materials Sci. Engineering (2020).

³⁸ Maksim Zadorin et al., *Protecting the Health of Indigenous Peoples of the Arctic: The Experience of the Regions of the Russian Arctic*, 263 IOP Conf. Series: Earth & Env'tl. Sci. (2019).

³⁹ Задорин М.Ю., Савельев И.В. Правовой обычай в лесном праве // Устойчивое лесопользование. 2022. № 2(69). С. 4–9 [Maksim Yu. Zadorin & I.V. Saveliev, *Legal Custom in Timber Law*, 2(69) Sustainable Forest Mgmt. 4 (2022)].

⁴⁰ Сизоненко С.А., Задорин М.Ю. Краткий обзор актуального состояния «традиционной хозяйственной деятельности в Российской Арктике» // АРКТИКА-2035: актуальные вопросы, проблемы, решения, 2021. № 3(7). С. 106–112 [Sergei A. Sizonenko & Maksim Yu. Zadorin, *Brief Overview on Current Status of Traditional Economic Activity in the Russian Arctic*, 3(7) Arctic-2035: Actual Issues, Problems, Decisions 106 (2021)].

⁴¹ Кряжков В.А. Федеральное законодательство о коренных малочисленных народах Севера, Сибири и Дальнего Востока России: новеллы последних лет // Государство и право. 2023. № 4. С. 72–83 [Vladimir A. Kryazhkov, *Federal Legislation on the Indigenous Peoples of the North, Siberia and the Far East of Russia: Novels of Recent Years*, 4 State & L. 72 (2023)].

The most important legislative breakthrough, which entered into force quite recently, was the so-called “Aboriginal Registry Act,” which was the product of a long-running discussion about the need to establish the exact number of indigenous small-numbered peoples for the purposes of providing state support measures and for taxation.⁴²

In 2010, the Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples in Russia was published in 2010.⁴³ Despite the passage of thirteen years, certain provisions of the report remain relevant to this day. In particular, it contained the following recommendations:

- expansion of the list of indigenous, small-numbered peoples;
- support for the provisions of the UNDRIP;
- guaranteeing the land rights of indigenous small-numbered peoples, regardless of any future changes in the legislation;
- detailing the guarantee in consultation with representatives of indigenous communities in the implementation of any industrial project;
- effective state control over industrial facilities;
- establishing parliamentary assemblies comprised of indigenous small-numbered peoples and enabling them to exercise control over federal and regional legislative activities; etc.

3.3. India and its National Tribal Policy

In India, the indigenous peoples and national minorities are comprised of a wide variety of small groups, which can be divided into the following two subgroups:

- 1) predominant ethnic groups: untouchables or Dalits, Kashmiris, Nagas, Sikhs, Adivasis and Andaman Islanders;
- 2) religious groups: Jews, Muslims, Sikhs and Christians.

According to the United States Agency for International Development (USAID), more than 104 million Indians, or 8.6% of the country’s population, belong to constitutionally recognized and protected “Registered Tribes,” which are indigenous communities that are not part of the prevailing Indian social hierarchy.⁴⁴

⁴² Реестр коренных малочисленных народов Российской Федерации. Краткие рекомендации по порядку заполнения и оформления документов, необходимых для внесения сведений о гражданстве в список лиц, относящихся к коренным малочисленным народам Российской Федерации // Департамент внутренней политики Ненецкого автономного округа [Register of Indigenous Small-Numbered Peoples of the Russian Federation. Brief Recommendations on the Procedure for Filling Out and Processing the Documents Necessary to Enter Information about a Citizen in the List of Persons Related to the Indigenous Peoples of the Russian Federation, Department of Internal Policy of the Nenets Autonomous Okrug] (Aug. 5, 2023), available at <https://smi.adm-nao.ru/kmns/reestr-korennyh-malochislennyh-narodov-rossijskoj-federacii/>.

⁴³ U.N. General Assembly, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/15/37/Add.5*, 23 June 2010 (Aug. 5, 2023), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/147/79/PDF/G1014779.pdf?OpenElement>.

⁴⁴ India, Partnership with Indigenous Peoples, USAID (Aug. 5, 2023), available at <https://www.usaid.gov/indigenous-peoples/regional-and-country-profiles/india>.

India has several laws and constitutional provisions such as the “Fifth Schedule for Central India” and the “Sixth List for Certain Areas of Northeastern India,” which recognize the rights of indigenous peoples to land and self-government,⁴⁵ but their implementation, according to the IWGIA, is far from satisfactory.

India voted in favor of the UNDRIP with the provision that, upon gaining independence from colonial British rule, all Indians would be recognized as “indigenous.” Thus, in India as well as in Russia, the concept of “indigenous people” in the sense used in the UNDRIP is not actually applicable. At the same time, the Government of the State of Jharkhand has formally declared the International Day of the World’s Indigenous Peoples, celebrated annually on 9 August throughout the world, as a state holiday.⁴⁶

Unlike Brazil, India is not a state party to ILO Convention No. 169; however, it has signed and ratified ILO Convention No. 107, which continues to be valid for seventeen countries in the world. The Committee for the Implementation of the Provisions of Convention No. 107, as part of monitoring the implementation of the provisions of the treaty in national law, in 2015 (last updated in 2020), identified certain points that need to be clarified by the Indian Government, including the following issues:⁴⁷

- on the participation of the indigenous population in the implementation of the strategic document – the “National Tribal Policy” (Arts. 2 and 5);
- on professional training programs aimed at meeting the needs of the tribal population with specific indicators of satisfaction from their implementation (Arts. 16 and 18);
- on the results of the implementation of the Mahatma Gandhi National Law on Guaranteed Employment in Rural Areas in respect of Scheduled Tribes and Castes (Arts. 16 and 18);
- on the implementation of educational programs taking into account cultural specifics (Arts. 21 and 26).

3.4. Chinese Economic and Social Policy Towards Indigenous Peoples

The main ethnic minorities and indigenous peoples of China include the following groups: Zhuang 16.9 million (1.3%), Manchu 10.4 million (0.77%), Hui 10.6 million (0.79%), Miao 9.4 million (0.71%), Uyghur 10 million (0.75%), Yi (Lolo) 8.7 million (0.65%), Tujia 8.4 million (0.63%), Mongol 6 million (0.45 percent), Tibetan 6.3 million (0.45%), etc.⁴⁸

⁴⁵ Land Rights in Scheduled Areas, Centre for Policy Research (Aug. 5, 2023), available at <https://cprindia.org/project/land-rights-in-scheduled-areas/>.

⁴⁶ India, IWGIA (Aug. 5, 2023), available at <https://www.iwgia.org/en/india.html>.

⁴⁷ Indigenous and Tribal Populations Convention, 1957 (No. 107) – India, International Labour Organization (ILO) (Aug. 5, 2023), available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4049337,102691:NO.

⁴⁸ 2010 Population Census, National Bureau of Statistics of China (Aug. 5, 2023), available at <http://www.stats.gov.cn/english/Statisticaldata/CensusData/>.

In addition to the Han majority, the Chinese government recognizes 55 ethnic minority groups. The definition of “ethnic minorities” (or “nationalities”) in the People’s Republic of China was developed by the state and does not truly reflect the self-identification of such ethnic minorities or the reality of ethnic diversity within China’s borders. In China, the term “Mínzú” is used to refer to non-Han “undistinguished ethnic groups.” With a combined population numbering more than 730,000 people, these ethnic minorities have not been recognized or classified as belonging to any of the 55 ethnic groups or the Han majority.

Although the Chinese government voted in favor of the UNDRIP, it is important to note that like Russia and India, China does not officially recognize the term indigenous people. Therefore, the provisions outlined in the UNDRIP have not been implemented in China.

According to the most recent government data from the 2010 National Census, ethnic minorities comprised 111,964,901 or 8.4% of the country’s total population. Furthermore, there are still unrecognized ethnic groups in China, numbering 640,101 people.

In China, the Law “On Regional National (or Ethnic) Autonomy”⁴⁹ is currently in force, which is an important basis for the implementation of the state ethno-national policy towards ethnic minorities. It includes the creation of “autonomous ethnic regions,” the establishment of their own “local government” (primarily for administrative matters) and the right to use their own language and culture. It includes, among other things, the establishment of “autonomous ethnic regions,” the creation of ethnic autonomous local governments (primarily for administrative purposes), the right to use commonly spoken native and local languages in governing bodies and the right to practice one’s own customs and culture. The autonomous ethnic regions account for approximately 60% of China’s total area.

The main economic and social policy in relation to persons belonging to ethnic minorities in China is provided for by the National Five-Year Plan, which is characteristic of socialist states. For example, the previous National Five-Year Plan (2016–2020) paid special attention to the economic development of various ethnic cultures in China. The current 14th five-year plan (2021–2025) continues this policy.⁵⁰

As noted by the IWGIA, much of the teaching of mother tongues in ethnic minority regions in China has been marginalized due to the prevalence of Chinese language teaching. Language and educational policies focus on improving the literacy rate of Putonghua (Standard Chinese) in rural communities and ethnic minority regions.

⁴⁹ Law of the People’s Republic of China on Regional National Autonomy (adopted at the Second Session of the Sixth National People’s Congress, promulgated by Order No. 13 of the President of the People’s Republic of China on 31 May 1984, and effective as of 1 October 1984) (Aug. 5, 2023), available at <http://www.asianlii.org/cn/legis/cen/laws/lotprocora584/>.

⁵⁰ Translation: 14th Five-Year Plan for National Informatization – Dec. 2021, DigiChina – Stanford University (December 2021) (Aug. 5, 2023), available at <https://digichina.stanford.edu/work/translation-14th-five-year-plan-for-national-informatization-dec-2021/>.

Since 2017, there has been a policy of phasing out the teaching of Uyghur and Kazakh in primary schools.⁵¹

3.5. South Africa's Policy of Inclusiveness

South Africa has a unique linguistic situation, as there are 11 official languages in the country: English, Afrikaans, Zulu, Xhosa, Northern Sotho, Southern Sotho, Tswana, Shangaan, Ndebele, Swazi and Venda.⁵²

According to the 2011 National Census, the percentage of racial and ethnic groups is as follows: "black Africans," 41 million (79.2%); "whites," 4.6 million (8.9%); "colored," 4.6 million (8.9%); Indian/Asian, 1.3 million (2.5%) and "other," 0.3 million (0.5%) for a total of 51.8 million (rounded up to the nearest hundred thousands).⁵³ It is important to note that in South Africa, the category of "colored" has traditionally referred to "indigenous peoples."⁵⁴

"Black Africans," defined as those whose mother tongue is African, make up over three-fourths of the country's population and share a common historical experience characterized by gross violations and abuses under the domination of "white colonists" domination and the enforcement of apartheid policies. This experience was associated with the indigenous peoples' massive, coerced inclusion in the "migrant work environment" in combination with the expulsion of the majority of them to overpopulated and economically unproductive territorial allotments. Linguistic and tribal divisions mattered less.

The first settlers, beginning in the mid-17th century, were mostly from Holland and France, followed later by the British, Eastern European Jews, Southern Europeans and whites from Angola, Mozambique and Zimbabwe. "Afrikaners," defined as people who identify themselves as white and speak Afrikaans, a language that is a derivative of the Dutch, continue to make up the majority of South Africa's white population.

The number of immigrants currently living illegally in South Africa is estimated to range anywhere from 5 million to 10 million, with estimates varying greatly from source to source. The vast majority of migrants come from other African countries, particularly the Democratic Republic of the Congo and Zimbabwe, but they are increasingly coming from all over the continent.

The indigenous peoples of South Africa, including the San and Khoekhoe, are collectively referred to as the Khoe-San and are further divided into several sub-ethnic groups. For example, the majority of "Khomani San" mainly reside in the Kalahari

⁵¹ China, IWGIA (Aug. 5, 2023), available at <https://www.iwgia.org/en/china.html>.

⁵² South Africa, Minority Rights (Aug. 5, 2023), available at: minorityrights.org/country/south-africa/.

⁵³ Census 2011, South Africa, The World Bank (Aug. 5, 2023), available at <https://microdata.worldbank.org/index.php/catalog/2067>.

⁵⁴ Indigenous Peoples in South Africa, IWGIA.org (Aug. 5, 2023), available at <https://www.iwgia.org/en/south-africa.html>.

region, as do the Khwe and Xun, who reside primarily in Platfontein, Kimberley. The Khoekhoe live in the Northern Cape Province, while the “Koranna” live in the provinces of Kimberley and Free State. Cape Khoekhoe populations are located in the Western Cape and Eastern Cape provinces.⁵⁵

South Africa introduced the “apartheid regime” to the international community during its period of colonial dependence. The 1973 Apartheid Convention expressly states this in Article 2, which defines apartheid as “the policies and practices of racial segregation and discrimination as practiced in southern Africa,” namely “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.”⁵⁶

The apartheid regime is no longer being practiced. However, during its enforcement, the Convention encouraged a wide variety of acts of violence that ranged from the killing of members of a particular racial group and the infliction of serious mutilation that would affect the continued existence of the group to the creation of living conditions that entail its total or partial destruction, as well as to instituting legislation that supported and reinforced such segregation.

The Report of the Special Rapporteur on the status of human rights and fundamental freedoms of indigenous peoples (dedicated to the Mission to South Africa) was released in 2006. The findings of this report regarding the state of human rights among indigenous communities were as follows:

1. The most important emphasis should be placed on the protection of the land rights of indigenous peoples, restitution and the right to quality education, medicine and representation.
2. A high degree of marginalization of the indigenous peoples deprives them of the right to equal access to the benefits provided to the rest of the population.
3. A special focus should be placed on protecting the rights of indigenous women.
4. Indigenous communities should be recognized as such, constitutionally, and on an equal footing with speakers of 11 officially recognized languages.
5. Health issues and the organization of polyclinics in indigenous areas should be a priority, and special attention should be paid to the provision of services to the most marginalized segments of the population.
6. Ensuring access to clean drinking water should be among the most important priorities for the government.
7. Support for the native languages of the indigenous peoples of South Africa should be carried out in cooperation with UNESCO, with special priority given to radio broadcasting in the “Nama” language, as well as teaching in schools.

⁵⁵ Indigenous Peoples in South Africa, *supra* note 54.

⁵⁶ International Convention on the Suppression and Punishment of Apartheid, *supra* note 6.

9. Organization of training programs for judges in the cultural specifics of indigenous peoples for a fair consideration of cases with their participation.

10. Special attention should be paid to the protection of the intellectual property of indigenous peoples.

South Africa has no official legislation on the rights of indigenous peoples and data on their demographics is not collected in the census. South Africa has also not yet ratified ILO Indigenous and Tribal Peoples Convention No. 169.

At the same time, South Africa has joined the UNDRIP, and in its statement at the 20th session of the U.N. Permanent Forum on Indigenous Issues on 23 April 2021, made it clear that it will continue to work to implement the provisions of the national Constitution and the Declaration regarding the rights of indigenous peoples, including taking into account the “2030 Agenda for Sustainable Development” and “pandemic realities.”

Furthermore, South Africa is implementing the so-called “District Development Model” (DDM), within the framework of which anti-COVID measures were implemented, including through the participation of indigenous community leaders in municipal councils.

South Africa has proclaimed its commitment to upholding the principles of social security, which should ensure that no one in need, from a particular family to a community, is neglected or excluded due to their socio-economic circumstances. In conclusion, South Africa considers it important to pursue a “policy of inclusiveness” and to encourage “agricultural zoning” in order to identify priority areas for development in specific districts, including “traditional knowledge” and “traditional food sources,” both of which will directly contribute to the preservation of biological diversity and the eradication of poverty.

The role of such an “umbrella organization” as the “South African National Chamber of Traditional Leaders,” which acts as a “pool of experts” advising the Government of South Africa, is highly appreciated.⁵⁷

However, in February 2022, an independent report titled “Observations on the State of Indigenous Human Rights in South Africa”⁵⁸ was submitted as part of the Universal Periodic Review, which was established back in 2006 by the General Assembly and the U.N. Human Rights Council.

The focus of the report is on the aforementioned Khoe-San people. At the same time, it is noted that the preparation of the report faced legal difficulties because

⁵⁷ South Africa's National Statement, 20th Session of the Permanent Forum on Indigenous Issues, General Discussion, *Item 6: Follow up to the Outcome Document of the World Conference on Indigenous Peoples and the 2030 Agenda for Sustainable Development*, 23 April 2021 (Aug. 5, 2023), available at <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2021/04/South-Africa-National-Statement-20th-Permanent-Forum-on-Indigenous-Issues-item-6.pdf>.

⁵⁸ *Observations on the State of Indigenous Human Rights in South Africa*, prepared for the United Nations Human Rights Council: February 2022, 3rd Cycle of Universal Periodic Review of South Africa, 41st Session of the Human Rights Council (Aug. 5, 2023), available at <https://www.culturalsurvival.org/sites/default/files/UPR%20South%20Africa-%202022%20FINAL.pdf>.

the term “indigenous peoples” in South Africa is not generally recognized or clearly defined, and therefore, it is frequently interpreted as referring to “black Africans.”

In addition, the Rapporteur’s report takes a critical stance against the Government of South Africa, stating that it is not fulfilling its international obligations in five areas of protecting the rights of indigenous peoples, namely land relations, political representation, ethno-cultural identity and identification and linguistic rights. It is also noted that the latest National Census in South Africa from 2022⁵⁹ still limits the identification of indigenous peoples by employing population categories that were defined in the previous Census of 2011, that is, in fact, by using the apartheid period classification systems, thus disaggregating data for the Khoe-San people.

Conclusion

A brief analysis of the situation in terms of ensuring the rights and legitimate interests of indigenous communities in the territories of the BRICS member states revealed the following key indicators:

1. The majority of the BRICS states are parties to the basic human rights agreements at the U.N. level.

2. There is no full agreement on the protection of indigenous peoples’ rights at the level of the participating states.

3. The participating states collectively have a record number of indigenous peoples and ethnic minorities.

4. Due to the motley ethno-cultural “palette” of the BRICS member states, they are reluctant to assume obligations under existing international agreements to protect the rights (primarily land rights) of indigenous peoples; the existing convention mechanisms have a one-sided approach to the historical conditions of the development of spaces in each individual country, marking them as a product of the policy of “colonialism,” which does not fit into the political and legal agenda of some BRICS countries, for example, Russia and China.

5. Certain states, for instance, India and Brazil, are state parties to the ILO Conventions and currently have obligations to implement the recommendations of the relevant committees under these agreements. In particular, these obligations include the provisions that are outlined below.

Brazil (under ILO Convention No. 169) has set the following goals and targets until 2024:

- implementation of state thematic and social programs with the maximum possible participation of indigenous peoples;
- encouragement of initiatives for indigenous peoples in the fields of education, medicine and environmental protection;

⁵⁹ Total population of South Africa in 2022, by ethnic groups (in 1,000s), Statista (Aug. 5, 2023), available at <https://www.statista.com/statistics/1116076/total-population-of-south-africa-by-population-group/>.

- restitution for indigenous peoples in connection with the implementation of economic projects related to hydropower and mining;
- statistics on indigenous children who attend schools and other educational institutions.

India (under ILO Convention No. 107) has set the following goals and targets until 2025:

- participation of indigenous peoples in the implementation of the state's ethno-national policy;
- vocational training for indigenous peoples and dealing with issues related to unemployment and employment;
- implementation of educational programs taking into account the culture of indigenous peoples.

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