**REPORTS ON DISCRIMINATION, SEGREGATION AND THE RIGHT TO ADEQUATE HOUSING**

QUESTIONNAIRE

**BASIC INFORMATION**

1. Name of Individual, Organization, Institution, Agency or State: **Anti-Discrimination Centre Memorial Brussels**

Type of Entity\*

National Government or federal governmental ministry/agency

Inter-governmental organization or UN agency

Local or regional government, agency, representative or mayor

Association, tenant union or housing cooperative

NGO network, umbrella organization

Community-based NGO

Academia

Foundation

National human rights organization, ombudsperson

Real estate, urban planning or construction

Real estate investor or investment fund

Trade Union

Other: NGO

2. Categorization of your Work

Please select one or more responses, as appropriate.

Public administration

Advocacy

Funding

Legal Assistance

Networking

Policy

Research

Technical Assistance

Training

N/A

Other:

3. City/Town: **the NGO is based in Brussels, the answers are about indigenous peoples in Russia**

4. State/Province: **the NGO is based in Brussels, the answers are about indigenous peoples in Russia**

5. Country (please indicate your region or “international” if focus the work of your organization covers multiple countries); region of Eastern Europe and Central Asia)

**HOUSING DISCRIMINATION**

**7. What specific forms of de facto or legal discrimination or barriers towards equal enjoyment of the right to adequate housing do the following groups face in your country (please provide evidence with examples, studies, reports and relevant statistical information):**

* **Indigenous peoples, precisely in South Siberia (Shor, Teleut, Khakas living in Kemerovo Province and Republic of Khakasia)**

Indigenous residents of Kemerovo Oblast and Khakasia– the Shor, Teleut and Khakas people are face violation of their rights to adequate housing in connection with the activities of the coal mining companies on their traditional lands. Indigenous communities and the local population have to grapple with the illegal confiscation of their lands and houses. If the indigenous people refuse to leave their homes, these houses are destroyed by arson, and harassment begins against the active part of the indigenous people, which is expressed in pressure and threats from law enforcement agencies and unknown persons acting on behalf of coal companies.

In end of 2012 the coal company ‘Yuzhnaya’ from the holding ‘Sibuglemet’ started excavations next to Shor village Kazas (Kemerovo region). The company bought the land and houses from the inhabitants of the village. In 2013 five houses of Shor people who refused to sell their houses and land were burnt. As a consequence the village was ruined, the saint mountain of Shor people Karagay-Lyash was exploded, the cemetery is left in the territory closed for visits nowadays.

The Teleuts, an indigenous people of Kemerovo Oblast lost their native environment and dwelling as a result of the activities of coal companies. Residents of Teleut villages and the villages of Bekovo, Shanda, and Razrez14km are living in a state of environmental disaster and threat of extinction.

Mining causes irreparable damage to the natural world of Koybalskaya Steppe (the place where the Khakas people traditionally live): to the pastures and meadows where the Khakas people farm, to the rivers, which are water sources for drinking, irrigating fields, and flooding pasture.

**8. Discrimination in housing can affect various dimensions of the right to adequate housing and other human rights. Could you provide more details regarding the specific areas in which housing discrimination is experienced? Below are examples of various forms of discrimination that can be experienced in relation to different dimensions of the right to adequate housing:**

**Accessibility**

Indigenous residents of Kemerovo Oblast – Shor people and Teleuts face the illegal confiscation of their lands, including water and natural resources essential for habitation. Commercial companies often get lands of indigenous residents for coal exploration and excavation in violation of the acting legislation. The indigenous people face cheating, blackmailing, and threats if they refuse to sell their lands. Mining destroys the places of their traditional economy and vital activity, natural and cultural sites sacred for the indigenous peoples, and historical monuments. All this leads to the forced resettlement of the indigenous peoples to the cities; far away from the traditional territories the indigenous peoples lose their identity, culture, and language.

**Habitability**

The activities of coal companies have a devastating impact on the environment and the habitats of indigenous people. In places of traditional settlement of Shors and Teleuts, there is an increased level of air, water and soil pollution, caused by the fact that coal companies do not comply with environmental standards. Hazardous emissions destroy agriculture and make it impossible to grow crops and livestock. Due to the constant pumping of water from coal mines, water disappears in the villages of the indigenous people.

**Security of tenure**

Violation of rights of housing and land and associated natural resources is one of the main problems that indigenous people of Khakasia and Kemerovo oblast face in the fight against illegal activities of coal companies.

The Land Code provides for the seizure of land plots from individuals to further public interests (Article 49). Such a decision may only be adopted by federal executive branch bodies, executive branch bodies of constituent entities of the federation, or local self-government bodies for state or municipal needs. To implement large-scale projects, on April 1, 2015 an addition was made to the Land Code under which federal, regional, and local government bodies may decide to seize land not just at their own initiative, but also at the petition of agents of natural monopolies, subsoil users, and other organizations (Paragraph 4 of Article 56.3 of the Land Code). During the seizure process, the grounds, terms, and procedure for adopting a decision on seizure must be closely complied with. For example, a site proposed for seizure must be listed in land-use planning documents (Part 10 of Article 45 of the RF City Planning Code), while the ownership right to the seized site may only be transferred after advance payment of equal compensation, which must include the market value of the land plot, losses caused by the seizure, and lost profit (Article 279 of the RF Civil Code, Article 56.8 of the RF Land Code). However, in relation to indigenous people living in an area that is rich in minerals, these provisions of the law are not respected. Lands and houses are taken away in favor of coal mining companies without the provision of documents required by law. The transfer of property rights does not take into account the wishes of the local population. The amount of compensation that is paid to resettled families usually does not take into account the market value of the land plot, losses caused by the seizure of the land plot, as well as lost profit.

**Availability of services, materials, facilities and infrastructure**

So-called cones of depression that change the position and level of groundwater started to appear in the coal mining area because of the need to constantly pump millions of tons of water from the open pits. For this same reason, drinking water in wells has started to vanish and has almost completely disappeared from several Khakas villages.

In addition, the explosive work being done at the pits harms the already decrepit underground water supply pipes, which affects the quality of drinking water in settlements of indigenous people. The results of a monitoring survey of drinking water quality in Khakasia conducted by the Russian consumer protection agency Rospotrebnadzor in 2019 show that nearly 25 percent of water pipes in rural districts do not meet hygienic requirements.

**Location**

Exposure to environmental health risks, such as external air quality, flooding, toxic ground exposure; noise; risk of landslides is the main consequences of the activities of coal companies. Most of the local communities are located in the immediate vicinity of coal mines. In this regard, air, water, soil are extremely polluted. This provokes the development of ancological and other diseases in humans and animals. Dust from explosions in coal mines, as well as from trucks transporting coal, is in the air almost all year round and makes breathing difficult, falls on grown vegetables and fruits, which makes them harmful for consumption. The noise, which is heard around the clock from coal mines, as well as from trucks, interferes with the rest of the local population, and in general a comfortable existence.

**9. Are there any particular current laws, policies or practices in your country, region or town/community that contribute to or exacerbate discrimination in relation to the right to adequate housing?**

In contravention of international standards, Russian laws on small indigenous peoples do not recognize their right to property in relation to traditional territories. The federal law “On Guarantees of the Rights of Small Indigenous Peoples in the Russian Federation” enshrines only the right to land use. Under Article 8, indigenous peoples have the right to use, free of charge, various categories of land required for performing their traditional farming activities and trades in places where small indigenous peoples have traditionally lived or farmed and to participate in monitoring the use of various categories of land. The Land Code (Article 39.10.13) establishes a timeframe of 10 years for this land use.

According to the UN Declaration on the Rights of Indigenous peoples, the principle of free, prior, and informed consent is a necessary condition for managing any activity relating to traditional lands, territories, and other resources. Russian legislation does not regulate or enshrine the principle of free, prior, and informed consent (hereinafter - FPIC), even though the government has re-ported to international bodies that this principle is in effect in relation to matters of small indigenous peoples (in particular, official information about Russia’s implementation of recommendations made by the UN Committee on the Elimination of All Forms of Racial Discrimination (2019)).

The so-called “Far Eastern Hectare” law has also complicated life for in-digenous peoples (in effect since June 1, 2016 for residents of the Far Eastern Federal District, which was expanded to include Buryatia and Transbaikal in 2019; the Free Hectare Program was opened to all residents of Russia since February 1, 2017). Indigenous communities were skeptical of this law from the beginning because in a number of cases territories of traditional nature use were transferred as “hectares.” In July 2020, there was a proposal to extend this law to “Arctic hectares” in Murmansk Oblast, Nenets and Yamalo-Nenets autonomous okrugs, and 23 municipal districts in Krasnoyarsk Krai, Arkhangelsk Oblast, the Komi Re-public, and the Republic of Karelia. Under this law, land (one hectare per person) is granted free of charge for five years of use and then registered as property or under a long-term lease. The plot can be used to build a home or conduct any type of economic activity.

**10.** **Can you explain exemptions in national law that allow (certain) public, private or religious housing providers to give preferential or exclusive access to housing to members of a particular group, for example based on membership, employment contract, public service, age, disability, civil status, sex, gender, religion, income or other criteria?**

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**11. In case there may be differential treatment of particular groups in relation to housing, please explain why such treatment could be justifiable according to international human rights standards - for example positive measures benefiting a particular group to overcome systematic discrimination or disadvantage-or if it would amount to discrimination?**

Differential treatment of indigenous peoples in relation to housing should be justifiable, because the UN Declaration on the Protection of the Rights of Indigenous Peoples (articles 3 and 26), ILO Convention No. 169, and customary international law enshrine the right of indigenous peoples to land, territory, and other resources. The ILO convention uses the term “lands” to include the total environment of the areas which the peoples concerned occupy or otherwise use. They have the right to ownership, possession, use, development, and control of the lands, territories, and other resources they possess on the basis of traditional rights and other forms of traditional possession or use.14 Even if the right to ownership and possession of lands is not formally recognized, the government must still protect it.

**SPATIAL AND RESIDENTIAL SEGREGATION**

12. What forms of spatial segregation along racial, caste, ethnicity, religion, nationality, migration status, heritage, economic status/income or other social grounds can be observed in urban and urban-rural contexts in your country?

Click here to enter text.

13. What impacts do these forms of spatial and residential segregation have on affected communities? Please point to indicators such as rates of poverty, un-employment and under-employment; prevalence rates of malnutrition; disparities in access to services and facilities (such as access to schooling, health care or other public benefits); disparities in access to infrastructure (lack of and/or poor quality provision of water, sanitation, transportation, energy, waste collection and other utility services); rates of exposure to environmental health risks (poor air quality, flooding, toxic ground exposure, etc).

Click here to enter text.

14. Have any particular historical or current laws, policies or practices in your country, region or town/community caused or exacerbated segregation?

Click here to enter text.

15. In your view, what factors (current or historical) are the principal *drivers* of spatial and residential segregation in urban and urban-rural contexts in your country?

Click here to enter text.

16. Are there examples in your country of where spatial and residential clustering has been a result of voluntary choices of residence by members of particular groups?

Click here to enter text.

17. The preservation of cultural identity, the right to self-determination of indigenous peoples and the protection of minority rights are examples of grounds for which groups may choose to live separately. Can you comment on how these forms spatial/territorial separation are evidenced in your country, if these communities they are subject to discrimination and suffer adverse consequences from spatial segregation such as through disparities in access to services, infrastructure, living conditions, etc.?

Click here to enter text.

18. In your view, are certain forms of observed residential separation/voluntary clustering compatible with human rights law and if so why? (for example to protect rights of minorities or to respect the freedom of choice of individuals to decide with whom to live together).

Click here to enter text.

19. Are there any laws or policies requiring certain individuals (and their families) to live in particular housing provided to them or in a particular geographical area (e.g. asylum seekers, migrants, IDPs, refugees, ethnic, religious, linguistic or other minorities, indigenous peoples, persons with disabilities, public service and military personnel)?

Click here to enter text.

20. In your view, what are the principal *barriers* to diminishing spatial, including residential segregation?

Click here to enter text.

**MEASURES AND GOOD PRACTICES TO CURB DISCRIMINATION AND REDUCE SEGREGATION**

**21. What laws, policies or measures exist at national or local level to prevent or prohibit discrimination in relation to the right to adequate housing?**

Russian law only has general norms that enshrine the right of each person to housing and prohibit the arbitrary deprivation of housing. For example, Article 40 of the Constitution reads:

1. Everyone shall have the right to a home. No one may be arbitrarily deprived of their home.

2. The bodies of state authority and local self-government shall encourage housing construction and create conditions for exercising the right to a home.

3. Low-income people and other persons mentioned in law and in need of a home shall receive it at little or no cost from the state, municipal and other housing stocks according to the norms fixed by law.

**22. Have your State, regional or local Government adopted any positive measures, such as measures of affirmative action, to reduce discrimination, segregation or structural inequality in relation to housing? To what extent have such initiatives been successful to address housing discrimination and segregation?**

Government bodies of Kemerovo Oblast must consult and cooperate in good faith with the appropriate indigenous peoples through their representative institutions to secure their free and informed consent prior to the approval of a new project that affects their lands, territories, or other resources, in particular in connection with the exploitation, use, or processing of minerals, water, and other resources.

Federal Law No. 49-FZ “On Territories of Traditional Nature Use of Small Indigenous Peoples of the North, Siberia, and the Far East of the Russian Federation” (of May 7, 2001) creates certain, although limited, opportunities for enshrining the land rights of indigenous peoples, but the authorities can act arbitrarily because there is no specific mechanism to apply this law. For example, traditional lands of Shors in Tashtypsky and Askizsky districts, Khakassia, which border Kuzbass, were included within the borders of a combined territory of traditional nature use of regional importance. Kemerovo Oblast, however, has not created a territory of traditional nature use for the Shors in spite of numerous requests submitted to various levels of government.

**23. Have any particular laws, policies or measures been implemented to limit or reduce residential segregation? To what extent have such policies raised human rights concerns?**

Click here to enter text.

**24. What is the role of the media, as well as other non- governmental organizations, of religious and governmental institutions, in fostering a climate that reduces or exacerbates discrimination in relation to housing and segregation?**

Independent media outlets generally try to take an active role in advocating for the rights of indigenous peoples in the Republic of Khakassia and Kemerovo Oblast to own land and housing in their traditional places of residence. They do this by publishing educational materials and investigations into the illegal activities of coal companies and the state bodies affiliated with them. There are a small number of NGOs that provide legal support to indigenous associations that protect and defend indigenous peoples’ interests in court and appeal to various state bodies for protection of infringed rights.

In disputes between indigenous peoples and coal companies, state bodies tend to take the side of the coal companies. In most cases, government bodies attempt to comply with the token requirements of the law that require them to secure the consent of indigenous peoples prior to the approval of a new project that affects their lands, territories, or other resources, in particular in connection with the exploitation, use, or processing of minerals, water, and other resources. However, when local populations reject such plans, state bodies can resort to various ruses and fabrications to achieve their desired results. In one case, public hearings concerning the approval of a plan to build a new coal quarry in Khakas villages were held in 2019. The majority of the population voted against the construction, but the local authorities falsified the voting results and allowed the construction to proceed.

Even though Russian federal and regional laws enshrine special guarantees for the rights of indigenous peoples, the country’s long-term strategic documents do not take their interests into account. For example, the Development Program for the Coal Industry does not mention that indigenous peoples are present on the territories of coal mining operations and are in need of special support measures, and the draft strategy for Kemerovo Oblast’s socioeconomic development “Kuzbass - 2035” says nothing about the Shors or Teleuts, even though representatives of these peoples submitted amendments to this document in 2018. The fact that indigenous residents were not mentioned in such important state projects speaks to the government’s disregard for indigenous peoples living in coal mining zones.

**25. Which institutional mechanisms exist to report, redress and monitor cases of discrimination or segregation in relation to the right to adequate housing and how effective have they been to address discrimination?**

As a general rule, in cases of discrimination or segregation in relation to the right to adequate housing indigenous peoples have the right to file complaints with the prosecutor’s office, the human rights ombudsperson, and other state agencies, and also with a court, but these complaints are generally not effective. State agencies generally limit themselves to checking the information indicated in the complaints and do not take any steps to restore the complainant’s rights because they are on the side of the violators (in this case, the coal companies). Most of their responses to these complaints direct the complainant to apply to a court for protection of their rights. Russian courts, however, do not have a widespread practice of recognizing discrimination, so it is virtually impossible to prove discrimination and have one’s rights restored.

**26. In your view, what are the principal barriers to seek justice for discrimination/segregation in relation to the right to adequate housing?**

The principal barrier in relation to indigenous peoples is the interest state bodies have in developing the coal industry. This interest in supporting coal companies is primarily connected with the needs of the Russian economy: The fuel and energy sector accounts for approximately 22 percent of the GDP, almost 60 percent of exports, and 40 percent of budget revenue annually. According to the Institute for National Monopolies Research, the coal industry’s contribution to Russia’s GDP in 2018 reached 1 percent and could continue to grow. Over the past several years, the Russian government has adopted a number of strategic measures geared to extensive support for the coal industry. The Development Program for the Coal Industry through 2035 (approved June 13, 2020) says that there are plans to increase coal production by a factor of 1.5 and exports by a factor of two by 2035. Government bodies are now closing their eyes to coal companies’ violations of current environmental protection laws and human rights for the sake of achieving these ambitious goals.

27. Can you specify how individuals and groups subject to structural discrimination or experiencing segregation can submit complaints to administrative, non-judicial or judicial bodies to seek relief? Please share any leading cases that have been decided by your courts or other agencies in this respect.

Indigenous people can submit complaints to administrative, non-judicial, or judicial bodies on a non-preferential basis. Few lawsuits trying to stop land seizure for coal mines have been successful in court. One important court decision was adopted in 2018: The Belovsky District Court (Kemerovo Oblast) found orders of the Subsoil Department (Sibnedra in the Siberian Federal District) concerning the confiscation of four private plots of land for mines in Mencherep Village, Belovsky District illegal and did not find a “state need” for this seizure. The plots were planned to be used for surface mining after transfer to the private company Stroypozhservis for use.

In 2019, the Subsoil Use Department for the Central Siberian District published 14 orders concerning the seizure of over 50 land plots from 44 owners in favor of the coal mines. With help from attorneys from the regional environmental organization *Rodnaya Step* (Native Steppe), some farmers attempted to appeal these orders in the republic’s courts, but most of the courts refused to uphold the claims. In addition, in the fall of 2019, Rodnaya Step activists filed a claim with the Supreme Court of the Republic of Khakassia regarding resolutions of the Government of Khakassia nos. 151 and 152 of April 15, 2019 “On the Transfer of Land Plots Located in Beysky District from the Category of Lands Designated for Agricultural Use to the Category of Lands Designated for Industrial Use.” This claim was rejected on November 11, 2019. Rodnaya Step activists filed an appeal with the Fifth Appeals Court of General Jurisdiction, which reversed the Supreme Court’s decision on March 12, 2020 and found the Government of Khakassia’s resolutions invalid. As grounds for its ruling, the appeals court noted that both mines had committed multiple violations of land laws and regulations for communicating with government bodies when filing their petitions.

**DATA ON DISCRIMINATION IN HOUSING AND SPATIAL/RESIDENTIAL SEGREGATION**

**28. Is any data on housing disparities, housing discrimination and spatial segregation collected and publicly available? If so where can it be accessed? Are there any practical or legal barriers to collect and share such information in your country?**

Are there any practical or legal barriers to collect and share such information in your country? For example, Vladislav and Yana Tannageshev, two leading activists of the group Resurrection of Kazas and the Shor People, and their children faced continuous persecution and threats from government authorities, law enforcement structures, and coal companies for their cooperation with the United Nations, including the UN Committee on the Elimination of Racial Discrimination and other international organizations. As a result, they were forced to flee Russia in April 2018 and seek political asylum in a European country. On May 10, 2018, the Rapporteur/Focal Point for Reprisals of the Committee on the Elimination of Racial Discrimination sent a letter to the Government of the Russian Federation expressing concern about this situation and the reprisals taken against Yana and Vladislav Tannageshev. The rapporteur also requested that information on this situation be supplied within 30 days. The Russian Federation did not respond to this letter.

**29. Can you kindly share any studies or surveys by local, regional or national Governments or by other institutions to understand better housing disparities, housing discrimination and spatial segregation and how it can be addressed (e.g. title and link, or kindly submit document).**

*Parallel Information to the Russian Federation’s Report on its Implementation of the Recommendations Contained in the Concluding Observations of the Committee on the Elimination of Racial Discrimination Following Consideration of the Combined 23rdand 24thPeriodic Reports on Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination:* <https://adcmemorial.org/wp-content/uploads/Parallel_Information_Indigenous_Peoples_of_Russia_CERD_2019.pdf>

# *“I Won’t Have Any Life Without This Land”: Violations of the Rights of Indigenous Peoples Resulting from Coal Mining”* by ADC “Memorial:

<https://adcmemorial.org/wp-content/uploads/indigenouseng2020-1.pdf>

30. Can you provide information and statistics related to complaints related to housing discrimination, how they have been investigated and settled, and information on cases in which private or public actors have been compelled successfully to end such discrimination or been fined or sanctioned for non-compliance?

There is no statistical data, but members of indigenous peoples in the Republic of Khakassia and Kemerovo Oblast have filed dozens of complaints about the coal companies’ illegal seizure of land plots. Information about these cases can be found in ADC Memorial’s report “*I Won’t Have Any Life Without This Land”: Violations of the Rights of Indigenous Peoples Resulting from Coal Mining”* <https://adcmemorial.org/wp-content/uploads/indigenouseng2020-1.pdf>. These complaints do not generally bring about the desired result, and rights violators do not bear any responsibility for their actions. Coal companies have been prosecuted for breaking environmental laws by polluting bodies of water, the soil, and the air, but the fines have had no effect on their illegal activities, and they were allowed to continue polluting the environment after paying them.