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# Resource Extraction from Territories of Indigenous Minority Peoples in the Russian North: International Legal and Domestic Regulation<sup>1</sup>

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**Abstract:** The existing system of international legal and domestic protection of indigenous minority peoples' interests in the Russian North concerning mining on their territories is analyzed in this article. This is an especially urgent issue due to the number of indigenous minority peoples in the Russian North who still keep to their traditional way of life (reindeer herding, hunting, fishing, and gathering). The article is drawn from the author's personal experience and field work in the Russian North, where he met with local NGO leaders, authorities, and representatives of indigenous minority peoples (Nenets). The novelty of the work is that the author uses both legal analysis of source documents as well as empirical methods during the course of the research, and comes to conclusions which could have practical significance for Russian legislation.

**Key words:** indigenous minority peoples, aborigines, Russian Northern Territories, natural resources, traditional way of life.

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1. I would like to dedicate this article to a prominent indigenous leader, the Oglala Sioux activist for the rights of Native American people – a politician, musician, author and actor – **Russell Means**, who died on October 22, 2012 in South Dakota, USA.

## 1. Introduction<sup>2</sup>

### 1.1 Background

Human rights protection is one of the most important issues in modern international and domestic law. And recent cases in international relations demonstrate the most complicated and contradictory issue is cooperation in the field of human rights and protection of basic freedoms. Perhaps there is no other sphere of international cooperation characterized by such intensity of emotion, political volatility, and frequency of violation.

Indigenous peoples' rights have a special place in the system of human rights. These people have been targets for extermination and discrimination throughout the colonization and seizure of their ancestral lands. Among the many indigenous peoples whose rights have been trampled upon are North-American and South-American Indians, aborigines of Australia and New Zealand, Indigenous Minority Peoples of Russia and many other disappearing ethnic groups. Latest research shows that most representatives of indigenous peoples live in poverty (less income than \$ 1 per person per day), in developing countries as well as in developed ones. About 70 % of indigenous people live away from cities and depend on the natural environment.<sup>3</sup>

Until very recently conflict between governments and indigenous peoples often resulted in bloodshed. In the summer of 2009, for example, in forests throughout Peru, conflict broke out between local tribes and police. Two thousand Indians carrying machetes, lances, and bows and arrows fought against policemen armed with automatic weapons, grenades, helicopters and armored vehicles. The guerilla tactics used in the jungles by the Indians were very efficient; they killed 24 policemen during the conflict, and lost half that number of their own men, forcing the government forces to retreat. The reason behind the violence was two laws signed by President Alan Garcia, opening up the Indian territories in the Amazon jungle to mining operations and dike construction which resulted in vast deforestation. In the beginning the protests were peaceful, but soon they became violent. The world community took the side of the Indians, and Peruvian authorities had to stand down. In the end the Prime Minister resigned, the Parliament abolished both laws, and the President made a formal apology to the Indians. There is a

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2. This article is written as a result of the author's trip to Yamal-Nenets Autonomous Okrug in April 2012.

3. Carino, Joji, «Indigenous Peoples, Human Rights and Poverty» in Indigenous views on Development and Cooperation. Seminar: Indigenous Perspectives on Development and Cooperation within the framework of the International instruments and Agreements Madrid 18–19 October 2004, Printed by: EGRAE, S.A. 2005, p. 140.

similar situation in progress in Guatemala, where nickel was found on Mayan territory, and in India, where bauxite mining operations are proceeding on the aborigines' land.<sup>4</sup>

In 1992, in Rio-de-Janeiro, the UN adopted the Declaration on Environment and Development, which states that:

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.<sup>5</sup>

The Convention on Biological Diversity, which was developed in the wake of the Rio conference, in its article 8 (j) also states countries have an obligation:

Subject to [its] national legislation, [to] respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;<sup>6</sup>

Since then many countries have included provisions in international documents concerning access to natural resources on aboriginal territory, which grant indigenous peoples the final say on environmental issues.

Some authors believe that international law now not only confirms a deep-rooted and close connection between indigenous peoples and their lands and resources, but also states that this connection should be taken into account during environmental conservation.<sup>7</sup> Because of growing environmental concern stemming from 50 years of industrial expansion into territories used by indigenous minorities for hunting and gathering, the Russian government began to develop

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4. S. Manukov, «Indians in the manger. Which methods are good in fighting for resources» in *Russian Reporter*, (October) 2009, p. 60.

5. UN Declaration on Environment and Development (Rio-de-Janeiro) June 14, 1992.

6. The Convention on Biological Diversity (Rio-de-Janeiro). June 5, 1992.

7. J.K. Das, *Human Rights and Indigenous Peoples*, Printed in India by S.B. Nangia A.P.H. Publishing Corporation, New Delhi 2001, p. 70.

environmental legislation which, for the first time, took into account the needs of indigenous groups.<sup>8</sup>

According to population census there are approximately 400,000 indigenous minority peoples in Russia from 46 ethnic groups (less than 0.3 % of the total Russian population).<sup>9</sup> They live from Murmansk in the West to Chukotka in the East, and occupy 60 % of Russian territory. They belong to different ethnic and linguistic groups. They live in the North, Siberia and Far East in very extreme weather conditions. Their traditional way of life is hunting, fishing, gathering and reindeer-breeding. Many are nomadic. Only 8 % of the Russian population lives in the territory of the «Indigenous Minority Peoples». However, a majority of Russian natural resources is concentrated in those same areas (97 % of gas, 80 % of oil, and 100 % of diamonds).<sup>10</sup>

## 1.2 Main Problems to be addressed

Extraction companies are organizations which collect natural resources to be marketed for profit. Their primary focus is not the interests of indigenous minority peoples who have been living on these resource-abundant ancestral lands for ages. This conflict of interest now has particular urgency because of the growing number of mining companies participating, and the expanding territorial reach of such activity. During this industrial expansion the following problems have resulted:

- Environmental pollution;
- Indigenous minority peoples have lost access to adequate resources to maintain their livelihood and received no restitution from mining companies;
- Indigenous minority peoples are therefore forced to leave their land;
- The principle of free, prior and informed consent before commencing industrial activity on the lands of indigenous minority peoples has been disregarded by authorities and extraction companies.

As Professor V.A. Kryazhkov states, the relationship between indigenous minority peoples and mining companies is one of permanent conflict because the partici-

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8. M.A. Zenko, «Indigenous Minority Peoples in the Russian Environmental and Legal Field: Political and Legal Analysis of the Modern Situation» in *Recommendations for Indigenous Minority Peoples Rights Protection to Environment Management. Collection of Articles*. Moscow: Institute of Environment and Legal Issues 2000, p. 80.

9. There is a List of Indigenous Minority Peoples of Russia adopted by the Government of Russia in 2000.

10. M.A. Nikitin, «Actual Issues of State Policy Towards the Indigenous Minority Peoples of the Russian North» in Y.V. Popkov (ed.), *Indigenous Peoples of Yamal in the Contemporary World*, Novosibirsk, Salekhard 2007, p.73.

pants hold antagonistic points of view which sometimes leads to open opposition.<sup>11</sup> Because of the industrial development of the Northern territories begun in the mid-20<sup>th</sup> century, most indigenous minority peoples are now in danger of disappearing. Their territories have become polluted and their traditional way of life has come under threat. Many indigenous minority peoples were forced to leave their lands and move to the cities where they were subsequently assimilated. It must be pointed out that the former Soviet Union supported the politics of assimilation and Russification of all non-Russian populations, including the indigenous minority peoples of the North.<sup>12</sup> Of all the problems facing indigenous minority peoples, the most concerning is the questions of their right to their lands and traditional way of life.

Today in the 21<sup>st</sup> century the indigenous minority peoples continue to face the same problems. Industrialization and the struggle for natural resources has caused ecological and cultural damage. Issues of international legal and domestic regulation in the Russian Federation in this sphere further increases conflict. Research of such an urgent topic should serve to strengthen the contemporary conception of indigenous peoples' rights protection within the scope of the internationally recognized principle of Human Rights and Liberties.

## 2. International Legal Regulation

### 2.1 International indigenous peoples' law

Contemporary international law serves as an important guide and strong motivation for the development of domestic legislation in the field of indigenous peoples' rights. International law, although once an instrument of colonialism, has developed and continues to develop, however grudgingly or imperfectly, to support indigenous peoples' demands.<sup>13</sup> By defining international and legal standards, international law promotes the processes of democratization in states where indigenous peoples live. Domestic law should follow international standards. Nowadays indigenous peoples are full participants in international dialogue with states, international organizations and independent experts.<sup>14</sup>

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11. Vladimir, Kryazhkov, *Indigenous Minority Peoples of the North in Russian Law*, Moscow 2010, p. 288.

12. Gorenburg, Dmitry, «Soviet Nationalities Policy and Assimilation» in Arel, Dominique and Ruble, Blair (ed.) *Rebounding Identities. The Politics of Identity in Russia and Ukraine*, Washington, DC: Woodrow Wilson International Center for Scholars 2006, p. 273.

13. Anaya, James, *Indigenous Peoples in International Law*, 2<sup>nd</sup> ed., Oxford University Press 2004, p. 4.

14. J.K. Das, 2001, p. 11.

In recent years many governments have indeed been taking into account the needs of indigenous peoples. In 2008, Australia and Canada, in February and June respectively, apologized to their indigenous population for the suffering caused during the conquest and seizure of aboriginal lands. Then, in January 26, 2009, Bolivia adopted a new Constitution which gave more rights to the country's 36 ethnic groups, including the right to participate in national politics. This new Constitution resulted from the election of the first Indian president, Evo Morales of the Quechua people. New Zealand sets a good example for civilly solving conflict with their aborigines. Over the last three decades the New Zealand government has been either returning back to the aborigines the land seized in the 19<sup>th</sup> century, or compensating them with the equivalent of the land's current value.<sup>15</sup>

These events were preceded by two decades dedicated to the world's indigenous peoples, which the United Nations declared to be from 1995 to 2004 and from 2005 to 2014, and also by the international year for the world's indigenous peoples in 1993, when the Russian Federation was one of the main initiators. These facts show that, step-by-step, the world community is laying the foundation of principles for equal rights and mutual respect between indigenous peoples and the society in which they live, and that every person and every nation has equal rights and freedoms, without any distinction of race, nationality, location, profession or any other circumstances.

In 2002 the UN Permanent Forum on Indigenous Issues within the ECOSOC<sup>16</sup> limits was formed and started its work. The Expert Mechanism on the Rights of Indigenous Peoples was established by the UN Human Rights Council and began its work in 2008. The UN Declaration on Rights of Indigenous Peoples,<sup>17</sup> approved by the General Assembly in September 2007, was a breakthrough, and a very important step in the field of indigenous rights protection. This signifies that we have reached a new level in the development of international protection for indigenous peoples. Furthermore, the UN Declaration defining the rights of indigenous peoples can now be considered a jumping off point for developing more extensive protections for indigenous peoples.

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15. S. Manukov, 2009, p. 63.

16. United Nations Economic and Social Council.

17. Four countries (Australia, Canada, New Zealand, and the US) refused to sign the Declaration in 2007, but later endorsed it (Australia in 2009, Canada, New Zealand, and the US in 2010). The Russian Federation abstained during voting and still has not endorsed it. Russian authorities are criticized by leaders of indigenous minority peoples for ignoring such an important document.



According to United Nations data there are more than 300 million indigenous peoples living in 90 different countries,<sup>18</sup> but they do share much in common. All of them, for example, have suffered from colonization and assimilation. They all deserve dedicated territory to carry out their traditions and preserve their identity, language and culture. They consider the restitution of their lands an act of overcoming injustice. At the same time, the legal regulation of indigenous peoples' status is significantly different around the world. In Russia, statutory law means all indigenous peoples' issues are regulated by both federal and regional legislation.

## 2.2 Russia and International Law

In order to understand regulation of mining activity on the lands of indigenous minority peoples in the Russian North, we first examine the Russian Constitution (1993), article 69:

The Russian Federation shall guarantee the rights of the indigenous minority peoples according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation.<sup>19</sup>

In addition the following international legal documents also relate to the rights of indigenous people: Indigenous and Tribal Populations Convention № 107, and Indigenous and Tribal Peoples Convention № 169, both of which were adopted by the International Labour Organization (ILO).

ILO Convention № 107, adopted in 1957, was the first international document devoted exclusively to addressing indigenous peoples' rights. This Convention was directed at the integration of indigenous populations into the prevailing dominant society, and their subsequent development according to a majority vision. The indigenous populations themselves, however, completely disagreed with such an approach. The definition of «indigenous people» noted they were members of a

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18. *Indigenous Peoples Funding and Resource Guide*, 2<sup>nd</sup> ed., Compiled by International Funders for Indigenous Peoples and First Peoples Worldwide, USA 2004, p. 1. // [http://www.acpcultures.eu/\\_upload/ocr\\_document/IFIP-FPW\\_IndigenousPeopleFundersGuide.pdf](http://www.acpcultures.eu/_upload/ocr_document/IFIP-FPW_IndigenousPeopleFundersGuide.pdf) accessed December 7, 2012 and *State of the World's Indigenous Peoples*, UN New York 2009, p. 1. // [http://www.un.org/esa/socdev/unpfi/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfi/documents/SOWIP_web.pdf) accessed December 7, 2012.

19. Constitution of the Russian Federation, 1993 (article 69).

tribal population whose social and economic conditions were at a less advanced stage than other segments of the nation state.<sup>20</sup>

The convention was recognized as outdated and in 1989 the ILO accepted a new document, ILO Convention № 169. Item 2 of article 15 of this new Convention states:

In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall *wherever possible* [italics supplied] participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.<sup>21</sup>

Of course such a soft approach as «*wherever possible*» comes nowhere near ensuring protection of indigenous peoples' rights. In addition, article 16 of the Convention admits relocation of indigenous peoples as an exceptional measure, following appropriate procedures established by national laws and regulations.

The Russian Federation has not ratified the Convention mainly because of article 14 of ILO Convention № 169, which outlines the rights of ownership and possession of indigenous peoples over the lands which they traditionally occupy. According to Russian legislation, there is no possibility for ownership and possession of lands by any groups of people based solely on ethnicity.

Today, of all international documents, only ILO Convention № 169 carries a legally binding character for ratifying states, and is the most comprehensive document on indigenous peoples' basic rights. As such the convention has legal backbone and forces the question of ratification and action in all countries where any indigenous peoples live.

### 2.3 The UN Declaration on the Rights of Indigenous Peoples

Another important document in the field of indigenous peoples' rights protection is the UN Declaration on the Rights of Indigenous Peoples, adopted in 2007. It

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20. The statement «at a less advanced stage» is inappropriate according to contemporary international law, which affirms the principle of equality and prohibits any form of discrimination. You can find other contradictions in contemporary international law which still echo from the past. For example, the Statute of the International Court of Justice (article 38), which states that the Court shall apply the general principles of law recognized by a civilized nation. The term «civilized nation» is not defined, and why this term is still in use is questionable.

21. The ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries № 169, 1989.



provides protection of a long list of indigenous peoples' rights, among the most important of which are the right to self-determination and the right to lands and natural resources. These rights were the focus of the main discussions during acceptance of the document.

This Declaration took a huge step towards restoration of historical justice and is a worthy culmination of long negotiations on indigenous issues. It has fixed at the international level the right of indigenous peoples to control their lands, territories and resources. Although existing international documents on human rights do not address the complete spectrum of problems faced by natives, representatives of indigenous peoples did agree that their expectations were reflected within the framework of the new document. The declaration as accepted became the most complete statement of indigenous peoples' rights ever made. Collective rights in the declaration are determined in a fashion unprecedented in international law. This document serves to confirm the international community today is solidly committed to the protection of individual and collective rights of indigenous peoples everywhere.

For example, article 10 prohibits any relocation of indigenous peoples from their lands without their consent:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.<sup>22</sup>

And item 2 of article 32 of the Declaration makes very clear, without a «*wherever possible*» escape clause, that:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.<sup>23</sup>

And although the Declaration has no legally binding force for member states, it does have significant moral and political force. In time it may be possible to develop and accept an international legal convention on indigenous peoples' rights protection incorporating all the Declaration experience, and take a further step toward strengthening indigenous peoples' interests.

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22. The UN Declaration on the Rights of Indigenous Peoples, 2007.

23. The UN Declaration, 2007.

But Russia, impeded in this instance by article 69 of its Constitution, still has not ratified ILO Convention № 169, and does not support the UN Declaration on the Rights of Indigenous Peoples. So what kind of rights guarantees do Russian indigenous minority peoples have according to (1) the universally recognized principles and norms of international law and international treaties, and (2) agreements of the Russian Federation article 69 of the Constitution? This indeed is the question. In the opinion of the author, there are no real international legal guarantees for these indigenous minorities pertaining to mining activity on their lands.

## 2.4 World Bank and Indigenous Peoples

The most effective mechanism for protecting indigenous peoples' rights and mining activity on their territories was created, again in the opinion of the author, by the World Bank. In its two Operational Directives 4.10 and 4.20, the World Bank discusses the necessity of protecting indigenous peoples' interests during projects financed by the World Bank.

Borrowers from the World Bank must divulge all information about a project before they begin, and allow indigenous minority people the opportunity to influence the realization of the project. For example, item 11 of the World Bank's Operational Directive 4.10 says:

In deciding whether to proceed with the project, the borrower ascertains, on the basis of the social assessment and the free, prior, and informed consultation, whether the affected Indigenous Peoples' communities provide their broad support to the project.<sup>24</sup>

And item 18 of the World Bank's Operational Directive 4.10 gives a set of obligations to projects which concern mining activity on the lands of indigenous peoples. These obligations are implemented by some mining companies in the Russian North, but only by those who borrow from the World Bank.<sup>25</sup> Thus, unfortunately, these obligations are not universal.

In October 2009 the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, visited the territories of the Russian North and met representatives of indigenous minority peoples. The Special Rapporteur met with Government authorities at the federal and regional levels, representatives and members of indigenous communities, and organizations in Moscow and in the regions of Khanty-Mansiysk, Krasnoyarsk and Khabarovsk. In each region he carried out a number

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24. World Bank's Operational Directive 4.10, 2005.

25. For example, Russia's leading independent natural gas producer NOVATEK in Yamal-Nenets Autonomous Okrug.

of field trips to meet with members of indigenous communities living in remote compact settlements or isolated dwellings.

In his final report he emphasized that today many Russian mining companies hold consultations and sign agreements with indigenous minority peoples before resource extraction on their territories. One criticism of the current practice that the Special Rapporteur heard from heads of families is that they would like to have the opportunity to discuss and negotiate all terms of their agreements with oil companies, rather than being presented with a model and an inflexible contract, preprinted and ready to be signed.<sup>26</sup>

The same opinion is held by leaders of the Russian Association of Indigenous Peoples of the North (RAIPON). For example, Rodion Sulyandziga – the RAIPON first vice-president – spoke about problems of realization of the Free Prior Informed Consent in Russia, at the Tenth Session of the Permanent Forum on Indigenous Issues in 2011.<sup>27</sup>

We conclude that the Russian Federation's obligations in the field of indigenous minority peoples' rights protection, according to international law and as detailed in article 69 of the Constitution, do not play out in practice. International legal regulation of resource extraction on lands of indigenous minority peoples in the Russian North is rather limited. Indigenous minority peoples continue to be treated in a patronizing manner, but do look forward to participating as equal partners in the future.

### 3. Domestic Legal Regulation in Russia

There are approximately 200 different nationalities (ethnic groups) living in Russia. More than 80 % of the population is ethnic Russian. Others are Tatars (the second largest group after Russians), Ukrainians, Chechens, Bashkir, Chuvash, Yakut, Chukchi, Nenets, and so on. All these peoples are divided into four groups in the legal literature. These are: Titular Nation (Russians), Titular Nations (in Republics), Indigenous Minority Peoples, and National Minorities.

Throughout its history Russia has used limited and cautious intervention into the northern system of traditional social bonds, culture and economy. Russia stimulated the creation of northern social orders and value systems, and the abo-

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26. Report of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Anaya, James, *Situation of indigenous peoples in the Russian Federation*, UN Document A/HRC/15/37/Add.5. 2010.

27. See the Report at <http://www.raipon.info/biblioteka/37-2009-12-16-12-39-43/581-2009-12-16-13-00-23.html> accessed December 7, 2012.

rigines were granted the right to decide for themselves how to integrate into the dominant Russian society.

Today indigenous minority people have all the rights and freedoms that other citizens of the Russian Federation enjoy. Specifically noted is the value of indigenous peoples' age-long experience in environmental preservation and protection. But now indigenous minority peoples' rights require specific protections in the context of industrial development of their territories. The majority of these indigenous groups live in hard-to-reach areas with an extreme climate and limited opportunities, a situation that requires establishment of additional rights for their factual equality with other Russian peoples. Their special legal status is considered a vital measure for their national revival, preservation, and development.

Part 1 article 9 of the Russian Constitution (1993) declares:

Land and other natural resources shall be utilized and protected in the Russian Federation as the basis of life and activity of the people living in corresponding territories.<sup>28</sup>

The attempt to tie this provision with indigenous minority peoples' rights to their lands and resources has failed, largely because the term «people» refers to the population (citizens) of the Russian Federation as a whole, without specific reference to ethnicity or origin. This was decided by the Russian Constitutional Court, June 7, 2000.<sup>29</sup>

And article 72 of the Russian Constitution (1993) states that:

The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes: protection of traditional living habitat and of traditional way of life of small ethnic communities.<sup>30</sup>

But this provision was not further developed by federal law to address natural resources, animal husbandry, and specially protected territories of the North, and so on. For example, the Russian Federal Law «About Subsoil»<sup>31</sup> does not mention any rights of indigenous peoples concerning resource extraction on their territories. This means by default that priority is given to commercial interests, and not to indigenous minority peoples of the North who suffer at their hands.

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28. Constitution of the Russian Federation, 1993 (article 9).

29. L.N. Vasilyeva, «The Regulation of National Minorities and Indigenous Minority Peoples' Rights: Experience of the Russian Federation» in *Journal of Russian Law*, (6), Moscow 2005, p. 156.

30. Constitution of the Russian Federation, 1993 (part 1, item «m», article 72).

31. Federal Law of the Russian Federation «About Subsoil», 1992.

According to Federal Law about Guarantees of the Rights of Indigenous Minority Peoples of the Russian Federation, these people have the right to protect their lands and traditional way of life.<sup>32</sup> Provisions were adopted for ecological and ethnological examination before any resource extraction on the lands of indigenous minority peoples. But these provisions still do not work, because the mechanism for such examinations has not yet been established.

Another Federal Law (1999) «About Territories of Traditional Nature Use of the Indigenous Minorities of the North, Siberia and the Far East of the Russian Federation»<sup>33</sup> does not resolve the problem either. Indigenous minority peoples have been living in the Northern territories of the Russian Federation for ages de-facto, but they cannot confirm their right to the land de-jure. So this law has stood for more than 10 years already, with no visible effect. That is, no territories of traditional nature use for indigenous minority peoples in the Russian Federation have yet been described. This situation is very advantageous for mining companies. They can avoid seeking the consent of indigenous minority peoples prior to resource extraction on their territories, because exact definition and delineation of such territories remains outstanding.

Unfortunately the existing system of Russian domestic legal regulation is full of gaps and contradictions and has yet to be redeveloped according to current international standards. Professor Kryazhkov in his book states that Russian legislation is vastly inadequate in the sphere of relations between mining companies and indigenous minority peoples. Of particular concern is the absence of the right of indigenous minority peoples to the lands they occupy. He writes about the necessity to develop the mechanism for interaction between mining companies and indigenous minority peoples in the Russian North. This mechanism must include, for example, carrying out ecological and ethnological expert examination before commencement of any commercial project on the lands of indigenous minority peoples.<sup>34</sup>

In the face of globalization, natural resource extraction and active industrial development in the North, Russian indigenous minority peoples merit and demand greater attention to their needs. As it was emphasized previously, there is currently no efficient system of legal support and protection for indigenous minority peoples dealing with large enterprise in Russia, and it is imperative to bring Russian legislation into compliance with international norms and standards.

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32. Federal Law of the Russian Federation «About Guaranties of the Rights of Indigenous Minority Peoples of the Russian Federation», 1999 (article 8).

33. Federal Law of the Russian Federation «About Territories of Traditional Nature Use of the Indigenous Minority Peoples of the North, Siberia and the Far East of the Russian Federation», 2001.

34. Vladimir Kryazhkov, 2010, pp. 301–309.

Of course, Russia has made use of progressive international experiences as reflected in its domestic legal system, but there is still a lot to do. It is very urgent to maintain and protect the fragile Northern environment, and to bring the principle of «duty to consult» into the relationship between mining companies and indigenous minority peoples in the Russian North.

It is also necessary to fix precisely in law the established borders of indigenous minority peoples, in order to preserve their environment and guarantee their territories for future generations. Current legislation is not capable of effectively protecting the territorial interests of indigenous minority peoples in Russia today.

Although the Russian Constitution writes about a guarantee of the rights of the indigenous minority peoples according to the universally recognized principles and norms of international law and international treaties and agreements, there is still uncertainty regarding ratification of the ILO Indigenous and Tribal Peoples Convention № 169 and support to the UN Declaration of 2007.

If these documents are accepted, Russia would then have the orientation to allow it to avoid many pitfalls during development of its own federal legislation. All necessary legislative and other preconditions already exist to support these international documents, and we only await the political will to make it happen. Indigenous minority peoples of the Russian North consider Russia's participation and signature on these documents a guarantee of their rights and interests in relations with commercial companies, and a strong basis for the development of Russian legislation in this field.

Corrupt connections are known to exist between authorities and private mining companies in Russia. Dishonest leaders of indigenous non-governmental organizations have also been involved in this process. But wherever money is concerned, there is potential for the dark side of human nature to surface. For example, a tragic scheme targeting the Cherokee nation operated in the U.S. during colonization of the Western territories<sup>35</sup>. Such sad stories continue. According to Russia's population census of 2010, the number of indigenous minority peoples has diminished.<sup>36</sup> The Russian Federation has already lost the Ainu, Chuvans, Kereks, and Orok.<sup>37</sup> These peoples were forced to leave their lands because of industrial expansion. Restrictions have been placed on hunting and fishing, and reindeer-breeders have to pay rent and taxes for the use of their land.

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35. The removal of Cherokees in 1838. Ehle, John, *Trail of Tears: The Rise and Fall of the Cherokee Nation*, New York: Doubleday Press, 1988.

36. <http://www.raipon.info/component/content/article/1-novosti/2637-2011-12-27-11-54-03.html> accessed December 17, 2012.

37. Vladimir, Kryazhkov, «Indigenous Minority Peoples' Rights in Russia: the Methodology of Regulation» in *State and Law Magazine*, (1), 1997, p. 19.



In November 2012 the Russian Association of Indigenous Peoples of the North, Siberia and the Far East was suspended by Russia's Ministry of Justice. According to the Ministry, the indigenous minority peoples' organization was closed because of alleged lack of correspondence between the association's statutes and federal law. Pavel Sulyandziga – RAIPON's well-known activist – told «Novaya Gazeta» that Russian federal authorities increasingly see indigenous minority peoples as a troublesome element in Russia's development goals. There is an extensive hike in the level of industrialization in the North, and indigenous peoples are seen as the last barrier against commercial and state development of resources. The authorities strongly dislike RAIPON's extensive international engagement.<sup>38</sup>

Two other scandals preceded suspension of RAIPON's activity. There was conflict with the Evenk community «Dylacha» in the Republic of Buryatia, which was successful in jade mining. And another involved the accusation of extremism and separatism of Pomors' leader Ivan Moseev in Arkhangesk oblast. He wanted to add the Pomors to the list of indigenous minority peoples of the Russian North.

On December 13, 2012 at the Federation Council,<sup>39</sup> a Conference was dedicated to the realization in Russia of the Second Decade of the World's Indigenous Peoples. The Ministry of Regional Development of Russia reported the current situation with indigenous minority peoples of the Russian North. They mentioned the Concept of Sustainable Development of the indigenous minority peoples of the North, Siberia and the Far East of the Russian Federation<sup>40</sup> adopted by the Russian Government in 2009. This Conception was criticized by the RAIPON president Sergey Kharuchi. He said they had not participated in the development of this document, and the action plan according to this Conception was declarative and not sufficiently supported financially. For example, in 2012 the federal budget gave 240 million rubles to the needs of indigenous minority peoples, and spent 275 million rubles on the pyrotechnic show at the APEC<sup>41</sup> Summit in Vladivostok.<sup>42</sup>

So it is clear there are still problems in the sphere of resource extraction from the territories of indigenous minority peoples in the Russian North. They are subject to land seizure. Their previous priority-oriented right to hunt and fish has now disappeared from current Russian legislation. As professor Kryazhkov writes in his recent article: «Russian legislation concerning indigenous minority peoples

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38. Novaya Gazeta (130) November 16, 2012, p. 5.

39. Federation Council is the upper house of the Federal Assembly of Russia (the Parliament of the Russian Federation).

40. Collection of Laws of the Russian Federation, (7), February 16, 2009, p. 876.

41. Asia-Pacific Economic Cooperation.

42. <http://www.raipon.info/component/content/article/1-novosti/3529-2012-10-26-08-23-57.html> accessed December 18, 2012.

could be characterized as unstable, contradictive, often imitational, only initially developed, and not enough adjusted with international law.»<sup>43</sup> His conclusion has been confirmed by the leaders of Russian indigenous minority peoples and other researchers.<sup>44</sup>

#### 4. Conclusion

Two main aspects should be emphasized in the field of indigenous minority peoples' rights protection in the Russian North and resource extraction from their territories. One is the struggle for sovereignty through the right to self-determination, and the other is their claim to ancestral lands and resources. Both are directly interconnected and influence the living standard of indigenous minority peoples, their development and prosperity. Their claim to specific lands and resources can serve as a good basis for the distribution of benefits from state resources among the population, especially in developing countries like the Russian Federation.

In any case today we are witnessing the most progressive stage in the history of development of indigenous peoples' rights and freedoms at the international level. The protection of indigenous peoples' rights and interests is becoming an important national goal, and the essential sphere of their international cooperation. Throughout the previous decades all conditions necessary to further their development and consolidation have been crafted. The policy of assimilation and forcible integration has been replaced by declarations of indigenous peoples' rights to self-government and preservation of their national, cultural and language identity. The world community's attention to the needs of indigenous peoples, and their own activity which today has unprecedented scope, have formed a basis for wide popularization of the issues connected to their rights.

The Russian Federation has yet to enforce international obligations concerning indigenous minority peoples' rights on its territory, especially in the field of resource extraction on the territories of indigenous minority peoples of the North. The ratification of ILO Convention № 169 and support of the UN Declaration on Indigenous Peoples' Rights will help in this process, and could be treated as a measure to enforce article 69 of the Russian Constitution.

It is very important to bring to the fore the internationally recognized principle of free, prior and informed consent of indigenous minority peoples concerning any proposed commercial development on their territories. Indigenous minority

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43. Vladimir, Kryazhkov, «Russian Legislation about Northern Peoples and Law Enforcement Practice: Current Situation and Perspective» in *State and Law Magazine*, (5), 2012, p. 35.

44. For example, such researchers as: Andrichenko L.V., Kharuchi S.N., Novikova N.I., Todishev M.A.

peoples of the Russian Northern territories should be recognized as equal partners by commercial enterprises, and must be allowed the opportunity to co-manage any such projects. In order to bring all these new-for-Russia mechanisms and institutions to the relationship between indigenous minority peoples of the North and resource companies which come to their territories, we would be wise to profit from the experience of foreign countries, where these instruments already exist and have been admirably put into use.

**Добыча природных ресурсов на территориях коренных малочисленных народов Севера России: проблемы международно-правового и внутригосударственного регулирования.**

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**Аннотация:**

В работе анализируется международно-правовая и внутригосударственная защита интересов коренных малочисленных народов Севера России при осуществлении добычи природных ресурсов на территориях их проживания. Эта проблема является особенно актуальной в виду того, что большое количество представителей коренных малочисленных народов Севера России ведут традиционный образ жизни (оленоводство, охота, рыбалка и собирательство).

В основе работы лежит личный опыт автора, побывавшего на российском севере, сложившийся в ходе встреч с лидерами местных общественных организаций, представителями власти и коренных малочисленных народов (ненцев). Новизна работы заключается в том, что помимо анализа существующей правовой базы, автор использовал эмпирический метод в ходе исследования и пришел к выводам, имеющим практическое значение для российского законодательства.

**Ключевые слова:** коренные малочисленные народы, аборигены, российский север, природные ресурсы, традиционный образ жизни.