

# NGO Submission to the Human Rights Council Universal Periodic Review Mechanism

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Submitted on Behalf of the following Organisations:

**Russian Association of Indigenous Peoples of the North (RAIPON), Moscow,**  
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**International Work Group for Indigenous Affairs (IWGIA), Copenhagen**  
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## Background / Context of Submission

1. The present submission has been prepared by the Russian Association of indigenous peoples of the North (RAIPON, Moscow) in cooperation with the International Work Group on Indigenous Affairs (IWGIA, Copenhagen), two non-governmental organisations in consultative status with ECOSOC.
2. It briefly describes the current state affairs in relation to the human rights of the 40 *indigenous numerically small peoples of the North, Siberia and the Far East of the Russian Federation*<sup>1</sup>, which are represented by their umbrella organisation, RAIPON. These indigenous peoples number only approximately 250,000 individuals.
3. For a substantial part of the indigenous population, traditional livelihood activities still constitute the main sources of food and income. In addition they maintain strong spiritual and cultural ties with the lands that they have inhabited and used since time immemorial.
4. Their original traditional territories stretch from Kola Peninsula in the West to Chukotka on the Pacific coast covering approximately two thirds of the territory of the Russian Federation and include areas that experience the harshest climate on earth. It is from these territories that the bulk of Russia's wealth in natural resources, such as oil, natural gas, coal, gold, diamonds and timber is being extracted. While the recent surge in global energy demand has dramatically increased the flow of revenues into the state treasury and boasted profits of private enterprises, the indigenous communities are increasingly feeling the negative impacts resulting from the encroachment of national and international extractive corporations into their remaining territories upon which they rely for their subsistence.
5. The indigenous peoples of the North are among the most marginalised and vulnerable segments of the Russian population. Virtually all socio-economic indicators are at levels dramatically worse than the Russian average figures with for example average life expectancy is 10-20 years below and level of unemployment is four to five times above the national average.
6. Many indigenous people rely on their traditional non-cash livelihoods, namely hunting, reindeer husbandry, gathering and fishing, for their subsistence. To ensure the full realisation of their human rights, especially their rights to an adequate standard of living, to culture and food the state is therefore required to take action to protect indigenous peoples' land rights in a manner that is consistent with their customs and needs. Protection is most urgently needed vis-a-vis large corporations, exploiting subsurface resources in indigenous peoples' territories.
7. However, due to deficiencies in legislation and administrative practice, most indigenous communities still have no legal title over the land and resources that they depend on for their very survival. Many, if not most, are barred from legally accessing those resources that would allow them to attain an adequate standard of living.

*The methodology and the broad consultation process followed nationally for the preparation of information provided to the UPR by the country under review*

8. RAIPON is not aware of a national consultation process initiated by the Russian Federal government for the preparation of information to the UPR.
9. The information in this submission has been compiled through extensive research and consultation activities. These consisted of:
  - a) A fact-finding mission in August-September 2007 by members of the Institute for Ecology and

Action Anthropology (INFOE, Cologne/Germany) to three regions of Asian and Northern Russia. The findings were documented in a parallel report to the UN Committee on the Elimination of all forms of Racial Discrimination, CERD (attached).

b) Various regional workshops have also been conducted by RAIPON in 2007 and 2008.. These processes involved a variety of regional and local indigenous organisations in the Russian Federation.

c) Updated information was also received through the nation-wide network of regional indigenous information which is coordinated through RAIPON's office.

*The current normative and institutional framework of the country under review for the promotion and protection of human rights: constitution, legislation, policy measure*

#### **International treaties:**

10. Russia is State-party to all major UN covenants and conventions, including ICCPR, ICESCR, ICERD, CRC and CEDAW. It has not ratified in ILO convention 169 concerning indigenous and tribal peoples in independent countries and has not supported the UN Declaration on the Rights of Indigenous Peoples.

#### **National legislation:**

11. Art. 69 of the Russian constitution guarantees the rights of the indigenous small-numbered peoples “according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation”<sup>ii</sup>. Art. 72 states that the protection of the rights and freedoms of national minorities falls under the joint jurisdiction of the Federation and its Subjects.

12. There are currently three framework laws defining the legal status of indigenous small-numbered peoples in Russia:

- a) The federal law “on guarantees of the rights of indigenous small-numbered peoples”<sup>iii</sup> was adopted 30<sup>th</sup> April 1999. This law provides certain privileges regarding employment, land tenure and use of natural resources, including the right of indigenous peoples to use land free of charge in areas traditionally inhabited or used by them. It also provided for special measures facilitating the participation of indigenous persons engaging in traditional economic activities in local self-administration, as well as the right (rather than the obligation) of regions to take additional protective measures for these persons.
- b) The Federal Law “On Territories of Traditional Nature Use of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation”<sup>iv</sup> was adopted by the State Duma on 7<sup>th</sup> May 2001,. This law was intended to create a legal framework for the establishment of so-called Territories of Traditional Nature Use or TTP<sup>v</sup> as they are known after their Russian abbreviation. The TTP were supposed to become a special type of protected area and reserved for indigenous peoples' traditional activities. They were meant to be managed, or at a minimum co-managed, by indigenous communities.
- c) The law “On the general principles of the organisation of *obshchinas* of the indigenous, small-numbered peoples of the North”<sup>vi</sup>, was passed 20<sup>th</sup> June 2000. An *obshchina* is a kinship-based non-commercial enterprise which engages in traditional economic activities. According to the law, *obshchinas* were also to play a role in local self-administration.

#### **Regional regulations**

13. The situation of indigenous peoples in Russia varies greatly by region. While some regions offer limited legislative recognition of the land rights of indigenous peoples, many regions do not afford any recognition of these rights.

*i)The implementation and efficiency of the normative and institutional framework for the promotion and protection of human rights described in ii)*

#### **Indigenous peoples land, livelihood and consultation rights.**

14. At present, the normative and institutional framework for the protection of indigenous peoples' human

rights is not functioning. There are three basic reasons for this:

15. Since their adoption, the framework laws have suffered from the fact that they are declarative and non-specific, depending on by-laws and normative acts for their implementation. Therefore, the law on Territories of Traditional Nature Use (TTP) has never been put into practice. Since its passage in 2001, indigenous communities from all over the Russian Federation had filed dozens of applications, however, the Government of the Russian Federation did not approve a single application for the establishment of such a territory. .
16. Additionally, the framework suffered since its inception from contradicting provisions made by other laws, namely those governing land and natural resources, which are driven by the spirit of economic liberalisation. The revised Land code adopted in 2001 stipulates only two forms of land tenure: According to this law, land can either be bought or rented. Similar provisions exist in the recently adopted Forest and Water codes (2006), which stipulate that the right to use forests, waters and the resources therein can be obtained exclusively through tenders. These changes have been introduced to create the preconditions for unrestrained privatisation of natural resources and their unhindered commercial exploitation. They conflict with the provisions of the aforementioned federal laws “On Territories of Traditional Nature Use” and “On guarantees of the rights of indigenous small-numbered peoples” in that they totally ignore the rights of indigenous peoples to their traditional lands, forcing them to participate in commercial tenders in order to be allowed to hunt, gather or fish at places which they have inhabited and used for generations. Additionally, they remove all specific rights and associated special measures addressing indigenous peoples not engaged in traditional land use, regarding employment, land use and the use of natural resources and taxation.
17. Thirdly, since their passage, the three framework laws have undergone numerous revisions, resulting in the watering down of state obligation towards the indigenous small-numbered peoples. E.g. federal law № FZ-122 of 2004, which became known as the “law on the monetisation of privileges” annulled article 4 of the Federal law “On guarantees of the rights of indigenous small-numbered peoples”, according to which state bodies and organs of local self-government should guarantee the right of indigenous peoples “to a distinct socio-economical and cultural development and the protection of their original places of residence<sup>vii</sup>, their traditional ways of life and resource management”. The same law also nullified the provisions, which guaranteed specific social services and health care as well as minimum quota for the representation of indigenous peoples in representative bodies.
18. The result is that, indigenous *obshchinas* (see above) are incapable of obtaining land plots for hunting, fishing and reindeer pasture, and since they do not have any legal title over the land which they use, they are barred from receiving licenses for hunting and quotas for fishing. Since 2006 territories that have been used by indigenous communities since time immemorial, are being rented out to commercial business entities under long-term license agreements.
19. Given that past and recent experience has shown that most indigenous peoples are adversely impacted by extractive industries operating in their territories, the question how industrial projects are assessed and whether or not human rights and social impacts are taken into consideration, are of vital importance to indigenous communities in resource rich regions.<sup>viii</sup> Originally, the law on Environmental Impact Assessments (EIA) provided that impact assessments of projects be undertaken in order to minimise their negative impact and to develop programmes for the prevention or mitigation of negative environmental, social, economic and other impacts. In 2006 the law was revised, so that from the definition of “Environmental Impact Assessment” the phrase regarding “related social, economical and other consequences of the project's implementation” was removed. This meant that the negative impact of projects on the traditional way of life and nature use of indigenous peoples no longer has to be assessed in EIAs and that corporations are no longer obliged to compensate for the damage caused, as stipulated in

article 8 of the federal law “on guarantees of the rights of indigenous small-numbered peoples”.

20. As a result of changes in legislation, indigenous peoples in Russia are currently deprived of legal rights, the right to property, use or tenure of their land, where they live, hunt, fish and graze their reindeer. Commercial companies, having obtained through tenders the right to use land and resources are not legally obliged to obtain consent from the indigenous peoples for the realisation of projects. Nor are they obliged to assess the amount of damage to the indigenous peoples territory and natural environment and to their traditional way of life resulting from their projects. Furthermore they are not required to pay indigenous peoples due damages or to take into account the existence of sacred sites of indigenous peoples within those territories.

### **Right to education, health care**

21. The Federal Law “On local self-administration”, allows for the possibility of settlements with less than 1,000 inhabitants to be merged into neighbouring larger settlements. Following a decision by the Russian Government, this possibility is being aggressively used with regard to indigenous settlements, which are often very remote and small. In those indigenous villages impacted by this policy, health care and education facilities as well as other social services are being terminated. As a consequence of this the majority of indigenous peoples in rural areas are now left on the brink of misery, without access to employment, health care or education.

### **Incidents of discrimination in mass media**

22. Recently, Russian mass media has increased the level of discriminatory and racist coverage of indigenous peoples of the North. This negative portrayal of indigenous peoples is motivated by the struggle of indigenous peoples' organisations for the respect for their land rights, and where these and other rights have been violated for compensation for the considerable damage caused by industrial exploitation.

### **Forced relocation / Involuntary resettlements.**

23. In clear violation of the widely acknowledged international customary norm<sup>ix</sup> requiring consent of indigenous communities prior to the authorization of projects involving their resettlement or relocation the current energy strategy, valid until the year 2020, adopted by the Russian authorities includes projects involving mass resettlement of indigenous peoples without prior consultation and without their consent.
24. One of these projects is the “Programme for the comprehensive industrial development of deposits on Yamal peninsula and adjacent waters”<sup>x</sup>, which is implemented by Gazprom and which, according to its public announcement, requires the alienation of land, on which currently approximately 500 families of Nenets herders practice reindeer husbandry. Another is the programme for the construction of the Evenkiiskaia hydroelectric dam on the Lower Tunguska river in Krasnoyarsk province, which is implemented by OAO HydroOGK and which will submerge a number of Evenk settlements located in the river valley. RAIPON has received letters from the inhabitants of those settlements strongly protesting the proposed projects in their lands and the impacts on their communities.
25. In summary violations of the rights of indigenous peoples in Russia are widespread and result from a combination of an inadequate and contradictory legal and policy frameworks that afford no protection for their land, livelihood and consultation rights, an increasingly inadequate provision of social services and the launching of programmes that result in forced displacement of indigenous communities and destruction of the natural resource base upon which they rely for their subsistence and cultural practices. Rights violated include the right to life, work, free choice of work, to an adequate standard of living, health, food, free choice of residence as well as freedom of conscience and religion. The right of peoples to self-determination, articulated in common Article 1 of the ICCPR and ICESCR and reiterated in the UN Declaration on the Rights of Indigenous Peoples, which envisages a self-determined economical, social and cultural development and control over natural resources is clearly violated, as the fundamental provision according to which “In no case may a people be deprived of its own means of subsistence.”

*Cooperation of the country under review with human rights mechanisms, and with NHRIs, NGOs, rights holders, human rights defenders, and other relevant national human rights...;*

26. Russia's state party reports to treaty bodies usually contain sections on the indigenous peoples of the north. However the repeated requests by the Committees on Economic, Social and Cultural Rights (CESCR) and for the Elimination of Racial Discrimination (CERD) to address the unresolved issues of ineffective realization of indigenous land rights, of extractive industries and their impact on the indigenous peoples natural environment and issues such as poverty and insufficient access to services, food and income have not been addressed by the Russia in its reports, nor in its written responses to questions posed by the relevant committees' country rapporteurs.
27. With regards to indigenous peoples, Russia has failed to ratify ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries and abstained in the vote for the UN Declaration of the Rights of Indigenous Peoples. Furthermore, Russia has failed to invite the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples to visit Russia.
28. Additionally, over the last three years, the Ministry for Regional Development, which is in charge of indigenous affairs, has been increasingly uncooperative with indigenous organisations. It failed to engage with them with regards to the much needed improvement of the legal basis for the realization of the indigenous peoples' rights and also failed to endorse the creation of Territories of Traditional Nature Use (TTP) required under the 2001 legislation referred to above.

*Achievements made by the country under review, best practices which have emerged, and challenges and constraints faced by the country under review;*

29. The adoption of the three framework laws mentioned above, on the rights of indigenous peoples, on Territories of Traditional Nature Use and on indigenous *obshchinas* have been landmark steps for the indigenous peoples of the Russian North. However, as previously mentioned, its centrepiece, i.e. the indigenous land titles known as "Territories of Traditional Nature Use" has never been put into practice, for reasons described above.

*Key national priorities as identified by NGOs, initiatives and commitments that the State concerned should undertake, in the view of NGOs, to overcome these challenges and..;*

30. According to former UN special rapporteur on the Right to Food, Jean Ziegler, access to land «must form a key part of the right to food». This especially holds true for indigenous communities, many of whom live in virtually non-cash environments and for whom their traditional subsistence activities such as hunting, fishing and reindeer husbandry constitutes an integral part of their culture, society and tradition and the sole source of income and food. The special rapporteur noted in 2001, that the right to food embodied the notion of cultural acceptability i.e. "sufficient food corresponding to the cultural traditions of the people", something which is of particular relevance when applied to indigenous peoples.<sup>xi</sup>

### **Recommendations:**

31. As State-party to all major international human rights covenants and conventions, the Russian Federation is duty-bound to identify groups within its borders, who are vulnerable to discrimination and violations of their human rights and freedoms and to take all necessary means to overcome existing violations within the shortest possible time frame. The present submission

has clearly identified the indigenous, small-numbered peoples of the North as one of the most vulnerable groups within Russian society. Similar concluding observations have regularly been made by United Nations Treaty bodies, including CERD<sup>xii</sup> and CESCR<sup>xiii</sup>, monitoring Russia's compliance with its obligations under international law.

32. The Russian Federation should immediately take all necessary steps to stop and reverse the deterioration of legal safeguards of indigenous peoples' basic human rights. First and foremost, it should take steps to guarantee indigenous peoples full and immediate access to and legal title over the land which they have inhabited and used since time immemorial. A vital step in this regard would be the full implementation of the law on TTP. For this purpose, existing conflicting legislation over land and resources should be changed accordingly.
33. The Russian Federation should take the necessary steps to ensure, that industrial exploitation of indigenous territories does not go ahead without the Free, Prior and Informed Consent of the indigenous communities affected. Participatory social impact assessment should be a mandatory element of project approval procedures, especially for extractive industries.
34. The Russian Federation should take the necessary steps to ensure that damage to the indigenous peoples' territories and resources caused by these industries is minimised and compensated adequately.
35. The Russian Federation should withdraw all support for projects which lead to involuntary resettlement of indigenous communities, such as the Evenkiiskaia hydroelectric dam.
36. The Russian Federation should immediately stop its policy of merging small indigenous settlements administratively with larger settlements, as long as these mergers imply the dismantling of all public services and infrastructure in the small settlements.

<sup>i</sup>Russian: *Korennye, malochislennye narody Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii*

<sup>ii</sup>Source of translation: <http://www.constitution.ru/en/10003000-04.htm>

<sup>iii</sup>Russian title: “*O garantiakh prav korennykh, malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii*”

<sup>iv</sup>“*O territoriakh traditsionnogo prirodopol'zovaniia korennykh, malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii*”

<sup>v</sup>Russian: *Territorii traditsionnogo prirodopol'zovaniia*

<sup>vi</sup>“*Ob obshchikh printsipakh organizatsii obshchin korennykh, malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii*”

<sup>vii</sup>Literally: “original habitat” (*iskonnaia sreda obitaniia*)

<sup>viii</sup> One of the most prominent examples is the West Siberian oil industry operating in Khanty-Mansi and Yamal Nenets autonomous okrugs. Much of the indigenous peoples territories of these regions have already been devastated and turned into zones of environmental emergency during the 1970s and 1980s. Indigenous peoples were also the group most affected by the largest onland oil spill ever, which occurred in 1994 near Usinsk in the North of Komi republic and released more than 100,000 metric tons of crude oil into rivers, lakes and forests. In recent years, indigenous peoples of the Far Eastern island of Sakhalin have vigorously protested against misconduct by transnational oil companies, which are responsible for regular mass fish kills in the North of the Island. In Southern Siberia, in Kemerovo region, indigenous peoples such as the Teleuts see their villages under siege by open cast mining, while in Eastern Siberia and the Russian Far East, large hydroelectric dams, gold and diamond mining have forced indigenous peoples to resettle. Other regions which are affected by a massive intrusion of oil and gas industries include Kamchatka's North-Western shelf in the Sea of Okhotsk, Yamal peninsula and the Nenets autonomous okrug.

<sup>ix</sup> For example UN Declaration on the Rights of indigenous peoples (Art. 10, 19 and others), ILO Convention 169 and policies of international financial institutions.

<sup>x</sup>Programma kompleksnogo promyshlennogo osvoeniia mestorozhdenii poluostrova Yamal i prilegaiushchikh akvatorii”

<sup>xi</sup>Report of the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10 UN Document E/CN.4/2001/53 7 February 2001 para 14.

<sup>xii</sup> Concluding observations 2003 (UN doc CERD/C/62/CO/7) Para 20; concluding observations 2007 (CERD/C/RUS/CO/19); Para 15, 20, 24

<sup>xiii</sup> Concluding observations 1997 (UN doc E/C.12/1/Add.13), Paras 14, 23, 30, Concluding observations 2003 (UN doc E/C.12/1/Add.94) Paras 11, 31, 33, 39, 59)