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IPY Project:

Monitoring of Development of Traditional Indigenous Land Use Areas in the Nenets Autonomous Okrug,
Northwest Russia

# LEGISLATIVE REQUIREMENTS FOR THE HYDROCARBON INDUSTRY AND PROTECTION OF THE RIGHTS OF NUMERICALLY SMALL INDIGENOUS PEOPLES OF THE NENETS AUTONOMOUS OKRUG

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# Introduction

The purpose of the present work is the review and analysis of legislative and statutory acts related to oil and gas extraction in the Nenets Autonomous Okrug (NAO). The main focus of this work is the requirements and obligations that are incumbent upon the hydrocarbon extraction companies that have a bearing on the interests and rights of indigenous peoples (NSIPN) [2] as well as the protection of the environment.

In considering these issues it was also necessary to investigate the procedure of allocation of subsoil resources, and the rights of the indigenous people living in this area.

There is another problem which deserves mention: a number of indigenous peoples' rights defined by legislation have a general declarative character and are lacking delineations of the specific duties of the resource extractors to preserve these rights. At the same time, applying Clauses 2 and 18 of the Constitution of the Russian Federations defining the validity of human rights, it is probably possible to achieve enforcement and observance of indigenous peoples' rights by means of the Office of Public Prosecutor and through legal proceedings. Questions concerning the practice of protection of these rights are, however, outside of the scope of this study.

[2] NSIPN: Numerically small indigenous peoples of the North

# I. General issues

## 1. Rights of the NSIPN to conduct traditional ways of life and protection of their primordial residence area

According to Clause 69 of the Constitution, the Russian Federation "guarantees the rights of numerically small indigenous peoples according to the conventional principles and norms of international law and the international contracts of the Russian Federation". According to item "m" of Clause 72, the protection of the primordial inhabitancy and traditional ways of life of the NSIPN, is a joint responsibility of the Russian Federation and its administrative subunits.

Three federal laws are completely devoted to the rights of the NSIPN:

- The federal law N 82-FZ, "On guarantees of the rights of numerically small indigenous peoples of the Russian Federation" (30 April 1999; revised on 22 August 2004 and 26 June 2007);
- The federal law N 104-FZ, "On the general principles of organizing communities of numerically small indigenous peoples of the North, Siberia and the Far East of the Russian Federation" (20 July 2000; revised on 21 March 2002, 22 August 2004 and 2 February 2006);
- The federal law N 49-FZ, "On Territories of Traditional Nature Use of numerically small indigenous people of the North, Siberia and the Far East of the Russian Federation" (7 May 2001; revised on 26 June 2007).

In addition, a number of acts contain positions which define the special status of the NSIPN with respect to the protection of their traditional way of life and primordial inhabitancy.

For example, "traditional places of residence and economic activities of numerically small indigenous people of the Russian Federation" are specially protected according to Part 3 of Clause 4 of the federal law N 7-FZ, "On protection of the environment" (10 January 2002).
The rights accorded to representatives of the NSIPN that can be used in their relationships with the hydrocarbon enterprises are listed in the federal law N 82-FZ, "On guarantees of the rights of numerically small indigenous peoples of the Russian Federation" (30 April 1999).

Clause 8 of this law concerns the rights of the NSIPN to protection of their primordial inhabitancy, traditional ways of life, trades and crafts:

1. Numerically small peoples and the associations they have formed to protect their primordial inhabitancy, traditional ways of life, trades and crafts have the right:

1) to use gratuitously various types of land in their traditional areas, which are necessary to practise their traditional trades and crafts, and to use gratuitously common, widespread minerals[3], as established by federal legislation and regional legislation;
2) to participate in controlling the use of these lands;
3) to participate in controlling the observance of federal and regional laws and laws that bear on protection of the natural environment in the context of the industrial use of the land and natural resources, construction and reconstruction of economic and other developments on the traditional lands of the NSIPN;
6) to participate in ecological and ethnological assessments in the context of prospective federal and regional programmes of natural resource development and environmenal protection of traditional lands;
8) to indemnification for losses caused by damage to Territories of Traditional Nature Use by commercial enterprises, as well as physical persons.

According to the federal law "On guarantees of the rights of indigenous numerically small peoples of the Russian Federation" (revised on 22 August 2004 and 26 June 2007), the administrative subunits of the federation do not have the power to pass acts protecting rights of the NSIPN. Nevertheless, at the level of the NAO, these issues are regulated by both federal and NAO legislation, for example, the NAO law N 671-OZ, "On regulation of land issues on the territory of the Nenets Autonomous Okrug" (29 December 2005), the NAO law N 416-OZ, "On subsoil resources" (2 June 2003), and the NAO law N 341-OZ, "On reindeer husbandry in the Nenets Autonomous Okrug" (15 March 2002).

According to Part 4 of Clause 17 of the NAO law N 341-OZ, "About reindeer husbandry in Nenets Autonomous Okrug" (15 March 2002), "… persons working in reindeer husbandry, their authorized representatives and representatives of the social organization 'Association of Nenets People Yasavey' have the right to request ecological and ethnological impact

[3] This term refers to a list of common minerals and stones, defined by Russian law, which normally are used for building and construction purposes.

assessments of activities potentially infringing the interests of reindeer husbandry and to participate in carrying out such impact assessments".

## 2. Territories of traditional land use and hydrocarbon exploitation

One of the means to protect the traditional way of life and primordial inhabitancy of the NSIPN is the establishment of Territories of Traditional Nature Use (TTNUs). Their definition, as well as the procedures for establishing and managing them, are regulated by the federal law N 49-FZ, "On Territories of Traditional Nature Use of indigenous numerically small peoples of the North, Siberia and the Far East of the Russian Federation" (7 May 2001; revised on 26 June 2007).

According to Clause 1 of this law, TTNUs are specially protected natural territories established for the NSIPN to practise traditional nature use and conduct a traditional way of life. According Clause 5, TTNUs can exist at a federal, regional or local level.

Clause 12 of the law defines how land, or specific natural resources on the land, can be withdrawn from a TTNU for state or municipal needs. The clause also defines the indemnification for losses to the NSIPN caused by such withdrawal.

As TTNUs are specially protected areas, a special legal regime is established within their boundaries. This includes a limitation on economic activities that conflict with the purpose of the establishment of an TTNU in the first place. The federal legislation does not contain an obvious interdiction against carrying out activities related to the exploration for, or the extraction and transportation of, hydrocarbon resources, but Clause 8 of the federal law "On subsoil resources" states that "the use of subsoil resources in specially protected territories should take place in accordance with the status of these territories". Thus, in cases where the regulations for a TTNU prohibit hydrocarbon-related activities within their borders, subsoil resources cannot be allocated for these purposes.

Procedures for establishing and managing TTNUs at a regional level within the NAO are regulated by "Regulations of Territories of Traditional Nature Use of numerically small indigenous peoples of the North in the Nenets Autonomous Okrug", approved through a decree of the NAO Administration on 29 December 2001, N 1025.

Besides this, a number of regulations contained in the NAO laws N 671-OZ, "On regulation of land issues on the territory of the Nenets Autonomous Okrug" (29 December 2005), and N 416-OZ, "On subsoil resources" (2 June 2003) also mention this issue.

Part 2 of Clause 28 of the NAO law "On regulation of land issues on the territory of the Nenets Autonomous Okrug" repeats the regulations of the federal law "On Territories of Traditional Nature Use". It also describes the procedures for land allocations and the use and protection of regional-level TTNUs, as well as how natural resources may be used within TTNUs and how their borders are established by the NAO Administration, in accordance with federal legislation, as well as other laws of the NAO.

Part 6 of Clause 29 of this law states that "withdrawal of the lands, or other termination of rights to the lands for needs contradicting their special-purpose designation within the limits of the specially protected natural territories, is not accepted". In this respect, this NAO law contradicts the above-mentioned Clause 12 of the federal law "On TTNUs", which provides an opportunity for such a withdrawal.

A number of TTNUs are currently established within the NAO through regulations approved by the NAO Administration in 2002. Among them are the regional-level TTNUs "im. Vyucheyskiy", "Erv", "Rassvet Severa", "Kolguev" and at least four other TTNUs. All of these TTNUs have been created with the purposes of protecting the rights and interests of the NSIPN in the NAO, including the preservation of their culture, traditional way of life and traditional economic activities. But none of the relevant regulations precisely delineate what is forbidden within the borders of the TTNU.

Despite this, all the relevant laws do limit the possibilities of conducting hydrocarbon-related activity within the limits of TTNUs, in line with specially protected natural areas. It is therefore necessary to use TTNUs as the mechanism for the preservation of traditional lands for the use of the NSIPN in the NAO.

## 3. General legislative issues regarding mineral exploitation

Issues concerning the exploitation of subsoil resources, including extracting hydrocarbon resources, are regulated by the federal law "On subsoil resources". Besides this, more specific issues are in part regulated by the federal Land, Forest and Water Codes, as well as by the federal laws "On protection of the environment", "On ecological impact assessment" and a number of subordinate acts.

Subsoil resources within the borders of the Russian Federation, including the subsurface space and its mineral, energy and other resources, are subject to state ownership. Private or municipal ownership of subsoil resources is not approved.

There are also laws and subordinate acts at the regional level regulating the exploitation of subsoil resources, including the extraction of hydrocarbon resources. The NAO law “On subsoil resources” was passed in 2003; it was revised in 2005 and 2006.

Clause 35 of the federal law “On subsoil resources” defines as the primary goals of state regulation of the exploitation of subsoil resources the continuous reproduction of the mineral and raw material base, its rational use and the protection of subsoil resources in the interests of present and the future generations of the people of the federation.

According to Clause 6 of the federal law “On subsoil resources”, subsoil resources are mineral occurrences that are investigated or extracted, including through waste mining and related processing methods. Non-extractive ways of using such resources – such as the construction of underground structures – also fall under this law.

Subsoil resources can simultaneously be allocated for geological studies and mineral extractions. Extraction can then be undertaken during or after the geological investigations.

# II. Regulation of mineral exploitation and indigenous rights in the NAO during the allotment of exploitation sites

## 4. The process of allotment of exploitation sites

Clause 10.1. of the federal law “On subsoil resources” defines the the fundamental conditions of allotting subsoil resource sites to their users. These allocations are made by the supreme authorities of the Russian Federation and its administrative subunits. Depending on the subsoil resources in question, allotments are approved by the federal government or its administrative subunits. For the extraction of minerals from Russian waters or the continental shelf, the approval of the federal government is necessary. Geological investigations in Russian waters or the continental shelf are approved through the federal management bodies for subsoil resources. With respect to local-level subsoil resource sites and common, widespread minerals[4], the decision is approved by the government bodies of the administrative subunits of the federation.

The right to use subsoil resources is granted on the following preconditions:

- approval of a commission, created by the federal management bodies for state subsoil resources and including representatives of the relevant administrative subunit of the federation;
- the decision of the competition or auction commission granting use rights to subsoil resource sites for the purpose of exploring for and extracting minerals or, under a combined license, for the purposes of geological studies and the investigation and extraction of minerals, barring sites in Russian waters and on the continental shelf;
- the coming into force of a consortium agreement on division of production, concluded in accordance with the federal law “On consortium agreements on division of production”.

Permission to use subsoil resources is specially sanctioned by the state by a license containing a form with the state emblem of the Russian Federation, as well as text, graphics and appendices. The appendices are an integral component, defining the basic conditions for using subsoil resources. Issuing licenses for the exploitation of subsoil resources is defined in Clause 11 of the federal law “On subsoil resources”.

[4] This term refers to a list of common minerals and stones, defined by Russian law, which normally are used for building and construction purposes.

The license is the document certifying the right of its owner to use subsoil resource sites within certain borders according to the specified purpose, during a limited period of time stipulated by the owner in advance. Between representatives of the government bodies and the subsoil resource user a contract can be signed (although this is not obligatory), with a description of the conditions applying to the use of such sites and the obligations of the parties in this connection.

The license certifies the right to geological investigations of the subsoil resources, to develop the mineral deposits, to carry out waste mining and related processing, and other sorts of exploitation of subsoil resources that are not related to mineral extraction. It is possible to receive one license covering several kinds of subsoil resource use.

The granting of the license is carried out at the consent of the land owner, the land user, or the tenant. Allottment of the land area is carried out according to a procedure regulated by federal legislation, after the project has been approved.

Licenses to exploit subsoil resources are granted through competitions or auctions, as legislatively defined in the "Regulations on the procedure of licensing for subsoil resource users" (Decision of the Supreme Court of the Russian Federation on 15 July 1992, N 3314-1, revised on 26 June 2007) and the "Instruction on the procedure of granting of concessions for development of gas and oil deposits" (ratified by the decision of *Gosgortekhnadzor* of the Russian Federation on 11 September 1996, N 35; revised on 13 July 2006).

Allocating subsoil resource sites proceeds as follows:

- Preliminary concession boundaries are defined.
- Announcement of an auction, or competition, which allocates sites for development, is published by a special authorized body in a federal, republican or regional press organ, an independent press organ, and a local press organ, not later than 3 months – for large objects not later than 6 months – prior to the date of the event.
- The enterprises submit applications.
- In the case of an auction, the applications undergo a preliminary examination (elimination). For competitions a preliminary expert examination is not conducted.
- After the application form for participation in a competition is accepted, the geological information package for the site of interest is given to the applying enterprise.
- On the basis of the geological information, the applying enterprise calculates the basic technical and economic parameters of the planned development.

- The auction or competition is carried out by a commission of experts, which renders a decision.
- The authorities render their decision on the basis of the decision of the expert commission of the auction or competition.
- A preliminary agreement is drafted. This outlines the recultivation and restoration of the tract of land in question. The land is allocated in accordance with the federal Land Code.
- A state ecological impact assessment of the license's supporting documents is carried out.
- The winner of the competition or auction is granted the license.
- Registration of the license by federal or regional geological resource management bodies (within a month from its receipt). The license comes into force after its registration.
- Authorities are obliged to publish publicly lists of all enterprises participating in competitions or auctions, a list of the enterprises which have received licenses, and the conditions on which licenses have been given. The information should be published not later than 30 days from the date of the decision on the competition or auction.
- The concession boundaries are specified.
- The resource exploitation project is outlined, other project documentation is developed.
- The project is carried out.

These procedures of resource exploitation in the NAO are regulated by the NAO law N 416-OZ, "On subsoil resources" (2 June 2003). According to a preamble of this law:

"The major task of the law is the establishment of relationships directed towards the rational exploitation of subsoil resources, nature protection norms and environmental safety, a combination of the exploitation of subsoil resources and the preservation of the traditional way of life of the indigenous peoples of the North".

The law regulates the procedure of allocating subsoil resource sites for exploitation, the exploitation itself, and the procedures for terminating the resource exploitation, defining details of the terms of the federal legislation. According to our investigations, Clause 35 of the law includes the following special duties of the license owner (subsoil resource user):

- to fulfill the conditions set out by the license and the license agreement (contract) with respect to production and other agreements (contracts) concluded on their basis, including agreements with Northern indigenous peoples;
- to respect the rights of indigenous people of the North with regard to the protection of their traditional lands, traditional way of life and occupations.

Thus, the law demands, among other obligations, the observance of the interests of the NSIPN during the exploitation of resources.

## 5. The process of allotting land for investigation, extraction and transportation of oil and gas; conditions and restrictions

According to item 4 of Clause 88 of the federal Land Code , paragraph “Industrial areas”, land areas for mineral extraction are given to mining and hydrocarbon companies after registration of the concession boundary and the statement on land recultivation and restoration subsequent to exploitation.

Thus, the obligation to restore and recultivate land damaged during hydrocarbon extraction is legislatively established.

Clause 29 of the federal Land Code stipulates that allotting state or municipally owned land to citizens and legal persons is carried out in accordance with government agencies or local self-government bodies that possess the allotment rights.

Extracting subsoil resources presumes the construction of various structures. The federal Land Code regulates the allocation of the sites for constructions. Part 3 of Clause 31 of the federal Land Code states:

> “When allotting land in places of indigenous peoples’ traditional nature use and economic activities … for purposes not connected with their traditional economic activities and crafts, one should organize meetings and public referenda concerning withdrawal of – and compensation for – the sites for … the construction of structures which infringe the interests of the specified peoples and communities.
>
> The executive government or local government bodies assigned by Clause 29 of the Land Code are responsible for the preliminary coordination in locating the structures in accordance with the results of such meetings or referenda.”

The procedures for carrying out such referenda and meetings are regulated by special federal and regional legislation.

The specifics of allotting sites for constructions and where installations shall be located in connection with subsoil resources extraction are regulated by the NAO law N 671-OZ, “On regulation of land issues on the territory of the Nenets Autonomous Okrug” (29 December 2005).

This law establishes the following procedures for allotting sites for constructions and work connected with subsoil resource use.

Clauses 19 and 21 state that for the allotment of land for constructions, locating of structures and work connected with subsoil resource extraction, and for prospecting in state lands of the NAO, it is necessary to present:

- an approved plan for the recultivation of the land;
- the consent of the main land user (tenant), and in the case of legal necessity, the consent of the representatives of the NSIPN or ethnic communities, including tribal communities, for the withdrawal of the land.

Part 3 of Clause 21 of the law relates to the decision of the Administration of the NAO on allotting land for carrying out prospecting, including the duties of the tenant to re-establish the land conditions in a way suitable for their assigned use, to perform necessary recultivation, and other conditions stipulated by the current legislation.

For carrying out prospecting, sites are leased for a term not exceeding one year.

Clause 22 of the law also establishes restrictions and an interdiction on allotting sites for structures and installations and work related to the exploitation of subsoil resources. The sites are not allotted in case in which their planned use directly threatens the environmental safety of the population or the land, or the traditional lifeways and economic activities of the NSIPN.

Clause 29 of the law states the general rules of allotments and use of land in places of traditional nature use and economic activities of the NSIPN. These are the main provisions:

- the regulation of use and protection of the land in places of traditional nature use and economic activities of the NSIPN is differentiated according to a zoning of territories, and should be compatible with the customs of the people in question and not impede their activities;
- in places of traditional nature use and economic activities of the NSIPN in the NAO a special legal regime of land use can be established;
- when allotting land in places of traditional nature use and economic activities of the NSIPN for purposes not related to their traditional economic activities and crafts, the opinion of these peoples is to come to light through public referenda concerning the withdrawal of the land for state or municipal needs and the construction of structures which infringe the interests of the mentioned peoples and communities;
- conditions for allotting land in places of traditional nature use and economic activities of the NSIPN should provide compensations for all losses caused by the withdrawal of

these areas. The size of the specified losses is defined by an agreement between the parties and is calculated according to regulations established in the current legislation;

- when allotting ground areas in places of traditional nature use and economic activities of the NSIPN, an agreement can be entered between land owners, tenants, land users, and persons to whom the sites are allotted, or in favour of which the user rights are restricted, about indemnification for losses connected with damage, pollution, unauthorized use, or other infringement of the rights of the peoples and communities in question. The size of the compensation is defined in the agreement.

Thus, the legislation of the Russian Federation and the NAO requires that the allotment of land for purposes not connected with conducting a traditional way of life are coordinated with the NSIPN. Legislation also delineates the necessary conditions concerning compensations and indemnifications for the resulting losses to the NSIPN.

# 6. Problems concerning state assessment

## State Environmental Assessment (SEA)

The basic mechanism of environmental protection which was used in Russia until 1 January 2007 was the State Environmental Assessment. Practically of all kinds of economic activities were subject to the State Environmental Assessment (SEA).

Since 1 January 2007, after a modification of the federal law N 232-FZ, "On modification of the Town-planning Code of the Russian Federation and separate acts of the Russian Federation" (18 December 2006; revised on 8 November and 4 December 2007), the role of the SEA is considerably reduced.

Before the law came into force, environmental assessment included "an establishment of the conformity of the planned economic and other activity with environmental requirements and a definition of the admissibility of the realization of the object of the environmental assessment, with an outlook on the prevention of possible adverse influences of this activity on the surrounding environment and the social, economic and other consequences of the realization of the object of the environmental assessment". (*Editor's note:* In other words, environmental assessment included consideration of whether the proposed development would have negative social and economic impacts.)

From 1 January 2007 this was restated as “an establishment of the conformity of the documents and/or the documentation proving that the planned object of the environmental assessment of economic and other activity, with the environmental requirements established by technical regulations and the legislation in the field of environmental protection, with an outlook on the prevention of negative influences of such activity on the environment”.

When comparing these definitions some major main differences can be seen. First, the subject of the assessment since 1 January 2007 is not the poposed economic activity, but the documents and the documentation. Second, all social, economic and other consequences of the poposed economic activity disappear from the purposes of the assessment. Third, and this is most important, as of 1 January 2007, it is a requirement that technical regulations coincide with the environmental requirements. As of today, there are no technical regulations regarding the maintenance of environmental safety. One more difference is that after 1 January 2007 the environmental assessment does not make a recommendation about whether the proposed economic activity should be permitted, but instead merely determines whether it conforms with the environmental requirements.

The law has brought changes into a significant number of federal laws, including “On environmental assessment”, ”On protection of the environment”, “On the protection of Lake Baikal”, “On an exclusive economic zone”, “On fauna”, “On protection of population and territories against extreme situations of natural and technogenic character” (hereunder project documentation for nuclear energy use) and a number of others.

Requirement for carrying out SEAs were removed from all these laws, replaced by a State Assessment of the Project Documentation (SAPD), provided by the Town-planning Code.

Despite these changes, licenses to utilize subsoil resources are still subject to SEA. Clauses 11 and 12 of the federal law “On environmental assessment” state that licenses for activities which can affect the environment are subject to both federal- and regional- level the SEAs**.**

Clause 14 contains a list of necessary conditions for carrying out the SEA. One such condition is an estimate of the impact on the environment, as well as documentation of discussions with the public and public organizations (associations) organized by local government institutions.

Thus, a SEA should precede the granting of a licence for the development of oil and gas projects. Representatives of the NSIPN have the opportunity to participate in the Estimation of Environmental Impact (EEI) as well as directly in the SEA.

## State Assessment of the Project Documentation (SAPD)

As a result of changes in the federal Town-planning Code which came into force on 1 January 2007, oil and gas projects are subject to state assessment. Clause 49 defines the the objective of the State Assessment of the Project Documentation (SAPD) and the technical investigations: an assessment of whether the project documentation conforms with the requirements of the technical regulations, including sanitary, epidemiological and environmental requirements, requirements of cultural heritage protection, requirements of fire, industrial, nuclear, radiation and other safety issues.

As noted above, technical regulations in the field of environmental protection are absent. It is thus quite possible that the environmental assessment will not be carried out at all.

It is also necessary to note that in Clause 48, Item 12 of the Town-planning Code, in the framework of project documentation for the state assessment, the Estimation of Environmental Impact (EEI) is not mentioned. There is only a list of measures concerning the protection of the environment, with no details about the measures themselves. At the same time, Item 2 of Clause 32 about the compulsion of carrying out an EEI in view of alternative variants and with obligatory participation of the public is excluded from the federal law ”On protection of the environment”.

From all this can be concluded that, after exclusion of these objectives from the (former) SEA, the process of EEI may not be carried out at all.

## Ethnological assessment

The concept of ethnological assessment is introduced by Clause 1 of the federal law N 82-FZ, “On guarantees of the rights of numerically small indigenous peoples of the Russian Federation” (30 April 1999). According to Item 6 of the clause, “ethnological assessment is a scientific investigation of the influence of changes of the primordial inhabitancy of numerically small indigenous people and the welfare … of an ethnic group”.

According to Clause 8, Part 6, the NSIPN have the right “to participate in the work on environmental and ethnological assessments during the process of developing federal and regional programmes for natural resources development and protection of the environment in places of traditional nature use and economic activities of indigenous peoples”.

Except for these positions, the Russian legislation contains no references to regulation of the process of ethnological assessments and their status.

Despite this, experiences of carrying out ethnological assessments of oil and gas projects exist from the Yamal-Nenets Autonomous Okrug and Sakhalin Oblast.

Clause 17, Part 4, of the NAO law N 341-OZ, "On reindeer husbandry in the Nenets Autonomous Okrug" (15 March 2002) states that "persons engaged in reindeer husbandry, their authorized representatives and representatives of the … Association of Nenets People 'Yasavey' have the right to put forward proposals on carrying out environmental and ethnological assessments of economic and other activity infringing the interests of reindeer husbandry, and to participate in carrying out these assessments".

In spite of the fact that regulations for ethnological assessments are not clear, the NSIPN of the NAO and their authorized representatives can demand that such assessments are carried out, when planned oil development projects infringe their interests.

## 7. Opportunities for participation of representatives of the NSIPN in making decisions infringing their interests

Based on the above analysis, it is possible to draw the conclusion that participation of the NSIPN in decision-making regarding the carrying out of hydrocarbon projects is possible at the following stages:

**1) At the stage of allocation of the land by referenda, meetings and coordination with representatives of the NSIPN**

Legislation stating these rights:

- Clause 31, Item 4, of the federal Land Code;
- Clauses 19, 21, 29 of the NAO laws N 671-OZ, "On regulation of land issues on the territory of the Nenets Autonomous Okrug" (29 December 2005)

**2) At the stage of the Estimation of Environmental Impact (EEI)**

As the substantiation of a license is a matter of a SEA, and as carrying out an EEI is obligatory according to the current legislation, participation of the public should take place as stated in the "Position on estimation of environmental impact of planned economic and other activity in the Russian Federation", approved by Order N 372 of the State Environmental

Authority (*Goskomekologiya)* of the Russian Federation (16 May 2000; hereafter called the Position).

This Position defines the main principles of carrying out an EEI, which include: the principle of presumption of potential harm of any proposed economic activity; compulsion of carrying out an EEI at all stages of preparing the documentation of this activity; compulsion of consideration of alternative variants; the principle of public participation in preparation and working at an EEI at all stages, and others (section II).

Section IV of the Position describes in detail the procedure of informing the public and participation from the public during the EEI that enables the NSIPN to realize the rights. The EEI in our country is a unique mechanism of public participation in environmentally significant decisions. It includes:

- the duty to inform the public at all stages of the EEI and to consider their proposals, notes and comments;
- public discussions of planned activity, including public hearings;
- an opportunity to present notes, proposals and comments regarding the proposed development at all stages of the public discussion.

**3) At the stage of the Public Environmental Assessment (PEA)**

The process of carrying out a PEA is regulated by Clauses 20-25 of the federal law "On environmental assessment". Main provisions of these clauses are:

- A Public Environmental Assessment (PEA) is organized and carried out under the initiative of citizens and public organizations (associations), and also under the initiative of local self-government bodies by public organizations (associations), the charters of which include work on the protection of the environment, including the organization and carrying out of environmental assessments. Public organizations must be registered according to the federal legislation (Clause 20);
- A PEA is carried out with respect to the same proposed development projects as the subsequent or simultaneous SEA (Clauses 21, 22);
- the public organizations (associations) which are carrying out a PEA have the right (Clause 22):
    - to receive documentation regarding the proposal from the applicant, in the same form as given to the SEA;

- to participate as observers in sessions of expert commissions of the SEA and to participate in concluding discussions and public discussions under the PEA carried out by them;

- PEA (Clause 23) is carried out after its registration in local government institutions;
- the number of reasons for possible refusal in registering a PEA is limited (Clause 24);
- the conclusion of the PEA is reported to the federal executive authority which is carrying out the SEA, to the applicant preparing the documentation which is subject to PEA, to the bodies which decide whether the proposed project can be carried out and to the local self-government bodies; it can also be handed over to other interested persons (Clause 25);
- the conclusion of PEA becomes valid after it has been stated by the federal executive authority in the field of environmental assessment or by a government institution of an administrative subunit of the Russian Federation (Clause 25).

**4) At the stage of the State Environmental Assessment (SEA)**

According to Clause 19 of the federal law ”On environmental assessment”, citizens and public organizations (associations) have the right

- to propose that PEAs of economic and other activities that infringe on the environmental interests of the inhabitants of a given territory be carried out, in accordance with current federal law;
- to write to federal and regional authorities with their suggestions about the environmental aspects of planned economic and other activities;
- to be informed about assessment results by federal and regional authorities that are carrying out SEAs of specific prospective developments;
- to carry out other actions relating to environmental assessment that are not prohibited by federal legislation.
- The assessment conclusions prepared by a SEA expert commission, and the decision as to whether the proposed project can be permitted, should take into consideration all the material submitted to the commission and it should thereby reflect public opinion.

# III. Indigenous rights and duties of the hydrocarbon industry

## 8. Issues of environmental protection during hydrocarbon exploration and exploitation

Preservation of the environment is a requirement for hydrocarbon projects. As the traditional way of life of the NSIPN is closely connected with the condition of the environment, the right to a favourable environment is stated in Clause 42 of the federal Constitution.

Issues concerning the preservation of the environment are determined in the federal Constitution, federal laws and other statutory acts.

Clause 4 of the federal law, N 7-FZ, "On preservation of the environment" (10 January 2002), specifies objects of special protection as well as sites included in the World Heritage List, state nature reserves, national parks, and areas of primordial inhabitancy and traditional nature use by the NSIPN.

Excerpts of the basic legislation concerning environmental protection and natural resources in the contect of hydrocarbon prospecting and exploitation follow.

### General issues of environmental protection in the context of exploration for and extraction of subsoil resources

***The federal law N 7-FZ, "On preservation of the environment" (10 January 2002)***

**Clause 34.** General requirements of environmental protection in the context of locating, designing, constructing, reconstructing, commissioning, operation, preservation and liquidation of buildings, structures, installations and other objects:

1. Locating, designing, constructing, reconstructing, commissioning, operation, preservation and liquidation of buildings, structures, constructions and other objects rendering direct or indirect negative influence on the environment are to be carried out according to requirements of environmental protection. Actions should be taken to secure environmental protection and restoration, rational use and reproduction of natural resources, and maintenance of environmental safety.

2. Breaching the requirements of environmental protection entails a stop by court order of locating, designing, constructing, reconstructing, commissioning, operation, preservation and liquidation of buildings, structures, installations and other objects.
3. Complete termination of locating, designing, constructing, reconstructing, commissioning, operation, preservation and liquidation of buildings, structures, installations and other objects that breach requirements of environmental protection takes place on the basis of a decision by court and/or tribunal.

**Clause 51.** Requirements of environmental protection relating to industrial waste

1. Industrial waste, including radioactive waste, must be collected, neutralized, transported, stored and/or disposed of using environmentally sound methods as defined by federal legislation .
2. These actions are prohibited:
    - dumping industrial waste, including radioactive waste, in surface or underground water reservoirs, in water catchment areas, in the subsoil and on the ground;
    - deposition of radioactive or other dangerous waste near cities or rural settlements, in forests and parks, resorts, health-improvement or recreational zones, on animal migration routes, close to spawning areas and elsewhere where the waste constitutes a danger to the environment, ecosystem or human health;
    - burying radioactive or other dangerous waste in water catchment areas for underground water reservoirs used as sources of water supply or for hydrotherapeutic purposes, or for the extraction of valuable subsoil resources;
    - importing radioactive or other dangerous waste into the Russian Federation with the purpose of their deposition or neutralization.
3. Regulations concerning waste, including dangerous waste and radioactive waste, are regulated by the federal legislation.

***The decision of the State Mining Directorate (Gosgortekhnadzor) of the Russian Federation of 6 June 2003, N 71, "On the statement of 'Rules of protection of subsoil resources'"***

1. During the exploitation of subsoil resources, safety of life and health of the population, protection of buildings and constructions, air, ground, forests, water, fauna and other elements of the environment shall be ensured.

2. During the exploitation of subsoil resources, environmental conditions and nature protection measures shall be checked regularly. If deemed necessary, the application of more effective environmental protection measures will be required.
3. Land destroyed through mining shall, after the cessation of the work, be brought into a suitable condition for further use. When work results in the destruction of the soil cover, the fertile ground layer shall be removed, stored and used on recultivated or unproductive land.
4. During the extraction of mineral deposits, actions to prevent water and wind erosion, salting, bogging or other sorts of soil degradation shall be carried out.
5. During the exploitation of surface and ground water, the water needs of the population for drinking and household uses,and the protection of water from exhaustion or pollution, including from sewage, shall have priority.
6. Within the boundaries of the concession, hydro-geological surveys and checks of the ground and surface water conditions shall be undertaken.
7. The allocation in settlements of dumps of … and waste deposits, being a source of air pollution by dust, harmful gases, evil-smelling substances, ….

## Duties of the user of subsoil resources concerning environmental protection

Clause 22 of the federal law N 2395-I, “On subsoil resources” (21 February 1992), states the duties of subsoil resource users, including preservation of the environment.

**Clause 16** of the NAO law, “On exploitation of subsoil resources … ” establishes the following duties of subsoil resource users. The user of subsoil resources is obliged to observe:

1) legal requirements regarding conducting work connected with the exploitation of subsoil resources and the primary processing of minerals;
2) the requirements of technical projects, plans and schemes of mining development,

…

7) regulations concerning the protection of subsoil resources, air, ground, forests, water, buildings and other structures from negative impacts resulting from the exploitation of subsoil resources;
8) that land sites and other natural elements degraded during the exploitation of subsoil resources shall be restored to a suitable condition for their further use;

…

10) the specific conditions established by the licence or the agreement for the project, and the timely delivery of correct payments.

…

x) the requirements of federal and NAO legislation regarding environmental protection.

Users of subsoil resources or other legal and physical persons involved in the exploitation of subsoil resources must have special qualification and experience, confirmed by a state license (certificate, diploma) to carry out such activities: geological prospecting, search, investigation, various methods of mineral extraction, construction and operation of underground structures, and other relevant activities.

Two federal orders, one of 21 August 2000, N 613, "On urgent measures for prevention and removal of spills of oil and oil products" (revised on 15 April 2002) and the other of 15 April 2002, N 240, "On the order of the organization of actions under the prevention and removal of oil spills of and oil products in the territory of the Russian Federation" establish duties for enterprises that extract and transport oil regarding the preparation and performance of emergency plans. In the context of current developments in oil extraction in the NAO it is urgent that the necessary regulations delineating the order's implementation are approved so that these orders can go into effect.

In the NAO, the "Regulations of the organization of actions under the prevention and removal of oil spills and oil products in the territory of Nenets Autonomous Okrug", approved by the NAO administrative resolution of 24 October 2002, N 595, also applies. This also describes the duties of users of subsoil resources in this sphere.

## Protection of water resources

***The Water Code of the Russian Federation***

**Clause 52.** Use of water for investigation and extraction of minerals.

1) Use of water for investigation and extraction of minerals shall be carried out according to the present Code and the legislation on subsoil resources.

**Clause 55.** Basic requirements for protection of water

…

2) When using water resources, physical or legal persons are obliged to carry out measures to ensure an adequate supply for household use among the local inhabitants and protection of water resources according to the present Code and other federal laws.

## Protection of woods and forest plots

State- or municipally-owned forest plots can be leased for geological studies of subsoil resources and for the extraction of mineral deposits.

Geological studies of subsoil resources in forests controlled by the Federal Forest Service without allocation of a forest plot is permitted on the basis of sanctions by federal and local governments, as long as such work does not entail the felling of forest plantings.

***The Forest Code of the Russian Federation***

**Clause 21.** Construction, reconstruction and operation of structures which are not part of the forest infrastructure.

1) Construction, reconstruction and operation of objects, which are not part of the forest infrastructure, on the "Forest Fund" are permitted for:
   - geological studies of subsoil resources;
   - development of mineral deposits.

**Clause 25.** Types of forest use

…

- geological studies of subsoil resources, extraction of mineral deposits.

**Clause 43.** Use of forests for geological studies of subsoil resources and for extraction of mineral deposits.

1. Use of forests for geological studies of subsoil resources and the extraction of mineral deposits can only be carried out in accordance with Clause 21 of the Land Code.
2. State- or municipally-owned forest plots are leased for geological studies of subsoil resources and the extraction of mineral deposits, except in the cases stipulated by Part 3 of the present clause.
3. On the basis of federal or local government sanctions, geological surveys of subsoil resources in forests controlled by the Federal Forest Service is permitted without allocation of a forest plot, as long such work does not entail the felling of forest plantings.
4. Regulation of the use of forests for geological studies of subsoil resources and for the extraction of mineral deposits is established by the authorized federal authority.

## 9. Compensation for damage to the traditional way of life and Territories of Traditional Nature Use as a result of hydrocarbon investigations, extraction and transportation

As stated above, according to Clause 8 of the federal law N 82-FZ, “On guarantees of the rights of numerically small indigenous peoples of the Russian Federation” (30 April 1999), NSIPN have the right to compensation for damage caused to their living space by economic activities of organizations of all forms of ownership or physical persons.

Similarly, Clause 29 of the NAO law N 671-OZ, “On regulation of land issues on the territory of the Nenets Autonomous Okrug” (29 December 2005), states that:

- conditions for the allotment of land in places of traditional nature use and economic activities of the NSIPN should provide compensation for all losses caused by the withdrawal of these areas. The size of the losses is defined by an agreement between the parties and is calculated as delineated in the current legislation;
- when allotting land in places of traditional nature use and economic activities of the NSIPN, an agreement can be entered between land owners, tenants, land users, and persons to whom the land is allotted, or in favour of which the user rights are restricted, about indemnification for the losses connected with damage, pollution, unauthorized use, or other infringement of the rights of the NSIPN. The size of indemnification is defined under the agreement of the parties.

Thus, both federal and regional legislation state the right of the NSIPN in the NAO to receive compensation for the damage rendered by hydrocarbon exploitation to their traditional nature use and a traditional way of life. The procedure of payment and calculations of the sum of the damage which is subject to compensation is defined under the agreement between the parties.

The legislation of the NAO demands agreements between users of subsoil resources and representatives of NSIPN at a stage of development of the project. The advantage of this requirement is the fact that the law guarantees a compensation of damage to the NSIPN; the disadvantage is the fact that the real impact on the Territories of Traditional Nature Use and the traditional way of life can be much larger than paid off under the agreement.

If the parties disagree about the size of indemnifications for damage that has occurred, they have the right to bring the case to court.

Clauses 77-79 of the federal law “On preservation of the environment”, which states the duty of full indemnification for damage to the environment, as well as regulations regarding the payment, can be used to calculate compensation for damages that have occurred.

According to Clause 78, calculating the size of the environmental damage caused by breaching environmental protection legislation is grounded in the costs of restoring and recultivating the degraded environment and carrying out whatever reconstruction work as may be required.

At the federal level, a number of methods to estimate damage are approved:

- the method of damage estimation from the destruction of fauna and the infringement of its life space, approved by the State Environmental Authority (*Goskomekologiya*) of the Russian Federation on 28 April 2000;
- methods from the assessment of, and the compensation for, damage to the environment as a result of environmental law infringement, approved by the State Environmental Authority (*Goskomekologiya)* on 6 September 1999.

A number of legal documents are recommended to use for estimation and compensation of damage as a result of environmental law infringement, approved by decree of the State Environmental Authority (*Goskomekologiya*) on 23 July and other documents.

At the NAO level, the regulation N 23, “Rates for calculating the size of compensation for damage caused by legal and physical persons through illegal hunting, gathering, preparation or destruction of objects belonging to the Red List of endangered species of the NAO, as well as the destruction and degradation of their living space” (26 January 2005).

Unfortunately, to our knowledge, these calculation methods do not match the real size of the caused damage and losses, nor the actual costs of restoration of the natural condition of the environment.

# IV. Termination of mineral exploitation and liability for infringement of legislation

## 10. Basis for termination of exploitation rights

Infringements of license conditions and systematic infringement of instructions form a basis for the termination of exploitation rights**.** If the resource user does not comply to obligatory reporting, as demanded by the legislation, a prescheduled termination of the granted rights is possible. This is in accordance with Clause 21 of the federal law “On subsoil resources” and Part of 3 Clause 16 of the NAO law “On exploitation of subsoil resources”.

**Liquidation and continuation of the enterprises**

After the exploitation of minerals, after the expiration of the licence, or after the prescheduled termination of exploitation rights, the enterprise either is liquidated or continued.

## 11. Responsibilities concerning infringement of mineral legislation

**Administrative liability**

Clauses 7.3., 7.4., 7.10., 7.14. and 7.16 of the Code on Administrative Offences (CoAO) state the responsibility in the form of monetary penalties for the following offences:

**Clause 7.3.** CoAO - for exploiting subsoil resources without permission (license) or breaching the conditions stipulated by the permission (license);

**Clause 7.4.** CoAO - for building in mineral exploitation areas without special permission, or for not following the requirements regarding building and construction safety;

**Clause 7.10.** CoAO - for giving user rights for ground, subsoil resources, forest plots or water objects, or exchanging grounds or subsoil resource sites, forest plots or water resources;

**Clause 7.14.** CoAO - for carrying out earth, construction or other works without the permission of the state authority for cultural heritage protection;

**Clause 7.16.** CoAO - for illegal alienation of grounds on specially protected historical or cultural heritage lands.

The maximum penalty for infringement of the clauses of the CoAO amounts to:
citizens: 2 000 RUB
officials: 5 000 RUB
legal persons: 40 000 RUB

**The criminal liability**

The Penal Code of the Russian Federation (UK RF) stipulates the responsibility for infringement of safety regulations for mining, construction and other works (Clause 216 of the Penal Code), for breaching regulations of protection and exploitation of subsoil resources during planning, allocation, construction, commissioning and operation of mining enterprises or underground constructions which are not connected with the extraction of minerals, and also for arbitrarily building in mineral exploitation areas (Clause 255 of the Penal Code).