

**Role of the State and Private Sector in Implementing the Principle  
of Free, Prior and Informed Consent**

In the Russian Federation, the legislation on small-numbered indigenous peoples continuing to lead a traditional lifestyle and preserving a traditional economy was developed in the 1990-s. It contains legal guarantees of the implementation of the right to obtain free, prior and informed consent, including through broad consultations or other forms of taking into account the opinions of small-numbered indigenous peoples and of their participation in decision-making process on matters that affect them.

In accordance with Article 8 of the Federal Law 82-FZ of April 30, 1999 "On guarantees of the rights of small-numbered indigenous peoples of the Russian Federation", small-numbered peoples and communities of small-numbered peoples, in order to protect their native habitat, as well as traditional lifestyle, economy and crafts have the right to:

- participate in exercising control over the use of different categories of lands necessary for operating the traditional economy and practicing the traditional crafts of small-numbered peoples, as well as over the use of widespread mineral resources in the areas of traditional habitat and traditional economic activity of small-numbered peoples;

- participate in exercising control over compliance with federal laws and laws of the constituent entities of the Russian Federation on the protection of environment during the industrial use of lands and natural resources, construction and reconstruction of economic institutions and other facilities in the areas of traditional habitat and traditional economic activity of small-numbered peoples;

- participate through authorized representatives of small-numbered peoples in drafting and adoption of decisions on protection of native habitat, as well as traditional lifestyle, economy and crafts of small-numbered peoples by

state authorities of the Russian Federation, state authorities of the constituent entities of the Russian Federation and local self-government authorities;

- participate in ecological and ethnological examinations during the development of federal and regional state programs of exploration of natural resources and environment protection in the areas of traditional habitat and traditional economic activity of small-numbered peoples;

- delegate authorized representatives of small-numbered peoples to the councils of representatives of small-numbered peoples under the executive authorities of the constituent entities of the Russian Federation and local self-government authorities;

- compensation for losses incurred as a result of damage to native habitat of small-numbered peoples caused by economic activities of organizations of all forms of ownership, as well as individuals.

Article 2 of the Federal Law 49-FZ of May 7, 2001 "On territories of traditional use of natural resources by small-numbered indigenous peoples of the North, Siberia and the Far East of the Russian Federation" stipulates that relations in the area of education, as well as protection and use of territories of traditional use of natural resources may be legally regulated by customs of small-numbered peoples if such customs do not contradict the law.

The Land Code of the Russian Federation 136-FZ of October 25, 2001 (Article 39.14) stipulates that, during allocation of land plots in the areas of traditional habitat and traditional economic activity of small-numbered peoples of the Russian Federation for the purposes not related to their traditional economic activities and traditional crafts, gatherings and referendums of citizens may be organized on the issues of provision of land plots for construction of facilities that affect the legitimate interests of the mentioned peoples. Land plots are allocated taking into account the outcomes of these gatherings or referendums.

According to the Concept of Sustainable Development of Small-Numbered Indigenous Peoples of the North, Siberia and the Far East of the Russian

Federation (approved by the Order of the Government of the Russian Federation of February 4, 2009, No. 132-p), the basic principles of sustainable development of small-numbered peoples include the need to involve their representatives and associations in decision-making on issues affecting their rights and interests in connection with the exploration of natural resources in the areas of their traditional habitat and traditional economic activity; as well as the need for an assessment of cultural, ecological and social impact of projects and activity suggested to be carried out in the areas of traditional habitat and traditional economic activity of small-numbered peoples.

One of the tools for regulating cooperation and establishing dialogue between the State, indigenous peoples and business, as well as for legislating the procedure for enabling indigenous peoples to participate in decision-making and consultations, is the law on ethnological impact assessment. The term "ethnological impact assessment" meaning a "scientific research into the impact on ethnic development of the changes in the native habitat of small-numbered peoples and the socio-cultural environment" is enshrined in the Federal Law 82-FZ of April 30, 1999 "On safeguarding the rights of small-numbered indigenous peoples of the Russian Federation" (Article 1, par. 6). In 2010, Sakha Republic (Yakutia) adopted the law "On ethnological impact assessment in the areas of traditional habitat and traditional economic activity of small-numbered indigenous peoples of the North living in Sakha Republic (Yakutia)". The main objectives of the ethnological impact assessment include ethnological monitoring, preventing a possible adverse impact on ethnic development of the changes in the native habitat of small-numbered peoples as a result of planned economic or other activity, determining compensation for damage incurred by users of land and other natural resources in the areas of traditional habitat of small-numbered peoples. The key principles of the ethnological impact assessment include its obligatory execution prior to the decision-making on planned economic and other activity in the areas of

traditional habitat of small-numbered peoples, publicity, involvement of public organizations (associations), and respect for public opinion.

Examples of application of free, prior and informed consent at the municipal level include the implementation of the Provision on the Procedure for Holding Public Hearings regarding the Industrial Project or Planned Activity in the Tazovsky District of the Yamalo-Nenets Autonomous Okrug. Hearings may be initiated by local authorities or indigenous peoples acting through their own organizations or as groups of 10. Public hearings are regarded authorized provided they are attended by more than 50 per cent of the population. Initiators are provided with background material which are to contain an assessment of a project's environmental impact and the reasons for choosing a certain piece of land. The content of the material is to be explained by an expert who should use non-technical terms modified to fit non-specialists.

### **Interaction of Business with Indigenous Peoples of the North: experience of Sakhalin Energy**

Sakhalin Energy Investment Company Ltd. (Sakhalin Energy/ Company) is operating on Sakhalin Island (Russia) since 1994. Sakhalin Energy is currently implementing the Sakhalin-2 project—one of the largest integrated oil and gas projects in the world.

According to its Human Rights Policy the Company addresses the issues associated with vulnerable groups including, in particular, the indigenous peoples, as the first priority. Sakhalin Energy has made a commitment to protect the rights of indigenous population with a particular focus on the culture, specific ways of life, customs, livelihoods and participation in economic advancement.

Since 2006 new mechanism of engagement with indigenous small-numbered peoples has been used - the Sakhalin Indigenous Peoples Development Plan (Plan) which is a partnership programme implemented jointly by business (Sakhalin Energy), community (Regional Council of the Authorised Representatives of the

Indigenous small-numbered peoples of Sakhalin Oblast) and authorities (Sakhalin Oblast Government).

Tripartite Plan has been elaborated and implemented in line with the best Russian and international standards and practices in regard to business and indigenous peoples, which include the principle of free, prior and informed consent (FPIC) as enshrined in the UN Declaration on the Rights of Indigenous Peoples and Performance Standard 7: Indigenous Peoples of IFC.

The Plan is the document detailing mutual obligations of Indigenous small-numbered peoples and subsurface user (including social investment amounts on the subsurface user's part as well as distribution mechanisms). The Plan is renewed every five years which allows to respond to changing times, fully take into account the development requirements of indigenous peoples and meet the needs related to enhancing the quality of life. Before each five-year phase of the Plan, a specially created working group develops a draft document, and organises two rounds of consultations in the areas of Indigenous small-numbered peoples traditional residence. The results of the consultations are supplemented by a final assessment made by an independent expert, a representative of indigenous peoples, and a sociologist. Finally, a conference is held where delegates from all seven districts of IP traditional residence review the draft Plan, express their consent to the Plan and to their official representative's signing a tripartite agreement on its implementation.

The programme is aimed at avoiding or minimizing Sakhalin-2 project's impacts on IP, improving the quality of life and, above all, supporting the sustainable development of indigenous peoples of the island, leadership capacity building and establishment of an independent Indigenous Peoples development fund.

The main distinguishing feature of the Plan is that it is managed directly by indigenous peoples. Decisions on the allocation of funds are made by programme committees, which consist exclusively of representatives of indigenous peoples,

specially elected at public meetings. The programme committees are supported by expert groups and district committees. The effectiveness of the Plan implementation is regularly evaluated by an independent expert and internal monitoring group.

The company uses special tools to ensure transparency and timely provision of information. These tools include the Plan website (in Russian and English), regular consultations, distribution of printed and video materials, etc.

Such projects as the Sakhalin-2 raise questions and, at times, arouse the concern of local population. In the years of the Plan implementation, several mechanisms have been developed to manage these issues, namely: **The Mitigation Matrix, which** includes the concerns of indigenous peoples, associated with the activities under the Sakhalin-2 project, which were voiced during public consultations, as well as corrective actions to address them, as well as **The Grievance Procedure.**

Sakhalin Energy openly shares its experience and welcomes comments and new ideas that enable the company to improve. To summarize and analyse experience of companies operating in other countries the company initiated, as part of its work in the UN Global Compact Lead, the establishment of a working group, and this resulted in the publication of *The Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples*, which is now used in many countries across the world. Together with the Office of the United Nations High Commissioner for Human Rights, the company has implemented a project for the publication of UN documents, namely the Universal Declaration of Human Rights and the Declaration on the Rights of Indigenous Peoples, in the languages of the Sakhalin indigenous peoples.