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INDIGENOUS PEOPLES AND EXTRACTIVE COMPANIES: THE CASE OF THE RUSSIAN ARCTIC

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Abstract: *The purpose of the article is to analyze the implementation of benefit-sharing agreements between indigenous communities and resource (oil, gas and mining) companies operating in different Arctic regions in Russia. While different regional legislation and regulatory frameworks, path-dependent practices and company policies resulted in a broad-spectrum of negotiated arrangements, the study shows that in reality, where resource extraction is prioritized, indigenous voices are often ignored. In Russia's illiberal context, indigenous communities are engaged in an uphill battle with extractive companies whose capacity and expertise in negotiation process is far more extensive. By and large, extractive industries in Russian Arctic inspired by new possibilities in extracting natural resources appear to be ill-prepared to benefit-sharing commitments. The paper concludes that in the context of the Russian North, agreements with resource (oil, gas and mining) are entitled to sugar-coat the uneven landscape of indigenous rights.*

Keywords: *Indigenous Peoples, Indigenous Rights, Arctic, Benefit-Sharing, Extractive Industries*

YERLİ HALKLAR VE PETROL, GAZ VE MADENCİLİK ŞİRKETLERİ: RUSYA'NIN KUZEY KUTUP BÖLGELERİ ÖRNEĞİ

Öz: *Bu makalenin amacı Rusya'nın farklı kuzey kutup bölgelerinde faaliyet gösteren petrol, gaz ve madencilik şirketleriyle buralarda yaşayan yerli topluluklar arasında gerçekleştirilen fayda-paylaşımı anlaşmalarının incelenmesidir. Her ne kadar, farklı bölgesel mevzuatlar, izlek bağımlı uygulamalar ve şirket politikaları çok farklı müzakere edilmiş düzenlemelerin ortaya çıkmasına neden olmuşsa da, bu çalışma, pratikte kaynakların çıkartılmasına öncelik verildiği durumlarda, yerli halkların sesinin yadsınıyor olduğunu göstermektedir. Rusya'nın liberal olmayan bağlamında, yerli halklar müzakere kabiliyet ve uzmanlıkları kendilerinininkinden çok daha fazla olan petrol, gaz ve madencilik şirketleriyle eşitsiz bir mücadele içindedirler. Genel olarak, Rusya'nın kuzey kutup bölgelerinde faaliyet gösteren ve bu bölgelerdeki doğal kaynakların çıkartılması ile ilgili imkânlardan esinlenen petrol, gaz ve madencilik şirketleri, fayda paylaşımı konusunda yeterli dikkati göstermemektedirler. Bu makale, Rusya'nın kuzey bölgelerinde, petrol ve gaz şirketleriyle yapılan anlaşmaların yerli halkların hakları ile ilgili dengesiz manzarayı gözlerden saklamak gibi bir işlevi olduğunu iddia etmektedir.*

Anahtar Kelimeler: *Yerli Halklar, Yerli Halkların Hakları, Kuzey Kutup Bölgesi, Fayda Paylaşımı, Doğal Maddeleri İşleme Endüstrisi*

Abbreviations

CSR - corporate social responsibility

EIA - environmental impact assessment

FPIC - free prior and informed consent

TTNU - territories of traditional nature use

UNDRIP - United Nations Declaration of Rights of Indigenous Peoples

Introduction

In recent years, the Arctic has become an important arena for resource extraction, and this activity is expected to grow in the decades to come.¹ In the course of active development of earlier unavailable oil and gas reserves, extractive companies often enter into encounters with indigenous peoples who have lived in the Arctic for thousands of years. As a result, extractive industry is coming under increasing pressure to balance out the interests of both parties. This often involves conclusion of different types of benefit-sharing agreements ensuring indigenous peoples' participation in a project.

While agreements between companies and indigenous population are made all over the world (North America, Australia, Canada, and Latin American countries), it is especially crucial in Arctic due to the region's location at the confluence of vast natural resources and traditional habitats of indigenous communities² Being one of the most vulnerable groups on earth, indigenous population faces an uncertain future under the conditions of Arctic industrial development. This article aims to contribute to the existing research on indigenous rights and benefit-sharing agreements in the Arctic by reviewing legislative and regulatory frameworks on benefit sharing frameworks in the Russian Arctic and sub-Arctic. Article analyzes implications of extractive activities to local contexts and answers the question of whether and how the rights of Arctic indigenous communities are ensured through the implementation of benefit-sharing agreements. Conclusion focuses on the main findings, existing gaps and future directions of the research.

Who are Indigenous Peoples?

Today there are approximately 300 million indigenous people spanning 70 countries and speaking over 4000 languages.³ After 50 years of active participation at the global arena, indigenous peoples' rights movement continue to gain its momentum and unprecedented level of empowerment. Two International Decades of the World's Indigenous Peoples saw the adoption of international standards and guidelines and

1 Birgitta Evengård et al., *The New Arctic* (Berlin: Springer, 2015), 352.

2 Birgitta Evengård et al., *The New Arctic*...352.

3 United Nations, *United Nations Declaration of Rights of Indigenous Peoples* (New York: United Nations, 2007).

the establishment of institutions that specifically target indigenous peoples' concerns.

As there is no universal definition of "indigenous peoples," the very term is highly contested and differs from country to country. The working definition upon which international organizations and scholars rely on in their works is the one proposed by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Martínéz Cobo:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.⁴

UN Special Rapporteur on the rights of indigenous peoples James Anaya provides a simpler version of the term: "They are indigenous because their ancestral roots are embedded in the lands much more deeply than others. They are peoples because they represent distinct communities and have culture and identity that link them with their nations of the ancestral past."⁵

While indigenous peoples live on lands rich in natural resources they are situated at the margins of power and live under conditions of severe disadvantages. They face serious obstacles such as exclusion from the mainstream society, deprivation of both land and access to life-sustaining resources, poverty and repression, all of which in turn force indigenous peoples to go into conflicts with governments.⁶ In order to change their positions, indigenous peoples around the globe demand the recognition

4 Jose Martinez Cobo, "Study on the Problem of Discrimination against Indigenous Populations" in *United Nations Permanent Forum on Indigenous Issues*, (New York: United Nations Permanent Forum on Indigenous Issues, 1986), accessed May 06, 2014, <http://undesadspd.org/IndigenousPeoples/LibraryDocuments/Mart%C3%ADnezCoboStudy.aspx>.

5 James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2004), 408.

6 James Anaya, "The Contribution of Indigenous Peoples to the International Human Rights" in *Twenty Eighth Lecture of the System Lecture Series of the Americas, Organization of American States, April 17, 2008* (Washington: OAS, 2008).

of their rights, the violation of which poses the main challenge to their well-being. These rights include the right to self-government, the right to land, right to development, and right to maintain their own institutions.⁷

What is at Risk?

It is to be noted that indigenous livelihood is inseparable from their lands and resources which constitutes a basis for religious, spiritual and ceremonial practices, as well as traditional activities such as hunting, fishing, gathering, and nomadism.⁸ Importantly, in their relations with the land, they do not use the concepts of private land ownership and, what is more, see themselves as a part of the land. That's why indigenous peoples' existence depends on the condition of environment surrounding them.⁹

While indigenous peoples remain some of the most vulnerable people on earth due to centuries of marginalization and discrimination, their territories often contain a treasury of natural resources. Thus, indigenous land is often viewed as a marketable commodity by governments and the private sector to be used for economic growth and exclusive profits. The result of both private and governmental extractive projects has been devastating, often leading to resettlement, homelessness, loss of culture and income, disruption of social organization and traditional knowledge, impoverishment, etc.¹⁰ In the case of environmental risks, loss of biodiversity often ruins indigenous peoples' means to existence. Important to realize, these changes are often cumulative, time-lagged, and the aftereffects may not be always foreseen.

What is Benefit-Sharing?

The so-called benefit-sharing arrangements are known by different names (Benefit-Sharing Agreements, Community Development

7 United Nations, *United Nations Declaration of Rights of Indigenous Peoples* (New York: United Nations, 2007).

8 Henry Minde et al., "Indigenous Peoples: Self-Determination, Knowledge, Indigeneity," *Forum for Development Studies* 37, no. 2 (2010): 281-286.

9 Theodore Downing et al., "Indigenous Peoples and Mining Encounters: Strategies and Tactics," *Mining, Minerals and Sustainable Development*, no.57 (2002): 1-41, accessed May 30, 2018, <http://pubs.iied.org/pdfs/G00548.pdf>.

10 Theodore Downing et al. "Indigenous Peoples and Mining Encounters..."

Agreements, Partnership Agreements, Impact Benefit Agreements, Shared Responsibility Agreements, Exploration Agreements, Profit-Sharing Agreements to name just a few) and are designed to mitigate the negative impacts of the resource projects on indigenous communities.¹¹

Benefits agreements have been an emerging trend since the 1990s in regions with sound indigenous legislation such as North America and Australia. The concept originated from several international instruments, including the Universal Declaration of Human Rights, the Convention on Biological Diversity (CBD), International Labor Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the International Treaty on Plant Genetic Resources for Food and Agriculture, and the Nagoya Protocol on Access and Benefit-Sharing to the CBD, etc. According to Convention on Biological Diversity and Nagoya Protocol, the benefit-sharing concept holds that communities granting access to their resources and traditional knowledge should receive a share of the benefits (in a monetary or non-monetary form) that users derive from the use of the resources.¹² Former UN Special Rapporteur on Indigenous Peoples' Rights James Anaya provides more explicit definition of the concept arguing that benefit-sharing is seen as a "one of a set of inter-linked safeguards for the realization of substantive rights of indigenous peoples."¹³ As such, indigenous rights to benefit – sharing is "an inherent component of indigenous peoples' rights to land and natural resources"¹⁴ and a part of "the broad international recognition of the right to indigenous communal ownership, which includes recognition of rights relating to the use, administration and conservation of the natural resources existing in indigenous territories, independent of private or State ownership of those

11 Maria Tysiachniouk and Andrey Petrov, "Benefit Sharing in the Arctic Energy Sector: Perspectives on Corporate Policies and Practices in Northern Russia and Alaska," *Energy Research & Social Science* 39 (2018): 29-34, accessed May 13, 2018, <https://doi.org/10.1016/j.erss.2017.10.014>.

12 United Nations, *Convention on Biological Diversity* (Rio de Janeiro: United Nations, 1992). United Nations, *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, also known as the Nagoya Protocol on Access and Benefit Sharing* (Nagoya: United Nations, 2010).

13 Elisa Morgera, "The Legacy of UN Special Rapporteur Anaya on Indigenous Peoples and Benefit-sharing," *Benelex*, May 29, 2014, accessed August 13, 2017, <http://www.benelexblog.law.ed.ac.uk/2014/05/29/the-legacy-of-un-special-rapporteur-anaya-on-indigenous-peoples-and-benefit-sharing/>.

14 Elisa Morgera, "The Legacy of UN Special Rapporteur..."

resources.”¹⁵ Thus, benefit-sharing represents a specific type of partnership between governments, private companies and indigenous peoples that ensure indigenous participation in decision-making processes as well as increase well-being and fate control of local communities.

Material and Methods

Research method used in the article includes documentary analysis with the main focus on primary and secondary sources such as Constitution, federal and regional regulations on indigenous rights, official documents of the Russian Federation, statistical data, speeches and official statements by key people, where appropriate; as well as international standards of the World Bank, ILO, UN and IFC; and companies reports on indigenous groups’ rights.

Four empirical cases of benefit-sharing policies conducted by extractive companies in different Russian regions were selected:

- Komi Republic: oil and gas company Lukoil Komi
- Sakhalin: oil and gas consortiums Sakhalin-1 and Sakhalin-2 with Sakhalin Energy and Exxon Neftegas Limited as operators
- Sakha (Yakutia) Republic: oil pipeline company Transneft and energy giant Gazprom
- Khanty-Mansi Autonomous Area: oil and gas company Surgutneftegaz

These regions are all inhabited by often remotely located, indigenous populations as well as non-indigenous groups, and possess vast natural resources, often located on indigenous lands, that attract both national and multinational extractive companies.

Despite regions’ commonalities, important distinctions should be considered. For instance, Komi and Sakha regions enjoy the status of republic which gives them opportunities to pass their own laws. As such,

15 James Anaya, “Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,” in *Fifteenth Session, Human Rights Council, July 19, 2010* (New York: Human Rights Council, 2010), 20.

Sakha Republic adopted its constitution even before the Russian Federation.¹⁶ Region's present legislation recognizes indigenous rights to land and natural resources and introduces Russia's first and only law on anthropological expert review (or ethno-cultural impact assessment) designed to assess the socio-cultural and economic impacts on indigenous communities affected by the industrial project.¹⁷ In both republics, Komi and Yakut communities are not recognized as indigenous peoples by the Russian legislation but recognized as such by international standards. In Sakha Republic, Yakut people, accounting for almost half of the population, enjoy the status of the so-called titular nation. In contrast, voices of smaller indigenous nations living in Yakutia, as well as indigenous Komi counting for 23% of the regional population are less visible.¹⁸

Indigenous groups in Khanty-Mansi Autonomous area enjoy fewer benefits in comparison to those granted by the status of republic. Indigenous rights are recognized by the regional charter, and adopted legislation provides for indigenous representation in the regional parliament and support of traditional indigenous activities¹⁹ Khanty-Mansi Autonomous area and Sakha Republic developed laws on territories of traditional nature use that require companies operating in the area to obtain the consent from indigenous population prior to the project and pay fair compensation for any damages affecting indigenous lands.²⁰

Sakhalin, Komi Republic and Khanty-Mansi Autonomous area are single-industry economies and are highly dependent on oil and gas production. In comparison, Sakha's oil and gas resources are rather small.²¹ The biggest extractive projects are "Power of Siberia" gas pipeline operated by Gazprom and the Eastern Siberia Pacific Ocean pipeline operated by Transneft. The region has been primarily known

16 Florian Stammler, *Case Studies of Northern Indigenous People and Extractive Industry Sakha Republic (Yakutia)* (Drag: Árran Lule Sami Centre, 2017), 8.

17 Florian Stammler, *Case Studies of Northern Indigenous People...8.*

18 Maria Tysiachniouk and Andrey Petrov, "Benefit Sharing in the Arctic Energy Sector..." 29-34.

19 Olga Murashko, "Protecting Indigenous Peoples' Rights to Their Natural Resources– The Case of Russia," *Indigenous Affairs* 3-4 (2009): 48-59, accessed May 13, 2018, https://www.iwgia.org/images/publications/IA_3-08_Russia.pdf.

20 Svetlana Tulaeva and Maria Tysiachniouk, "Between Oil and Reindeer: Benefit Sharing Arrangements between Oil Companies and Indigenous Peoples in Russian Arctic and Sub-Arctic Regions," *Journal of Economic Sociology* 18, no. 3 (2017): 70-96.

21 Florian Stammler, *Case Studies of Northern Indigenous People...8.*

for its mining industry such as diamond and gold extraction. In cases of Khanty-Mansi Autonomous area, Sakha and Komi republics, extractive activities are operated by Russian companies: Transneft, Gazprom, Lukoil-Komi, Surgutneftegaz. Contrary, in Sakhalin case two large private, transnational oil consortiums – Sakhalin-1 and Sakhalin-2 operate in the region. Sakhalin-1 shareholders include US company Exxon Neftegas Limited, the Japanese company Sodeco, the Indian state oil company ONGC Videsh Ltd and subsidiaries of the Russian company Rosneft. Sakhalin-2 consists of the operator Sakhalin Energy, Gazprom, Shell, Mitsui and Mitsubishi.²²

Results and Discussion

Response to Indigenous Claims: Global Standards and State Legal Framework

The issue of multinational companies' governance has been examined by international community for almost forty years. The growing influence of enterprises during the second half of the 20th century resulted in the design of international regulatory framework that would ensure companies' commitments to basic human rights, workers' rights and environmental responsibility.²³ Indigenous peoples' movement in particular has been the driving force behind the development of standards addressing indigenous rights and the accountability of companies. Most important of them include International Labor Organization (ILO) Convention No. 169 and UN Declaration on Indigenous rights. International Labor Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries represents the first example of the multiculturalist international norm in the post - war era.²⁴ It recognizes indigenous rights to own and control lands, to manage the natural resources, to meaningful participation in decisions that affect indigenous communities, to maintain their own cultural, social and political institutions and to equal protection of the law.²⁵ On 13 September 2007 after two decades of negotiations the

22 Maria Tysiachniouk and Andrey Petrov, "Benefit Sharing in the Arctic Energy Sector..." 29-34.

23 Elisa Morgera, "From Corporate Social Responsibility to Accountability Mechanisms: The Role of the Convention on Biological Diversity," *SSRN Electronic Journal* (2012), accessed May 30, 2018, <https://ssrn.com/abstract=1995521>.

24 William Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford: Oxford University Press, 2007), 386.

25 International Labour Organization, *Convention no.169 on Indigenous and Tribal Peoples* (Geneva: ILO, 1989).

General Assembly adopted the United Nations Declaration of Rights of Indigenous Peoples (UNDRIP) which “constitutes the minimum standards for the survival and well-being of the indigenous peoples” and is a key element of the global indigenous praxis today. It includes the right to economic, social and cultural development, right to autonomy or self-government, right to maintain and political, legal, economic, social and cultural institutions and the right to the lands, territories and resources which indigenous peoples have traditionally occupied.²⁶

Both ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples calls for consultation and the use of the principle of Free Prior and Informed Consent (FPIC) that implies negotiations between companies and indigenous communities, adequate compensation toward for land extraction and damage and, in a case of resettlement, allows indigenous communities to veto industrial projects. Equally important, financial actors such as the World Bank and International Finance Corporation play a significant role by encouraging their clients and partners to adhere to standards on indigenous rights. Russia has not ratified the Convention on the ground that its provisions infringe upon Russian legislation that does not recognize ownership of lands “by any groups of people based solely on ethnicity”.²⁷

Furthermore, legal basis for company–community relations in Russia is established by the federal laws on indigenous peoples. Russian indigenous groups inhabit the Northern and Asian parts of the country (See Annex1). Article 69 of the Russian Constitution guarantees “the rights of the indigenous small peoples according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation.”²⁸ The Federal Law “On Guarantees of the Rights of Indigenous Small-Numbered Peoples Rights in the Russian Federation” (1999) allows indigenous people to “possess and use their lands, free of charge, in places of traditional habitation and economic activities in the pursuit of traditional economic

26 United Nations, *United Nations Declaration of Rights of Indigenous Peoples* (New York: United Nations, 2007).

27 Ruslan Garipov, “Resource Extraction from Territories of Indigenous Minority Peoples in the Russian North: International Legal and Domestic Regulation,” *Arctic Review on Law and Politics* 4, no. 1 (2013): 4–20, accessed May 13, 2018, <http://site.uit.no/arcticreview/files/2014/11/Resource-Extraction-from-Territories.pdf>.

28 “Constitution of the Russian Federation” *The Ministry of Foreign Affairs of the Russian Federation.*, Last modified June 14, 2018. http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICk6BZ29/content/id/571508.

activities.”²⁹ According its provisions, indigenous peoples have the right to take part in monitoring industrial development on land used for their traditional economic activities. They also have the right to obtain compensation for any damages to their traditional environments.

The Federal Law “On Territories of Traditional Nature Use of Indigenous Small-Numbered Peoples of the North, Siberia and Far East of the Russian Federation” (2001) creates territories of traditional nature use (TTNU).³⁰ The companies working in TTNU must coordinate their actions with indigenous people, obtain their consent for industrial activity, and compensate for damages.

The main federal laws regulating environmental protection are Federal Laws on Environmental Protection (2001) and Environmental Expert Review (1995). Both laws require an environmental impact assessment (EIA) prior to the implementation of a project.³¹ The procedure aims to seek ways to minimise and mitigate damages sustained as a result of resource exploitation and, if possible, identify the alternatives. Particularly, an EIA has to be financed by the company responsible for the project and thus, is prone to bias.³² Moreover, the established EIA does not include anthropological assessment of the project.³³

Legislation Pitfalls

Different regulatory contexts, company approaches and national legislative frameworks have resulted in a variety of negotiated agreements between indigenous groups and resource companies. First and foremost, pitfalls in legislation prevents legal guarantees of indigenous rights in the country. As Kryazhkov puts it: “Russian legislation concerning indigenous minority peoples could be characterized as unstable, contradictory, often imitational, only initially

29 Law No. 82FZ, *The Federal Law On Quarantees of the Rights of Indigenous Small-Numbered Peoples of the Russian Federation*, 1999.

30 Law No. 49FZ, *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*, 2001.

31 Law No. 7-FZ, *The Federal Law on Environmental Protection*, 2001. Law No. 174-FZ, *The Federal Law Environmental Expert Review*, 1995.

32 Alexandra Tomaselli, Anna Koch, “Implementation of Indigenous Rights in Russia: Shortcomings and Recent Developments”, *The International Indigenous Policy Journal* 5, no. 4 (2014), accessed May 13, 2018, DOI: 10.18584/iipj.2014.5.4.3

33 Olga Murashko, “Protecting Indigenous Peoples’ Rights to Their Natural Resources...”

developed, and not enough adjusted with international law.”³⁴ The laws themselves are fragmentary and their implementation depends on “either case-by-case arrangements or additional by-laws to be passed at regional or national level in order to enable their implementation.”³⁵

Furthermore, some provisions of sectoral legislation (land code, forest code, water code, act on subsoil) are in a conflict with indigenous regulation. Usually, the federal government overrides the regions in areas of shared jurisdiction – land use, natural resources, and indigenous peoples – with federal regulations having primacy over regional ones. Thus, lack of mechanisms to implement the declared rights, jurisdictional vagueness and authoritative federal power represent the biggest gap preventing for indigenous communities from adequate protection.³⁶

Russian Companies and CSR

Based on the above-mentioned standards, companies acknowledge their commitment to improve transparency, consult stakeholders, and commit to standards related to the environmental responsibility, workers’ rights, universal human rights and indigenous peoples’ rights. In Russia, in the absence of comprehensive benefit-sharing concept, arrangements with indigenous population are often called “socio-economic agreements” and/or presented as a part of the so-called ‘corporate social responsibility’ of industrial companies. World Business Council for Sustainable Development (1999) defines CSR as “the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.”³⁷ CSR initiatives allow to held companies accountable for their actions and “operate in an economically, socially and environmentally sustainable manner.”³⁸

34 Vladimir Kryazhkov, “Russian Legislation about Northern Peoples and Law Enforcement Practice: Current Situation and Perspective”, *State and Law Magazine* 5 (2012): 27-35.

35 Rohr, Johannes, IWGIA, *Indigenous Peoples in the Russian Federation* (Copenhagen: IWGIA, 2014), 69.

36 Elena Gladun and Kseniya Ivanova, “Preservation of Territories and Traditional Activities of the Northern Indigenous Peoples in the Period of the Arctic Industrial Development,” in *The Interconnected Arctic — UArctic Congress*, ed. K. Latola and H. Savela (Cham: Springer, 2017).

37 Phil Watts, Lord Holme, *Corporate Social Responsibility: Meeting Changing Expectations* (Geneva: World Business Council for Sustainable Development, 1999).

38 Rune Fjellheim, John Henriksen, “Oil and Gas Exploitation on Arctic Indigenous Peoples’ Territories Human Rights, International Law and Corporate Social Responsibility,” *Journal of Indigenous Peoples Rights*, no.4 (2006): 1-52, accessed May 3, 2018, <http://caid.ca/Arctic2006.pdf>.

Despite the aspiration of the Russian government to maintain exclusive control of the natural resources sector, Russian companies are pressured to adopt CSR practices due to competition for export markets, and the need for investment, skills and technologies.³⁹ As a result, Russian enterprises have engaged in numerous joint ventures with multinational oil companies. These enterprises have exported their CSR policies and are entitled to function according to globally-recognized standards and consequently induce Russian companies to operate in the same fashion. Sometimes these standards prove to be more sensitive to the local context and, thus, more effective than domestic regulations.

In the case of Sakhalin, influenced by international actors and global standards companies have advanced their policies in developing sound agreements with indigenous population. That is to say, the higher the company's reliance on international financial institutions, in all likelihood its policy would reflect globally-accepted standards protecting the rights of indigenous peoples. Henceforth, many multinational corporations concerned with brand reputation seek to elaborate special programs for indigenous peoples, demonstrating adherence to international rules. Noteworthy, as international oil companies arrived at the island only in the 1990s, they remained immune to Soviet CSR practice that often resulted in paternalistic benefit-sharing arrangements with local communities.

Notably, during the emerging conflicts in Sakhalin, the protest movement targeted primarily Sakhalin Energy - consortium that applied for financing support from the European Bank of Reconstruction and Development.⁴⁰ The company came under the pressure from the bank to resolve the conflict by concluding an agreement with indigenous population. In 2006 Sakhalin Energy's initiated Sakhalin Indigenous Minorities Development Plan and included indigenous participation at all stages of company's projects. According to the plan (2006), indigenous representatives became responsible for distribution of benefits and overseeing a grievance procedure.⁴¹ Under those

39 Laura Henry et al., "Corporate Social Responsibility and the Oil Industry in the Russian Arctic: Global Norms and Neo-Paternalism," *Europe-Asia Studies* 68, no. 8 (2016): 1340-1368, accessed May 13, 2018, <https://doi.org/10.1080/09668136.2016.1233523>.

40 Machie Lamers et al., "Oil and Indigenous People in Sub-Arctic Russia: Rethinking Equity and Governance in Benefit Sharing Agreements," *Energy Research & Social Science* 5, no. 4 (2018): 140 – 152, accessed June 13, 2018, <https://doi.org/10.1016/j.erss.2017.09.004>.

41 "First Sakhalin Indigenous Minorities Development Plan," *Sakhalin Indigenous Minorities Development Plan*, Last modified January 6, 2017, <http://www.simdp.ru/eng.php?id=34&pid=2>.

circumstances, international standards of indigenous rights, including FPIC, induced Sakhalin Energy to implement extensive negotiations with indigenous people and triggered the development of inclusive social programs.⁴² Unlike Sakhalin Energy, Exxon Neftegas Limited relied on international financial institutions in a less degree and thus was less subject to social scrutiny. Instead, it was influenced by the example of Sakhalin Energy partnership agreement and pressure from the regional authorities.

The Khanty-Mansi Autonomous Area as well as Sakha Republic have been known for the comprehensive framework on indigenous rights, including regional laws on the creation of TTNU and rich experience of concluding agreements with indigenous population.⁴³ In Khanty-Mansi Autonomous Area Surgutneftegaz declared its commitment to global standards on indigenous rights, including ILO Convention, United Nations guidelines, the World Bank, etc. However, while relying on international standards, company limits its policy to questionable compensations or targeted investments of cultural and sport events. In other words, benefit-sharing programs are used as a “window-dressing” to improve the image of the company to the extent required to obtain the “social license to operate” with minimum participation of indigenous peoples.⁴⁴ In fact, without direct pressure from international financial institutions and multinational companies’, commitments to global standards at most may be leveraged to ensure implementation of a bare minimum of guidelines on benefit-sharing.

With attention to regional framework on indigenous rights Sakha Republic has taken more progressive safeguards. Yet, while the status of republic and titular nation gives local population political control over their own land, heavy burden of extractive industries falls primarily on the republic’s smaller indigenous groups.⁴⁵ In like manner, indigenous Komi have a very limited ability to control the benefits assigned by the enterprise. Instead, regional government and/or a state-run company take the responsibility for defining and monitoring the support to local communities, who have no say in delivery of benefits.

42 Machie Lamers et al., “Oil and Indigenous People in Sub-Arctic Russia...”

43 Florian Stammerl., *Case Studies of Northern Indigenous People...8.*

44 Maria Tysiachniouk and Andrey Petrov, “Benefit Sharing in the Arctic Energy Sector...”

45 Florian Stammerl., *Case Studies of Northern Indigenous People...8.*

In contrast to transnational corporations, Russian companies tend to be more dependent on the Russian authorities which affects, in turn, the strategies companies choose in realizing indigenous programs in the region. Russian companies prefer to consult with the regional authorities, while the international companies cooperate directly with the population. Furthermore, while in Western countries indigenous entrepreneurship and the revitalization of indigenous subsistence lifestyle, languages and cultures are prioritized as a part of benefit-sharing policy, Russian companies tend to focus on investments and support for kindergartens, hospitals, sports and cultural events.⁴⁶

In like manner, whereas strong indigenous representation and social mobilization played a crucial role in empowering Sakhalin indigenous people, Russian companies proved to be less vulnerable to pressure from both transnational and local environmental NGOs. At the same time, due to lack of expertise and resources, the only way indigenous peoples can resist companies' policies may be through alliances with interest groups such as NGOs, academic, and environmental organizations.⁴⁷ The Komi ties with Greenpeace Russia, for instance, though moderately, have positively influenced the development of social movement and eased the unfavorable domestic context for unrecognized indigenous groups in Russia.⁴⁸

Although minor yet important factor explaining different benefit-sharing practices in the region is the type of industry present in the area. Sakha Republic, for instance, contrary to other regions, has rich mining reserves. Historically, mining companies have a more coordinated organizational system and comprehensive body of knowledge in dealing with affected communities. Agreements with indigenous people have been more extensive and inclusive, while the negative impact has been less profound in contrast to oil and gas developments.⁴⁹

By and large, in Russia the concept of benefit-sharing is still in its infancy. Russian companies appear to be affected by path-dependence

46 Ilan Kelman et al., "Local Perceptions of Corporate Social Responsibility for Arctic Petroleum in the Barents Region," *Arctic Review on Law and Politics* 7, no. 2 (2016): 152-178, <http://dx.doi.org/10.17585/arctic.v7.418>.

47 Theodore Downing et al. "Indigenous Peoples and Mining Encounters: Strategies and Tactics," *Mining, Minerals and Sustainable Development*, no.57 (2002):1-41, accessed May 30, 2018, <http://pubs.iied.org/pdfs/G00548.pdf>.

48 Maria Tysiachniouk and Andrey Petrov, "Benefit Sharing in the Arctic Energy Sector..."

49 Michael Limerick et al. *Agreement-Making with Indigenous Groups: Oil and Gas Development in Australia*. (Brisbane: University of Queensland, 2012).

practice rooted in the Soviet tradition of high dependence on state policy and informal ties with authorities.⁵⁰ According to this social contract local population obtained full employment, housing, free health care and education “in exchange for participation in state-sponsored political mobilization and labor tranquility.”⁵¹ This practice saw the continuity in contemporary Russia and continues to infuse relations between state and industry. State’s role in the oil and gas sector remains decisive and the authorities play a leading part in determining the use of natural resources and legitimating the work and managerial behavior of energy companies who, in practice, represent the state. Commitment to respect global guidelines on indigenous rights, if implemented, is often initiated for fear of inhibiting company’s development on the global markets. It often results in restrained stakeholder engagement, disempowered non-state actors and dependency on company’s funding among indigenous population.⁵² Companies policies still lag behind understanding of substantive rights of indigenous peoples to their lands, territories and natural resources. Ideally, benefit-sharing goes beyond top-down compensations payments and short-term material benefits⁵³ and provides opportunities for wealth generation and long-term sustainable development of the affected community.⁵⁴ In other words, benefit-sharing should be seen as a partnership between different parties and a shift away from narrowly structured agreements to a set of safeguards for the realization of indigenous rights, their participation in decision-making processes and capacity building.

Conclusion

In recent decades, indigenous peoples’ rights have become one of the core elements in the state’s policy development as well as in the corporate sector’s strategies. Particularly in the Arctic, indigenous

50 Laura Henry et al., “Corporate Social Responsibility and the Oil Industry in the Russian Arctic...”

51 Laura Henry et al., “Corporate Social Responsibility and the Oil Industry in the Russian Arctic...”

52 Laura Henry et al., “Corporate Social Responsibility and the Oil Industry in the Russian Arctic...”

53 Jocelyn Mackie et al., “Corporate Social Responsibility Strategies Aimed at the Developing World: Perspectives from Bioscience Companies in the Industrialised World”, *International Journal of Biotechnology* 8, no. 1/2 (2006).

54 International Labour Organization, *International Instruments and Corporate Social Responsibility: A Booklet to Accompany Training on Promoting labour standards through Corporate Social Responsibility* (Geneva: International Labour Organization, 2012).

peoples play a decisive role in central issues around the region's future using domestic and more importantly international channels. In reviewing the sources on benefit-sharing agreements and indigenous communities in Russia, several gaps become evident. First and foremost, we must affirm that despite a growing number of literature on benefit-sharing, more research is needed in order to determine different types of agreements, factors and contexts that facilitate creating a sound benefit sharing arrangement. Secondly, existing literature on agreements between Arctic peoples and companies focuses mainly on USA and Canada. Thus, there is a lack of both theoretical and practical background on how non-Western societies have traditionally debated and managed community relations and indigenous rights in different realities, at both political and academic level.

Benefit – sharing is often portrayed as a successful and most desired practice of equal partition of profit with the local inhabitants that contributes to sustainable development in Arctic communities. Given that the Russian state budget depends heavily on revenue from oil and gas exports, industrial development in the region is likely to expand and be joined by new economic activities in the future. And yet, benefit-sharing framework should not be seen as a panacea to existing problem in community-company relations. Complexity of the concept is embedded in its determination to balance out two conflicting and incompatible variables: extractive industries and indigenous peoples. At the end of the day, the activity of the first ultimately threatens the survival of the latter. Whereas indigenous communities often feel that no compensation can replace the loss of ancestral lands, in Russia they do not have the right to veto industrial activity and are thus left with no choice rather than accept compensation payments. Negotiations between the two parties a priori contain the power imbalance that is often presented under the rhetoric of “coexistence of industry and indigenous communities.” In practice, indigenous peoples are getting outplayed on all fronts: prior to the project, during and, not to mention the damages they are left to deal with after the project ends.

On condition that indigenous empowerment is pursued under the guise of corporate responsibility rather than democracy, does it switch the path of human rights conversation in the country? Under the circumstances of severe disadvantages, indigenous communities across Russia have looked for ways to resist extractive industries and explored benefit-sharing principles that would protect their inalienable rights to land. Yet, instead of asserting their essential rights within the political arena,

indigenous communities address the corporations and demand benefits thus shifting their status of rightsholders to stakeholders. By re-directing claims from the state to the corporation, indigenous peoples find themselves in a position when their rights are easily manipulated by companies, and, what is more, replaced by benefits. This eventually leads to fundamental ignorance and silence of indigenous voices. Surely, in Russia's illiberal realities benefit-sharing is an alluring prospect. Yet, comprehensive benefit-sharing programs are more likely to be fully functional in realities where liberal traditions are already well-established.

Given these points, without a sound regulatory framework ensuring indigenous rights to land and self-government, benefit-sharing arrangements will act merely as a short-term measure incapable of preventing the eventual destruction of indigenous communities. The most promising way to get around this problem is to revive the rights-based conversation in the country. In all circumstances, already being one of the triggers of Arctic policy-making processes, indigenous voices will become more influential in shaping the region's future, hence it would be particularly important for indigenous peoples of Russia to shift their position from passive observers to agents of change, and for Russian companies operating in the Arctic to provide the means for the indigenous peoples to have an active involvement in both Russian and international Arctic.

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Annex 1

INDIGENOUS PEOPLES OF THE RUSSIAN FEDERATION



