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Taking ethical guidelines into the field for evaluation by indigenous stakeholders

HIGHLIGHTS

- Indigenous land users affected by industry can insightfully comment on the substance of international ethical guidelines and standards for industry performance.
- Their knowledge of the environment (natural and social-cultural) is a so-far under-used resource. If considered during development, it has the potential to improve the sustainability and performance of industry.
- International standards and guidelines are not well-enough known among those people for whom they are written in the first place.
- Authorities and industry are mostly concerned with their own national legislation; thus, they may overlook the potential for applying international guidelines.
- The local presence of company representatives with social expertise is crucial for implementing international guidelines meaningfully.
- However, it is not enough to send workers to the Arctic; local staff need a direct connection to the company headquarters.
- The need to improve both horizontal and vertical communication extends to all parties: between national governments and municipalities, between company headquarters and local operations, and between indigenous national organisations and local herders and hunters.

Using anthropological fieldwork methods, we took various international standards and guidelines to industry representatives, local administrators, and nomadic reindeer herders across several sites in the Norwegian and Russian North. These included: the indigenous peoples' social responsibility policy of the International Petroleum Industry Environmental Conservation Association (IPIECA), the Environmental and Social Performance Standards of the International Financial Corporation (IFC), and the UN Guiding Principles on Business and Human Rights (UN Guiding Principles, also known as the Ruggie Principles). Across the portfolio of stakeholders that we spoke to, we were particularly concerned to subject these documents to the critique of the indigenous people who are deeply – and potentially negatively – affected by oil, gas, and mining developments. Sites were in the Yamal-Nenets Autonomous Okrug (YNAO), Russia's prime gas province; the Nenets Autonomous Okrug (NAO), an important oil province in European Russia; the Sakha Republic (Yakutiya), a major resource base in northeastern Russia, and Divtasvuodna/Tysfjord, a mining, mineral-processing and fish-farming municipality in Nordland County, Norway. The field team was led by a European social anthropologist and included an indigenous legal scholar for the locations in Cases 1 and 3, and an indigenous politician in Case 4.

As far as we know, this has never been done before, especially in remote areas of Russia. While some indigenous spokespersons have been involved in drafting guidelines (for example, Mikhail Todyshev's and Pavel Sulandziga's work since the mid-1990s in the drafting of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)), there is little scope for insights from the hunting, fishing, or grazing grounds in the tundra to filter upwards all the way to national governments or to the drafting of an international document. In the other direction, once guidelines or legal documents have been written, they rarely go back to the people on, about, or even with whom they were written in the first place. Even if there is a wish to do so, there is no system for taking documents to the field, translating them, discussing them in depth with people on the ground, collecting feedback, and reporting back to a higher level.

An important insight that emerged was the range of ways in which local understandings and arrangements echo formal guidelines, enhance them, or make up for their absence. We hope that these examples will encourage a greater flow of knowledge and judgement between decision-makers and local populations in the future.

CASE 1 Nenets Autonomous Okrug (NAO)

Voluntary guidelines of IPIECA (not known locally)

Indigenous people involved: Nenets.

Companies involved: Bashneft'; Naryanmarneftegaz (formerly Conoco-Philips/Lukoil joint venture, now 100% Lukoil). Both companies are present in the village of Krasnoye and the regional capital Naryan-Mar.

In April 2015, project researchers visited Naryan-Mar; the village of Krasnoye, which is headquarters to two indigenous reindeer-herding enterprises called Erv and Kharp; and the Varandey tundra.

In the NAO, the Trebs and Titov oil deposits in the Varandey tundra are being developed by Bashneft', the only Russian company which is a member of IPIECA – the global oil and gas industry association for environmental and social issues. The oil extraction takes place on reindeer pastures of the indigenous Nenets people. The aim of the project was to find out their views on the local relevance of the IPIECA indigenous peoples' good practice document (IPIECA 2012). This document is not available in Russian, so we sat with local people and summarised it in Russian orally in the field.

While we were able to talk extensively with reindeer herders, we were unable to talk to employees and officials of the companies. Here, as in Case 2, company public relations (PR) officers whom we spoke to by telephone guided us directly to their publicly available statements on sustainability. For any other questions, they said that we would have to talk to their headquarters (for Bashneft', in Ufa; for Lukoil, in Moscow or Syktyvkar), as no one on site would have any information to give to us. Both foreign and Russian members of our team received the same response from various companies over five separate communications by telephone and email. It seemed clear that this would also be the case for

local residents, including the reindeer herders most affected. The fact that Bashneft' displayed such a reaction to our request is a noteworthy finding, as the IPIECA guidelines place great importance on a company's local presence and the implementation of best practices by their employees.

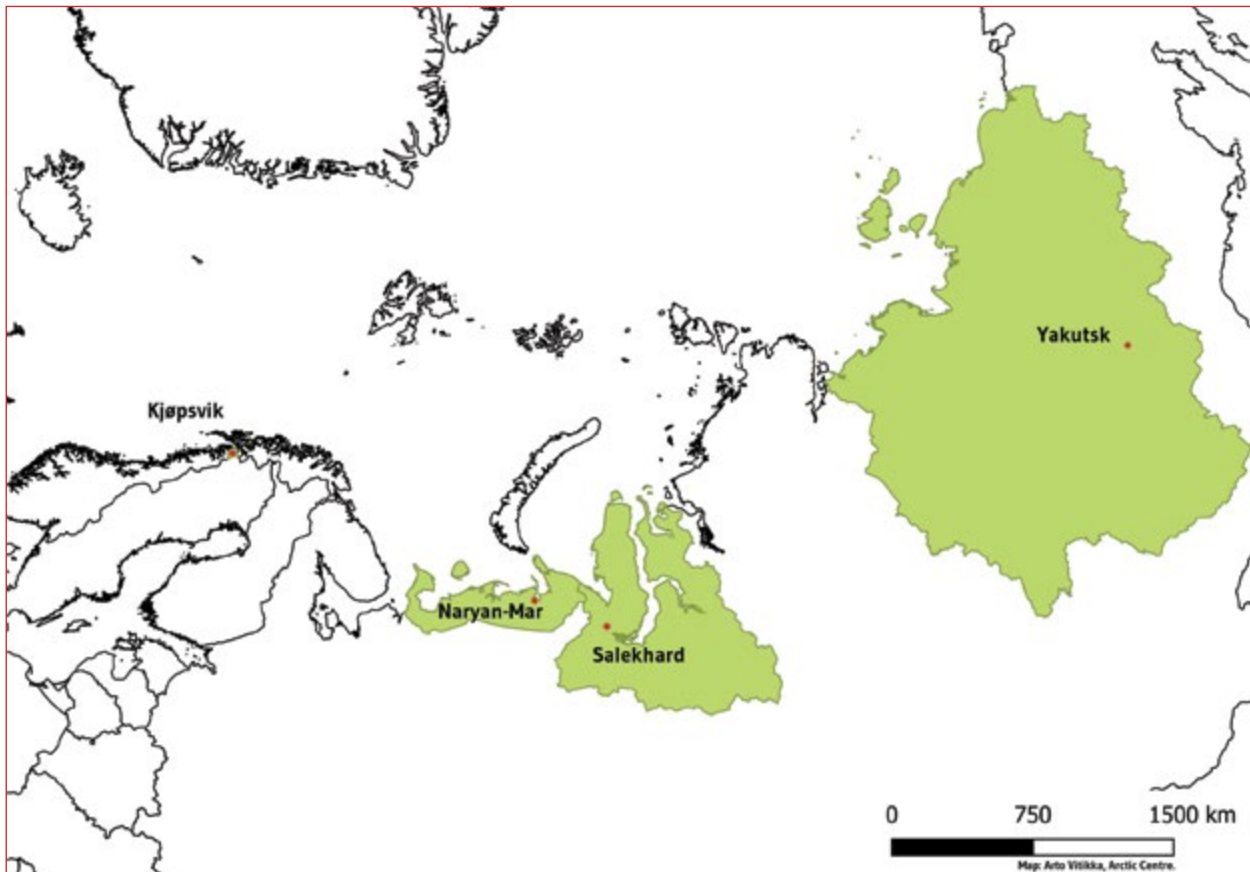
This is already telling about the local social competence of a company on the ground. It seemed that nobody on their oil field was in a position to comment on these guidelines, and the PR officer to whom we talked on the phone did not even know of their existence. On the other hand, the PR officer assured us that Bashneft' claims to apply best practice in the fields of corporate governance, employee relations, transparency, sustainability indicators, supply-chain, and subcontractor management, all of which must take into account international best practices and principles of business ethics (Bashneft' Sustainability Report 2014, p.140).

The village of Krasnoye hosts the headquarters of the two reindeer-herding associations, on whose grazing grounds the company works. Herders, herding administrators, and residents of the village to whom we talked were well aware of the company's investment in community facilities. They had built a new healthcare centre, which brought to the residents a quality of healthcare previously unseen outside the city. The centre opened officially on the 30th December 2014. However, when we were in Krasnoye we were told that the healthcare centre did not really fulfil much more than the old one, as there was no stipulation on who would pay for qualified staff to offer those diverse healthcare services to village and tundra residents.

In the village, we talked to reindeer herders, people from the reindeer-herding associations, and people on

BOX 1. Key recommendations summarised from the IPIECA guidelines on social responsibility towards indigenous peoples (2012)

- Use international and local expert advice.
- Adhere to international organisations' instruments, namely the ILO Convention 169 on Indigenous and Tribal Peoples, the UNDRIP, and the Convention on Biological Diversity Article 8j, as well as main best practice policies of international financial institutions such as IFC (IFC 2012).
- Carry out social impact assessment (SIA) with participation of the indigenous peoples themselves.
- Develop an indigenous development plan and monitor impacts as they arise together with the people affected.
- Document formal commitments of the company, official consultations, and agreements with indigenous actors.
- Train your own workers in indigenous issues, and consider customary decision-making processes.



Map showing main fieldwork sites discussed in this paper

the street. None of them was aware that Bashneft' was an IPIECA member, or even what IPIECA was or that it offered the company some international guidelines. As one of our partners in the city of Naryan-Mar, Vladislav Peskov (former Vice-Governor of the okrug (district) and former President of the indigenous people's association Yasavey) said: "No-one knows about IPIECA, it is not relevant at all, the company does not publicise its commitment to any guidelines, nor do they share such guidelines with the people. Bashneft' is just another company like all the others, no better and no worse. It makes no difference."

On the other hand, this does not mean that people in Krasnoye did not have ideas very similar to those expressed in the indigenous peoples policy. Though they did not know the term or concept of FPIC (free, prior and informed consent), they expressed very clearly that they expected any company to talk to them and ask for their agreement before any land under indigenous use became impacted by any company activity. There was a very clear idea that not asking for agreement beforehand was a violation of something, even though nobody could say which law, document or practice would be violated.¹

All our interlocutors mentioned compensation for damage as the most relevant mechanism of relations between companies and indigenous people. Everyone was clear that whenever company

activities cause property damage, pollution or other disturbance, the company has to pay. While this idea is also part of many major international documents (including the IPIECA guidelines), this is not really what mattered in the local context. What mattered is that people believed that companies are obliged by national law to pay compensation for environmental damage, and that they can be held liable in courts if they do not. In line with this, the Chairman of one reindeer-herding company in Krasnoye, Erv, clearly emphasised that legal action through the courts works in relation to the oil company, when nothing else helps. They had already won several court cases where the oil company had been ordered to pay compensation to the herders, mostly for oil spills. This seemed to be a regular occurrence.

Erv and the oil company also have an agreement, according to which the herding enterprise receives regular cash payments. Taken together with the financial transfers from this agreement, the compensation payments formed a significant part of the income of Erv, which invested the proceeds in housing for herders, meat processing factories, and education. Rather than the in-kind support sometimes offered by companies or accepted by herders, for example, by Erv's neighbour enterprise Kharp, Erv believes that cash best gives herders the freedom to decide how to develop their own community. By contrast, the reindeer herders of

Kharp are convinced that in-kind support by the oil company is best suited to support reindeer herding as a culturally specific livelihood of the Nenets nomads rather than just a meat producing occupation (Stammler & Ivanova 2016a).

However, reindeer herders were not aware of other recommendations in the IPIECA guidelines that went beyond FPIC and compensation. When we explained that some documents, such as the IFC guidelines or the World Bank operational policy on indigenous peoples, recommend not only damage compensation, but also participation in decision-making, benefit sharing, and the management and monitoring of impacts, nobody thought it was realistic to claim this as a right. In Krasnoye, some reindeer herders had benefited from company activities by receiving free and high-value housing in the village because their herding boss made a good deal with the oil company Naryanmarneftegaz when it was still a US-Russian joint-venture between ConocoPhillips and Lukoil. Currently no such programme is offered by any company working in the area. In any case, nobody thought this was a right, but saw it rather as a generous present from the company. This approach is prevalent across all cases in all regions where we took documents to the field: companies conceive of their engagement as help or charity in a paternalistic way, thus turning herders from independent partners to dependent victims of company damage to the environment.

The IPIECA document requires company workers to be trained for engagement with local indigenous communities. This does not seem to be the case in Krasnoye, but real-life coexistence between practitioners from both sides trains people “on the go”, and we found some creative specific situations in relations between herders and oil workers on the ground. Local indigenous people understand that they can claim compensation for any damage that an industry worker inflicts on their tundra property – mostly reindeer. They know that individual oil workers can get into serious trouble if herders complain about their behaviour to the company leadership. For example, when a herder from Erv noticed that one of his reindeer had been shot by an oil worker, he decided not to complain to the

company. He believed that if he had done so, the oil worker responsible would have lost his job. He told us that he felt sorry for the worker, that the reindeer was sick anyway, and that the workers did not even have the ability to recognise this. The loss of one sick reindeer was not worth ruining that person’s career.

On the other hand, companies in the region have also learned to show sensitivity towards indigenous connection to the land: during a pipeline route planning that connects several deposits to the Varandey oil terminal, herders voiced their worries about the impact of the pipeline on their most sacred site in the area, the Semigolovaya hill. The companies planning the pipeline considered the concern voiced in the consultation and agreed to re-route so that the sacred site would remain untouched.

These examples show that some of the best company practices originate from the indigenous herders themselves, but this can happen only when there are trusted channels for communication, and a genuine concern in the company to learn and respond appropriately. The guidelines specify meaningful consultation at an early stage, the reaching of agreements with indigenous peoples through good faith negotiation, the avoidance of culturally sensitive areas, and the avoidance of resettlement (IPIECA 2012, pp. 44-45). However, it was not because of these guidelines that these good things happened, since most people on the ground were not even aware of them. It is more that a mutual understanding has evolved out of the lived experience of contacts over the last forty years. In terms of evaluating international guidelines, we conclude that the IPIECA guidelines contain much that is in line with the expectations and values of local communities and this reflects well on those who designed them. However, there appears to be a serious lack of availability of the guidelines for local indigenous residents directly affected by company activities. There is also a serious gap in the chain of management and awareness between the headquarters (where company experts develop policies and make decisions on membership of industry associations) and the company representatives on the ground.

CASE 2 Yamal-Nenets Autonomous Okrug (YNAO)

International Finance Corporation (IFC) performance standards not known, but found highly relevant after introduction by the fieldwork team

In this example, the International Finance Corporation (IFC) Environmental and Social Performance Standards were not known in the field before the researchers' arrival there, but were found highly relevant after they were introduced by the fieldwork team.

Indigenous people involved: Nenets, many of them full time nomads with large herds of reindeer migrating through gas deposits.

Companies involved, all of which have agreements with the municipality of the Yamal'skiy rayon where most of the nomadic reindeer herders migrate, and where large gas construction has been ongoing since 2005:

- Gazprom and its many subsidiaries and subcontractors.
- Novatek: a gas company partially owned by Gazprom and with involvement from Total at various stages of its development.
- Yamaltransstroy: a company responsible for industry-run railway construction.

In April and August 2014, we held discussions with local stakeholders in the following locations: a forest one hundred kilometres north of Nadym; Nadym city; a tundra reindeer-herding camp between Bovanenkovo gas field and the Kara Sea; and Salekhard, the district capital.

In this region the industry in question is gas, not oil, which means certain differences in the impacts experienced. Although the construction and development phase entails roughly the same steps and infrastructures, during extraction a major difference is that – unlike oil – gas is not liquid, so that pipeline leaks do not pollute reindeer-grazing or fishing grounds. The entire development on Yamal is dominated by Gazprom and its myriad of subcontractors. Gazprom is not officially committed to implementing any international guidelines and best practices that might be mandatory for foreign companies, for example, when these companies rely on international bank loans. Gazprom is also not a member of IPIECA, the International Association of Oil & Gas Producers (IOGP) or other industry associations, and has not signed up to the UN Global Compact.² As such, the company is obliged to abide only by Russian law.

Nonetheless, inside Russia the YNAO, along with the Sakha Republic (Yakutia), is considered a very advanced region in its regulative practice of industry-people relationships. The example of coexistence between reindeer nomads and the gas industry in this region is often used as a showcase, even though there have been times when nomads were in a state of desperation. The incident quoted at the head of this paper was the first reaction of respected reindeer-herding elder and former Communist Party congress member Sergei Serotetto in Yamal, when he learned that Gazprom was going to acquire full control of all their reindeer- grazing land between the Bovanenkovo deposit and the Kara Sea. Gazprom representatives threatened herders with closing down the entire summer pastures for tens of thousands of reindeer and almost one hundred nomadic families.

This incident was followed by a number of attempts to save the pastures for the herders in coexistence with gas field development. These included an international best practice declaration specifically tailored for the Nenets case (<http://www.arcticcentre.org/declaration>), intervention by indigenous activists on behalf of the herders negotiating with Gazprom, backed up by scientific evidence for the exceptional resilience of Yamal nomadism (Forbes, Stammler *et al.* 2009). In the end these attempts proved successful: the reindeer nomads secured permission from Gazprom to cross the gas field twice a year and have continued access to their summer pastures, even though the development of new gas fields (Kharasavey and Kruzenshtern

BOX 2. IFC performance standards

- 1 Assessment and Management of Environmental and Social Risks and Impacts
- 2 Labour and Working Conditions
- 3 Resource Efficiency and Pollution Prevention
- 4 Community Health, Safety, and Security
- 5 Land Acquisition and Involuntary Resettlement
- 6 Biodiversity Conservation and Sustainable Management of Living Natural Resources
- 7 Indigenous Peoples
- 8 Cultural Heritage

fields) is further encroaching on their pastures. The state did not relocate nomadic families to villages, and this enabled reindeer herders and their families to continue their nomadic way of life with their families – the most vital precondition for a thriving traditional culture using reindeer as a key resource. Regional officials and activists are keen to showcase this as a unique example of cultural resilience and mutual cooperation, although sometimes it seems that companies or industry advocates use the impressive visual appearance of this nomadic life to hide tensions that nonetheless recur and threaten the continuation of this lifestyle.

In location, we focused specifically on taking the IFC Environmental and Social Performance Standards (IFC 2012) to the field and discussing their usefulness with selected people. As the company was not ready to talk, this was done mainly with herders in the tundra and with indigenous people who are employed by the company, in effect, as community liaison officers. Unlike the IPIECA guidelines, the IFC standards are available in Russian. We took these with us and discussed the text with our interlocutors. None of our interviewees had ever heard of any of these documents.

Even though these guidelines were written in clear Russian, understanding them was anything but easy for our local partners. Even a Nenets community liaison officer with university education and PhD student status needed a lot of additional “translation” by us in order to make the crucial link between the bureaucratic and general-sounding tone of the guidelines, and any concrete examples of what this could mean in his region and situation. However, the fact that people in the field were happy to spend many concentrated hours on this is a positive sign of interest, and also a reminder that their knowledge and experience are a wasted resource if not brought fully into the process of drafting and implementing guidelines.

Besides IFC Performance Standard (PS) 7 on indigenous peoples, people were also extremely interested in PS 8 on cultural heritage. This was surprising for us, as they considered it more important that standard 1 on environmental and social risks and impacts. Regarding the latter, both indigenous people and local company representatives felt that they had already found a way of managing these – the main instrument being an unorthodox and informal grievance mechanism: the companies give out to reindeer herders the mobile (cell phone) numbers of the leadership in the regional headquarters, such as Nadym or Novy

Urengoy or Ukhta. Herders are encouraged to call these managers immediately when they notice something worth complaining about. Sharing the phone numbers of senior managers gives herders the feeling of honour and respect that they carry a direct line to big people in their pocket and that the big bosses are only a call away. The principle is excellent, though the implementation so far has been uneven. Our informants said that no one had ever used this instrument directly. Rather, nomads on the tundra tend to call a trustworthy person of Nenets nomadic origin who has relatives among the herders and is a de facto community liaison officer. They tell him about the situation, and trust him to take this information to wherever he thinks it belongs.

Such community liaison officers are a key part of a company grievance mechanism. One of the community representatives with whom we spoke during fieldwork worked for Gazprom, another was the Health, Safety and Environment officer of the construction company Yamaltransstroy. In some cases, actions of such liaison officers have put significant pressure on the gas company (Gazprom). On one occasion during a VIP visit to Yamal, the Yamaltransstroy indigenous Nenets liaison officer facilitated an informal meeting between directly affected reindeer herders and a Gazprom vice-president. While the municipality deleted the meeting from the agenda, the officer re-arranged it by inviting the vice-president for a smoke-break, where the herders were able to express their grievance to him. Their main complaint was the threat to close down the summer pastures between Bovanenkovo and Kharasavey, referred to above, and the looming threat to relocate nomads as a result of pasture shortage to the village, where they would have nothing to do. The vice-president was surprised to hear this, went back to the official meeting and threatened to withdraw the entire project from the Nadym Gazprom subsidiary. The threat seems to have worked. According to our contacts in 2014, herders continue to move in early summer through the Bovanenkovo gas field. Gazprom security services close the roads when the nomads cross them, even though this can lead to traffic jams of kilometres. The herders also get supplies of fabric that they can put on roads and gravel slopes, which saves sledge runners from increased wear. The herding teams have the phone numbers of the local duty managers, so they can warn them when they are going to need the roads to be blocked. When crossing the gas deposit, the herders agree with individual industry-employees to barter reindeer meat and fish for supplies that industry-workers have access to, from fresh bread to mobile phones and ammunition.



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Nomadic reindeer herders crossing the gas deposit supply road at Bovanenkovo, Northwest Yamal. The queue of company-trucks is held up and controlled by traffic police and security services.



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Gazprom and the herders have an informal agreement that the company places fabric on roads and slopes in summer to reduce wear on wooden sledge runners when herders cross hard-surfaced roads. This level of detailed cooperation and good will could not be achieved through international guidelines, but only through personal contact and negotiation on the ground.

The issue of cultural heritage is particularly important. The analysis by our informants went in a direction not anticipated in PS 8 of the IFC guidelines, and is a striking example of the untapped critical power of indigenous informants. This could not be assessed from sitting in an office, but can be elicited only on the ground through focused fieldwork techniques. The community liaison people expressed concern for the protection of Nenets sacred sites from industrial infrastructure development. There have been cases where bulldozers had destroyed sites, or deprived them of their significance, by turning the entire area around them into construction sand quarries. Central to this issue is the fact that the sacred sites of the nomadic Nenets are not understood and respected by the company, though bulldozing a sacred site can be seen as an act of sacrilege equivalent to demolishing a Christian church.

Here our informants exposed a weakness and an inconsistency in the conceptualising and drafting of PS 7 and PS 8. Nenets sacred sites are of a particular sort, a sort that finds echoes among many indigenous peoples. Different from a Christian

shrine or tomb, a Nenets sacred site is a stationary knot, from which spiritual connections reach out to every nomadic family's sacred sledge, which may be considered the "mobile branch" of that stationary knot. Each nomadic family has a sacred sledge that carries the spirits of their ancestors, embodied in sacred objects. The sacred sledges contain items from the sacred site and move with the nomads across the tundra on migration routes negotiated throughout the centuries. As such, Nenets spiritual heritage consist of more than stationary sites. When sites get lost or destroyed (as in gas development), the spirits in their sacred sledges lose their home too, and thus the migration of spirits across the tundra with people loses its anchor.

There is not yet a law on the federal level in Russia regarding the protection of sacred sites as places for cultural heritage, but the regional authorities are working out how Nenets sacred sites (and sledges) can be made to fall under a Yamal regional law. Our informants welcomed PS 8 as a source of potential international recognition of such sites. However, they questioned why indigenous sacred sites should be exempt from this standard, that is, why they



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Reindeer herders and workers of Gazprom and its subcontractors form personal relationships as the herders migrate near gas industry settlements. Here, a gas worker weighs freshly slaughtered reindeer meat that he has bartered from herders – a welcome change from the menu in the Gazprom canteen.



A sacred site saved from destruction by road and quarry works. The Nenets reindeer herder Evgenii Khudi sits at the Bovanenkovo gas deposit near offerings of antlers and coloured ribbons. The site is used by reindeer herders to thank the spirits for a safe and successful crossing of the Se Yakha River and of the numerous roads and pipelines that criss-cross their route to the summer pastures on the Kara Sea. Reindeer herders also encourage truck drivers to stop by the site and feed the spirits of the land as a sign of appreciation.

should enjoy a different protection. PS 8 reads: ‘The requirements of this Performance Standard do not apply to cultural heritage of Indigenous Peoples; Performance Standard 7 describes those requirements.’ (PS 8, paragraph 5, pp. 53-54).³ As such, the Nenets felt their sacred sites are less protected under PS 7 on indigenous peoples (IFC 2012, p.48). Although PS 7 recommends avoiding the destruction of indigenous peoples’ cultural heritage, it admits that this may be unavoidable, but says that if so, then the destruction should at least happen with the FPIC of the indigenous communities (IFC 2012, p.51).⁴ FPIC is seen as best practice, but herders in the tundra are not always sure that their representatives who give consent pay justice to the entangledness between sacred sites and sacred sledges among the nomads. This is a question about the legitimacy of representation of local interests – a concept that may be taken for granted too easily.

Our informants interpreted this as a lack of clarity in the performance standards, which could be fixed if the sentence excluding indigenous heritage

from PS 8 was deleted, and the word “religious” or “spiritual” was more explicitly added to the heritage preservation sections of both standards. Especially significantly regarding PS 8, they pointed out their appreciation that the standard applies even in cases where the cultural heritage is not legally codified (IFC 2012, p.53, standard 8, clause 5). This has particular meaning for Yamal, where there have been discussions on whether or not to disclose information on sacred sites for a regionally codified official inventory. Opponents to this idea maintain that to disclose information supposedly known only by religious specialists (shamans) may endanger the spiritual power of the place. The view was expressed that if this standard could be applied regardless of the legal status of such sites, such a public disclosure of information could be avoided. In fact, clause 13 of PS 7 refers to land use that is not dependent on legal title but is used for cultural, ceremonial, and spiritual purposes, which do not have to be legally defined.

However, it was significant that people did not see this as being written explicitly enough.

The location of the discussion inside nomadic tents encouraged the highlighting of another aspect, again related to cultural heritage: PS 8 includes a category of 'removal of replicable and non replicable cultural heritage' (clause 11 and 12), which is protected differently. Both the moving and removing of heritage and its replicability raised lively interest, with the suggestion that the standard should be amended. The sacred sledges could be classified as movable cultural heritage, since they travel with households during their nomadic migration. One might argue that movable sacred heritage is not threatened by industry development. However, if industry destroys the site to which these mobile items belong, their spirits may become uprooted and become homeless. If one classifies Nenets sacred heritage only as "removable and replicable", one would miss out this connection, in effect, recognising only one half of their cultural heritage and missing the other half. As for "replicable", although in principle, new sacred items can be made, this replication can be done only by

shamans, all of whom were persecuted by the Soviet Union and have virtually disappeared. Herders therefore expressed the view that their previously replicable cultural heritage had in fact become non-replicable, as no one had the right or the skill to replicate it any more.

This complex discussion shows how guidelines can be improved and corrected by bringing them back to the field for critical analysis. In this case, the herders themselves recommend that:

- the sentence excluding indigenous heritage from standard 8 should be deleted;
- the word "religious" or "spiritual" (in Russian, the same word: *dukhovny*) should be made more explicit in the heritage preservation sections of both standards 7 and 8;
- the words "removable and replicable" should also be extended to cover nomadic items such as sacred sledges and what is transported on them.

CASE 3 Republic of Sakha (Yakutia)

Presenting the IFC performance standards and the UN Guiding Principles on Business and Human Rights to indigenous land users in search of relevant guidelines

Indigenous peoples involved:

Evenki: residents of the area around Iengra, Neryungri, Nakhod, Aldan and Khatastyr in southern Yakutiya.
Sakha (also known as Yakut): a local people, who would be defined as indigenous by the UN but not according to Russian law, also resident across these field sites.

Companies involved:

- Yakutugol' coal mining company: one company in the Mitchell consortium, and the main company of Neryungryi.
- Kolmar: a coal mining company based in Switzerland.
- Transneft: the operator of the East Siberia Pacific Ocean Pipeline (ESPO).
- Gazprom: the builder and operator of the Power of Siberia Pipeline, through its subsidiary Gazprom Transgaz Tomsk.
- Various gold mining companies, whose names are unknown by the indigenous peoples affected.

As far as the researchers were made aware, these companies have neither signed up to international ethical standards nor committed to doing more than complying with national legislation.

Fieldwork was carried out in the following locations in November 2014, January 2015, and December 2016: the coal mining city of Neryungri; the village of Iengra, inhabited by indigenous Evenki reindeer herders; the region of Aldan, home to gold and iron ore mining, and a passage for the Power of Siberia pipeline; Khatastyr, a village where gold mining significantly impacts indigenous Evenki reindeer herders.

We held discussions in particular with two officials of the Yakutugol and Kolmar coal extraction companies, as well as with officials of the municipalities of Neryungryi and Aldan, and with members of indigenous communities including reindeer herders, hunters, activists, and intellectuals.

This was the region where we found the greatest awareness of the general problem of industry threatening the very existence of an indigenous culture based on reindeer herding. This did not however translate into detailed knowledge of guidelines, even among company officials. Besides a general statement that international best practices were taken into consideration, the two company

officials did not know any details of which standards specifically they were following. However, they assured us that as their coal companies have a local presence in Neryungri, unlike the Moscow-based pipeline company that builds in the area (Gazprom Transgaz Tomsk), they are very well integrated with the community. This seems reasonable for the large population of Russian, Ukrainian, and other European settlers in the region, mostly working in the mining industry. It does not, however, refer to any indigenous community. Coal mining is the mainstay of the regional economy and employs tens of thousands of people, but hardly any of the indigenous population, who live by reindeer herding and hunting.

Inevitably, it was indigenous people rather than immigrant miners who were critical of the companies' environmental and social performance. Indigenous people are impacted by coal mining, especially the new El'ga coal deposit closer to the border with Amur district, which is much bigger in reserves than the long-established Neryungryi deposit. In El'ga, the company Yakutugol' has teamed up with many other companies to develop a major new industrial complex that includes a railway and parallel car road, a high-voltage electric line, and a workers' settlement, which may remain a fly-in/fly-out base or may even become a permanent town. The coal infrastructure covers the territory of several indigenous Evenki communes (obshchina). The area used by the coal company includes areas with land titles registered to two of these obshchinas, named Los' and Buta. The chairpersons of these two obshchinas became activists for the cause of preserving the entire indigenous population in this area of South Yakutia.

It is especially among these people that we found much interest in the international guidelines. Indigenous herders, activists, and administrators thought that, in principle, such guidelines could help them make their cases and claim their rights in regard to industry. The Evenki hunting and reindeer-herding obshchina called Bugat had to deal with multiple companies and industry projects in their area: the East Siberia Pacific Ocean Pipeline (ESPO) oil pipeline, the Power of Siberia gas pipeline, the Tazhnyi iron ore factory, and the Kankunskaya hydroelectric power station project. Each of these industry projects works with a myriad of subcontractors, one of which had

just asked the obshchina to sign an agreement. As a result, the obshchina's territory is in danger of being compartmentalised and divided up into unconnected parcels, as part of their territory is criss-crossed by pipelines, supply roads, transmission lines, construction quarries, and other infrastructure for all of the industry listed above. In such a setting it would be hardly possible to continue a herding and hunting lifestyle any more. In this respect, Bugat had an immediate practical need for international guidelines, as they were unprepared, untrained, and overwhelmed by the sudden question and the need to come up with a legally appropriate agreement draft.

We therefore presented a wide range of informants with two documents to study – the IFC performance standards and the UN Guiding Principles – at the very moment when they were preparing their response to an agreement draft delivered to them by the company. Both of these are in fact available in Russian online, but this was the first time that anyone in this community had heard of them. They would also have had very little scope to understand the implications if we had not gone through both these documents with them in detail.

This was a rare real-time occasion of direct applied research where we could study how guidelines are perceived, interpreted, and used at a crucial moment of decision. It was also yet another lesson for us in the precision and focus of an indigenous legal critique. While they found the texts highly relevant, at this grassroots level our informants found the stipulations in both documents quite general. In the discussions they brought up more concrete questions, addressed in particular to the legal scholar on our team. For example, they questioned whether or not they had to do a new land-categorisation project (*mezhevaniye*) and a new cadastral passport (*kadastrvoyi pasport*) of their land in order to be legally recognised as a party affected by industrial activity. This had to do with recent changes in the Russian Land Code (*Zemel'nyi Kodeks*), and the change of status of the land as part of the territory of a village council (*territoriya naslega*) as different from the territory of the municipality but between different village councils (*mezhselennaya territoriya*).

The focus of the obshchina members was on sustainability – not as an abstract concept but out of a desire to predict what the land will look like when their children work there. They also noted their desire to be involved in the construction process of the industry project. In this particular case, their desire was to be employed for clearcutting the forest for a

BOX 3. UN guiding principles 20, 21, 29

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:
- Be based on appropriate qualitative and quantitative indicators.
 - Draw on feedback from both internal and external sources, including affected stakeholders.
21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts, should report formally on how they address them. In all instances, communications should:
- Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences.
 - Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved.
 - In turn, not pose risks to affected stakeholders, personnel, or legitimate requirements of commercial confidentiality.
29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

road and power line. The reasoning was that "if we already have to sacrifice our woods, then better do it ourselves in a way it is less damaging for us, and earn some money from this" (reindeer herder Grigoriev, obshchina Bugat, January 2015).

Of the entire IFC performance standards, the stipulation that appealed most was PS 5, about the desirability of avoiding resettlement. People felt that this should apply even where they have only traditional usage rights rather than formal land ownership (this point reappears in PS 7, clause 14). Several families had already had to relocate away from their own land, not only necessarily due to industrial activity, but also due to the end of transport subsidies that formerly financed helicopter flights between their land and the settlements of lengra and Neryungryi. As formal ownership of hunting and fishing grounds is hardly possible to achieve for indigenous peoples in the Russian North, this guideline was seen as particularly relevant.

However, there were lively discussions even within one family as to how realistic this is, especially with companies that do not depend on international credit. These companies are therefore not obliged to follow IFC standards, since IFC requires these standards to be observed as a condition of funding. This means that any application of international guidelines in such cases is just voluntary. Nonetheless, in the process of negotiating with the company, the indigenous representatives felt that it would be useful to show that they are aware of these guidelines, and to recommend their implementation.

In discussing the UN Guiding Principles, people were most interested in issues of tracking company performance, transparency of communication, and business grievance mechanisms (Principles 20 & 21 & 29). In particular, our informants highlighted a weakness in the application of these principles to subcontractors. They argued that it was

wishful thinking that a company would track the performance of their subcontractors, and that communication with affected stakeholders (as required in Principle 21) existed only on paper (the IPECA document also mentions similar problems of supply chain management). While the indigenous land users had the telephone numbers of a company's community liaison officers as one aspect of a grievance mechanism (Principle 29), in several cases these contacts were not working in practice. In general, people in the field expressed clearly their conviction that companies need to have a constant regional presence if they want to work in the area. However, in reality, most companies do not have local representatives, and this applies especially to subcontractors. In such cases, the contacts for grievances were over 5,000 kilometres away in Moscow. This was a serious deficiency in the implementation of any guidelines, whether voluntary or mandatory.



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Land use of indigenous reindeer herders and incomer people increasingly overlap in South Yakutia, while land rights are not finally settled.

CASE 4 Divtasvuodna/Tysfjord

International guidelines thought by some to be unnecessary because already incorporated into Norwegian national law

Indigenous people involved: Sami, mostly Lule Sami.

Companies involved:

- Norcem: now 100% owned by Heidelberg Cement, running the factory in Kjølsvik.
- The Quartz Corp, based in the US, with Drag being its prime location for producing high purity quartz sand products for the IT industry.

Fieldwork was carried out in June 2015 and August 2016. Our conversation partners here included inhabitants of the villages of Ájluokta (in Norwegian, called Drag) and Gásluokta (Kjølsvik), and in summerhouses along the shore of Oarjjevuodna (Hellmofjorden). We also talked to representatives of the two main extractive industrial companies, Norcem in Kjølsvik and The Quartz Corp in Drag. The municipality, represented by the mayor of Tysfjord, also commented. Among our interviewees, the inhabitants of Hellmofjorden and almost all inhabitants of Drag considered themselves Sami, while in Kjølsvik most of the residents, and the company officials, were Norwegian.

Here the contrast with all our Russian sites was striking. It was not so much a question of whether or not people had heard of international guidelines. Rather, the mayor of Tysfjord, the plant manager at Norcem, and even many of our Sami interlocutors assumed that such guidelines were unnecessary since the standards enshrined in Norwegian national law were higher.

This perception is grounded in a situation that is specific to Norway and does not apply in Russia. In Norway, there are tensions between the status of any Sami legislation or institutions, even the Sami Parliament, and the position in Norwegian law that all citizens of Norway have equal rights. This presumption works to a greater or lesser extent against any notion of indigenous rights. To the extent that there is a notion of distinctive indigenous rights, this notion has greater force, and takes more concrete legal form in the Finnmark Act, which applies to the northern region of Finnmark, rather than here in Tysfjord.

More than any other international instruments, here the local discussion centred around Norway's complex relationship with convention No 169 of the ILO (International Labour Organisation). Norway was the first country to ratify this convention in 1990. The Norwegian Government and the

Norwegian Parliament assumed that the vast part of the country's legislation was already consistent with the convention, including the land rights Article 14 (Government proposition No 102, 1989-90; International Labour Conference 1989). Consequently, they found it unnecessary 'to require special amendments to domestic Norwegian regulations, prior to ratification'. (Government proposition No. 102, 1989-90, p.7). It was assumed that if necessary, the Sami Rights Commission would propose amendments that the legislators could use for legislative considerations in this regard.

In Russia, a treaty or convention becomes part of the Russian legal system upon its ratification by the Russian Federation. Moreover, there is a backdoor way of bringing in "accepted principles of international law" as governing law, even if the source (e.g. a convention) has not been formally adopted by the Russian Federation (see project paper on 'Legal framework for extractive industries and indigenous peoples in the Russian North'). In contrast, in Norway, a norm of international law does not become part of national law (and thus has no force of law), even if it has been ratified, until it is incorporated as a piece of national legislation.

This assumption of consistency was already challenged by the Sami Parliament at the time of ratification, especially in terms of Sami land rights in relation to Article 14 of the ILO 169. However, the Sami Parliament recommended ratification due to the work of the Sami Rights Commission, but stated that ratification would require judicial clarifications and legislative amendments at a later stage (Government proposition No. 102, 1989-90, p.12).

The discrepancy between the commitments of the convention and state practice seems to be prominent also in terms of mining. Article 15 (2) of the Convention contains consultation obligations posed on the Government, a benefit-sharing commitment, and commitments to put in place fair compensation measures for damages to the people concerned, when the state retains the ownership of mineral resources for extraction, which is the case in Norway (Ravna 2016, pp.177-178). Regarding mining in reindeer-herding areas, the Ministry of Industry at the time of ratification, stated that:

'It is already an established practice that the county, the municipality, and representatives from reindeer husbandry are offered opportunities to

BOX 4. International Labour Organisation (ILO) Convention 169 and Sami Land Rights in Norway

During the late 1970s and early 1980s, a conflict arose over the building of a hydroelectric power station on the Alta River in Finnmark. Demonstrations, civil disobedience, and a hunger strike resulted in a new national approach regarding Sami rights issues in Norway, which led to the appointment of two commissions to deal with the issue: the Sami Culture Commission and the Sami Rights Commission. The first report from the latter (NOU 1984:18) led to the Sami Act 1987, an amendment of the Norwegian Constitution on Sami rights in 1988 (Article 110a, now Article 108), and the establishment of the Sami Parliament in 1989 (Broderstad 2015, p.18, Note 1). Norway ratified the ILO Convention No. 169 on Indigenous and Tribal Peoples in 1990, passed the Human Rights Act in 1999, incorporating the UN International Covenant on Civil and Political Rights (ICCPR), making Article 1 (self-determination) and Article 27 (rights to enjoyment of cultures and use of own language for minorities) the most important provisions for the Sami (Ravna 2016, p.174).

The continuing work of the Sami Rights Commission led to the second main report (NOU 1997:4) in 1997, which formed the basis for the 2005 adoption of the Finnmark Act. This Act ensures Sami rights to land and natural resources (while simultaneously securing the rights of other residents in the county) by transferring contested Crown land to a regional ownership body, namely the Finnmark Estate, and prescribing the legal process to comply with ILO 169's obligations regarding land and natural resources in indigenous people's areas (Ravna 2016, p.173). Section 3 of the Act reads: 'The Act shall apply with the limitations that follow from ILO Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries. The Act shall be applied in compliance with the provisions of international law concerning indigenous peoples and minorities and with the provisions of agreements with foreign states concerning fishing and transboundary watercourses'.

According to Ravna, "This is a direct incorporation of ILO 169 into the area of the Finnmark Act, ensuring that the Act cannot be applied in contradiction to the ILO Convention. The obligations to the Sami are clearly stated in Section 5, paragraph 1: 'Through prolonged use of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark'". (2016, p.184).

According to the ILO Convention 169, indigenous peoples have the right to be consulted (Article 6). The agreement on procedures for consultations between the State authorities and the Sami in Norway was agreed upon, and confirmed by a Royal Decree in 2005 (Ministry of Local Government and Modernisation).

The Sami land claims in Tromsø, Nordland and the South Sami Area were dealt with by the Sami Land Rights Commission II, which submitted its proposal to the Ministry of Justice in 2007 (NOU 2007:13 and NOU 2007:14). After hearings, the Government is preparing a bill on this matter to the Parliament. After 10 years, it's still unclear when the bill will be submitted.

express opinions in such cases. Consequently, there should not be any need for altering our practice in this regard in order to fulfil our commitments under the convention'. (Government proposition No. 102, 1989-90, p.10, our translation).

Article 22 in the ILO constitution requires member states to submit reports on the implementation of conventions that they have ratified. The Government of Norway submitted its First Report 'on the measures taken to give effects to the provisions of the Convention No. 169 Indigenous and Tribal Peoples, 1989', in 1993 (Government of Norway, various dates). The Sami Parliament disagreed strongly with certain sections of the governmental report, particularly the section addressing land and resource rights, and submitted a written response to the Government, reflecting the substantive disagreement on the status of implementation of the ILO 169.

Norway has very actively promoted its ratification of ILO 169 both abroad and domestically, so that

the idea that Norwegian legislation meets those standards seem to have taken root among the public, industry, and many Sami too. It is the Government's responsibility to make sure that industry meets the standard of ILO 169, but the Government has been slow to fulfil these obligations, and there is a struggle between the Government and the Sami Parliament every four years when the Government report on this issue to the ILO. The diverging views regarding the threshold for implementing state obligations on land and resources for the Sami pertaining to ILO 169 have been an issue that has dogged Norway's reports almost continuously since its inception in 1993.

The Finnmark Act of 2005 is probably the sole exception regarding disagreement, and even today, it is still only the 2005 Finnmark Act that meets the obligations in ILO 169 regarding land and resources (Ravna 2016, 184). For the rest of the traditional Sami area in Norway, such as our study area, there is still no resolution. Countries that have signed up to ILO 169 are not necessarily the ones where companies perform the best on indigenous rights, and it is thus

less of a surprise than one might expect to see that Norway scores rather low in the tables of our project paper 'Ranking oil, gas and mining companies on indigenous rights in the Arctic' (Overland 2016).

The local situation reveals important differences, even within a relatively small country such as Norway. The relevance of ILO 169 in Tysfjord is much less than, for example, further north in Finnmark, where ILO 169 texts have already become incorporated into legislation. The Finnmark Act turned ILO land rights regulations into regional Norwegian law (Ravna 2016, p.184), which the indigenous peoples can use today as their codified rights. Some of these rights are collective for all people living in the area, so in Finnmark the issue is about common land, and use rights since time immemorial. In Tysfjord by contrast, for historical reasons parts of land are held privately, originating from the seventeenth century in terms of state integration, access to resource bases, and the distribution of production surplus in Sami areas, which "also led to changes in legal rights" (Hansen and Olsen 2014, p. 230).

Cement production in Kjøpsvik has a history of nearly one hundred years. The mining activities in Drag have a decades-long history as well, with participation of Sami as workers in both sites. This is an important example of how indigenous people can become successfully incorporated into a mining activity, to such an extent that mining becomes a mainstay of the indigenous economy. Thus, it can be said that both the cement factory in Kjøpsvik and the mineral factory in Drag have earlier contributed to the surrounding society in ways that resemble what today is called corporate social responsibility.

Company representatives in Tysfjord explained that the most important variable was local content, i.e. hiring locals as workers, and using local expertise. Creating local content opportunities for local communities is considered to be international good practice and is promoted by international industry associations such as IPIECA and ICMM (the International Council on Mining and Metals), the Towards Sustainable Mining initiative, and the Equitable Origin EO100TM Standard for ethical energy projects. ILO 169 incorporates a specific requirement that indigenous peoples should benefit from resource development and their interests be prioritised in related development plans (Articles 7 and 15). The IFC calls on its clients to offer culturally appropriate sustainable development opportunities if their projects are to affect indigenous peoples' traditional resource use practices (Performance Standard 7(14)) (Wilson 2017).

The company representatives in Tysfjord believed that international standards and guidelines such as these are largely irrelevant because national legislation covers the important elements of these instruments. It is significant here that "local content" is not perceived as meaning "indigenous content". While the idea of indigenouness is more politically powerful further north in Finnmark, along the Norwegian coast further south there is widespread reluctance to acknowledge Sami interests and there is also often hostility to what are taken as "special privileges for the Sami based on ethnicity".

Though not expressed directly, there seems to be a conviction that Norway's policies on extractive industrial development and indigenous peoples are so good at honouring indigenous rights, that adhering to international standards could actually reduce the quality of the engagement between all parties (industry, indigenous peoples, municipality, state). This is in striking contrast to Russia, where nobody in any of our field sites suggested that international guidelines might have a lower standard than Russian law. This perception is reinforced by clear situations where Norwegian legislation obliges a company to go further than international guidelines, as for instance, regulations in terms of working conditions. Representatives from both industry and the municipality argued that following Norwegian laws and regulations is enough, and goes further than most international guidelines anyway. Our Sami interlocutors too seemed to be content with a definition of "local content" as being not necessarily indigenous.

Tysfjord could be considered special because even explicitly Sami people there are happy for regulations to be relevant for the entire local population, not just for Sami. On the other hand, there are still deeply engrained resentments between Norwegian and Sami in the municipality, leading to a situation where not all people with Sami ancestry are happy to be considered Sami. Therefore the industries' and municipalities' position that best practices with industry concern all local citizens, not just Sami, enjoys broad support. The head of the municipality (the mayor) knew of the relevance of the ILO 169, but argued that since its ratification the convention has become incorporated in Norwegian law, and that what mattered was to follow that law.⁵

It was only from Sami politicians with connections to the Sami Parliament that we heard any mention of international guidelines. These people were much more aware of the relevance of ILO 169 than other people. In principle, most people to whom we talked agreed with the idea that in Norway industry

should be for the benefit of all people regardless of their ethnic origin. Sami should have the same rights as anybody else, and no more. That is in line with company policies, where officials stated that there must not be a preference for indigenous hiring, which, in any case, would be contrary to Norwegian law: they would simply take the best qualified candidates. On top of that, it seemed that Sami people were satisfied with the possibilities that they have for accessing especially targeted funds from the state for developing their own indigenous society. Members and advisors of the Sami Parliament explained how Sami people can apply for funding controlled by the Parliament for developing cultural and livelihood-based initiatives. Several funding options are found at the county level as well. Moreover, there is a special fund earmarked for remote local development activities from the Ministry of Local Government and Modernisation, to which people in Tysfjord have successfully applied before.

In general, the impression we got in the field was that people are accustomed to relying on the Norwegian state to provide them with good conditions for development. Therefore, and in sharp contrast to the situation in the Russian North, they did not expect anything special from the industry active in their area. In Russia, companies are under pressure to provide social facilities and other benefits to the indigenous community (though their ways of doing this are often just cheap tokens). In Norway, companies argue that they pay taxes, and therefore have no further obligations to the indigenous

population, and this position actually finds support among the Sami. In particular, those who have experience in applying for government funding did not seem to expect industry too to invest in indigenous development.

The political and cultural egalitarianism that is now embedded in Norwegian state structure is challenged every time Sami affairs and rights are on the agenda. As in our Russian cases, in Norway too we can point to a certain disconnect between the PR and promotion of best practices by the headquarters and the lived experience of implementation on the ground. This applies not only to company headquarters and their local representatives, but also to national governments and their local implementation structures, right down to municipalities.

The view that a strong state and strict rules make guidelines in the field superfluous is problematic. Not paying attention to those guidelines is firstly, a missed opportunity to become an exemplar of good practice worldwide and secondly, a missed opportunity to become even more relevant for the people, since the guidelines still do cover some regulations that are not codified by Norwegian law. A stronger state regulator does not mean that international instruments are irrelevant. It means, rather, that they can fill in on more case-sensitive areas locally, building a bridge directly to the globalisation discussion and not stopping on the national level.

Conclusion. The power of indigenous critique, and the gap between guidelines and implementation

Evaluation of guidelines

The practice of taking guidelines to the field has major implications for the evaluation of guidelines. It subjects these documents, generally written far away in city offices, to the most stringent possible evaluation by people with the greatest understanding of situations and processes on the ground. In the case of indigenous peoples affected, it also subjects the documents to the most searching critique by the people who will be the main victims if things go wrong:

- It shows the level of detail with which guidelines can be scrutinised and commented on by the most directly-affected local stakeholders, to a level that we believe has never been done before, certainly in the Russian Arctic.
- It can have an immediate, direct effect on the local level of company practice. One of the community liaison officers (the Yamaltransstroi person) is also an advisor to the regional governor, and expressed his intention to propose these standards for inclusion into a unified local environmental policy that would be mandatory for all companies active in the YNAO. This is a striking example of the scope of a community liaison officer's go-between role in practice.
- It shows how indigenous stakeholders can readily and immediately respond to best practice guidelines, even if they have never heard of them before, and propose practical amendments and improvements based on their own specialised knowledge and experience.
- It shows possibilities for narrowing the gap between texts in the abstract and practice on the ground, by providing feedback to companies that are willing to listen and learn. Thus, guidelines can be made relevant in the field by bringing them back to a range of people who can actually make use of them, negotiate them, and implement them.

Lessons for implementation

These case studies, and the variety between them, contain several lessons for wider and more satisfactory implementation. The key is the nature of relations between indigenous people, companies, and government (at various levels):

- A great deal has been achieved, and can be further achieved, through local – even personal – contacts on the ground. In cases where people perceive that good practices are implemented, this is often because of such informal mechanisms rather than through the implementation of formal guidelines. Such informal arrangements may deliver results and viable compromises, which could hardly be achieved through more formal legal procedures. Whether or not one believes that this should be the case, it is a fact that should be acknowledged and utilised. This is particularly the case in Russia, where the legal framework functions at several different levels (Novikova *et al* 2017).
- Nonetheless, the state is still of utmost importance on the ground, both in the perception of people and in formal practice. The state has a moral responsibility – and political role – to protect its citizens, and to act as an intermediary between indigenous peoples and companies. In practical terms, the state can more actively engage locally in awareness-raising, cooperate with indigenous peoples, and lobby more proactively with companies to consider guidelines and to organise meetings and public hearings where such guidelines are introduced, discussed, and negotiated. Of course, the state should be vigilant in ensuring adherence to those guidelines.
- It turns out that many of the topics that are of local concern are already covered in one or other international guideline documents (for example, 'Cultural heritage and sacred sites' for Case 2, or 'FPIC' for Case 1). Local indigenous peoples had experienced and thought through these issues with great sophistication and without knowing anything about international "best practice". This corroboration can potentially give local people confidence that they are not asking for the impossible, and that their concerns make sense and are echoed internationally (and in Russia, parliamentary groups writing legislation are strongly informed by international standards). However, this echoing is often in rather abstract terms. On the one hand, these abstract terms allow for some

flexibility in interpretation and implementation. On the other, it points to a need for greater input from indigenous peoples themselves into the initial drafting, and subsequent amending and fine-tuning, of such documents.

- Indigenous peoples contain a great reservoir of wisdom and practical knowledge about the environment. Their contribution to dialogue, preferably at an early stage, can prevent or mitigate many dimensions of environmental and social damage that remain beyond the awareness of outsiders. Much has been written about the value of indigenous peoples' traditional knowledge as a part of the earth's cultural heritage. But the point we make here is that the experience-based knowledge of people is not only worth preserving as a relic of a bygone tradition. Rather, it is also useful to be applied in real life, even for industry purposes. For example, nobody knows the details of the boggy swampy landscape of the Yamal Peninsula as well as the reindeer nomads do. When planning a pipeline route or siting a compressor-station, a workers' village or gas

field installation, this detailed knowledge can be helpful for avoiding problems of unstable constructions, drowning equipment, and other risks (Sidortsov, Stammler and Ivanova 2016). Where this does not yet happen, we strongly recommend that they should be brought into such discussions, and invited to subject guidelines and related documents to their own critical analysis – as equal partners.

- Concerning Norway, by encouraging a sense that the country lives up to the relevant standards, the ratification in 1990 of ILO Convention 169 appears to have had a soporific effect on the country's mining industry's capacity to develop knowledge of Sami rights and to keep up with this evolving field. The ILO convention was born from a tripartite collaboration between government, workers', and employers' organisations. We recommend that the Norwegian government, the Labour Union (LO) and the Confederation of Norwegian enterprise (NHO) should work together with the Sami Parliament to evaluate the situation with a view to developing more efficient measures for future implementation.

1. In 2012, IPIECA published its guidelines on indigenous peoples, which acknowledge the 2012 IFC performance standards and their revised use of "consent" rather than "consultation". However, the guidelines go on to state: 'Although there is a certain amount of consensus between governments, NGOs, and companies on the need for free, prior and informed consultation with Indigenous Peoples in negotiation and decision-making processes, the concept of consent is not universally accepted' (IPIECA 2012, p.19). Nonetheless, while IPIECA does not explicitly commit to FPIC, the text continues: 'Regardless of the debate, companies benefit from ongoing engagement with Indigenous Peoples in the places where they operate, and from their broad support and participation. The application of the good practice approaches summarised in this section can assist companies and indigenous communities in reaching this position.' (IPIECA 2012, p.19)

2. The UN Global Compact is one of the few functioning ethical business networks in Russia and several energy companies have signed up to it. See also: <http://www.facing-finance.org/en/database/companies/gazprom-oao/>

3. Our Nenets partners mentioned that it may not be self-evident that religious heritage is necessarily part of cultural heritage. This concern is addressed in paragraph 16 of PS 7, where spiritual aspects are included. But neither they nor we could explain or justify why the "indigeneness" of a cultural heritage site removes it from protection under PS 8, and why the good regulations from standard 8 should not apply here. It seemed that the cultural heritage regulations within standard 7 on indigenous peoples were in fact less detailed and effective than the ones in standard 8.

4. Performance Standard 7(16) states (under the heading 'Critical Cultural Heritage'): 'Where a project may significantly impact on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives, priority will be given to the avoidance of such impacts. Where significant project impacts on critical cultural heritage are unavoidable, the client will obtain the FPIC of the Affected Communities of Indigenous Peoples'. In this sense, cultural heritage includes natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees, and sacred rocks.

5. The irrelevance of ILO 169 expressed by a Norcem local manager was especially noteworthy, for several reasons: he represents a multinational company active in sixty countries, which claims to be a leader in, for example, climate change action (heidbergcement.com); his company drafted a best practice handbook for community responsibility in 2014, and is also an active participant in the World Business Council for Sustainable Development (WBCSD); he has himself worked in Africa in countries for which such guidelines were designed; his local branch of the company would have been a good example of such best practices and guidelines actually were not only implemented but over-fulfilled, if the claims by Norcem are true. In particular, the company is proud of being a leader in environmental performance in the cement industry, especially the small volume of the cement produced in Kjøpsvik that allows for the Norcem factory there to test new best technologies in environmental performance. Theoretically, the same argument would go for the social performance as well, but that argument was never made, neither by the company itself, nor by the municipality.

References

A. Legal documents and standards

Convention on Biological Diversity (CBD) (1992) <https://www.cbd.int/convention/text/>

International Finance Corporation (IFC) (2012) Environmental and Social Performance Standards and Guidance Notes – 2012 Edition. <http://www.ifc.org/performancestandards>

International Labour Organisation (ILO) Convention 169 concerning Indigenous Tribal Peoples in Independent Countries (ILO 169) (1989).
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314

International Petroleum Industry Environmental Conservation Association (IPIECA) (2012) Indigenous Peoples and the Oil and Gas industry: context, issues and emerging good practice. A guidance document for the oil and gas industry. <http://www.ipieca.org/resources/good-practice/indigenous-peoples-and-the-oil-and-gas-industry-context-issues-and-emerging-good-practice/>

Ministry of Local Government and Modernisation. (2014) Consultation duty in Sámi matters.
<https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtspalte/consultation-duty-in-sami-matters/id86931/>

UN Global Compact <https://www.unglobalcompact.org/>

UN Guiding Principles on Business and Human Rights (UN Guiding Principles) (2011)
<https://business-humanrights.org/en/un-guiding-principles>

B. Papers and reports

Bashneft' (2014). Isskustvo sozdaniya stoimosti: otchet ob ustoicevom razvitii 2013. (The art of value creation: sustainability report 2013). Ufa: Bashneft'.
<http://fs.moex.com/content/annualreports/1810/4/bashneft-annual-report-2014-eng-web.pdf>

Broderstad, E. G. (2015). 'The Finnmark Estate: Dilution of indigenous rights or a robust compromise? In *The Northern Review* 39, pp.8-21.

Forbes, B. C., Stammler, F. *et al.* 'High resilience in the Yamal-Nenets social-ecological system, West Siberian Arctic, Russia'. In *Proceedings of the National Academy of Sciences* 106(52), pp.22041-22048.

Government of Norway (various dates). Reports to the ILO concerning Convention No.169; 1993, 1998, 2003, 2008 and 2013, with comments and questions from the ILO Committee of Experts; 2004, 2010, and 2015 (in English): <https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/urfolkryddemappe/ilo-konvensjonen-om-urfolks-rettigheter-/id487963/>

Government of Norway. St. prp. nr. 102 (1989-90). Om den 76. internasjonale arbeidskonferanse i Geneve 1989 (Government Proposition (Resolution) No. 102 (1989-90) on the 76th session, International Labour Conference in Geneva (1989)). <https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1989-90&paid=2&wid=b&psid=DIVL968>

Government of Norway. Innst. S. nr. 197 (1989-90). Om den 76. internasjonale arbeidskonferanse i Geneve 1989 (Standing Committee Recommendation No.197 (1989-90) to Parliament on the 76th session, International Labour Conference in Geneva 1989)
<https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=6273#>

Hansen, L. I. and B. Olsen (2014). *Hunters in Transition. Outline of Early Sami History*. Leiden, The Netherlands: Brill.

NOU (1984):18 - Om samenes rettigheter (On the Rights of the Sami). Bergen: Universitetsforlaget.
Reklametrykk. <https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/samepolitikk/midtspalte/nou-198418-om-samenes-rechtsstilling/id622185/>

- NOU (1997):4 - Naturgrunnlaget for samisk kultur (The Natural Resource Base for Sami Culture). Oslo: Statens forvaltningstjeneste. Statens trykking. <https://www.regjeringen.no/no/dokumenter/nou-1997-4/id140720/>
- NOU (2007):13 - Den nye sameretten. Utredning fra Samerettsutvalget. (The New Sami Right). Report from the Sami Rights Commission. Oslo: Departementenes servicesenter. <https://www.regjeringen.no/no/dokumenter/nou-2007-13/id491883/>
- NOU (2007):14 - Samisk naturbruk og rettssituasjon fra Hedmark til Troms. Bakgrunnsmateriale for Samerettsutvalget (Sami Resource Use and Legal Status from Hedmark to Tromsø. Research Material for the Sami Rights Commission). Oslo: Departementenes servicesenter. <https://www.regjeringen.no/no/dokumenter/nou-2007-14/id584312/>
- Novikova, N., Sidortsov, R., Stammler, F., Vitebsky, P. (2017). 'Legal framework for extractive industries and indigenous peoples in the Russian North'. Ájluokta/Drag, Norway: Árran Lule Sami Centre.
- Overland, I. (2016). 'Ranking oil, gas and mining companies on indigenous rights in the Arctic'. Ájluokta/Drag, Norway: Árran Lule Sami Centre.
- Ravna, O. (2016). 'ILO 169 and Securing of Sami Rights to Lands, Nature-based Livelihood, and Natural Resources'. Brill Nijhoff. doi: 10.1163/79789004314399_012
- Ruggie, J. (2011). Guiding Principles on Business and Human Rights. Implementing the United Nations 'Protect, Respect and Remedy' Framework. United Nations. Office of the High Commissioner for Human Rights.
- Sidortsov, R., Ivanova, A., and F. Stammler (2016). 'Localizing governance of systemic risks: A case study of the Power of Siberia pipeline in Russia'. In *Energy Research & Social Sciences*, 16, pp.54-68. <http://doi.org/10.1016/j.erss.2016.03.021>
- Stammler, Florian and Vladislav Peskov (2008). 'Building a "Culture of dialogue" among stakeholders in North-West Russian oil extraction'. In *Europe-Asia Studies*, 60(5), pp.831-849. https://www.jstor.org/stable/20451550?seq=1#page_scan_tab_contents
- Stammler, F., & Ivanova, A. (2016a). 'Confrontation, coexistence or co-ignorance? Negotiating human-resource relations in two Russian regions'. In *The Extractive Industries and Society*, 3(1), pp.60-72. <https://doi.org/10.1016/j.exis.2015.12.003>
- Stammler, F., & A. Ivanova (2016b). 'Resources, rights and communities: Extractive mega-projects and local people in the Russian Arctic'. In *Europe-Asia Studies*, 68(7), pp.1220-1244. <https://doi.org/10.1080/09668136.2016.1222605>
- Wilson, E. (2016a). 'What is the social licence to operate? Local perceptions of oil and gas projects in Russia's Komi Republic and Sakhalin Island'. In *The Extractive Industries and Society* 3, pp.73-81.
- Wilson, E. (2016b). 'What is Free, Prior and Informed Consent?' Ájluokta/Drag, Norway: Árran Lule Sami Centre.
- Wilson, E. (2017). 'Evaluating international ethical standards and instruments' Ájluokta/Drag, Norway: Árran Lule Sami Centre.

Acronyms and abbreviations

ESPO	East Siberia Pacific Ocean Pipeline
FPIC	Free, Prior and Informed Consent
ICCPR	International Covenant on Civil and Political Rights
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
ILO	International Labour Organisation
IOGP	International Association of Oil & Gas Producers
IPIECA	International Petroleum Industry Environmental Conservation Association
LO	Landsorganisasjonen i Norge, (Norwegian Confederation of Labour Unions)
NAO	Nenets Autonomous Okrug
NHO	Næringslivets Hovedorganisasjon (Confederation of Norwegian Enterprise)
NOU	Noregs offentlege utgreiingar (Official Norwegian Report)
<i>obshchina</i>	commune (officially recognised indigenous economic and social unit in the Russian North)
<i>okrug</i>	district (in Russia)
PS	performance standard
Ruggie Principles	another name for UN Guiding Principles on Business and Human Rights
SIA	social impact assessment
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WBCSD	World Business Council for Sustainable Development
YNAO	Yamal-Nenets Autonomous Okrug

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