



## **Extractive Industries and Indigenous Peoples in Russia: Regulation, Participation and the Role of Anthropologists<sup>1</sup>**

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### **Abstract**

Oil, gas and mining development have historically led to loss of lands, livelihoods and community cohesion for indigenous and local communities living close to the industrial activity. At the same time, these industries have also contributed to local socio-economic development in these regions. The effectiveness and sustainability of local development in the context of such projects depends on the extent to which local expectations are satisfied, the minimisation and mitigation of negative environmental and social impacts, the equitable distribution of project benefits, and the opportunities for meaningful participation of local communities in decision-making. Public involvement can be hampered by people's lack of awareness of their rights to participate in the development process. This article explores the role of international norms and company self-regulation in framing relations between oil, gas and mining companies and indigenous and local communities in Russia. This analysis has particular relevance for the oil and gas industry and the nomadic reindeer herding communities of the Russian North, Siberia and the Far East. The conclusions focus on the role of anthropologists in these development processes.

### **Introduction**

Historically, relations between indigenous communities and developers who make claims to their lands have been characterised by a lack of trust, in some cases hostility. Development related to the extractive industries (mining, oil and gas) has historically encroached on lands traditionally used by indigenous and other local people, and this has frequently resulted in loss of livelihoods and community cohesion. It has also led to some severe environmental damage and loss of resources that indigenous and local communities depend on, and in some cases, to serious human rights violations (including arbitrary arrests and detention, torture and killings). On the other hand, these industries have also provided welcome opportunities for the socio-economic development of local societies. However, discontent has resulted where development expectations have not been realised, benefits have been distributed inequitably, or local communities have not been meaningfully included in decision-making. This article considers the relations between indigenous peoples and the extractive industries from an international

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perspective, with a particular focus on how international processes and experience can inform and shape these relations in the context of oil, gas and mining development in the Russian Federation. The mining sector has been a source of concern for indigenous peoples worldwide. However, this article has particular relevance to the relationship between the oil and gas industry and indigenous communities in the Russian North, Siberia and the Far East, many of whom are engaged in nomadic reindeer herding.

This analysis relates primarily to legal and regulatory matters, including 'hard' and 'soft' law, as well as the increasing range of self-regulation initiatives currently being developed by leading industrial companies. Our conclusions focus on the role of anthropologists in these development processes. Anthropologists have traditionally played the role of interpreter of indigenous knowledge, neutral observer and recorder of traditional cultures and practices. Some anthropologists have stepped out of their neutral role to oppose the encroachment of damaging industrial natural resource projects onto indigenous peoples' lands. Anthropologists can also play a more involved role as information providers, mediators and facilitators of dialogue between communities and industrial developers.

### **Traditional Resource Rights**

Control, management and autonomy in decision-making over land and resource use are significant among the rights sought by indigenous groups. In many cases there is no legal ownership of land that is used on a day-to-day basis for hunting, fishing, gathering of wild plants, or reindeer herding. Many local land use issues arise from conflict over the use of customary land that is communally managed and of spiritual and cultural significance. Loss of access to land and resources is more often the issue than loss of land itself (IIED and WBCSD 2002). The demand for self-determination frequently distinguishes indigenous peoples from other local communities, who may demand land tenure, economic security and local control over resources and decision-making, but tend not to express these demands in terms of sovereign rights and self-determination (Posey 1996).

The world's cultural diversity - and the unique traditional knowledge of sustainable resource management held by indigenous cultures - is under threat from various development and globalisation processes. It is estimated that between 50% and 90% of the world's languages will have disappeared within 100 years, and loss of language is an indicator of loss of cultural diversity (UNEP 1999). According to indigenous peoples' holistic and spiritual worldview, some sites may need strict protection as the abode of spirits. What is underground may also be sacred and may be considered as part of indigenous resources and heritage, even though governments tend not to recognise this. Indigenous peoples are calling for a holistic approach to issues relating to their traditional resource rights<sup>3</sup> (i.e. one which recognises the interlinked nature of their land, natural resources and culture) and they stress the need for a human rights dimension to any approach.

States differ with respect to the recognition of indigenous peoples' rights to land and resources. In Fiji and Papua New Guinea, for example, indigenous peoples make up the majority of the population and their rights are legally established. In contrast, in

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<sup>3</sup> Traditional resources are defined by Posey et al (1995) as "tangible and intangible assets and attributes deemed to be of spiritual, aesthetic, cultural and economic value to indigenous and local communities".

states such as Myanmar (Burma), indigenous identities go virtually unrecognised (IIED and WBCSD 2002). However, even where legal rights exist, this provides no guarantee that human rights will be respected in practice. This may be due to the lack of capacity for implementation, the contradictory nature of various layers of legislation (e.g. federal and regional lawmaking in Russia) or the predominance of state and private interests in decision-making processes.

International conventions and standards of good practice can provide activists and legislators with instruments to influence legislative reform at the local and national level, and support demands for increased public participation in decision-making. However, the results can be patchy, depending on the sophistication of interpretation, the influence of international campaigning, the nature of the investment and the involvement of Western companies and financial institutions. For example, projects being implemented primarily by Russian companies in Western Siberia do not enjoy the same NGO or media attention (nationally or internationally) as those on Sakhalin Island, which have the involvement of multinational companies and financing from multi-lateral development banks, although they may have comparable or greater environmental and social impacts (Stammler and Wilson 2006).

The Traditional Resource Rights framework developed by Darrell Posey and others (Posey 1996) can be used to address issues relating to community rights in the context of extractive industry development. The framework is built around four processes: (i) identifying 'bundles of rights' expressed in legally binding documents and international agreements; (ii) recognising the evolving 'soft law' that is influenced by customary practice and non-binding agreements, declarations and codes of practice; (iii) harmonising existing legally-binding international agreements signed by nation states, to develop a consistent international position; and (iv) 'equitising' to provide marginalised indigenous, traditional and local communities with favourable conditions to influence all levels and aspects of policy planning and implementation. Self-determination for indigenous peoples lies at the heart of this approach.

In this article we consider some of the 'bundles of rights', examples of 'soft law' and company self-regulation initiatives that can support indigenous and local people in their efforts to influence policy planning and implementation to protect their traditional livelihood practices in the context of extractive industries development. Our discussion does not extend to the wealth of informal negotiations and agreements which can facilitate relations between extractive companies and local communities, such as those between oil and gas companies and local reindeer herding communities in Western Siberia (see for example Stammler 2005a).

### **State obligations – national legislation and international conventions**

Companies working in a country are obliged to abide by that country's national legislation as a minimum requirement. However, gaps sometimes exist between a country's legislation on paper and its enforcement. Furthermore, specific clauses negotiated in foreign investment agreements such as production sharing agreements (PSAs) may make certain legal allowances for companies outside of the national legislation (IIED 2005; Rutledge 2004). Russian environmental legislation is relatively comprehensive, though enforcement is often weak (Oldfield et al. 2003; Spiridonov 2006). The legislative framework for clarifying indigenous land rights is an important area where it remains incomplete or even contradictory (Murashko 2008). In many cases, local land users in areas allocated for industrial development do not own the lands they use, a factor that hinders effective impact assessment and regulation of

industrial activity (Fondahl and Poelzer 2003; Wilson 2003; Stammler 2005; Murashko 2006).

The Russian Constitution (1993) confirms Russian citizens' rights to environmental protection, access to information, and participation in decision-making. Article 69 'guarantees the rights of indigenous minorities in accordance with generally accepted principles and norms of international law and international treaties of the Russian Federation'. Indigenous peoples' rights in relation to land and natural resources (forests, marine resources, subsurface resources and protected areas) and their protection in the face of development of these resources are contained in clauses of various laws and other legal acts passed since 1991, including the 2001 Land Code (Fondahl and Sirina 2006). However, ultimately the state has legal ownership of subsurface resources according to Article 1.2 of the law 'On Subsurface Resources'.

The 1999 law 'On guaranteeing the rights of indigenous peoples of the North' 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 activities'. The 2001 law 'On territories of traditional natural resource use' allows for the establishment of such areas. As Novikova (2008) notes, these laws allow indigenous custom to be taken as evidence of land and resource rights in court. Regional legislation in some cases provides varying degrees of further protection (Alferova 2006; Fondahl and Sirina 2006; Murashko 2008; Novikova 2008). However, early attempts to establish territories of traditional natural resource use have faced many challenges, and it will take time to assess their effectiveness. Furthermore the hierarchy of Russian legislation means that, for example, the Land Code – which does not recognize all traditional resource rights – will override the indigenous rights legislation. Thus in practice, if a traditional resource use area is threatened by an oil, gas or mining project, then the legislation may afford no real protection (Murashko 2008).

The impact assessment process is arguably the area where most influence can be exerted on extractive industry developments. The 1995 Russian federal law 'On the ecological expert review' (*Ob ekologicheskoi ekspertize*) requires that project documentation (including environmental impact assessments) pass through a State Ecological Expert Review. This process is criticized for its subjectivity, the lack of provision for follow-up and long-term monitoring, and the potential for influence by pro-development lobbyists (Spiridonov 2006; Fondahl and Sirina 2006). Nonetheless, it is an established legal process, includes mandatory public consultation, and allows public groups to carry out their own public ecological expert review. It is worth noting, however, that in 2006 the law was amended and the definition of an environmental impact assessment no longer includes 'related social, economic and other project impacts' (Murashko 2008).

Furthermore, while there are specific procedures for carrying out an environmental impact assessment,<sup>4</sup> such procedures do not exist for assessing socio-economic or cultural impacts (Murashko 2006). Russian activists and academics are now promoting legislative reform relating to the concept of *etnologicheskaiia ekspertiza* (ethnological – or **anthropological** – expert review) (Dmitriev 2003; Murashko 2002). The law 'On guaranteeing the rights of indigenous peoples' contains reference to the anthropological expert review (in referring to indigenous peoples' right to take part in ecological and anthropological expert reviews). However, this provides no legal

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<sup>4</sup> The 'Environmental Impact Assessment (EIA) Procedures' (*Polozhenie ob otsenke vozdeistviya namechaemoi khoziaistvennoi i inoi deiatel'nosti na okruzhayushuyu sredu*) (2000).

obligation to carry out such reviews. And in practice there is, as yet, no accepted methodology to support implementation of an anthropological expert review (Roon 2006; Murashko 2008).

The 1992 Convention on Biological Diversity (CBD) has the force of international law and has been ratified by Russia. In addition to requirements for environmental impact assessment, with public participation, the CBD calls for governments to 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements' (Article 10) and to 'respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity ...' (Article 8 (j)).

The 'Akwé:Kon Guidelines on cultural, environmental and social impact assessment of developments on or affecting sacred sites and lands and waters traditionally occupied or used by indigenous and local communities' were developed in 2004 by the Parties to the Convention on Biological Diversity (i.e. those who have ratified the Convention, including Russia) (Secretariat for the CBD 2004). These guidelines are not legally binding; however, they have been formally endorsed by the Conference of the Parties (the highest body of the CBD) and provide comprehensive guidance on key aspects of impact assessment that could be incorporated into national legislation. They provide indigenous rights activists with an instrument for advocating reform of the legislative framework (see for example Murashko 2006 and Khamaganova 2006).

The United Nations' Universal Declaration of Human Rights or UDHR (1948) is legally non-binding, but is an international instrument of great importance symbolically, politically and in terms of 'soft law'. In addition to other fundamental human rights, it recognises the right to individual and collective ownership of land, and states that 'no one shall arbitrarily be deprived of his property' (Article 17). As part of the UDHR process, the - legally binding - International Covenants on Economic, Social and Cultural Rights (ICESCR) and on Civil and Political Rights (ICCPR) were adopted by the UN General Assembly in 1966 and ratified by Russia in 1976. Article 1 of both covenants upholds the right of all peoples to self-determination and states that 'in no case may a people be deprived of its own means of subsistence'.

### **State responsibilities – non-binding conventions and declarations**

A number of other documents are important instruments of 'soft law': these are non-binding international declarations and conventions that have not been ratified by Russia. The principles embodied in these documents are used by indigenous human rights activists, legal experts and academics in developing draft legislation and good practice guidelines at the national and local level. These international documents have broad-based support from indigenous peoples worldwide. Those that are legally binding have been ratified by other countries (particularly in Western Europe and Latin America).

The Rio Declaration is a statement of voluntary principles from the 1992 UN Conference on Environment and Development (UNCED) – the 'Earth Summit'. Although it is not legally binding, it has weight in the international community and, importantly, Russia took part in the process and agreed on the principles. Principle 22 recognises the important role of indigenous peoples in environmental

management and sustainable development. Agenda 21, a major product of UNCED, recommends that governments and intergovernmental organisations recognise that indigenous peoples' lands should be protected from environmentally unsound and socially or culturally inappropriate development activities. It also recommends strengthening national dispute-resolution arrangements for settling land and resource-management conflicts.

The ILO Convention 169 on Indigenous and Tribal Peoples, which entered into force in 1991, has not been ratified by Russia, but is widely used as a reference by indigenous rights groups. In Russia, there has been considerable lobbying by indigenous peoples and their advocates for ratification. ILO 169 recognises indigenous rights to ownership of traditionally occupied land and the right to participate in the use, management and conservation of these resources (Articles 14 and 15). It requires consultation with land users before exploration or exploitation of the resources (Article 15) and states that resettlement should only be an exceptional measure and take place only with the 'free and informed consent' of the people concerned, who should be fully compensated (Article 16). The International Finance Corporation (the private sector arm of the World Bank) has issued guidance relating to ILO 169. Although the Convention is directed at governments, it is frequently used as a reference by indigenous groups. A company that engages in a project where government action breaches the Convention may itself be held to account.

A number of United Nations (UN) bodies exist to address indigenous issues. These include: the UN Permanent Forum on Indigenous Issues (UNPFII), which convenes annual forums on issues such as 'free, prior and informed consent' (see below); and the Intra-Departmental Task Force on Indigenous Issues within the Department of Economic and Social Affairs, which promotes the integration of indigenous issues in the department's technical co-operation programmes.

The 2007 UN Declaration on the Rights of Indigenous Peoples is considered to be the most complete and representative statement of principles for indigenous rights because of its broad consultation with indigenous leaders. Although non-binding to governments, the Declaration can be used to apply pressure to governments to live up to its principles and objectives. The Declaration recognises indigenous peoples' right to remain on their lands, to maintain their distinctive spiritual and material relationship with these lands and the resources they have traditionally owned or used (Article 25). It provides full recognition of indigenous land-tenure systems and resource management institutions (Article 26). It also recognises indigenous peoples' cultural and intellectual property rights and the responsibility of states to preserve sacred sites (Article 13). It highlights the need for states to ensure effective monitoring, maintenance and restoration of indigenous peoples' health (Article 38), and asserts indigenous peoples' right to fair procedures for conflict resolution and redress (Article 39). Importantly for extractive industries development, Article 30 states (our underlining):

'indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreements with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.'

Further international conventions that have not been ratified by Russia are also used as reference, including the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), and the Espoo Convention on Environmental Impact Assessment in a Transboundary Context (1991).

### **Industry standards of best practice**

It is important for those engaging in dialogue to understand not only the framework of legal rights and regulations and international norms, but also the framework of existing industry principles and practices. In some cases, conflicts have arisen due to poor understanding of companies' policies and practices and the industry-wide principles they follow. The corporate policies of leading multinationals reflect some of the international environmental and human rights standards established in the documents discussed above. In the 1990s, environmental activists were lobbying for extractive companies to carry out environmental impact assessments (EIAs). Today social, health, cultural and human rights impact assessments have taken the place of EIAs as the newly evolving areas of corporate policy. Anthropologists are sometimes at the forefront of debates over methods and approaches, including in Russia, as noted above in relation to the anthropological expert review.

Oil, gas and mining companies increasingly require completion of an integrated environmental, social and health impact assessment (ESHIA). To some degree, this approach should address the gaps in Russian legislation discussed above, although assessment of cultural impacts is still poorly understood. The impact assessment process aims to seek ways to minimise project impacts, explore alternatives (including 'no development') and, in the case of unavoidable impacts, identify measures to mitigate these impacts. Compensation is seen as a last resort, where negative impacts are unavoidable.

In 2005 a forum on indigenous peoples and impact assessment was organised alongside the annual conference of the International Association of Impact Assessment by the Tebtebba Foundation (see below), the Grand Council of the Crees, the World Bank Group and Hydro Quebec. It was attended by the Russian Association of Indigenous Peoples (RAIPON) among others. The extractive industries were a key area of focus. Participants concluded that impact assessment should be holistic and acknowledge historical experience as well as present and future developments. It should be part of a process that allows indigenous people to have a meaningful role in decision-making. Community engagement and impact assessment need to be long-term processes, adapted to indigenous peoples' needs.

Some companies now have specific guidelines for engaging with indigenous communities. It is important that consultations be conducted at a time and place suitable for local participants, in good faith (i.e. with full intention of addressing community concerns) and at a stage in project development where local people's concerns can be considered in the project design phase. Consultation should be carried out by personnel with experience in local relationship building, preferably with a locally trusted anthropologist or NGO representative as intermediary. Monitoring of the consultation process is important so as to gather people's feedback about its effectiveness.

In 2000 the World Bank Group (the World Bank and the International Finance Corporation or IFC) launched a comprehensive review of its performance in the

extractive industries sector. The Extractive Industries Review concluded that while investments in the extractive industries can contribute to sustainable development, further efforts are needed in relation to poverty reduction, broader inclusion of stakeholders and transparency of revenue management. As a result of the review, the World Bank Group revised its environmental and social policies and guidance.<sup>5</sup>

Two key World Bank policies have particular relevance to indigenous peoples: the operational policy OP 4.10 'On indigenous peoples', which requires completion of an indigenous peoples' development plan, and OP 4.12 'On involuntary resettlement', whose objective is that involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs. OP 4.12 also requires that displaced communities be 'meaningfully consulted' and any resettlement programme should improve living standards or at least restore them in real terms to pre-displacement levels.

The IFC's Performance Standards on Environmental and Social Sustainability were revised in 2006.<sup>6</sup> Performance Standard 7 (Indigenous Peoples) sets out a series of requirements for projects that are likely to have adverse impacts on local indigenous communities. The focus is on good faith negotiation and informed participation of indigenous people in the process of project development. Specific requirements include the following:

- ✍ ... [T]he consultation process will ensure their free, prior, and informed consultation and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.
- ✍ The client will seek to identify, through the process of free, prior, and informed consultation with and the informed participation of the affected communities of Indigenous Peoples, opportunities for culturally appropriate development benefits.

Critics of the IFC formulation have highlighted the importance of the term *consent* in providing communities with the opportunity to influence decision-making by committing developers to respond to community concerns.<sup>7</sup>

In May 2008, the European Bank for Reconstruction and Development approved its revised Environmental and Social Policy.<sup>8</sup> Performance Requirement 7 (Indigenous Peoples) similarly sets out detailed requirements for the meaningful participation of indigenous peoples. The term *consent* is used in this policy, for example:

- ✍ [Paragraph 33] If the client proposes to locate the project on, or commercially develop natural resources located within, customary lands under use, and adverse impacts can be expected on the livelihoods, or cultural, ceremonial, or spiritual uses that define the identity and community of the Indigenous Peoples, the client will ... enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and consent as a result of the negotiation.
- ✍ [Paragraph 35] ... When relocation is unavoidable, the client will not carry out such relocation without obtaining free, prior and informed consent for it from

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<sup>5</sup> <http://go.worldbank.org/WTA1ODE7T0>

<sup>6</sup> <http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards>

<sup>7</sup> Personal communication with North American indigenous rights expert.

<sup>8</sup> <http://www.ebrd.com/about/policies/enviro/policy/index.htm>



the affected Indigenous Peoples' communities as a result of good faith negotiations.

- ✍ [Paragraph 37] ... The client will not proceed with ... commercialization [of the cultural resources, knowledge, innovations, or practices of Indigenous Peoples] unless it: (i) enters into a good faith negotiation with the affected communities of Indigenous Peoples; (ii) documents their informed participation and their free, prior, informed consent to such an activity; and (iii) provides for fair and equitable sharing of benefits from [such] commercialization.

## Industry-led voluntary initiatives

The Equator Principles are a set of voluntary principles for the finance industry. The Principles provide a common baseline and framework for financial institutions to develop their own social and environmental policies related to their project financing activities. The Principles state that negative impacts on project-affected ecosystems and communities should be avoided, and if these impacts are unavoidable, they should be reduced, mitigated and/or compensated for appropriately. Specifically, they require compliance with IFC performance standards (see above). Banks that have signed up to the Equator Principles will not provide loans to projects where the borrower does not comply with the Principles.<sup>9</sup>

In 1999 nine of the world's largest mining companies launched the Global Mining Initiative, which led to the commissioning of the Minerals, Mining and Sustainable Development (MMSD) project and resulted in the report 'Breaking New Ground' (IIED and WBCSD 2002).<sup>10</sup> This report provides recommendations on how the extractive industries can improve their performance, including chapters on land use and local communities, with coverage of indigenous peoples' issues. The International Council on Mining and Metals was set up to take forward the agenda set out in the MMSD report. In 2005 they published their Indigenous Peoples' Review and issued a draft position statement on indigenous peoples and mining. This includes commitments that cover consultation, dispute resolution, compensation and benefit sharing, and respect for indigenous rights as articulated in national and international law.<sup>11</sup>

Another sector-specific initiative, the International Petroleum Industry Environmental Conservation Association (IPIECA) is a voluntary organisation whose members include oil and gas companies and associations. It provides a channel of communication between the oil and gas industry and the United Nations. IPIECA has developed a training 'toolkit' on human rights issues, including a workbook with information on indigenous forums, legal frameworks and 'soft law' instruments such as the UN Declaration on Indigenous Peoples' Rights.<sup>12</sup>

The UN Global Compact was launched in 2001 to encourage businesses from all sectors and worldwide voluntarily to adopt environmentally and socially responsible policies and to report on them.<sup>13</sup> It acts as a forum for governments, civil society and business. It has ten principles, the first of which is to 'support and respect the

<sup>9</sup> <http://www.equator-principles.com/>

<sup>10</sup> <http://www.iied.org/sustainable-markets/key-issues/business-and-sustainable-development/mining-minerals-and-sustainable-development>

<sup>11</sup> <http://www.icmm.com/>

<sup>12</sup> <http://www.ipieca.org/>

<sup>13</sup> <http://www.unglobalcompact.org/>

protection of internationally proclaimed human rights'. The Global Compact was launched in Russia in November 2001 and a Russian companies' rating index for corporate responsibility was established in 2004. The Russian Union of Industrialists and Entrepreneurs has played an active role, including establishing the Social Charter for Russian Business in 2004. A meeting in 2006 to establish the Russian Global Compact Network attracted 200 participants, including representatives of government ministries, big business and civil society.<sup>14</sup>

The Voluntary Principles on Security and Human Rights were developed by the governments of the United States, the UK and the Netherlands, together with representatives of the extractive industries, and interested NGOs. The principles guide companies in maintaining the safety and security of their operations, ensuring respect for human rights, and they require companies to carry out a human rights impact assessment.

The Global Reporting Initiative is a framework used by many companies in their reporting on sustainable development and includes reporting on indigenous peoples' issues. The GRI framework has been adopted by some Russian businesses. A sector supplement for the framework has been developed for the mining and metals sector, while a supplement for the oil and gas sector is under development.<sup>15</sup>

The Business Leaders' Initiative on Human Rights (BLIHR) is a programme with thirteen corporate members. These include Alcan and Statoil representing the extractive industries and Barclays Bank, which lends to extractive industry projects. There are no Russian companies, although some of the member companies are involved in Russia. BLIHR was set up in May 2003, with the main aim of finding practical ways to apply the Universal Declaration of Human Rights within a business context and inspiring other businesses to do the same. By 2009 they aim to have developed a handbook and they hope businesses will adopt the guidance in their business practice.

In August 2003 the UN Sub-Commission on the Promotion and Protection of Human Rights approved the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. However, it is not clear yet how these legally non-binding norms will be taken up by business, and how they will shape international and national legal frameworks in the future.

In July 2005, Professor John Ruggie was appointed to the position of Special Representative to the UN Secretary-General on business and human rights. In 2007 Ruggie completed a report in which he concluded that the current voluntary initiatives are not sufficient for integrating and defending human rights issues in the context of industrial projects, drawing special attention to the lack of involvement of state-owned enterprises in such initiatives. In 2008 Ruggie published his 'Protect, Respect and Remedy' framework for business and human rights, comprising three core principles: (1) the state duty to protect against human rights abuses by third parties, including business; (2) the corporate responsibility to respect human rights; and (3) the need for more effective access to remedies.<sup>16</sup>

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<sup>14</sup> For more information on the Global Compact in Russia see:

<http://www.undp.ru/index.phtml?iso=RU&lid=1&pid=109>

<sup>15</sup> <http://www.globalreporting.org/Home>

<sup>16</sup> This and all other reports and materials related to the work of the UN Special Representative can be found at: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>

## International indigenous peoples' initiatives and networks

The Tebtebba Foundation (the Indigenous Peoples' International Centre for Policy Research and Education) took an active role in consultations relating to the World Bank Extractive Industries Review, including an independent review and the 2003 Indigenous Peoples' Declaration on Extractive Industries.<sup>17</sup> This Declaration highlights indigenous people's concerns about the extractive industries and calls for a moratorium on all activity until their human rights are respected. It makes recommendations for governments, business and others (e.g. on the need for legally binding and not just voluntary standards). It builds on the 1996 Indigenous Peoples' Declaration on Mining, which stressed that indigenous peoples should be empowered to decide whether mining should take place in their communities or not.

Other fora have also addressed this issue, including the 2002 World Summit on Sustainable Development in Johannesburg, and a 2001 Workshop on Indigenous Peoples, Human Rights and the Extractive Industries organised by the Office of the UN High Commissioner for Human Rights in Geneva. The International Indigenous Forum on Biodiversity is part of the process around the Convention on Biological Diversity and is working to promote implementation of Article 8(j) of the CBD (see above).

IUCN (the World Conservation Union) has set up a Working Group on Social and Environmental Accountability of the Private Sector (SEAPRISE), which is working to strengthen the capacity of business to become environmentally and socially accountable. The group aims to reduce the negative impact of industry, particularly extractive industries, on biodiversity and people, particularly indigenous people. A key focus is building local capacity for engagement with industry.

At the UNPFII, indigenous peoples regularly raise concerns about the impacts of extractive industries on their territories. In 2005, the Forum convened an International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples in 2005. In March 2009 the Forum organised an International Expert Workshop on Indigenous Peoples' Rights, Corporate Accountability and the Extractive Industries in the Philippines, in collaboration with Tebtebba. One output from this workshop was the Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples, urging respect for human rights, transparency and environmental protection.<sup>18</sup>

As part of the research project 'Environmental and Social Impacts of Industrial Development in Northern Russia' (ENSINOR), led by the Arctic Centre in Rovaniemi, reindeer herders, local authorities, industry people and researchers contributed to a 'Declaration of Coexistence between reindeer nomads and the oil and gas industry in the Russian North'. This includes recommendations to carry out strategic environmental assessment; meaningful consultation; transparent and equitable distribution of benefits; capacity building; and environmentally responsible industrial practice.<sup>19</sup>

The International Working Group on Indigenous Affairs (IWGIA) works at local, regional and international levels, helping indigenous people to improve their quality of life and relations with their governments, and to influence global economic and

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<sup>17</sup> [http://bankwatch.org/documents/decl\\_wbeir\\_ip\\_04\\_03.pdf](http://bankwatch.org/documents/decl_wbeir_ip_04_03.pdf)

<sup>18</sup> This Declaration and other materials from the conference can be accessed at:

[http://www.tebtebba.org/index.php?option=com\\_content&view=article&id=46&Itemid=57](http://www.tebtebba.org/index.php?option=com_content&view=article&id=46&Itemid=57)

<sup>19</sup> The text of this declaration and more information about this project can be found at:

<http://www.arcticcentre.org/?deptid=15989>

political forces that affect them. IWGIA has established a network of indigenous and non-indigenous groups, which is active in Russia. IWGIA has a strong focus on capacity building and empowerment of indigenous people and organisations, and played a facilitating role in developing the UN Declaration on the Rights of Indigenous Peoples.

The Arctic Council is a high-level forum for cooperation, coordination and interaction between Arctic states, indigenous communities and other Arctic residents. Several indigenous associations, including RAIPON, have the status of permanent participants on the council. The Council has several working groups, which address a range of issues, including some that relate to indigenous peoples and extractive industries. UNEP/GRID-Arendal,<sup>20</sup> for example, is implementing a project for Arctic Russia, known as the ECORA project, which aims to introduce integrated ecosystem management approaches, partly as a way to address conflicts between industrial development and the traditional resource use practices of indigenous communities.

### **Discussion: the role of anthropologists**

In this section, we reflect on the role of anthropologists in the processes described above. We emphasise that where anthropologists do play an active role in these processes, it should never be a substitute for the direct and meaningful involvement of indigenous peoples themselves. We also note that the involvement of anthropologists is not essential, and past experience has sometimes been negative. Such discussions are beyond the scope of this paper. However, we would like to emphasise the serious responsibility that anthropologists have towards the people that they work closely with. Professional codes of conduct provide guidance, for example the American Association of Anthropologists Code of Ethics.<sup>21</sup>

In Russia, anthropologists are active in political and public life. They engage with local communities, companies and the government, and they influence policy processes and activist campaigns at the international and local level. Those who do this have a responsibility to develop a solid awareness and understanding of the whole range of instruments available. Together with legal experts, they can play a role in informing indigenous peoples about these instruments. Indeed, a number of anthropologists in Russia are 'legal anthropologists'.<sup>22</sup> Anthropologists can also facilitate processes of legislative and regulatory reform by promoting the incorporation of indigenous peoples' values and perspectives relating to extractive industries. Defining terminology and methodologies is a key role for anthropologists, in close consultation with representatives of indigenous and other affected communities, as well as industry and government.

Considerable anthropological research already takes place into land and resource rights in the context of extractive industry development. However, many areas remain to be explored, particularly in relation to compensation arrangements or benefits agreements, mechanisms for establishing title to land and obstacles to legislative reform. There is great potential for anthropologists, legal scholars and indigenous peoples to work together on these areas. Lessons can be learned at the international level from responses to past events such the Exxon Valdez oil spill and current discussions around the Akwe:Kon Guidelines and other international documents.

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<sup>20</sup> The United Nations Environment Programme's Global Resource Information Database, based in Arendal, Norway.

<sup>21</sup> <http://www.aaanet.org/committees/ethics/ethcode.htm>

<sup>22</sup> Novikova (2008) discusses the discipline of 'legal anthropology'.

Similarly the debates over the *etnologicheskaja ekspertiza* taking place in Russia today can usefully inform international development of social and cultural impact assessment approaches. Anthropologists can contribute to a fuller and more nuanced understanding of this subject. This should not replace the direct participation of indigenous representatives in these debates.

Where possible, the representatives of indigenous and local communities themselves should engage directly in processes of legislative reform and in negotiations with companies and the government relating to impacts and benefits from industrial projects. However, despite the range of instruments available, there is a lack of awareness about these instruments and a lack of experience and capacity in using them. Anthropologists can work together with indigenous associations to raise awareness and build capacity through training workshops and information dissemination. In Russia, anthropologists and groups such as RAIPON and environmental law NGOs already engage in such activity.

Anthropologists can be particularly effective in roles related to mediation and facilitation. They can work with companies, government and communities to ensure that people are properly informed about potential impacts and benefits of industrial projects, and that they can make informed decisions about how they negotiate. This includes advising on the kind of information that communities need, the protocol for dialogue, the pace of collective decision-making or other aspects of engagement. This is particularly relevant to indigenous communities, which may have specific approaches to community decision-making.

Anthropologists can play a useful role in the 'prior informed consent' process, ensuring that consent is given freely and that people are not coerced into giving their consent under false pretenses. While it is common practice to require indigenous and local people to learn the language and culture of companies (with engagement organised on the companies' terms), relations are more effective where the companies and their contractors learn the ways of talking and knowing of the indigenous and local people themselves. Long-term, trust-based relationships are more likely to be successful if this is the approach. Anthropologists thus have an important role to play as interpreters and cultural mediators, translating not only between different languages and nuances within those languages, but also between different values, worldviews and needs (e.g. western and indigenous; village and corporate).

Experience has demonstrated that complex issues can successfully be addressed where a sensitive and dynamic individual with a particular connection to an indigenous group has fulfilled the role of mediator between that community and an external developer. This might be a possible role for an anthropologist. It is important that such individuals are known and trusted by the community, though this relationship can be developed over time. More important is that they have a good understanding of the particular ethnic group and that they have the ability to listen to – and hear – what people have to say. In some cases it might also be useful to consult a number of anthropologists to get a broader range of insights and experience.

Locally grounded participatory research and immersion research (participant observation) within communities is important for the development not only of anthropological theory, but also government policy and corporate strategy. A good understanding of local community dynamics and politics and the way that governments work is essential for a foreign company in Russia. (Similarly a good understanding of the nature and behaviour of multinationals and other foreign

companies is beneficial to communities, but this area is as yet much less developed in Anthropology.) Comparison of the ways of working of foreign and state-run companies in Russia can also provide rich insights, beneficial to sustainable development planning.

The above areas of research, together with in-depth analysis of power relations and interactions between civil society, government and industry are important for theoretical and practical debates within the emerging 'Anthropology of extractive industries'.

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