



Original research article

# Who is responsible for the Russian Arctic?: Co-operation between indigenous peoples and industrial companies in the context of legal pluralism<sup>☆</sup>



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## ABSTRACT

This article explores the existing normative system's regulation of relations between indigenous peoples of the North and industrial companies in Russia. Special attention is given to the issue of responsibility in Arctic development by government, by industrial companies (company policies), and by indigenous small-numbered peoples (customary law). For all those involved in nature management in the Russian North, the potential for overcoming the dangers they face depends on a combination of these normative frameworks. The study is based on legal anthropology methods, which combine ethnographic field research (including participant observation and expert interviews) and analysis of texts of national laws, regulations, internal corporate documents as well as traditional customs. It is grounded in principles of legal pluralism, which allows for the co-existence of multiple legal regimes governing interaction between indigenous people and industrial companies. The article concludes that what is required in the Russian North is full implementation of existing legislation and industrial companies' social together with environmental commitments, plus an integrated approach that takes into account local legal, ethnocultural and historical practices, in addition to assessment by ethnological experts in the field of legal anthropology.

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## 1. Introduction

"Northerners" in the Nenets language is *ngem ter*, meaning "contents of the North". At least, that is how Nenets, Khanty and other indigenous peoples<sup>1</sup> living in the Arctic see themselves.<sup>2</sup> They do

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<sup>1</sup> In this article the terms indigenous peoples, indigenous small-numbered peoples of the Russian North, Siberia and the Far East, and aboriginals are synonymous.

<sup>2</sup> The Arctic zone in the Russian Federation was demarcated in 2014. It includes the territories of eight Federation subjects, including regions where indigenous small-numbered peoples of the North live. The area comprising the Arctic zone of the Russian Federation consists of about nine million square kilometres; its population is more than 2.5 million people, which is less than 2% of the population of Russia and approximately 40% of the population of the whole Arctic. The Russian Arctic is home to 82,500 persons from indigenous small-numbered peoples out of a total number of some 250,000 of this category in the Russian population as a whole//Ukaz Prezidenta Rossijskoi Federatsii ot 02.05.2014 No 296, O' sukhoputnykh territoriiakh Arkticheskoi zony Rossijskoi Federatsii' (Russian Federation Presidential Decree on 2.5.2014, No. 296 "On the Land Territories of the Arctic Zone of the Russian Federation") <http://www.garant.ru/products/ipo/prime/doc/70547984/#ixzz3k5yl3jza>.

not impose on the land; they integrate into the land's nature. In living their traditional way of life, they do not harm the land. During the lengthy history of development in the northern territories, they came to know how to treat the land and the creatures living there. This traditional knowledge (TK) of indigenous peoples, which is effectively a responsible approach to natural resources under extreme Arctic conditions, is particularly important in today's Russian North. For them, it is also a priority to establish dialogue in social interaction. Research on most Arctic communities portrays their development as much more likely to be based on partnership rather than antagonism. Coastal and tundra nomadic peoples have played a substantial role in this engagement. Historically, northern multiculturalism has been based on dynamic interaction between cultures and has shown great capacity for change [1].

The overarching purpose of this article is to explore how the legal anthropology of traditional knowledge can aid indigenous peoples of the Russian North to adapt to fast-changing environmental, social, and economic conditions. In particular, the article aims at identifying ways in which the current legal regime, as well as environmental assessment and ethnographic review, can be deployed to achieve this goal. Such adaptation needs to occur in a manner

consistent with their history, cultural heritage and traditional way of life.

This article considers relations between industrial companies and indigenous peoples in Russia in the context of legal pluralism—namely the existence of state and other legal norms. Indigenous peoples, oil corporations and government authorities comprise a single system of relations; currently this system is responsible for the future existence and development of these peoples. My research in the Russian North [2] shows that anthropologists can play an essential role in these relations, acting not merely as academics but also as expert-mediators. There is potential to use their ethnological expertise so as to construct a dialogue between all participants in resource use. By this means an acceptable framework for industrial development in the regions where indigenous people live and make their livelihoods can be established. Under present Arctic development conditions this process of active co-operation brings various consequences, as well as mutual risks.

The role of the Arctic in global politics is determined first and foremost by its position as a repository of natural resources. In the Russian Federation, which makes nearly two thirds of all wealth produced in the circumpolar Arctic, the following tendencies are particularly evident: the formal economy is based on large-scale exploitation of natural resources; processing of these plays a comparatively minor role; and the benefits accrued are often utilized outside the Arctic. In a report on human development in the Arctic, prepared as an initiative of Ministers of Foreign Affairs as part of the work of the Arctic Council at the beginning of the 1990s, an analysis of the economic situation in the Arctic was expressed in very broad terms [3]. It notes general tendencies and problems, and in particular “the need to strengthen the relationship between economic and social development in the Arctic, and not to follow the principle of: what’s good for the company is also good for society” [4].

Historically, both in Russian ethnographic literature and in advisories addressed to government authorities, scholars have focused on problems involved in Arctic exploration and on the “exotic way of life” of inhabitants of northern latitudes. The study of the dynamics of interaction/co-operation between indigenous peoples and industrial companies, the changes in indigenous communities, the unfolding new policies from government and the business community, remains marginal within socio-cultural anthropology. Nevertheless, for the majority of Arctic regions from the second half of the twentieth century onward, industrial development and the activity of industrial companies is a realm connected to the existence of indigenous peoples, their cultural development and their selfhood.

Recently in Russia scholars in a variety of disciplines have been paying particular attention to scientific and technical development in the Arctic and to accompanying ecological problems [5]. In the field of scientific and technical Arctic studies, the most prioritized region is Yamalo-Nenetskiy Autonomous Okrug<sup>3</sup> (YaNAO) [6], which is also well researched by anthropologists. Selecting this region as an example, one notes the main tendencies arising from interaction between indigenous peoples and oil and gas companies, as well as mutual risks associated with the process.

In Russia since the 1990s, the preparation has begun of specific legislation to protect indigenous peoples’ rights. This is in line with the Constitution of the Russian Federation of 1993 and has been influenced by public action from indigenous peoples of the North. To a large extent the process of lawmaking at a Federal level was based on the legislative potential of the regions. So for many

of these regions, this process of lawmaking was even more constructive than for those at the centre. Nevertheless legislation is not itself enough to protect indigenous peoples; new practices and mechanisms are required. Over the years there has been a noticeable change in the position of industrial companies, some of which proclaim their desire to work according to global standards. Within the framework of the United Nations such standards are articulated within the Global Compact [7] and the Guiding Principles<sup>4</sup> of Business and Human Rights, implementing the UN “Protect, Respect and Remedy” Framework [8].

## 2. Main themes, objectives and methodology

This article analyses interaction between indigenous peoples and industrial companies in the Russian Arctic. The data researched comprise: international legal acts; regulatory documents articulating Russian Federation development strategies in the Arctic zone; Russian legislation governing relations between industrial companies and indigenous peoples; documents from non-governmental organizations in Russia consisting of business communities and indigenous peoples; as well as current and past norms of traditional land use and relations with ‘neighbours’ in the Russian North. This article gives specific attention to the issue of responsibility in Arctic development of government bodies, of industrial companies (company policies) and of indigenous peoples (customary law).

The author’s fieldwork data in this paper were gathered in different regions of Arctic Russia and the Canadian North-Western Territories. I used ethnographic field methods including research *in situ*; participant observation; in-depth interviews; expert polls of politicians and leaders of social movements; and interviews and questionnaires.

The study was carried out under the rubric of legal anthropology. This multidisciplinary research field aims to understand the rules of behaviour in varying societies. It gives preference to legal aspects, declaring the impossibility of isolating law as such since it is just one element of a shared cultural and social system, and in various ways is perceived and enforced by every sub-group of society [9]. Legal anthropology brings together traditional and modern legal systems with the goal of providing an adequate characterization of humanity’s actual (as opposed to formal) legal existence [10].

Legal anthropology emerged from the intersection of jurisprudence and social anthropology, sociology, history and philosophy. Since the second half of the 20th century the basis for its methodology has been legal pluralism (S. Moore, J. Griffiths, S. Merry, G. Woodman, K. and F. von Benda-Beckmann et al.), which is the co-existence of two or more legal systems, when human behaviour (according to Griffith’s definition), corresponds to more than one legal order [11]. Legal pluralism allows not only for the co-existence, but also for the mutual interaction of different legal systems that create a “semi-autonomous social field” [12,13]. Different legal systems are altered in the process of interaction with each other. The uniqueness of the methodology of legal anthropology is such that regardless of whether or not government and academia accept this situation, the existence and study of these legal systems depends on the “empirically observable fact that one way or another people are using a number of legal systems, which is reflected in their behaviour” [14]. A new field has developed, and the Russian North can supply numerous examples of such semi-autonomous systems [15].

Another methodological framework for this research consists of approaches, elaborated in symbolic anthropology (according to Geertz), where cultural analysis is not an experimental science in

<sup>3</sup> A unit of Federal subject or administrative division in the Russian Federation.

<sup>4</sup> The principles were the work of John Ruggie, Special Representative of the UN Secretary-General.

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