5 Indigenous agency through normative contestation

Defining the scope of free, prior and informed consent in the Russian North

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Introduction

In March 2014, Almazy Anabara, a subdivision of ALROSA, the world leader in diamond mining, obtained a license in the Olenek Evenks county, the Republic of Sakha (Yakutia) RS (Ya). Neither the local district (*ulus*) administration nor the residents of the village of Zhilinda were informed about the planned mining. Zhilinda, in which the vast majority of the population are Evenks, has the status of a *territory of traditional nature use* (TTNU), which grants its Indigenous residents a right similar to free, prior and informed consent (FPIC) or s*vobodnoye, predvaritel'noye i osoznannoye soglasiye*. The community gave the company its consent only for three of the four proposed mining sites. The locals protested mining on the Malaya Kuonapka River, a sacred place for Evenks and the only source of drinking water and fish. The *ulus* administration summoned the federal Agency for Subsoil Use to arbitration and demanded them to cancel the results of the auctions at Malaya Kuonapka for violating Indigenous peoples' rights under the TTNU law for FPIC. Despite the public outcry, the arbitration found no violation of the Evenks' right to FPIC.

Free, prior and informed consent was outlined in the Indigenous and Tribal Peoples Convention No. 169 (ILO Convention 169) and fully introduced by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as a specific Indigenous peoples' right to self-determine through meaningful consultation on how a project may affect them or their territories. Over the past decades, FPIC has become a global normative umbrella principle with growing yet contested recognition among governments and corporations to secure Indigenous peoples' rights in an extractive context. Free, prior and informed consent is still an evolving international norm: its normative status is not clear enough, and its procedural implementation is controversial (Heinämäki, 2020, p. 335).

While the Russian Indigenous representatives and diplomats took an active role in the work on the UNDRIP, Russia has refrained from endorsing the declaration and has not ratified ILO 169. The above legal case history from the RS (Ya) FPIC shows that it has found its way into deliberations on the Russian ground. It also demonstrates how FPIC performs in the RS (Ya) and how Indigenous peoples strive to use this international tool to defend their rights regarding local mining.

Scholars have recently begun to delve deeper into studying international (soft) regulations in the Russian extraction context, recognizing their growing importance

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and use over the past decade (Novikova and Wilson, 2017). Some studies show how engagement with global markets (supply chains, funding) and adherence to international corporate regulations have changed companies' conduct toward Indigenous peoples at the local level (Stammler and Wilson, 2006; Tulaeva et al., 2019). Others have taken a bottom-up approach to examine how the development of international regulations, globalization and the growth of Indigenous activism and information technologies have affected Indigenous peoples' participation in and control over resource development (Tysiachniouk et al., 2018).

Research findings on these issues are mixed. Some scholars argue that international Indigenous peoples' rights and ethical guidelines for industry performance are not well known among Indigenous stakeholders (Stammler et al., 2017). Others highlight cases when Indigenous peoples' organizations (IPOs) have voiced local injustices in the language of international Indigenous rights and even managed to "catch the moment" to improve their position (Peeters Goloviznina, 2019). Indeed, the debate on how to study Indigenous actors' perceptions on such complex issues as FPIC needs even greater scholarly attention (see the discussion on human security, Hoogensen Gjørv and Goloviznina, 2012, pp. 2–3).

Free, prior and informed consent is the latest addition to the Russian debate. As scholarship on the concept in the Russian context remains limited, there is much to be explored on the history of FPIC institutionalization and its encounter with domestic IPOs. How do Russian IPOs perceive and interpret FPIC? What is their experience of it and its implementation on the ground? More importantly, can the IPOs use the regulative power of the FPIC to ensure greater participation and control by their constituents over their homelands' developments?

This study contributes to the growing branch of scholarship examining encounters with FPIC from the perspective of the most numerous and diverse types of grassroots IPOs in contemporary Russia – *obshchiny* (often translated literally as nomadic clan communities). The study takes a bifocal research perspective, both normative and empirical, to explore the role of *obshchiny* in enabling the right of their constituents to FPIC in extractive projects in the Russian North. The Russian Federal Law No 104-FZ defines *obshchiny* as "a kinship-, family- or community-based organization of Indigenous peoples, formed to protect their traditional territories, traditional ways of life, culture, rights, and legal interests" (Russian Federation, 2000). In addition to their large number (1,597 *obshchiny* registered in Russia), the choice of *obshchiny* also has another analytical reasoning (Russian Federation, 2020). Given the specifics of the Russian approach to recognizing Indigenous peoples' territorial rights, *obshchiny* are the only legal entity through which the state recognizes Indigenous peoples' collective rights to land and use of resources (Kryazhkov, 2015).

Over the last decades, scholars have produced two different, albeit interrelated, narratives in studying the *obshchiny*. One concerns the historical (imperialistic) legacies and structures (institutions and power) of Russian Indigenous politics, limiting the possibilities of *obshchiny* to ensure their constituents' rights to land, autonomy and self-determination. The other narrative is about how the Indigenous organizations' lack capacity to take advantage of new opportunities (globalization, digital revolution) to realize the aspiration for economic, cultural and social advancements.

Subscribing to both narratives, I argue that they belong to just one side of the story about IPOs from *above*, a perspective of those with dominant status in power relations. To complement this mainstream yet one-way approach, I suggest rethinking the agency of IPOs from another angle, from *below*. The actors-based perspective spotlights the tactical, instrumental and localized practices the IPOs use to contest the normative roots that regulate their relations with the more powerful and resourceful counterparts. Incorporating these organizations' voices into the mainstream top-down debate will make more visible the processes of normative and social change they initiate and engage in from the bottom up. This advances our understanding of IPOs' agency in the context of the rights-flawed Russian state.

The study's empirical part is designed as a case study of the relationship between a family-based Evens *obshchina* and a gold mining company in the Republic of Sakha (Yakutia) in 2015–2019. Zooming into the practice of normative contestation around FPIC, I explore how the *obshchina*, contesting the company's visions on FPIC, was able to secure an advantageous interpretation of it; and how, under the prevailing unfavorable circumstances, the *obshchina* was able to maximize its benefits and interests. The choice of the RS (Ya) for the study has methodological reasons. Scholars demonstrate a consensus, acknowledging the republic as an "outstanding" case due to its Indigenous legislation's progressiveness and advanced law enforcement mechanisms to regulate "Indigenous–industries" relations. The study contributes to the scholarship, highlighting the institutional mechanisms behind the "advanced," rights-based approach to Indigenous politics.

The article consists of six sections. Following the introduction, the second part outlines a theoretical framework, sketching the ideas on agency and norms in a normative contestation analysis. The third part describes the methodology and methods used. The next sections examine the specifics of FPIC in the Russian legal framework and discuss the case study findings from the RS (Ya). The final part ends with the conclusions.

Agency and norms through practice of normative contestation

The ontological ground of FPIC lies in the right of Indigenous peoples to self-determination: through their representative organizations, Indigenous peoples have the right to express their views and decide what happens on their lands, exerting control and governing these developmental activities (Heinämäki, 2020, p. 345). The normative foundation of the FPIC process is based on the ideas of participatory citizenship and democratic governance (Hajer and Wagenaar, 2003; Kooiman et al., 2005). My analysis joins this stream of scholarship examining how Indigenous actors challenge the existing norms to bring about social and political change in governance. By centering attention on the Indigenous agency's encounter with the norm of FPIC, I apply a norm contestation analysis (NCA) (Wiener, 2014; Jose, 2018).

Norm contestation analysis originates from international relations (IR) norm scholarship that concerns norms and norm-related behavior across global–local scales (Wiener, 2014). This analysis considers contestation as a "social practice that discursively expresses disapproval of norms and entails objection to them"

(Wiener, 2014, p. 30). It acknowledges the diversity of norms and their crucial role in regulating actors' social behavior (states, organizations, individuals). While mainstream IR scholarship focuses on studying norms at the international level, other scholars contribute with insights from normative contestation behavior at the micro-scales of a global society (Deitelhoff and Zimmermann, 2018).

Instead of viewing the norms as stable, the approach emphasizes their dual nature (quality), which implies that they are both structuring (stable) and socially constructed (flexible) (Wiener, 2014, pp. 19–24). Understanding norms as dynamic constructs of dual quality foregrounds the relationship between norms and agency. Norms never remain valid by themselves; they need constant affirmation by the actors through their practice. Hence, the actors can always (re-)produce the dominant meaning of the norms or contest it.

Agency manifests the norm-generating power of actors, which derives from and is exercised through actors' asymmetrical relations as power-holders engaged in a normative contestation (Wiener, 2014, p. 9). Cultural contexts and institutional arenas, varying significantly, play a critical role in enabling the actors' agency to contest the existing norms. The *presence of institutional mechanisms* that facilitate the participation of actors (stakeholders) in contestation processes and the *access* of actors to them largely determine the actors' ability to exercise their norms-generating power. The power of those with limited or without institutional access to the normative contestations sites and mechanisms remains negligible and restricted (Wiener, 2017, p. 12).

Scholars consider NCA particularly useful for examining human behavior related to ambiguous norms (both social and legal) and interactions they have caused (Jose, 2018, p. 34). When international norms touch the ground in a given context, they generate multiple interpretations of their content, prescriptions (what the norm enables and prohibits) and their parameters (the situations in which the norm applies) (Jose, 2018, p. 5). Relatively, they encourage and enforce the actors, as norm-followers, to operationalize the meaning of these norms and define appropriate, norm-compliant behavior.

International Indigenous rights fall into the category of norms whose ambiguity plagues their conceptualization and challenges their practical application. What is FPIC, then? How should it be performed on the ground, by whom and under what conditions? The vague articulation of FPIC as a normative concept within international documents makes it an ideal target for contestation by Indigenous actors and extractives. With different backgrounds, driven by diverse (even adverse) interests, these actors have a conflicting interpretation of FPIC. While studies show that current FPIC practice is replete with positive and negative examples, the scholars also highlight its potential for negotiating mutually beneficial agreements (Rombouts, 2014, p. 23).

Research methodology and methods

This study was informed by data collected in fieldwork and desk research and primarily applied qualitative techniques, including semi-structured interviews, participatory observation and document analysis. In total, twenty-two interviews

were conducted to clarify the informants' perceptions of FPIC and related issues (consultation, consent, benefits-sharing) in the Republic of Sakha. A large part of the interviews was conducted during the fieldwork in two settings: in Yakutsk (February–March 2019) and the *obshchina* winter camp along the Verkhoyansk Range (March 2019). Among my informants were the *obshchina* members, representatives of the republican authorities, the Ombudsman for Indigenous Peoples' Rights (OIPR), regional branches of Indigenous public organizations, including the Association of Indigenous Peoples of the North (AIPON), the World Reindeer Herders Association (WRH), the Union of the Nomadic Obshchiny (UNO) and academia. The names of many informants were anonymized to protect their identity. Most of the interviews were conducted in Russian, recorded and transcribed as text documents.

The secondary data for analysis is a corpus of official documents on Indigenous issues, including the relevant federal and RS (Ya) legislation, policy papers and the reports of the OIPR (2014–2019) (OIPR, 2020). The open-access data on Polymetal's social and Indigenous policy was obtained through the company's website (Polymetal International plc, 2020). These data have also been coded, categorized and analyzed using a mix of interpretative analysis techniques.

The challenge of FPIC in the Russian context

Although Russia has not endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), it has reaffirmed its commitment to FPIC on numerous international platforms (OHCHR, 2018). Russian officials have always emphasized that the FPIC has to be interpreted through the normative lens of national legislation. The status and rights of Indigenous peoples are enshrined in the Constitution of Russia (1993) and three federal Indigenous laws, namely "On the Guarantees of the Rights" (1999), "On Organization of *Obshchiny*" (2000) and "On Territories of Traditional Nature Use" (2001) (Russian Federation, 1992, 1993, 1999, 2000, 2001). This legal framework incorporates Russia's approach to recognizing "Indigenous peoples" and their land rights.

At the core of Russia's approach to recognizing indigeneity lies the concept of ***k**orrennye **m**alochislennye **n**arody **S**evera, Sibiri i Dalnego Vostoka*, KMNS (small-numbered peoples of the North, Siberia and the Far East). The law defines KMNS as

> peoples living in the territories of their ancestors' traditional settlements, preserving the traditional way of life and economic activities, numbering fewer than 50,000 persons, and recognizing themselves as independent ethnic communities.
>
> (Russian Federation, 1999)

Forty ethnic groups have KMNS status and represented 0.2 percent of the country's population at the last census (Russian Federation, 2010).

Russia's approach to recognizing KMNS land rights also differs from other Arctic states (Fondahl et al., 2020). They live and maintain their economies in a gigantic area rich in natural resources. Much of the land is public property, as the

territory is vital for Russian national security and its resources-based economy. The state does not recognize the inherent rights to ancestral lands of small-numbered peoples of the North, Siberia and the Far East, but only their usufruct rights to land tenure (where the title remains with the state).

Russia has no particular law on FPIC. The legislator grants the scope of FPIC-related rights to *obshchiny*, recognizing them as the only rights-holders of the KMNS collective rights (Kryazhkov, 2015). The modern institutional history of the *obshchiny* has its origins in post-Soviet Russia (Fondahl et al., 2001; Gray, 2001; Novikova, 2001; Stammler, 2005; Sirina, 2010). With the crash of the Soviet command economy and the system of state farms (*sovkhozes*), the land from state farms (but not property rights) was transferred to the *obshchiny*. In the 1990s, the *obshchiny* registered their legal entities as various commercial agricultural organizations (Sirina, 2010; Stammler, 2005).

The Presidential Edict of 1992 issued two directives of a revolutionary character (Russian Federation, 1992). The edict called on the regional governments to transfer reindeer pastures, hunting grounds and fishing areas used by KMNS to their *obshchiny* for "life-time possession, free-of-charge use" (Russian Federation, 1992). The edict also called on the authorities to define the TTNU and declare their indefeasible status for any extractive activities. Since then, the institutional linkup between *obshchiny* and TTNUs has made them the central hub of Russia's KMNS land rights recognition politics (Fondahl et al., 2001, p. 551).

In 2000, ten years after the first *obshchiny* were organized locally, federal legislators enacted the law "*On obshchiny*" (Russian Federation, 2000). The law recognized *obshchiny* as non-profit organizations (NPOs) and their economic activities solely for non-commercial purposes. The latter has been limited to a closed list of thirteen types of activities, including reindeer husbandry, hunting, and fishing (Russian Federation, 2000). The new legislation also required *obshchiny* created in the 1990s to change their status from commercial agricultural organizations to non-profit. Since the mid-2000s, the government has regularly stripped away the provisions of rights of *obshchiny* (Kryazhkov, 2015). The most critical of these, concerning the land rights of the *obshchiny*, were introduced by the new Land Code (Russian Federation, 2001a). The Code replaced the norm of land use "free of charge" with use "on lease." The new regulation eventually jeopardizes the very existence of the *obshchina*. No single *obshchina* can afford to pay even the minimal rent for thousands of hectares of land tenured under the restrictive conditions to use it only for non-commercial activities. Due to the municipal government reforms of 2004–2005, the self-governmental function of *obshchiny* at the local level also became invalid (Kryazhkov, 2015, p. 56).

The federal law FZ-49 defines territories of traditional nature use (TTNU) as "specially protected territories, established on the lands of *obshchiny* to ensure traditional nature use and preserve traditional ways of life" (Russian Federation, 2001). The legislator expels these territories from any property transfers (via buying-selling, lease, etc.). In the same vein as FPIC, the legislator recognizes the right of the KMNS to say no to industrial activities on such territory, yet without the veto power. If industrial activities in such an area are unavoidable, the law

guarantees the affected communities compensation payments or land allocation elsewhere.

Since 1992, in many subjects (regions) of Russia, the authorities have established hundreds of TTNU under their jurisdiction (Tranin, 2010). Meanwhile, the federal government has failed to establish a single federal-level TTNU. Given the supremacy of the federal law, the future of regional-level TTNU remains peculiar. In the event of a potential conflict of national and regional jurisdictions, the latter would fail to protect the regional TTNU from being dismantled (Murashko and Rohr, 2018, p. 40).

As a cornerstone of FPIC, the participation and consultation of the KMNS affected by industrial activities are regulated by federal land, environment and subsoil legislation. The legislator requires companies to inform, consult and consider the local community's opinion regardless of their ethnic composition before implementing the project. The law provides two institutional channels of participation on the local level of governance of extractive developments for KMNS and non-KMNS people: an environmental review and public hearings.

The legislator obligates all developers to conduct ***o****tsenka* ***v****ozdeystviya na* ***o****kruzhaiyschuiy* ***s****redu, OVOS* (comparable to an environmental impact assessment, EIA) (Russian Federation, 1995). This may include an ***e****tnologicheskaya* ***e****kspertiza, EE* (comparable to a social impact assessment, SIA), but this is not obligatory. The results of an assessment of environmental impacts become subject to deliberation at a public hearing, a gathering where the community meets with developers and authorities to voice their concerns and expectations regarding the proposed activities. The public hearing ends with a protocol that includes these issues but has no legal force binding the company to implement them. While a public hearing implies a democratic and inclusive idea of governance, in practice, it gives the community only the tiniest degree of empowerment, making its participation through this channel rather a formality (Tulaeva et al., 2019).

To sum up, while the Russian legislation formally includes norms on participation, informing and consulting Indigenous peoples, the existing framework addresses FPIC neither entirely nor comprehensively. The Russian legislator's vision of the FPIC is narrow, as it impairs the fundamental importance of this principle to ensure Indigenous peoples' rights in the international legal framework (Kryazhkov and Garipov, 2019). Nevertheless, within the contemporary Russian federative state, numerous subjects (regions) provide better protection of KMNS rights than the corresponding federal law. One of the vanguard regions where regional lawmakers have made progress in incorporating the FPIC in KMNS legislation and its implementation is the Republic of Sakha (Yakutia) (Sleptsov and Petrova, 2019).

Contestation on FPIC in the RS (Ya): a case study

FPIC in the RS (Ya) legal framework

The Republic of Sakha, with an area of 3,084 million square kilometers, is one of three ethnic republics among the nine federal subjects of the Arctic Zone of the

Russian Federation (AZRF). The republic has a population of one million people, around half of whom have a Sakha (Yakut) ethnicity. The capital Yakutsk lies 4,900 kilometers east of Moscow. For centuries, for five ethnic groups, practicing a semi-nomadic way of life and closely connected to the land, these territories have been a homeland. According to the last census (2010), these groups include the Evens, the Evenki, the Dolgans, the Chukchi and the Yakagirs, making up just 4.2 percent of the region's population.

Sakha became part of the Russian Empire in the sixteenth century, and since then, its economic history has been one of resource exploitation (Tichotsky, 2000, p. 72). For Sakha's governors, ownership and control over the land (subsoils) have always been a matter of paramount importance. Within the Soviet command-administrative system, the republic's gold mining and diamond industries provided the national budget with significant foreign exchange earnings, ensuring its special status in relations with central authorities in Moscow (Tichotsky, 2000, p. 71). In early post-Soviet Russia, Sakha's elites successfully used land, indigeneity and ethnicity issues as resources in their negotiations with the federal center over land control, subsoil revenues and the strengthening of Sakha's sovereignty (Balzer and Vinokurova, 1996, p. 101).

Nicknamed "a storehouse of the country's diamonds, gold, tin, oil and gas reserves," RS (Ya) is also known for its protectionism toward KMNS through legislation and policy. The republic adopted most of the laws on KMNS earlier than the federal legislator (Table 5.1). These days the regional legislation provides better protection of KMNS rights than the corresponding federal legislation (Fondahl et al., 2020). Just a month after the presidential decree (1992) that recognized the land tenure rights of *obshchiny* and thus legitimized their inclusion in the debate on land privatization in the Russian North, Sakha politicians passed the regional *Obshchiny* Law (1992). During the next decades, the republic became the flagman in the organization of *obshchiny* and the territories of traditional nature use. These days it has 199 *obshchiny* and 62 TTNU, which comprise a significant share of such institutions in the Arctic Zone of the Russian Federation (Sakha Republic, 2020a).

Table 5.1 Legislation in the RS (Ya) and the Russian Federation on KMNS rights

Subject	*RS (Ya) law adopted*	*Russian federal law adopted*
Constitution	1992	1993
Obshchina KMNS	1992	2000
Reindeer Husbandry	1997	
Territories of Traditional Nature Use (TTNU)	2006	2001
Ethnological Expertise (EE)	2010	
Ombudsman For Indigenous Peoples' Rights (OIPR)	2013	
On Responsible Subsurface Resource Use	2018	

During the 2000s, political and administrative reforms sharply increased decentralization in the federal–regional relations, including the redistribution of tax flows, resource revenues and the unification of law. The federal legislator has failed to provide proper legal backing and guarantees to *obshchiny* and the TTNU. On the contrary, the expansion of the country's resource-based economy and the growth in energy demands around the world have led to numerous amendments and changes in federal legislation, further weakening the legal protection of the KMNS (Murashko and Rohr, 2015, p. 30).

In the Republic of Sakha, these processes have led to a "second wave" of regional lawmaking to strengthen control over the territory (subsoils) and promote good governance in KMNS affairs. Lawmakers' efforts have resulted in two enforcement mechanisms through ethnological expertise (EE) and the ombudsman for Indigenous peoples' rights (OIPR). Both instruments aim to compel companies to comply with international and national rules regarding information, consent and compensation for the KMNS affected by their industrial activities. In contemporary Russia, EE is an exclusive practice to RS (Ya), while the OIPR is limited to a few regions.

Even though norm obligating extractive companies to conduct EE was mentioned in the federal law two decades ago, legislators' efforts have not gone beyond the project stage (Novikova and Wilson, 2017). To fill this gap, in 2010, the RS (Ya) legislators issued a law on ethnological expertise. The law defines ethnological expertise as "a public service aimed to create conditions for meaningful dialogue and partnership between extractives and KMNS" and explicitly endorses the FPIC as its guiding principle (Sakha Republic, 2010).

Like a social impact assessment (SIA), ethnological expertise is a scientific study to measure planned industrial activities' cumulative impacts on the livelihood, culture and economies of the affected *obshchiny*. It results in a legal decision to support or reject the project, stating the amount of compensation that the company has to pay to the *obshchiny*. Unlike SIA's voluntary nature within what is comparable to an environmental impact assessment (OVOS), ethnological expertise is mandatory for all industrial activities planned in areas with *obshchiny* prior to implementing a project. Companies evading EE are subject to a fine. It is essential to emphasize that the binding character of ethnological expertise is limited only to territories of traditional nature use.

The Ombudsman for Indigenous Peoples' Rights (OIPR) is an independent government body that aims

> to institutionalize a guaranteed right of Indigenous peoples to have a special representative to advocate their interests in relations with authorities, businesses, and civil society organizations in a court and other settings.
>
> (Sakha Republic, 2013)

The OIPR is appointed by the Head of the RS (Ya) on the KMNS organizations' proposal. The mandate gives the ombudsman the authority to investigate KMNS complaints of maladministration and violation of their rights, exert non-judicial

pressure to resolve conflicts involving the KMNS and submit annual recommendations to the RS (Ya) Parliament and its Head.

High stakes at Nezhda

Nezhda (*Nezhdaninskoye*) is the fourth-largest gold deposit in Russia (632 tons of ore reserves) located in the remote areas of the Verkhoaynsk mountain range in the northeast of RS (Ya) (Figure 5.1). The deposit was discovered in 1951, but due to global negative trends in gold prices and the economic crisis in 1998, the mine was closed. In 2015, Polymetal, one of the largest global gold producers, came to the RS (Ya) through the JSC South-Verkhoyansk Mining Company to restart Nezhda. Total capital expenditures for Nezhda are estimated at USD234 million, with a mine life of up to 2045 (Polymetal International plc, 2020).

Polymetal is an internationally active Russian precious metals public limited company registered in Jersey (UK). The company shows its commitment to corporate ethical conduct and responsibility through membership with the UN Global Compact, the Extractive Industries Transparency Initiatives (EITI) and the International Finance Corporation performance standards (IFC). Under its principal investor's requirements – the European Bank for Reconstruction and Development – the company undertakes to respect Indigenous peoples' land rights and integrate the FPIC in its operation.

Over a decade of operations in the Russian sub-Arctics, Polymetal has built the company's reputation responsive to Indigenous peoples' rights and environmental standards. Several national and international assessments have praised the company's

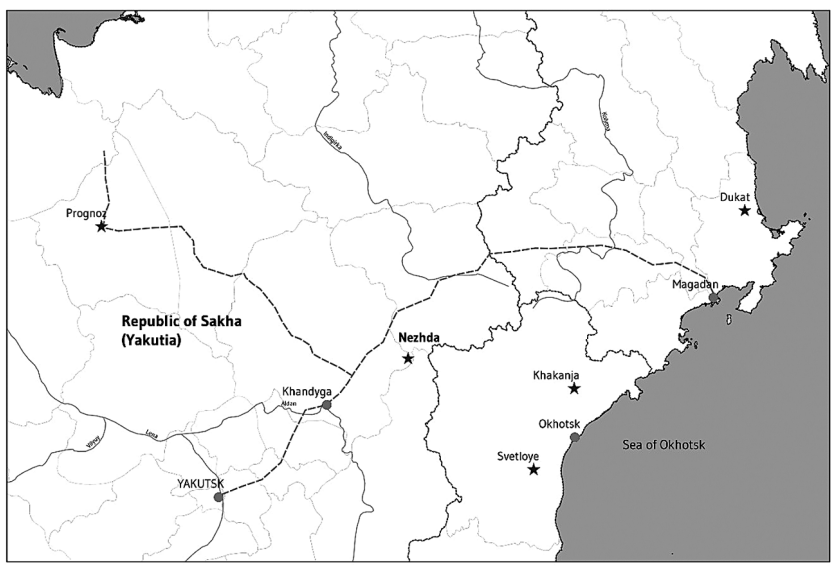

Figure 5.1 The Nezhda mine, the Republic of Sakha (Yakutia), Russia. ©Arctic Centre, University of Lapland.

environmental responsibility efforts and performance in Indigenous communities' engagements (Overland, 2016; Knizhnikov et al., 2018). A more detailed analysis of the company's social reporting shows that Polymetal does not have a specific corporate Indigenous policy and considers "Indigenous issues" among many other engagements with local communities. The company engages with local (Indigenous) communities through voluntary "in-kind" donations and philanthropy, rather than on a program basis. Moreover, the company does not have a formal grievance mechanism to provide affected Indigenous communities with access to remedy.

The area around Nezhda has high stakes not only for the company and mining. After the Tomponskyi state farm's liquidation, these plots were transferred to former workers, the Even reindeer herders, who organized their family-based *obshchina*. The *obshchina* received 396,000 hectares of land for forty-nine years as a usufruct (land tenure). On the cadastral passport that the *obshchina* has for the land, the plots are registered as hunting grounds, legitimizing their multi-purpose use for reindeer herding, hunting and fishing. However, the areas adjacent to Nezhda do not have the status of a territory of traditional nature use. Although the *obshchina* has applied to recognize these parcels as such, local authorities have rejected these applications, arguing that this can lead to a "conflict of interests" between different land (subsoil) users.

Since 2001, the *obshchina* has had a legal entity status as a non-profit organization of Indigenous peoples with reindeer husbandry as its principal activity. It owns a thousand reindeer, and its primary income comes from the republican subsidies for reindeer husbandry. Seventy percent of that small but stable income goes to herders' remuneration at USD 300 per month. The community is an active member of the republican branches of Indigenous peoples' and reindeer herders' associations, including the World Reindeer Herders Association (WRH), the Association of Indigenous Peoples of the North (AIPON) and the Union of the Nomadic Obshchiny (UNO).

The *obshchina* officially has eleven adult members registered as employees. Its organizational structure includes two brigades (camps), each led by brothers, while their sister, a well-known Even politician in the past, acts as chairwoman. The brothers and their families herd the deer and watch these remote territories all year round, whereas the chairwoman's job in Yakutsk is crucial to accessing the authorities, company headquarters and Indigenous associations to carry out necessary paperwork and networking. The combination of rural and urban members in the organizational structure and its strong ties with authorities and Indigenous associations ensure the *obshchina*'s access to various sites of negotiations, resources and flows (material and nonmaterial) regionally, nationally and internationally. Although these characteristics of the *obshchina*'s organizational capacity are not unique, they are also not typical of two hundred other *obshchiny* in the RS (Ya).

FPIC through the actors' contestation "talks" and "walks"

The data analysis revealed that the *obshchina* and Polymetal had different perceptions of FPIC. As a commercial entity, the company has viewed FPIC from a "minimalist" stance, narrowing its interpretation to national legislation and limiting its costs and responsibilities to affected *obshchiny* to only legally binding tasks.

In contrast, the community's perception of the FPIC is broad, based on the principles of reciprocity, mutual respect, shared responsibility and accountability. The actors' views influenced their contestation practices around two main areas; "consent" and "benefits-sharing."

The first area of disagreement between the *obshchina* and the company was about "consent," including who grants the consent in Nezhda and whose consent counts as legitimate. Polymetal entered the RS (Ya) in 2015, having signed cooperation agreements with the republican and Tomponskyi municipal authorities. The public hearing on Nezhda was held in the municipal center Khandyga, 250 km away from the mine. Most of the participants were representatives of the local authorities or the company and none of them informed the *obshchina* about the reopening of the mine or the hearings. The environmental impact assessment stated that the project would not affect any Indigenous *obshchina* and TTNU, and its environmental impact would be moderate. The hearing ended with a protocol supporting the Nezhda mine, which the company acknowledged as the local community's consent.

The *obshchina*'s normative stance concerning the "C" in the FPIC was different. Soon after the project started, the *obshchina* lost dozens of reindeer due to traffic accidents and shootings. These incidents and the "minimalist" conduct of Polymetal brought the *obshchina* chairwoman to the company's Yakutsk office to negotiate trade-offs. During the negotiations, the chairwoman challenged the legitimacy of the consent obtained, requiring the company to recognize the *obshchina* as one of the local consent-grantors. The chairwoman argued that the local consent, to be legitimate, must include the informed agreement of all those affected by the mining industry and, first of all, of "affected Indigenous communities." Voicing the "Indigenous" perspective in interpretations of FPIC as broad and inclusive, she used moral and non-legal character arguments, referring to customary law.

The company objected to this with its narrow interpretation of FPIC while using Russian legislation's normative language. The company claimed that the land around Nezhda was public property. The state granted the company a legal mining license. Even though the plots of the *obshchina* are adjacent to Nezhda, there is no legal recognition of these areas as TTNU. Consequently, the *obshchina*'s claims to the status of an "affected Indigenous community" lacked sufficient legal legitimacy. In turn, the *obshchina* insisted that even if their claims might have less legal significance without the official TTNU status, its demands to respect their rights and compensate for losses ultimately had moral legitimacy. How Polymetal respects these rights will have direct implications for its corporate reputation regionally, nationally and internationally.

The second area of contention between the *obshchina* and the company over the FPIC was benefits-sharing. Generally speaking, benefits-sharing implies distributing monetary and non-monetary benefits generated by implementing the development project and goes beyond compensations (Pham et al., 2013, p. 3). In Russia, benefits-sharing arrangements are not monolithic; their practice varies across legal regimes and institutional contexts of the regions (Tysiachniouk et al., 2018). In the RS (Ya), the engagement between Indigenous peoples and extractive companies regarding the distribution of benefits falls under two

modes: quasi-formal bilateral agreement-making and formal agreement-making using ethnological expertise (EE).

As the above analysis shows, the legal framework limits the choices available to *obshchiny* if their territory does not have a TTNU status. The legislator excludes these *obshchiny* from the list of legitimate claimants for benefits-sharing through the EE. For comparison, the RS (Ya) hosts 418 extractive companies with 1,467 licenses to extract minerals, while only twenty-one ethnological expertise assessments were conducted in 2010–2020 (Sakha Republic, 2020b). The legislator left a large part of the *obshchiny* with a poor choice: to protest or negotiate with the company independently.

In the case under study, Polymetal argued its position on benefits-sharing from a commercial (minimalist) stance. The company justified its actions by Russian legislation, claiming its benefits-sharing with the RS (Ya) and the local municipality. These include taxes and revenues to the republican and local budgets, investments into infrastructure (building roads, electricity lines) and new jobs for the locals. According to the company, among other payments for 2016–2018, the company paid 27 million rubles only to the local budget. The municipality spent these to renovate a medical center, purchase computers for a school and celebrate Reindeer Herders' Day.

The *obshchina* objected, contesting the perceived legitimacy of these benefit-sharing arrangements as genuinely equitable. The chairwoman did acknowledge that the company's money had improved the residents' living standards in the municipal center. However, she emphasized that the reindeer herders in their remote camps received nothing from these "benefits" to somehow compensate for their damages, stress and risks. The chairwoman urged the company to provide a more targeted and justified distribution of benefits, ensuring the rights of affected reindeer herders to particular (and better) compensation.

Such interactions between the *obshchina*, Polymetal and the authorities, and their contestations around "local consent" and "benefits-sharing" are not unique to Sakha or Russia. The Russian "irregular governance triangle" (Petrov and Titkov, 2010) makes it a common practice on the ground for the authorities to go beyond the "intermediary" role and deliberately replace community (indigenous) voices, speaking on their behalf. Such a mode of interaction encourages companies to deal with the state's representatives instead of working with Indigenous *obshchiny* directly. The companies perceive "local consent" as an agreement with local authorities in exchange for social payments. The companies' money flows to capitals and municipal centers, while the Indigenous *obshchiny*, most affected by extractive activities, rarely enjoy these benefits. As already argued, the companies take a minimalist approach, limiting their costs and responsibilities to the affected *obshchiny* to tasks that are legally binding. The latter are few and easy to defy, given the principal role the extractive industries play in the country' s resource-based economy and the deficit of the rule of law.

At the end of their first round of negotiations, the *obshchina* and Polymetal reached a verbal agreement that the company would pay damages for each deer killed. They also agreed to build a fence along the road to prevent deer–vehicle collisions. The deal was short-lived, and when the company failed to keep its promises, the *obshchina* submitted a complaint to the OIPR.

OIPR as a norm enforcer

The Indigenous peoples' right to use advocates to negotiate with more powerful counterparts in the FPIC process is recognized and broadly practiced. As international experience suggests, in contexts with a deficit of the rule of law and weakness of civil society organizations, Indigenous peoples have better chances to defend their rights with help from the specialized institution of the ombudsman (Krizsán, 2014). In Russia, the first institution of OIPR was established in the Krasnoyarsk region in 2008. Like other ombudsman-type institutions in Russia, the OIPR has a "personified" nature, the legitimacy and effectiveness of which heavily depend on political support from the regional authorities and civil society organizations (Bindman, 2017).

In the Republic of Sakha, the OIPR was established in 2014. During 2014–2019, the institution was led by Konstantin Robbek, who had extensive experience working with Indigenous rights in the republic as an activist, analyst and policymaker. A lawyer by education and Even by origin, he interned at the UN program for Indigenous practitioners on Indigenous advocacy and rights defense. For years of serving as the OIPR, Robbek has strengthened the new institution's capacity and mandate, not least with the support of local Indigenous organizations. The legitimacy and authority of the OIPR these days in the RS (Ya) is high and recognized by the extractives operating there.

In response to the *obshchina*'s complaint about Polymetal's misconduct, the OIPR organized a meeting between the parties to facilitate a dialogue. According to the ombudsman, the conflict situation between the *obshchina* and Polymetal was far from unique and had a standard set of characteristics and causes for such cases. At the core of the conflict was a lack of shared understanding of normative foundations of mutual conduct, rights and obligations between the parties in the context of extractive activities. Like every encounter between Indigenous peoples and extractives, the conflict manifested as an asymmetry of power, capacity and resources. Uncertainties, contradictions and numerous loopholes in federal legislation serve the companies' interests rather than protect Indigenous peoples' rights.

Given this background, the OIPR saw his role in balancing these power asymmetries by articulating challenges faced by the *obshchina* in legal terms and linking them to the powerful language of international law. Acting as a local normative-enforcer, the OIPR gave a broad interpretation of Indigenous peoples' rights, using relevant international standards (ILO 169 and UNDRIP) and referred to good examples of Indigenous–mining industry relations from other regions and countries.

Another crucial task of the ombudsman in mediating the conflict between the *obshchina* and Polymetal was to counteract the company's attempts to define and perform the FPIC solely on its own, following "minimalist" commercial visions. To do this, the OIPR leveraged its interpretative power and mandate as an institution affiliated with authorities to convince the company to accept broadly formulated interpretations of the FPIC process as authoritative.

While it is not always the case in practice, the mediation of the OIPR lifted the *obshchina*–Polymetal relations to a new level. One of the direct practical outcomes of the OIPR's facilitation was formalizing communication channels between the

parties. The company appointed two officers to deal with the *obshchina*'s queries. Since then, communication has improved: it has become prompt, conducted by cell phone and respectfully. According to the Indigenous informants, a lack of respect and pervasive negative attitudes among the company's representatives had been some of the most significant barriers to building mutually trustful relations. Though these negative perceptions have not entirely disappeared, the facilitation of the OIPR has encouraged the company staff to progress with more sensitive and respectful attitudes toward the herders and their requests.

Soon after the meeting with the ombudsman, the *obshchina* and the company signed their first bilateral agreement. To date, the agreement practice is annual, bilateral, confidential and quasi-formal, offering benefits-sharing as "in-kind" services. For example, the company has subsidized a ten-kilometer-long fence along the main road. It regularly helps the herders to deliver food, fuel and equipment to their remote camps. Scrolling back on the history of their relationship with Polymetal, the members of the *obshchina* acknowledge the company's efforts to build positive mutual relations. Nevertheless, the current main concern of the *obshchina* remains to induce the company to step beyond its minimalist position toward more equitable benefits-sharing that will contribute to the *obshchina*'s long-term economic sustainability.

Conclusion

The case study of the *obshchina* in the Republic of Sakha (Yakutia) shows that the Russian Indigenous peoples' organizations, like their Arctic counterparts, increasingly recognize FPIC as a tool for empowerment. The analysis of the *obshchina*'s contestation practices highlights its agency (norm-generating power) to object and challenge the normative foundations of their relationships with the mining company and authorities, which they perceive as unjust, illegitimate and even immoral. As the study demonstrates, the availability and accessibility of institutional mechanisms to ensure *obshchiny* participation in deliberation forums is a matter of Indigenous peoples' success. The EE and the institution of the OIPR in the RS (Ya), complementing and enforcing each other, offer *obshchiny* different institutional doorways to broaden their participation in the governance of natural resources extraction at the local level. These mechanisms serve as the contestation sites, providing *obshchiny* with critical engagement with the norms to refine their rights' normative roots. Furthermore, the EE and the OIPR operate as local FPIC enforcers, which helps *obshchiny* enhance their rights to the FPIC and benefits-sharing. However, as the study shows, the interpretative power of the EE and OIPR is neither fixed nor conclusive and has its limitations.

The case study holds broader lessons for understanding the performance of FPIC on the ground that is not limited by the Russian extractive context. As extractive corporations' role in global governance grows, it is corporations rather than governments that take an increasingly leading role in promoting the FPIC. When the legislator does not require FPIC and does not control its implementation, it allows companies to independently decide what FPIC is about and where, how and to what extent it is to apply. As the case study shows, there is a risk that

the company misuses the fundamental legal meaning of FPIC as the right of Indigenous peoples as it relates specifically to the *land* consent *prior* to any land disturbances (not afterward). Even when a company declares its commitment to FPIC, it often deprives the FPIC of its normative value, which is intended to enable self-determination of affected Indigenous *obshchiny* through true consultation and a share of the benefits to contribute to their sustainable development.

In the Russian context, FPIC can become a vehicle for Indigenous peoples to enable their right to self-determination in extractive developments but under specific provisions. These will require updating national legislation in line with international Indigenous peoples' rights supporting FPIC and empower the *obshchiny* through new, more democratic governance structures.

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