

SUMMARY POINTS OF THE TYSFJORD EXCURSION, OCTOBER 2017



The TriArc and IndGov group visiting and strolling around in Måsske/Musken in Oarjjevuodna/Hellmofjorden, Divtasvuodna/Tysfjord, Norway. From left, Sven-Roald Nystø, Svein Jentoft, Håkan T. Sandersen, Marina Peeters Goloviznina, Cathy Howlett, Catherine Moriarity (partly), Lars Theodor Kintel, Einar Eythorsson and Patrik Lantto (hidden behind Eythorsson). Photo: Else Grete Broderstad

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Meeting in Divtasvuodna/Tysfjord

From 2.-8. October 2017, a research team gathered at Árran Lule Sami Centre, Ájluokta/Drag, Divtasvuona suohkan/Tysfjord Municipality, Norway as part of the TriArc and IndGov research projects (see below for more details). The projects' researchers arranged an open seminar combined with working meetings for the project participants. To plan the seminar, the Centre for Sami Studies (SESAM) cooperated with Árran Lule Sami Centre, where the related project *Indigenous Peoples and Resource Extraction in the Arctic: Evaluating Ethical Guidelines*, was located (see the presentation by Sven-Roald Nystø below). The seminar addressed the following themes: the role of aquaculture in local indigenous communities; the ethical guidelines project; and work in progress of the TriArc project. Included in the seminar two excursions took place: one to The Quarts Corp mineral factory at Drag and the other to Måsske/Musken, a local Sami community where a fish farming site is located.

We are grateful to Árran Lule Sami Centre who hosted us, to Mikael Urheim (Sami Elder) who so benevolently met and talked with us in Musken, to Andreas Odin Rimpi for showing us the fish farm in Musken and to The Quarts Corp mineral factory for guiding us at the factory. To the presenters at the seminar: many thanks for presentations and for comments when drafting this summery, and a special thanks to Sven-Roald Nystø for planning the seminar and hosting us. Lastly, we thank Catherine Moriarity and Kaja Nan Gjælde-Bennett for transcribing and editing this summery.

About the TriArc project:

The Arctic governance triangle: government, Indigenous peoples and industry in change (TriArc) is a four-year long research project funded by the Research Council of Norway and hosted by the Centre for Sami Studies at UiT The Arctic University of Norway. Indigenous peoples and Northern local communities have traditionally lived in close contact with and off of nature, and they have developed arrangements for resource management that has been under considerable pressure due to large industrial development projects. The aims of the research project are to examine how large development projects like mining, production of electric power, and aquaculture challenge traditional resource use and management by local communities, and to investigate the types of governance arrangements established to regulate the relationship between traditional land use and large industrial development. The project includes a significant comparative component assessing the countries in the circumpolar area – Canada, Finland, Norway, Russia, and Sweden – as well as drawing upon Australian experiences where Indigenous peoples have had experience with projects on resource development. By comparing regions and nation states, the purpose of this project is to clarify which conditions frame these processes; both regional and national, and elements at the international level (companies and

international regulations). State, market, and civil society are also core components of the theoretical framework. The concepts of governability, accountability and legitimacy are central to the discussion about interaction and potential governance between actors within these sectors of society. How is the indigenous involvement in processes of resource development informed by international and national political and legal realities, the behavior of various corporate actors, and Indigenous peoples' own institutions? To what extent can we identify forms of governance that promote indigenous engagement with resource development and management?

About the IndGov project:

Indigenous-industry governance interactions in the Arctic. Environmental impacts and knowledge basis for management (IndGov) is connected to the TriArc project and aims to learn from successful indigenous-industry governance arrangements as well as successful ways of including traditional knowledge in the knowledge basis for governmental and industrial management. Focusing on expanding industrial activities in relation to reindeer husbandry and small-scale fisheries, the goals of this project will be accomplished through conducting a series of stakeholder workshops with the mining, green (electric power) and aquaculture industries and indigenous rights- and stakeholders. Indigenous actors, industry representatives as well as representatives from the environmental sector are invited to enter into a dialogue on particular environmental and governance issues in the intersection between industry and indigenous land use in the Arctic. The stakeholder workshops will have a special emphasis on learning from “best practice” cases in Sweden, Canada (British Columbia) and New Zealand to facilitate dialogue on problems and innovative solutions for sustainable indigenous-industry relations. The first workshop was conducted in Tysfjord, Nordland County in October 2017 and focused on interactions with the aquaculture and mining industries (report available in 2020). The second workshop was held in Kiruna, Sweden, in October 2018 where interactions between the mining industry (LKAB) and the nearby Sami villages around Kiruna were discussed. The final workshop was held at the Fram Centre in Tromsø in the fall of 2019, where the focus was put on interactions between green industries, focusing on electric power development, and reindeer husbandry.

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Both TriArc and IndGov are case study research projects comprised of various cases from different international locations. Each case is an example of either State/Indigenous, State/Industry, or Industry/State interaction. Thus, the projects employ a case study methodology for both the TriArc and IndGov projects, informed by the theoretical framework of the governance triangle. Within the triangle, the project researchers study issues of the state-indigenous, the state-industry and indigenous-industry intersections, different stories from which we potentially can learn about the interaction, relationships and legalities. Utilising a case study

methodology, these projects allow the researchers to categorize the case studies based on the type of interaction and then compare these cases to determine the major themes and issues identifiable in each case that highlights the broader issues and themes that underplay these relationships in the governance triangle. Both the context and issues of generalization between cases in this manner are important in social sciences.

Introduction to Tysfjord

The Sami in Norway historically have had relatively close contact with Norwegians, mainly in terms of economic-political relationship and less so socially and culturally. Tysfjord is an area in Nordland County, Norway which roughly sketched, constituted the southernmost Coastal Sami area in terms of competing taxation between Denmark-Norway and Sweden until the end of the 16th and the beginning of 17th centuries (Nielssen 2017:64-86). This conflict culminated with the Kalmar War 1611-13, forcing Sweden to resign all sovereignty over Coastal Sami areas, which thenceforth became in practise a part of the Danish-Norwegian state, though the final border between Sweden and Norway was not established until 1751 (ibid.). State integration, access to resource bases and the distribution of production surplus in Sami areas “also led to changes in the legal rights” (Hansen and Olsen 2014, p.230). A favourable system for the Sami in terms of ownership and possession of land was abolished, leaving the sedentary Sami (between Saltfjellet in Nordland County and northward to the border of Finnmark County), with parts of the land privately held. Concerning the Sami in Tysfjord, this roughly encompasses the inner arms of the fiord. Hellmofjorden where Musken is located is such a fiord.

Established in 1869, Tysfjord became a municipality with a landmass of 1463 square km. The Indigenous people who live there are Sami, mostly Lule Sami. The basic industries in Tysfjord today are cement and mineral production, fish farming and public services. Cement production in Gásluokta/Kjøpsvik has over a one hundred year-long history. The mining activities in Drag have a decades-long history, “with participation of Sami as workers in both sites. This is an important example of how Indigenous people can become successfully incorporated into a mining activity, to such an extent that mining becomes a mainstay of the indigenous economy.” (Stammiller et al. 2017, p.16). Today, this is true for salmon farming as well.

Regarding relationships, “there are still deeply engrained resentment between Norwegian and Sami in the municipality, leading to a situation where not all people with Sami ancestry are happy to be considered Sami. Therefore the industries’ and municipalities’ position that best practises with industry concern all local citizens, not just Sami, enjoys broad support.” (ibid.). This is relevant for the debate on international ethical standards and instruments for indigenous rights concerning extractive industries.

The industry companies involved are Norcem, which are now owned by Heidelberg Cement and running the factory in Kjøpsvik. The Quartz Corp based in the US with Drag has the prime location for producing purity quartz sand products for the IT industry. Regarding fish farming, the primary companies are Ellingsen Seafood, Nordlaks and Cermaq. The latter is mainly located in the adjacent municipality of Hamarøy in the southwest.

Tysfjord municipality ceased to exist on January 1st, 2020, due to the decision of the Norwegian Parliament in 2018, as a part of the national municipality reform. The south-western part of Tysfjord merged southward with Hamarøy municipality and the north-eastern part merged northward with Ballangen and Narvik municipalities.

Topic 1: The Role of Aquaculture in Local Communities

Einar Eythorsson's presentation on *Marine Space, Aquaculture and Indigenous Communities: the Norwegian Governance Framework*, focused on changes in the governance of coastal planning and the transferred authority for granting aquaculture permits to county councils through new legislation on coastal zone planning. The point of departure is the tremendous growth of salmon farming, which requires marine space governance different from traditional fisheries management. As a governance object, marine space embodies an overlap between rights, government legislation and planning processes as they relate to the sea. The legislation and governance framework that has been developed for marine space has implications for Sami communities where the aquaculture industry is located. One of the focal points of his presentation was the issue of sea rights as a barrier to access, ownership and control for Coastal Sami communities. Coastal waters are considered as state-managed marine commons, but unlike land-based commons, Norwegian legislation does not provide an opening for individual or collective rights claims based on traditional use of the sea and marine resources. However, with the growth of the aquaculture industry, allocation of de facto rights to marine space to this industry has become an important topic for governance. In line with other stakeholders, Sami communities and Sami associations can voice their interests in (municipal or inter-municipal) coastal zone planning processes, in which municipal authorities are required to identify marine areas suitable for location of aquaculture installations. In addition, the Sami Parliament can file objections to the coastal plans if proposed aquaculture locations interfere with Sami interests. Municipalities are obliged to address the objections, generally through dialogue with the Sami Parliament. The Sami Parliament has filed a handful of objections to coastal zone plans between 2010 and 2015, acting as an advocate for local Sami interests. The arguments in the presentation are further developed in Eythorsson et al (2019).¹

Håkan T. Sandersen's presentation on the *model of Musken*, a small Sami community in Tysfjord, addressed attitudes towards aquaculture management in indigenous communities. He discussed to what extent, and under what circumstances, salmon farming can represent a viable alternative for marginal indigenous communities. In Musken, salmon farming was introduced as a means to bring economic development into the community. In 2003, the community was granted two salmon farming licenses with the aim of strengthening the basis for continued settlement and development of the community in order to sustain the vulnerable Lule Sami

¹ Eythorsson, E., Sreiber, D., Brattland, C. and Broderstad, E. G. 2019; Governance of Marine Space; Interactions between the Salmon Aquaculture Industry and Indigenous Peoples in Norway and Canada, in Bankes, Nigel and Ravna, Øyvind (eds.) *Governance of marine space*. Hart Publishing, Oxford UK

culture and language. After a process of bids, and the government placing requirements on the licenses, including employment of locals, contribution to the economic activity in the community, and measures to strengthen the Lule Sami language, these requirements were not bound by any legal obligation. Further, the bidding process for the salmon farming licenses created social cleavages within the community as each proponent formed economic alliances to gain local support.

Musken Laks was granted the two licenses in the Musken fjord, handing out 46% of its private shares to local residents who quickly sold them off. The residents in the community saw these licenses as an indirect way to receive wealth from the operation of salmon farming in the fjord. In effect, the proponents who bided on the fishing licenses gained community support through the paradigm of social license to operate (SLO). However, because these ‘promises’ were articulated under the structure of a social license to operate, there was no authority that could hold Musken Laks accountable for reneging on those promises. The result was a structural conflict of interest between the residents of Musken and Musken Laks. In effect, the economic and social community development plan constructed around aquaculture in Musken was not successful, apart from a brief period of individual economic stimulus for some residents. At present, there are two aquaculture companies, Ellingsen Seafood and Nordlaks, operating in Tysfjord and both employ a number of Sami from Musken and other places in Tysfjord. Even if aquaculture was not successful as an emergency survival strategy in Musken, it provided relevant and well-paid jobs for many young Sami youth. The localized effects of aquaculture on community development were born out of structural and governance issues. Due to the industry’s capital and competence requirement and Norwegian national policy related to aquaculture, communities are vulnerable to the actions of the proponent. Sandersen concluded that fish farming should not be regarded as a feasible short-term strategy for community survival and development, but rather a long-term employment strategy.

Dorothee Schreiber’s presentation on *Canada’s Aquaculture Industry and First Nations* addressed the relationship between fish farmers, the province and First Nations in British Columbia. On the coast and along the rivers that bring spawning salmon home, there is a strong sense among Indigenous peoples that if the salmon disappear, they will cease to exist as Indigenous peoples. The salmon farming industry is also controversial among the settler population of the province, as wild salmon are the basis of a significant tourist economy and are considered keystone species in the ecology of the coastal rainforest. Organizations such as the Wild Salmon Defenders Alliance are strengthening alliances between First Nations and environmentalists on this issue. There is a strong sense among environmentalists and First Nations that the government is not listening, that it has abandoned wild salmon, and that it has left the industry to do as it pleases.

The densest concentration of fish farms on the coast of British Columbia can be found in the Broughton Archipelago and Discovery Islands region, located between northern Vancouver Island and the adjacent mainland. Out-migrating wild salmon smolts from the Fraser River pass through this area and come within close proximity of net cages that harbor high densities of sea lice, bacteria, and viruses. These diseases pose a significant threat to wild salmon at their most vulnerable life stage. For nearly 30 years, the Mamalilikala, Namgis and Kwikwasut'inuxw Haxwa'mis First Nations have worked to remove fish farms from the wild salmon migration routes. In the summer and fall of 2017, hereditary chiefs, elders, and youth, with widespread support from their communities, occupied two Marine Harvest fish farms. These First Nations are increasingly having to rely on passing Fraser River salmon stocks for their food fish supply, because local salmon stocks have declined from the impacts of logging. The cumulative effects of industry on wild salmon make the concerns surrounding the spread of disease from farmed to wild fish all the more pressing.

Ahousaht is sometimes held up as an example of how Indigenous peoples in British Columbia can change their position, from one of ardent opposition to one of cooperation and public support for the industry. It is important to contextualize any discussion of Ahousaht's journey into fish farming with the history of how the Ahousaht were displaced from their territories, marginalized from the economic benefits of the fisheries, and reduced to a life of poverty. Today the Ahousaht First Nation is working on multiple fronts: although involved in a Protocol Agreement (a type of impact-benefit agreement) with Cermaq, the Ahousaht First Nation is also in the courts to assert its right to fish wild stocks. In 2009, the Supreme Court of British Columbia declared that the Ahousaht have a right to fish for any species of fish within their fishing territories and to sell that fish. It also found that the entire fisheries management regime, consisting of legislation, regulation, and policies, was an infringement of that right, and directed the parties to negotiate. Those negotiations failed, and the case returned to court on the issue of whether Canada can justify its management regime as it applies to the aboriginal fishery.

First Nations in British Columbia continue to insist that the Crown has a duty to protect aboriginal interests against the expansion of private property. First Nations use the courts and political mechanism to try to strengthen the First Nations-state side of the governance triangle. They insist that the state must give expression to First Nations jurisdictions, knowledge and the economic component of aboriginal rights and title. The political organizations in BC hold that it is inappropriate for First Nations to raise questions of rights and title with industry, and that questions of rights and title must be addressed through negotiations between governments (First Nations and Canada). The arguments in the presentation are further developed in Eythórsson et al. (2019) (cf. footnote 1).

Lars Theodor Kintel's based his presentation on *Indigenous Peoples and Sustainable Aquaculture Standards* on his Bachelor's thesis. He compared certifications standards of

sustainability and indigenous recognition of rights within the aquaculture industry across three jurisdictions; Canada, Chile and Norway. The departure point was the large variation in Indigenous peoples' rights across these three jurisdictions. Their systems of governance and legal foundations for each country's constitutions vary greatly, creating differences reflected in each country's requirements for aquaculture industry standards and regulations.

In the traditional territory of the Mapuche peoples in Chile, aquaculture standards are governed by committees that oversee different aspects of the standard certification process required for aquaculture projects. The demand for the certification process came from consumer demands as opposed to government-informed legislation. In Chile, the content of aquaculture standards and regulations are weak compared to those in Canada and Norway – reflecting a global gap in the aquaculture standards and certification process. However, this gap is also found in both Canada and Norway.

Regarding international certification standards to govern the aquaculture industry and set standards for best practices of regulations, The Global Salmon Initiative (GSI), comprised of 17 member companies representing over 70% of the global salmon production, has committed to certifying all of its member farms to the ASC Salmon Standard by 2020. Founded in 2010 by WWF and IDH (Dutch Sustainable Trade Initiative), the Aquaculture Stewardship Council (ASC) is an independent non-profit organization (NGO) with global influence.

ASC aims to be the world's leading certification and labeling programme for responsibly farmed seafood. The ASC's primary role is to manage the global standards for responsible aquaculture, which were developed by the WWF Salmon Aquaculture Dialogues² that included salmon producers, buyers, feed companies, academics, nongovernmental organizations and other stakeholders. In 2012, they presented a Salmon Standard after a multi-stakeholder creation process. The Indigenous Rights section (Criterion 7.2) of the ASC Salmon Standard states that farms would have to,

"directly consult with bodies functioning as territorial governments and have come to agreement with indigenous governments, or are working towards an agreement, for farms that are operating in indigenous territories. The requirements are designed to be consistent with the United Nations Declaration on the Rights of Indigenous Peoples."

This means that the farms adhering to the ASC Salmon Standard have agreed upon quite significant inclusion of Indigenous people in decision-making and planning of company activities.

Many smaller scale aquaculture facilities were not engaging with the ASC certification process, which particularly was the case for family-owned aquaculture activities in Chile. In his thesis,

² http://awsassets.wwf.no/downloads/salmon_fact_sheet_english_v4.pdf

Kintel suggests that each company engaging with Indigenous peoples and rights requires a model whereby top management directly consult together with third party aquaculture auditors to address indigenous stakeholders' concerns.

In Canada, Kintel found that Indigenous peoples have designed their own framework and governance system for sustainable aquaculture. In order to fill the gap within the Canadian aquaculture industry, the Aboriginal Principles for Sustainable Aquaculture (APSA) initiative aims to support standards and regulations that promote the participation of First Nations in the development and management of healthy and sustainable aquaculture. Some APSA principles include greater transparency in the sharing of information, open communication with First Nations to concerns, equal opportunity for training, hiring and wage equity, and high standards for environmental sustainability and fish-ecosystem health. Further, APSA provides certification to companies that apply and are subsequently audited. Embedded in the certification process is also a reporting mechanism that ensures companies are held accountable to maintaining APSA standards and principles. One of the first companies to enter into APSA's certification process was Cermaq, one of the largest aquaculture corporations. Kintel notes that since indigenous issues in Canada tend to be more diversified and based on agreements with individual tribes it is hard to compare with for example the Sámi people that is represented by a parliament in each of the countries Norway, Sweden and Finland. Thus it is challenging to evaluate to what extent APSA and similar initiatives are representative.

Interestingly, Cermaq also operates in Northern Norway, where their record for acknowledging indigenous rights as a part of sustainable aquaculture, is inconsistent at best. Lars Theodor points a few reasons for this, including a lack of awareness among the industry of Sami rights and fish farming, and a poor national governance framework for sea rights more broadly. Lars Theodor concludes that the variation in aquaculture standards of sustainability is largely due to legislation and governance frameworks, or lack thereof. Internationally, certification standards and regulation tools exist, like those of ASC and APSA, however a lack public awareness and public engagement means that the application of these standards is not fully enforced.

Topic 2: Indigenous Communities and Natural Resource Activities

Sven Roald Nystø gave a presentation of the project *Indigenous Peoples and Resource Extraction in the Arctic: Evaluating Ethical Guidelines* (“the Project”), which lasted October 2013 - March 2017 and was financed by the Norwegian Ministry of Foreign Affairs. He emphasized the policy recommendations of the project, which originally arose from the Norwegian Government’s 2009 High North strategy document, *New Building Blocks in the North* and was developed alongside the 2011 *United Nations Guiding Principles on Business and Human Rights* (UN Guiding Principles).

The baseline of the project was Indigenous peoples’ experience of having little influence over resource extraction and face encroachments on their land, while companies do not know which rules to follow, and governments struggle with insufficient legislation and policies. The project development goal (long-term desired effect) was to facilitate ethical resource extraction in the Arctic that takes into account the rights and interests of Indigenous peoples. Consequently, the project aimed to complete the following activities:

No.	Activities	Results/Outputs
1	Systematic mapping and analysis of international, national and regional and local ethical guidelines applicable to extractive industries operating in indigenous territories in the Arctic. The selected instruments were explored and compared in relation to due diligence; consultation; free, prior and informed consent (FPIC); benefit sharing; and access to remedy.	Wilson, E 2017 (August): Evaluating international ethical standards and instruments for indigenous rights and the extractive industries. Wilson, E 2017 (February): Evaluating international ethical standards and instruments: policy summary. Wilson, E 2017 (January): What is social impact Assessment? (SIA). Wilson, E 2016 (December): What is free, prior and informed consent? (FPIC).
2	Develop a ranking system of companies involved in resource extraction on the land of Indigenous peoples in the Arctic	Indra Overland 2016 (December): Ranking Oil, Gas and Mining Companies on Indigenous Rights in the Arctic.
3	Doing fieldwork in northern regions of Norway and Russia to study actual functioning, opinions and impact of existing guidelines	Novikova, N & Wilson, E 2017 (March): Anthropological expert review: socio-cultural impact assessment for the Russian North. Stammiller, F, Nystø, S and Ivanova, A 2017 (February): Taking ethical guidelines into the field for evaluation by indigenous stakeholders. Stammiller, F and Ivanova, A 2017 (March): Case studies of indigenous people and extractive industry – Nenets Autonomous Okrug (NAO).

		Stammler, F and Ivanova, A 2017 (March): Case studies of indigenous people and extractive industry – Sahka Republic (Yakutia).
4	Engaging and facilitating dialogue between indigenous representatives, government and industry	The primary work on this activity was initially aimed at engaging industry in terms of companies and the Mineral Cluster, Norway. Gradually we experienced that the challenges attached to this activity went far beyond accessible project capacity and could favourably be conducted as a follow-up at a later stage.
5	Project promotion and dissemination of progress and results	Vitebsky, P 2017 (March): Final Project Report. (41 scientific articles were published in international journals and books. 100 project presentations and addresses were given: 43 in Norway, UK 15, Russia 13, Finland 7, Canada 6, Sweden 3, Austria 3, Denmark 2, Iceland 2, Italy 2, US 2, France 1 and Japan 1).
		All the afore mentioned reports are published by Árran Lule Sami Centre (Árran - julevsáme guovdásj/lulesamisk senter). Báhkko. Ájluokta/Drag, Norway: www.rran.no (Ethical Guidelines).

The Project identified three ‘pillars’ that form the moral governance framework within which the UN Guiding Principles can be applied, implemented and monitored: state responsibility, company responsibility, and access to redress. Project research showed that even where relatively comprehensive and satisfactory frameworks have been elaborated into guidelines or legislation, they are often not applied satisfactorily.

Policy recommendations

On June 15th 2017, Árran Lule Sami Centre submitted a memorandum on policy recommendations from the project to the Ministry of Foreign Affairs, Norway. The recommendations are summarized as follows:

- A. Norway should evaluate the challenges with its domestic implementation of the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries (1989), particularly concerning Sami land rights, use of natural resources and other type of land use. The ranking of oil, gas and mining companies in the Arctic displays that even though Norway has ratified the ILO 169, Norwegian mining companies have relatively low scores in terms of respecting Indigenous peoples’ rights. On the contrary, the ratification appears to have had a soporific effect on the country’s mining industry’s capacity to develop knowledge of Sami rights and to keep up with this evolving field.

- B. That Canada's Toward Sustainable Mining System 2004 (TSM) should be implemented in Norway in terms of a national version for the mining industry. The system was taken into use in Finland in 2015, Argentina 2016 and Botswana 2017. Adoption of the TSM guiding principles and other commitments is mandatory for all members of the Mining Association of Canada. TSM is not just a set of standards, but a system for demonstrating implementation of these standards and a way of driving performance improvement over time.
- C. Norway should consider developing legislation specifically relating to social and cultural impact assessments (SIA), taking advantage of international good practise. This may also help address some of the gaps in the country's implementation of ILO 169.
- D. Evaluate the Norwegian Mineral Act in terms of Sami rights and international law. The Ministry of Trade, Industry and Fisheries was contemplating on the issue early spring 2018 and started the evaluating work late spring after initiatives from representatives in the Norwegian Parliament. The Sami Parliament encouraged the ministry in a letter 8 June 2018 to being included in the work.
- E. To update Norway's National Action Plan for Business and Human Rights of 2015.
- F. Norwegian Government should issue a white paper to the Norwegian Parliament in a more holistic perspective where various form of land use in Sami areas are dealt with in a larger context. In addition to land based extractive industry, use of marine areas including fish farming should be addressed in terms of Sami and Indigenous peoples' rights and interests.

Marina Peeters Goloviznina presented her Ph.D. research project *Indigenous Organizations within Russia's Arctic Hydrocarbon Governance: Participation, Power and Perceived Legitimacy*. The project draws from academic and policy debates towards issues of governance and indigenous agency when it comes to contesting indigenous rights norms in a context of extractive developments in the Russian Arctic. The project's principle research questions aim to understand whether and how Russian indigenous organizations (IOs) can succeed in their attempts to contest the norms that they perceive as unjust and illegitimate, in a regime that flaws in terms of human rights commitments, the rule of law and good governance. The project explores the scope of IOs agency (power) and reveal the resources and strategies, enabling these organizations to succeed in a given context.

The project uses the term 'indigenous organizations' (IOs) in a broader sense in order to include different types of entities, created by Indigenous peoples to realize their rights and to serve diverse interests of their communities (societal, economic, political, etc.). Rather than viewing these IOs as a mere part of Russian civil, business and political society, the study places them into global communication networks. The study analyses a direct involvement of these IOs in processes of governance of extractive activities, albeit mainly at the local level. In particular, its focus lies on the analysis of the IOs' horizontal relations with other non-state actors, including indigenous and environmental organizations and extractive (oil and gold mining) corporations.

The analysis applies an integral theoretical framework, merging insights from a governance approach (Kooiman, 2001), norms contestation (Wiener, 2007) and historical institutional analysis (Greif, 2006). This is a fieldwork-based comparative analysis of the IOs' agency within extractive governance in two extractive regions - Republic of Sakha (Yakutia) and the Komi Republic.

The case study in the Republic of Komi is presented in: Goloviznina (2019).³

Cathy Howlett's presentation, *Indigenous Peoples and the Governance of Extractive Industries: A Case Study of the Carmichael Coal Mine, Queensland Australia*, is a literature review and document analysis of the Adani Carmichael mine in Australia's Queensland territory. Through an analysis of this case study, Howlett provides insight into the governance context that determines the outcomes for negotiating ILUAs between Aboriginal groups and mineral development companies in Australia. Mineral development on Aboriginal land in Australia is subject to federal legislation, governed under the *Native Title Act 1993*. The *Native Title Act* recognises that Indigenous peoples have rights and interests under their traditional laws and customs. In Australia, Indigenous Land Use Agreements (ILUAs) are agreements that manage a wide range of *Native Title* matters such as the consent to future acts, compensation, protection of significant cultural sites, and how *Native Title* rights and interests can be exercised alongside resource development activities. ILUAs and the *Native Title Act* form the foundation of governance of indigenous rights and interests in the context of natural resource development in Australia. ILUAs can be negotiated in area where *Native Title* has, or has not yet, been determined; entered into regardless of whether there is a *Native Title* claim over the area; and part of a *Native Title* determination or settled separately from a *Native Title* claim. In relation to mining or petroleum authorization permits, the Australian State is not a party to the agreement and is not involved in the negotiation process, but must ensure the ILUA process under the *Native Title Act* has been adhered to.

In April 2016, the Adani Carmichael Mine proposed to build one of the world's largest coal mines. The Adani Corporation subsequently negotiated and finalized ILUAs with some members of a *Native Title* claimant group. Following the finalized ILUA process, the Queensland government authorized approval for the leases and permits required for the mine to operate. Under the *State Development and Public Works Organization Act 1971*, the Coordinator General has the authority to determine development projects as "prescribed" as a "critical infrastructure project". As a result of this declaration, the Coordinator General can make swift project authorization approvals, foregoing the usual statutory powers of Queensland court to judicially review and determine the lawfulness of the decisions made by the Coordinator General. In this case, the normal requirements

³ Marina Peeters Goloviznina: 'Indigenous Agency and Normative Change from 'Below' in Russia: Izhma-Komi's Perspectives on Governance and Recognition,' *Arctic Review on Law and Politics*, Vol 10 (2019).

under the statutory approvals process require environmental impact assessments, cultural heritage protections have been stripped by the Coordinator General's 'fast-track' approval.

Howlett's case study of the Adani Carmichael Mine in Queensland provides further insight into how the Australian state legislation under the *Native Title Act* creates the circumstances whereby mineral development is poorly regulated and disadvantages Aboriginal groups. This research will contribute to the comparative aim of the TriArc project. Parts of her presentation is included in Howlett and Lawrence (2019).⁴

Horatio Sam-Aggrey's presentation titled, *Impact and Benefit Agreements (IBAs) in Canada: What we know and what are the outstanding questions*, includes a literature review and document analysis of the IBA landscape in Canada, and provides a comprehensive account of the context under which IBAs operate and the provisions of some of these agreements in the mining, energy and aquaculture industries. This broader sectoral emphasis is especially significant given that the predominance of the literature has focused on IBAs in the extractive industry. Sam-Aggrey noted that despite the proliferation of IBAs in Canada, the negotiation of these agreements is not governed by any single legal or policy framework. The exception is some areas of Northern Canada, where IBAs are mandatory because of modern Land Claims Agreements. Hence, these agreements have come about as a result of different drivers, influenced by local factors. This state of affairs has created a patchwork of IBAs across Canada.

Given the lack of laid down policy on when IBAs can be signed vis-a-vis the Environmental Impact Assessment (EIA), the timing and linkages between the two processes are not integrated in a consistent manner in projects. When the IBA is signed is important because it determines the kind of mitigatory provisions and benefits that are included in IBAs and also impacts the bargaining power of communities. There are three possible scenarios for the timing of IBA negotiations vis-a-vis EIAs, (before, during and after the EIA process), with each scenario having its own advantages and disadvantages. If IBAs are signed before the EIA, such an agreement may not account for all the negative impacts assessed by the EIA. Consequently, the agreement may not be comprehensive enough and the communities' bargaining power in seeking mitigatory measures for the negative impacts is weakened. This is because the company would have already secured the community's approval of the project. Concluding an IBA during the EIA process (as is the case in most instances) increases the likelihood that such an agreement is more comprehensive, as the community would likely be better informed about the negative impacts of the project and are thus able to include mitigating actions in the IBA. Also, the community's bargaining power is stronger because the company needs their approval during EIA process. If the IBA is signed after EIA, the community does not have much influence because the company has already attained official approval of the project, so company does not have to

⁴ Cathrine Howlett and Rebecca Lawrence 2019: Accumulating Minerals and Dispossessing Indigenous Australians: Native Title Recognition as Settler-Colonialism,' *ANTIPODE. A Radical Journal of Geography*, 2019

listen to the community. However, this also depends on legal basis of the IBA, because if the agreement is required by law then the company will still have to sign an agreement with the community. Another related issue that was discussed is the ability of small communities to understand the massive scientific documents produced by the EIA process.

Sam-Aggrey also noted that given the lack of a single governance framework for IBAs, there is no uniformity regarding the social and economic provisions of these agreements. Nevertheless, he asserted that most agreements do have a combination of different categories of cash payments, equity provisions, education and training, business development for indigenous companies and support for different types of social and cultural programs. The provisions of IBAs tend to be context-specific depending on factors, such as the rights and interests at issue, the unique provisions of each land claim agreement, whether the Aboriginal beneficiaries' land tenure rights is surface, sub-surface or both, the extent of perceived effects from the proposed project on the land, the project parameters and the bargaining power and leverage of the Aboriginal groups.

After reviewing the provisions of selected IBAs in the mining, aquaculture, and the energy sectors, Sam-Aggrey noted that while it is difficult to conclusively paint a picture of a discernible IBA pattern variation by industry (due to the confidential nature of available agreements), snippets of agreements that are in the public domain point to some subtle but important differences in the provisions of IBAs, by industry. For example, energy and mining-related IBAs are more likely to emphasize employment and indigenous business development provisions. This is likely due to the fact that these mining and energy developments involve diverse roles performed by many different specialised companies, of different sizes. Thus greater opportunities exist in the mining and energy industries for the use of unskilled or semi-skilled labour from local communities on a full time basis. However, it is worth pointing out that the degree of capital intensiveness of the operations is also likely to impact the demand for workers. Another difference noted is that equity offers/ participation are more likely to be part of IBAs involving energy projects, especially renewable energy projects. This is partly due to the long-term nature of the infrastructure and revenue streams in these projects. Similarly, Aboriginals are more likely to be equity partners in renewable energy projects than in other energy projects. This is partly owing to the buy-in provisions of large utility companies. Also, long term Power Purchase Agreements (PPAs) signed by these energy projects with public utilities provide stable long term sources of revenues, which are attractive to Aboriginal communities.

During his presentation, Sam-Aggrey also highlighted a trend towards the negotiation of LNG IBAs with high financial benefits in BC. LNG projects slated for development in BC are expensive projects with projected capital investment running into tens of billions of dollars. Unlike the mining sector, which is made up of a large number of companies of varying sizes who mine a diverse range of minerals and metals, the energy sector (especially LNG companies)

tends to be dominated by fewer large and wealthy companies specialising in energy exploration and development. Thus the type of mineral mined and the size of the company impacts the content of the IBA signed between the company and Aboriginal communities. Other factors such as First Nations assessments of the high value that proponents attach to gaining the social licence to operate and project certainty, and the projected impacts on the community, are also important factors determining the size of IBAs' financial provisions. In BC, LNG investment are of strategic importance to government, hence the government's revenue and benefit sharing policy has contributed to the provision of host First Nations communities with significant benefits.

In conclusion, the proliferation of IBAs seemingly signals greater autonomy and a less paternalistic approach to resource development, however these agreements raise many questions the shrinking role of the neoliberal state in the provision of social and economic supports for Aboriginals, the implementation of the provisions of the agreements, and gender inequality in the distribution of the cost and benefits of the projects.

IBAs signal the withdrawal of neoliberal state in the provisions of social and economic development opportunities for Indigenous people, as much of the responsibility of the state is downloaded unto companies. In BC, the government's revenue and benefit sharing policy from LNG and other projects are used as a way to get the First Nation to approve projects within their territory. For some Aboriginal communities who are cash-strapped being offered a substantial upfront payment is hard to turn down. This raises ethical concerns as it can be argued that the benefits sharing program amounts to informal pressure for communities to approve these projects. This practice also raises important questions about the use of revenue sharing and IBAs as tools of government regional economic development programs.

The majority of IBAs contain a confidentiality clause for all external parties sometimes insisted on by companies or both parties. These confidentiality clauses make it difficult for external parties to police these agreements and small communities with relatively little experience in the process of negotiation are vulnerable to corporate exploitation. Significantly, once signed, such clauses bar Indigenous people from engaging in any legal proceedings against the company.

Lastly, the issue of gender inequality in distribution of IBA benefits is important to emphasize. Although women are more likely to be negatively impacted by these development activities, IBAs are negotiated mainly by men and the needs of women are not always in the forefront of such negotiations.

For TriArc, this presentation provides a useful insight into the governance relationship among the three players in the IBA landscape. It also provides useful information on the factors impacting the provisions of IBAs. This research will also contribute to the comparative goal of the TriArc project, especially regarding IBAs and differences in governance contexts.