Extractive industries and indigenous peoples

Report on the seminar arranged by the Ministry of Foreign Affairs, Norway and the Working group on Indigenous Peoples in the Barents Euro-Arctic Council, in cooperation with the Centre for Sami Studies, University of Tromsø, Tromsø, September 10, 2012

Centre for Sami Studies
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Introduction

This report presents the talks of the speakers and a summary of the discussions conducted at the seminar on extractive industries and indigenous peoples, arranged in Tromsø, Norway on September 10, 2012.

The seminar was arranged in conjunction with the on-going Norwegian chairmanship of the Barents Euro-Arctic Council (BEAC) 2011-2013. As chair of the BEAC, Norway regards it as important to organize an informed debate on the relationship between extractive industries and the concerns and rights of indigenous peoples (cf. opening address by Deputy Minister Larsen). The increased extraction of minerals, while providing new opportunities for people living in the Barents region, poses a pressing challenge to indigenous peoples’ traditional way of life and their sustainable use of natural resources, as well as their right to participate in the benefits of such activities. As pointed out by the three Norwegian Deputy Ministers Torgeir Larsen, Tone Toften and Jeanette Iren Moen, Norway considers it, in order to address this common challenge in a timely and orderly manner, essential to promote close consultation and open debate between governments, indigenous peoples and the extractive industries. The chair of the BEAC Working Group of Indigenous peoples Lars-Anders Baer expressed a hope that the governments of Finland, Sweden and Russia will follow the Norwegian example and enter into a dialogue with the indigenous peoples in matters related to extractive industries.

The topicality of these issues are revealed in the currently increased industrial activities pertaining to reopening of older mines as well as expectations for large undiscovered mineral reserves. In the Norwegian Northern Strategy geophysical measuring is a target area, and Geology for Society estimates that there are large undiscovered mineral reserves valued to 2000 billion NOK in the northern part of Norway (GeoNor 2010: 4).

As is the case with the rest of the Arctic, the prospects of economic opportunities are highlighted by politicians and industry. In a clear request, the Norwegian minister for trade and industry Trond Giske has advised the municipalities in Finnmark to arrange for a best possible adaption to mineral development. At the same time this development may lead to an upsurge in the level of conflicts between industry, authorities, environmental interests and indigenous peoples. Indigenous governing bodies like the Sami Parliament, emphasize the practical implementation of international law regulations. Thus standards of international law that apply to resource extraction on indigenous peoples’ lands was the first issue to be addressed at the seminar by the UN special rapporteur on the rights of indigenous peoples, James Anaya and one of five experts of the UN Working Group on Human Rights and Business Alexandra Guaqueta. According to Mr. Anaya the discussion should not be framed by the consultation and consent standards alone, these should be

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1 NRK Sápmi, published 04.09.12 http://www.nrk.no/kanal/nrk_sapmi/1.8309965
seen as special standards that safeguards and functions as a means for the exercise of indigenous peoples’ substantive rights. Ms. Guaqueta also underlined a right-based framework in her presentation of the UN Guiding Principles on Business and Human Rights. These standards contain specific principles for both states and business, and the foundational principle is that corporations have the responsibility to respect human rights.

Their presentations were followed up by a focus on the salient role of government regulations as a framework for business activities and the interaction between indigenous peoples and industry. Mark Taylor, a Senior Researcher at the Fafo Institute for Applied International Studies, Oslo emphasized the salient role of human rights, and underlined that whenever different government institutions interact with business, they have a duty to act to ensure the protection of human rights, including indigenous peoples’ rights. He addressed the how States can through law and regulations, require or encourage businesses to engage in human rights due diligence.

New legislation on mining and minerals may prove to safeguard indigenous rights and interests in case of conflict. The 2009 Norwegian Minerals Act was after consultation with the Sami Parliament adopted without an agreement or consent. The Sami Parliament was of the opinion that the act was not in line with international law. As stated by the president of the Sami Parliament Egil Olli in his opening remarks: “In practice, the government did not give the Sami Parliament an opportunity to consent to the Minerals Act, so that the Sami Parliament also cannot agree to the activity which the Act is intended to regulate.” The Sami Parliament therefore urged for a direct dialogue with the companies that want to operate in Sami areas (cf. The Sami Parliament’s mineral guide). According the President Olli, the companies find the mineral guide both good and useful.

This relationship between industry and indigenous peoples was the topic of the third part of the seminar where experiences from this kind of cooperation were addressed. Dialoguing with the stakeholders is a challenge that the industry is prepared to accept, said Elisabeth Gammelsæter, the president of the Norwegian Mining and Quarrying Industries. But how should this relationship work out? Ragnhild Marit Sara, reindeer herder and lawyer from the reindeer herding district Fiettar in Finnmark, Norway told that their district is highly pressured by existing and planned industrial development. Also Niila Inga, a reindeer herder from Laevas mountain village in Sweden, told how their communities are heavily impacted by different mining projects and wind farms. Whether there is a difference between Norwegian and Swedish cases in the degree or intensity of contact between the affected indigenous parties and the industry remain to be seen. According to General Manager Christina Lundmark from SveMin – the Swedish association of mining, they have an intention to develop guidelines for work in Sami areas. On the other hand Managing Director Øystein Rushfeldt of Nussir ASA referred to an intentional agreement signed with the Sami Parliament, and a number of dialogues meeting with the reindeer herding districts, the regional reindeer herding administrative bodies and the Sami Parliament.
According to the Mining Association of Canada (MAC) - the national organization of the Canadian mining industry, a strong priority in the 2009 strategic plan is a focus on Aboriginal participation in mining. MAC has signed a Memorandum of Understanding with the Assembly of First Nations and defined four pillars of commitment: partnership, investment, procurement and employment. With a Canadian contexts as a point of departure; what are the lessons learned, and what are the ways forward? How is it possible to best preserve the rights of indigenous peoples while promoting cooperation between indigenous communities, industry and governments? Influential tools are the impact benefit agreements (IBAs) because they are furthering community relations, providing economic benefits to communities, and providing some degree of stability between communities and mining proponents, as PhD Candidate Courtney Fidler from the University of Saskatchewan gave an account for.

The report will follow the structure of the seminar, starting with the opening address, followed by the international and governmental framework and then the indigenous-industry relationship. The talks, speaking notes and power point presentations of each session will first be presented without any rewriting done by us. This material is then followed by our relative detailed summary of the discussions, which also includes the contributions of the panellists. Here we make a reservation that we may have misinterpreted the statements. All participants in the panels and discussions have been given the opportunity to submit comments and corrections to the summary of their statements. Finally the last part of the report is a commentary, aiming to pinpoint some of the main topics of the seminar. The Centre for Sami Studies, University of Tromsø was the local organizer of this seminar, and is also responsible for the development of the report. Thus, the Centre and the authors are solely responsible for the content of the report.

The presentations and the discussions at the seminar were highly informative and exceedingly constructive. The good debates and simultaneously the effective presiding of the meeting would not have been possible without the professional skills of the moderator of the seminar Mr. John Morrison, Executive Director at the Institute for Human Rights and Business. We are also grateful to the Ministry of Foreign Affairs and the BEAC Working Group of Indigenous Peoples, for the cooperation on organizing this seminar. Finally we would like to thank all the contributors at the seminar; speakers, panelist and those who participated in the debate.

Tromsø, January 8, 2013

Else Grete Broderstad
Academic director, Centre for Sami Studies

Jørn Weines
Higher executive officer, Centre for Sami Studies
SESSION I: OPENING ADDRESS

Torgeir Larsen, Deputy Minister Norwegian Ministry of Foreign Affairs

Dear friends and colleagues, ladies and gentlemen, it is good to be back in the Barents region – and back in Tromsø.

Our theme here today is “Extractive Industries and Indigenous Peoples”. The Barents region is immensely rich in natural resources – not only in the sea, but also on land, where indigenous peoples have lived for centuries. Balancing indigenous rights and development - driven by the harvesting of natural resources – is as important as it can be complicated. Dialogue between the key actors, greater knowledge and better understanding are needed.

I am therefore very pleased to see so many distinguished representatives of the three main groups in question – indigenous peoples, the business sector, and the local and central authorities – here today.

It is also an honour to have Professor James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples, with us. Professor Anaya’s report from the Sami areas covered several countries and examined issues of general relevance. We welcome this.

Indigenous issues are one of the key priorities for Norway’s current chairmanship of the Barents Euro-Arctic Council. Indigenous culture and history is a crucial part of this region’s identity – across and within the borders of Norway, Sweden, Finland and Russia. I am pleased to have the President of the Norwegian Sami Parliament, Egil Olli, with us. It is crucial that indigenous peoples must are listened to.

This region is rich in minerals and natural resources – and we all know that conflicts can arise between the extraction of minerals and traditional ways of harvesting natural resources, and indeed indigenous peoples’ ways of life.

The question to be discussed here today is therefore: How can we best safeguard the rights of indigenous peoples, and at the same time promote development, dialogue and cooperation between indigenous communities, industry and the authorities?

Given our ambitions – as governments - to expand mineral extraction in the north, we have to ask ourselves: Do we have the necessary mechanisms in place to protect indigenous peoples’ rights? And are we being sufficiently clear about how we expect businesses to behave?

The UN Guiding Principles on Business and Human Rights are useful in this regard. They provide guidance for both governments and businesses. The principles were endorsed by the UN Human Rights Council in June last year, and they have now become a central reference document for international work in this field. Norway has long been actively engaged in the
issue of business and human rights in the international arena. Together with Russia and three other states, we are currently part of the core support group on this issue in the UN.

I very much appreciate having with us today one of the five experts from the UN Working Group on Human Rights and Business, Alexandra Guaqueta. She will speak about the corporate responsibility of the mining sector to respect human rights - particularly in connection with operations on indigenous land.

Learning from experiences – and best practice - is key. Today will be very much about just that. Representatives from all the key groups will share their experiences and ideas for the future. It will not be possible to fully legitimise mining activities in this region, without taking into account the priorities of the peoples who traditionally live here – the Sami, the Nenets and the Vepsian.

The obligation to consult indigenous peoples in matters that concern them is set out in ILO Convention No. 169. In Norway, regular consultations have been conducted between the Sami Parliament and the Norwegian authorities for a number of years. This is an important element in the work to safeguard Sami rights in Norway. My colleagues from other ministries will say more about these consultations later today – and I expect the President of the Sami Parliament will also do so in his address.

In concluding, I would like to thank the Barents working group on indigenous peoples for the close cooperation with the three government ministries involved in preparing for this seminar. I would also like to thank the University of Tromsø for the important role it has played and for making all practical arrangements.

I look forward to an interesting seminar and fruitful discussions. It is my sincere hope that this seminar will promote dialogue and help foster sustainable social development in the Barents Region – and therefore also help to prevent conflict.

I am glad that we have a high-level representative from Russia present here today. I would now like to give the floor to the Governor of the Nenets autonomous district, Mr Fyodorov.

Thank you.

Igor Fyodorov, Governor of Nenets Autonomous District

There is no transcript of Mr Fyodorov’s opening address.
Egil Olli, President of the Sami Parliament, Norway

State Secretary, indigenous peoples leaders, good morning to you all!

On behalf of the Sami people’s elected body, the Sami Parliament in Norway, I would like to thank the organizers for their invitation to attend this important seminar on extractive industries and indigenous peoples. It is always inspiring to come here to Tromsø, the international indigenous peoples’ city. There are several excellent knowledge institutions here that research into topics which are relevant to the northern area policy in general and Sami conditions in particular. Tromsø is a city where the Sami language and culture are visible - both among the Sami people who live here permanently and due to the large number of Sami students. So I’m glad that the Ministry of Foreign Affairs and working group on indigenous peoples in the Barents Euro-Arctic Council chose to locate the seminar here. I would like to take this opportunity to particularly welcome to Sápmi those guests who have travelled far to get here.

Last week, Norway’s Minister of Trade and Industry, Trond Giske, attended the Finnmark Conference, which discussed growth, greater value creation and new opportunities in Finnmark, Norway’s most northerly county. At that time, the minister painted a picture of a treasure trove here in the north, in the heart of Sápmi. The geologists say there are gold and minerals worth 1,500 billion Norwegian krone in the northern part of Norway. That is 250 billion American dollars. Yes, it is no doubt true that there is a treasure trove under the earth in Samiland. There are assets which, with wise management, can provide prosperity and development for many generations to come. But I believe this treasure will be difficult to get hold of if we do not take the interests of the people, animals, fish and plants that live on the land, in the water and at sea into necessary consideration. The rights of the indigenous people and others must be respected, important interests must be safeguarded, and the value created must also benefit the local and regional levels.

Mining operations have potentially major consequences for land areas, environments and community life. The Sami and other indigenous peoples all over the world have historical experience of this. Mining operations are different from a lot of other new industries in that they require a lot of land, they put metals that are themselves poisonous into the ecological cycle, and they use poisonous chemicals to separate out these metals. In addition, they are relatively labour-intensive operations, so that they rapidly change the social and cultural conditions in the societies where they are established. Indigenous peoples have historically often been the losing parties in such situations. This is the reason for mining operations being specifically referred to in the international law on indigenous peoples.

When Norway was to get a new, modern, integrated Minerals Act, we in the Sami Parliament expected the government to fully understand this. They did not. The government put forward, and the Norwegian parliament passed in 2009, an Act that does not take into consideration any aspect of Sami culture in relation to mineral operations outside Finnmark.
county, that does not give the Sami Parliament any right to consultations on decisions linked to mineral operations and that does not give the Sami people a share of the benefits of mining operations, irrespective of who is the landowner. All this is a clear breach of Norway’s international-law obligations. In practice, the government did not give the Sami Parliament an opportunity to consent to the Minerals Act, so that the Sami Parliament also cannot agree to the activity which the Act is intended to regulate.

We in the Sami Parliament thus faced two choices. Either to reject and make efforts to stop all mining initiatives in Sami areas or to prepare our own rules or guide as to how we, in an open, transparent manner, are to deal directly with mineral companies and try to reach agreement with them. We chose the latter. After a public consultation process, the Sami Parliament adopted a guide for exploration work and operations relating to mineral resources. In our experience, companies find the Sami Parliament’s mineral guide both good and useful. Minerals operations are enormously capital intensive. No serious player would start major activities without a minimum of certainty that the investments will later be profitable. Acceptance by the indigenous peoples and local communities is therefore crucially important to them.

I will not hide the fact that it will be demanding for the Sami Parliament to negotiate solutions for new mining operations that most of the Sami population can agree with. The Sami Parliament must weigh up serious issues and do so before the authorities reach their decisions based on impact assessments. We in the Sami Parliament have undertaken a responsibility that is more than just stating our opinion. The Sami Parliament must also learn to accept and bear such responsibilities. I have been a politician for some years and worked on mineral issues since the mid-1990s, so I know that issues always return, although in a slightly new situation and packaging. I would like us to put the confrontational debate behind us, so that we can now sit down together to discuss the solutions that will provide benefits for everyone, including for Sami culture and society.
Ladies and gentlemen, I am pleased to represent the Norwegian Mining and Quarrying Industries - Norsk Bergindustri today at this seminar in Tromsø.

It is very important to my association to keep the dialogue regarding simultaneous presence for the mining industry and traditional Sami activities alive. I'd like to take this opportunity so thank those Sami representatives that have been brave enough to keep the dialogue so constructive. The Sami parliament president Mr Egil Olli is one who I feel has done quite a lot to reduce fear within the Sami population.

We are all in a very different place today than we were in 2008 and 2009 when the discussion about the Mineral Act was at the most inflamed: - We have a legislation which is based on the ILO convention regarding Indigenous People's rights, we have several agreements between the Sami parliament and our companies, as well as between companies and reindeer districts. We have Finnmark Mineralforum, which is an arena to address challenges, we've arranged and taken part in several dialogue seminars and we had solid Sami representation both from the Sami parliament as well as the reindeer herders taking part in the Norwegian delegation to the world's largest mining convention PDAC in Toronto in 2011. I feel the Norwegian mining industry understands the Sami people and their challenges better today that we did just a few years ago, and I dare to hope that the Sami people also understands our challenges better.

I expect that the Sami dialogue will be addressed in the mineral strategy which the Minister of Industry Mr Trond Giske has promised to deliver in the fall of 2012. We still have challenges. Today the mining industry is not experiencing predictability. Several individual cases, also in Sami areas, have had unsettling developments. Investors, who are necessary tools to pay for establishments in Norwegian mineral resources, are impatient and quick to look elsewhere. If they lose interest in Norway this would mean a missed opportunity to develop a long term industry which can offer stable employment in Sami areas. Our members are contributing positively to local communities all over Norway and there is no reason why they shouldn't be able to do this also in Sami areas. We just need to discuss what simultaneous presence means in practice to be able to exist side by side.

The Minister of Industry Mr Trond Giske told the Norwegian mining industry in November 2011 to go out and create our own predictability by dialoguing with our stakeholders. This is a challenge we're prepared to accept. I appreciate the initiative to this seminar and I look forward to hear and to share experiences during the day on how to do it.

The Norwegian mining industry has long traditions. Mining engineers came to Norway from Germany already in the 17th century. Ours is an industry with a strong pride and strong culture traditions, our engineers carry the bergmannsdrakt, Norway's only yrkesbunad –
professional costume, on festive occasions. I would therefore like to end with a typical mining greeting, which was often said before the miner entered the mine, as an encouragement for the ore vein to open to the miner, to ensure safe keeping, also including those greeted in the same family. I therefore greet you the same way miners across the world greet each other:

Glück Auf!
Lars-Anders Baer, Chairman of the Barents Council Working Group of Indigenous peoples
WGIP

You’re Excellences, Ladies and Gentlemen

Allow me first of all to thank the Norwegian Barents Euro-Arctic Council Chairmanship for their commitment to organize this important seminar in co-operation with BEAC Working Group of Indigenous Peoples and the University of Tromsø. The seminar will address many sensitive, difficult and important question and challenges facing member states, indigenous peoples and business entities in the Barents region. I also hope that the contribution from our UN expert will guide us in coming deliberations.

One key issue is gap between universal norms and the reality which indigenous peoples are faced with on the ground. This is often referred to as “the implementation gap” – between ideals and the reality. The Barents co-operation has an important role to in bridging this gap and I hope the government of Finland, Sweden and Russia has the guts to follow the Norwegian example and enter into a dialogue with the indigenous peoples in matters related to extractive industries.

The seminar will deliberate and address most of the contemporary key “mega trends”, as natural resource demands, climate change, globalization and also indirectly population growth. This mega trends already today an impact on everyday life of the indigenous peoples in the Barents region and will in the near future have a major impact on shaping a new political, economic and social order in the Barents region and the whole Arctic. We also face a great risk of evolving conflicts between states, indigenous peoples and other stakeholders in this bonanza of oil, natural gas, minerals and plentiful waters in the Arctic. The indigenous peoples in the Arctic have to find the equilibrium in this boom and tackle these challenges, hopefully in co-operation with the national states, business entities, UN and other, regional and international bodies. In this emerging new order in the Barents region and the Arctic we need an open and frank dialogue between different stakeholders on equal footing,


So – what is the lesson learned so far?

Extractive industry as mining is not a new activity in the traditional Sámi territory. The reality is the opposite. In the south Sámi territory the Nyberget Mine in the Röros region in Norway was in operation between 1650 and 1717. A more dramatic mining exploration was Nasafjäll mine, active between 1635 and 1659. This mine was situated in southerner part of what’s today the county of Norrbotten and this was before the border treaty between Sweden and Denmark/Norway was signed 1752. In 1659 the Nasafjäll mine was destroyed by
Danish/Norwegian troops and there were some rumors they were assisted by Sámi scouts.

At same time and during the peak of fearful and expensive Thirty Years' War in Europe in the late 1650 the Swedish lord kansler Axel Oxenstierna stated that “we have our own India in Lapland/Norrbotten” referring to new silver deposit discovered in Nasafjäll.

The history have tendency to repeat itself,

Last week the Norwegian Minister of Trade and Industry Trond Giske stated that Norway has a “treasure chest” containing minerals worth millions of dollars in the traditional Sámi Territory during a meeting in Alta in the beginning of September 2012. At the same time the Swedish Prime Minister Reinfeldt announced that the government will allocate 3, 5 billion Swedish kronor to the mining industry the coming years. In this context the Prime Minister stated that the rich mineral deposits in the Sámi territory have the same importance for Sweden economy as the oil for Norway.

This type oral rhetoric is revealing and I say no more.

As a closing remark and to facilitate the debate today I want to refer to a newly published book written by Larry Smith a professor at UCLA in US. In his book The New North he makes a convincing portrayal of future of the Arctic from “treasure chest” perspective to use minister Trond Giske wordings. Among other he compares the emerging new indigenous policies in US, Canada and Greenland versus the present indigenous policies in Finland, Norway, Sweden and Russia, especially in context of recourse development and management. In this context he argues that Nordic and Russian indigenous policies only encourage the “mummifications” of indigenous peoples and their historical practices into bits of folklore, instead of giving the indigenous peoples rights and real means to choose their own future in marked oriented global economy. The difference as he put is the modern land claims agreements in North America and the self-government in Greenland. During seminar to day we are going have examples the development in US and Canada.

Finally, the principal of free, prior and informed consent gives also at right to say yes.
SESSION II: INTERNATIONAL FRAMEWORK AND STANDARDS APPLICABLE TO RESOURCE EXTRACTION ON INDIGENOUS PEOPLES’ LANDS

James Anaya, United Nations Special Rapporteur on the Rights of Indigenous Peoples

Various international instruments now affirm the rights of indigenous peoples and establish standards that are relevant to the question of extractive industries on or near indigenous territories. Prominent among these instruments are the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Also relevant are the decisions and comments of various United Nations and regional human rights bodies interpreting major rights treaties – including the International Covenant on Civil and Political Rights, the International and the Convention on the Elimination of All Forms of Racial Discrimination, and the American Convention on Human Rights.

In the discussions applying these instruments in the context of extractive industries affecting indigenous peoples, emphasis has been placed on the duty of states to consult with indigenous peoples in order to obtain their free, prior and informed consent before taking decisions that affect them. This consultation and consent standard is a prominent feature of the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169, and it has been read into other international instruments, including the multilateral treaties I have already mentioned. The discussion about the consultation and consent standard, however, has become highly contentious, with conflicting points of view about the scope of the duty of states to consult with indigenous peoples and about the need to obtain their consent to extractive projects that may affect them.

I have come to believe that the preeminent focus on consultation and consent is blurring understanding about the relevant human rights framework by which to discern the conditions under which extractive industries may legitimatley operate within or near indigenous territories. It is simply misguided to tend to reduce examination of the rights of indigenous peoples in the context of resource development projects to examination of the contours of a “right to be consulted” or a “right to free, prior and informed consent”. To be sure, understanding the contours of the principles of consultation and consent is of critical importance. However, arriving at such understanding cannot be adequately achieved by framing the discussion within these principles alone.

A better approach appreciates, first of all, that neither consultation nor consent is an end in itself, nor do they constitute stand-alone rights. Rather principles of consultation and consent together constitute a special standard that safeguards and functions as a means for the exercise of indigenous peoples’ substantive rights. The primary substantive rights of indigenous peoples that may be implicated in natural resource development and extraction include rights of ownership or use of lands, territories and natural resources; related rights to maintain cultural practices and be free from discrimination; rights to health and physical...
well-being in relation to a clean and healthy environment; and the rights of indigenous peoples to set and pursue their own priorities for development, including development of natural resources, as part of their fundamental right to self-determination. These rights are grounded in multiple international instruments, including binding multilateral human rights treaties that have been widely ratified, and are articulated in the United Nations Declaration on the Rights of Indigenous Peoples.

By their very nature, each of these rights that are potentially affected by natural resource extraction entails autonomy of decision-making in their exercise. This is especially obvious with regard to the right to set development priorities and the right to property, but it is also true of the other rights mentioned. Hence, the consultation and free, prior and informed consent standard that applies specifically to indigenous peoples is a means of effectuating these rights, and it is further justified by the generally marginalized character of indigenous peoples in the political sphere; but it is a standard that certainly does not represent the full scope of these rights.

Addionally, it is important to comprehend that the consultation and consent standard is not the only safeguard against measures that may affect indigenous peoples’ rights over their lands, territories, and natural resources, and other rights. Such additional safeguards include, among others, the undertaking of prior impact assessments that provide adequate attention to the full range of indigenous peoples’ rights, the establishment of mitigation measures to avoid or minimize impacts on the exercise of those rights, benefit sharing and compensation for impacts in accordance with relevant international standards. All these safeguards, including the State’s duty to consult, are concrete expressions of a precautionary approach that should guide decision-making about any measure that may affect rights over lands and resources and other rights that are instrumental to the survival of indigenous peoples.

Consultation and consent and related safeguards are instrumental to securing indigenous peoples’ rights in the face of extractive industries that operate or seek to operate on or near their territories, but understanding the reach of those underlying substantive rights and the potential impacts on those rights must be a starting point for solving the many questions that arise in this context. By focusing on the substantive rights, the specific requirements of the duty to consult and the objective of obtaining consent, in any given situation in which extractive operations are proposed, are more readily discernible, given that those specific requirements are a function of the underlying rights being safeguarded. Thus, the particular indigenous peoples or communities that are to be consulted are those that are the bearers of the potentially affected rights, the consultation procedures are to be devised to identify and address the potential impacts on the rights, and consent is to be sought for those impacts under terms that are protective and respectful of the rights. Furthermore, identification of the full range of indigenous rights that may be affected by an extractive
project is essential to ensuring full compliance with the duty of states to protect and the responsibilities of corporations to respect human rights.

I have observed a high level of acceptance by States and transnational business enterprises of the “protect, respect and remedy” framework that is incorporated into the Guiding Principles on Business and Human Rights that were endorsed by the Human Rights Council in 2011. The Guiding Principles affirm the well-established maxim of international law that States have a duty to protect human rights, including against abuses by business enterprises and other third parties, through appropriate policies, regulation and adjudication. The second “pillar” of the Guiding Principles is the responsibility of corporations to respect human rights by acting with due diligence to avoid infringing or contributing to the infringement of human rights. The third is the need for effective remedies to redress violations when they occur.

I have observed a high level of acceptance of the Guiding Principles and its “protect, respect and remedy” framework. But at the same time I have noted ambiguity among government and corporate actors about the extent to or manner in which the Guiding Principles apply with respect to the standards of human rights that specifically concern indigenous peoples. This ambiguity should be dispelled in favour of a clear understanding that the Guiding Principles apply to advance the specific rights of indigenous peoples in the same way as they advance human rights more generally, when those rights are affected or potentially affected by business activities, including extractive industries. There is no sound reason to exclude the human rights standards that apply specifically to indigenous peoples from the application of the Guiding Principles, and to do so would be contrary to the injunction, found among the Principles’ introductory paragraphs, that they should be applied “in a non-discriminatory manner”, with particular attention to the rights and needs of groups that are vulnerable or marginalized.

I would like to note that the Human Rights Council’s Expert Mechanism on the Rights of Indigenous Peoples, in its recent follow-up report on indigenous peoples and the right to participate in decision-making, discussed the relationship between the Guiding Principles on Business and Human Rights and the rights of indigenous peoples.

As for the state’s duty to protect indigenous peoples’ rights within the framework of the Guiding Principles, it bears emphasizing that this duty entails ensuring a regulatory framework that fully recognizes indigenous peoples’ rights over lands and natural resources and other rights that may be affected by extractive operations; that mandates respect for those rights both in all relevant State administrative decision-making and in corporate behaviour; and that provides effective sanctions and remedies when those rights are infringed either by government or corporate actors. Such a regulatory framework requires legislation or regulations that incorporate international standards of indigenous rights and that operationalize them through the various components of State administration that
govern land tenure, mining, oil and gas, and other natural resource extraction or development.

I regret that, in my work as Special Rapporteur, I have found, across the globe, deficient regulatory frameworks such that in many respects indigenous peoples’ rights remain inadequately protected, and in all too many cases entirely unprotected, in the face of extractive industries. Major legislative and administrative reforms are needed in virtually all countries in which indigenous peoples live to adequately define and protect their rights over lands and resources and other rights that may be affected by extractive industries. Yet at the same time and in the same countries in which this need persists, extractive industries are permitted to encroach upon indigenous habitats, a situation that in need of urgent attention.

For their part, business enterprises have an independent responsibility to respect human rights, including the rights of indigenous peoples. In referring to the human rights that corporations are responsible for respecting, number 12 of the Guiding Principles states that these include, “at a minimum”, those rights specified in the Universal Declaration of Human Rights and certain other broadly applicable instruments, while the commentary to principle 12 clarifies that, when applicable, other human rights instruments, such as those applying to particular groups including indigenous peoples, should inform the corporate responsibility to respect human rights. It is therefore evident, especially in light of the mandate to apply the Guiding Principles in a non-discriminatory manner, that the rights corporations should respect include the rights of indigenous peoples as set forth in the Declaration on the Rights of Indigenous Peoples and other sources.

Also clarified by the Guiding Principles is that the corporate responsibility to respect human rights “exists independently of the States’ abilities and/or willingness to fulfill their own human rights obligations, and it does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”

Despite this independence of responsibility, in my work as Special Rapporteur I have observed numerous instances in which business enterprises engaged in extractive industries do not go further than compliance with domestic laws or regulations, regardless of the ineffectiveness of those laws and regulations for the protection indigenous rights. Corporate attitudes that regard compliance with domestic laws or regulation as sufficient should give way to understanding that fulfillment of the responsibility to respect human rights often entails due diligence beyond compliance with domestic law. Due diligence requires, instead, ensuring that corporate behaviour does not infringe or contribute to the infringement of the rights of indigenous peoples that are internationally recognized, regardless of the reach of domestic laws.
All that I’ve said thus far suggests that extractive industries can legitimately operate within or near indigenous territories if certain measures of State protection and corporate respect for indigenous peoples’ rights are taken, including consultations and consent base arrangements to safeguard indigenous rights. Across the globe, however, indigenous peoples are continuing to resist extractive industry operations that may affect them. In many cases, they tend even to resist entering into consultations over proposed extractive and other natural resource development activity for fear of being forced down a path of acceptance of extractive activities that they simply do not want close by. In instances where such resistance persists, it will be problematic for extractive industries to operate, even if only because of the practical consequences that derive from a lack of social license.

A fundamental problem that generates opposing positions in this context is the model of natural resource extraction that is being promoted by corporations and States for development and extraction of natural resources within indigenous habitats. It is a model in which the initial plans for exploration and extraction of the natural resources are done by the corporation, with perhaps some involvement by the State, but with little or no involvement of the affected indigenous community or people. The corporation controls the extractive operation and takes the resources and profits from it, with the State gaining royalties or taxes, and indigenous peoples at best being offered benefits in form of jobs or community development projects that typically pale in economic value in comparison to the profits gained by the corporation. It is a model of colonial overtones, in which indigenous peoples see their territories again encroached upon by outsiders who control aspects of their habitats and take from them, even when done with the promise of corporate social responsibility.

I believe that new and different models and business practices for natural resource extraction need to be examined, models that are more conducive to indigenous peoples self-determination and their right to pursue their own priorities of development. Such models could include genuine partnership arrangements between indigenous peoples and corporations, in which the indigenous part has a significant or even controlling share in the ownership and management of the partnership, or models in which indigenous peoples develop their own extractive business enterprises.

I am aware that, in a number of places, indigenous peoples have in fact developed such partnership arrangements or their own extractive operations. On the other hand, some indigenous peoples may under no circumstances want to see natural resources extracted from their traditional habitats on an industrial scale. But if self-determination means anything, it means the right to choose and not just a binary choice between an existing model of resource extraction that is unattractive or no extraction at all. In my future on extractive industries as Special Rapporteur, I plan to examine different models of natural resource extraction in which indigenous peoples have greater control and benefits than is
typically the case under the standard corporate model, drawing on a review of the experiences of indigenous peoples in different places.
Dear Representatives of the Governments of Norway, Finland, Russia and Sweden; Dear Representatives of the Sami Parliament; Dear Sami and other Indigenous Peoples present here today; Dear UN colleagues, Dear participants.

First of all I would like to thank the Government of Norway and the Working Group on Indigenous People in the Barents Euro-Arctic Council and the Center for Sami Studies of the University of Tromsø for this invitation.

I will talk to you about the UN Guiding Principles on Business and Human Rights which speaks directly to at least one aspect of mining governance: dealing with its social impacts. I think of mining governance as being mainly about two things. The money and benefits question: creating jobs, and how to distribute, invest and manage the wealth in order to attain sustainable development. And then impacts question: identifying and understanding all the range of negative impacts and setting rules to manage them. These two spheres are connected, for sure. Sustainable development is impossible without the protection of rights. But it is important not to conflate them. You’ll understand what I mean as I work through my speech.

The UN Guiding Principles on Business and Human Rights was proposed to the UN Human Rights Council, after many years of consultations and research, as a framework and a set of concrete standards to solve key coordination challenges between States, corporations and civil society when trying to manage the actual and potential negative impacts that businesses can have on people. Business can have many positive impacts, like jobs and taxes, but sometimes they have adverse impacts that infringe on human rights. Traditional Corporate Social Responsibility was simply not tackling these negative impacts. Among the consequences derived from the governance gaps and the collective action problems left by old Corporate Social Responsibility models were uncertainty and rising risks for business, exploited workers, rising numbers of affected communities, impunity, intra-community conflict and conflict between business and society all which were contributing towards the breakdown of broader Social Contracts nationally and globally. The Human Rights Council thus unanimously endorsed these standards in 2011 creating a pragmatic and authoritative guide.

I thought I would give you a glimpse of the UN Guiding Principles on Business and Human Rights and the governance solutions they can provide by talking of my own experience in the extractive industry.

Not long ago I was working for a large open pit mine. It had the challenges that many extractives have had the world over in recent years, partly because of their footprint, partly because social norms had changed and partly because old frameworks were not sufficient. The project began in the 1970s, it was a success story: brilliant engineering, thousands of direct and indirect jobs, a good stream of national and local revenue through taxes and royalties, world-class rehabilitation of forests. But at the turn of the 21st century its social license to operate came under threat. Management figured it had to do with ongoing local
poverty. Royalties were not trickling down to the people in ways that mattered. So they boosted community investment. But discontent and conflict did not ease as hoped. Due diligence queries, demands for social audits for which no standardized template existed and other requests from all directions -- from NGOs, to shareholders, to clients and investors--began occupying a huge amount of time of management.

It was only until the company began using rights-based social standards and looking to international best practise that they finally identified the core issues. Old fashioned Corporate Social Responsibility was no longer cutting it, and domestic legislation was behind. Community affairs practitioners were not equipped to spot short and long-term social impacts like those derived from the increasing frequency of the cargo train over time, land acquisition or resettlement. You see, the CSR department has been historically tasked to promote development not measure, disclose and explain impacts. Traditional environmental impacts assessment mandated by law weren’t quite equipped for that purpose either. On top of that, community projects and labour perks had turned into a “perverse currency” mediating the relationship between companies and stakeholders while leaving impacts unaddressed. Communities and workers knew the CSR budget was designed to fund schools, football courts and village Christmas parties, not to address adverse impacts, so that’s what they went for, more philanthropy. Then there was the issue of scope: workers in the supply-chain began posing demands on the company and the extent to which the company could or should intervene in another company’s affairs was unclear. Meanwhile, the State was absent from the conversation for the same reasons that the company had gaps: no particular government agency seemed to own the topic. The Ministry of Environment dealt with pollution and forest rehabilitation, not with social impacts. Mines and Energy dealt with licenses and the national royalties regimes, not with negative social impacts, and the Ministry of Interior dealt with Indigenous issues, not with the mines. Plus the company had always been legally compliant on everything and CSR was seen and defined as something belonging to the private sphere, because it was about voluntary donations.

So, how did a new rights-based approach help? It did at least three key things: First, it made social and specific human rights impacts visible, and provided a platform for communities, workers and the company to think, talk and act together to prevent and mitigate concrete impacts, and it provided a framework to agree on relevant redress (redress that had to do with the impact at hand) and to focus better on sustainable solutions. So for instance, redress for the loss of cattle related to the passage of train was no longer about disbursing cash to replace the animal, but about sitting together to develop a community program aimed at preventing hazardous crossings of the railway.

Second, the rights-based framework allowed the company to sharpen its risk assessments and collect, process and present information that helped them demonstrate to clients, shareholders and investors that they were addressing impacts, not just building schools. This in turn helped shareholder and clients deal better with their own risks.

And third, the framework brought the State back in. The company and the communities made a united front to demand from the state to fulfill its obligations on ensuring the realization of socio-economic rights by people.
So what do the UN Guiding Principles say?

First, they clarify the differentiated roles of States and corporations when it comes to human rights: States have the duty to protect people against human rights abuses by corporations; they also have the duty to fulfill human rights. Corporations are not States and don’t have the same legal obligations that States have, but Corporations, at a minimum have the responsibility to respect human rights, they cannot cause harm. If harm occurs, companies and States must provide access to remedy. With regards to States, the Guiding Principles say they should set out clear expectations for businesses on the issue of managing adverse human rights impacts, so that businesses can predict what is expected of them.

For example, the European Union changed its CSR policy and explicitly said that companies were expected to follow the Guiding Principles, and that they could use tools such as ISO26000, the OECD Guidelines for Multinational Enterprises and the UN Global Compact principles to achieve this.

Now, something relevant Ministries that provide licenses could do is to require that Environmental Impact Assessments include robust Social Impact Assessments chapters that are compatible with the UN Guiding Principles. They can issue general criteria for these updated Social Impact Assessments and ask that domestic and foreign enterprises follow them. The UNGPs also say that States should ensure policy coherence across its various agencies, which means, that trade and industry departments, environmental departments, agencies in charge of indigenous issues should understand and incorporate business and human rights provisions.

So, for example, if a government, say through Export Promotion and Credit Agencies, or a Trade Ministry, proactively promotes their companies to go out and invest elsewhere, they should also ensure that these companies know the UN Guiding Principles.

In practice, based on my own experience, it is also helpful when government agencies in charge of protecting or promoting rights understand better how businesses work, so they can set out expectations and requirements that are realistic.

The UN Guiding Principles also contain specific principles for corporations. The foundational principle is that corporations have the responsibility to respect rights. Businesses can undertake other commitments to support and promote rights, but these should not off set a failure to respect human rights.

The operational part of the standard says businesses must have a policy commitment to respect human rights; a due diligence process to identify, prevent, mitigate and account for how they address impacts based on meaningful consultations with potentially affected groups; they also say that policies must be integrated into business decision-making. In practice, this means that the management of social impacts should not sit with a Public Relations or a CSR department only. Finally, business and corporations need to provide appropriate access to remedy via judicial or non-judicial mechanisms.
Now, the UN GPs are already spreading across the globe, serving as a point of reference for industry codes of conduct, domestic policies, and international organizations. Our task in the UN Working Group on Business and Human Rights is to promote the uptake and implementation of the UN Guiding Principles and to help build a global corporate accountability regime based on experiences and lessons of things that work on the ground. I hope this initial input informs the dialogue you have begun and that the UNWG and the rest of the world get the benefit of learning from your own journey of implementation.

Thank you.
SESSION III: GOVERNMENT REGULATION/FRAMEWORK FOR INTERACTION BETWEEN INDIGENOUS PEOPLES AND THE INDUSTRY

Mark Taylor, Fafo Institute for Applied International Studies


Indigenous peoples and mining is not my usual topic, so it is an honour to be invited and a real privilege to hear the views from all parts of the Barents region, not least from indigenous peoples, and it is a pleasure to be back in Tromsø.

I have been asked to introduce the topic of the role of government in the interaction between indigenous peoples and the mining industry. It is perhaps a risk asking a researcher like myself to take on this task, rather than for example a politician, but I will do my best to offer some perspective from my work on business and human rights elsewhere in the world in the hope that it will be relevant for what is happening now in the Barents region.

To do that I would like to begin by picking up on what was said in the previous session about the international normative frameworks – in particular the UN Guiding Principles for Business and Human Rights and the rights of indigenous peoples – and to focus briefly on the fact that states have a duty to protect human rights. It is worth emphasizing three things about the state duty to protect human rights: first, the scope of human rights referred to by the UN GPs includes “all internationally proclaimed human rights”, precisely because the record shows that business can infringe on all of those rights. There is no doubt that this includes the rights of indigenous peoples. Second, the state duty to protect rights includes protecting against violations by third parties, such as business, not just against acts of state. And third, the duty applies to all institutions of state. This is not a minor or marginal point, but it is in fact central to the state duty to protect human rights against business-related violations because it is the policies and practices of state institutions – all level of government – which ensure that rights are enjoyed and protected.

The implications of this duty are clear: whenever institutions of state interact with business, they have a duty to act to ensure the protection of rights. To put it more clearly, ministries of trade and industry, ministries of finance, of labor, or foreign affairs, of development, export credit agencies, environmental protection agencies, licensing offices, municipalities and local government - when they interact with business, facilitating the business activity is only part of the job. Human rights is another part.
When a ministry instructs the board of a state-owned enterprise or a municipality or puts out a tender for services, or whatever action states take with respect to the market, human rights must also be part of the mix. Obviously, not all arms of government can be responsible for all aspects of protecting human rights; but within their substantive jurisdiction, they have a duty to act to do so, whether as regulators, purchasers, or as owners, making human rights a part of government action in the market is not an option, it is in fact a duty.

The new international frameworks set out a standard for business compliance with human rights. I will not go into detail about the business responsibility to respect human rights and its principle operational method – human rights due diligence – except to say that human rights due diligence is relatively new as a concept but is being rapidly globalized, across regions – the OECD, the EU, ASEN, and the great lakes region of Africa – as well as across industrial sectors.

To date, the most concrete expression of human rights due diligence expressed so far by governments has been found in the mining sector, where it is being applied to the entire supply chain of minerals used in high-tech components – minerals such as tin, tantalum, tungsten and gold – in order to safeguard human rights in conflict situations. It is a basic five-step process of self-assessment and practical remedial steps. It has been described in detail by the OECD, but perhaps most important it has been backed by legislation in the United States which requires reporting to the Securities and Exchange Commission on so-called “conflict minerals”.

So, when the Guiding Principles say that states should “protect human rights”, they do not just mean that states should promote corporate social responsibility (CSR) by contributing funds to the UN Global Compact or holding CSR conferences – those may be useful steps to take, but they are not the place to start, nor are they sufficient and, above all, they are no excuse for not doing more.

The very clear implication of the new international frameworks is that governments should be 1) elaborating a standard of compliance for business to respect human rights; 2) setting out ways that business can meet that standard (such as due diligence) and 3) deploying enforcement mechanisms for when they don’t. The question then is; how can government make this new standard of business and human rights – the business responsibility to respect human rights – effective, not least in the context of the development of mining in the lands of indigenous peoples in the Barents region?

I don’t have the easy answer to this, and I suspect that the answer will be different for each country and perhaps there will be variations in practical ways for each community; but I do have some ideas to offer about what those answers should have in common.
First, and at the risk of appearing to contradict myself, it is important to recognize that the dichotomy I set up just now – between soft, promotional or voluntary activities like CSR conferences and the UN Global Compact, and harder, regulatory or legal action – is not very accurate or a helpful dichotomy for the purposes of policy. Broadly stated, different arms of government can either encourage business to respect human rights or require business to do so, but the overall government policy – overall policy effect – must be to do both, to find ways to encourage business to respect human rights and at the same time put in place rules that require business to respect human rights. This is not so much a stark choice between soft CSR and hard law, as it is a continuum of law and policy measures, options that states can deploy as they see fit, and as appropriate – both to the industrial activity being regulated and to potential harms to the citizens and communities affected by that activity.

For example; when a state passes a law requiring mining companies to consult with indigenous peoples, it is using its role as a regulator to require business to respect human rights. Or a government can use its power as an investor to encourage business to respect human rights by making it government policy that all state owned enterprises will conduct human rights due diligence as well as require human rights due diligence of their partners and suppliers.

Which brings me to a second point to keep in mind: effective rules are ones that are followed.

Experience has taught us that compliance is not simply a function of enforcement or penalties. As necessary as those are, one of the key sources of compliance with rules are things like efficacy and legitimacy. People – and businesses – are more likely to follow rules if they are clear, impose reasonable costs or burdens, and if they reflect – or, crucially, do not contradict – commonly held values.

By way of conclusion, here are four factors that have been reflected in the discussion we have heard here today, and which we need to keep in mind when thinking about what would make for legitimate and effective law and policy – to encourage and require business to respect the rights of indigenous peoples in the Barents region.

The first is the physical or built nature of the activity. Minerals have a location and particular qualities and those simple physical facts of geology are the starting points for the particular economies of extraction and added valued of a mineral-based product. The same is no less true of other economic activities, such as reindeer husbandry: reindeer require pastures, they migrate, the population fluctuates, and those simple facts combined create their own economies. As we heard this morning, each of these has a very different impact on the land, and on the people and animals that live there. Rules governing those activities have to make sense of these processes and impacts or they will not be followed or respected. Simply put, the nature of the production process matters to how governments draft and enforce the
rules for economic activity, including the rules requiring those activities to respect human rights.

So, too, do social norms, both what people think is proper behavior, but also what people think is a reasonable rule. Social norms are a second factor to keep in mind. These norms are, of course, deeply cultural. They influence not only what kinds of economic development are valued by a community or by society at large, but also how the conflicts which arise from economic development are handled. By the way, the same point about norms and culture applies to industry. Culture and basic principles matter to how business conducts itself: anybody who has moved from one industry to another – from oil and gas, to finance, or from agriculture to mining – will tell you that they are different business cultures. In this sense, the increasing number of companies who claim to be "value based" and "good corporate citizens" is not a bad thing, but it is naïve not to recognize that those values are up against more deeply embedded cultural norms in business, such as the fact that the central function of a business is to turn a profit, not to promote rights.

Which brings me to the third factor to keep in mind: Markets drive economic and political interests and affect the rules we put in place to govern them. We are here in this meeting today not just because the Barents region has minerals or indigenous peoples, but also because world demand and prices for minerals and alloys are on the rise, making those minerals viable economic opportunities. In the past six years, global demand has transformed the mining industries in recent years from marginal sectors in the global economy into some of the most important - and therefore powerful - industries on the planet. Powerful industries shape legislation and influence enforcement of the rules, not least those rules that protect the rights of people who present a risk to economic opportunity, people who get in the way of the exploitation of economic opportunity.

Finally, the law itself matters for effective regulation. It influences social norms and it structures markets; it has direct impacts on the process put in place to take advantage of economic opportunity – whether by structuring land or property rights, or by seeking to protect the environment, workers or indigenous peoples – both as international laws – such as those protecting the rights of indigenous peoples – but with far more teeth when the laws in question are national in nature and enforced as such. It is never a good idea to ask policymakers to think holistically, that word tends to bring to mind images of mountains of complexity, political risk, and poor regulation to match. But ignoring certain facts of life like the ways in which the nature of the production process interacts with social expectations, economic power and law, ignoring those facts is likely to result in policies that fail to protect human rights.

Given the advances in the international normative frameworks in 2011, the choice which governments now face is not whether to integrate human rights to their engagements with business but how to do so. One size will not fit all. The implementation of international norms must be negotiated, not least with the communities that will be most affected by
them. But they must also be implemented through regulation of the market, as a means to ensure the respect for human rights by business. With that I will say thank you for listening and I look forward to the discussion today about how we can manage the wealth of the Barents region to the advantage of its cultural heritage – not least as maintained by indigenous peoples – as well as its social and economic development.
Tone Toften, Deputy Minister Norwegian Ministry of Government Administration, Reform and Church Affairs

Procedures for Consultations between State Authorities and the Sami Parliament

As an indigenous people, the Sami are entitled to be consulted on matters that may affect them directly. In 2005 the Sami Parliament, called Sámediggi, and the central government authorities concluded an agreement on procedures on how these consultations are to be carried out. I am grateful for the opportunity to present the Norwegian model for consultations between indigenous people and state authorities, and from my perspective the added value of consultations.

I will start by presenting the main elements of the consultation procedures. I will then comment on the relevance of the consultation mechanism within the mineral sector. My presentation will focus on three elements of the procedures – the objective of consultations, the scope of the procedures and the implementation of the procedures.

First, the objective of the procedures for consultations: Consultations are a way of involving Sami interests, such as Sámediggi and reindeer herders, in decision making processes. I believe that this mechanism plays an important role in order to strengthen the dialogue between the state authorities and indigenous representatives within many sectors of society, including the mineral sector.

In general, consultations will be conducted in addition to public hearing processes. It is an important principle that the consultations shall be undertaken in good faith, and the objective is to achieve agreement to the proposed measures. It is therefore provided in the procedures that the consultations shall continue as long as Sámediggi and the state authorities consider it possible to achieve an agreement.

The scope of the consultation procedures is extensive. The procedures apply to the Government and its ministries, directorates and other subordinate state agencies or activities. Furthermore, they apply in matters that may affect Sami interests directly.

The consultations may include various issues, such as legislation, regulations, administrative decisions, guidelines and other measures. Also, the obligation to consult Sami interests may include all material and immaterial forms of Sami culture. It is important to underline that the agreement applies in matters concerning the material basis for the Sami culture, including land administration, competing use of land and land rights. The obligation to consult Sami interests is applicable to traditional Sami areas. The procedures thus apply in matters concerning mineral exploitation within the traditional Sami areas. The implementation of the procedures will vary according to the measure in question and the interests involved.
Time is an important factor. The state authorities shall as early as possible inform Sámediggi about the commencement of relevant matters that may directly affect the Sami, and identify those Sami interests and conditions that may be affected. The initiative may also come from Sámediggi or other Sami representatives. Also, sufficient time must be allocated to enable the parties to carry out genuine and effective consultations and political consideration of all relevant proposals.

Information is another key factor. It is important that the Sami representatives receive all relevant information throughout the consultation process. If agreement is not reached, all authorities involved in the matter shall be informed about the view of the Sami interests.

The consultation procedures have been practiced for six years. As a consequence of the establishment of these procedures, 20-40 formalised consultations take place every year. Our experience is that the many consultations have enabled Sámediggi to strengthen their position as a representative and competent voice for the Sami people. It has also enhanced the awareness and knowledge of Sami issues in Government ministries and agencies, and among cabinet ministers and parliamentarians. Admittedly, agreement is not always reached between the Government and Sami representatives. However, the consultation mechanism ensures that decision-makers are increasingly well acquainted with the views of Sámediggi.

A great part of consultation processes take place when new legislation or amendments to existing legislation is under consideration. For instance, Sámediggi was consulted by the Ministry of Trade and Industry concerning the Minerals Act. Agreement was achieved on several provisions, but the consultation process was finalised without full agreement being reached. According to the procedures, the views of the Sámi parties were reflected in detail in the proposal submitted to the Parliament.

Both the Finnmark Act and the Norwegian Mineral Act contains special provisions for the county of Finnmark. As for the Sami areas outside Finnmark, a committee, the Sami Rights Committee, has made several proposals regarding rights to land and resources. One of the proposals from the Committee is a new act concerning administrative procedures and consultations. The Ministry of Government Administration, Reform and Church Affairs is currently working on the follow up of this proposal. The Ministry's preliminary views on this matter were presented to Sámediggi in June, as a basis for the coming consultations.

One topic in the follow up of the Committee’s proposal is consultations regarding administrative decisions, including permissions to mineral activities and exploitation. An important question is how consultations with Sámediggi and other Sami representatives should be carried when the authorities consider giving permission to a company to mining activities in a certain area. This question is of great importance for both Sami stakeholders and the authorities, and will be subject to assessment in the coming process. I will underline that Sami interests, local communities, NGOs and other actors and stakeholders will be involved in this work.
This seminar is a useful venue to discuss the coexistence of two important interests – the need for mineral exploitation in the north and a sustainable Sami culture. I think we can achieve more knowledge and understanding for both the needs and the challenges involved through dialogue and cooperation - through an on-going dialogue between all three actors – the authorities, the mining companies and representatives for Sami interests and local communities.

In my presentation the focus has been on the dialogue between the authorities on one hand, and Sámediggi and other Sami interests on the other hand. This dialogue could be conducted in many ways and through different mechanisms. I believe that the procedures for consultations in Norway contribute to a partnership perspective between State authorities and Sámediggi. In addition, the authorities and the Sami representatives reach a common understanding of the situation and of the developmental needs of Sami society.

This seminar gives an opportunity to take this common understanding even further by also involving the mining companies in the discussions. I hope that we can use this day to become familiar with each other’s points of view and to discuss possible solutions for coexistence.

Thank you.
Government regulations/framework for interaction between indigenous peoples and the extraction industry in Sweden

Tromsö, September 10th 2011, Lotta Lauritz, legal advisor at the Mining Inspectorate of Sweden

Main legislations

- The Minerals Act and ordinance
- The Environmental Code and ordinances
- Reindeer herding act and ordinance
The Swedish mineral legislation
– Main points

Regulates the competition between explorers/exploiters

Can give access to land regardless of ownership or other rights to use the land

Step 1 – Exploration

– An exploration permit – issued by the Mining Inspectorate – gives the holder the exclusive right to explore for minerals in the area and the preferential right to exploit any deposit that is found.

  The owners of special rights, among them the semi-villages, has the same position as the land owners
  - Information about the application
  - Service of the decision with the right to appeal

– Exploration work requires
  - A valid plan for operations. The plan becomes valid through a certain procedure between the company and the land owners/owners of special rights. If they disagree the plan can be settled by the Mining Inspectorate
  - Specific permits/permissions according to the Environmental Code, the Minerals act, the Cultural heritage act etc.

– No explorations are allowed in National parks
– The right of common access makes it possible to do some research without exploration permit or consent of landowners
Step 2 – Exploitation concession

An Exploitation concession will be granted if

- The deposit is proven to be economically recoverable
- The site is found suitable for mining activities when other interests of public value are taken into consideration (an environmental impact assessment is needed). Reindeer herding is one of these interests.

The Exploitation concession means that the holder owns the mineral deposit referred to in the concession and have the main approval of the site to establish a mine.

According to the law the Sami village is notified of the application, given the opportunity to give its opinion and the right to appeal the decision. In practice the applicant also have consultations before the application is made.
Step 3 – Environmental permit

- Trial according to chapter 9 in the Environmental code.
- The application, with a detailed environmental impact assessment, is made to the Land and Environmental court.
- The court decides the terms for operation concerning emissions and other impact on the surroundings.
- The site is not tried again regarding other land use of common interest.

Consultation with the Sami village and other stakeholders is compulsory in the process of setting up the ELA. The Sami village has the right to give their comments to the court and the right to appeal the decision.

Step 4 – Designation of land

- Determines the right to take the land needed into possession (not ownership) for extraction and purposes connected to it.

- If agreements have not been made between the concession holder and the land owners and owners of special rights, the Mining Inspectorate decides about the compensation in the designation process. The Sami village is entitled to compensation for the loss of land that can be used for pasture and for costs caused by the need of putting up fences, changing the migration routes etc.

During operation of a mine, the landowners shall be compensated with 1.5% (0.5%) of the value of the minerals extracted each year.
The reindeer herding act and ordinance?

If a mine is to be established on state owned ground within the reindeer herding area the tenure of the land for mining shall be tied by the Geological Survey of Sweden in consultation with the County Administrative Board and the national Property Board of Sweden. The sami village is heard in the process.

It is possible to revoke the reindeer herding rights in an area for other purposes in the Expropriation act. This is not valid for mines, as the process in the Minerals act on designation of land replaces expropriation.
Distinguished guests, ladies and gentlemen, dear friends: It’s a pleasure for me to be here for today’s seminar on extractive industries and indigenous peoples here in Tromsø.

I believe this is an important arena for dialogue and exchange of views between the industry, indigenous peoples and the authorities on how we can achieve coexistence between Sami interests and the mineral industry.

In recent years there has been a significant increase in international mineral and metal prices and increased interest in mining nationally and internationally.

Norway has considerable resources, especially in the northern parts of the country. This provides opportunities for value creation and employment in Norway. The Norwegian mineral industry is important for commercial development in the districts. With the new Minerals Act, the government has taken an important step to arrange for mapping of mineral resources. In addition, the Government has appropriated funds for a four-year mapping program with a total budget of 100 million NOK to the mapping of minerals in Nordland, Troms and Finnmark. Such mapping can provide the basis for new commercial activities and new jobs.

Ensuring a predictable framework for the mineral industry is commercially and industrially vice. It is also key to regional policy. The Norwegian mineral industry, with its 6,000 employees and more than 12 billion NOK in revenue, needs a framework that provides predictability.

In my view the Minerals Act provides for a responsible administration of the country's mineral resources. At the same time it safeguards other important interests such as indigenous people’s rights.

Section 2 of the Minerals Act sets out that the administration and use of mineral resources pursuant to the Minerals Act shall ensure that the foundation of Sami culture, business and industries and community life is safeguarded.

Furthermore, section 6 sets out that the Act shall be applied in accordance with the rules of international law relating to indigenous peoples and minorities. These rules apply equally to all Sami traditional areas in Norway.

The Minerals Act also establishes special rules to ensure the basis for Sami Culture in the county of Finnmark. Firstly, the rules include a duty to give notice to affected Sami interests before prospecting, exploration and extraction begins. Secondly, the Minerals Act has special procedures in relation to the processing of applications for permits for mineral activities in Finnmark. A party that applies for a permit shall take reasonable steps to obtain information about directly affected Sami interests in the area that is to be explored.
Furthermore, when processing the application, the Directorate of Mining shall give the landowner, the Sami Parliament, the municipality, and the relevant area board and district board for reindeer management an opportunity to comment.

These rules ensure that the authorities have an optimal basis for its decisions. If the Sami Parliament or the landowner opposes the granting of an application, the Ministry of Trade and Industry shall decide the application.

In the assessment of whether a permit shall be granted, special consideration shall be given to the interests of Sami culture, reindeer husbandry, Sami business and industries, and community life. It is the concrete consequences for affected Sami interests that shall be assessed. A permit may be refused if granting the application would be contrary to Sami interests.

If the application is granted, conditions may be imposed to safeguard these interests such as restrictions on mineral activities during reindeer calving periods. Such conditions are laid down in a number of permits.

The Minerals Act also provides for benefit sharing when the extraction occurs in traditional Sami lands and affects the Sami community in Finnmark. A party that is extracting a deposit of minerals owned by the State shall pay the landowner an annual fee of 0.5 per cent of the sales value of that which is extracted. In the case of land owned by Finnmarkseiendommen (The Finnmark Estate), an increased landowner fee of 0.25 % shall be paid in addition to the ordinary landowner fee.

In December 2007, the Sami Rights Committee II finalised its report on rights to land and natural resources in traditional Sami areas outside the county of Finnmark. As mentioned by the State Secretary of the Ministry of Government and Administration, Reform and Church Affairs, the Government is currently working on the follow-up of the report.

The follow-up process will make the basis for considering future legal amendments concerning Sami rights outside the county of Finnmark, including the legal framework for mineral exploration in these areas.

The Sami interests are also safeguarded in other acts. Mineral activities may require permits under other acts, such as The Planning and Building Act and The Pollution Control Act. It is the municipalities as planning authorities who determine whether an area should be regulated to mineral extraction, and the municipality shall also at this stage safeguard Sami interests.

Coexistence between the mineral industry and Sami interests requires not only good and predictable regulations: Dialogue between the government, the mineral industry and Sami interests, such as Samediggi and reindeer husbandry is also important to achieve this.
It is important that we find a way to balance the two possible conflicting interests. I think that both the procedures for consultations and the Mineral Act can be used in finding solutions which both can enhance mineral activity and protect Sami interests.

Operating in Sami areas comes with a special responsibility. It is crucial that the mineral companies promote dialogue both with local authorities, local communities and Sami interests. Our goal must be that the two can coexist. It is also important that mineral extraction provides a basis for local value creation and other positive local consequences. The use of local labour is important in this respect. Mineral companies should therefore have plans and goals on how to recruit and train local workers when they establish new operations.

Some mineral companies, such as Nussir and Arctic Gold, have signed letters of intent with the Sami Parliament regarding planned exploration and extraction of mineral deposits in Finnmark. It is encouraging to see that such initiatives are taken to secure mutual trust between mineral companies and local communities.

The Government has decided that it will work out a strategy for mineral industry, which shall be presented in 2012. It is natural that the strategy discusses coexistence between the mineral industry and Sami interests, and questions regarding the need for future legal amendments concerning Sami rights outside the county of Finnmark. A key issue in the strategy, and in our work, is the objective of a sustainable industry that can live side by side with other industries and interests which operates environmentally safe and well rooted in the local community.

Thank you!
Summary of Q&A session

In the Panel:

- Mr Bård Dagestad, Directorate of Mining, Ministry of Trade and Industry, Norway
- Mr Per Wallén, Foreign Ministry of Sweden
- Mr Rune Fjellheim, Director of the Sami Parliament, Norway
- Mr James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples
- Mr Matias Åhrén, Representative of the Sami Council

Moderator: Mr John Morrison, Institute for Human Rights and Business

Summary:

Gunn-Britt Retter, vice chair of the Norwegian Sami Association commented on and congratulated on the very high level representation on the program; giving the seminar a high profile. But she also took the opportunity to remind the audience that while the reindeer herding is essential to Sami culture, the Sami culture is also a coastal culture. Herself being from a coastal Sami from Nesseby, north-east Norway, said that the coastal culture is based on fisheries combined with other livelihoods. And fishery also includes traditional salmon fishing in coast water, meaning fjords. We have to keep in mind the coastal Sami culture, and impact by waste management, which contains substances harmful for the life in the fjord and the oceans, she said. She also said that one have to be very careful that the mineral act doesn’t prove a standard that Norway somehow defines Sami people to only live in Finnmark. She pointed on distrust rising from the results of the mineral act, and asked the panel what could be done to re-establish or establish a trust, and to get a step further from the unpredictable situation. The legal framework that is in place in Norway now doesn’t fulfil the human right principles.

This was commented on by Bård Dagestad. He referred to what the deputy ministers said earlier, about the process going on the Sami Rights Commission south of Finnmark (SRU II). In that process the rest of the Sami area will be evaluated. It will be a legal process towards the mineral act. In the meantime, in between the mineral act of 2009 and the SRUII, the Directorate of mining will be more than happy to have a constant dialogue with the Sami Parliament, in any part of Norway, not only Finnmark. But it has to be within the framework of the existing legislation.

Matthias Åhren commented on the point about establishing trust, and that this conference is built on the premises of how sustainable partnerships between Sami culture and mining are possible. But often that is not the case. He said that what is causing disturbance among Sami communities is that it is always thought that coexistence is possible. But sometimes it is simply not the case that it is possible to accommodate for coexistence. Åhren pointed out that this should be acknowledged. Until we can get to that point, there will never be any
progress. State regulation should acknowledge that fact as well, and define these rights in the acts, that actually forces companies to comply with the communities’ rights. That is not the right to consult. Consult, in his experience from the Sami Council, almost never works when the conflicts of interest are too big, which they often are when talking about mining and reindeer herding. Consulting is not enough. There must be a legislation that acknowledges the communities’ right to say no. Then the trust will be back, and the communities will feel that they are heard when they say that this activity simply cannot coexist with their traditional activity.

Also Rune Fjellheim commented on trust, and referred to a seminar some while ago, where responsible politicians presented that the mineral industry had the potential of providing at least a 100-150 jobs in the region in the next 10 years. The question was turned around: “How do you know how many people work in the reindeer herding industry in Finnmark today?” If you don’t know what kind of jobs you at the same time are risking, you are not building trust because you are only building on one side, and not putting the facts on the table on the other side, Fjellheim said, and also commented on the struggling with the current mineral act. The current act is posing a number of problems and challenges. The Sami parliament has numerous times expressed, and especially towards the companies, that they are willing to discuss remedies to accommodate the process further on, even though the regulations are not as good as the Sami parliament would have seen it.

In the more difficult processes, what is often needed is to establish good procedures to create a sober baseline for facts, and understanding of both the needs of the reindeer husbandry community and also the mining industry, Bård Dagestad said. It is necessary to realize that sometimes the impact both social and environmentally from the mining industry, could be better explained, and be better put up and laid out. Sometimes, from the reindeer husbandry’s side there is a notion that the mining industry is like the doomsday bell, which is not always the case. Dagestad would like to see a good process to create a sober and proper baseline of the social and environmental impact for both parts so that before starting to agree or disagree, we can agree on what we are disagreeing on.

Matti Berg from Girjas Sami village in the Kiruna area told that mining industry has been in the area where he grew up for a long time. Now his community is threatened by a company that will start several open pit mines, 4 or 5 in the area and in the neighbour areas too that are going to take away the heartland of their community, which will make it impossible to carry on with reindeer herding. Berg sees a difference between what is said in UN Documents and the Swedish government’s strategic document about the Arctic. Especially about the reindeer herding people and the Sami people, it is very optimistic. But when he turns to his backyard he sees that reality is totally different. Thus he asked: Is it correct that he can sit back and relax and say “this is no danger to my people, and my home area”?

James Anaya responded that he doesn’t think any of us can relax. We have before us a significant problem, with deep historical roots, involving the encounter of different peoples,
different cultures over time. Just now we’re still trying to accommodate to each other’s existence. Advances have been made on some fronts, on the international level with the affirmation by the states of the world, of the indigenous peoples’ rights, regarding land, resources and so forth, and with governments taking steps to recognize those rights. But what the Kiruna town example shows us is what has been referred to at the implementation gap. Efforts still need to be made to bring into realization the exercise of these rights. This is a case that Anaya has looked at as the special rapporteur. He’s received information about this situation, and has communicated with the Swedish authorities. The Swedish authorities have explained that this has been reflected in the reports publicly, and the authorities have assured that steps are being taken to consult with the indigenous peoples appropriately and protect their rights. Anaya will continue to look at the situation and hopes that the Sami people, and Kiruna town will continue to press for their rights as they should, according to these international standards and according to the agreements that governments around the world has made on these. Anaya referred to what Åhren was saying that there is a need to serious reflection about what are the specific rights of the Sami people. Often we skirt around that discussion and talk in abstract terms about consultations, and about the need for economic development, talk in abstract terms about rights, without specifying what those are. What areas? What particular rights? There may be circumstances in which respect for human rights demands that development projects simply won’t move forward, and the countries of the world have come to understand that with regard to environmental issues. Entire areas have been set aside as conservation areas, that are seen as being outside the realm of possibility for exploitation. That same level of sensitivity for the natural environment needs to apply for the rights of indigenous peoples. Anaya said that he is confident that with that baseline understanding, there will be some circumstances, that the opportunities for genuine partnerships and trust will be established or further. Some hard steps need to be taken, or some steps that have, that are still in front of all concerned that need to be taken together. And among those is this realization of one: what the specific rights are involved, and secondly that in certain circumstances development projects simply cannot go forward.

John Morrison commented on the ILO 169, and the fact that Norway has ratified the convention while Sweden, Finland and Russia have not. He continued by asking if a person in Norway has more protection than in another country because the government has ratified the ILO-convention. Does it actually convey protection?

James Anaya clarified by outlining as following: ILO 169 is a treaty, a multilevel treaty. In one sense, there is level of protection that comes with a country subscribing to a treaty. The protection has to do with the legal commitment that is made, the legal obligation that is assumed, and to do with the supervisory mechanism that comes through that ratification treaty. The ILO, International Labour Organization, is supervising that, to oversee implementation of that treaty. But in a fundamental sense, the other countries have the same or similar level of obligation internationally, or put it a different way: level of
commitment internationally, to protect the human rights of indigenous peoples. This comes from their ratification of basic human rights treaties, such as the international covenant on civil and political rights, or the international convention on elimination of all forms of discrimination that include broad provisions of human rights, that apply to indigenous peoples in specific ways. The right to culture in the covenant on civil and political rights has specific meanings for indigenous peoples. The human rights committee which monitors compliance with the covenant has said that Sami reindeer husbandry and other aspects of Sami culture are protected by that right to culture, of the covenant. That establishes an obligation upon parties to that covenant, that multilevel treaty, similar to the obligations that Norway has under ILO 169. We go through other international treaties and do the same. We can start from the assumption that of all the states in the Barents region, do have a level of commitment to indigenous peoples’ rights, including collective rights over land and resources, and importantly, the right of indigenous peoples to set their own priorities for development. These are commitments to basic human rights principles. It’s beyond a legalistic commitment, or some legalistic obligation, it’s a matter of basic human rights. It’s about coexistence amongst diverse peoples, or effectively multicultural or bi-cultural societies which the Sami people are the first, or earlier peoples, to live in these territories. It is a matter of basic human rights that governments should take these steps to protect, these aspects of Sami way of life and Sami culture.

Matthias Åhren told that he knows the Kiruna situation well and has been working with Girjas on the Sami Council. Referring to Anaya’s answer, about the implementation gap, he said that the law is there. The international legal framework is there. He is completely sure that there will be no mine in the area.

As a comment to a point made about climate change, Bård Dagestad said that while the mining industry sees a business opportunity on using the north-west passage, he has never seen any in the mining industry applaud the fact that the ice shield is melting. But the ice shield is melting, and some companies are definitely seeing a business opportunity.

By applying his family’s hometown-area, Røros, which is an old mining town, Rune Fjellheim pointed out aspects relating to respect and a sort of general recognition of each other’s cultures and activities. For 400 years has the Sami and the reindeer herders been presented with the statement that “you are blocking development”. “The modern world is coming to you, so you have to move away”. It has come from the mining industry, the forestry and other agriculture. And it has come from the tourist industry with the establishment of cottage industry in this area. Fast forward 400 years and to today, the reindeer herding industry in the Røros area, despite being worked against, is one of the single largest industries in the area. It’s viable, it’s economical. It provides hundreds of jobs in that region. But it has never been applauded for that. It has always “been in the way”. And where is mining today in Røros? It is gone. Where is forestry? It is gone. Where is agriculture? It is gone. So reindeer herding and the Sami activities there has outlived all those industries that
were supposed to bring the modern world to Røros. And they even fed the miners in the beginning. How you build trust when that story is only kept on the Sami side? You have a municipality that is constantly working against the industry that is actually providing a hundred jobs in that area. It is difficult to have a constructive dialogue when that is the outset. It shouldn’t be a surprise that keeping reindeer herding is of greater value to the Sami parliament than it is to the Norwegian parliament.

Anders Blom, Swedish Sami Association and association PROTECT referred to one of the key words in the speeches so far, “dialogue”, and that it calls for a definition. What do we really mean by dialogue? In his opinion, to have a working dialogue there has to be some prerequisites, such as equal partners that have equal resources and equal rights. Can there be a true dialogue in this context? Blom noted that it is a talk about interests, stakeholders, but about right holders. But there is a lot of difference between being stakeholder or bearer of an interest, and being right holders. Are we talking about a dialogue with the right holders?

Bård Dagestad, stated the Norwegian Mineral Legislation certainly considered the reindeer husbandry, reindeer herders, as right holders with protection on the level of compulsory purchase. If rights are taken from the reindeer husbandry; you need to do it via a process of compulsory purchase. There is no question at all that within the Norwegian mineral legislation, the reindeer herders is holding a right to an expropriatory level.

Matthias Åhren referred to Matti Berg’s community and Scandinavian Resources who want to exploit the area there. They’ve had so-called dialogue with communities until the point when the community say “no, we don’t want you here”. And then they cut off the dialogue and say “okay, we only have to comply with Swedish law”. There is a dialogue until you say something that the companies do not want to hear. And then it’s a question of “do you have a legal protection for the right” because clearly communities are right holders. According to Åhren the protection is not there now in Swedish and Norwegian law or for that matter in Finnish or Russian law. “Clearly our actual rights are not reflected in the legislation and that is why we have to engage in these very resources and time consuming campaigns that we now have to do to stop these kinds of projects”, he said.

Øyvind Ravna, at the Law Faculty, University of Tromsø referred to the ILO convention and article 15, which says that indigenous people shall whenever possible participate in the benefit of the mineral extraction. He then asked is if the Norwegian mineral act is in compliance with the international legislation on this section.

Bård Dagestad answered that he believes that in regards to ILO convention article 15 and in regards to the extra royalty in Finnmark, he doesn’t think that you can take the point of view, that those 0.25% are specifically targeted to fulfil article 15 as such, when article 15 states clearly that when it is possible, the indigenous population shall have benefits, and shall benefit from the mining industry in the area. But he would not go into a discussion on
whether the whole mineral legislation and the whole legal area of Norway are in compliance with it at all. But regarding the extra fee in Finnmark, it is not the case that this alone is supposed to fulfil the legal obligation of Norway. It’s a much more complex picture than that.

**James Anaya** was glad to hear that interpretation, and called attention to article 6 of the mineral act, which says that it will be applied in accordance with the rules of international law relating to indigenous peoples and minorities. When addressing this, in the capacity as special rapporteur, the issue of the mineral act was raised to him. He stated to the Norwegian authorities in his written communication that his expectation was that the mineral act would be applied in accordance with international law, which would of course include ILO 169. At the end of the day, what is important is how the act is applied. His hope is that the relevant authorities would see the act with sufficient flexibility to always work to ensure compliance and that its application is in compliance with ILO 169 and other relevant international standards, as to benefit sharing and other issues.

**Rune Fjellheim** would like to focus on the regulation in the sense that all parties have to see at some point some benefit of the activities that are going on. One has to be compensated for the negative part, and then on top of that see some positive advantage. He said that the regulations today are completely lacking a functioning incentive structure, to bring the parties to the table, making sure that they feel as equal parties in discussing the issues, and then build an incentive structure that actually makes these things possible. He then referred to one of the affected Sami communities and the project in Kvalsund where there also are huge plans for windmills, a big power line, crossing the same area. Who is taking the responsibility to seeing the totality here? It is only the reindeer herding industry that is seeing this. Who is helping them then, deciding which is the most important? Which one should we go along with? If we go along with all, it’s game over for us. You get the “what’s in it for us?” situation. And that is a huge responsibility on the government side, to see the totality.

Based on this comment **John Morrison** brought up the point that industry values predictability. He asked about how predictable and how much clarity are governments at present providing investors?

**Michael Lindblad**, the local chair of the Sami organization in Umeå, asked for an assessment of the Swedish state’s policy concerning mining, and the fact that many Sami communities are threatened by the present situation. **Per Wallén**, Swedish Foreign Ministry, said that he could not give the assessment, as it is not his area of expertise. It should have been up to the expert who planned to this seminar. He promised to bring the issue back to Bergsstaten.

**Matthias Åhren** also replied and said that the time is too short to assess the Swedish policy system. In his opinion it is clear that it is insufficient. Using the Scandinavian Resources as an example, he told that they bought a share in that company in order to attend their
shareholder’s meeting. They actually spent a lot of time discussing this issue in Kiruna, and they were really upset. For they had done everything they needed to do under Swedish law to prospect in this area, and imagined that they would be in the clear. If they followed the legislation, there would be no problems. So they were quite upset and surprised for this uproar from the community. Actually they said that they had preferred that Swedish legislation took more of the reindeer herding communities into account, exactly for providing predictability. They didn’t at all like this situation when having complied with national law; they were still faced this huge resistance against their project. Thus there is also from the business side an interest to review the legislation, which actually takes the community rights into account.

Åhren also commented on Finland, where the situation is even more problematic. That’s not because the mining or forestry are necessarily worse than in Sweden and Norway. But the problem in Finland is that you do not protect reindeer herding as a sole Sami right, which makes it much more difficult towards the Sami reindeer herders to protect their rights, because they don’t have the reindeer herding districts as we have here, or the Sami villages as in Sweden. They are mixed with the Finnish population, which of course could have different interests. Now that is where Finland has to their start legislation, to render reindeer herding a sole right to the Sami people, for things to work.

James Anaya stated that he thinks that the indigenous rights regime in each of the Nordic countries to one degree or another is somewhat stable, also pointed out in his report a couple of years ago. There need to be improvements in each of the countries to recognize Sami rights. That will hopefully contribute to dialogue and consensus about what those rights are, and what specific perfections need to take place to provide stability to those rights. Until that is developed to a significant degree, there is always going to be unpredictability. There will not be the foundation, in order for the kind dialogue to take place. The dialogue and arrangements will be on an ad hoc basis, some better, and some worse, some predictable of indigenous rights, and some not so predictable. People will continue to feel vulnerable in their lives. There will be dialogues and consultations, and arrangements that are better than others. But predictability and stability will be hard to achieve without a firm foundation of recognition of indigenous peoples’ rights. It is evident that there are improvements in the rights regime of each country that needs to be made.

Bård Dagestad noted that the industry does not necessarily see that the predictability in those areas is very great and good. One thing that could be very helpful from the Sami side is to clarify areas of great importance at a very early stage, maybe even prior to prospecting of those areas. That could increase the predictability for the industry quite a lot, because to have that clarification later on in a situation where you have spent tens of millions of dollars is a little bit late. To have that clarification would probably give a better predictability. Of course it is understandable to have a very comprehensive map of areas of great importance would be impossible. But to show the major areas of great importance where mining could
have severe consequences, could perhaps help the companies and help the government as well. Dagestad also noted the difference between Canada and the Nordic countries’ legislation. The difference has to be seen in a context of very different legislative culture, between common law countries and civil law countries. Especially in Nordic civil law countries we do have a tendency to regulate much more than in Canada. The advantage is that you are secured of minimum rights in a very comprehensive and good way. In Canada you can make agreements that can go further, but there is a flip side of the coin. You can also make quite lousy agreements. The benchmark in Norway is much higher than the lousiest agreements in Canada. So there is a flipside of this coin.

Tore Johnsen, General Secretary of the Sami Church Council commented on the principle of free prior and informed consent, which is now a very important principle made exclusive in the UN declaration on the rights of indigenous peoples. Talking about the challenge of implementation; how do governments and industry define the content of this principle? And it seems to be a concern, a tendency amongst industries and governments in many countries, to reduce this principle to a principle for more consultation. So actually it makes free prior and informed consent a principle about free prior and informed consultation. Johnsen then asked: what is the obligation of the government, in this situation in Norway, to make clear its own position on how to define and interpret this principle of free prior and informed consent, and how to the experts on the panel see the relationship between the principle of consultation and the principle of free prior and informed consent?

Matti Berg asked if he understands this rightly, that the ILO convention 169 should make his position stronger in Sweden. Why hasn’t Sweden ratified the convention?

Kristen Molvik Botnmark from Sibelco commented on the expectations in terms of predictability, and that Anaya pointed out something very important about defining the rights. What are the rights specifically? She noted as Dagestad, the need to make a framework or baseline for the sober and proper discussion and dialogue. So predictability in line with all the other things already mentioned about framework, legislation and so on, understanding the expectations, in regards of the human rights and rights of indigenous peoples specifically, would help the dialogue.

Riikkaa Aaltonen, senior advisor of the Finnish Ministry of Employment and the Economy told that there is a new mining law in Finland, in force since first of July 2011. They have still very little experience with the implementation of the law. And as far as she knows there haven’t been any big problems with the local Sami as it is called in Finland. The government are keeping an eye on these issues and they are going to evaluate the law later on.

Final round of comments from the panel:

Bård Dagestad referred to his earlier point that one of the greatest needs in the further dialogue is to try and agree on a baseline for the benefits and impacts. That would be tremendously helpful because there are myths on both sides, definitively on how small –
how big the impacts and benefits are, and what we are agreeing or disagreeing on. About the question of free, prior consent versus consultation; there are no vetoes in the mining law in Norway. There are only obligations to take into consideration. There are also obligations to take into severe consideration, and to give it a high priority. But there are no vetoes. That is also a challenge to the reindeer herding community, that the legal aspects in the Norwegian mining law is severe consequences for Sami culture and the reindeer husbandry and the Sami way of life. In the contact with the mining industry it’s very important that the emphasis is on the consequences of the case in question. Pamphlets do not carry the same weight as quite sober explanations of the consequences.

Per Wallén noted that the question put to Sweden was simple enough, but that he hesitated to answer it though, because when answering it he wanted to be 100% correct and not 80% correct. The responsibility for this question lies within the rural ministry, not the Ministry of foreign affairs to which he belongs. Therefore he refrained from answering now, but would see to it that an answer was given. As Dr. Anaya pointed out, it seems that Russia, Finland and Sweden do not have a protection, not as well as Norway has.

Regarding consent vs. consultation Rune Fjellheim said that it is an international debate where the negative forces in the negotiations have advocated for consultation instead of consent because it sort of softens things up. In Norway we have a consultation agreement, often causing some confusion. Fjellheim referred to deputy minister Tone Toften’s intervention where she said it very clearly that the consultation agreement actually aims for agreement. So it aims for consent. That whole process is a consent building process. It doesn’t work 100%, but it works in 95% of the cases. Regarding the Nordic countries, comparing Norway, Sweden and Finland, Fjellheim believed that unfortunately today, it is fair to say that one can just follow the money. The more money invested in mining, probably the less strong position the Sami side has to protect their rights. At the present there is a situation where most of the activities are probably in Finland, and where the Sami voice is weakest. Then it’s some more in Sweden and least on the Norwegian side. And the governments are probably talking together like this “how do you get all these investments here, we have to do it like you” and on the Sami side there’s the discussion on “how do you get so little in Norway, and why do we have so much in Finland”.

James Anaya further commented on the consultation and consent issues, saying that in fact, these are not opposing concepts; free prior and informed consent and consultation. The UN declaration on the rights of the indigenous peoples, which uses these words, free prior and informed consent, uses them in association with consultations. The declaration says exclusively that the state shall consult and cooperate in good faith with indigenous peoples, in order to obtain the free prior and informed consent. It’s not a free-standing principle, free prior and informed consent. Anything that happens that might in any way affect an indigenous people automatically triggers some right to veto. This principle is a safeguard principle. It safeguards the substantive underlying rights. The principle is triggered when
those rights might be affected, the rights over land, resources, the right to culture, the rights in connection with places for example, the right of indigenous peoples to set their own priorities to develop. One project might affect these rights. Then the duty of consultation comes into play, as a safeguard to protect these rights. What is consultation to achieve? It is to identify how these rights might be affected. It is relevant to the impact assessment. The consultation is relevant to developing consensually, mitigation measures. It is relevant to developing benefit sharing arrangements. And it is relevant to identifying what aspects of a project need to be altered or cannot go forward at all, because to do so would impact the rights they infringe upon. That is what the consultation is about. Now, what if at the end of the day there is no agreement on particular impacts and mitigation measures? The way the standard has been developed and applied is such that if the impact is significant one way, and would cause a violation of that right, the project needs to be altered so that impact does not go forward, or it needs to be shelved. It simply cannot go forward with that fundamental impact on the right. If a town is going to be removed, and people’s way of life is going to be fundamentally altered, so that their right to continue with their culture intact is undermined perpetually that project simply shouldn’t go forward. Not because there is a right to veto, but because their rights would be fundamentally infringed. We go back to the rights. We need to identify from the outset, what rights should influence the matter? And that is called the safeguard of consultation, and consent comes into play.

Matthias Åhren lastly noted that the mining companies should be more mindful coming to the Sami territory and do their homework before investing those 10 million dollars. He agreed upon what was said, about a baseline. Åhren also commented on the question on why Sweden doesn’t ratify ILO 169. He believed that the reason Sweden is not ratifying ILO 169 is not necessarily that the Swedish population is hostile to Sami rights and so on, and that there is right now a lack of respect for Sami. But the problem is that they don’t know where this end. If Sweden ratify ILO 169 and recognizes land rights, they don’t know if this will end up with Sami opening mines in Kiruna. Will the Sami block other kinds of development? Åhren said that it is a need to come with a comprehensive solution proposal on what is understood with Sami land rights. There is a need for an agreement so that legislators in Norway, Sweden, Finland, and Russia know exactly when they recognize Sami land rights, how far does it go? Where does it stop? What is the predictability? This uncertainty right now is a blocking progress, he said. From the Sami side it must be said that “this is as far as we are going to take it, and we will not take it any further”. Then maybe an agreement can be reached, a comprehensive solution that allows for both traditional livelihoods and development.
SESSION IV: INDUSTRY – INDIGENOUS PEOPLES INTERACTION

Courtney Fidler, University of Saskatchewan

Speaker notes: Experiences from cooperation between extractive industries and indigenous communities in Canada

Introduction: Few would disagree that the last quarter century has witnessed a fundamental change in how Aboriginal groups and the mineral industry in Canada operate. Within this transformative extractive climate, a transactional approach has been taken up and is most evident in impact benefit agreements (IBAs), signed between mining proponents and Aboriginal groups. The existence of IBAs to maximize industrial certainty, and uphold aboriginal interests by enabling cooperation through reciprocity, would otherwise be difficult to achieve exclusively through the Crown.

A reflection of the current reality of doing business, mining companies are now expected to pursue their interests in ways that also promote those interests of the communities and regions in which they operate. The mining industry is increasingly approaching mineral development with indigenous communities, in a manner that accommodates local concerns about mine development and integrates community input to the planning and design of mining projects. In so doing, mining companies can avoid, mitigate or compensate for land and resource conflict so that business can proceed with much greater legal certainty.

In this introductory presentation, I will touch on the rationale for parties entering into agreement, standard provisions, and conclude with some takeaway lessons based on case studies, to set the stage for subsequent case studies in Norway and Sweden.

Overview: Agreements are negotiated for different reasons, depending on the particular land and resource rights, the regulatory framework in place. The framework to account for environmental impacts from resource development can include two distinct, but linked processes. First, environmental assessment (EA), which is governed by legislation and overseen by regulatory agencies, and second IBAs. Both mechanisms can simultaneously shape and inform the direction of a prospective development to ensure that adverse impacts are minimized and positive impacts are maximized.

There are a lot of different kinds of agreements; some begin early on, such as communication agreements, whereas others like IBAs can deal with the life cycle of the mine – most are confidential. It’s important to note that agreements don’t mean consent for the mine. Negotiating an IBA should mean FPIC, way of saying YES, based on these conditions. In many cases IBAs are negotiated because communities feel the project will go ahead regardless. Benefits are not always a matter of choice for Aboriginal communities in Canada, and many direly need them and are among the most disadvantaged in the country. Such communities do not have the luxury of saying no and are overwhelmingly not opposed to development – in fact they desperately need it.
There are more than 120 IBAs in Canada; a figure that will likely increase with time. Governments in Canada support IBAs because of their practical use in furthering community relations, providing economic benefits to communities, and providing some degree of stability between such communities and proponents.

**Content:** Monetary benefits are often a key component to IBAs and can consist of equity ownership, royalties, foundations, trusts and funds. IBA provisions frequently include employment and contracting opportunities, training and educational programs, and environmental protection programs (TK, cultural heritage management plans). While the context and content of agreements vary considerably on a project to project basis, the following offers some account as to why IBAs are common place in mineral development.

**Rational:** Aboriginal people are using IBAs to 1) build on the EA process, particularly in the realm of socio-economic and cultural issues; and, 2) to further aspirations and objectives of the community by investments that aim to add value to the community and contribute to long-term development. The increased preponderance of IBAs is in part linked to the emergence and development of Aboriginal title and rights recognition (i.e. greater political power), which gives rise to Aboriginal peoples political legitimacy to act as decision makers rather than stakeholders, on their territory.

Industry is approaching mineral development with Aboriginal peoples in a twofold manner: 1) accommodate Aboriginal concerns regarding the project and transplant this knowledge into the project design and planning process, and by so doing, 2) ensure infringement and grievances are at a minimum – mitigated, compensated. For the mining industry, which is commodity cycle (i.e. time) sensitive, it is imperative to have a social license to operate to ensure that business proceeds effectively with minimal uncertainty and opposition.

**Final Observations:** Though based on the Canadian experience, the lessons identified are broadly applicable to IBAs internationally:

1st, successful agreements hinge on community trust, which should be inherent in IBAs. Ascertaining this level of trust requires genuine participation of the indigenous community and ongoing communication between the mining company and the community.

2nd, it is well known that capacity is often limited in indigenous communities to participate in EA, and that most EA systems provide limited resources to facilitate indigenous community involvement. There is an opportunity through IBAs to enhance the capacity of indigenous communities to become engaged in resource development by, for example, providing funding for participation in the EA.
3rd, there is a danger with IBAs of blurring the lines of responsibility and accountability between the mining company and government with respect to indigenous communities. Successful agreements require clear delineation of roles and responsibilities. The lack of clarity concerning who is responsible for what, the blurring of responsibilities under IBAs versus regulatory obligations, can lead to confusion for all parties and a breakdown in communication.

IBAs can deliver real benefits, however agreements need to be considered within the larger legal framework.

For additional information: visit IBA Research Network
Experiences of cooperation between extractive industries and indigenous communities in Canada

Overview

- Impact Benefit Agreements go above and beyond the prescribed regulatory process.
- Mining companies are now expected to pursue their interests in ways that promote those interests of the communities.
Parties: Roles & Responsibilities

STATE
- Houses Mine Approval Process
- Duty to Consult
- Environmental Assessment

ABORIGINAL GROUP
- Reciprocal obligation
- Cannot veto a project

MINING COMPANY
- Wants certainty
- Surrogate to the State
- Proactive Approaches: IBAs

Parallel Process

- Environmental Assessment and Impact Benefit Agreements
  - Both shape and inform the direction of a mineral development
  - Minimize adverse impacts and maximize positive impacts
Types of Agreements

- Endless different agreement framework options: reflect the project's context
- More than 120 agreements in Canada

Standard IBA Provisions

<table>
<thead>
<tr>
<th>Article</th>
<th>Exemplary Clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cultural Initiatives</td>
<td>Social Support, Protection and use of TL, Protection of Heritage and Sensitive Sites</td>
</tr>
<tr>
<td>Environment Initiatives</td>
<td>Environmental Policies, Environmental Impact and Protection, Reclamation, Waste Disposal, Monitoring, Land Use Planning</td>
</tr>
<tr>
<td>Economic and Education Initiatives</td>
<td>Favouring Trading Partner Status, Aboriginal Representation, Training Plan, Education Fund, Scholarships, Contracting, Revenue Sharing</td>
</tr>
<tr>
<td>Consultation</td>
<td>Project Advisory Committee, Public Meetings, Government action Approval</td>
</tr>
<tr>
<td>Legal &amp; General Provisions</td>
<td>Aboriginal, Treaty &amp; Constitutional Rights, Agreement, Interest and Environmentally, Dispute Resolution, enforceability, Confidentiality</td>
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Rationale

- Aboriginal – 1) build on the regulatory EA process; 2) further aspirations and objectives of the community
- Industry - 1) accommodate Aboriginal concerns regarding the project and transplant this knowledge into the design and planning process; 2) ensure infringement and grievances are at a minimum – mitigated, compensated.

Take Home Lessons

- 1st, successful agreements hinge on community trust
- 2nd successful agreements require clear delineation of roles and responsibilities
- 3rd consider agreements within larger legal framework
Questions?

- Are IBAs a long-term sustainable solutions?
- Who benefits in the long-run?
- Should there be greater involvement of the state?

More Information

IBA Research Network

http://www.impactandbenefit.com/

Collaboration Interest?: ReSDA – Resources and Sustainable Development in the Arctic
Experiences from Sweden

Presentation from Christina Lundmark, SweMin

Mining and Exploration in Sweden and Relations to the Reindeer Husbandry

Christina Lundmark
2012-09-10

SweMin

The Swedish association for mining, metal and mineral producers and exploration.
- Approx. 40 members
- Focus areas:
  - Land access
  - Exploration
  - Environment
  - Health and Safety
  - Energy and Climate
  - Competence
  - Treaties with unions

www.svemin.se
Ethical rules of SveMin

The task of the mining industry is to supply the society with minerals and ore in a responsible manner and with long-term profitability.

Sustainable development

- Minerals and metals are essential to a well-functioning and modern society. Metals are produced from ore and can be continuously recycled.

- SveMin members will promote sustainable development and efficient, balanced, long-term management of energy and natural resources while showing due consideration for people, economy, environment and the society in general.
SveMin Reindeer Husbandry Committee

- Within the SveMin Exploration Committee a special Reindeer Husbandry Sub-Committee has been formed with members from both mining and exploration companies.
- The workgroup has had several contacts and a meeting with the Swedish Saami Association, SSR.
- Contacts has also been taken with the Saami Parliament in Sweden.
- The intention is to develop guidelines for work in Sápmi.
Exploration permits in Sweden 2011

Map from the Geological Survey of Sweden

Areas covered in Sweden

- 0,02% (100 km2) - Mines
- 0,03% (135 km2) - Quarries for industrial minerals and dimension stone
- 0,12% (531 km2) - Golf courses
- 10% (43 559 km2) - Nature reserves, national parks etc.
- ca 40% (160 000 km2) - Sami villages
Cooperation and agreements

- At some locations there has been disagreements, but a lot of good examples exist on cooperation between the mining industry and the reindeer husbandry.
- Agreements with Saami villages concerning work with Reindeer husbandry inquiries in connection with Environmental Impact Assessments.
- Agreements on reimbursements for extraordinary work for the reindeer husbandry in connection with exploration activities.

Thank you for your attention!
Presentation from Niila Inga, Reindeer herder, Laevas sameby

My name Niila Inga am a reindeer herder in Laevas Saami community, the most southern Sami community in the municipality of Kiruna. I am among the youngest reindeer herders in the Sami community and have taken over from my father who took over from his father and so on. I don’t know how many generations back this goes.

In Laevas Sami community, we have more than 8,000 reindeer distributed across about 170 reindeer owners, and 18 of us work full time with the reindeers.

We have pastures ranging from Norway to the east of the Lapland border. In the summers our pastures are on the Norwegian side of the border and in the winters we are down in the forest lands halfway to Gällivare / Tärendö. Reindeers have migrated along these paths for thousands of years. On the map, our lands seem large, but the reality is another.

Laevas Sami community is one of the most heavily exploited Sami communities in Sweden. We are impacted by seven different mining projects and two wind farms that are in the start-up phase.

Anyone who says that mining and reindeer can live side by side do not know what they are talking about, they haven’t seen our reality. We have survived and adapted to the state owned LKAB in Kiruna and Svappavaara for over 100 years (which is the biggest mining actor on our lands), so I know what I’m talking about. We have gradually, bit by bit, had to move out of the way as mines expand, and our migration routes and pastures have become tailing ponds or waste rock dumps. Today, the reindeer have still not accepted that their pasture lands have been turned into industrial areas, so most of the year the reindeer end up there, and we spend a lot of energy and time trying to get them out of these dangerous areas, in co-operation with LKAB. In the current situation, our communication is good with LKAB: it has only taken a little over 100 years to work that out. But over the last hundred years, and especially when the mine started, the herders, my ancestors, did not have much of a say, but simply had to accept their fate for the sake of the major economic interests at stake.

One cannot in any way claim that we are reactionaries, and trying to prevent the development of society, we are just trying to survive. The mining industry often speaks of various adaptations and mitigation measures, but how do reindeer adapt when the pastures disappear and migration routes are cut off? They starve to death.

However, progress is being made and very slowly the Swedish government is beginning to accept the rights of indigenous peoples, one example is the city of Kiruna conversion. Large parts of the city of Kiruna must be moved for mining to continue, and in the project, which involves not only houses to be moved, but also railroads and roads, etc., the Sami communities affected have been involved from the planning stage and have explained how we want it. And we have actually been listened to.
When you put all these intrusions into my Sami community on the map, both proposed plans and established projects, the future looks bleak. What shall we live off? How will I be able to conduct a controlled reindeer husbandry on broken lands and fragmented pastures?

We are forced to start acting tougher. If we just sit in consultation meetings and negotiate compensations, we will have soon negotiated away our history and our future, for money. How can we defend such behavior to future generations? What do we leave behind us?

A concrete example where we have pulled the emergency brake is Kiruna Irons plans at Rakkuri, Kiruna Iron was previously owned by Scandinavian Resources, now Hannans Rewards is the owner. As you can see on the map, which is a rough sketch, Laevas saami community will be cut in half if the mining plans go ahead. Although the company claims that they are only in the exploratory drilling stage, we are doing everything possible to try to stop these plans. If a mine is built here, reindeer herding will be extinguished in my Sami community. Adaptation and mitigation measures cannot help us; the impact is too large for reindeer husbandry to survive in this area. With this disappearance of the reindeer, so too disappear our history and our future.

It is said by the company that they comply with Swedish law and all environmental requirements, it seems to me that is an obvious prerequisite, and anything else would be terrible. They also say that they have a good communication with us and are taking into account the reindeer herding, good communication in my eyes would have been if they really had listened to what we say and abandoned the mining project.

The same company or its parent company holds a large share of exploration permits in our area, and it scares me.

Kiruna Iron AB also has mining plans on the lands of our southern neighboring Sami community of Girjas. When you put the plans into this context the picture is terribly frightening, it’s not just the reindeer herding affected by these mining plans, the impact on our environment is immense, rivers affected, hunting and fishing areas disappear, recreation areas disappear.

These impacts have resulted in a collaboration started in autumn of 2011 between concerned parties, including Laevas, Girjas, holiday home owners and permanent residents along the Kalix River who are together trying to try to stop these mining plans. This work is progressing at the same rate as the mining company plans to start mining. I and my colleague Matti Berg from Girjas are leading this collaboration.

What makes it difficult for us Samis on the Swedish side is that the Swedish government has accepted the Sami as its indigenous people, but in no way lives up to its commitments to protect us from this kind of intrusion that threatens to devastate our lives.
From the mining industry side the industry association SweMin has started a sub-committee for the relations between the reindeer husbandry and the mining industry, but on the first meeting with Sami representatives they refused to accept our rights. Such an committee without any Sami representation seems to me quite worthless.

My hope is first and foremost that Kiruna Iron realize that they are killing reindeer herding in several reindeer communities and that they abandon their plans.

And that the Swedish government does something about this mining boom going on everywhere in the Swedish part of Sápmi and makes companies respect our rights.

Do you really have to dig up everything that is under the ground for the sake of money? What happens to mother earth when we have taken all the natural resources that exist? And at the same time sweeping under the carpet those indigenous people who live in great respect and reverence for nature?
Laevas Sameby
Laevas Sameby

LKAB Kiruna mine,  
Laevas former calving lands
Laevas Sameby
RAKKURI PROJECT

Consequences
What kind of future do we want?

Thank you!
A Case from Norway

Presentation from Øystein Rushfeldt, CEO Nussir

Can mining coexist with traditional Sami activity?

Øystein Rushfeldt, Nussir ASA
Sep.10, 2012

The nature of mining

- Mining has consequences
  - Footprint (use of land)
  - Environmental impact

- Is mining necessary?
Change in attention

- Recent events
  - Establishing FEFO «Finnmarkseiendommen»
  - New Mineral Act (1 jan 2010)
  - New guidelines from Sametinget
  - Political focus on minerals
  - Increased prospecting, particularly in the North

Coexistence

- Can mining coexist with traditional Sami activities
- Can mining be an integrated part of a Sami society?
Status in Finnmark

- Potential new projects in Finnmark
  - Store Norske
  - Arctic Gold
  - Scandinavian Resources
  - Nussir

- +200 MNOK spent 2007-2011

Fundament

- Nussir ASA is focused on reaching a broad based public consent for its activity
  - Existing activities needs to experience both a protection of their interest and a benefit from the new activity
  - Early involvement
  - Full transparency
  - True dialogue
Dialogue

- Dialogue meetings (40-50 meetings 2009-2012)
  - Fiettar(22), Fala(20), Vest Finnmark Reindriftsforvaltning
  - Sametinget
  - Områdestyret for Vest Finnmark

- Agreements
  - Intentional agreement suggested for Fiettar/Fala
  - Intentional agreement signed with Sametinget

Use of land

Area: 1844 km²
Reindeer herding: ca.96%

Area: 0.4 km²
New area: <0.1 km²
ESIA, Zoning plan and permits

- Nov-09  Dialogue groups started
- Jul-10   ESIA scheme adopted by Kvalsund Municipality (KM)
- 3-Jun-11 ESIA, ROS and Zoning plan submitted to KM
- 30-Jun-11 ESIA, ROS and Zoning plan prepared by KM
- 15-Sep-11 Consultation with 120 receivers
- 8.Mai-12 Zoning plan approved by KM
- 19.Sep-12 Mediation with Sametinget and Områdestyret
- H2-12 Discharge permit from KLIF
- H1-13 Mining concession from Directorate of Mining
- 2015 Operations

ESIA submitted June.2 2011

- Most comprehensive ESIA ever in Norwegian mining industry
- 20 studies, including:
  - Society
  - Marine life
  - Marine fish
  - Noise and dust
  - Biodiversity
  - Tailings properties
  - Reindeer herding
  - Sea Sámi issues
  - Landscape
  - Tailings placement
  - Salmon
Open pit or underground - natural causes

Tailings in sea or on land – natural causes
Society

- Active engagement and cooperation can make a major difference

- Ripple effect project established
  - Main activities
    - Permanent settlement
    - Supplier network
    - Education & recruitment
The road ahead

• Continue direct and equal talks

• Find acceptable solutions locally

• Government should support local agreement
Extractive industries and indigenous peoples

Reindeer herding district 22- Fiettar
Ragnhild Marit Sara

Reindeer herding district 22- Fiettar

• Traditional indigenous saami reindeer herding summer, calving and fall grazing area
• 3 siida’s (groups of reindeer herding families)
• Livelihood for approximately 120 peoples
• Long historical use for the past several centuries
Reindeer herding district 22 - Fiettar

Highly pressured by industrial development in the reindeer herding areas:

- 132 kV power lines
- Cabin site
- Roads
- Hydropower
- Planned wind mills
- Planned power plants
- Planned 420 kV power line
- All this in addition to the **proposed mining**
Law protection?

• Reindeer herding district 22 went to court in 2001-2003 against the massive expansion of the cabin area
• Established in the judgement from Hålogaland lagmannsrett, that the tolerance limit in reindeer herding district 22, is considered exceeded once in the 1970-80 century
• So when are the reindeer herders` rights to be considered infringed?

Co-existence with the extractive industries?

Both documentation and knowledge available on the devastating impacts of development in reindeer herding areas
Experience from earlier impacts

- Substantial loss of grazing land
- Abandon our calving grounds
- Migration became difficult
- The district had to stop the mineral surveys in court in 2008, because of enormous impacts in the middle of the calving period

Cooperation?

- Win-win situation
- Respect
- Dignity
- Trust
- Predictability

Reindeer herders needs protection and support from the Norwegian Government, The Saami Parliament and other authorities
Summary

Reindeer herding district 22 – Fiettar
has clearly stated resistance against the proposed
development in the reindeer herding areas

Is this statement to be respected?

Any need for dialogue if there is no respect for the
reindeer herders' view of the matter?
Summary of Q&A Session

In the panel:

- Mr Øystein Rushfeldt, CEO Nussir ASA
- Ms Kristin Molvik Botnmark, Sibelco Nordic
- Mr Lars-Åke Claesson, Arctic Gold
- Mr Anders Blom, Swedish Sami Association (SSR) and the project Protect
- Mr Anders Oskal, Director of the International Centre for Reindeer Husbandry
- Mr Pavel Sulyandziga, Russian Association of Indigenous Peoples of the North, Siberia and the Far East (RAIPON)
- Ms Alexandra Guaqueta, Member of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises

Moderator: Mr John Morrison, Institute for Human Rights and Business

Summary:

Marja Anttonen from the Reindeer Herders’ Association of Finland commented on the situation for Finnish and Sami reindeer herders. In the Finnish reindeer herding areas there are currently three mines operating, and at least seven mines are planned. None of these are in the Sami home area, but they are still at the reindeer herding area of Finland. Mineral exploration is going on also on Sami home area. There are 56 districts or cooperatives in Finland. 13 of them are located in the Sami area. The impacts of the mines are the same for the Finnish reindeer herding, which are suffering from direct and indirect (due to changes in reindeer pasture use) loss of pastures, fragmentation of pasture areas, uneven grazing pressure and difficulties on reindeer herding work, which again have impacts on the profitability of the herding and on the reindeer herding culture and way of life.

Anders Blom pointed on all the different kinds of impacts from the new development of new explorations, thus it is not sufficient to only discuss from a mineral point of view, an accumulated perspective is needed. The area used for mining can be regarded as a small area, but one has to also consider roads, railroads, the need for energy, and the pollution and environmental impacts that all add to the picture. There are places where coexistence is possible, but we have to accept that in some places coexistence is not accepted.

According to Øystein Rushfeldt, it is important to remember that the Kvalsund municipality is a sea-Sami municipality that is in dire need for some kind of new activity. There has been a drop in population, and there is a desperate need for some new activity, which could be mining, or it could be some other activity. In order to keep this sea-Sami community alive and keep it as a stronghold for sea-Sami cultural tradition, this is a balancing act against other effects, such as the fisheries, reindeer herding or environmental effect. It is quite a challenge to try to balance all of them, but as the project has been developed and the current plan with no major use of new land areas, the reindeer herding should to a large extent be able to continue as before. Nussir has also suggested that the reindeer herders
enter into agreements that will assist the reindeer herding to develop their activity, so that
the mining activity can be a positive thing for the reindeer herders when all things are taken
into consideration. When it comes to the power lines, they are not new power lines for the
Nussir project, but these other activities are stand-alone activities that cannot be “put into
the box” with Nussir. But of course it makes the map look much more challenging for the
reindeer herding industry. Nussir has asked the authorities to comply with the wish from the
reindeer herders to look upon all these activities in one assessment, and Nussir can pay their
share of this assessment, but cannot lead it as they are only one of the involved parties.

Anders Oskal commented on a point made earlier in the debate that 0.2% of the land area is
going to mines. He said that there might be, as we are aware of, also other types of impacts,
namely those of pollution that will spread beyond that area. On the other hand, stating that
40% of the Swedish area is used by Sami reindeer herding is a figure that should be
examined a bit closer, because change in land use and loss of pastures is recognized as the
major long-term challenge for reindeer husbandry, and has been so for a long time.
Furthermore, “a square meter of pasture may not be a square meter of pasture”, referring
to the complexities of reindeer herders’ nomadic pasture use and that some parts of the
pastures are key to sustain the whole system of pasture usage. Referring to deputy minister
Toften, who talked about the added value of consultation, and the director of the Mineral
Directorate (Bård Dagestad) who spoke of the baseline, Oskal pointed on traditional
knowledge being very important. For these processes to work there has to be a very
different acknowledgement, that in fact there is no one who knows their home areas, their
grazing areas, better than the reindeer herding Sami, who knows how their reindeer use
these areas, and how the reindeer react to different impacts. And this is a type of knowledge
that has been tested, and is tested every day, but is rarely included into management and
governance in an effective way. This often leads to reindeer herders and their perspectives
being brought on the stage very late in development projects. Too often they are asked to
either say yes or no to plans that have been laid out already. The especially regretful part of
this is that to the extent that there is a potential for coexistence, it is left out because the
reindeer herders’ own knowledge is not effectively included.

Alexandra Guaqueta pointed on two things from her own country and experience. One is
the issue of planning for development activities, and it’s a classical challenge that happens
everywhere. At the municipal level, there is going to be different types of economic
activities, like mining, tourism and agriculture. There has to be someone who is pulling the
threads together, and sees how these activities work as a whole in a particular region. That is
what local development planning is for. In that planning exercise, you need the
communities, political processes and companies onboard, in order to be able to bring all the
information to that local development planning. And that local development planning needs
to hook up to national development plans as well. One of the benefits of having public
authority serving as the coordinating energy, is that it is very difficult to expect that one
company, one mining company, will go and talk to a hotel and say “well, now I want to talk
to you because I need to understand your social impact, and then I have to go down the road and talk to the electricity company, and then up the road and talk to the other ones”. That is not the role of businesses. Public authority is there to do this co-ordination. Of course these issues are going to be difficult, and you’re going to have to balance needs and interests. Ultimately you can say “well, we are one of the economic activities in this region”. Is it going to be sustainable economically? Then you have to see the impacts. It just brings in up the extra size of integrated local municipal development planning. Now, the second point made was the relevance of information data. We need to have the information onboard, reliable information that takes into account local knowledge. We have to systematize that data and bring evidence based information into the discussion, so that it is not driven by ideas or passion.

Ole Kr. Fauchald from the Fridtjof Nansen Institute linked up with the last speaker, concerning the facts or the factual approach to predicting the impacts of mining activities. He has been critical about (environmental) impact assessment and the way that industry and the assessors have come closer and closer together. There is a tendency of dependency between those who are assessing the impacts of these activities and those who monitors them. After the establishment of these activities you have similar companies involved in the monitoring of the activities, and the public authorities are in a way outsourcing a lot of their responsibility, and insuring that there is neutrality in this part of the process is important. Interested by one comment from Nussir concerning how they approach this issue of impact assessment, and wonder how this was perceived by the Sami interest.

Øystein Rushfeldt responded to this point about who is paying for the environmental assessment, he said: The reason why we are paying is not that we would like to get rid of the cash, but it is because that is stated in the law that we are obliged to pay for the assessment. I do understand that this immediately creates this potential for paying for “correct” or wanted answers. That was the reason why we asked the reindeer herders, the fishermen and the salmon groups themselves to point out the institutions, and even the persons, that should do these assessments. The reindeer herders chose NORUT, the fishers chose Akvaplan, the salmon society choice NIVA to do that. And we didn’t ask for prices from others, we just accepted these persons and paid for it. The idea was that this should create a stronger ownership to the results of those assessments. This is a good way to get around this feeling of paying for certain answers. And certainly, if the government would like to pay assessments in the future, that is okay with us.

Katrine Blom spoke on behalf of Davvin, an environmental organization based at the University of Tromsø, about the discussion on marine ecosystems and the planned dumping of mining trailing in the Repparfjord in Finnmark. Norway, being one of only five countries in the world that allow dumping of mining trailing right into the fjords, she found this a very important issue to address. The Norwegian institute of marine research has done an independent environmental assessment that strongly advises against the companies’ plan on
dumping. How can there be coexistence between planned mining activity and with traditional fishing in Repparfjord?

Øystein Rushfeldt responded to the question on dumping, and stated that there is no such activity in the Norwegian mining industry. Nussir will never be involved in dumping. The use of this word is to criminalize the activity. In the case that Nussir got a legal permit to a sea-tailings placement of tailings, which is not dumping. And the experience from other such activities in Norway, and also abroad, in Canada when it comes to copper mines, does not indicate a close down of fisheries or salmon rivers. That is the reason why this method has been chosen as the best method for this project.

Ragnhild Marit Sara, reindeer herding district 22 problematized how it is possible to balance interests, which actually are rights - human rights and indigenous peoples’ rights. How to manage that?

Lars-Åke Claesson pointed on a quite good relation with most of the local people and the local reindeer herding people, and that they have agreements with most of the Sami districts. From the very beginning they have been discussing things such as timing: when can there be mining work and when not, and when it is not possible to be in the same area at the same time and so on. But they have run into the problem that the political majority of the Kautokeino municipality does not allow an impact study. They have actually taken a vote against the work to show what the impacts would be. The Bidjovagge mine has been a mining camp twice before. The plan area for mining purposes is about 7 square kilometers or 7,000 dekar. Looking for continuing the ore bodies, but also to extend it because seen there is a potential for more ore to be found in the neighborhood. Exploration has been going on since the early 50s. He had heard about both negative and positive sides, the road up to Bidjovaggi was built, 40km from Kautokeino to Bidjovaggi and it has been a good opportunity for the reindeer people to use it. The reindeer people are building an area for slaughtering due to the large amount of reindeer in the area. The local politicians are regarded as a problem and a big risk for the mining industry since it is of national interest.

Pavel Sulyandziga presented an intervention in Russian. Translation follows:

Sulyandziga expressed his gratitude to organizers for opportunity to participate. He was involved into the policy to protect of indigenous peoples’ rights since the war with industrial company that purchased our territory in Soviet times in the end of 1980s. His personal experience of negotiation with business was very negative. At one of the UN meetings in 2002 that was dedicated to industrial companies he said that he will never sit at the table with business for negotiations. But in 2006 he was one of the first leaders of indigenous peoples that signed the agreement with one of the biggest industrial companies in Russian Far East which wanted to receive the piece of land on territories of his people.

From his experience of negotiation between indigenous peoples and industrial companies he said that they have no other alternative except cooperation. Unfortunately nowadays
several groups, the states and industrial companies think that they are the only main figures that have the right to make decisions. He said that indigenous peoples have to understand that we are not the main figures also in decision making. But at the same time we have to insist that we are the part of the bodies that have the right for decision making with our own rights and duties. And he emphasized once again that indigenous peoples have no alternative to dialogue. But when the industrial companies come to territories of indigenous peoples with their plans to extract resources and organize the negotiations with indigenous peoples it often means the survival for indigenous peoples and the benefits and money for industrial companies unfortunately. Very often that means the development and enrichment for one part and the curse for the other.

He recalled that the UN in one of the first studies on indigenous peoples made the conclusion that “indigenous peoples are only ones who don’t migrate after capital”. States searched the new lands with the aim of their own development and economics. The business came on and left the territories, but the indigenous peoples stayed on their traditional lands and were endured their misfortune. One has to remember why the discussion sometimes becomes too sensitive for indigenous peoples. That’s a question of their survival.

As about the Russian Federation he couldn’t say that there is a similar situation as in Norway. The situation is very different. In Russia there are a few such companies that follow almost all the international standards of human rights and indigenous peoples’ rights. He could list them using the fingers of one hand. First of all there are the companies with foreign investment or those having the loans from international finance institutes. Many of the international finance institutes have their own policies on the indigenous peoples’ rights. And these companies have to follow the requirements of the banks if they want to receive the money.

He said that in Russia there is no system on how the companies have to work with indigenous peoples. So the companies work as they want in that field. In every region there are different situations. Even Gasprom which is very big company, works very correctly with indigenous communities in one region, while in other regions like a bull in china shop.

That’s why he unfortunately couldn’t say that they have any state policy in that field in Russia. That’s why the indigenous peoples and Raipon organize so many discussions with industrial companies and insist that they have to adopt the international standards to protect and respect the indigenous peoples’ rights.

**Anders Oskal** responded to the statement from Arctic Gold. The municipality, the people in the municipality and reindeer herders do have experience with mining in that area. For instance, the former company Outokumpu Oy had promised to sow grass in the impacted fields to re-vegetate them, which basically never materialized. So there are some questions on credibility for the mining industry that may or may not be relevant/associated with the
new company Arctic Gold. While the road was mentioned, the affected reindeer herders just last week explained the difficulties with that road to him. Contradictory to the statement from Arctic Gold, the road is seen as a clear problem for reindeer husbandry because of other people’s use of it, with subsequent disturbing of reindeer on the winter pastures and so on. This leads to another question, namely that of predictability. The industry says they need predictability to be able to exploit the resources. One must however also focus on predictability for the other group, in this case reindeer herders who have been using these areas for generations and generations: These are their traditional lands where they grew up, and these are the lands where they see a future for their children. In order to get a good starting point for any collaboration, there is a need for trust. The development concerning the regional boards of reindeer herding (in Norway) were mentioned as an example. These boards are composed of the reindeer herders and others with a mandate, according to law, to bring about objections to development projects, if coexistence is not possible. This does not mean that the project is automatically stopped, but it’s brought out of the municipal system, up to the Ministry of the Environment, or there can be a mediation process with the regional governors. Now, recently the government of Norway has proposed to change this system, dissolving these regional boards. The possibility to object to development projects are proposed to be given over to the regional governors, meaning that there will be less consultations and possibility to have an impact on the actual process, according to reindeer herders. Many reindeer herders also see this in relation to the rather aggressive discourse in the media on the new mining opportunities in the north of Norway. This is not the best starting point, if one really wants to have trust and a dialogue with the people that are very seriously affected by development.

**Anders Blom** described situations in Sweden with about 5000 planned windmill turbines, planned mines and tourism. This means that every Sami community is asked to take part in 30-50 meetings each month. And obviously, it is not easy to have a high quality dialogue if you are asking people who are not professional skilled to do this dialogue, people who actually has to be out in the forest, taking care of their reindeer. So in order to have a dialogue, based on Sami rights, there must be a capacity building for the Sami communities to take part in all of those dialogue meetings. Otherwise everything we have been talking about at the seminar is just nonsense. You can’t have rights issues count if you don’t have the resources to protect them. Reading in newspapers last week, the Swedish government is investing 5,3 billion Swedish crowns in mining infrastructure in the northern parts of Sweden. We know that the High North vision in Norway will see similar investment. When will there be the corresponding investment in human rights? When will we see capacity building that enables the right holders to take part in that dialogue we are now requesting? We have to solve that. Otherwise we should stop talking. Otherwise, the talk about human rights is just a talk, Blom said.

**Kristin Molvik Botnmark** drew the attention to Sibelco, which has co-existed with the Sami people at Stjernøy for 50 years. There have been bumps in the road, but she claimed that
the coexistence could serve as an example for how it can be done. She was also referring to some of the debates earlier in the seminar, and Mr. Niila Inga asked “do we need to dig up everything under the earth for the sake of money?” That is a rhetorical question, and about impact, which we have been talking a lot about today, versus purpose. Mining industry, like it or not, has a purpose. She challenged both the panel and the participants: are we able, around this table, on this floor, to also look into the global welfare perspectives? When we are talking about the win-win, on which levels are we talking about win-win - maybe not locally, but definitely globally? The extraction industry is on this earth because there is a need. And in some parts of the world it is a need based on welfare needs. And what might help us in this dialogue, bringing all the perspectives in, which we all need? Maybe we need some greater involvement from a governor perspective, some more coordination of the various interests, to sort this dialogue out, in the aim of coexistence.

Alexandra Guaqueta said that there is going to be local specificities like the Nordic countries and the Sami people. Also non-indigenous peoples are facing the same challenges. And the way forward is clearly asking for a greater coordination role from public authorities in a way that matches legitimacy and accounts for local people. That is about the coordination role to mediate between the developments needs of entire nations. We all need hospitals, schools and education. And those need to be paid for. As we do respond to the needs we know what invariably works: Processes that have good information, independence and credibility.
PLENARY DISCUSSION: THE WAY FORWARD. ARE SUSTAINABLE PARTNERSHIPS POSSIBLE?

In the panel:

- Ms Jeanette Iren Moen, Deputy Minister, Ministry of Trade and Industry, Norway
- Ms Riikka Aaltonen, Senior Advisor, Ministry of Employment and the Economy, Finland.
- Ms Laila Susanne Vars, Vice President of the Sami Parliament, Norway
- Ms Elisabeth Gammelsæter, Secretary General of the Norwegian Mining and Quarrying Industries, Norway
- Mr James Anaya, UN Special Rapporteur on the rights of indigenous peoples
- Mr Matti Berg, Girjas Sameby, Reindeer herder
- Mr Sergey Gushchin, First Secretary for the Russian embassy in Norway.

Moderator: Mr John Morrison, Institute for Human Rights and Business

Summary:

John Morrison introduced the next dialogue. This last section had no formal presentations, thus Morrison first opened the floor for interventions from the audience. One issue was the question of the possibility of coexistence between the mining industry and the indigenous peoples. Morrison asked what the criterions for informing this discussion are, and posed the following questions: Maybe we have the criteria already, and maybe the panel can help with this. But after all conditions and circumstances, the coexistence is not possible, what happens then? What does non-coexistence look like? And then, under what criteria is coexistence desirable? But then that opens up all sorts of other questions of what happens next? What processes are equitable? Which criteria should the process perceive? What are the different models of equity? The earlier sessions have dealt with the role of indigenous peoples in business itself. In the mining sector, are there models of ownership or co-ownership? Is Canada a place to look for these models? Where is coexistence possible? One take-away from the Canadian presentation is the idea that indigenous people are engaging in partnerships because they fear the alternative, that the projects will proceed even if they do not participate. Maybe somebody wants to contest that? Are partnerships truly possible in environments where there actually isn’t a choice? Are we talking about real choices?

Anders Oskal, Director of the International Centre for Reindeer Husbandry, commented on what was said about the purpose of the mining industry, and noted that according to the United Nation’s prognosis there will by 2050 be 8,9 billion people in the world with basic need for food. A point on its own is that reindeer herding pastures are very marginal, but even so the reindeer husbandry is able to produce food from these very scarce resources. Then he talked about unpredictability, climate change and land use change that are really
changing the arctic in very fundamental ways. These challenges are interconnected and come on top of every other challenge that global and indigenous communities may be facing. As the ice melts, new trading opportunities arise. And what we’re seeing is really that the arctic is rapidly becoming an integrated part of the global economy. In that context, there should be an equal right and possibility for all to develop business, a possibility should be a possibility for all. For instance, in the Yamal-Nenets autonomous region in western Siberia, the authorities have focused on small, private indigenous people businesses. The Association of World Reindeer Herders has also been suggesting new fair-trade regimes - in other words that when national states and entities extract and use natural resources from the reindeer pastures, they should also be obliged to buy and use other products from the local reindeer herding communities, benefitting the local economies and value added. Mentioned one example from Norway, as a paradox where state regulations are used to stop digging down bio-products from reindeer slaughtering, mainly content of the stomach which is basically biological, meaning that small scale/field-based slaughtering of reindeer in practice has become impossible. It is a paradox that the same regulations are used to permit deposits of mining waste. What is done to support increase of local value added to those who are most affected?

Matthias Åhren, Sami Council pointed on the need to nuance the use of the word “coexistence”. There are already a lot of mines in the Sami areas, referring to Ragnhild and Niila and others who have stated that now it is enough, one cannot take any more. In many communities any further mines cannot be in coexistence with reindeer herding. That would be too much. On more mine will lead to the end of reindeer herding in that area. That is the case when talking about the possibility of coexistence. He also commented on the argument that from the Sami side one has a responsibility to provide the rest of the world with minerals, and he finds nothing fair in that. The Sami people, he said, are probably the people that provide the world per capita with the most minerals of all.

Aileen Espiritu, Director of the Barents Institute asked whether we tend to place indigenous peoples, governments, and industry in separate silos. She pointed out that perhaps indigenous peoples want to cooperate with mining industries and want to benefit from mining in the same way as non-indigenous groups and business leaders within those communities. Espiritu argued that the prime example of this is the great, big gigantic island between North-America and Europe -- that is Greenland. The Inuit population on Greenland definitely wants to develop their resources through mining; they want extractive industries, and they want to be the leaders in the extraction of resources from their land and territory. Where do the aspirations of indigenous peoples fit when they themselves want to be developers of their land on their own terms, within the context of mining and outside the frames of traditional economics?
Kathrine Johnsen, University of Life Sciences studies land use conflicts in Finnmark, and she asked the Ministry of trade and industry: What is your role in mediating conflicts and facilitating dialogue between the different interests?

Tore Johnsen commented on what is happening in Canada in relation to the tar sands. He referred to the Beaver Lake Cree first nation, who filed a lawsuit against Canada and the province of Alberta in 2008. The authorities are now allowing so many projects in their traditional lands, that their treaty right to hunt and fish, which is protected by the constitution, is totally ruined. They have 17,000 infringements on their rights in their lawsuit. And Canada said that “well, you can’t file a lawsuit with 17,000 infringements. You need to file 17,000 separate”. Both Canada and Alberta has tried to make the court reject the issue, but in April this year, the court said they have the right to have a court case. Another thing is that this is the first time when Canada had a prime minister from Alberta. And now (Harper) has his second period, when he was elected it was the first time that the political power moved from the east to a western state. As the oil price rose, there was a boom in the tar sand. In June, this summer, the parliament of Canada adopted a social budgeting and the important part of that bill is to relate to environmental policies, so environmental organization just have a short time to comments on industrial projects. According to Johnsen, Canada is an example of what is happening with the policies when the market value of a resource is big.

Anders Blom, Swedish Sami Association and the organization PROTECT pointed on a few examples of coexistence. Some years ago there were two Sami villages in the Northern parts of Sweden that jointly formed a plan for a windmill park in their areas. They identified a good company and formed an agreement with that company. Everything was well so far. That agreement was based on an initiative of the indigenous people in the area, and full acceptance of Sami rights. What happened was that the county council denied the project because it was ugly for the landscape. It was dropped. So there are examples of coexistence, but it is not easy. Blom also asked about comments on how one can provide capacity to Sami right holders to actively be a part in the dialogue.

Svein Mathiesen, International Center for Reindeer Husbandry in Kautokeino pointed out that only Igor Federov said something about further development of reindeer husbandry or development of the indigenous livelihood. Why is there a problem to say that “yes we have local reindeer, we could develop indigenous people economy” when the Arctic is changing? The vision of the Arctic is going to change, and there will be mining industry. But developing the Arctic, one has to include everyone. Mathiesen emphasized that believing in reindeer husbandry is something for the future. He asked about what has Norway done to build competence in the mining communities, mining companies and indigenous communities. When listening to the mining companies there is a lack of knowledge. Arctic Gold says they respect the laws of democracy in Kautokeino. But what has Norway done in the collaboration between Russia and Norway on building competence? Mathiesen also asked
how courses are made, and how future indigenous leaders are trained. According to Mathiesen there is no kind of progress, from the mining association or mining companies, nor from the state. Mathiesen referred to a meeting two years ago in Kautokeino, organized by Helga Pedersen, when the mining initiative started on the Norwegian side. What have Norway done to train the indigenous societies, to meet the new vision for Arctic?

Kristin Molvik Botnmark Sibelco Nordic referred to the Stjernøy example, and what she would call coexistence. She emphasized that the discussion made it appear as if there are no relations. In practical lives there are communities and also Sami people basing their livelihood, some of them, on actually being employed by the mining industry. According to Botnmark, the debate doesn’t have to be as polarized as it seems to be so far in the seminar.

Mari Bangstad, National Contact Point Norway for the OECD Guidelines for Multinational Enterprises commented on the balancing of interests. She informed that 44 countries, including Norway, Finland and Sweden have established so-called OECD national contact points (OECD NCPs) for non-judicial dispute resolution. These NCPs offer dialogue and mediation. Bangstad then invited Dr. Anaya to provide his view on how the NCPs could safeguard indigenous peoples’ rights.

John Morrison, Mari Bangstad and Alexandra Gaqueta had a clarifying discussion on complaints to the OECD NCPs and nationality of the company. In general, the enterprise must be multinational. Anyone can submit a complaint, and the Norwegian NCP handles complaints against Norwegian enterprises with international activities or non-Norwegian enterprises in Norway. It was commented that the type of situation discussed in the seminar needs a deep process and engagement involving governments that perhaps a non-judicial grievance mechanism that deals with individual cases will not be able to address.

John Morrison then introduced the panel and the topic on the way forward.

Matti Berg referred to the concepts of coexistence and predictability, both are needed. The Sami people in Sweden need the right to say no to companies, because with the right to say no there is also a right to say yes. When going into negotiations on equal terms, one could start to find some way to create a predictable society. Today mining business comes into Sami areas, talking about 10 – 15 – 20 years. The Sami have been there for hundreds of years, producing food. In the future food is going to be needed, all over the world. So the question is really what way we should think in the future. Should we have indigenous people? Should we have any reindeer husbandry in Sweden, or should we just put it back in the history books? And what is going to happen with his country in the future, because he lives close to the mine. He sees what happens with the nature around the mine, and referred to numbers mentioned by Christina Lundmark on how much area mining takes. But that is not the truth. The truth is that they touch much more land for him, because of all

[1] Through i.e. ownership, joint ventures, production of goods or services, trade (supply chain) or investments.
infrastructures, all the pollution. Every day reindeer gets killed by trains. Every day rivers get pollution. The reindeer herders lose the land every time.

**Sergey Gushchin** briefed on Russian state policy in the mining issue, and did not quite agree with the panelist who thought there is no such policy. The Russian Constitution guarantees and protects rights of indigenous peoples and these rights are followed in the land code, water code, tax code and forest code of Russian federation. Then, there have been some new developments in the legislation recently. There is a draft, it’s not voted yet, to present or introduce special territories of traditional nature management, where indigenous people will have priority of access to hunting lands, water supplies and whatever they are doing for centuries. So there is a plan to designate three levels of such territories: federal level, regional level and local level. There is also introduced on a governmental level a method of calculation of damage and compensation of this damage to local communities, and the government has an agreement for industry, to establish with local communities on future possible damage compensation. He talked about some positive examples of Russian business cooperating with indigenous people, and named a big company with a special desk on protection of the rights of indigenous people. It gives direct economic aid to families of indigenous peoples, gives them fuel, diesel, and facilitates infrastructure and ways of getting education for children of indigenous peoples. Companies establish on a regular basis contracts of agreement with heads of clans of indigenous peoples living in the area of their future projects. Gushchin then spoke about international cooperation. Russia will host the Second International Decade of the World’s Indigenous Peoples; there will be a several events within this decade. He also informed about cooperation between Russia and Norway on matters of indigenous peoples. On the way forward he concluded: “I think you have been talking about partnership. It is a very distant goal. Maybe we can talk first about direction and dialogue, and then as a way to coexistence, then we can create a basis for future partnerships.”

**Laila Susanne Vars** commented on the contributions from Niila Inga and Ragnhild Marit Sara, and said that they illustrate better than thousand impact assessments the challenges that the Sami communities face on a daily basis. She also said that the governments of Norway have put the Sami parliament in a position which makes it almost impossible to achieve coexistence, predictability for all and even sustainable partnerships. The aim of the Sami Parliament is to build bridges between the cultures. One question is that when the Norwegian government does not provide us with the building material, how are we supposed to build these bridges? When it comes to the role of the Sami parliament, the Sami parliament could not accept the mineral act of 2009, because it is not in compliance with international law. It is quite a burden for the Sami parliament to be responsible for all this dialogue, all over Norway, between reindeer husbandry, between the sea-Sami interests, between the hunters, gatherers, and various types of industry. The Sami Parliament is obliged to secure the human rights of the Sami. But when the mineral act does not provide the framework that we need, we are in an impossible situation, Vars said, and continued:
“We are in fact forced to have different, various kinds of negotiations on different levels, with different mineral industries. So no one should be afraid that the Sami parliament will infringe any rights of the reindeer herders, because we don’t have that right. We cannot give away the grazing rights of Fiettar. So we have been very open with Nussir, and other companies, that we don’t have that mandate.” How can the Sami be active participants in the dialogue? Well, if you require that the Sami, the reindeer herders and all the others, should have dialogue with mineral industry, all of the local and regional authorities – there would be no reindeer herders. They would spend all the time talking. And we cannot have that kind of situation. The Sami parliament has established a foundation called Protect, in order to build up the capacity within the Sami society. The Sami themselves need to map the existing industry, and see the impacts that they already have, and to make up their own mind on how to develop the communities.

James Anaya emphasized the states’ duty is to protect the human rights of the Sami people, and in doing so, take the long view, not just limit that duty to specific cases of initiatives of the mining development, or other resource development. He raised the question about what kind of coexistence there can be overall, how Sami reindeer herding can, in the longer term, continue. Coexisting with mining, and at what level? And with that longer view, he thinks there has to be discussion about what kind of models of mining extraction, industrial mining extraction, is there going to be? The classic model is what we see being discussed. Companies coming in, developing their own projects, then proposing them to the government, and trying to sit down with Sami people to get them to agree to it, and agree to mitigation measures. But there are different kinds of models that we’re seeing around the world, where indigenous peoples are developing their own resource development companies, and are participating in joint-ventures with industry, or with government, to develop mining, or to develop minerals and other resources. He emphasized the need for serious discussion with this long term vision, about what kinds of model are going to be in place. And with that there is a greater chance of compatibility. There is a greater chance of indigenous peoples generally, in this case the Sami people, of being in control of their own destinies, genuinely exercising self-determination. On the part of industry, the responsibility to respect human rights, the Sami people has to be taken seriously. Beginning with identification of what those human rights are, the industry itself must be thinking about different kinds of models, not the classic model, but thinking beyond the classic model of industry taking initiative to engage in partnership arrangements. If the mining is going to take place, Sami people have to be involved from the very beginning of the development of the project. The project design itself is a product of that discussion. The discussion isn’t at the end of the development of the design, but at the very beginning of it. And only if that takes place can he see sustainable longer term coexistence of large scale industrial mining, with indigenous peoples’ rights over their land and resources. Anaya would encourage that kind of discussion. This is a step along that path; again the optimism in the seminar discussions being a precursor to that kind of discussion, but discussions need takes the long view, and then includes a component of capacity building. How can the indigenous, in this
Jeanette Iren Moen commented on what was said about the total local impact, not just regarding mining, but other areas as well, and that we might have to look at better systems for coordination in our country. She would bring the discussion back to the involved ministries. Moen believed that coexistence is possible in the future, maybe not all the time, maybe not everywhere. But in many cases coexistence is possible. And she emphasized the need for real dialogue and cooperation; want to take part in the dialogue. And that goes for both sides. She also underlined the need for competence building in all areas, in the decision process, in the companies, and educating geologist with local competence. Referring to her earlier intervention, she told that the Ministry is going to map out a strategy for the mineral sector. And amongst this, education and expertise will be important, research and development, surveying of mineral resources, not only in the northern parts of Norway. And predictable governmental processes and regulations is the key is here.

Elisabeth Gammelsæter stated that mining is essential to the future. Green industries cannot develop without mining. Also the Sami people need minerals. 4-wheelers, snowmobiles – these are mineral products. Norway has potential; Norway also has strong legislation and higher standards. The consequence of no coexistence is that other people are going to do it instead. We will not get the benefits to Norway, and we will not have control of the effects. Local consequences, local value added is very important, Sami drilling companies, Arctic drilling. They are drilling north in Kautokeino. They are important suppliers to the mining industry. Not all prospecting leads to exploration. Not all exploration leads to establishment of mines. Gammelsæter pointed on one of the lessons from today; that is the need for strong governments to balance the effects, the industry will respect a no sometimes, but sometimes even the reindeer have to be herded a different way. She made a final point: “Our industry needs competence, and would love for Sami youth to choose mining careers. We need to keep increasing our understanding culture, and to anchor our projects locally.”

Riikka Aaltonen mentioned that the existence of mines has been questioned quite a lot in Finland, not only by indigenous people, but of all stakeholders, land owners, local communities, since there have been some issues with environmental aspects. That has become a challenge for mining companies. They have to earn their social license to operate, which they are working a lot on. But unfortunately the mining companies were very surprised. That fulfilling the legal demands isn’t enough in modern the world. Greenland was mentioned here, and their interest in starting mining. In that perspective she said, the Nordic countries, Finland, Sweden, and Norway have the obligation to give their expertise in mining and also the good ways of dealing with, and telling about the hazards, so that when Greenland is starting, is in the beginning of this path, they get the best possible knowledge. We can provide the education needed, so that the locals can get benefits from this industry.
And finally, if mining is establish in northern parts of the country, the indigenous people should be thinking of this business opportunity.
CONCLUDING REMARKS

The seminar was arranged in order to capture three main dimensions of the relationship between the mining industry and indigenous peoples: the standards of international law applicable to states and the industry; governmental regulations that impact the interaction between indigenous peoples and the industry; and the interaction itself between the industry and indigenous peoples.

The consultation and consent principles constitute a special standard for the exercise of indigenous peoples’ substantive rights, and the standards of consultation and consent is not an end in itself, nor do they constitute stand-alone rights, as underlined by UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya. The message from Anaya and Expert Member of the UN Working Group on Business and Human Rights Alexandra Guaqueta was clear; the duty and role of the states is to protect human rights through appropriate policies, regulation and adjudication. But business enterprises also have an independent responsibility to respect human rights, including the rights of indigenous peoples.

The paramount duty of the state in protecting human rights at all levels of state institutions and against violations by third parties was further emphasized by Senior Researcher Mark Taylor in the session on governmental regulations. The concept of human rights due diligence has been applied in the mining sector in order to safeguard human rights in conflict situations. Following from the Guiding Principles on Business and Human Rights which was endorsed by the Human Rights Council in 2011, governments should elaborate a standard of compliance for business to respect human rights; outline ways that business can meet the standards; and developing enforcement mechanisms in case standards are not met. However, compliance is not simply a function of enforcement or penalties; it is also about efficacy and legitimacy. Thus, as Taylor pointed out: the dichotomy between soft, promotional or voluntary activities and harder, regulatory or legal action is not very helpful for the purpose of policy. Instead, the overall government policy must find ways to encourage business to respect human rights and at the same time put in place rules that require business to respect human rights.

As shown by Guaqueta, the guidelines can provide governance solutions with a rights-based approach, by making the social and specific human rights impacts visible, allowing the companies to sharpen their risk assessments and address the impacts, and bring the state back in to fulfill its obligations to ensure the realization of socio-economic rights by people.

The Deputy Ministers Torgeir Larsen and Tone Toften gave an account of the experiences with the Norwegian consultation agreement between the government and the Sami Parliament, which has enhanced the awareness and knowledge of Sami issues in
government ministries and agencies. But at the same time the 2009 Minerals Act illustrate
the different understanding of what is required to establish trust. After the Sami
Parliament’s rejection of the Minerals Act and the adoption of the same act by the
Norwegian Parliament (cf. President of the Sami Parliament Egil Olli’s opening address), the
Sami Parliament has developed their own mineral guide for exploration work and operations
relating to mineral resources.

Seen from the perspective of the mining industry, the lack of predictability is a challenge for
investment. Therefore, as stated by the Secretary General Elisabeth Grammelsæter, the
industry is prepared to create its own predictability by engaging in dialogue with the
stakeholders. Ensuring a predictable framework for the mineral industry was also a point
made by Deputy Minister Jeanette Iren Moen. The issue of predictability was also raised in
the debate, and a point made was that the reindeer herding industry in some areas has
survived the mining industry and other livelihoods, has been economic viable, but also this
livelihood is in need of predictable frameworks.

This issue of predictability linked to different forms of exploitation is a challenge for the
reindeer herding industry. Both of the reindeer herders Niila Inga and Ragnhild Marit Sara
told about heavily exploited Sami communities in respectively the Kiruna area in Northern
Sweden and Finnmark in Northern Norway – areas being exposed bit by bit, where migration
routes are cut off. Also other participants told about areas impacted by different exploitation
and development projects like mining, power lines and plants, cabin sites, roads, railroads,
and planned wind mills in the herding areas. How is it possible to assess the impacts without
evaluating all the intrusions – broken lands and fragmented pastures? Thus, change in land
use and loss of pastures is a major challenge for reindeer husbandry, and therefore
according to some of the participants sometimes coexistence between reindeer herding and
mining activities is impossible to accommodate.

Dependent on domestic law and governance, the countries of the circumpolar north seem to
apply somewhat different approaches in their dealings with indigenous peoples and
extractive industries, and the governmental-indigenous interaction reveals different country
specific strategies. Given the clear ambitions of the states in expanding mineral extraction, a
relevant question that was raised is whether or not there are mechanisms in place to protect
the rights of indigenous peoples. Undoubtedly all countries struggle with an implementation
gap, but there are differences regarding the size of this gap. As pointed out by many of the
attendees, major legislative and administrative reforms are needed in countries where
indigenous peoples live to adequately define and protect their rights over land and
resources.

Then what about the industry-indigenous relationship; do the actors share some common
features across state borders? Apparently to some degree the industry and indigenous
rights- and stakeholders are approaching each other. General Manager Christina Lundmark
told about meetings and engagement with the Sami Parliament in Sweden, in the
Norwegian-Sami context CEO of Nussir Øystein Rushfeldt emphasized the need to reach a broad public consent for the activity of Nussir, and referred to a range of meetings with different rights- and stakeholders. For indigenous peoples in Russia there is no alternative to dialogue with the industry, but few companies act in compliance with standards of human rights.

The Canadian context seems to illustrate the most comprehensive formal relationship between the mining industry and indigenous peoples. As PhD candidate Courtney Fidler accounted for, case studies from Canada show how impact and benefit agreements (IBAs) are signed between mining companies and Aboriginal communities in order to establish formal relationship between them, aiming to reduce the predicted impact of a mine and to secure economic benefit for affected communities. The key component of the agreements is monetary benefits. But as pointed out by Fidler, in many cases IBAs are not a matter of choice for Aboriginal communities, they do not have the luxury of saying no and are overwhelmingly not opposed to development, but in desperately need it.

The three main dimensions of the relationship between the mining industry and indigenous peoples that were accounted for, are revolving around concerns like the roles of public controlled (state) solutions, private industry solutions and indigenous and community arrangements in civil society. The governance of mineral resources and how this interconnectedness – the governance interactions of this triangle unfolds itself, raise several questions: Are the processes and procedures, i.e. the activities of the three spheres, involving new or changed practices of interaction between authorities, indigenous peoples and the industry sector? During the debate, core questions of traditional versus newer and different models of extractions were brought to the table. Are the models of extraction consequently still controlled by corporations and state agencies without involvement of indigenous peoples? Who are benefiting from royalties and taxes? Are there any indigenous share in ownership and management, and are there examples of indigenous peoples developing their own business enterprises? The impacts and benefits of development projects can be substantial, both socially and environmentally, and therefore it is important that these are communicated clearly. The discussion brought up the notion that in order to avoid problems during a development process, it is important to establish good procedures for how to create a baseline of facts that is credible for all involved rights- and stakeholders. However, the creation of this baseline requires the fair involvement of all rights- and stakeholders in agreeing on a consensus on what the baseline should be.

The Arctic governance structures are dominated by states, and the question of how the state can play a special role in safeguarding indigenous rights and interests is highly topical. During the seminar discussion this role was emphasized and illustrated, such as municipalities as planning authorities, and the role of public authorities serving as the coordinating agency that takes the responsibility of overseeing the totality of different impacts, including avoiding severe environmental impacts.
As pointed out by both moderator John Morrison and Ambassador Sverre Stub in their concluding remarks, the questions raised at the seminar illuminate the complexity of multi-stakeholder cooperation; still the constructive dialogue constitutes a solid platform for further and continued conversations.

Seen from the Centre for Sami Studies’ point of view it is necessary to emphasize the need for additional knowledge building, particularly in the field of mining governance and indigenous rights, including the integration of local knowledge as part of decision-making. A notion that was brought up during the seminar was the need for an investment in both capacity building and other “infrastructure” for safeguarding human rights, in order to enable rights holders to participate in dialogue on equal footing with industry and authorities. Thus there is a demand for study programmes and research projects that aim to contribute to the discussion on how to improve insight in relation to the governance challenges that arise as consequences of large-scale changes. In order to achieve real participation for indigenous peoples and inhabitants of the Arctic region in politics, management and industrial developments, at national, cross-border and international levels, the role of rights, indigenous self-determination and co-determination needs to be further explored.
APPENDIX - PROGRAM

Extractive Industries and Indigenous Peoples

Tromsø, Norway, Monday 10 September 2012

Seminar organised by the Government of Norway and the Working Group of Indigenous Peoples of the Barents Euro-Arctic Council

9 Sept
19.45  Bus from Rica Ishavshotel to Tromsø University Campus
20.00  Reception at Árdna, the Sami cultural house of the University of Tromsø
21:45  Return to the hotel by bus

10 Sept
08:00-09:00  Registration in hotel lobby, Rica Ishavshotel
09:00-09:30  I. WELCOME AND INTRODUCTION

Opening address:
- Mr Torgeir Larsen, State Secretary, Ministry of Foreign Affairs, Norway
- Mr Igor Gennadievich Fedorov, Governor Nenets Autonomous District, Russia
- Mr Egil Olli, President of the Sami Parliament, Norway
- Ms Elisabeth Gammelsæter, Secretary General of the Norwegian Mining and Quarrying Industries, Norway
- Mr Lars Anders Baer, Chair of the Working Group of Indigenous Peoples of the Barents Euro-Arctic Council

Moderator: Mr John Morrison, Executive Director, Institute for Human Rights and Business

09:30-10:15  II. INTERNATIONAL FRAMEWORK AND STANDARDS APPLICABLE TO RESOURCE EXTRACTION ON INDIGENOUS PEOPLES’ LANDS

- Mr James Anaya, UN Special Rapporteur on the rights of indigenous peoples
- Ms Alexandra Guaqueta, Member of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises

10:15-10:30  Coffee break

10:30-12:15  III. GOVERNMENT REGULATION/FRAMEWORK FOR INTERACTION BETWEEN INDIGENOUS PEOPLES AND THE INDUSTRY

- Mr Mark Taylor, Senior Researcher, Fafo Institute for Labour and Social Research: Introduction
- Ms Tone Toften, State Secretary, Ministry of Government Administration, Reform and Church Affairs, Norway: Procedures for Consultations between State Authorities and the Sami Parliament
- Ms Jeanette Iren Moen, State Secretary, Ministry of Trade and Industry, Norway: Regulation of Mineral Activities in Sami Areas
- Ms Lotta Lauritz, Legal Advisor, Mining Inspectorate of Sweden (Bergsstaten)

PANEL DISCUSSION
- Mr Bård Dagestad, Directorate of Mining, Ministry of Trade and Industry, Norway
- Ms Lotta Lauritz, Legal Advisor, Mining Inspectorate of Sweden (Bergsstaten)
- Mr Rune Fjellheim, Director of the Sami Parliament, Norway
- Mr Klemet Erland Hætta, Mayor of the municipality of Kautokeino, Norway
13:15-14:45  IV. INDUSTRY – INDIGENOUS PEOPLES INTERACTION

- Ms Courtney Fidler, University of Saskatchewan: Introduction: Experiences from cooperation between extractive industries and indigenous communities in Canada

Presentations of experiences from the region:

Experiences from Sweden:
- Ms Christina Lundmark, SveMin
- Mr Niila Inga, Laevas sameby, reindeer herder

A case from Norway:
- Mr Øystein Rushfeldt, CEO Nussir ASA
- Ms Ragnhild Marit Sara, reindeer herder and lawyer

Panel discussion
- Mr Øystein Rushfeldt, CEO Nussir ASA
- Ms Kristin Molvik Botnmark, Sibelco Nordic
- Mr Lars-Åke Claesson, Arctic Gold
- Mr Anders Blom, Swedish Sami Association (SSR) and the project Protect
- Mr Anders Oskal, Director of the International Centre for Reindeer Husbandry
- Mr Pavel Sulyandziga, Russian Association of Indigenous Peoples of the North, Siberia and the Far East (RAIPON)
- Ms Alexandra Guaqueta, Member of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises

Q&A session

14:45-15:00  Break

15:00-16:00  - PLENARY DISCUSSION: THE WAY FORWARD. ARE SUSTAINABLE PARTNERSHIPS POSSIBLE?

- Ms Jeanette Iren Moen, State Secretary, Ministry of Trade and Industry, Norway
- Representative from the Government of Russia (name tbc)
- Ms Riikka Aaltonen, Senior Advisor, Ministry of Employment and the Economy, Finland.
- Ms Laila Susanne Vars, Vice President of the Sami Parliament, Norway
- Ms Elisabeth Gammelsæter, Secretary General of the Norwegian Mining and Quarrying Industries, Norway
- Mr James Anaya, UN Special Rapporteur on the rights of indigenous peoples
- Mr Matti Berg, Girjas Sameby, Reindeer herder

Q&A session