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Anthropological expert review: socio-cultural impact assessment for the Russian North

HIGHLIGHTS

- Anthropological Expert Review (AER) is a Russian form of socio-cultural impact assessment, aimed at evaluating the effects of industrial projects on northern indigenous communities, their culture and traditional livelihoods.
- AER is based on anthropological fieldwork, which includes working with the affected indigenous communities to identify critical natural resources, water sources and sacred sites.
- AER is generally carried out by experienced anthropologists who are familiar with the local context, in collaboration with local communities.
- Without a federal law on AER, there is no legal obligation for companies to commission an AER. Some of Russia's northern regions have started to introduce laws on AER, yet regional legislation lacks weight without the federal law.
- There is a need to build competencies within federal and regional government departments to address gaps in implementing and enforcing AER recommendations.

The concept of anthropological expert review (etnologicheskaya ekspertiza) was first introduced in Russian law in 1999. It refers to the practice of socio-cultural impact assessment in northern regions inhabited by indigenous peoples, and its practice is particularly relevant in the context of extractive industry projects. The theory and practice of anthropological expert review (AER) evolved in response to the perceived lack of analysis of indigenous peoples' social and cultural issues in the standard environmental impact assessment (EIA) process for major industrial development. AER constitutes an expert opinion on the impact of such projects on the socio-economic development of indigenous communities and the preservation of indigenous peoples' culture and traditional way of life. AER enables the consideration of traditional knowledge and indigenous peoples' values in project-related decision-making. It also creates a viable mechanism for consultation. If an AER is conducted to a high standard, with sufficient consideration of indigenous concerns and consultation with communities, then it can build trust in a project.

Why is anthropological expert review necessary?

The concept of anthropological expert review (AER) in Russia corresponds closely to the notion of a socio-cultural or ethno-cultural impact assessment elsewhere. It has evolved to fill gaps in the practice of environmental impact assessment (EIA), although in general it is carried out quite separately from regular EIA procedures. Russia has a history, a legal framework, and an established system for carrying out EIA. The EIA documentation is assessed via a state environmental expert review (SEER) carried out by a panel of experts at the federal or regional level. Among the SEER requirements is a 'social analysis' and the EIA documentation is subject to public review and consultation.

However, in practice social and cultural questions tend not to get enough attention within the SEER process. In Russia an EIA is generally carried out by ecologists who tend to have a limited understanding of social and cultural issues, and sometimes even come into conflict with local indigenous communities over the results of an EIA. At best, the required 'social analysis' amounts to no more than a short characterisation of the local population that will be affected by the project, while the 'cultural analysis' is completed by archaeologists. Indigenous peoples are practically ignored. Moreover, the experts reviewing the EIA documentation also tend to have little experience of

assessing social and cultural issues. This situation is not limited to Russia, and has been widely reported in the literature on SIA and indigenous communities (Wilson 2017).

The only exception to this practice in Russia has been the integrated environmental, social (and health) impact assessments (ESIA or ESHIA) carried out for international projects, such as the Sakhalin-2 oil and gas project (Sakhalin Energy), the Yamal LNG (liquefied natural gas) project, or the Dvoinoye Gold Project (Kinross), following the requirements of the international financial institutions that are financing the projects.¹

AER is generally carried out by anthropologists from scientific research institutes, and is commissioned and paid for by companies. AER is a mostly voluntary practice, which is usually carried out in response to local community demands if they believe an EIA is inadequate, or following tension or conflict with local indigenous populations. In one Russian region (the Republic of Sakha (Yakutia)), AER is required by law, but there are some challenges in fully implementing that law in the absence of a Russian federal law (see below).

AER is a mechanism for interaction between local indigenous peoples, industrial companies, government agencies and scientists. An AER enables the analysis of the socio-cultural environment, including social dynamics, traditional livelihoods, cultural norms and practices, and the consideration of potential impacts on the community's culture and on their socio-economic development prospects. It may also include a review of the corporate policies and regulations of the company implementing the industrial project. AER offers a channel for indigenous communities to have their opinions and concerns heard and addressed. For companies, AER can be an effective risk-mitigation tool and, if conducted appropriately, it can be a powerful tool for building trust with local communities.

When carrying out an AER, experts may draw attention to the specific interests and peculiarities of indigenous peoples' lifestyles that warrant special attention. The most obvious ones for the Russian North include:

- The nomadic lifestyles of reindeer herders and the zoning of pastures, depending on the season and the significance of the pasture: for example, the lichens on which reindeer depend in winter are particularly vulnerable to disturbance, while spring pastures meant for

calving require special protection to provide quiet surroundings for the animals;

- Fishing and hunting grounds, used on the basis of customary law;
- Local dependence on water, as it is taken directly from open sources, which need to be carefully protected;
- Local diet, which includes a lot of raw meat and fish; and
- The use and value of sacred places in local people's lives.

As such, AER focuses on indigenous peoples' values and traditional knowledge in a way that cannot adequately be achieved in an EIA.

Legal and institutional background

In scientific research and in the development of policy and law, Russian anthropologists and legal experts are guided by international norms for the protection of indigenous peoples' rights, many of which have requirements for social and/or cultural impact assessment (Wilson 2017). Article 69 of the Russian Constitution guarantees the rights of indigenous peoples according to universally-recognised international norms.²

Of particular relevance to the work of Russian experts are: the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007), which is supported by Russia; and the Convention on Biological Diversity (CBD 1992), which Russia has ratified. When the Secretariat of the CBD produced the Agwe:Kon Guidelines on environmental, social and cultural impact assessment in 2004, these were published and distributed widely across Russia, contributing to the evolving debates. Experts also refer to the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples (1989) and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), neither of which Russia has ratified. The standards of the World Bank Group, including the International Finance Corporation (IFC) are also used as a benchmark for good practice in respecting indigenous rights in the context of industrial development (Martynova and Novikova 2012).

However, the evolution of concepts, legal documents and practices, both nationally and regionally, have been influenced primarily by the work of Russian academics and non-governmental organisations, by

resolutions adopted by citizens at public hearings, and via other forms of direct democracy. The Institute of Anthropology and Ethnology in Moscow has played a particularly significant role in the evolution of AER. In 1955 a department was set up within the Institute specifically to study Russia's northern indigenous peoples. At that time, in the Soviet era, scientists produced published and unpublished/confidential studies and provided direct advice to the government. In this way they were able to inform the authorities of the most critical issues related to indigenous peoples in the Russian North. This practice continued until 1994. The institute subsequently published a series of works based on anthropological fieldwork, analysing the lives and livelihoods of northern indigenous peoples. Many unpublished/confidential works produced during the Soviet era were published at this time. The studies of northern indigenous peoples produced in the Soviet and post-Soviet era covered diverse topics, but in many ways these can be seen as precursors to the AER as they had similar goals. Today anthropological research papers and books are generally made available to the public, although AER-related research can still be subject to confidentiality restrictions, depending on the company that commissions the work.

National legislation

The theory and practice of AER has developed independently from EIA, yet it is important to consider it in the light of EIA practice. The Russian legal framework for EIA (or OVOS)³ and state environmental expert review (SEER) has evolved primarily at the national level, influenced by international standards and instruments (see below). By contrast, legislation and regulations for AER have evolved both at the national level, and, significantly, at the regional level, due to the fact that AER is called for only in specific (northern) contexts, and owing to Russia's federal structure, which enables regional legislation to evolve in response to specific local demands (Novikova 2017).

Russian scientists and indigenous rights activists began to explore and promote the notion of an 'anthropological expert review'³ to make up for the inadequacies of the standard environmental expert review process, whereby EIA documentation is reviewed by a panel of experts and a project is approved or rejected on that basis. In particular, these processes generally fail to adequately engage local communities or assess social and cultural impacts, despite requirements for public consultation and disclosure of project documentation.

The process of state environmental expert review (SEER) is governed by the Federal Law on Environmental Protection (1991, 2002) and the Federal Law on Environmental Expert Review (1995). More specifically the EIA procedures are governed by the Regulations on Environmental Impact Assessment (2000), which supersede earlier EIA regulations of 1994. Over the years these procedures have been influenced by the US National Environmental Policy Act (NEPA) (1969), international conventions including the Aarhus Convention (1998) (not ratified by Russia) and the policies of international financial institutions (Cherp and Golubeva 2004). The 2000 EIA Regulations have more explicit requirements for making EIA materials publicly available, as well as public consultation. However, many industrial projects still fail to carry out public consultation adequately (ibid.).

The concept of AER itself first appeared in the Russian legal system with the Federal Law *On Guaranteeing the Rights of Indigenous Small-Numbered Peoples of the Russian Federation* (1999)⁴. Article 1(6) states that 'anthropological expert review is scientific research on how socio-cultural and livelihood changes affect ethnic groups of indigenous peoples'. But many experts believe that this definition is too vague. The scientific community and the wider Russian public view AER more specifically as an expert opinion on the potential impact of industrial projects on indigenous peoples' development prospects and the preservation of their lifestyles.

According to Article 8(1/6) of the same law, indigenous peoples have the right to 'participate in environmental and anthropological expert reviews'. Indigenous peoples may call for an AER to be carried out, take part in its implementation and review its findings, including the expert advice offered in the conclusions. However, the law falls short of obliging anyone (government agencies or companies) to commission an AER, and there are no federal regulations clarifying the AER methodology. This allows companies to refuse requests from indigenous communities, pleading confusion about how to go about it and arguing that in any case it is not a legal obligation. As a result, while indigenous peoples have the right to call for an AER and to participate in it, they do not have the force of federal law to back them up in making this happen.

Regional legislation

The only Russian region to have passed a law making AER mandatory for industrial projects is the Sakha Republic (Yakutia). The law *On Anthropological expert review in areas where indigenous peoples of the Sakha Republic (Yakutia) traditionally live and practice traditional economic activities* was enacted in 2010. This law outlines measures for the protection of indigenous rights in the context of industrial development projects. In this legislation, AER comprises two parts: 1) the assessment of impacts on the indigenous peoples; and 2) a compensation assessment.

This is an important legal development, but still requires further refinement. For instance, experts observe that the regulations governing the process of carrying out an AER are incomplete. There is no standard AER methodology and there are no specific criteria for selecting experts to carry it out. There are some concerns that the emphasis on the compensation assessment may lead to discussions between developers and communities that focus more on compensation than long-term sustainable development. There is also no mandatory requirement for government oversight or public monitoring of the implementation of the expert recommendations.

However, despite these reservations, and despite the fact that this law is relatively new and these processes will surely undergo further modification, the experience of the Sakha Republic (Yakutia) is extremely valuable. The implementation of AER in Russia's largest northern region will give a powerful impetus to related applied research and possibly also to the development of federal legislation.

Legislation relating to AER is also evolving in other regions. In the Yamal-Nenets Autonomous Okrug (YNAO), for instance, the main law relating to indigenous peoples and industrial activity is the *Law On protection of the ancestral environment and traditional lifestyles of indigenous peoples of the Yamal-Nenets Autonomous Okrug* (as amended in 2008). This law elaborates on aspects of national policy concerning the protection of the indigenous peoples' environment and traditional ways of life. In particular, Article 9 states:

In this autonomous region conditions shall be created for the assessment of impacts on the ancestral environment and traditional lifestyles of indigenous peoples. The procedure for [this assessment] shall be defined by the law of the autonomous region.

For several years, lawmakers in YNAO have been developing a specific law to implement this requirement.

Anthropological expert review in practice

Despite the lack of a federal law obliging companies to carry out AER, the practice has been repeated voluntarily throughout the Russian North. Companies tend to commission an AER following a conflict or on the request of a local community that feels the EIA/SEER process has been inadequate. An AER can be a useful tool for companies seeking recommendations from experts on the proper policy to be followed in relation to indigenous peoples. Several AERs have been carried out in the Yamal-Nenets Autonomous Okrug (YNAO). For instance, in 2012, Lukoil carried out an EIA that was approved by the SEER process, but local people felt that it was insufficient. They requested an expert review of the cumulative impacts of the activities of all the companies operating in their local area. This incorporated an element of AER. The decision to undertake the study was made by the regional authorities and the work was paid for by a regional fund.

On Sakhalin Island in the Russian Far East, the Sakhalin-2 project social impact assessment (SIA) was challenged by the local indigenous peoples, as part of a wider public protest in 2005. Among their demands, indigenous activists called for an AER to be carried out to supplement the existing SIA, which they felt was inadequate. In response to the protest, one of the project lenders, the European Bank for Reconstruction and Development (EBRD) requested that Sakhalin Energy conduct a gap analysis of the SIA, bringing in experts from the Moscow Institute of Ethnology and Anthropology (Tishkov *et al.* 2008). Following the gap analysis, the company did not carry out an AER, due to the uncertainty around the methodology. However, they did carry out a further set of studies of indigenous peoples' livelihood practices and potential project impacts, as well as a series of meetings between the indigenous representatives and environmental experts within the company to discuss the potential impacts and proposed mitigation measures in depth. This led to the negotiation of an indigenous peoples' development plan, which included support for indigenous peoples' livelihoods and cultural activities and has now been running for a decade.

Since the Republic of Sakha (Yakutia) passed its law on AER in 2010, there has been a lot of interest in how the law is being implemented in practice. Although some 200 industrial projects have been launched in the region since 2010, no more than ten AERs have been carried out. A key issue is that companies frequently argue that they follow federal law rather than regional law. The federal Land Code and the

Law on Subsoil (the main mineral law) do not oblige companies to carry out AER. At a public meeting in Moscow in 2016, the deputy speaker of the parliament of the republic, Viktor Gubarev, pointed out that since there are no relevant norms in federal legislation, companies are within their rights to challenge demands for AER at the regional level and to dictate their conditions for responding to those demands.⁵ Therefore, in his opinion, it is essential to pass a law on AER at the federal level.

A further challenge is the lack of clarity on specific requirements. The legal requirements in the Sakha regional law on AER are primarily related to the content of the assessment. However, the law does not specify the methodology or the kinds of experts required, specifying only 'social scientists' but not anthropologists. This sometimes leads to the inappropriate use of sociological questionnaires when in-depth anthropological field research techniques are essential. On the other hand, experts do need to have a flexible approach to AER, which should be responsive to the local situation, so guidelines should not be too regimented. At this point in time it is difficult to extrapolate general guidelines from the few

studies that have been carried out to date, which have all been very different. On average, the AERs that have been completed have taken around six months to complete, and so results are not immediately available. Moreover, it is not clear at that point what influence the recommendations will have on subsequent decisions. As such, it will take time to really understand the effect that a mandatory requirement for AER has had on relations between industry and the indigenous peoples of the Sakha Republic (Yakutia).

The lack of formal regulations governing the methodology for an AER at the federal and regional levels has not stopped anthropologists amassing and sharing their experiences and developing broadly comparable approaches to AER (Murashko 2006; Martynova and Novikova 2012; Novikova 2014; Golovnev *et al* 2014). Thus typically an AER is likely to include a study of the baseline situation; consideration of scenarios of future impacts, taking account of current trends and local attitudes; recommendations on how to optimise decisions and minimise adverse effects; and consideration of alternative development options. More specifically, an AER is likely to include research into the following questions (Box 1).

BOX 1. Research questions explored within an anthropological expert review

- Analysis of the relevant laws and regulations, standards, methods and past experience of AER in the Russian North.
- Analysis of the relevant company policy relating to indigenous peoples.
- Analysis of the traditional way of life of the indigenous peoples as it exists before the start of the proposed activity, both within the zone of operations and in the zone of direct and indirect project influence.
- Identification of communities of indigenous peoples and local residents, *obschinas*⁶ and other groupings, whose interests may be affected by the project.
- Data gathering and analysis of socio-demographic indicators for the indigenous and local people potentially affected by the project.
- Research into the livelihoods practices of the indigenous peoples potentially affected by the project, both directly and indirectly.
- Assessment of the social situation in the communities potentially affected by the project.
- Assessment of the state of traditional culture in the communities potentially affected by the project.
- Identification and assessment of the most vulnerable local ethno-cultural groups and territories potentially affected by the project.
- Identification and assessment of possible changes in the traditional way of life of indigenous and local populations as a result of the project.
- General prognosis for the ethno-demographic, ethno-social and ethno-cultural situation over the lifetime of the project, taking into account the baseline data.
- Development of measures to avoid or mitigate possible negative impacts of the project on the ancestral environment and traditional way of life of the indigenous peoples.
- Consideration of alternative development options and the relative impacts and benefits of those options for the local indigenous populations.

When conducting an AER, anthropologists study and evaluate actual and potential changes in people's way of life. The anthropological methods also allow for the exploration of socioeconomic, political, cultural and demographic factors. The ethnic groups under study are analysed not as homogenous entities, but more realistically as diversified and stratified communities in which individuals, households and social groups within the community may have different economic and cultural practices, linguistic preferences (Russian or their native language), needs and aspirations.

Often, the focus of an AER is a community with life strategies that differ from those of the wider society. The anthropologist's task is to let everyone voice their opinion, especially the most vulnerable groups – women, elderly people and young people. Protection of the rights of these people calls for special attention. The rights, interests and needs of those engaged in traditional natural resource use (hunting, fishing, gathering and reindeer herding) are also given special consideration. It is also important to consider those working in schools and administrative roles in towns or villages, who play an important part in supporting those engaged in traditional activities. Researchers face a challenging task: to allow all stakeholders to have a voice; to give a scientific explanation for the situation on the basis of what people have told them; and then to go one step further – to offer alternative solutions to the problems identified.

Local indigenous people always take part in AER studies – indeed it is impossible to do an AER without their participation. In practice, there are various ways that indigenous people can contribute by sharing their traditional knowledge. They might take researchers to the places where they fish, or where the fish spawn. They might explain which places in the landscape are particularly important and why they are so important. This might include indicating the location of sacred places. The researchers and their local guides might discuss the proposed route of a pipeline and where this route passes across reindeer pastures, and together they might identify places where special crossings will need to be constructed to allow the reindeer to migrate safely.

Local indigenous people can also contribute to these studies in a more technical capacity, either as researchers themselves or as technical assistants. Companies sometimes support training for local indigenous people to learn more about AER. For example, in 2014 Exxon gave a grant to the Sakhalin indigenous peoples' association to run a seminar on AER in every village inhabited by indigenous people, inviting an anthropologist from Moscow to run the seminar. The seminar introduced residents to the international norms and Russian laws that underpin AER, as well as the methods and goals of AER. The discussions and role play also involved company personnel responsible for community engagement.

AER is more than just a normative exercise or a research project. AER calls for dialogue between anthropologists, representatives of the community, policy-makers, public officials and industrial companies. It provides an arena for reconciling the interests of the parties involved, and for mitigating the adverse effects of industrial projects. Ideally, too, it contributes to the sustainable and harmonious development of the affected communities. There is often a close relationship between the local community and the anthropologists carrying out an AER. Indigenous communities know the anthropologists who work in their regions and can recommend particular experts to carry out an AER.

A further practical application of AER (as yet untested), would be as part of the process of eliciting the free, prior and informed consent (FPIC) of indigenous peoples relating to an industrial project. Informed consent needs to be based on the kind of knowledge and understanding generated through the AER process. The concept of FPIC is starting to appear in regional legislation (for instance on Sakhalin Island) and there is a need to determine clear criteria and legal mechanisms for including AER as a required part of the FPIC process. This would also include the possibility of applying a veto on industrial activities in indigenous peoples' regions.

What are the main challenges to implementation?

Lack of a clear legal and institutional basis for application

The challenges associated with implementing AER in the Russian Federation relate primarily to the legal framework. The normative basis of AER derives both from international law (requirements for social and cultural impact assessment) and from the Constitution of the Russian Federation. Yet crucially the applicable federal laws refer to AER as an option rather than an obligation. Moreover, AER is mentioned only in legislation relating to indigenous peoples and not in legislation relating to natural resource management. There is no mention of AER in the Land Code or the Law on Subsoil, which companies take more seriously. Although AER is mandatory in the law of the Republic of Sakha (Yakutia), the lack of a federal law and the lack of a regulation on the methodology allow companies to resist requests to commission an AER.

The need to clarify the legal framework is just one element of the state responsibility to protect indigenous peoples' rights, in line with the UN Guiding Principles on Business and Human Rights (2011). Prevailing practice today is for industrial companies to commission AERs (often under pressure from the community, who could not afford to pay for it themselves), while the state is not involved much in the process, not even in ensuring that companies adopt and implement the recommendations from the AER. Moreover, the state would provide continuity to a process. Frequently the company commissioning an AER is a company planning a gas or oil pipeline, but another company is going to actually use the pipeline – a company that has no obligations to follow the AER recommendations.

In recent years, policy-makers and parliamentarians have exhibited an inconsistent attitude to AER. On the one hand, parliamentary hearings have been devoted to AER and its role in protecting the rights of indigenous peoples. On the other hand, the government criticises the proposed laws, while deputies and public officers representing the interests of big business argue that AER will create impossible obstacles for business. It is worth noting, however, that in October 2016, the office of the President issued five orders relating to inter-ethnic relations, including one that calls for the strengthening of AER procedures. The government has now begun collecting related proposals from the federal regions and from experts of the Russian Academy of Sciences.

Failure to understand communities

The success of AER relies on the professional skills of those carrying out the review. Frequently the research institutes who apply for tenders to carry out AER do not have the required set of skills to do an adequate job and simply assume that the process is similar to an EIA. Compounding the lack of skills is a lack of familiarity with the communities. Those who have worked for a long time in a particular region are concerned about their reputation and their relationships with local people, but those who are new to a region – and may well not return – are less inclined to care how local communities perceive them.

The situation is exacerbated by the structure of contracting relating to the AER. For example, increasingly, companies are offering to pay for an AER only after the work has been completed. It is very difficult for some scientific research institutes to find such sums of money, so this means that a better qualified research institute might be unable to bid for that work, while another institute with more money but less expertise can put in a bid. In Yakutia, a new requirement has been introduced to the law on AER for companies to pay the government in advance for the AER. This should help to address these issues of affordability for research institutes.

There can also be misunderstanding by all parties of the meaning of 'traditional' ways of living, not least because Russian law is more inclined to recognise and validate what it calls 'traditional forms of livelihood' than indigeneity itself. Scientists themselves, including anthropologists, may idealise a lifestyle unaffected by the modernisation processes, even though this is something that does not and cannot exist. Representatives of industry may claim that if indigenous people are using cars then they do not have a traditional way of life, a view that is equally false. The only realistic and ethical way is to try to understand the views of indigenous people themselves about their own future development, as indigenous people, within and as part of the modern world.

Lack of follow-up

Local indigenous communities frequently have unrealistically high expectations of what an AER can accomplish, and might over-rely on the AER to achieve their goals and resolve their problems related to an industrial project. Disappointed expectations undermine local people's trust in the AER process, and can also risk damaging relations

between the anthropologists carrying out the AER and the local community – relations which may have lasted over many years up to that point.

One of the reasons why indigenous people do not trust AER is that they lack confidence in the impartiality of decisions taken on the basis of the findings. The anthropologists who carry out the research cannot control what happens to the results. The primary aim is for the companies to know what the situation is, so that they are in a position to take appropriate measures on the basis of that knowledge. But neither the anthropologists nor the community have power over how the companies will use the knowledge and whether they will adopt and implement the recommendations.

In general there is a lack of public review of the AER results and recommendations. Experts may have different opinions and so do indigenous peoples, so there should be some way of monitoring and ensuring effective feedback from the community and other experts. Publication of the results is very important in this regard, but is not always assured by the company commissioning the AER. The anthropologists who carry out the AER may wish to publish the results, but may be unable to ensure that this happens. It is also important to ensure public monitoring of the implementation of AER recommendations throughout the life of a project, and not just at the start, but this very rarely happens.

Recommendations

The anthropological expert review (AER) is a form of socio-cultural impact assessment that has been developed in Russia in response to the perceived lack of coverage of social and cultural issues in the standard environmental impact assessment (EIA) processes. AER is based on Russian scientific and legal traditions, the unique social and cultural specifics of northern Russian regions, and international standards and instruments that require adequate due diligence for industrial projects taking place in areas where indigenous peoples live and practice their traditional livelihood activities.

The content of an AER is broadly comparable to the content of a social or cultural impact assessment as these are practiced elsewhere (Wilson 2017). While this is not determined by the legislation that exists to govern AER, it is evident in the analysis and practice of anthropologists who carry out AER and have written on the subject (e.g. Murashko 2006). What is striking about the implementation of AER in Russia is the importance given to the role of anthropologists and anthropological methods, including field visits, in-depth interviews, participatory livelihoods surveys and identification of important resource-use areas and sacred sites. The participation of the local community in data gathering and in developing recommendations is an essential prerequisite for an adequate AER.

The challenges associated with the implementation of AER in the Russian Federation relate primarily to the legal basis for its implementation and the application of the results and recommendations produced by the AER process. This is the same in other countries. Globally, the legislation of social and cultural impact assessment is patchy at best, and generally limited to basic social requirements incorporated into EIA legislation (McCullough 2016). Russia's federal structure has, however, enabled innovation to happen – both practically and legislatively – at the regional level. A significant example of this is the AER legislation that has been adopted by the Republic of Sakha (Yakutia). This initiative could influence other regions (some of which are starting to develop similar legal initiatives) and could also influence national legislation.

A large part of the effectiveness of an AER rests on political commitment and on the technical competence of officials and consultants in the field of social and cultural assessment. This is the same in other parts of the world, where the results of SIAs are frequently challenged, due to the failure

to adequately identify and address impacts or to ensure adequate local participation in the studies or in the subsequent decision-making (Ross 1992; Markussen-Brown and Simms 2011; Hansen et al. 2016; Papillon and Rodon 2017). This challenge has been noted in Russia. The need to carry out AER to understand and anticipate changes in the living conditions of indigenous communities is widely discussed among government, industry, scientific communities and indigenous peoples' organisations. The current efforts by the office of the President to gather information and experience from the regions and the Russian Academy of Sciences to strengthen AER procedures are extremely significant.

Nonetheless, it is important to note that an AER is generally a voluntary process with no legal weight. It is not mandatory to include an AER in the process of state environmental expert review (SEER), along with the EIA documentation. Even where an AER is mandated by regional law, as in the Sakha Republic (Yakutia), the lack of a federal law allows companies to resist requests to carry one out. All of this points to the critical importance of the EIA and SEER processes for local indigenous communities, and the need to reform these to ensure greater local participation and attention to social and cultural issues.

In the light of these developments, our analysis leads to several recommendations:

Within Russia

- **Strengthen the legal framework:** While the different levels of federal and local laws can give a very helpful flexibility on the ground in Russia, it is nonetheless essential to have a federal law on AER, so as to strengthen its adoption and application, including in regions with relevant regional laws. It is also important to incorporate the concept of AER into resource development legislation, and not only in the legislation relating to indigenous peoples. It is also important to strengthen the EIA and SEER procedures to ensure greater local participation and adequate analysis of social and cultural issues.
- **Develop criteria and mechanisms to enable application of FPIC:** There is a need to determine clear criteria and legal mechanisms for including AER methods into the process of eliciting the free, prior and informed consent (FPIC) of indigenous peoples when taking decisions. This should include the possibility to apply a veto on industrial activities in areas where indigenous peoples practice their traditional livelihoods and culture.

Within and beyond Russia

- **Build capacities for carrying out social and cultural impact assessment:** There is a need to ensure that AER – and elsewhere, social and cultural impact assessment – are carried out by qualified and experienced experts with appropriate skills. It is important to support scientific institutes in this, but also to build the capacities of indigenous peoples to carry out these studies, for example, by training indigenous peoples in anthropological research skills and hiring and training local field assistants.
- **Strengthen the application of recommendations:** It is essential to ensure that those commissioning social and cultural impact studies have the experience and skills to understand and properly apply the results, and officials are able to understand and respond to the specific recommendations. Public monitoring of the implementation of recommendations should be made possible and become a mandatory requirement.
- **Share and test out the AER methodology in other contexts:** Good practice in AER in Russia involves the close involvement of the local community in data gathering and in developing recommendations. Researchers make field visits and rely on anthropological field research methods, including in-depth interviews, participatory livelihoods surveys and identification of important resource use areas and sacred sites. These are all good practices that can be shared and compared with experience from other regions of the world.
- **Share positive (and negative) lessons from Russia:** The experiences of implementing AER in Russia are very comparable to the experiences of carrying out social impact assessment (SIA) with indigenous populations in other countries, including Canada and Australia, which have been widely documented in English-language literature. There is very little material on the Russian experience in English. The language barrier should not hamper the sharing of lessons between Russian and other regions of the world, particularly other Arctic regions and those with significant populations of indigenous and local communities who are dependent on the local land and resource base.

1. Sakhalin Energy's Sakhalin-2 project ESHIA can be found here: <http://www.sakhalinenergy.ru/en/library/folder.wbp?id=e15e01ea-ec75-4821-87d3-e1aa3a0d736c>; the Yamal LNG ESIA can be found here: <http://yamallng.ru/403/docs/ESIA%20ENG%20.pdf>; and the ESIA for Kinross's Dvoinoye project can be found here: <http://kinrossgold.ru/wordpress/wp-content/uploads/2017/01/Dvoinoye-ESIA-13FEB2013.pdf>

2. For more discussion of the Russian legal framework, see Novikova, 2017.

3. EIA is translated as *otsenka vozdeistviya na okruzhayushchuyu sredu* and therefore the abbreviation OVOS is frequently used to refer to EIA in the Russian context.

4. Russian legislation only recognises a certain category of indigenous people as requiring special protection. These are the indigenous small-numbered peoples of the North, Siberia and the Far East (*korennye malochislennye narody Severa, Sibiri i Dal'nego Vostoka*). There is an approved list of peoples who qualify for this status, and to do so they must meet certain criteria, including having a total population of less than 50,000. For the purposes of this paper, we use the term 'indigenous' or 'indigenous peoples' throughout to refer to these northern peoples.

5. <http://iltumen.ru/content/viktor-gubarev-vystupil-s-dokladom-na-konferentsii-arkticheskogo-soveta-v-moskve>

6. An *obshchina* is a traditional grouping of indigenous households.

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Acronyms and abbreviations

AER	anthropological expert review (etnologicheskaya ekspertiza)
CBD	Convention on Biological Diversity
EBRD	European Bank for Reconstruction and Development
EIA	environmental impact assessment
ESHIA	environmental, social and health impact assessment
ESIA	environmental and social impact assessment
FPIC	free, prior and informed consent
IFC	International Finance Corporation
ILO	International Labour Organisation
LNG	liquefied natural gas
NEPA	National Environmental Policy Act
OVOS	otsenka vozdeistviya na okruzhayuschuyu sredu (environmental impact assessment)
SEER	state environmental expert review
SIA	social impact assessment
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNGPs	UN Guiding Principles on Business and Human Rights
YNAO	Yamal-Nenets Autonomous Okrug (region)

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