

How would you feel if foreigners encroached on your natural resources for commercial exploitation without your consent and had no agreement with you regarding the sharing of benefits generated from its use? This is the case for vulnerable Arctic populations and Indigenous peoples. The Arctic is known as a vast storehouse of potential resources. Oil seeps have been recognized and used for commercial purposes in Northern Alaska, Canada, and Russia since the 1920s (Huntington & Arctic Monitoring and Assessment Programme, 2007). They will continue to be a significant economic force in the Arctic, spreading through many areas and environments and impacting many individuals and communities. Additionally, the melting of Arctic glaciers caused by climate change provides opportunities to exploit new Arctic oil and gas deposits (Casper, 2009). In the Arctic, extractive factories invade indigenous and local populations' land and water, posing a danger to their resources. These activities are, therefore, likely to affect the delicate and fragile Arctic ecosystem and endanger already vulnerable Arctic populations and Indigenous peoples, while at the same time improving economic growth (Casper, 2009).

Benefit-sharing can be described as a fair and equal distribution of the monetary and non-monetary benefits produced by resource extraction activities. Rewards include the allocation of taxes and royalties, business, and equity ownership, employment creation, negotiated arrangements, and community development (Wilson, 2019). Globally, benefit-sharing offers mean that indigenous/local populations and extractive industries cooperate peacefully to turn the resource "curse" into a developmental advantage (Petrov & Tysiachniouk, 2019). In remote areas in the Arctic, oil and natural gas production offers growth opportunities and also raises costs for residents, indigenous communities, and cultures. It affects the economy's survival and reduces the traditional resource utilization of land (Tysiachniouk & Petrov, 2018). Benefit-sharing is a legal requirement and a component of corporate social responsibility that can promote sustainable development in the remote Arctic regions if adequately structured. In the Arctic, sustainable development can be defined as development that enhances the well-being, health, and protection of Arctic populations and inhabitants, while maintaining the institutions, roles, and resources of ecosystems (Petrov & Tysiachniouk, 2019). On the other hand, Corporate Social Responsibility (CSR) is a management principle in which organizations combine fiscal, social, and environmental issues in their business practices and the relationship with their stakeholder ("What Is CSR? | UNIDO," n.d.).

Meanwhile, according to Wilson, for efficient control of industrial production's environmental and social impacts, indigenous and local populations are pressing for fairer benefit-sharing by the extractive industries. International principles refer to Indigenous peoples' rights to benefit from creating resources, engaging in decision making, and establishing development planning goals that specifically impact them. Although international standard procedure on indigenous rights for Free, Prior, and Informed Consent (FPIC) exists for equitable distribution of benefit sharing with Indigenous peoples in resource development, there are currently no prospects for Indigenous peoples to play a significant role in strategic planning. Lack of meaningful engagement and participation of indigenous communities in decision-making during the life cycle of resource extraction activities undermines the FPIC principles in violation of Indigenous peoples' rights. The disagreements over the benefits and negative effects of resource extraction have intensified due to structural changes triggered by the COVID-19 pandemic. The fall in market prices for gasoline due to a decrease in demand has impacted productivity and profitability (Bernauer & Slowey, 2020). It has resulted in exposing the failure of extractive corporations' failure to incorporate Triple Bottom Line (TBL) initiatives that focus on the 3 Ps: (Planet, People, and Profit) into their business operations. Due to limited data on the ongoing economic, social, and health impacts of the COVID-19 pandemic, there is a gap in this research paper on the full impacts of the pandemic that will have to be addressed by future research.

This paper aims to address benefit-sharing in extractive industries and how Indigenous people can participate in community development decisions by answering how benefit-sharing would promote sustainability and access to decision-making in the era of Covid-19. The paper's approach is based on a review of the literature to establish the principles underlying the study. The paper is divided into three (3) parts: a) benefit-sharing instruments and corporate social responsibility; it explains benefit-sharing principle, formation, purpose, and the relationship between benefit sharing and CSR to promote sustainable development in the Arctic, b) discuss indigenous control and implementation of international standards in respect of indigenous rights through the effective implementation of FPIC and its achievement strategies, and c) the impacts of COVID-19 on benefit-sharing agreements concerning the TBL initiative.

Fair and Equitable Benefit Sharing Principle, Formation, Purpose

In international environmental law, the debate regarding control and ownership of natural and biogenetic resources has been ongoing for the past several decades (Stellina, 2015).

Natural and marine genetic resources have traditionally been regarded and accepted as part of the common heritage of mankind. Nevertheless, the developed nations have been too concerned with the extraction of biological and genetic resources with the advancement of technology and the increased north-south divide over sovereign rights for natural resources (Stellina, 2015). To bring equity between the needs of developed and developing nations and how to protect and conserve marine and natural resources. Access to Benefit Sharing (ABS) was seen as a solution.

Since the 1990s, benefit arrangements have been a growing interest in regions with sound indigenous regulations, such as North America and Australia. (Sulvanziga, 2019). The principle arises from various international instruments, including the Universal Declaration of Human Rights, the International Labor Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, the Convention on Biological Diversity (CBD), and the "Nagoya Protocol on Access and Benefit-Sharing to the CBD" (Sulvanziga, 2019, p.64). Access and benefit-sharing from an international legal perspective refer to how benefits resulting from the natural resources utilization, the protection of the environment, and the use of traditional knowledge would be shared between the communities granting access to the resources and the users of the resources (Unit, 2020 "The Nagoya Protocol on Access and Benefit-Sharing").

James Anaya, the former United Nations Special Rapporteur on the Rights of Indigenous Peoples, drew unprecedented attention to the role of benefit-sharing concerning Indigenous people's rights to land and natural resources (Morgera, 2014). According to Anaya, Indigenous people's rights to benefit-sharing implies "the broad international recognition of the right to indigenous communal ownership, which includes recognition of rights relating to the use, administration and conservation of the natural resources existing in indigenous territories, independent of private or State ownership of those resources." (Sulyandziga, 2019, p. 67). He stated that "Aside from their entitlement to compensation for damages, Indigenous peoples have the right to share in the benefits arising from activities taking place on their traditional territories, especially in relation to natural resource exploitation" as a reference to benefit-sharing in Article 15(2) of ILO Convention No. 169 and appropriate

to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Articles 25 and 26 respectively (Morgera, 2014, p. 1-2). In this regard, Anaya also stressed that the only clear international standard applicable to benefit-sharing is that it must be “fair and equitable” for such sharing. The benefits to be shared include tax revenue, information, scientific and commercial cooperation, joint management of natural resources, and technical support, which have been identified as monetary and non-monetary (Morgera, 2016).

James Anaya also argued that benefit sharing is seen as “one of a set of inter-linked safeguards for the realization of substantive rights of Indigenous peoples” (Sulyandziga, 2019, p.67). Sharing of benefits explicitly reflects a particular relationship among governments, commercial businesses, and indigenous groups. It is known that benefit sharing is part of the social license to operate, thus, the public approval of the operations of the industry plus the completion of mandatory mineral extraction licensing and permit requirements (Tysiachniouk & Petrov, 2018).

In a nutshell, the benefit-sharing aim is to ensure indigenous communities' involvement in decision-making by improving their well-being and offering local communities' control over their future as well as protecting Indigenous peoples' human rights by promoting community development projects in remote areas in the Arctic.

Benefit-Sharing and CSR for Sustainable Development

Corporate Social Responsibility (CSR) is a principle whereby corporations willingly decide to commit to a healthier community and a safer world. CSR is defined by the Commission of European Communities in 2001 as “a concept whereby companies integrate social and environmental concerns in their business operations and their interaction with their stakeholders on voluntary basis.” CSR initiatives for international oil firms include developing risk control policies such as steps to avoid oil spills; focusing on energy conservation and green energy; establishing partnerships with the local communities where they operate; enhancing the quality of life of workers; and contributing to society as a whole (Cao, 2018). Thus, CSR initiatives enable businesses to move beyond regulatory standards to add to their competitiveness by engaging more in human capital, the community, and stakeholder partnerships.

Sometimes, companies engage in corporate social responsibility benefit-sharing schemes to satisfy investors and shareholders and to meet the needs of local communities only to the degree required to receive the 'social license' to operate (Tysiachniouk & Petrov, 2018). The commitment of an organization to localities often takes the form of compensation or targeted investments. However, the corporation holds the leadership role in the decision-making power of benefit sharing, making its preference prevail in several ways over community needs and desires (Petrov & Tysiachniouk, 2019).

According to Johnstone & Hansen 2020, the socio-economic and environmental effects of the exploration and production of oil have led to political and civil society problems that have caused social damage by companies in violation of human rights laws of the local populations and workers. This includes the right to land, culture, rights at work, an acceptable standard of living, and the right to engage in decision-making processes relevant to projects involving land and communities (Johnstone & Hansen, 2020). For this reason, it is therefore crucial for businesses practicing CSR to follow the TBL 3P's (Profit, People, and Planet) approach as a measure for financial reporting on their business activities. The TBL concept, proposed in 1987 by the Brundtland Commission, is the basis of most CSR theories. In 1994, the phrase was coined by John Elkington, often known as 3Ps or three pillars. It notes that a corporation should be accountable for three characteristics: profit, people, and the planet, i.e., economic, social, and environmental responsibility.

The United Nations Industrial Development Organization (UNIDO) also argues that, as a method for assessing and reporting organizational success toward economic, social, and environmental performance, the TBL methodology is used. It is an effort to connect private businesses to sustainable global development by giving them a complete set of working priorities than just profit alone. The view held is that an organization must be financially stable, eliminate its adverse environmental effects, and function in compliance with community norms in order for it to be sustainable. Therefore, businesses can be considered profitable only if it takes care of all three components of the TBL, and all of them are incredibly closely related (Księżak & FischBach, 2017). Thus, one element cannot be adopted in isolation from the others.

Meanwhile, one accepted definition of sustainable development in Brundtland's 1987 report defines it as "the development that meets the needs of the present without compromising

the ability of future generations to meet their own needs”(Fonseca, Domingues, & Dima, 2020, p.1). Sustainable development aims to resolve the societal desires to live best under the limits placed by nature. Development is a multidisciplinary process for all persons to reach a better quality of life. The interdependent and mutually reinforcing elements of sustainable growth are economic growth, social development, and environmental conservation (Fonseca et al., 2020, p.2). It indicates that, there is a relationship between CSR, TBL, and sustainable development as they all aim to address the same core elements.

Non-Governmental Organizations and the general population have a great deal of influence on CSR initiatives. According to Sustainable Development Working Groups Report, 2013 on “CSR in the Arctic-way forward,” the primary universal standards which drive CSR in the Arctic that were approved by the Arctic Council in the first workshop on CSR held in Stockholm from 26-27 January 2012 are the OECD Guidelines, the United Nations Global Compact, and the Global Reporting Initiative Reporting Standard. These guidelines are considered strong and adequate instruments that warrant more focus, follow-up, and enforcement by Arctic business operators (Group (SDWG), 2013).

The United Nations Guiding Principles (UNGPs) of Human Rights promote that all states are responsible to uphold human rights and prevent violation by corporations and organizations of all kinds and sizes. The obligation allows enterprises to comply with appropriate national laws and self-regulate to fill policy differences between national and international law. Both government and non-states players must ensure that victims are entitled to remedies (Johnstone & Hansen, 2020). The UNGPs also stress that businesses should dialogue on stakeholder engagement, particularly in terms of “meaningful” consultation and engagement with communities and stakeholders (Wilson, 2020). Mineral extraction and mining ventures in the Arctic can not only add to the economic circulation of natural resources, produce revenue, and provide new employment for the local population, but can also be followed by negative effects on the ecosystem, traditional land, climate, and the health of local people ((Novoselov, Potravny, Novoselova, & Gassiy, 2020).

For that matter, Novoselov, Andrey, et al., 2020 argue that industrial projects in the Arctic are highlighted and influenced by many Arctic stakeholders’ interests through social, environmental, anthropological, and cultural practices. Therefore, the achievement of benefits for resource extraction projects on conventional lands in the Arctic should also mention:

- Protection of the environment needed to lead the traditional Indigenous peoples' commercial activities;
- Cultural heritage preservation and traditional knowledge;
- Reduction of social conflict induced by project implications awareness;
- Employment development;
- Health care improvement;
- Providing infrastructure
- Providing educational accessibility;
- Increasing living standards and empowering the indigenous community with requirements for socio-demographic reproduction.

The compensation process must meet all parties' needs, which can only be accomplished by including all stakeholders in the execution of strategic planning. For this reason, the fair and equitable benefit-sharing arrangement in the Arctic regions is critical, and it must facilitate both procedural and distributional equity. The principle of benefit-sharing encompasses several instruments, such as the negotiation of partnership agreements, the purchase of traditional products, the creation of indigenous jobs, the funding of transport, and social infrastructure development (Tysiachniouk, Henry, Tulaeva, & Horowitz, 2020). This scheme encourages indigenous communities to make better use of these financial opportunities to achieve future sustainable growth.

Consequently, community engagement is an essential aspect of international human rights law in the decision-making process on matters concerning one's own life and the society in which one lives. However, Agenda 21 also acknowledges, among other things, that strong public involvement in decision-making, including the need for individuals, groups, and organizations to engage in decisions, especially those concerning the communities in which they live, is one of the essential prerequisites for achieving sustainable development. The mining industry in the Arctic affects the environment, the safety of the water supply, and the local people's welfare. It then takes the form of compensation and corporate social benefit to cater to the harm suffered. In the meantime, a win-win outcome will only be accomplished if all parties are engaged in the decision-making process to disclose their specific needs regarding the benefit of enhancing the indigenous livelihood towards community development.

Indigenous Control and Implementation of International Standards

Various international partners have been discussing international standards on human rights and Indigenous peoples' protection for the sustainability of the environment. As a result, resource production's social and cultural issues are of significance, and the lack of community participation in the early stage of resource development and active engagement of indigenous communities in decision-making strategies violates the FPIC rights of Indigenous peoples.

The precise interpretation of the theory can be determined by breaking down the meaning of the terms that make up the FPIC principle. The UN Guidelines on FPIC describe "free" as a system that is not subject to externally imposed deadlines. As a result, aboriginal peoples should not be forced, intimidated, or threatened into consent (Hughes, 2018). According to (Pillay, 2020), "prior" means that approval should be obtained sufficiently in advance of any permission or start of operations, and that indigenous consultation or consensus procedures should be respected in terms of time constraints. Thus, the engagement must take place well ahead of planned events to give Indigenous peoples and communities enough time to establish and create relationships, consider all key information, and make decisions with the aim of successful relations (Hughes, 2018).

(Pillay, 2013) further explain that "informed" implies that information is provided on a variety of topics, such as the nature, size, pace, reversibility, and scope of any proposed project or activity; the project's purpose as well as its duration; the locality and areas affected; a preliminary assessment of the likely economic, social, cultural, and environmental impact, including potential risks; personnel likely to be involved; and the locality and areas affected. The possibility of refusing consent may be included in this procedure. The approval process must include consultation and participation.

Therefore, a fragile Arctic environment is of concern because of the adverse consequences of extractive practices, which are now turned into industrial "green movements," resulting in the invasion of indigenous lands (Wilson, 2020) and causes danger to their ways of life, such as herding, fishing, and farming. The focus on indigenous rights is on FPIC principles. FPIC may take many forms but is an important sustainable development corporate governance framework. It is a right set out for Indigenous peoples in international treaties and declarations, especially ILO Convention 169 on Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples and some national

legislation (Buxton & Wilson, 2013).

The interpretation and implementation of international norms and values will enhance shared understanding and meaningful stakeholder participation. In recent years the call for respecting indigenous privileges concerning a set of criteria in resource development has grown stronger and stronger. According to Wilson (2019), the lack of respect for Indigenous peoples' control, rights, and consents in resource exploration has urged local communities in the Arctic regions to encourage governments and companies to allow them to take greater control and do more in adhering to international norms/standards. To achieve these objectives, there exist the calls for FPIC to create fairness/equity, in addition to guiding and applying the spirit of FPIC in industry projects through existing laws/international standards around the world.

However, (Buxton & Wilson, 2013) argue that, for effective implementation of FPIC, first, it must be enforced by deliberative mechanisms in which fair viewpoints based on shared data are weighed through gathering information from all parties. Second, the procedure must be structured in a flexible way for societies concerned in order to fulfill customary practices, human rights, and to reach joint decisions. Finally, the process must enable local citizens to participate on equitable footing and make responsible decisions constructively. Indigenous control, in many ways, has been pointed out by Wilson. She further explains as the ability a) to ascertain how organizations envision their future about extractive industries and whether they want resource development to occur on their lands and b) to ensure appropriate decision-making powers and fair benefit sharing if products appear as stated (Wilson, 2019).

As Wilson explains, these demands are indicated in the ILO Conventions on Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which suggest, among other things, it is the right of Indigenous peoples to decide their priorities and to exercise control over their development; yet, as the former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, agrees, this particular indigenous right is rarely respected in practice (Wilson, 2019).

Strategies for Achieving Control through Free, Prior, and Informed Consent

As noted earlier, there are some debates on the right methods to address the lack of control in achieving fairness and equity: the former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, identified a 'preferred' model, based on greater levels of indigenous control over the nature of the development and the sharing of the benefits, emphasizing, in particular, the indigenous right to determine priorities and strategies for the product or use of their lands and territories. Also, elsewhere, the 'prevailing' model of resource development has been termed by some as 'extractivist' which in turn means indigenous relations with the natural environment should be based more on the partnership, respect, and entitlement through 'knowing' rather than 'owning' the resources (Wilson, 2019).

Anaya's 'preferred' model adds more voice and corresponds to Tysiachniouk and Petrov's 'shareholder' model that envision greater indigenous control over decision-making, including strategic planning (Wilson, 2019). The notion of 'indigenous control' also extends to decision-making about whether a project goes ahead. However, in cases where Indigenous peoples do not own the mineral resources in question, this requires a process of FPIC before critical development decisions get formulated in these communities (Wilson, 2019). Therefore, for the standard of good practice in stakeholder participation, the FPIC must be established from discovery to completion over the project life cycle in line with obtaining the social license to operate for a transparent and timely procedural process.

The Impacts of Covid-19 on Benefit-Sharing Agreements Concerning the TBL 3 Ps Initiative

The Covid-19 global crisis is worrying and poses a threat to health care for all, including to Indigenous peoples worldwide. Indigenous populations are still facing inadequate access to hospitals, a substantially higher incidence of infectious and non-infectious diseases, lack of access to necessary facilities, hygiene, and other main prevention steps, such as drinking water, soap, and disinfectants. Vulnerable populations may suffer discrimination and stigma in accessing healthcare and may only be considered if programs and amenities are offered in indigenous languages. Meanwhile, Indigenous peoples' cultural lifestyles are a pillar of their resilience as most indigenous groups frequently hold large traditional meetings to mark special occasions, which can pose a danger at this moment in preventing the spread of the virus.

As stated in (“COVID-19 and Indigenous Peoples | United Nations for Indigenous Peoples,” n.d.) the number of COVID-19 infections worldwide grows, with high mortality rates in some vulnerable communities with underlying health conditions. However, statistics on the prevalence of infection in indigenous populations are not yet available (even where ethnicity records and tests are available) or are not reported. It is also not available in indigenous languages for important information on infectious diseases and prevention steps. This means that aboriginal communities became incredibly fragile during the global pandemic since they face a high degree of socioeconomic neglect and are at excessive risk of public health crises. The Arctic indigenous communities are not left out of these devastating issues. In contrast, “A report from the Centers for Disease Control found that non-Hispanic American Indians and Alaska Natives (AIAN) account for 0.7 percent of the U.S. population, but 1.3 percent of COVID-19 cases”(“Vulnerable Communities,” 2020).

Meanwhile, industrial resource activities are ongoing in their territories. It means that the benefits provided by extractive industries are not meeting the need and desires of the local communities. Infrastructure such as adequate and modern health facilities is not available. Corporations must adhere to the benefit-sharing mechanism that can promote community development. On the other hand, the COVID-19 pandemic is also creating chaos in extractive economies worldwide because of decline in the selling price of oil. This is due to the decrease in demand and decrease in production and profitability caused by running physical distancing protocols, all of which has resulted in a substantial decrease in the share price of many large mining firms (Bernauer & Slowey, 2020).

As claimed by Bernauer & Slowey, 2020, the COVID-19 pandemic brought conflicts over the benefits and harmful effects of extraction activities in Canada. Three conflict issues include:

Community Health (People)

As a result of chemical pollution by extractive industries, physical and mental health conditions have been an issue for Indigenous peoples in the communities. Additionally, new diseases can be contracted from immigrant workers, local lifestyle changes, and disturbances in relationships with the community. Such migrants, however, are agents by whom the coronavirus could spread to remote communities.

However, the reaction from mining firms initially varied as the COVID-19 pandemic hit

Canada. Although some companies responded by shutting down, some, such as in British Columbia, continue to operate. Criticism from some Indigenous elders and activists is that this is because the companies still operating value corporate revenues more than the people's health and safety, condemning their decisions to keep operating during the pandemic as not thinking of the well-being of their workers and the community at large. Nevertheless, in Nunavut, the Baffin Land Iron Mines-operated Mary River iron mine drastically reduced activities and sent all Nunavut workers home with pay as a benefit to help deter the transmission of the disease to Inuit communities.

Environmental Protection

Environmental impact mitigation is the concern of Indigenous peoples regarding activities of extractive industries. More tension is likely to develop since the pandemic interrupts production and impact global commodity prices. For instance, the oil price is affecting the exploration of Russian Arctic oil compared to competitor producers. In the sense that demand for February - June of a particular form of oil supply was seen to have traded below zero at about \$40 per barrel (/bbl_.28) in May ("Isolation and Resilience of Arctic Oil Exploration during COVID-19," 2020). Besides, this is not a complete reflection of global demand. Meaning, the extreme conditions, and instability indicate the effect the pandemic is having on the oil markets. As a result, enterprises may call on the Indigenous people for environmental sacrifice to give them more space to adjust and return to profitability for the share of the benefit.

Economic Benefit (Profit)

The income generated by oil and gas industries would continue to bypass indigenous communities, including revenues, royalties, company contracts, and employee salaries. Benefit-sharing arrangements incorporated in new agreements and Indigenous Industrial Agreements are essential tools for capturing Indigenous peoples' local economic benefits. In the post-Covid-19 world, the businesses may request not sharing benefits for the communities' development. They will propose reducing rentals for resources and salaries for employees regarding the global economic recession and incentives. Indigenous groups have embraced extractive industries as an engine of community development and as a way of promoting self-determination goals. These economic developments are also impacting industry-indigenous relations (Bernauer & Slowey, 2020), resulting in many others getting trapped in their territories with extractive schemes that continued either with or without

their consent. Therefore, to negotiate agreements that will support community development, Indigenous peoples must pursue consultation (Wanvik & Caine, 2017) regarding equity in distributing the benefits sharing to address the needs and desires of the people, the communities, and for future generations.

Conclusion and Recommendation

Benefit-sharing is a useful tool for community development and demands high indigenous participation throughout extractive industries negotiation. Fair benefit-sharing is a legal requirement and part of good governance and corporate social responsibility, which encourages sustainability in the environment if managed properly. Benefit-sharing arrangements enhance human well-being and preserve or compensate for ecosystem degradation. Meanwhile, the broadest benefit-sharing mode and mechanism in the Arctic may not ensure sustainable development in the communities (Petrov & Tysiachniouk, 2019).

Therefore, the absence of Indigenous peoples' representation in policy decisions on creating the extractive sector in their territories, including decisions on the allocation of land for extractive industry operations and the awarding of exploration licenses, threatens the possibilities for fair development results. It is advised that there should be an informed decision to monitor the benefit-sharing scheme, and total community control of benefit-sharing and management must exist to eliminate any controversy. As a result, companies and the state must collaborate with indigenous and other impacted populations to develop local institutional capacity and human resources as part of benefit-sharing obligations. This will ensure that the policies that share benefits are transparent, sensitive, empowering, and lead in a just and equitable way to Arctic populations' sustainable development. Thus, corporate social responsibility and Triple Bottom Line initiatives should be monitored and enforced in every Arctic state's soft laws. Every mining and oil industry player operating in the Arctic must report companies' financial, social, and environmental performance over time by protecting businesses amid future uncertainty.

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