Extracting More Than Resources: Human Security and Arctic Indigenous Women

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I. INTRODUCTION

The circumpolar Arctic region is at the forefront of rapid change, and with change come concerns regarding potential security threats.[1] Security is an ever-changing, dynamic issue. Numerous factors determine what makes a state, a community, or an individual feel secure or insecure. For example, while extractive industry development can bring economic benefits to an area, there are also human security concerns associated with these development projects. This has been acknowledged by groups that study the impact extractive industry development projects have on different geographic areas.[2] However, most studies that have been done look at development projects in southern hemisphere countries

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1. The circumpolar region is defined differently depending on the issues being discussed. Because this Article includes governmental administrative concerns, a broad understanding of this region is applied throughout. For U.S. purposes, this includes the entire state of Alaska. For an illustration of the boundaries applied in this Article, see Kue Young, *Circumpolar Health—What is Next?*, 72 INT'L J. CIRCUMPOLAR HEALTH at fig. 1 (2013), *available at* http://www.circumpolarhealthjournal.net/index.php/ljch/article/view/20713/html.

2. *See, e.g.*, Caroline Kaeb, *Emerging Issues of Human Rights Responsibility in the Extractive and Manufacturing Industries: Patterns and Liability Risks*, 6 NW. J. INT'L HUM. RTS. 329 (2008). The extractive industry is generally defined as an industry that exploits "non-renewable natural resources, including oil, gas, minerals and timber." Alex Grzybowski, *Extractive Industries and Conflict, Guidance Note*, *in* TOOLKIT AND GUIDANCE FOR PREVENTING AND MANAGING LAND AND NATURAL RESOURCES CONFLICT 6 (2012), *available at* http://www.un.org/en/events/environmentconflictday/pdf/GN_Extractive_Consultation.pdf.

or countries classified as "developing."[3] What has not been explored are human security concerns connected with extractive industry development projects within the "developed" countries like the United States.

This Article will change that by focusing on the human security concerns connected to extractive industry development in the circumpolar region of the United States. The scope will be limited to the human security risks that extractive industry development poses to indigenous women living in the region. However, many of these same concerns also create insecurity for other people living in the region. Part II focuses on the definitions of human security and how a human security approach differs from traditional security analysis. Part II also explores why a human security approach works well with the unique circumstances that exist in the circumpolar Arctic region.

Part III reviews examples of human rights violations associated with extractive industry development projects. This Part also identifies specific risk factors that make it more likely that a project will lead to human rights violations in an area and also addresses the particular risks faced by indigenous women in the circumpolar region of the United States. Finally, Part IV provides suggestions regarding how these risks might be mitigated, including both government action and voluntary business choices. Part V concludes.

II. HUMAN SECURITY

During the second half of the 20th century, the dialogue surrounding security began to change. Prior to that time, most analysts and governmental leaders spoke of security from a top-down, state-centered, militaristic perspective.[4] Toward the end of the Cold War, leaders began speaking of the "soft issues of traditional security," such as transboundary pollution, infectious diseases, organized international crime, and other things that were not traditionally classified as security concerns.[5]

In 1994, the UN Development Programme Human Development Report introduced the term "human security."[6] The report stated, "The

3. *See, e.g.*, Kaeb, *supra* note 2; Tarek F. Massarani et al., *Extracting Corporate Responsibility: Towards a Human Rights Impact Assessment*, 40 CORNELL INT'L L. J. 135 (2007).

4. Lassi Heininen, *A New Northern Security: Environmental Degradation and Risks, Climate Change, Energy Security, Trans-nationalism and Flow of Globalization and Governance*, *in* ENVIRONMENTAL AND HUMAN SECURITY IN THE ARCTIC 39 (Gunhild Hoogensen Gjørv et al. eds., 2014).

5. *Id.*

6. *See* UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 1994 (1994) [hereinafter 1994 HUMAN DEVELOPMENT REPORT], *available at* http://hdr.undp.org/sites/

world can never be at peace unless people have security in their daily lives."[7] It went on to explain that the only way to meet this objective is to include a human component in security discussions. In order to do this, leaders must consider not only a top-down state perspective but also a bottom-up human and community perspective. Incorporating both perspectives into security discussions broadens the scope and allows analysts to look at people's security experiences, not just state concerns.[8]

A. Definition

What exactly is meant by the term "human security"? Many groups have used human security in formal meetings, but no single working definition has been agreed upon. Most people look to the definition created by the United Nations, which lists the two major components of human security as freedom from fear and freedom from want.[9] Therefore, any concern that causes either fear or want among people can be classified as human security concerns. The United Nations also has stated that the goal for human security discourse is to protect people from "critical and pervasive threats and situations."[10] The combination of these components and the goal of human security are viewed as the original understanding of this term. However, understanding human security is not only about the actions of states and international organizations. Human security also emphasizes empowering individuals and communities to take care of themselves.[11]

In a working paper, the Centre for Research on Inequality, Human Security and Ethnicity (CRISE) broke down several recognized key elements of human security. The Centre combined them to create a description of human security as a "universal, preventive, 'people-centred' approach" to security that focuses on long-term solutions.[12] The emphasis on people-centered policies stands in contrast to traditional discussions focused on the needs of countries or of the world; individual concerns

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default/files/reports/255/hdr_1994_en_complete_nostats.pdf.

7. *Id.* at 1.

8. Kirsti Stuvøy, *Human Security and Women's Security Reality in Northwest Russia*, *in* ENVIRONMENTAL AND HUMAN SECURITY IN THE ARCTIC 231 (Gunhild Hoogensen Gjørv et al. eds., 2014).

9. 1994 HUMAN DEVELOPMENT REPORT, *supra* note 6, at 24.

10. COMM'N ON HUMAN SECURITY, *Outline of the Report of the Commission on Human Security*, *in* FINAL REPORT OF THE COMMISSION ON HUMAN SECURITY 2003 at 1 (2003), *available at* http://www.unocha.org/humansecurity/chs/finalreport/Outlines/outline.pdf.

11. 1994 HUMAN DEVELOPMENT REPORT, *supra* note 6, at 24.

12. Sabina Alkire, *A Conceptual Framework for Human Security* 5 (Ctr. for Research on Inequality, Human Security & Ethnicity Working Paper No. 2, 2003), *available at* http://www3.qeh.ox.ac.uk/pdf/crisewps/workingpaper2.pdf.

did not enter into strategic decisions. Security studies have been used as a way for leaders to identify causes of fear as well as to identify ways to mitigate those fears.[13] Now, with the shift to the people-centered focus, individual perspectives are more regularly included in serious policy-making discussions.[14]

Human security is not the only term used to describe the concept of people-centered security concerns. "Comprehensive security" describes "human security, or civil security, with a focus on human beings as individuals and citizens." [15] In other security discussions, particularly ones that include broad topics like economics or the environment, "common security" has been a preferred term.[16] No matter which term is used or how these terms are specifically defined, it is clear that state perspectives are not always consistent with the concerns of the people, and policy discussions will continue to include the perspectives of individuals and communities.

B. Application to the Arctic

The Arctic region is currently in a state of transition. The Arctic ice cap is melting, and with the melting have come changes: warming temperatures; rising waters; ecosystem changes; and altered animal, bird, and sea mammal migrations, to name a few.[17] With the warming climate come new factors that create security concerns, such as rising water levels, which will impact the safety of coastal and island towns and villages; ecosystem changes that will alter available food supplies as well as current business practices; increased shipping, which will bring greater risks of environmental contamination and possible human safety risks; easier access to previously unreachable natural resources, which will lead to a great presence of outsiders in the region that bring with them potential environmental and human security risks.[18] These concerns may not have

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13. Gunhild Hoogensen et al., *Human Security in the Arctic—Yes, it is Relevant!*, 5 J. HUM. SEC. 1, 1 (2009).

14. For an example of this, see INDIAN LAW & ORDER COMM'N, *Reforming Justice for Alaska Natives: The Time is Now*, *in* A ROADMAP FOR MAKING NATIVE AMERICA SAFER: REPORT TO THE PRESIDENT & CONGRESS OF THE UNITED STATES 55–61 (2013).

15. Heininen, *supra* note 4, at 40.

16. *Id.* at 39.

17. Hoogensen et al., *supra* note 13, at 3.

18. This paper will focus on specific human security risks associated with resource development. For a more in depth discussion on some of the other risks, see THE WHITE HOUSE, NATIONAL STRATEGY FOR THE ARCTIC REGION (2013), *available at* http://www.whitehouse.gov/sites/default/files/docs/nat_arctic_strategy.pdf; Jonathan Masters, *The Thawing Arctic: Risks and Opportunities*, COUNCIL ON FOREIGN RELATIONS (Dec. 16, 2013), http://www.cfr.org/arctic/thawing-arctic-risks-opportunities/p32082; INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE

existed before the rapid temperature changes, or, if they did, they are now heightened.[19] When drastic changes like this occur in an area, the population must find ways to adapt. Often, old approaches and old definitions are inadequate for new times.

If security concerns in the circumpolar Arctic region are viewed only from a state-centered perspective, the issues that lead to community insecurity will likely be overlooked. Because of unique climate-related issues, security concerns within the circumpolar region of the United States are often more similar to concerns held by people living within the circumpolar regions of other countries than the concerns existing among citizens living in the rest of the country. This means that unless people in the rest of the country prioritize the security concerns that exist within this region, the federal government is not as likely to address them. This is why it is so valuable to allow citizens in this region to be able to address concerns that are distinct to their region. For an area to truly be secure, the population living in that region must feel secure.[20]

At the same time, from a political perspective, the Arctic region is fairly stable.[21] Because of the lack of serious state-centered security concerns, the Arctic may be the perfect location to transition security discussions from a traditional to a human security approach.[22]

C. Controversy

Not everyone supports a people-centered, human approach to security. As one scholar stated, "Any argument for taking a human security approach to the Arctic region must acknowledge the difficulty of confronting the dominant security discourse that associates any notion of security with the use of force, particularly by the military."[23] The concern is that labeling something a security concern elevates it to a level where a militarized response is deemed necessary, which could potentially threaten certain human rights.[24]

2013: THE PHYSICAL SCIENCE BASIS (2013), *available at* http://www.ipcc.ch/report/ar5/wg1/#.Uu-2W6VFAWE.

19. Intergovernmental Panel on Climate Change, *supra* note 18.

20. ENVIRONMENTAL AND HUMAN SECURITY IN THE ARCTIC xviii (Gunhild Hoogensen Gjørv et al. eds., 2014).

21. Heininen, *supra* note 4, at 49.

22. In the international project (GAPS), researchers determined that human security is a powerful tool for analyzing security issues specific to the Arctic. *See* Hoogensen et al., *supra* note 13, at 1.

23. Marina Goloviznina & Gunhild Hoogensen Gjørv, *Conclusion: Revisiting Arctic Security*, *in* ENVIRONMENTAL AND HUMAN SECURITY IN THE ARCTIC 272 (Gunhild Hoogensen Gjørv et al. eds., 2014).

24. Stuvøy, *supra* note 8, at 245.

However, saying that a militarized response is the only one to security concerns rejects other potential solutions. That response belongs with the old security paradigm, which is inapposite to the current situation in the circumpolar Arctic region. There is power in giving a stronger voice to people-centered concerns. "Using the language of security catapults Arctic community interests and concerns to the same level as energy security interests or state security."[25] Doing this then allows the concerns of Arctic peoples to be explained to powerful audiences who might be able to do something about them. Despite concerns about broadening the security discourse, old approaches to security, particularly in a rapidly changing region, will not bring a sense of security to the people in this region.

III. LINK BETWEEN EXTRACTIVE INDUSTRIES AND THE HUMAN SECURITY CONCERNS OF INDIGENOUS WOMEN

Human security may be threatened by deliberate, intentionally caused direct threats, but it may also be threatened by what are known as indirect or structural threats.[26] These are threats to security that are created unintentionally and are often the by-product of an action that is not directly threatening.[27] While extractive industry development projects are not created to victimize women, violence against women has been the by-product of numerous development projects.[28] Indigenous women are not the only people who can be negatively affected by extractive industry development, but based on current data, they are a high-risk group and deserve special consideration.

A. Human Rights Violations in the Industry

According to the Human Rights Council, "[e]scalating charges of corporate-related human rights abuses are the canary in the coal mine, signaling that all is not well."[29] Human rights violations have been al-

25. Goloviznina & Gjørv, *supra* note 23, at 272.

26. Alkire, *supra* note 12, at 29.

27. *Id.*

28. *See, e.g.*, KARINA CZYZEWSKI ET AL., THE IMPACT OF RESOURCE EXTRACTION ON INUIT WOMEN AND FAMILIES IN QAMANI'TUAQ, NUNAVUT TERRITORY 63–71 (2014); Georgianne Nienaber, *Man Camp and Predator Economics Threaten Heartland Native Communities*, HUFFINGTON POST (Aug. 5, 2013) http://www.huffingtonpost.com/georgianne-nienaber/man-camps-and-predator-ec_b_3700640.html; *How Mining is Making the World a Worse Place for Women*, OXFAM AUSTRALIA (May 21, 2013), https://www.oxfam.org.au/media/2013/05/how-mining-is-making-the-world-a-worse-place-for-women/.

29. Special Rapporteur on Trafficking in Persons, Especially Women & Children, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development* at 3, U.N. Doc. A/HRC/10/16 (Feb. 20, 2009) (by Joy Ngozi Ezeilo).

leged against numerous corporations for extractive industry development projects.[30] For example, in Papua New Guinea, allegations have been made against Barrick Gold Corporation that indigenous women and other community members have been attacked, beaten, and raped by guards hired by the company.[31] Over seventy groups have filed complaints with the United Nations Human Rights Commission asking for international attention to this situation.[32] Barrick Gold initially agreed to assist victims with reparations, but only if the victims agreed to sign away the legal right to litigate the issue later.[33]

Other examples include allegations brought against Royal Dutch/Shell for human rights violations related to extractive industry projects in Nigeria.[34] U.S.-based Unocal's pipeline project in Myanmar led to numerous allegations by locals of murder, rape, and torture committed by security guards hired by the company.[35] In the Democratic Republic of Congo, similar allegations were made against workers hired by AngloGold Ashanti.[36] Because of these and other similar examples, some scholars have concluded that human rights problems are "intrinsic to most oil and mining corporations."[37]

More attention is paid to human rights violations like these when they occur in countries in the southern hemisphere. These countries are those viewed by the West as either developing or as having underdeveloped legal systems. However, examples exist within developed countries that prove these countries are not exempt from extractive development-related human security threats. Williston, North Dakota is one contemporary example. The city sits on top of the Bakken oil formation.[38] When the oil fields opened, hundreds of mostly male workers flocked to the town. These workers are housed in makeshift camps referred to as "man camps." Within two years of the fields opening, the overall crime rates

30. Rick Ruddell, *Boomtown Policing: Responding to the Dark Side of Resource Development*, 5 POLICING 328, 330 (2011).

31. U.N. Human Rights Office of the High Commissioner Human Rights, *Re: Allegations Regarding the Porgera Joint Venture Remedy Framework* (July 2013), *available at* http://www.ohchr.org/Documents/Issues/Business/LetterPorgera.pdf.

32. *Id.* at 3.

33. *Id.* at 2.

34. Kaeb, *supra* note 2, at 334.

35. *Id.* at 340–42.

36. *Id.* at 343.

37. *Id.* at 329.

38. *Boomtown Strippers: Canaries in the Oil Fields*, LEGAL RURALISM BLOG (Oct. 25, 2011), http://legalruralism.blogspot.com/2011/10/boomtown-strippers-canaries-in-oil.html.

have increased 7.2%, which include large numbers of "forcible rape[s] . . . prostitution, and 'other' sexual offenses."[39]

In Fort McMurray, Alberta, a town subject to a similar oil sand boom, crime rates—specifically crimes against women—jumped in the same manner as the rates in North Dakota.[40] In 2009, Fort McMurray had a crime rate of one crime for every five residents and was ranked "in the top five Canadian cities in terms of the crime severity index."[41]

Both the United States and Canada have highly developed legal and regulatory systems; yet, community members still face security concerns when extractive projects open. Because business practices affect almost all human rights, including the right to a clean environment, personal security, community security, and economic stability, governmental officials and community members must observe the impact these practices have within the community.[42] Without adherence to human rights standards, development projects lead to violence and conflict.[43] The most vulnerable or marginalized members of communities often bear the brunt of negative social impacts.[44]

In response to allegations of corporate abuses in multiple industries, the U.N. created the United Nations Global Compact: a strategic business initiative that established a framework for business policies and practices.[45] The first two principles listed in the Compact are that "businesses should support and respect the protection of internationally proclaimed human rights," and that "business[es] should make sure that they are not complicit in human rights abuses."[46] The principles in this initiative, if followed, would promote stronger business practices in all industries. However, though the United States and other western countries are listed as participating in this initiative, these countries focus their efforts on

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39. Nienaber, *supra* note 28.

40. Alex Hannaford, *No Country for Young Men*, BRITISH GQ (Mar. 8, 2012), http://www.gq-magazine.co.uk/comment/articles/2012-03/08/canada-oil-rush/viewall.

41. Ruddell, *supra* note 30, at 335–36.

42. For a more detailed discussion on this, see Kaeb, *supra* note 2; CORPORATE ACCOUNTABILITY WORKING GRP., INT'L NETWORK FOR ECON., SOC. & CULTURAL RIGHTS, CONSULTATION ON HUMAN RIGHTS AND THE EXTRACTIVE INDUSTRY (2005), *available at* http://www.earthrights.org/sites/default/files/documents/escr-joint-ngo-submission.pdf.

43. Victoria Sweet, *Rising Waters, Rising Threats: The Human Trafficking of Indigenous Women in the Circumpolar Region of the United States and Canada*, 6 YEARBOOK OF POLAR LAW (forthcoming 2014) (manuscript at 13) (on file with author).

44. Ingrid Macdonald, *Introduction: Women's Rights Undermined*, *in* TUNNEL VISION: WOMEN, MINING AND COMMUNITIES 5 (Ingrid Macdonald & Claire Rowland eds., 2002).

45. *Overview of the United Nations Global Compact*, UNITED NATIONS GLOBAL COMPACT, https://www.unglobalcompact.org/aboutthegc/ (last updated Apr. 22, 2013).

46. *Human Rights*, UNITED NATIONS GLOBAL COMPACT, http://www.unglobalcompact.org/Issues/human_rights/index.html (last visited Sept. 22, 2014).

regulating companies running projects in other countries, and not on projects within their own borders. While this focus should be applauded, evidence demonstrates that human rights violations associated with extractive industry development projects should be anticipated and made a priority in every country where these projects exist.[47]

B. Risk Factors Associated with EI Development

After researching the similarities that exist in the extractive industry projects that lead to human security threats and human rights violations, three major factors stand out as warnings that a particular extractive industry project may be risky for the local population. The presence of just one of these factors seems to be sufficient, but if all three occur together, the risks increase exponentially.

First, will the size and scope of the project require large groups of transient, outside, mostly male, workers to be brought into the area?[48] When this happens, the area is flooded with men who are generally from another area, may be single or are at least far from their families, and who are not invested in the wellbeing of the community or community members. Unfortunately, when large numbers of outside workers with no connection to the community arrive in an area, violent crime rates rise.[49] When discussing the link between outside workers and rising crime rates, one law enforcement officer noted that the workers in his area appear to have no respect for local laws.[50] Perhaps they are law-abiding citizens in the communities where they come from, but they have no allegiance to the communities where they only temporarily reside.[51]

Second, will the development project occur in a rural location? Sociological literature suggests that rural and remote communities are more vulnerable to the negative impacts of development than urban areas.[52] Resource-based booms impact basic infrastructure like roads, food sup-

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47. For a more thorough discussion of human trafficking as a risk associated with extractive industry development, see Sweet, *supra* note 43.

48. Cecilia Jamasmie, *Arctic Oil Extraction Frozen, but Mining to Bring a Melting $100 Billion in Investments*, *MINING.COM* (Jan. 14, 2013), http://www.mining.com/arctic-oil-extraction-frozen-but-mining-to-bring-a-melting-100-billion-in-investments-99646/; BEN COLLINS & LESLEY FLEISCHMAN, OXFAM AMERICA, HUMAN RIGHTS AND SOCIAL CONFLICT IN THE OIL, GAS, AND MINING INDUSTRIES: POLICY RECOMMENDATIONS FOR NATIONAL HUMAN RIGHTS INSTITUTION 18 (2013).

49. Sweet, *supra* note 43, at 11–12.

50. *On the Collateral Consequences of an Extraction Boom: Too Many Men, Too Much Light*, LEGAL RURALISM BLOG (Jan. 17, 2013), http://legalruralism.blogspot.com/2013/01/on-collateral-consequences-of.html.

51. Ruddell, *supra* note 30, at 331.

52. *Id.* at 330; COLLINS & FLEISCHMAN, *supra* note 48, at 19.

plies, and law enforcement. It is hard to determine in advance how much and how quickly an area will boom, making it impossible to plan ahead.[53] In addition, even if a community can approximately predict growth, it may not have the resources to train and hire sufficient police to meet new demands. Without enough police officers, it is incredibly difficult to control rising crime rates.

Third, will a large number of systematically marginalized or otherwise vulnerable populations live in the area?[54] Vulnerable does not mean that the people are weak or incapable, but instead that numerous factors have combined to put the community at greater risk than other communities. Perhaps these communities have had to deal with social factors that make community members more vulnerable to predators. Factors like poverty, alcohol abuse, lack of education or other opportunities have all been identified by researchers as factors that make community members vulnerable.[55] If a history of outsiders not respecting or valuing or understanding the culture and concerns of these communities exists, then these outsiders won't be respectful when dealing with community members. Therefore, extractive industry development projects are more likely to threaten the security of systematically marginalized or vulnerable communities.[56]

C. Potential Impact on Indigenous Women in the Circumpolar United States

Many serious human security threats have been identified within the developing world, however certain regions and certain communities within supposedly developed and secure countries also face serious human security problems. An estimated 370 million indigenous people live worldwide and, despite cultural differences, they share many common

53. Kirk Siegler, *On the Plains, The Rush for Oil Has Changed Everything*, NPR (Jan. 29, 2014), http://www.npr.org/2014/01/29/264912750/on-the-plains-an-oil-boom-is-transforming-nearly-everything.

54. COLLINS & FLEISCHMAN, *supra* note 48, at 19.

55. U.S. DEP'T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN, YOUTH & FAMILIES, GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES 3–4 (2013), *available at* http://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf; STATE OF ALASKA TASK FORCE ON THE CRIMES OF HUMAN TRAFFICKING, PROMOTING PROSTITUTION & SEX TRAFFICKING, FINAL REPORT AND RECOMMENDATIONS 6–7 (2013), *available at* http://www.law.state.ak.us/pdf/admin/021513-TaskForceFinalReport.pdf.

56. For a modern Arctic example, see CZYZEWSKI ET AL., *supra* note 28.

problems.[57] Many indigenous communities are vulnerable to factors including poverty and lack of outside opportunities; these identified vulnerabilities are compounded by a history of colonialism and prejudices against indigenous cultures.[58] Rural northern indigenous communities living in the United States are no exception.[59]

In addition, women often find themselves most immediately impacted by security challenges, but when they attempt to raise awareness or propose solutions for these challenges, they are marginalized by people in power.[60] When discussing the gender injustices women face, particularly in areas with mining projects, one international leader said, "Women's low status is not 'natural' . . . . It is due to social, cultural, historical and economic factors. This is an injustice."[61] Indigenous woman face double the difficulties when personal or security challenges arise.

In addition to the societal challenges indigenous women face, all three of the identified extractive industry risk factors exist with currently proposed projects in the circumpolar Arctic region. First, the scope of these projects will require large numbers of outside workers.[62] With the increase in men will come an increased demand for women.[63] Second, many of the development projects will be located in rural areas.[64] Until now these areas have not been easily accessible because of the incredibly harsh weather conditions, leaving them sparsely populated. Finally, many of the areas slated for extractive development projects are highly populated with groups of indigenous peoples. In some of the villages in northern Alaska, between 70% and 90% of the population is Alaska Native. Indigenous communities within the United States have historically

57. Gunhild Hoogensen Gjørv, *Virtuous Imperialism or a Shared Global Objective? The Relevance of Human Security in the Global North*, *in* ENVIRONMENTAL AND HUMAN SECURITY IN THE ARCTIC 68 (Gunhild Hoogensen Gjørv et al. eds., 2014).

58. Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 622 (2010).

59. Gabrielle Slowey, *Aboriginal Self-Determination and Resource Development Activity: Improving Human Security in the Canadian Arctic*, *in* ENVIRONMENTAL AND HUMAN SECURITY IN THE ARCTIC 190 (Gunhild Hoogensen Gjørv et al. eds., 2014).

60. Gjørv, *supra* note 57, at 70.

61. Andrew Hewett, *Mining, Women and Communities and Oxfam Community Aid Abroad*, *in* TUNNEL VISION: WOMEN, MINING AND COMMUNITIES 10 (Ingrid Macdonald & Claire Rowland eds., 2002).

62. Jamasmie, *supra* note 48.

63. Jude Sheerin & Anna Bressanin, *North Dakota Oil Boom: American Dream on Ice*, BBC NEWS MAGAZINE (Mar. 12, 2014, 8:45 AM), http://www.bbc.com/news/magazine-25983917.

64. Jamasmie, *supra* note 48.

been marginalized.[65] This marginalization has left the communities vulnerable to further exploitation.

When considering the potential impact that extractive industry development projects might have on indigenous women in the circumpolar region of the United States, a human security approach helps identify concerns. It is the only approach that allows individuals to articulate what causes insecurity, particularly for those who have been most marginalized.[66] A recent report released by the bipartisan Indian Law and Order Commission provides evidence that individual security concerns have not been addressed by either the state or the federal government, demonstrating how vital it is for individuals in this region, particularly indigenous women, to be able to express exactly what has happened and what may happen in the future that causes them to feel so insecure.[67]

Numerous reports have been written analyzing the impact that extractive development projects have had or currently are having on local communities around the world.[68] Using these reports, four specific areas were identified to demonstrate some of the potential security threats that indigenous women living in northern Alaska may face and that likely have not been addressed in project development proposals currently submitted to the state. The areas that will be addressed are: environmental impact, health impact, personal safety impact, and economic impact.

1. Environmental Impact

When describing the impact of mining on her community, an Aboriginal woman from Australia stated that mining left behind a "restless and confused environment."[69] While mining can stimulate growth and prosperity, it can also irreparably damage the environment.[70] Once projects are completed, they leave behind polluted, plundered land that is no

65. Deer, *supra* note 58, at 622; MELISSA FARLEY ET AL., GARDEN OF TRUTH: THE PROSTITUTION AND TRAFFICKING OF NATIVE WOMEN IN MINNESOTA (2011); PATRICIA TJADEN & NANCY THOENNES, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN (2000), *available at* https://www.ncjrs.gov/pdffiles1/nij/183781.pdf.

66. Gjørv, *supra* note 57, at 59.

67. INDIAN LAW & ORDER COMM'N, *supra* note 14, at 55–61.

68. TUNNEL VISION: WOMEN, MINING AND COMMUNITIES (Ingrid Macdonald & Claire Rowland eds., 2002).

69. Pat Kopusar, *An Australian Indigenous Women's Perspective: Indigenous Life and Mining*, *in* TUNNEL VISION: WOMEN, MINING AND COMMUNITIES 13 (Ingrid Macdonald & Claire Rowland eds., 2002).

70. *How Mining is Making the World a Worse Place for Women*, *supra* note 28.

longer useful for a subsistence lifestyle.[71] Mining projects have been known to impact everything from water tables to soil fertility.[72] In the recently released report from Qamani'tua, Nunavut, community members reported the loss of caribou directly connected to the Meadowbank mine.[73] In addition to losing the caribou, community members have stopped fishing or gathering near the mine, and the dust from the road leading to the mine has ruined the roadside vegetation.[74] Women in this community now have to spend money on food that would normally be hunted or gathered, and once the mine closes, they will have no way to go back to living off of the land.

Many indigenous women are culturally closely connected to the land, and destroying the land destroys both culture and personal wellbeing.[75] Extractive industry projects tend to require large amounts of land and often last for decades, fundamentally changing the land as well as the lifestyles of people who live off of the land.[76]

2. Health Impact

Extractive industry development has adversely affected not only the land but also the peoples who live in the region. For example, the Vuntut Gwitchin in the Yukon noticed a dramatic rise in fetal alcohol syndrome and drug abuse during the last oil boom that occurred in the region.[77] In addition, health problems increase because of the pollution associated with mining projects.[78] Some of the more common illnesses that have been noted are respiratory and skin diseases.[79] James Anaya, U.N. Special Rapporteur for Indigenous Issues, reported that indigenous women living in communities near oil, gas, and mining operations are vulnerable to sexually transmitted diseases, including HIV/AIDS, which are often introduced by the outside extractive workers brought into the area.[80]

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71. Jill K. Carino, *Women and Mining in the Cordillera and the International Women and Mining Network*, *in* TUNNEL VISION: WOMEN, MINING AND COMMUNITIES 18 (Ingrid Macdonald & Claire Rowland eds., 2002).

72. *Id.*

73. Czyzewski et al., *supra* note 28, at 99–100.

74. *Id.*

75. Gjørv, *supra* note 57, at 68–69.

76. COLLINS & FLEISCHMAN, *supra* note 48, at 18.

77. Slowey, *supra* note 59, at 199.

78. Carino, *supra* note 71, at 19.

79. *Id.* at 18.

80. Statement by the U.N. Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, to the International Expert Group Meeting on the Theme: Sexual Health and Reproductive Rights (Jan. 15, 2014).

3. Personal Safety Impact

Outside workers have brought more than diseases. In his same report, Mr. Anaya noted that indigenous women have reported that the introduction of these outside workers also led to increased sexual harassment and violence, including rape and assault.[81] Some of the women reporting the violence are community members and some are women working within the mining projects.[82] "Sex work and violence against women, often fuelled by alcohol, are increasing at alarming rates in mining areas . . . . Women and girls tell us they feel less secure and increasingly vulnerable to violence and intimidation."[83]

While examples exist of corporations turning a blind eye to abuses perpetrated by employees, it is much more likely that corporations are indirectly complicit in human rights violations committed by employees.[84] For example, Papua New Guinea was already struggling with a weak governance structure and an imbalance of power within the country that most dramatically affected vulnerable populations.[85] When the Porgera gold mine opened, bringing in workers and guards who had no respect for local women, the rates of assaults and rapes increased exponentially.[86] Similar risks exist in Alaska, where the rates of rape and violence against women exceed national averages.[87] Bringing in large groups of outside workers increases personal safety concerns, even though the corporations involved are not directly creating risks. For some communities, the very presence of extractive projects exacerbates existing human rights violations and increases security concerns.[88]

4. Economic Impact

Female-headed households have an increased risk of impoverishment when major extractive projects open within their communities.[89] These projects drastically change local economies. Extractive industry

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81. *Id.*

82. K. Bhanumathi, *The Status of Women Affected by Mining in India*, *in* TUNNEL VISION: WOMEN, MINING AND COMMUNITIES 23 (Ingrid Macdonald & Claire Rowland eds., 2002).

83. *How Mining is Making the World a Worse Place for Women*, *supra* note 28.

84. Margo Tatgenhorst Drakos, *The Corporate Human Rights Impact Assessment: Top-Down and Bottom Up*, XVIII INT'L AFF. REV. 1 (2009), *available at* http://www.iar-gwu.org/node/66.

85. Letter from Asia-Pacific Coordinator for MiningWatch Canada to U.N. High Commissioner for Human Rights at 3 (Sept. 4, 2013), *available at* http://www.miningwatch.ca/sites/www.miningwatch.ca/files/letter_to_unhchr_re_porgera_opinion_2013-09-04.pdf.

86. *Id.* at 1–4.

87. Erin Fuchs, *Why Rape is Much More Common in Alaska*, BUSINESSINSIDER.COM (Sept. 6, 2013), http://www.businessinsider.com/why-does-alaska-have-such-a-high-rate-rape-2013-9.

88. Drakos, *supra* note 84.

89. Macdonald, *supra* note 44, at 5.

workers are generally paid large salaries, and with the increase in disposable income flowing into the area, inflation affects everything from housing to food.[90] Women who are able to get service industry jobs or jobs within the mining industry may be able to pay these inflated rates, but the inflated salaries and expenses lead to income inequalities within the community that further damage both community and family relationships.[91] In addition, higher salaries are not always spent on family expenses. Some workers use the money to feed alcohol or drug addictions, and others manage the money poorly because of a lack of education or experience.[92] Either way, not all families are benefited by the higher and more regular salaries associated with development projects.

Women who are not able to get service industry or mining jobs suffer when traditional livelihood opportunities are lost. This happens most often when traditional livelihoods were supported through gathering or hunting activities in the local environment, and the environment has been damaged by the development project.[93] When that happens, they have no ability to provide for themselves and their families. Additionally, after the development project has ended, the economic system collapses, leaving vulnerable workers dependent on a project that no longer exists and with fewer opportunities than originally existed in the area prior to the beginning of the project.[94]

The foregoing exemplifies how extractive industry projects impact communities. These communities are made up of both men and women, but the unique issues that impact women are rarely acknowledged. As stated by representatives of one NGO, "Only when mining companies acknowledge this and fundamentally change the way they engage with women and support their participation in decision-making processes, can they truly contribute to sustainable and equitable development."[95] With the proposed developments located in Alaska occurring in the middle of indigenous communities, indigenous women in particular must have their concerns addressed for positive relationships between companies and local communities.

90. Sheerin & Bressanin, *supra* note 63.
91. CZYZEWSKI, *supra* note 28, at 50–60.
92. *Id.* at 55–60.
93. Carino, *supra* note 71, at 17.
94. Drakos, *supra* note 84, at 4.
95. *How Mining is Making the World a Worse Place for Women*, *supra* note 28.

IV. MITIGATING THE RISKS

Risks are an intrinsic part of the upcoming plans to develop the circumpolar region, but risks can generally be mitigated. It is possible to make things safer for indigenous women in the region, but not unless and until the risks are acknowledged and identified in conversations and policy making discussions.

Governments may still have the primary responsibility to promote, protect, and fulfill human rights, but the growing influence of companies demonstrates that states will need to work more closely with corporations to effectively protect against business-related security threats. Through employment and other activities, businesses constitute a driving force in most national economies today.[96] The Universal Declaration of Human Rights (UDHR) "calls on every individual and every organ of society to strive to promote and respect the rights and freedoms it contains and to secure their effective recognition and observance."[97] The phrase 'every organ of society' now extends to not just individuals, but also private entities such as companies."[98]

Most of the major projects planned within the circumpolar region have been proposed by multinational corporations (MNCs).[99] The increasing role that MNCs have begun to play in the global economy presents potential to do both good and harm. Viewing risk through a human rights lens will help identify possible legal liability, potential for project interruption or abandonment, and negative impacts on the corporate image.

A. National Human Rights Institutions

In a policy report released in 2013 by Oxfam America, analysts identified some of the social and environmental impacts associated with extractive industry projects.[100] One major recommendation to mitigate these risks is for every country to create its own national human rights institution (NHRI).[101] NHRIs are created for the stated purpose of protecting human rights within the country.[102]

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96. CORPORATE ACCOUNTABILITY WORKING GRP., *supra* note 42, at 6.

97. *Id.* at 7.

98. *Id.*

99. *See, e.g.*, *Graphite Creek*, GRAPHITEONE RESOURCES, http://www.graphiteoneresources.com/projects/graphite_creek/ (last visited Sept. 23, 2014); Jamasmie, *supra* note 48.

100. COLLINS & FLEISCHMAN, *supra* note 48.

101. *Id.* at 8.

102. *Id.*

The report then gave guidelines to assist countries in evaluating whether or not the NHRI being created will be effective. The five evaluation criteria listed in the report were created specifically for NHRIs that deal with extractive industry regulations. The first one is independence.[103] NHRIs must remain independent from political pressures. Extractive companies often exert power over local and national governments, particularly in remote regions where many extractive projects are located.[104] If the NHRI is not vulnerable to governmental pressures, then it will more effectively evaluate extractive company practices. The second is promotion. An effective NHRI broadens public awareness of the duties that both the state and corporations have to protect human rights.[105] The third criterion is empowerment. NHRIs need to empower marginalized populations on local, national, and international levels.[106] When the Indian Law and Order Commission reviewed justice and security issues in Alaska, the report cited evidence demonstrating that empowering local communities to deal with both social and security concerns themselves was a much more effective solution than using outside authorities to fix local problems.[107] In addition, the NHRI will not be as accurate or effective if marginalized people believe that their concerns will continue to be ignored by authorities. They will not report negative environmental, health, personal safety, or economic impacts, and the NHRI will be working from incomplete data. Therefore, the NHRI needs to make procedures that build trust among marginalized populations and promote local control over community security concerns.[108] Fourth is remediation. Any dispute resolution must be perceived as legitimate to provide redress that is equal to the violation.[109] "Redress could include compensation, restitution, guarantees of non-repetition, changes in relevant law and public apologies."[110] Power is the final criterion. The NHRI

103. *Id.* at 20.

104. *Id.*

105. COLLINS & FLEISCHMAN, *supra* note 48, at 20.

106. *Id.*

107. INDIAN LAW & ORDER COMM'N, *supra* note 14, at 43–51.

108. The tragic events surrounding the Elsipogtog anti-fracking protests in Canada show both how badly things can go when traditionally marginalized groups are not empowered to speak about community concerns, and also why governments need an independent body holding them accountable. *See, e.g.*, Leanne Simpson, *Elsipogtog Protest: We're Only Seeing Half the Story*, HUFFINGTON POST CANADA (Apr. 24, 2014, 8:40 AM), http://www.huffingtonpost.ca/leanne-simpson/elsipogtog-racism_b_4139367.html.

109. COLLINS & FLEISCHMAN, *supra* note 48, at 21.

110. Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, at 22, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008) (by John Ruggie).

must be able to influence the actions of both government and corporate leaders in order to make change.[111] State regulations prohibiting certain corporate conduct will have little impact without the ability to investigate abuses and require change. An effective NHRI has the ability to mitigate the risks associated with extractive industry development.

Unfortunately, the United States does not currently have a NHRI.[112] While a case can be made that creating a NHRI is vital, particularly with the anticipated development boom in Alaska, the five evaluation criteria could still potentially be used by other regulatory bodies to determine the effectiveness of both state and federal bodies when dealing with citizen complaints against extractive industry actions.

B. Additional State Actions

Until the United States has created a formal NHRI, other actions can be taken that will provide additional layers of protection for community members facing security threats related to development projects. Both states and the federal government could set a policy that companies with known human rights violations will not be awarded development contracts. Particular attention should be paid to companies that have shielded workers from liability for those violations. Awarding contracts to companies with poor human rights records does not uphold a government's responsibility to its citizens.

The United States could also strengthen requirements for Social Impact Assessments (SIAs). SIAs were created to help government regulators assess potential social consequences related to development projects.[113] Unfortunately, SIA implementation has been unevenly applied because of the "absence of legal mandates specifically requiring a standalone SIA."[114] Strong SIA requirements could identify many of the stated security concerns and require mitigating actions by development companies before they become a problem.

As mentioned in Part II, one of the principles embraced by the international community regarding business practices is that businesses must be careful to not be complicit in human rights abuses.[115] This duty

111. COLLINS & FLEISCHMAN, *supra* note 48, at 21.

112. *Id.* at 80.

113. THE INTERORGANIZATIONAL COMM. ON PRINCIPLES AND GUIDELINES FOR SOCIAL IMPACT ASSESSMENT, *Principles and Guidelines for Social Impact Assessment*, *in* 21 IMPACT ASSESSMENT AND PROJECT APPRAISAL 231 (2003).

114. RABEL J.BURDGE & C. NICHOLAS TAYLOR, WHEN AND WHERE IS SOCIAL IMPACT ASSESSMENT REQUIRED? (2012), *available at* http://www.tba.co.nz/pdf_papers/When_and_Where_is_SIA_Required_19-5-12.pdf.

115. *Human Rights*, *supra* note 46.

is difficult to define, however, because the definition of legal complicity varies by country. Generally, in order to hold a company liable for actions of workers, a government will need to prove that a company knowingly "provid[ed] practical assistance or encouragement that ha[d] a substantial effect on the commission of a crime."[116] However, even the *mens rea* standard for "knowingly providing assistance" varies. If the required *mens rea* standard were lowered to make it easier for states to hold companies liable for worker actions and complicity were more concretely defined, it would be much easier to hold companies liable for these actions, thus providing more security for local populations.

Finally, national and state government leaders need to recognize the importance of indigenous community self-government in providing security for community members. As one scholar noted, "[S]elf-government, especially in areas where there is increased oil and gas activity, dramatically improves the ability of communities to address their own human security issues."[117] Similarly, in the formal report submitted by the Indian Law and Order Commission, commission members highlighted the need for indigenous law enforcement and justice systems to be respected as legitimate by outside legal institutions in order for tribal communities to have adequate access to justice.[118] Without this respect, local communities will struggle to protect members from negative outside influences. With that in mind, no state or federal task force should be created without the meaningful inclusion of tribal leaders. This means that the task force will tackle controversial or systemic issues and implement appropriate tribal leadership recommendations instead of including leaders for purely symbolic purposes.[119]

C. Corporate Action

A common international set of standards articulating the human rights responsibilities of business needs to be articulated. It is in the interests of companies as well as the rest of society "for the human rights principles and standards that define acceptable corporate behavior to be clearly and unambiguously established."[120] In addition to setting formal

116. Ezeilo, *supra* note 29, at 20.

117. Slowey, *supra* note 59, at 191.

118. INDIAN LAW & ORDER COMM'N, *supra* note 14.

119. Unfortunately, the history of security dialogues demonstrates that formal dialogues that include indigenous participation rarely meet these criteria. *See* Eduardo Canel et al., *Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*, 30:1-2 CANADIAN J. DEV. STUD. 5, 14–15 (2010).

120. Corporate Accountability Working Group, *supra* note 42, at 28; Currently, only a piecemeal approach to corporate responsibility exists. Elements can be found in the following places:

standards that will create an atmosphere of corporate accountability, corporations have the opportunity to voluntarily implement more stringent standards.[121]

Until governments and intergovernmental groups have created a single set of standards, corporations can take action on their own. One idea is to implement a Human Rights Impact Assessment Framework (HRIA) for each upcoming project. A HRIA focuses on human rights impacts that exist within a corporation's sphere of influence.[122] The assessment should use internationally recognized human rights standards to judge the impact development projects may have. This includes finding ways to avoid direct or indirect complicity in human rights abuses. In order to fully determine this, a standard must also be set to determine who is within a company's sphere of influence. Without this clear standard, companies will use a "narrow, biased interpretation of their responsibilities. Without a clear definition of sphere of influence, businesses may seek to limit their responsibility artificially."[123]

Companies also need to implement a thorough due diligence process: "a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it."[124] According to Professor John Ruggie, implementing a thorough due diligence process forces companies to "become aware of, prevent and address adverse . . . impacts."[125] In order to effectively ascertain the potential negative social impacts, the company must determine what factors should be included within the scope of required due diligence. In his role as a UN Special Representative, Professor Ruggie officially recommended that companies consider the following areas: (1)

International Bill of Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Business Leaders Initiative on Human Rights (leads and develops corporate response to human rights); Revenue Watch Institute (promote responsible management of natural resource wealth for the public good; Organization for Economic Cooperation and Development's Guidelines for Corporate Governance; Vienna Declaration and Program of Action; Extractive Industries Transparency Initiative; and International Business Leaders Forum produced a draft Guide to Human Rights Impact Assessment and Management. *See* Drakos, *supra* note 84, at 6.

121. While it is true that many corporations do only the minimum necessary to voluntary give back to communities, and some do not follow through with promised actions. *See* Canel et al., *supra* note 119, at 15–16, some corporations are considering the positive impact on both reputation and long-term results that may be associated with more responsible business practices. *See* Massarani, *supra* note 3, at 157–58.

122. Drakos, *supra* note 84.

123. Corporate Accountability Working Group, *supra* note 42, at 7.

124. Ruggie, *supra* note 110, at 9.

125. CHRISTINA HILL & KELLY NEWELL, WOMEN, COMMUNITIES AND MINING: THE GENDER IMPACTS OF MINING AND THE ROLE OF GENDER IMPACT ASSESSMENT 6 (2009).

country contexts and what human rights challenges already exist in the area; (2) what human rights impacts their activities may have; and (3) whether their business activities may contribute to abuse through other relationships connected to their business activities.[126] By delving into these three areas, a corporation may be able to predict the likelihood that doing business within a particular area might create human security risks for local populations. As stated in previous sections, many human security threats are indirect rather than direct results of corporate business practices. Once threats have been identified, it is easier for corporations to work with local communities to find ways to mitigate these threats.

In addition to setting up procedures, companies can also find ways to give back to communities that will ultimately protect human rights. While it is true that "[a] company cannot compensate for human rights harm by performing good deeds elsewhere," giving money to fund local community initiatives can strengthen the ability of a community to protect itself.[127] A company could fund a new school or school program to improve educational opportunities, or donate money to the local police to increase capacity. A company that truly desires to mitigate risks associated with a development project should be able to use resources to strengthen communities and reduce identified risk factors.

However, even if the companies come in and create social and economic development programs, they should not be allowed to distance themselves too completely from taking responsibility for any human rights abuses connected to their development programs.[128] Voluntary corporate actions are welcome, but they cannot replace standards and regulations that will allow countries and individuals to hold corporations responsible for violations and damages, whether directly or indirectly caused by development projects.

V. CONCLUSION

In order to responsibly develop the Arctic region, it is important that potential threats are acknowledged and that actions are taken to mitigate the risks that extractive industry development projects will bring. A great deal can be learned about how to maintain security by using a human security approach. Particularly when dealing with a region that is undergoing rapid change, viewing potential threats from both a top-down and bottom-up approach allows communities and individuals the ability

126. Ruggie, *supra* note 110, at 17.
127. *Id.*
128. Kaeb, *supra* note 2, at 351.

to express what makes them feel threatened. The changes currently taking place in the Arctic are creating new threats that did not previously exist, and while development projects will bring economic benefits into the region for some, not all people will reap these benefits.

All groups living in the region are likely to experience the impact of these new threats, but indigenous women residing in the region are more vulnerable than any other group. Because so many of the extractive development projects will require large groups of outside, transient workers to be brought into rural locations mostly populated by communities of systematically marginalized people, and because the combination of these three circumstances has led to increases in gender-related violence in other locations, indigenous women residing in this region will be particularly impacted by development plans. Not only will their personal safety be threatened, but there will likely be negative implications for the environment, their physical health, and even their economic well-being.

It is possible that some of the worst of these threats may be mitigated by governmental and corporate actions. If the United States were to create an effective NHRI that upheld strong business accountability standards, enforced more stringent SIA requirements, and strengthened legal complicity definitions, while at the same time involving local tribal communities in the process, community members would feel more secure when faced with these potential threats. At the same time, corporations that are willing to see the long-term benefits associated with socially responsible development plans will enhance their reputation with socially conscious stockholders and build community goodwill by agreeing to stricter human rights standards, conducting thorough due diligence processes to identify risks prior to problems occurring, and giving back to the communities. However, if no one is willing to acknowledge these threats and engage in the conversation, then development projects will move forward with no protections in place, and the security of many people living in the circumpolar Arctic region of the United States will be threatened.