



*“Greenland compliance with the ILO 169 and UNDRIP”*

Master thesis



**AALBORG UNIVERSITET**  
STUDENTERRAPPORT

**Title:**

“Greenland compliance with ILO 169 and UNDRIP”

**Authors:**

Aixa Pérez García

Alberto Huerta Morales

**Supervisor:**

Anne Merrild Hansen

**Thesis period:**

4<sup>th</sup> semester

February-June 2017

Aalborg University, Denmark

**Number of pages:** 52 (incl. Appendix A, B)

## Abstract

In 2009, the Self-Government Act set the framework for Greenland to become an independent State. However this process requires Greenland to be economically self-sufficient, which it is not in the present. Exploitation of mineral resources has been proposed as the roadmap to achieve this economic goal.

From an international perspective, there are two international instruments that set the framework for indigenous peoples rights, namely the ILO Convention No.169 (ILO 169) and the UN Declaration of the Rights of Indigenous Peoples (UNDRIP). These international instruments represent the articulation of human rights in the specific circumstances of indigenous peoples.

This research is focused on the assessment of the implementation in Greenland of ILO 169 and UNDRIP. The case-study of Greenland is selected on the basis of the share of the population self-identified as Inuit (a recognized indigenous people), the current economic development trend towards increased mineral resource activities and the fact that both ILO 169 and UNDRIP have been adopted by Greenland.

The assessment is done by interpreting, conceptualizing and operationalizing the ILO 169 and UNDRIP in the form of the obligations they generate to Greenland. These obligations are assessed with primary sources (interviews) and secondary sources (relevant national legislation including the Mineral Resource Act and historical records)

The conclusions presented in this project are based on whether the Greenlandic government is respecting, protecting and fulfilling of the obligations regarding FPIC, land and natural resources, consultations, participation and development and self-determination.

## **Preface**

This project has been developed as a Master thesis by students of Aalborg University in the program “Environmental Management and Sustainability Science”. In the semester period February-June 2017.

The project is divided in numbered Chapters. The figures are numbered based on the Chapter number in which they are presented. References are based on the Chicago-style system.

The front cover image was taken from the NASA database (NASA 2017).

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## 1 Introduction

The Arctic is the part of the world mostly covered by the Arctic Ocean and large land areas in the northern parts of the Arctic States: Russia, US, Finland, Sweden, Norway, Iceland, Canada and the Kingdom of Denmark<sup>1</sup> (Arctic Center University of Lapland 2016). Around 4 million people live in the Arctic in the present, including roughly 10% of indigenous peoples from more than 30 distinct indigenous groups, sub-groups and communities (Arctic Council 2016).

The Arctic regions have considerable demographic diversity. Some areas are made up largely of indigenous peoples with subsistence economies and rural lifestyles, others, large urban settlements heavily inhabited by non-arctic immigrants. Additionally, there is a great and complex cultural variation within the Arctic indigenous peoples (Norden 2015b).

In most Arctic regions indigenous peoples are a minority<sup>2</sup>. However, in Greenland, they account for a majority of the population (Arctic Council 2016). The indigenous peoples of Greenland are officially recognized by Denmark as “Inuit”. This term encompasses all native Greenlanders, although in reality there are multiple subcultures that differ culturally and linguistically (Cultural Survival 2015).

Since 1953, Greenland status as a Danish colony was abolished, becoming an integral part of the Kingdom of Denmark. In 1979, the Home-Rule Act was approved and certain executive and legislative competences were transferred from Denmark to a newly “home-government” in Greenland, including taxation, fisheries planning and social, educational and cultural affairs (Kuokkanen 2015). Once all the competences considered in the Home-rule Act were fully transferred to the “home-rule” government, a subsequent Act was drafted and approved in 2009: The Self-Government Act (SGA).

The SGA recognized the right for self-determination from the people of Greenland and allowed for further transfers of State competences from the Danish Government to the Greenlandic Self-government, with an eventual full independence of Greenland (Danish Parliament 2009). One critical competence, the management of mineral resources in Greenland, including full control and revenue from these activities, was adopted by the self-government soon after the SGA was approved.

Since 2013 there has been political support in Greenland towards the mining sector, particularly by the Siumut party (Hubbard 2014). This have been seen in the “lifting” of the so-called uranium-ban, the development of a framework that would allow for uranium export, and the promotion campaign to “mining countries” to invite them for investment in Greenland<sup>3</sup> (Bureau of Minerals and Petroleum 2011b). This situation has often been based on the promise of economic benefits that will lead

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<sup>1</sup> Comprised by three entities: Denmark, Faroe Islands and Greenland. They share the same Constitution and leader of State: Queen Margrethe II

<sup>2</sup> Excepting in Canada where they account for about half the State arctic population Iceland has no indigenous peoples population

<sup>3</sup> As of 2017, there are more than 100 active licenses for mineral and hydrocarbon prospection, exploration and extraction.

Greenland to achieve its full independence. Amidst this situation, the Greenlanders remain divided on the “mining question”, particularly when it comes to uranium (Persson and Christiansen 2016).

Hansen (2014) concluded that rapid development of extractive industries has the potential to cause dramatic changes in the social and ecological systems in Greenland. Considering the potential impact for present and future generations, it is important to ensure the overall respect for indigenous people’s rights, including inclusion and participation of the community in decisions regarding mineral resource activities. Yet the lack of public involvement as well as transparency issues in the development process of mining projects has been pointed out particularly in Greenland (Tiainen 2016; Hansen 2014), as well as generally across the Arctic (Nordic Council of Ministers 2015).

Overall, indigenous peoples have identified themselves by the important connection to the land that they inhabit due to the spiritual, cultural, social and economic relation with their traditional lands (United Nations 2009). In order to protect the interests of indigenous populations in the Arctic, several regional organizations have been formed such as the Inuit Circumpolar Council (ICC) which represents approximately 170,000 Inuit living in US, Canada, Greenland and Russia.

From an international perspective, there are two international instruments that set the framework for indigenous rights (Swepston 2011), namely the ILO Convention No.169 (ILO 169) and the UN Declaration of the Rights of Indigenous Peoples (UNDRIP). The two instruments, which have been ratified and adopted, by Greenland and Denmark respectively (Cultural Survival 2015), highlight the importance of consultation and participation in decision-making as the basis for applying the broader set of rights enshrined (International Labour Organization 2013; United Nations 2008b).

## 1.1 Research Question

The international instruments for indigenous peoples provide a set of rights related to consultation, participation, land and natural resources, which in the context of Greenland, and the expected development of extractive industries, acquire critical importance. At the same time, since the SGA approval, which sets the roadmap for full independence from Denmark, the self-government of Greenland has been paving the way for an economy heavily supported by extractive activities.

Considering this situation, Greenland national government must be prepared to guarantee the respect of the international rights of indigenous peoples, particularly in regards to land, natural resources and community participation as addressed by the ILO 169 and UNDRIP. Therefore, it is imperative to know the current status of the implementation of both instruments in order to identify the potential areas of improvement at a National level. Having said so, the leading research questions are:

*How are the set of rights, related to mineral resource activities, addressed by ILO 169 and UNDRIP?*

*To what extent are these rights being respected, protected and fulfilled in the present in*

## *Greenland?*

### 1.2 Report Structure

The body of the report is divided in 9 Chapters. Chapter 1 presents an overall context of the research topic leading up to the specific research question guiding the investigation. Chapter 2, contains the research design and the methodology. These two chapters provide context for the research project as a whole.

Chapters 3, 4 and 5 are descriptive ones. They present in detail all the relevant information necessary to understand the problem at hand and to analyze it. Chapter 3, contains the general presentation of the Home-Rule and Self-Government Act. Critical pieces of legislation necessary to understand the relationship between Greenland and Denmark. Furthermore, the socio-economic conditions of Greenland that drive the mineral extraction momentum in the country. Chapter 4 addresses the two international instruments of indigenous rights: ILO 169, UNDRIP and a specific section on FPIC. Chapter 5 describes the national legislation related to mineral resource extraction, environmental protection, land-tenure and the Self-Government Act.

Chapters 6 is focused on the concept of indigenous peoples and how it applies in the context of Greenland. This is necessary information for the analysis. Chapter 7 contains the analysis of the assessment of the implementation of the ILO 169 and UNDRIP in Greenland based on primary (i.e. interviews) and secondary sources (i.e. legislation, reports, historical records etc.).

Finally, Chapter 8 is focused on a thorough discussion of the analysis made, in addition to aspects related to the research design selected and the analysis approach. Finally in Chapter 9, conclusions are presented based on the assessment of the obligations of the Government derived from the ILO 169 and UNDRIP.



## 2 Research Design

This investigation begins with the perception of a world that is not set in stone, a type of relativist approach, where there are multiple ways of understanding reality. An approach that has been labeled in the realm of social sciences as contemporary positivism<sup>4</sup> which embraces the notion that reality is produced and reproduced by inter-subjective social processes, and at the same time still allows a (semi) rigorous process of scientific inquiry (Toshkov 2016).

The type of research question selected in an investigation determines the path to follow in the research (ibid.). Within the paradigm of research selected, two main types of research (questions) can be identified: normative and positive. In a nutshell, normative questions ask what *ought to be* while positive questions ask *what is*.

Based on the research question posted in Section 1.1, this project should be considered as a positive research; and hence, the focus will be on the empirical aspects of indigenous peoples rights articulated through mechanisms of consultation and participation in the decision making on the development of projects of extractive industry in Greenland. This reality inherently relates to theoretical concepts of human rights, democratic aspects and participation theories. In other words, there is a relation between concepts and facts.

In itself, positive research might be divided into theoretical and empirical. Empirical research focuses in the real-life empirical facts and phenomena, using theory as a tool, but taking the analysis beyond the realm of abstraction. In conclusion, this project should be considered as an empirical positive research, with a specific focus on descriptive research, which is one of many goals of empirical positive research (ibid.).

### 2.1 Methodology

Single critical in-depth case studies are a fitting methodology when the phenomenon of study is contemporary, the context is highly relevant and there are several sources of evidence available (Yin 2014). Descriptive case studies are usually motivated by cases that have 'long lasting impacts... and [are] highly unusual for some reason' (Toshkov 2016, 294).

The case that is investigated in the report addresses the main tools to protect indigenous peoples rights, which are the ILO 169 and UNDRIP (Swepston 2011), in the context of the mineral resource activities in Greenland. Therefore, this case fulfills all the requirements for a critical-descriptive case study methodology.

The methodology of this report is based on the process of conceptualization and operationalization of the ILO 169 and UNDRIP. This process ends up in the development of indicators that can be

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<sup>4</sup> This differs from the natural science approach of positivism, and leans more towards a constructivist perspective.

assessed with empirical information. Figure 2.1 presents a model of the indicator development process.

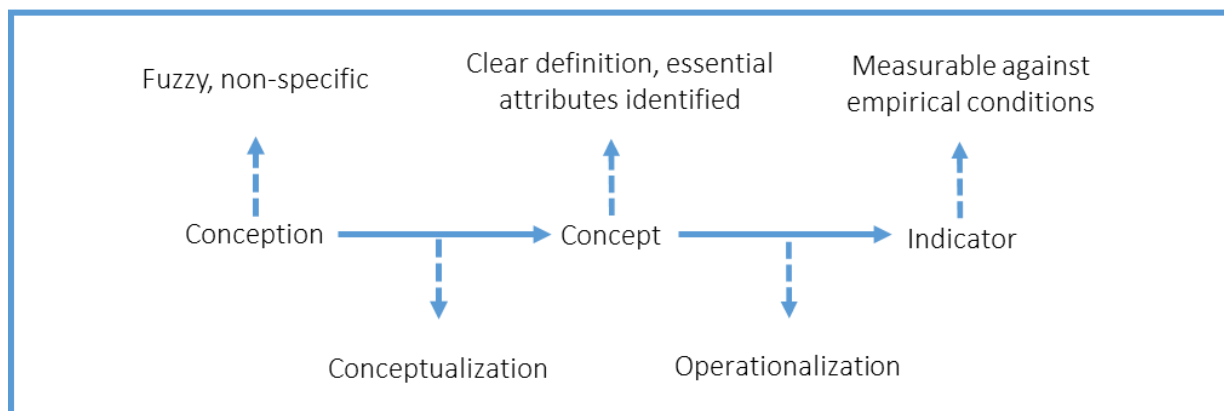


Figure 2.1 The process of conceptualization and operationalization in order to develop measurable indicators (Toshkov 2016).

Conceptualization refers to the process from fuzzy and non-specific ideas or conceptions into clearly defined concepts. Concepts are sharable mental representations of a generalized and abstract empirical events. They are necessary in order to interpret reality in the light of theory (ibid....).

In the same way, the ILO 169 and UNDRIP are legal documents with vast amounts of abstract information related to indigenous peoples rights. Therefore, they require to be interpreted<sup>5</sup> and conceptualized, based on the research questions of this project, and generate the specific concepts of FPIC, land and natural resources, consultation, participation and self-determination.

Once concepts are defined, it is necessary their operationalization in order to be measurable (ibid...). In this particular case, once FPIC, land and natural resources, consultation, participation and self-determination have been clearly conceptualized, they are analyzed from the perspective of the State obligations they generate (divided in obligations to respect, protect and fulfill).

Finally, these obligations are assessed with empirical evidence in order to determine to what extent the ILO 169 and UNDRIP provisions have been complied with in Greenland in the context of the mineral resource activities.

The empirical evidence used in the assessment comes from primary and secondary sources. For the primary source of data, one in-depth semi-structured interview with the director of the ICC Greenland was conducted (a summary of the interview is presented in Appendix B). Secondary

<sup>5</sup> The interpretation is based on the article 31 and 32 of the Vienna Convention for Treaty interpretation, which considers not only the text, but the objective and full content of the instrument at hand, including pre-able, annex as well as the context of the development of the treaty (Sargent 1998).

sources comprises information available that is drawn from national and international legislation, scientific reports, archival records from the ILO and research related to the case study.

### 3 Greenland: political administration and mining

It is impossible to understand the current relationship between Denmark and Greenland without addressing the two major pieces of legislation governing this relation, namely the Home-Rule Act (HRA) of 1978 and the Self-Government Act (SGA) of 2009.

The HRA was drafted by an appointed Home-Rule Committee, later presented and approved by the Danish Parliament in 1978 and eventually accepted in a referendum in Greenland in 1979. The HRA sets out the political organization to be implemented in Greenland, which is to be based on an assembly elected in Greenland known as “Landsting” and an administration headed by “Landsstyre” (Peder Hansen 1973).

Overall, “the overarching principle of the HRA was the devolution and delegation of legislative and executive authority from Danish to the Greenlandic authorities within certain areas of jurisdiction” (Kuokkanen 2015, 182). These areas were specified in the HRA and they included taxation, country planning, trade legislation, internal transportation, environment and conservation amongst others (Peder Hansen 1973). While the areas that remained under Danish Jurisdiction were foreign and monetary policy, judiciary system and defense amongst the most important.

In 2009, the SGA was developed to expand the sovereignty conceded in the HRA. This new Act, contained a new set of 33 policy jurisdictions available to be transferred from the Danish government to the recently created “self-government”. This new government would be comprised by the Greenlandic Parliament (also known as Inatsisartut) and the Primer and its ministries (also known as Naalakkeersuisut).

The SGA contained major cultural changes such as making west-Greenlandic the official language (instead of Danish) and changing the name of Greenland to the Greenlandic word for the country: Naalakkersuisut. Furthermore, the SGA addresses the economic relation between Greenland and Denmark, including the Danish block grant and its connection to the revenues obtained from mineral resource activities (Danish Parliament 2009).

Overall, the SGA sets the framework for full independence from Denmark, however this process requires Greenland to be economically self-sufficient, which as of today is not<sup>6</sup>, as well as the full transfer of the competences considered in the SGA.

By contrasting the HRA and the SGA, it can be observed the Danish progressive recognition of internationally recognized indigenous people’s rights. On the hand the HRA considered “Greenland is a distinct community within the Kingdom of Denmark” (Peder Hansen 1973) while the SGA recognized “that the people of Greenland is a people pursuant to international law with the right of self-determination”(Danish Parliament 2009). This change shows how Denmark progressed from considering the people of Greenland as a minority to granting them the right for self-determination.

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<sup>6</sup> Around 30% of Greenland’s GDP comes from the yearly grant obtained from Denmark.

On the other hand, there was a transition from the “fundamental rights of natural resources” (ibid.), granted in the HRA, which was a deliberately vague concept used to avoid the conflict of raw material exploitation between Denmark and Greenland (Brøsted 1986), towards the transference of the management and revenue of the mineral resources in Greenland to the self-government.

### 3.1 Socio-economic drivers to mining activities in Greenland

Since the end of World War II, Greenland has been through crucial economic and social changes. Traditional hunting fishing has declined, a monetary economic system, (based on wages rather than subsistence) developed and increased mobility, amongst other factors, have placed Greenland in a fast track towards a globalized “modern” society (Norden 2015a).

Today, Greenland is a net importer country (DKK 1.2 billion in 2014) with an unemployment rate of 10.3%. It is still dependent on the Danish block grant (around one third of the GDP) (Statistics Greenland 2016). The main job provider is public administration and government, followed by jobs are related to fishing, hunting and agriculture (ibid.). Greenland biggest expenditure is on social welfare (almost 30% of its GDP in 2014) (ibid.).

In 2009, the SGA set forth a freeze of the Danish block grant to a specific amount in addition to that amount being correlated to the revenues from mineral extraction activities <sup>7</sup>(Danish Parliament 2009). Furthermore, a decline in shrimp catch, overall emigration and stagnation of economic activities have accentuated the structural economic ailing of Greenland (Bjørst 2015). Climate change, specifically, ice cap melting, has increased the interest of larger economic endeavors, from commercial shipping, large scale tourism and maybe most importantly, mineral resource extraction (ibid.).

Greenland has been historically engaged in mining of copper, coal and cryolite extraction from its origins as a colony in the mid-19<sup>th</sup> (Naalakkersuisut 2016). However, the current socio-economic conditions as well as “irreversible trend towards independence” (Kielsen, Olsvig, and Enoksen 2017, 2), have apparently driven some of the authorities to frame mining as the only way to achieve Greenland’s necessary economic development (Bjørst 2015)

As of April 2017, in regards exclusively to minerals (not including hydrocarbons), there are 65 active licenses<sup>8</sup>: specifically 7 non-exclusive prospecting, 51 exclusive exploration and 7 exploitation (Statistics Greenland 2016). It is expected that two mines commence production in 2017 and additional exploration to continue (Stendal 2016). Paradoxically, while remaining on top of the political agenda, mining has not been as important economically for Greenland as it was in recent

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<sup>7</sup> the grant will be reduced by half of the mineral revenues exceeding DKK 75 million

<sup>8</sup> These are referred to “large scale mining”. There is a different type of license for “small scale” which is granted only to local residents of Greenland and it’s limited to an area of 1sq kilometer.

years<sup>9</sup> (Statistics Greenland 2016).

### 3.2 The uranium “ban”

In the mid-1980s, the Danish Parliament initiated a zero-tolerance policy<sup>10</sup> on radioactive minerals mining either as the main mineral for extraction nor a byproduct (Poppel et al. 2015). Several factors influenced this decision known as the “uranium-ban” such as the accident with the US bomber carrying four hydrogen bombs in 1968 close to the Thule Air Base in Greenland (Gunter 2015), as well as the growing of the world-wide anti-nuclear movement (Leonard 2003).

The “uranium-ban” stood until 24 October 2013, when the Parliament (this time, the Greenlandic one), overturned this policy in a close vote (15 votes to 13). This initiative was pushed by a political coalition lead by the Democratic Siumut party, which rose to power seven months before, with campaign promises of rebutting the ban, increasing royalty payments and oversight of the mining industry (Gunter 2015).

Since June 2016, both Danish and Greenlandic governments have passed bills that are set to establish a framework that would allow for Uranium exportation from Greenland that would comply with international non-proliferation standards and other national security issues, which would allow Greenland to export of radioactive material (Oneal 2017). The recent government formed in 2016, holds a coalition of both “pro and against” uranium mining. From the three political parties currently forming the coalition for government, only one (Sumit-the majority party) voted in favor of uplifting of the uranium-ban (The Local DK 2016)

Different political parties in Greenland seem to have a different approach even when they agree on an uranium ban. For example, the are proponents for single referendums, parliamentary vote each time a license to mine a radioactive mineral is being considered, non-binding referendums before any mine begins operation or even legislation based on the content of radiation from the minerals extracted (Pedersen 2016).

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<sup>9</sup> In, 2014, the mining sector only employed around 110 people and it generated a turnover of DKK 95 million, compared to DKK 353.3 million in 2008

<sup>10</sup> Although the practice of zero tolerance stood for many years, there is no formal “decision” or document available in the archives that formalizes this practice.

#### 4 International instruments for Indigenous Peoples rights.

This section presents the Indigenous peoples rights from the perspective of two international instruments, namely the International Labour Office Convention No.169 and the United Nations Declaration on the Rights of Indigenous Peoples. These two represent the main tools to protect Indigenous peoples rights (Swepston 2011).

This section begins with a brief historical contextualization of the development of both instruments, then continues to address each one individually, from a general perspective and the specification of the provisions (rights) they contain. Special importance is placed on consultation and participation aspects, as these are a key-issue in all matters on Indigenous people's rights (ibid.).

##### 4.1 Introduction

The International Labour Organization (ILO) is a standard-setting specialized agency of the United Nations, which aims to improve working and living conditions worldwide. It was created in 1919 and it became part of the United Nations in 1946 (International Labour Organization 2003).

In 1957, the ILO adopted the first Convention on Indigenous and Tribal Populations known as Convention No.107 (International Labour Organization 1989). This first ILO Convention (ILO 107) was based on an *integrationist approach* by which the integration of the Indigenous peoples into the modern society was conceived as the only way for their communities to survive (International Labour Office Geneva 2013). In conjunction with an *assimilationist approach* by which, all Indigenous peoples 'problems would disappear as long as they were absorbed into the modern societies (Yupsanis 2010).

After the ILO 107, the indigenous right's issue was not part of the international agenda until the 1970s when, following the momentum created by civil right movements, the United Nations started to work on specific standards and procedures for Indigenous and Tribal peoples (Swepston 2011). This revisit on the indigenous rights issue was due to the fact that C107 had been widely criticized, the UN had been questioned for the lack of examination on Indigenous people and in parallel, the World Council on Indigenous People<sup>11</sup> and the UN's Working Groups on Indigenous population were working on the Indigenous issue. The outcome of such momentum was the adoption of the ILO Convention on Indigenous and Tribal peoples No.169<sup>12</sup> (ILO 169) (ibid.).

As time passed, the UN instead of working on the C169 and made it more specialized, decided to undertake a new UN Declaration, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Which may be considered as the "the most recent and fullest expression of indigenous peoples' aspirations"(International Labour Office Geneva 2013, 10)

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<sup>11</sup> The first Indigenous NGO established in 1975.

<sup>12</sup> The core of the C169 is based on the C107, however it takes a different approach based on respect for Indigenous people and adoption of mechanisms for consultation and participation. The ILO 169 was ratified by the Kingdom of Denmark (including Greenland) on February 22, 1996.

## 4.2 How the ILO 169 works

The ILO 169 is an international treaty which becomes legally-binding through States' ratification. The act of ratification is indeed voluntary however, once the Convention is ratified<sup>13</sup>, the State has the obligation to implement and to ensure the Convention's provisions (International Labour Office Geneva 2013).

Due to the international variation in the concept of "indigenous peoples", the ILO 169 instead of defining the term, it states to whom the Convention applies (International Labour Organization 2003). Article 1 from the Convention addresses this matter, yet overall it can be said that it applies to recognized indigenous and tribal peoples within independent countries.

It is part of the ratifying State's responsibilities to articulate the provisions made by the Convention and for that purpose, the development of specific agencies to fulfill these functions are essential. In addition, the nature and the scope of the implementation measures depend on the specific context of the country (International Labour Office Geneva 2013) so, the requirements made by the Convention should be considered for every particular country as the guides to develop its own articulations from the Convention.

Indigenous peoples cannot invoke the ILO 169 before the ILO supervisory bodies individually; they have to use the ILO Tripartite Constituents to articulate their concerns. The Constituents are: Workers Organizations, Employers Organizations and Government. Moreover, given the fact that ILO 169 enforces consultation through the representative institutions, indigenous peoples must become part of employers or workers organizations<sup>14</sup> to be part of the tripartite constituents and have direct access to the ILO supervisory body (International Labour Office Geneva 2013).

The implementation of the Convention is verified by the elaboration and submission of reports<sup>15</sup>, with consideration of the tripartite constituents (tripartite principle) of the ILO (International Labour Organization 2003) These reports are reviewed by the Committee of Experts and the Application of the Convention and Recommendation (CEACR) to check how the implementation has been undertaken by the specific country (International Labour Office Geneva 2013).

## 4.3 ILO 169 Provisions

Given that ILO No. 169 frames its provisions aligned with the United Nations (International Labour Organization 1989), indigenous peoples' rights are recognized as the articulation of fundamental human rights (International Labour Office Geneva 2013)

Overall, the ILO 169 provides indigenous peoples with **rights to land, natural resources and their own development**, through the **mechanisms of consultation and participation**. Therefore, Indigenous

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<sup>13</sup> For some ratifying countries, even though Treaties are directly applicable, some specific legislative provisions are needed to ensure the effective application of Convention.

<sup>14</sup> In some cases forming specific workers and employers organizations or create alliances with already established ones.

<sup>15</sup> It is part of the responsibilities of the ratifying *State* to submit these reports every five years.



peoples rights to be consulted and participate in the decision-making processes constitute the cornerstone of the Convention (ibid.), being at the same time rights and as mechanisms to claim other rights (ibid.).

#### 4.3.1 Consultation

As stated in Article 6 of the Convention, indigenous peoples have the right to be consulted whenever any measure might affect them, such as amendments to the national constitution, land rights and any public policies among others (International Labour Organization 2003).

The specific circumstances under which the ILO 169 emphasizes the importance to undertake public consultations are: *prior* to relocation (Art. 16), transference ownership of land to members outside the indigenous community, exploration and exploitation of natural resources (Art 15-2) (either owned by the community or just occupied by it), and whenever a legislative measure or administrative measure affects them directly.

As the article 6(2) mentions, the proper consultation procedure requires a qualitative process of **good faith**, dialogue between the **representative institutions**, with the **people concerned** and by applying the **proper procedures**<sup>16</sup>. However, C169 does not provide Indigenous peoples with the right to veto due to the fact that reaching an agreement or an informed consent is not a specific requirement in itself<sup>17</sup> for the Convention (International Labour Office Geneva 2013).

Consultations should be carried out through the representative institutions so, in terms of *who* should be consulted, the ILO highlights the consideration of the characteristics of the country, the indigenous peoples, the subject and scope of consultation. The proper definition of the representative institutions is key for the process, due to the fact that the inadequate designation of the representative institutions could mean the illegitimacy<sup>18</sup> of the consultation process in itself (ibid.).

The ILO 169 specifies that governments are required to “establishing institutionalized mechanisms for regular and broad consultation along with specific mechanisms to be applied, whenever a specific community is affected” (ibid, p. 12). In other words, provide flexibility and reliability to different types of consultations.

Regarding the consultation procedure, in 2009 the CEACR pointed out two main challenges in which the country should work on. On one hand, to ensure that the consultation would be carried out before any measure was adopted. On the other hand, to include provisions in the domestic legislation in regards to prior consultation as part of the process for granting concessions (exploration and exploitation of natural resources) (ibid.).

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<sup>16</sup> Good faith implies that consultation respect for Indigenous peoples’ values and interests. People concerned is the potential people affected by any measure, and appropriate procedures means that consultation is meaningful.

<sup>17</sup> ILO 169 specifies that no measure should be undertaken against Indigenous peoples’ wishes. However, this statement does not imply a total inaction in that situation.

<sup>18</sup> As long as the Indigenous peoples do not feel represent through their own representative institutions

### 4.3.2 Participation

Mechanisms of consultation and participation are intertwined (International Labour Office Geneva 2013), therefore some articles cover both type of interactions, for example, Article 6 (b) of the Convention defines the right for participation calling for governments to establish the means to guarantee that indigenous peoples freely participate at all levels of decision-making in the elective institutions that concern them (International Labour Organization 1989).

Regarding specifications for participation, ILO 169 contemplates that indigenous peoples shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which might affect them directly (Art. 7-1) including systematic actions to protect their own rights and integrity (Art. 2-1). Furthermore, the Convention also recognizes the right to participate in the use, management and conservation of the natural resources upon which indigenous peoples depend on (Art. 15-1).

The ILO 169 considers also co-operation (a form of participation) in specific topics aimed to the improvement of the life conditions of indigenous peoples, such as the assessment of social, spiritual, cultural and environmental impacts associated to planned development activities (Art.7-3), protection and preservation of the environment in the territories they inhabit (Art.7-4), labour and recruitment conditions (Art. 20-1), health services (Art.25-2) education programs (Art.27-1) as well as the proper implementation of the Convention in itself (Art. 33-2a).

All these provisions address the participation right directly by defining under which circumstances the people concerned have the right to participate. However, the C169 contains other numerous references which implies the right to participation indirectly, such as the right to cooperate with the people concerned, the obligation not to take measures against Indigenous peoples' wishes and the responsibility to seek free and informed consent where the relocation is an exceptional unavoidable measure (International Labour Organization 2013).

### 4.3.3 Land, natural resources and development

The ILO 169 recognizes the great spiritual and cultural value that lands and natural resources have for indigenous peoples and advise the governments to respect it. It is from that premise that the ILO 169 frames the provisions regarding land and natural resources (International Labour Organization 1989).

Article 14 states that the rights of ownership and possession of the peoples concerned over the lands that they have traditionally occupy shall be recognized, which implies that governments have to identify indigenous peoples lands and protect their rights to ownership and possession effectively (ibid.).

Additionally, article 15 articulates the indigenous people's right to natural resources shall be protected, which implies the right to use, manage and conserve their natural resources (ibid.). This provisions, as stated by the Convention, shall be applied aligned with the provisions made by the

articles (6 and 7) about consultation and participation respectively (International Labour Organization 2013).

The ILO 169 holds a specific provision (Art.15-2) for situations when the State has the ownership of minerals, subsurface resources or other resources belonging to land. Given the case, the government has to consult to the peoples concerned before undertaking any program for exploration and exploitation of the resources. In addition, the peoples concerned have to be compensated for the damages occasioned by the implementation of these activities (International Labour Organization 1989).

Another important element in regards to land, is addressed in article 16 which articulates that peoples concerned shall not be removed from the lands that they occupy. However, when the relocation is unavoidable, relocation shall occur only with the free and informed consent of the people's. If consent is not reached, the relocation shall follow national legislation mechanisms for consultation. In addition, peoples concerned have the right to return to their lands as soon as the object for relocation has vanished (ibid.).

#### 4.4 UNDRIP

UNDRIP was created the 13<sup>th</sup> of September in 2007 following adoption of the resolution 61/295 by the General Assembly of the United Nations. It is comprised by an Annex and 46 articles to address the rights of indigenous people (United Nations 2008a).

Because of the way it was created, UNDRIP does not become legally-binding as treaties or customary law does, even though States vote in favor of the resolution in the General Assembly. Therefore, it is considered as soft-law or non-binding norms (Gunn 2011). In other words, conventions like this one represent the commitment of the States to move towards the direction that the Declaration points out (ibid.).

The UN Declaration does not create new rights for Indigenous people, what it does is to apply existing human rights to a specific group of people who have specific circumstances (ibid.). It could be said that UNDRIP means to be the aspirational document in which Indigenous peoples can claim their rights to self-determination and control over even their own development (Swepston 2011).

The first part of the Declaration, the Annex, set forth a series of assumptions and underlying understandings that drive the creation of this convention, such as affirming that Indigenous people are equal to others, while maintaining the right to be different. The declaration expresses the UN's awareness of the suffering during the process of colonization and dispossession of their land, territories and resources, and the importance of the compliance by States with other international Treaties and Agreements which are related to human rights (United Nations 2008a). Additionally, it recognizes the importance of allowing Indigenous people to control over the developments which affect their territories, lands and resources in order to strengthen Indigenous people 'institutions and achieve a sustainable and equitable development. (ibid.).

#### 4.4.1 UNDRIP provisions

Due to the specific context of this research project, this section specifically addresses the UNDRIP provisions for self-determination, consultation, participation, land and natural resources and development.

##### **Self-determination**

Arguably the most important article in UNDRIP is article 3, which establishes that Indigenous peoples have the right to self-determination (United Nations 2009, 9). By virtue of this right, the indigenous people can freely determine their political status and pursue their own economic, social and cultural development. For the specific case of Greenland, the SGA was built on recognition of the right to self-determination of the Greenlanders under international law (Danish Parliament 2009).

##### **Consultation**

Consultation provisions in ILO 169 (section 4.3.1.) and UNDRIP are similar, however, UNDRIP considers additional scenarios for consultation, namely, storage and/or disposal of hazardous materials in their territories (Art. 29-2), using their territories for military services (Art.30), and consultation in order to achieve the ends of the UNDRIP (Art.38).

Perhaps the most important difference between the conceptions of consultation from both instruments, is not the situations that require consultation, but rather the goal of the consultation process, which in the case of UNDRIP is to obtain the “free, prior, and informed consent” (FPIC) (United Nations 2008a). The concept of FPIC is addressed in the Section 4.5.

##### **Participation**

UNDRIP focuses on the right for indigenous peoples to keep distinct socio-cultural practices, while at the same time “participate fully, if they so choose, in the political, economic, social and cultural life of the State” (United Nations 2008a, 5).

The provisions for participation are set in Article 18: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights” (ibid.). Moreover, it provides procedural elements such the use of representative institutions, chosen by the indigenous peoples (Art.18) and considers the accessibility in regards to language in political, legal and administrative proceedings (Art. 13-2).

##### **Land, natural resources and development**

Article 26 of the UNDRIP recognizes that Indigenous peoples have the right to the lands, territories and resources that they have traditionally occupied, and the State duty to legally recognize and protect their lands, territories and resources. For that purpose, the State shall establish and implement aligned with indigenous peoples concerned a transparent process to recognize and adjudicate their lands, territories and resources (Art.26) (ibid.).

Indigenous peoples have the right to the conservation and protection of the environment and the protection of the capacity (in terms of productivity) of their lands, territories and resources (Art.27). So, for that purpose, the State shall implement programs for such protection and conservation (ibid.).

The article 32 of the UNDRIP states that Indigenous peoples have the right to decide their own strategies for the development or use of their lands, territories and resources (ibid.). Moreover, States shall consult to the indigenous peoples concerned through their representative institutions to obtain the FPIC regarding any project which might affect their lands, territories and resources, especially in cases of development related to the exploitation of the mineral resources activities (ibid.).

#### 4.5 FPIC

FPIC is a key principle present in specific or with particular variations in the ILO 169 and UNDRIP (Forest Peoples Programme 2017). FPIC stands for Free, Prior and Informed Consent. Free, implies no coercion, intimidation or manipulation. Prior, implies the consent to be sought before the authorization of the project. Informed is related to issues of communication, from what it is communicated but also the way this information is provided (United Nations 2008b). This is fairly straightforward, and overall non-controversial, however, the last element of FPIC, “Consent”, is more complex.

A simple definition of consent is referred to “permission” or “voluntary agreement”, yet this is not as direct in the case of FPIC. Because while “consent” in terms of FPIC refers to a voluntary, reversible and collective decision towards a specific project (UN-REDD 2013), and the right “withhold consent” is recognized by the UNDRIP (United Nations 2008b) there is the overall interpretation by States that FPIC does not concede a “veto” power.

Furthermore, because of the non-legally binding nature of UNDRIP, the interpretation of FPIC as a legal requirement, from the ILO 169 perspective is rather confusing. According to the ILO 169 interpretation handbook, consent is not a requirement for consultation, but rather the objective of the consultation. Meaning that a consultation does not have to end up in consent, because it is not a requirement. Leaving the consequences of “non-consent” undefined and blurry.

FPIC originated as a response from involuntary resettlement of people for infrastructure projects. The concept itself is rooted on “western” private property rights, yet it is developed as a way to guarantee those same property rights<sup>19</sup>, within an informal ownership arrangement that characterizes indigenous peoples land (Mahanty and McDermott 2013)

FPIC comprises two primal rights which are covered in UNDRIP: self-determination (e.g. Art 11.2 and 19 in the UNDRIP) and property right (e.g. Art 28.1 in the UNDRIP) (UN-REDD 2013). Considering its relation to self-determination and property rights, there have been efforts to use FPIC as a measure to institutionalize indigenous rights (Fontana and Grugel 2016) Although the fact that FPIC originates

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<sup>19</sup> And to a certain extent taking into consideration the historical dispossession of indigenous peoples from their lands.

from an international norm makes its interpretation in specific domestic contexts variable (Schilling-Vacaflor 2016, 4).

Overall, FPIC is mentioned six times in UNDRIP and once in ILO 169. In UNDRIP the principle of FPIC is related to context of relocation, dispossession of lands, resources and cultural/spiritual property, storage of hazardous waste, legislation that may affect indigenous peoples and maybe most importantly, the approval of any project affecting their land and territories. On the other hand, in ILO 169, FPIC is only considered in situations for relocation. Overall, this is clearly a more limited scope of the application of the principle of FPIC.

## 5 Legal Framework

This section presents the legal framework of mineral resource activities, land-tenure and environmental protection in Greenland. These particular topics are selected because of the relation with specific aspects of indigenous peoples' rights, such as provisions for consultation, land ownership and protection.

In regards to mineral resource activities, the section presents the organizational entities that are in charge of the mineral resource activities in Greenland. Moreover, the general aspects of the MRA, which is the main legislation of these activities, is presented. In addition to the mineral resource activities that require a license. Furthermore, the environmental and social impact assessments, which are requirements for the granting of licenses, are presented in general and in particular for public participation.

The last two sections explore the legal situation of land ownership in regards to indigenous people in Greenland and the approach taken by the government towards environmental protection and its relation to the mineral resource activities.

### 5.1 The Mineral Resource Act

After the amendments made by the Greenland government to the Mineral Resource Act in 2012, three specific organizational entities were in charge of the mineral resource activities in Greenland (Naalakkersuisut 2017c). By doing so, the intention was to reduce the conflict of interest within the same authority (Tiainen 2016).

The *Mineral License and Safety Authority* (MLSA) became the authority related to licenses and safety issues. The *Ministry of Industry and Mineral Resources* (MIMR), became responsible for the activities related to mineral resources activities such as policy-making, legal issues, Social Impact Assessment and Impact Benefits Agreements among others. And, the *Environmental Agency for the Mineral Resources Area* (EAMRA) is the authority responsible for environmental issues related to mineral resources activities, including protection of the environment and the Environmental Impact Assessment (Naalakkersuisut 2017c).

This section firstly highlights the main contents of the legislation in terms of the mineral resources activities which require a license, the competent authority for mineral resources activities, the definition of mineral resources and the territory where the law is applicable. Then, the section goes further with specific information for mineral resources activities and for environmental protection.

The *Mineral Resource Act* (MRA) was approved by the Greenland Parliament the 7<sup>th</sup> of December in 2009. By passing this law, Greenland self-government had the right to use and to exploit the mineral resources located in its subsoil (Greenland Parliament 2009). The MRA defines the type of mineral resources activities which require the granting of a license and appoints the Mineral Resource Authority as the competent administrative authority for the mineral resource activities in the territory of Greenland.

For the MRA, the term of mineral resources encompasses hydrocarbons (oil and natural gas) and minerals (other mineral resources which are not hydrocarbons), although the MRA states that the Greenland government might write down specific provisions for the definitions of mineral resources, hydrocarbons and minerals.

The scope of application of the MRA is extendable to the territorial land, territorial sea, continental shelf area, and exclusive economic zone off Greenland. Therefore, the MRA applies to all the facilities and installations related on mineral resource activities which are located on the territorial land, territorial sea or continental shelf-area.

#### 5.1.1 Mineral resources activities

The process of the mineral resources activities is comprised by several phases which require independent licenses. These activities are, prospecting, exploration, exploitation, export, the use of the subsoil for storage or other activities related to mineral resources, related energy activities and the establishment of pipelines for activities.

In terms of prospecting, the Greenland government might provide a license for prospecting mineral resources, for mineral resources activities and for the use of the subsoil. The license provided expires after 5 years and the fact of holding a prospecting license on a specific area does not provide the exclusive access<sup>20</sup>.

With regard to exploration, the Greenland government might provide an exclusive license on a specific area, on specific terms and for one or more minerals. If exploitable resources are discovered the licensee can apply to an exploitation license. The exploitation license, which cannot exceed 50 years, ends when the activity is discontinuous, and just can be granted to specific Companies<sup>21</sup> who just can perform the activities considered by the license.

Particularly, the MRA defines some provisions (valid for exploration and for exploitation) for the licensee such as, the use of labour from Greenland, the use of Greenland enterprises (contracts, supplies and services), the process of exploited resources in Greenland and the conduct of surveys and the implementation of plans to ensure that exploration and exploitation of mineral resources is socially sustainable.

Once the license is granted and before the exploitation begins, the government must have approved an exploitation plan which must contain specifications about the installations related to the mineral activities. The use of the subsoil requires a license in itself, which timespan is up to 50 years, being

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<sup>20</sup> The government can grant similar licenses to others for the same area.

<sup>21</sup> Which are: (1) Natural person who resides permanently in Greenland and is able to pay taxes. (2) Who has been registered in the National Registration Office as resident for the previous five years and have actually paid taxes during the last five years.



the fee payable dependent on the extension of the area and the volume of substances stored.

With regard to the termination of activities, the MRA states that the licensee who apply for an exploration license must prepare a closure plan and to ensure its financial feasibility. The MRA also addresses the possibility for the government to issue a 6-year suspension of exploitation activities. If the terms for suspension are not met, the government might order the licensee to implement the closure plan.

The MRA contains a section to promote and guarantee a sustainable development in Greenland by articulating specific provisions for the *Environmental Impact Assessment* (EIA) and the *Social Impact Assessment* (SIA) respectively. The next sections address these two assessment tools and their specific provisions for public consultation.

## 5.2 Environmental Impact Assessment

The MRA establishes that exploitation and use of subsoil for storage or purposes related to for mineral resource activities, require the approval of the EIA report before granting the licenses. The government might require additional information for the EIA and the applicant must undertake additional studies before the approval by the government. In addition, the Greenland government must publish all the information regarding the submission of the EIA report on its website or other accessible sources (including a non-technical summary) and similar information regarding the decision made (ibid.).

The EIA is applicable to all the mining companies that operate in Greenland, to make them aware (at an early stage<sup>22</sup>) that environmental issues have to be addressed in order to obtain the specific licenses (Bureau of Minerals and Petroleum 2011a) . The EIA must propose mitigation measures, and to consider the time expected to elaborate an EIA (around 2-3 years) so the environmental issues are part of their project proposals (ibid.). Once the EIA proposed by the mining company is approved by the EAMRA, then the license is granted.

It is required that the EIA has specific contents (ibid.) and public consultation is one of them. It is stated that the public should be involved and informed throughout the EIA process, when the mine is in production, through public consultation meetings at two different moments.

### 5.2.1 Public consultations in EIA

Firstly, at an early stage of the EIA process when the public can make comments on the EIA draft, comments which have to be evaluated in order to be added as an input to the final EIA<sup>23</sup> report. In addition, the other public consultation meeting shall take place regarding the relevant information about the EIA reports and other issues, before the final EIA report is submitted for approval. The

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<sup>22</sup> During the exploration phase, the Company has to identify the potential environmental impacts associated to all the stages of its mining project (before mining activities start and beyond the closure).

<sup>23</sup> This final EIA report contains the list of stakeholders involved in the consultation process.

minimum requirement is set at one meeting, yet it can exceed that number.

Regarding the time and the procedure for the public involvement, the Guideline points out 6 weeks (as a minimum) and assigns the White Paper<sup>24</sup> as the document which details consultation procedures (ibid.) such as attendants, comments made and responses. The EIA report focuses on environmental matters due to the fact that the social impacts associated to the mining projects are addressed by the Social Impact Assessment Report (ibid.).

### 5.3 Social Impact Assessment

The SIA or SSA (social sustainability assessment as the MRA refers to this tool) is the requirement for the activities, considered in the MRA, that have a significant impact on the social conditions and the Greenland government decides whether the activity requires a SIA (Ministry of Industry Labour and Trade 2016).

Generally speaking, the SIA Guidelines is to be the support for the assessment of the social impacts of a project in which the stakeholder's involvement (through participation) into the SIA process is recognized as the key to achieve the best sustainable development based on mineral resources exploitation. The involvement of the stakeholders, which has to be meaningful, has to be documented and requires a stakeholder analysis (ibid.).

The current formal process of the SIA is made out of 10 stages and the public participation is identified through three of them such as, the scoping study, the pre-consultation and the consultation (ibid.).

#### 5.3.1 Public consultations in SIA

In the scoping study, which is the first stage of the SIA, the key-issues related to a specific mining project are identified and framed. The public participation must be part of this stage to guarantee that groups concerned will be able to effect on the issues that have to be addressed by the SIA at a proper time. The company, based on the scoping, shall elaborate and publish a non-technical report<sup>25</sup> addressing the main aspects of the project, which can be used for meaningful discussions with the public.

The pre-consultation<sup>26</sup> stage makes sure that the mining company has contacted with the relevant stakeholders and municipalities implicated in the process at an early stage. Moreover, it means the official recognition that the company wants to implement a specific project and its purpose of conducting a consultation process through the SIA (ibid.).

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<sup>24</sup> This document contains the public consultation comments or a summary of the comments. These comments are the answers made by the company as responses to the comments or, by contrary, the facts for which the comments cannot be implemented during the EIA process by the company.

<sup>25</sup> This document must be available in Greenlandic and Danish.

<sup>26</sup> The stage which is previous to the formal eight-week consultation period.

The project description (based on the scoping stage) and a non-technical summary<sup>27</sup> are made available in the Government's hearing portal for public pre-consultation for 35 days. The results from this pre-consultation become part of the content of the *Terms of References (ToR)*<sup>28</sup>, which is submitted for approval to the MIMR (ibid.).

The consultation period consists on the submission of a draft port of the SIA for a period of 8 weeks for consultation. This period must start no later than 4 weeks after the submission of the SIA draft report but after the application for exploitation have been received. The SIA report is considered as a draft until the comments made by the public during the 8 weeks-consultation are incorporated (ibid.).

The results from the consultation phases (pre-consultation and consultation) are incorporated into the White Paper. In it, the questions that rose from both phases have to be addressed by the company or by the authorities. Moreover, it has to be specified which part of the SIA report incorporates the outcome of these questions. Therefore, the white paper has to have a clear structure in which every question is addressed and answered. This document is a decisive input for the final decision that the government have to make regarding whether or not granting the exploitation license for a specific mining project.

There are four different types of public consultation meetings according to the SIA guidelines (ibid.) namely: stakeholder meeting, community meeting, public consultation and information meetings. Stakeholders meetings aims to involve the relevant stakeholders into the project and they are held by the companies. Community meeting aims to involve the public in social aspects and mining related issue and they are held by public authorities. Public consultations meetings are held in connection with the 8 weeks consultation period, where companies present their reports and authorities inform about the process. Information meetings aims to provide information about the status of the project and future initiatives.

Although it is specified who the participants in every public meeting are, it is not clear the formal procedures applied during these consultations. So, it is undefined the public's level of influence over the projects being discussed.

When the consultation period is over, the negotiations to develop an *Impact Benefit Agreement (IBA)* between municipalities, the company and the Greenland government can begin<sup>29</sup>. The IBA is a tool with a dynamic nature that aims to transform the initiatives (described in the SIA report) into measurable projects, which aim to safeguard the Greenlandic interests in the project. The IBA has to be signed by all the parties involved before the final exploitation and the closure plan are approved. Therefore, the IBA is the prerequisite to start the exploitation construction work (ibid.).

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<sup>27</sup> Both should be presented in Greenlandic, Danish and English

<sup>28</sup> The terms of References is a document in which the detailed information of the project is addressed. By mentioning the specific details of timetables, budget, the expected phases to be implemented and the stakeholders involved.

<sup>29</sup> Based on the approved SIA Report

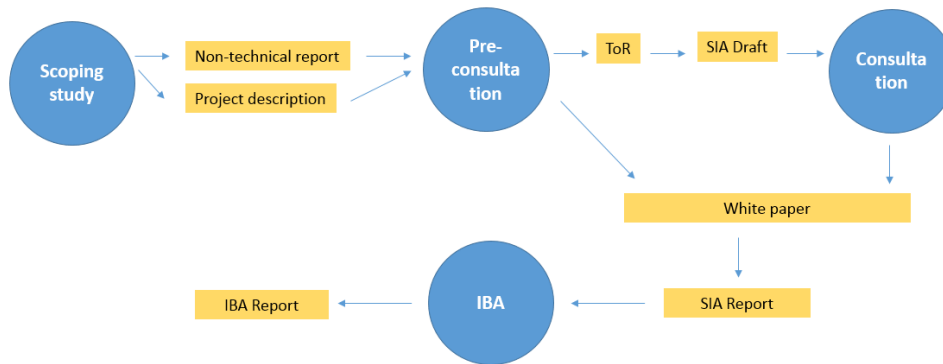


Figure 5.1 The figure represents the four stages through the SIA process in which the public participation or consultation take place. Blue circles represent a stage, and yellow rectangles represent inputs and outputs (documentation) of the process

#### 5.4 Land Tenure

The land-tenure, or land ownership arrangement in the Arctic has been historically characterized by indifference and neglect from colonial powers. This generated an approach of “terrae nullis”, mostly due to the initial low interest in habituating the areas, therefore not deeming necessary to create treaties or arrangements regarding land with the natives (Göcke 2012).

Resources like minerals and fisheries started to raise the interest in formalizing certain aspects in the relations between Arctic regions and the indigenous populations with their “home-States”. Different arrangement developed in the Arctic, particularly in Greenland a type of partial territorial sovereignty<sup>30</sup> was eventually implemented with the passing of the SGA (ibid.).

After the SGA, the situation in regards to land-tenure in Greenland has been characterized by the self-government having control over the subsoil and is able to plan and develop extractive projects (Pelaudeix 2012). This is considered as a “full” control over land ownership, compared to other Arctic indigenous communities’ situations (ibid.).

The arrangement in Greenland is summarized as that individuals or entities cannot acquire titles to land within Greenland. Greenlanders hold jurisdiction over their lands, but this jurisdiction is held collectively by the people of Greenland (Göcke 2012). This is reflected in the Danish government argumentation in the Inughuit dispute presented to the ILO:

*“[T]he land traditionally occupied by the Inuit people has been identified and consists of the entire*

<sup>30</sup> Partial territorial sovereignty refers to a political arrangement where units exist within a State and have autonomous State-like jurisdictional powers in some areas while at the same time they continue to be subordinated under the central authority of the State (Göcke 2012, 286)

*territory of Greenland. Section 8(1) of the Home Rule Act of 1978 establishes that “the resident population of Greenland has fundamental rights to the natural resources of Greenland”*(International Labour Organization 2001)

This statement from the ILO notes that Greenlanders have the collective right to use the territory of Greenland and continue to have access to the land for their subsistence and traditional hunting and fishing activities (ibid.). In other words, according to the ILO, the land demarcation procedures that are warranted based on Art.14-2 of the Convention, are met in the case of Greenland by virtue of the SGA (International Labour Standards Department 2009).

Right now, the population is a majority Inuit, therefore, the management of the lands, passes de facto to an “Inuit” government. However, this could change in the future with demographic variations (Göcke 2012), taking away the management of the lands from the Inuit community. Regardless of who gets to manage the lands in Greenland, based on the SGA, the actual sovereignty (lawful ownership) remains in the Kingdom of Denmark.

## 5.5 Environmental Protection

The governmental competences regarding environmental protection and conservation were originally delegated to the Home-Rule Government with the HRA (Peder Hansen 1973). The current governmental organization in Greenland places The Ministry of Domestic Affairs, Nature, and Environment as the responsible for environmental protection and nature conservation (Tommasini 2016).

The current strategy for environmental protection is mainly focused on designation of protected areas. There are 23 protected areas in Greenland where it’s possible to move, fish and hunt although some have restrictions on this matters (Naalakkersuisut 2017b). Additionally, there are 11 RAMSAR sites, two of them within the Greenland National park (Tommasini 2016).

There are other initiatives towards environmental protection, for example the yearly Environment and Nature award, which is awarded by the Greenlandic government to individuals, institutions or organizations, whose project have a positive impact in the environment (Naalakkersuisut 2017a). As well as several other environmental initiatives lead by NGOs, partially funded by the government, such as the ICC (Interview-ICC, 2017).

Landsting Act No.29 on the Protection of Nature (Act.29) aims to protect the nature in Greenland and applies to the land and fishing territories (Landsting 2003). However, when proliferation, exploration and exploitation of non-living resources (mineral resources) take place, the Act No.29 points out the MRA as the competent law (ibid.). From this specific designation of competences, it could be assumed that in that case, the protection of nature is narrowed to the mitigation measures proposed by the EIA.

The Act.29 relies on the precautionary principle, which recognizes the limitation for scientific

information and promotes actions to prevent environmental harm before it happens. However, this principle is not applied to the grant of the exploration licenses due to the fact that the MRA is not based on this principle. Therefore, this situation could create high uncertainties regarding the health and the environment in Greenland.

## 6 Indigenous Greenland

In international law, there is no consensus on the meaning of “indigenous peoples”<sup>31</sup>. Instead, an approach towards identification (not definition) has been usually taken. For this purpose, there are several distinct characteristics that function as key indicators in their identification such as connection to land and nature, distinct socio-cultural ties and beliefs, marginalization from society, or historical presence before the colonization or development of the current State (Cernic 2012).

Yet, arguably, the most important indicator in the attempt to identify indigenous peoples is self-identification (Karlsson 2013; OHCHR 2013). The ILO 169, considers this element as a fundamental criterion for determining the groups to which the provisions of the convention apply” (OHCHR 2013, 2).

As argued by a native Greenlander, Inuit and Inughuit have different traditions, language and beliefs (Ngiviu 2015), in others words, they identify themselves as different groups. However, the Danish State argues that: *“all native Greenlanders (Kalaallit) are of Inuit origin [,] they came to Greenland from Canada hundreds of years ago and all Greenlanders (Kalaallit) speak the same language”*(International Labour Organization 2001, 4). This stance can be seen in the SGA, were the inhabitants of Greenland are uniformly recognized as the people of Greenland (Danish Parliament 2009).

The lack of official recognition of different ethnical groups within Greenland, implies that State does not recognize the right for self-determination beyond the Inuit as a general group. Therefore, the State avoids granting the full set of internationally recognized rights for indigenous peoples, to the multiple subcultures inhabiting Greenland (Cultural Survival 2015). For example the case of the Inughuit (a subculture in Greenland) against the Danish Government.

In 2001, the National Confederation of Trade Unions of Greenland (SIK) placed a complaint at the ILO against the Danish Government on behalf the people known as Inughuit. The Inughuit habituated the Thule District in Greenland before the establishment of the US Air base in 1953. They claimed compensation for the forced relocation and land-demarcation from the area they inhabited up until May 1953, claims which are part of the provisions in the ILO 169.

In their response, the Danish State argued that in 1996, they have awarded a monetary compensation for the forced relocation and the “significant injustice” (International Labour Organization 2001, 3) committed. However, when presenting their arguments to deny the demand for land demarcation, the Danish government argued the following:

*“There is only one indigenous people in Denmark in the sense of Convention 169 [,] the original*

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<sup>31</sup> For practical reasons throughout this project, the concept of “indigenous peoples” is used as an inclusive term that gathers indigenous peoples, tribal peoples, first nations, natives, and any other national term used to refer to the particular demographic that fits the generally accepted subjective and objective criteria.

*population of Greenland, the Inuit*” (ibid, 4).

The reality is that the Danish Government denied their claims as a distinct indigenous group (Ibid.) and on that basis, argued that the State did not have to officially recognize and demarcate the lands the Inughuit have traditionally inhabited. In other words, the Inughuit were considered as a minority, not a distinct indigenous group from the Inuit.

### 6.1 Definition of “rights”

What does it mean for indigenous peoples to have “rights”? In order to answer this question, it is necessary to understand the theoretical concept of a right. In practical terms, a “right” is composed by three crucial elements: 1) *who* has the right (the right-holder), 2) to *what* right is it entitled and 3) *who* acquires certain duties based on the particular right (*duty-bearer*) (Wenar 2015).

This simple characterization of rights, which is depicted graphically in Figure 6.1., facilitates the deconstruction the indigenous people’s rights granted in the ILO 169 and UNDRIP and allows to further understand their implementation in empirical situations.

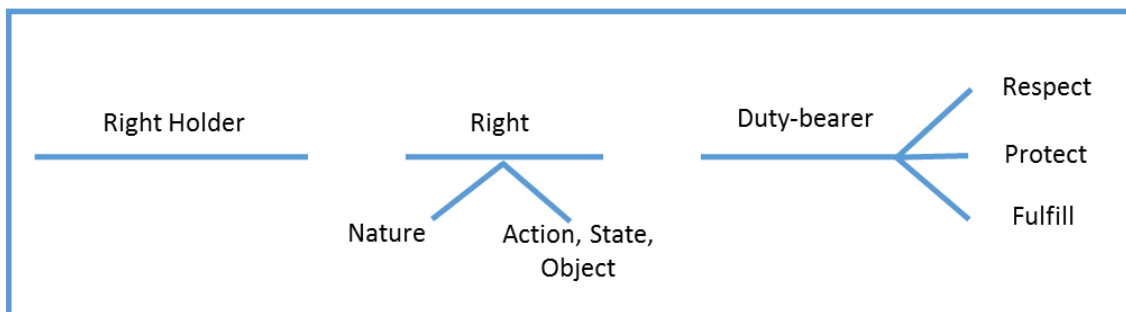


Figure 6.1 Characterization of rights based on three key elements

Human rights, to which everyone is entitled, are all conceived as individual rights, yet some rights, such as indigenous peoples rights, are better protected as a group, making them not individual rights, but rather collective or “group rights in nature” (United Nations Economic and Social Council 2000). Indigenous peoples rights are collective, therefore, they are granted to indigenous individuals who organize themselves as “peoples” (OHCHR 2013).

International law has developed a specific typology to clarify the obligations impose on the States as duty-bearers vis-à-vis human rights. These obligations, also known as tripartite obligations, are: obligation to respect, protect and fulfil<sup>32</sup>(United Nations Economic and Social Council 1999). This typology is used in the analysis of this report.

The obligation to respect requires the State to avoid measures that hinder or prevent the enjoyment

<sup>32</sup> Which incorporates both facilitation and provision



of the right. The obligation to protect requires the State to take measures to prevent third parties from interfering with the enjoyment of the right. The obligation to fulfill requires the State to take positive measures that enable and/or assist (facilitate) in the enjoyment of the right and finally, fulfillment is also related to providing the specific right (ibid.).

The limitations of action of the State towards fulfilling its obligations as a duty-bearer is also an important component. Within international law treaties, a recurrent element that is articulated as “progressive realization” is related to real potential that some States may lack resources to fully realize all their duties towards a particular right. The term progressive realization implies an obligation to take measures towards the fulfillment of those duties to the maximum of their available resources (OHCHR 2008, 7). However, there are some clauses that are not applied to this concept and require immediate fulfillment, for example, ending discrimination (United Nations Economic and Social Council 1999, 14:10).

## 7 Analysis

This section analyzes the provisions defined by ILO 169 and UNDRIP with regards to: FPIC, land and natural resources, consultation, participation and development and self-determination. These provisions are framed from the perspective of the obligations that are generated towards the State or government when an international legal instrument is implemented. These State obligations are based on the tripartite scheme (Section 6.1.) and they are shown in a set of tables in Appendix A.

The themes in which this section is divided are originated from obligations generated to the State from recognized rights and overall provisions from both the ILO 169 and UNDRIP. While these obligations are not specially addressed as such, some common patterns were identified during the analysis and hence grouped in the five selected themes.

In the beginning of each section, a summarized explanation of the theme is presented (in *italic*) as well as the relevant part of the report where more information is provided. Following, the State's obligations are directly assessed with relevant evidence to determine whether or not they are met.

### 7.1 FPIC

*FPIC is a key principle present in specific or with particular variations in the ILO 169 and UNDRIP and stands for Free, Prior and Informed Consent. UNDRIP considers FPIC regarding any project which might affect their land territories and resources. ILO 169 in turn, only considers it in the situations of relocation. (Section 4.5)*

Overall, the FPIC obligations as addressed in ILO are related to situations where relocation is unavoidable. In contrast to UNDRIP where FPIC is necessary whenever a project might affect their lands, territories and resources.

In the legal context of Greenland, concepts of relocation or FPIC are not specifically defined. In fact, the consent from a community is not a requirement in the process of granting a license and although there are consultations (as part of the licensing process), seeking consent is not their final purpose.

### 7.2 Land and Natural Resources

*The cornerstone of the ILO 169 and UNDRIP obligations in regards to land and natural resources is the recognition of the right of indigenous peoples to (own/possess/occupy/use) their territories and natural resources. From this underlying right, other provisions such as the process of identification, consultation, redress and conservation are derived. (Section 4.3.3 and 4.4.1)*

The Kingdom of Denmark retains complete sovereignty over the Greenland territory (Reference SGA) and the Danish government has argued that “it has not at any time been possible, for either natural or legal persons, to acquire rights of ownership to lands in Greenland” (International Labour Organization 2001, 5). Therefore, it is impossible to consider indigenous peoples as “owners” of their lands.

In fact, Greenlandic government holds a right to manage and use the natural resources of Greenland, which is delegated to the Greenlanders and this is translated into the recognition and respect of the right to use, manage and conserve the natural resources, while the right for not being removed, return to and possession of their lands, have not been accomplished.

### **Compensation and redress**

There are provision for compensation in the MRA (Part 19-92 and Part 13-61), as well as there is evidence from the Danish government, that compensatory practices were carried out in the past. Specifically as seen in the specific example of the Representation case from the Inughuit community forcibly removed from their lands in 1953, and the redress provided by the government for this relocation (ibid.). It can be argued that this obligation was met, and that set the precedent for further similar cases.

### **Management and use of natural resources**

The Greenlandic government holds a right to manage and use the natural resources of Greenland, which is delegated to the Greenlanders. This can be interpreted as fulfilling the ILO requirements of recognition and respect of the right to use, manage and conserve the natural resources. Furthermore, UNDRIP presents a more general approach towards lands rights, not specifying if it is related to the right to own, use, sell etc. As said before, the current situation in Greenland is that indigenous people hold the right to manage and use the natural resources of their lands. However, their right to “own” their territories is not currently recognized.

Overall, while the government of Greenland protects the right of indigenous peoples to use and inhabit their lands that have traditionally occupied, this right can be interrupted by specific conditions, namely mineral resource activities and military actions.

### **Recognition and Identification of lands**

Regarding the identification of their lands, the ILO concluded that the Kingdom of Denmark has met their duties when passing the HRA (ibid.). However, from the Greenland government perspective, this obligation has not been strictly fulfilled based on the current land-use arrangement in Greenland. As long as this condition don't change, it is not reasonable to expect that a process of recognition and adjudications of lands in Greenland is carried out.

### **Conservation**

The Landsting Act No.29 on the Protection of Nature aims to protect nature in Greenland and applies to land and fishing territories (Landsting 2003). This has derived in several protected areas across Greenland (Naalakkersuisut 2017b). The Act No.29 sets out the requirements necessary for an association or organization to propose a “conservation order proposal” aimed to protecting a specific area. If the proposal is approved, no action might be taken to interfere with the proposal (Landsting 2003).

However, it is unclear what mechanisms of decision are granted when a protected area is in conflict with a potential mineral resource development. What it is clear, is that when mineral resource activities take place, Act.29 points out to the MRA as the competent legislation regarding nature protection upon these activities.

### 7.3 Consultation

*ILO defines consultation as a process in which Indigenous peoples, through their representative institutions, are consulted whenever any measure might affect them. The government has to ensure regular and specific consultation mechanisms to fulfill the ILO provision. UNDRIP on the other hand, specifies additional scenarios where consultations are required and more importantly defines the FPIC as the objective of consultation. (Section 4.3.1 and 4.4.1)*

The national legislation in Greenland only addresses public consultation through the EIA (and potentially SIA) for a specific project regarding the exploitation license. These consultations are carried out, not with the intent of seeking the consent of the community, but rather to incorporate their input in the projects (EIA/SIA reports). Additionally, in the legal framework, neither the figure of “consent” or “relocation” are specifically defined.

The ILO obligations for consultation are partially met. The key missing aspects are related to the lack of regular and broad mechanisms, as well as the legally defined triggers for consultation (Greenland Parliament 2009), which in the present is limited to the granting of exploitation licenses.

On the other hand, from the UNDRIP perspective, there is a more critical limitation which is related to the nonexistence of FPIC from indigenous peoples as the objective for carrying out a consultation. Additionally, consultations are limited to the mineral resource activities, and they do not comply with the obligation to consult whenever a legislative measure is to be implemented.

### 7.4 Participation and Development

*ILO considers that it is the government's duty to establish the means which can guarantee the free participation of Indigenous peoples at all levels of decision-making that might concern them. This participation shall take place in the plans and programs (for regional and national development), use, management and conservation of natural resources, protection of the environment and the impact assessments that concern them.*

*UNDRIP defines the right to participation as the Indigenous peoples' right to participate in all decision-making that might affect them, through their representative institutions. In addition, the UNDRIP defines the right to decide about their own strategies for development, lands and use of resources. (Section 4.3.2, 4.3.3, 4.4.1)*

Inuit are a majority of the population Greenland and in the political level. Also, as all other Greenlanders, they hold an equal citizenship (as Danish citizens). This implies free and equal

participation through the existing mechanisms (i.e. voting, public consultations etc.). The special features of the Greenlandic society make possible the right to participation regardless of the implementation of this ILO provision.

Moreover, by considering the concept of Institutions as the “representative institutions” that ILO promotes, it could be said that Greenlandic government promotes the development of these institutions, such as the partial funding towards the ICC (Interview-ICC, 2017), which is an official representative institutions for Inuit.

Furthermore, the impact assessments considered during the licensing process of mineral resources activities, require the input from the affected communities. Arguably, the fact that the content of the impact assessments is supervised and evaluated by the government, ensures the community involvement into the process.

## 7.5 Self-determination

*The right to self-determination is the cornerstone of the UNDRIP. By the official recognition of this right, the Indigenous peoples have the right to freely determine their political status and pursue their economic, social and cultural development. In 2009, the SGA was built on the recognition of this right to the Greenlanders by the Danish government. (Section 4.4.1)*

The right to self-determination can be analyzed from both the Danish and the Greenlandic perspective. On one hand, Denmark recognized the right to self-determination to the people of Greenland by passing the SGA and by allowing a Self-government in Greenland. Therefore, it could be said that this UNDRIP provision is fully met.

On the other hand, within Greenland, the unanimous consideration of “Greenlanders” appear to ignore other sub-cultures within the society. Concerning this situation, it could be said that the right to self-determination is partially met within the Greenlandic society as long as Inuit is the only official recognized sub-culture.

A broader implementation of the provisions of UNDRIP in Greenland is driven as the result from the civil society pressure, who in the recent years has been fighting for the recognition and implementation of FPIC in particular (Interview-ICC, 2017).

## 8 Discussion

This section is focused on the discussion of what has been done in this research (methodology/research design) and in the specific topics which require further reflection, given their importance for the case study.

### **FPIC**

The issue with FPIC is that first of all, it is an UNDRIP provision, therefore States are not obligated to implement it, this can be seen in Greenland context in two areas. First, the lack of legal framework to support FPIC, and second, the purpose of the consultations of the communities affected by mining projects. Because, while there are mechanisms of consultation in place, this clearly are not aimed to seek the consent of the affected people, but rather to incorporate their views as input.

### **Lands and Natural Resources**

The issue with lands recognition is a complex one. This particular provision creates a situation in which both the Danish and Greenlandic Government are able to each justify their position and yet do not meet the objectives set-out neither by ILO or UNDRIP. For example, the Danish government argues that they have already granted the recognition of the lands to the Inuit by the Self-government act, yet indigenous peoples in Greenland do not have a legal recognition of their lands. This situation by itself, weakens the community power in regards to negotiation of potential developments to be carried out in this lands.

It is unclear whether the self-government is even able to fulfill this provision, considering that as of today, the land sovereignty of Greenland territory remains with the Kingdom of Denmark. So, it could be argued that the Self-government is not able to comply with their land-recognition and ownership obligations on the basis of the land ultimately belonging to the Kingdom of Denmark and potentially rely on the principle of progressive realization to justify their lack of fulfillment of this obligation.

The obligations towards nature protection and conservation seem to be accomplished by different initiatives taken place in Greenland, for example the designation of certain protected areas. However, this approach to conservation is delegated to a second place, when mineral resource activities take place. At that point, the protection and conservation approach is overtaken by the EIA which considers mitigation measures to environmental impacts, rather than conservation.

The flexibility of the ILO 169 provisions implies that every ratifying State has to make its own interpretation and implementation (Joona 2010). In the particular case of Greenland (considering Denmark), the implementation of the ILO 169 in the lands right, has meant that Greenlanders hold the right to use, manage and conserve their natural resources. While, other rights related to the ownership of the lands, have not been accomplished, such as the right of possession of their lands, the right for not being removed from them and the right for FPIC on projects on their lands.

### **Consultations**

The MRA does not consider consultations as an explicit step in the process of granting a license. This aspect is addressed as within two of the requirements (EIA and SIA) in the process. The fact that the consultation is not addressed in the highest national legislative levels (i.e. MRA) can be interpreted as a lack of importance from the government towards this issue.

Furthermore, there are reported issues with procedural elements in the consultations, such as the accessibility in the language, as well as the general objective of them. This series of elements are hard to identify from a legislative perspective, in turn, require a more detailed assessment of how the consultations procedures in Greenland.

### **Development and Participation**

The provisions made by ILO 169 and UNDRIP for public participation present a clear deficiency for the particular case in Greenland due to the generality of their provisions, which pretended to be applicable in most States where the indigenous population has similar conditions of social exclusion. Yet these conditions do not apply in Greenland.

All the people of Greenland are considered as Greenlanders so, there is not any kind of ethical differences between them. Therefore, all of them can freely participate by using the normal procedures such as voting. Concerning with ILO, the provision made for the participation does not provide any additional right which could have not been accomplished before by the national legislation.

The obligation for cooperation with indigenous peoples in the impact assessments, represents the limitations of the ILO 169. Specifically the delegation of procedural aspects to the interpretation of States. Particularly in Greenland, it is practically guaranteed that there will be some type of cooperation with the community when carrying out EIA and SIA. However, it is on the procedural aspects of this cooperation that the true objectives of the ILO 169 can be achieved. In other words, guaranteeing cooperation without addressing specific procedural requirements is useless.

### **Self-determination**

To answer whether or not the right to self-determination is accomplished in Greenland, it is needed to consider two perspectives. From the Danish perspective, the right for self-determination to Greenlanders is accomplished, and the SGA is the most outstanding proof of that. However, from the Greenlandic perspective, the fact that the society is unanimously described as Greenlanders wipe out the right to self-determination from the different sub-cultures within Greenland that claim to be distinct indigenous peoples.

Furthermore, the right for self-determination, which ultimately is related to the influence on the people's own development, is not clear whether it is being fulfilled by the Self-Government. Just as with the participation provisions, this assessment requires a deeper analysis of the democratic conditions in Greenland.

## Research design and analysis approach

The initial idea to evaluate jointly the implementation of ILO 169 and UNDRIP was developed based on their similarities and the common themes addressed by their provisions, which just differed in the level of detail. For example, ILO defines that when the relocation is unavoidable, that relocation should occur with the FPIC while UNDRIP considers that the State has to look for FPIC through consultation with the Indigenous peoples concerned.

However, it is currently considered that the different legal nature of ILO and UNDRIP, makes it difficult to develop an evaluation framework able to cover both tools and provisions. For example, the ILO 169 being a legally binding treaty, is more likely to generate legislative changes in the signing countries and this can be used as evidence of implementation, as several researchers have taken this approach (Courtis 2009). By contrast, the nature of UNDRIP as a Declaration, might be more suited to be evaluated incorporating the perceptions of the indigenous communities in order to evaluate if the country, which has adopted it, is indeed moving towards the direction of the provisions.

This overarching approach for investigation of indigenous rights regardless of the instrument from which they emanate, is similar to a research based on the evaluation of a series of human rights in the United Kingdom (Vizard 2012). This approach proved to be much more ambitious compared to other similar indigenous peoples rights' research which focused on the on the specific implementation of ILO (Férrandez Alemany and de la Piedra RanaVal 2011) or even on a single provision from ILO (Sargent 1998).

### ILO vs UNDRIP

By assessing the implementation of both instruments, two key aspects are made clear, first, the difference in the precision of their provisions, and second, the difference in the level of ambition that is perceived in them.

UNDRIP may be considered as the more ambitious of the two, particularly for its consideration for self-determination and FPIC, yet it lacks precision in its provisions which would allow for its implementation. In contrast, the legally binding nature of the ILO 169, produced more operational provisions but less ambitious. Furthermore, ILO's nature will inherently drive the State to pursue the ILO provisions rather than the UNDRIP. In some cases this situation might be detrimental to the indigenous communities, for example, in particular case of FPIC.

Regardless of the differences in their nature and provisions, both ILO 169 and UNDRIP are designed to be applied internationally, therefore, their provisions are based on a set of assumptions that apply to most States. However some of these assumptions do not apply to Greenland.

This results that in some aspects, the implementation of provisions from either instrument do not represent a substantial improvement in the conditions for indigenous peoples in Greenland. Arguably, the over-reliance on internationally designed instruments, presents a limitation when trying to be applied in un-common cases that do not fit the general conditions.



## 9 Conclusion

This research is focused on the assessment of the implementation in Greenland of ILO 169 and UNDRIP, the most relevant international instruments focusing on indigenous peoples rights.

The case-study of Greenland is selected on the basis of the share of the population self-identified as Inuit (a recognized indigenous people), the current economic development trend towards increased mineral resource activities and the fact that both ILO 169 and UNDRIP have been adopted.

In order to assess to what extent ILO 169 and UNDRIP are implemented in Greenland, their provisions are contextualized focusing on themes related to mineral resource activities. Once the process is done, provisions are framed according to the obligations generated to the State.

The evidence used for the assessment includes the current legislation in Greenland such as the HRA, SGA, MRA and Act.49. An interview with the director from ICC Greenland (an international Inuit representative organization). In addition to a representation case submitted to the ILO from the Inughuit community towards the Danish government.

The main conclusions of this research are presented below. They consist on to what extent the government of Greenland meet its different types of obligations related to the themes analyzed (detailed tables in Appendix A)

Regarding FPIC, Greenland does not fulfill its obligation to seek their FPIC when relocation is unavoidable nor to obtain the FPIC regarding any project which might affect their lands, territories and resources (especially in cases development related to the exploration of the mineral resources activities).

In relation to Land and Natural resources, it is concluded that Greenland respects the right to use, manage and conserve their natural resources, as well as the right to decide the strategies for the development or use of their lands, territories and resources. Moreover, is is protected the right to use, manage and conserve their natural resources.

Finally, Greenland fulfills the right for compensation for the damage occasioned by the implementation of these activities. Co-operation with indigenous peoples, to protect and preserve the environment of the territories they inhabit and Implement programs for protection and conservation of the environment and protection of the capacity (in terms of productivity).

The government of Greenland fulfills their obligations to consult when there is a transference ownership of land to members outside the indigenous community and prior to exploration and exploitation of mineral and subsurface resources. The government provides the institutionalized mechanisms for specific consultations with the people affected, these mechanisms follow the national laws and regulations

In relation to participation and development, the obligations derived exclusively from ILO 169 to respect, protect and fulfill are fully accomplished by the Greenlandic government.

The right to self-determination is not entirely respected by the authorities in Greenland. However, it is respected the right to participate fully in the social, economic and cultural life and keep distinct-

socio cultural practices as well as to participate in the decision-making matters which would affect their rights through representative institutions chosen by themselves.

The government of Greenland is in the process of fulfilling their obligations in regards to understanding in administrative processing, ensuring continuing improvement and achieve the ends of UNDRIP.

## 10 Bibliography

- Arctic Center University of Lapland. 2016. "Arctic Indigenous Peoples." <http://www.arcticcentre.org/EN/communications/arcticregion/Arctic-Indigenous-Peoples>.
- Arctic Council. 2016. "Arctic Peoples." <http://www.arctic-council.org/index.php/en/our-work/arctic-peoples>.
- Bjørst, Lill Rastad. 2015. "Saving or Destroying the Local Community? Conflicting Spatial Storylines in the Greenlandic Debate on Uranium." *Extractive Industries and Society* 3 (1): 34–40. doi:10.1016/j.exis.2015.11.006.
- Brøsted, Jens. 1986. "Territorial Rights in Greenland : Some Preliminary Notes." *University of Wisconsin Press Stable* 23 (1): 325–38. <http://www.jstor.org/stable/40316119>.
- Bureau of Minerals and Petroleum. 2011a. "BMP Guidelines." [https://govmin.gl/images/stories/minerals/EIA\\_guidelines\\_mining.pdf](https://govmin.gl/images/stories/minerals/EIA_guidelines_mining.pdf).
- Bureau of Minerals and Petroleum. 2011b. "Greenland Mineral Exploration Brief in Figures."
- Cernic, Jernej Letnar. 2012. "STATE OBLIGATIONS CONCERNING INDIGENOUS PEOPLES' RIGHTS TO THEIR ANCESTRAL LANDS: LEX IMPERFECTA?," 1129–72.
- Courtis, Christian. 2009. "Notes on the Implementation by Latin American Courts of the ILO Convention 169 on Indigenous Peoples." *SUR - International Journal on Human Rights* 10 (June): 53–80. doi:10.1525/sp.2007.54.1.23.
- Cultural Survival. 2015. "Observations on the State of Indigenous Human Rights in Denmark in Light of the UN Declaration on the Rights of Indigenous Peoples."
- Danish Parliament. 2009. *Act on Greenland Self-Government*. <http://uk.nanoq.gl/Emner/~media/6CF403B6DD954B77BC2C33E9F02E3947.ashx>.
- Férrnandez Alemany, Andrés;, and Cristhian de la Piedra Ranaval. 2011. "IMPLEMENTACIÓN Y EVOLUCIÓN DE LOS DERECHOS CONTENIDOS EN EL CONVENIO OIT 169." *Estudios Públicos*.
- Fontana, Lorenza B., and Jean Grugel. 2016. "The Politics of Indigenous Participation Through 'Free Prior Informed Consent': Reflections from the Bolivian Case." *World Development* 77 (April 2014). Elsevier Ltd: 249–61. doi:10.1016/j.worlddev.2015.08.023.
- Forest Peoples Programme. 2017. "Free, Prior and Informed Consent (FPIC)." <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>.
- Göcke, Katja. 2012. "Recognition and Enforcement of Indigenous Peoples- Land Rights in Alaska, the Northern Regions of Canada, Greenland, and Siberia and the Russian Far East." *The Yearbook of Polar Law Online* 4 (1): 279–304. doi:10.1163/22116427-91000094.
- Greenland Parliament. 2009. *The Mineral Resources Act*. Grenland: Greenland Parliament.

- [http://www.bmp.gl/images/stories/faelles/mineral\\_resources\\_act\\_unofficial\\_translation.pdf](http://www.bmp.gl/images/stories/faelles/mineral_resources_act_unofficial_translation.pdf).
- Gunn, Brenda. 2011. "Understanding and Implementing the UN Declaration on the Rights of Indigenous . An Introductory Handbook." *Indigenous Bar Association*.  
[http://www.indigenousbar.ca/pdf/undrip\\_handbook.pdf](http://www.indigenousbar.ca/pdf/undrip_handbook.pdf).
- Gunter, Chelsea. 2015. "The Case for Uranium Mining in Greenland." *Cornell International Law Journal* 48 (2): 423–49.  
<http://search.ebscohost.com/login.aspx?direct=true&db=lgs&AN=110345744&site=ehost-live>.
- Hansen, Anne Merrild. 2014. "Community Impacts : Public Participation , Culture and Democracy." *University of Copenhagen*.
- Hubbard, R. 2014. "Mining in Greenland and Free, Prior and Informed Consent: A Role for Corporations?" *Nordisk Miljörättslig Tidskrift* 2014:1 1.  
<http://nordiskmiljoratt.se/onewebmedia/Hubbard NMT 2014-1.pdf>.
- International Labour Office Geneva. 2013. "Understanding the Indigenous and Tribal Peoples Convention, 1989 (No.169)."
- International Labour Organization. 1989. C169 Indigenous and Tribal Peoples Convention, 1989. *C169 Indigenous and Tribal Peoples Convention*, issued 1989.  
[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).
- International Labour Organization. 2001. "REPRESENTATION (Article 24) -DENMARK-C169-2001."
- International Labour Organization. 2003. "ILO Convention on Indigenous and Tribal Peoples, 1989 (No.169): A Manual." *Geneva, International Labour Office*.
- International Labour Organization. 2013. "Understanding the Indigenous and Tribal Peoples Convention, 1989 (No.169). Handbook for ILO Tripartite Constituents."
- International Labour Standards Department. 2009. "Indigenous & Tribal Peoples ' Rights in Practice."
- Joona, Tanja. 2010. "International Norms and Domestic Practices in Regard to ILO Convention No. 169 - with Special Reference to Articles 1 and 13-19." *International Community Law Review* 12 (2): 213–60. doi:10.1163/187197310X498606.
- Karlsson, Bengt G. 2013. "The Social Life of Categories: Affirmative Action and Trajectories of the Indigenous." *Focaal*, no. 65: 33–41. doi:10.3167/fcl.2013.650104.
- Kielsen, Kim, Sara Olsvig, and Hans Enoksen. 2017. "Coalition Agreement 2016-2018."
- Kuokkanen, Rauna. 2015. "'To See What State We Are In': First Years of the Greenland Self-Government Act and the Pursuit of Inuit Sovereignty ' T.'" *Ethnopolitics*. Taylor & Francis. doi:10.1080/17449057.2015.1074393.

- Landsting. 2003. *Landsting Act. No 29 of 18 December 2003 on the Protection of Nature*.
- Leonard, Liam. 2003. *The Background to Global Ecopolitics. Advances in Ecopolitics*. Vol. 5. Elsevier. doi:10.1108/S2041-806X(2010)0000005005.
- Mahanty, Sango, and Constance L. McDermott. 2013. "How Does 'Free, Prior and Informed Consent' (FPIC) Impact Social Equity? Lessons from Mining and Forestry and Their Implications for REDD+." *Land Use Policy* 35. Elsevier Ltd: 406–16. doi:10.1016/j.landusepol.2013.06.014.
- Ministry of Industry Labour and Trade. 2016. "Social Impact Assessment (SIA) Guidelines on the Process and Preparation of the SIA Report for Mineral Projects."
- Naalakkersuisut. 2016. "Mining History." <https://www.govmin.gl/minerals/mining-history>.
- Naalakkersuisut. 2017a. "Greenland Government Environment and Natural Price." <http://naalakkersuisut.gl/da/Naalakkersuisut/Departementer/Natur-Miljoe/Natur-og-Klimaafdelingen/Natur/Miljoe-og-Naturpris>.
- Naalakkersuisut. 2017b. "Protected Lands." <http://naalakkersuisut.gl/da/Naalakkersuisut/Departementer/Natur-Miljoe/Natur-og-Klimaafdelingen/Natur/Fredede-landomraader>.
- Naalakkersuisut. 2017c. "The Bureau of Minerals and Petroleum (BMP) Becomes the Mineral License and Safety Authority (MLSA)." <https://www.govmin.gl/component/acymailing/listid-5/mailid-70-the-bureau-of-minerals-and-petroleum-bmp-becomes-the-mineral-licence-and-safety-authority-mlsa?Itemid=100060>.
- NASA. 2017. "Greenland and Iceland." <https://climate.nasa.gov/interactives/global-ice-viewer/#/2>.
- Ngiviu, Terto. 2015. "The Inughuit of Northwest Greenland : An Unacknowledged Indigenous People." *Yearbook of Polar Law*.
- Norden. 2015a. "Arctic Human Development Report." Vol. II. doi:10.6027/TN2014-567.
- Norden. 2015b. *SLiCA: Arctic Living Conditions*. Edited by Birger Poppel.
- Nordic Council of Ministers. 2015. *Local Knowledge and Resource Management: On the Use of Indigenous and Local Knowledge to Document and Manage Natural Resources in the Arctic*.
- OHCHR. 2008. "Frequently Asked Questions on Economic, Social and Cultural Rights." <http://www.ohchr.org/EN/Issues/ESCR/Pages/WhatarethetheobligationsofStatesonESCR.aspx>.
- OHCHR. 2013. "Indigenous Peoples and the United Nations Human Rights System, Fact Sheet No. 9/Rev. 2."
- Oneal, Michael. 2017. "Greenland Needs Money. Is a Uranium Mine the Answer?" *The Washington Post*. [http://www.washingtonpost.com/sf/world/2017/02/10/greenland-needs-money-is-a-uranium-mine-the-answer/?wpisrc=nl\\_az\\_most](http://www.washingtonpost.com/sf/world/2017/02/10/greenland-needs-money-is-a-uranium-mine-the-answer/?wpisrc=nl_az_most).
- Peder Hansen, Jørgen. 1973. *The Greenland Home Rule Act*.

- Pedersen, Mads. 2016. "Divided They Stand." *The Arctic Journal*. <http://arcticjournal.com/oil-minerals/2244/divided-they-stand>.
- Pelaudeix, Cécile. 2012. "Inuit Governance and Contemporary Challenges: New Questions for Arctic Governance." *The Yearbook of Polar Law Online* 4 (1): 155–88. doi:10.1163/22116427-91000089 T4 - New Questions for Arctic Governance.
- Persson, Charlotte;, and Malene; Christiansen. 2016. "Greenland Is Divided over Uranium Mining." *Science Nordic*, 5–7.
- Poppel, Birger, Mads Fægteborg, Mia Olsen Siegstad, and Hunter T Snyder. 2015. "The Arctic as a ' Hotspot ' for Natural Resource Extraction and Global Warming," 129–36.
- Sargent, Laurie. 1998. "The Indigenous Peoples of Bolivia's Amazon Basin Region and ILO Convention No.169: Real Rights or Rhetoric?" *The University of Miami Inter-American Law Review* 29 (3): 451–524.
- Schilling-Vacaflor, Almut. 2016. "Who Controls the Territory and the Resources? Free, Prior and Informed Consent (FPIC) as a Contested Human Rights Practice in Bolivia." *Third World Quarterly* 6597 (February). Routledge: 1–17. doi:10.1080/01436597.2016.1238761.
- Statistics Greenland. 2016. "Greenland in Figures 2016," 1–40. [http://www.stat.gl/publ/da/GF/2016/pdf/Greenland in Figures 2016.pdf](http://www.stat.gl/publ/da/GF/2016/pdf/Greenland%20in%20Figures%202016.pdf).
- Stendal, Henrik. 2016. "Advanced Projects and Mineral Potential in Greenland."
- Swepton, Lee. 2011. "Good Governance and Indigenous and Tribal Peoples." Vol. 3.
- The Local DK. 2016. "Greenland Uranium Mining Opponents Join Government." <http://www.thelocal.dk/20161028/greenland-uranium-mining-opponents-join-government>.
- Tiainen, Heidi. 2016. "Contemplating Governance for Social Sustainability in Mining in Greenland." *Resources Policy* 49. Elsevier: 282–89. doi:10.1016/j.resourpol.2016.06.009.
- Tommasini, Daniela. 2016. "The Governance of Protected Areas in Greenland: The Resource National Park among Conservation and Exploitation." *Indigenous Peoples' Governance of Land and Protected Territories in the Arctic*, 1–256. doi:10.1007/978-3-319-25035-9.
- Toshkov, Dimiter. 2016. *Research Design in Political Science*. Edited by B Guy Peters, Jon Pierre, and Gerry Stoker. Macmillan. PALGRAVE.
- UN-REDD. 2013. "Guidelines on Free, Prior and Informed Consent." [http://www.unredd.net/index.php?option=com\\_docman&task=doc\\_download&gid=8717&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&Itemid=53).
- United Nations. 2008a. *United Nations Declaration on the Rights of Indigenous People*.
- United Nations. 2008b. "United Nations Development Group Guidelines on Indigenous Peoples' Issues."

- United Nations. 2009. "State of the World's Indigenous Peoples." *UNPFII. State of the World's Indigenous Peoples*.
- United Nations Economic and Social Council. 1999. "Implementation of the International Covenant on Economic, Social and Cultural Rights." Vol. 14.
- United Nations Economic and Social Council. 2000. "Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and Those of Indigenous Peoplesg." *Prevention of Discrimination against and the Protection of Minorities*. doi:10.1017/S0020818300006640.
- Vizard, Polly. 2012. "Evaluating Compliance Using Quantitative Methods and Indicators." *Nordic Journal of Human Rights* 30 (3): 239–78.
- Wenar, Leif. 2015. "Rights." *The Stanford Encyclopedia of Philosophy*. Metaphysics Research Lab, Stanford University. <https://plato.stanford.edu/archives/fall2015/entries/rights>.
- Yin, Robert K. 2014. *Case Study Research*. 5th ed. SAGE Publications Ltd.
- Yupsanis, Athanasios. 2010. "ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 1989–2009: An Overview." *Nordic Journal of International Law* 79 (March): 433–56. doi:10.1163/157181010X512576.

## 11 Appendix A

This Appendix presents a set of 5 tables with the obligations generated to the State and government from the provisions in the ILO 169 and UNDRIP.

Theme: FPIC
ILO Obligations
<p>Fulfill:</p> <ul style="list-style-type: none"> <li>● To seek their FPIC when relocation is unavoidable.</li> <li>● To follow national legislation mechanisms for consultation if consent is not reached.</li> </ul>
UNDRIP Obligations
<p>Fulfill:</p> <ul style="list-style-type: none"> <li>● Consult them through their representative institutions to obtain the FPIC regarding any project which might affect their lands, territories and resources (especially in cases development related to the exploration of the mineral resources activities).</li> </ul>

Theme: Land and Natural Resources
ILO Obligations
<p>Respect:</p> <ul style="list-style-type: none"> <li>● Their right for not being removed from their lands</li> <li>● Their right to return to their lands, once relocation cause has vanished.</li> <li>● Their right to own and possess the lands they have traditionally occupied</li> <li>● Their right to use, manage and conserve their natural resources</li> </ul> <p>Protect:</p> <ul style="list-style-type: none"> <li>● Their right of ownership and possession.</li> <li>● Their right to use, manage and conserve their natural resources</li> </ul> <p>Fulfill:</p> <ul style="list-style-type: none"> <li>● Identify their lands.</li> <li>● Compensate for the damage occasioned by the implementation of these activities.</li> <li>● Take measures, in co-operation with indigenous peoples, to protect and preserve the environment of the territories they inhabit</li> </ul>
UNDRIP Obligations



Respect	<ul style="list-style-type: none"> <li>● Their rights to lands, territories and resources they have traditionally occupied</li> <li>● Their right to decide the strategies for the development or use of their lands, territories and resources.</li> </ul>
Protect	<ul style="list-style-type: none"> <li>● Their rights to lands, territories and resources they have traditionally occupied</li> <li>● From dispossession or forced transfer from their lands.</li> </ul>
Fulfill	<ul style="list-style-type: none"> <li>● Establish and implement aligned with them, a transparent process to recognize and adjudicate their concerning their lands, territories and resources.</li> <li>● The right to redress for the lands which have been taken without their FPIC.</li> <li>● Implement programs for protection and conservation of the environment and protection of the capacity (in terms of productivity).</li> </ul>

Theme: Consultation	
ILO Obligations	
Fulfill:	<ul style="list-style-type: none"> <li>● Government has to undertake public consultations: <ul style="list-style-type: none"> <li>❖ prior to relocation (which should take place only with the FPIC)</li> <li>❖ transference ownership of land to members outside the indigenous community,</li> <li>❖ prior to exploration and exploitation of mineral and subsurface resources (whether or not the government has the ownership of minerals, subsurface resources or other resources belonging to their lands).</li> <li>❖ whenever a legislative measure or administrative measure affects them directly.</li> </ul> </li> <li>● Government has to establish institutionalized mechanisms for regular and broad consultation aligned with specific mechanisms whenever they are affected.</li> </ul>
UNDRIP Obligations	
The State has to consult to obtain the FPIC	<ul style="list-style-type: none"> <li>● States shall consult to obtain their FPIC before: <ul style="list-style-type: none"> <li>❖ adopting and implementing legislative or administrative measures that may affect them</li> <li>❖ to the approval of any project affecting their lands or territories and other resources, particularly in connection with [...] mineral, water or other resources”</li> <li>❖ storage or disposal of hazardous materials which shall take place in their</li> </ul> </li> </ul>

- lands or territories
- Relocation is an exceptional measure, which shall take place only with FPIC.
- Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations

Theme: Participation and Development

ILO Obligation

Respect:

- The right decide their own priorities and development
- The right to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly

Protect:

- Ensure that whenever appropriate, assessment studies are carried out in co-operation with indigenous peoples

Fulfill:

- Establish means by which they can freely participate, to at least the same extent of other sectors of the population, at all levels of decision-making, in the elective institutions that concern them
- Establish the means to the development of their institutions and initiatives, and when appropriate, provide the resources necessary.

Theme: Self-determination

UNDRIP Obligations

Respect:

- The right to self-determination
- Their right to participate fully in the social, economic and cultural life of the State and keep distinct-socio cultural practices
- Their right to participate in the decision-making matters which would affect their rights through representative institutions chosen by themselves.

Fulfill:

- Ensure they can understand and be understood in political, legal and administrative proceedings (through interprets if necessary)
- Take measures to ensure continuing improvement of their social and economic conditions
- Take the appropriate measures to achieve the ends of the UNDRIP declaration

## 12 Appendix B

Summary of the Interview conducted via Skype with a representative of ICC Greenland on May 17, 2017

*Are Inuit in Greenland considered as being 'indigenous' (according to international standards) by the government of Greenland?*

Inuit are indigenous peoples, internationally recognized as such, but while they are account as indigenous from a Danish perspective, they are not considered “indigenous” within Greenland. Within the population in Greenland, there is an overall acknowledgement of the difference in cultures between Inuit, Inghuit and XXX (a third culture in south Greenland that I couldn't understand the name). There is self-identification as different “indigenous peoples” to a certain extent, yet this is not recognized by either the Danish or Greenlandic government. The government of Greenland is not an indigenous government. It is public government, which legislates not with a particular “Inuit” interest in mind. This lack of recognition hinders the articulation of some internationally prescribed collective indigenous peoples rights, particularly, land rights.

*Does the community in general trusts in the consultation processes?*

The short answer is no. Overall, most Inuit felt that they don't understand the projects, documentation and even argumentation put forward by companies. The language issue is critical and the complexity and length of documentation also plays a role in creating this negative perception of the consultation process.

*Does the community in general considers the consultation process have an adequate timing?*

The consultation process is overall perceived as short, particularly from the point of view of organizations who are trying to review the documentation and come up with argumentation on each case.

*Does the community in general, considers the information provided in consultation is clear and understandable?*

Not at all, there is lot of paperwork that most of the times is not understandable. There is critical aspect which is related to complicated terminology that gets more and more complex when tried to be translated into Danish and even more complex into Greenlandic. They are required to come up with new terminology (created words) that often is incomprehensible for the community.

*Are there any specific representative institutions for Inuit community? If so...how were they formed? are they consulted directly through them?*

There are several representing institutions in Greenland. In most cases they participate in the consultations. The ICC is a specific organization that is trying to advance Inuit interests, but most other associations are not specifically representing Inuit. These organization represent their members, which may or may not be Inuit.

In regards to "official" organizations within the ILO 169 framework, only the SIK (employee organization of Greenland) has access to the ILO 169 system.

All institutions have to be consulted (not only SIK) in consultation, this means that local organizations and associations are participants in consultations, as well as individuals.

*Do you consider Inuit are adequately represented by their institutions?*

Inuit are a majority in Greenland, and they are a majority in almost every political level. There is no under-representation in that sense. But there is not an "Inuit" agenda that automatically gets pursued by all Inuit in government.

*What is the level of influence that Inuit have in the decision making of development plans in Greenland?*

Although Inuit are not underrepresented, in the high-administrative there is a lot of external influence, particularly in trade-policy by the Trade Organization (which is composed mostly by danes). This organization seems to be pushing for a "big capital economy" power by big capital investments, compared to a lower scale economy of other sectors of society (not traditional hunter-gatherer. It is a capitalistic model, but in a smaller scale).

A lot of "political consultants" in law-making and decision making are often foreigners (mostly danes). They have a large influence in decision making, and that is seem as a problem, because these experts, not only do they lack the capacity for those roles (they wouldn't be in a similar position in Denmark), but they also lack the cultural knowledge of the Greenlandic society. The problem with the people who are in power in Greenland is that there is no approach in their education to "Indigenous Rights". Most legislation in Greenland is more/less based on laws of Denmark. High governmental positions are not usually occupied by "native" Greenlanders. This external collaborators often don't stay long in Greenland so there is a lack of continuity in law making.

*Is there any sort of perceived exclusion of Inuit from cultural, political life?*

No, Inuit are integrated in every level of social, cultural and political life in Greenland.

*Is Greenland aiming towards "implementation" of the UNDRIP?*

UNDRIP should be implemented by Greenland. When Denmark adopted this declaration, Greenland automatically adopt it, and even made an independent (un-official) adoption of this

declaration. As of today, the civil society in general, and ICC in particular, are pushing UNDRIP implementation through FPIC.