



**Háskólinn
á Akureyri**

**The legal position of Inuit in the
exploitation of natural resources in
Greenland**

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The legal position of Inuit in the exploitation of natural resources in Greenland

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30 ECTS thesis submitted in
partial fulfillment of the degree of
Master of Polar Law (LLM)

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Akureyri, April 2019

The legal position of Inuit in the exploitation of natural resources in
Greenland
From customary law to the Mineral Resources Act of 2009
30 ECTS thesis submitted in partial fulfilment of the degree of Master of
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Abstract

Among the many topical issues dominating international discourse, are climate change, pollution, and human rights violations. Regarding environmental problems, the Arctic is going through one of the darkest periods of its history and the consequences will not tend to fade over time. Issues such as the rapid melting of polar ice and the resulting rise in sea levels have not only negatively affected the vulnerable Arctic ecosystem, but have also compromised the lifestyles of indigenous peoples who for centuries have lived in seemingly uninhabitable environments. In fact, according to the National Snow and Ice Data Center (NSIDC), in 2019 the Arctic marine ice has reached its minimum extension. This means that in the autumn the ice expanded more slowly than usual. This makes indigenous communities more vulnerable, because lack of ice creates floods and reduces the mobility of the local communities and fauna that use the ice caps to move¹.

Despite these many threats of climate change, opportunities are also generated as ice retreats, with many countries now examining economic possibilities presented by climate change. In fact, in these years the routes of communication have grown and a real race to exploit natural resources has been triggered. Greenland is a prime example of a country where the threats and opportunities of climate change coexist.

This thesis will outline the history of Greenland from the point of view of the regulation of the mining sector and the protection of Inuit rights there with respect to the social, environmental and economic consequences of mining.

¹ NATIONAL SNOW AND ICE DATA CENTER (NSIDC), "*Arctic sea ice maximum ties for seventh lowest in satellite record*", March 2019

(<https://nsidc.org/arcticseaicenews/> last accessed on 2nd April 2019) See also: NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) "*2018 Arctic Sea Ice Ties for Sixth Lowest Extent On Record*", 2018 (<https://www.nesdis.noaa.gov/content/2018-arctic-sea-ice-ties-sixth-lowest-extent-record>) (last accessed on 2nd April 2019)

Initially, this thesis presents a framework on the recognition of the rights of native Greenlanders and their rights to the land on the international level, paying particular attention to the Arctic situation. Given the current situation in Greenland and the particular nature of its Government, this thesis will try to reconstruct the current Greenland legislative system and the position of Denmark in the perspective of the human rights law.

The research will include an analysis of the direct and indirect democracy systems used by the indigenous populations, through a careful analysis of the Mineral Resources Act and major national regulations. The effectiveness of the judicial proceedings promoted by the Act and by domestic law will also be analyzed.

The research will also explain the positive and negative impacts of mining on the indigenous population, featuring opinions of the Inuit and the hopes and projects of the mining companies currently on the territory.

“The world lies in the hands of those that have the courage to dream and who take the risk of living out their dreams - each according to his or her own talent.”

— **Paulo Coelho**

Preface

This thesis represents the author's great interest in the Arctic and the populations that inhabit it. The Master of Polar Law follows the Master degree in Law of 2017 at the University of Florence (Italy) in Comparative Law, specifically in the constitutional review methods in Nordic legal systems.

The first part of the thesis is the result of the studies undertaken at the University of Akureyri, while the fieldwork study contains the work achieved in Greenland, during the autumn semester of 2018 in Nuuk.

The present research lends itself to further development.

The results of Chapter 7 emerged from a four- month investigation in which the researcher traveled to three different locations conducting research independently.

Most of the results such as interviews, structured and semi-structured or informal conversations.

This thesis respects the ethical principles of scientific research in social sciences, such as: transparency, accessibility, respect, dignity, competence, inclusion, prudence, integrity and benefit for society.

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Acronyms / Abbreviations

CERD	Committee on the Elimination of Racial Discrimination
CSR	Corporate Social Responsibility
ECommHR	European Commission on Human Rights
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
FPIC	Free, Prior, Informed Consent
GA	General Assembly
GDP	Gross Domestic Product
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MRA	Mineral Resources Act
OECD	Organisation for Economic Co-operation and Development
PP	Public Participation
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous People
UNCLOS	United Nations Convention of Law of the Sea
UNGA	United Nations General Assembly
USA	United States of America

Table of Treaties

Treaties

International

United Nations

International Covenant on Economic, Social and Cultural Rights (16 December 1966, EIF 3 January 1976) 993 UNTS 3

International Covenant on Civil and Political Rights (16 December 1966, EIF 23 March 1976) 999 UNTS 171; 1057 UNTS 407

International Labour Organization

Convention Concerning Indigenous and Tribal Peoples in Independent Countries, C196 (27 June 1989, EIF 05 September 1991) 72 ILO Official Bull 59, 28 ILM 1382

Table of Other Documents

United Nations

- Declaration by the United Nations (Washington January 1, 1942) 55 Stat 1600, EAS 236
- The Universal Declaration of Human Rights (10 December 1948) UN doc A/RES/217(III)
- Declaration on the Rights of Indigenous Peoples (13 September 2007) UN doc A/RES/61/295
- United Nations Declaration on the Rights of Indigenous Peoples' (Resolution) (13 September 2007) UN doc A/RES/61/295
Meeting Records; UN doc A/61/PV.107
Press release UN doc GA/10612 (143-4-11)
- United Nations The Rio Declaration On Environment And Development (Rio de Janeiro from 3 to 14 June 1992) A/CONF.151/26

Conventions

- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, Denmark, 25 June 1998)
- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, Finland, 1992)
- Convention On Biology Diversity (Rio de Janeiro, Brazil, 1992)
- Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) (1992)
- United Nations Convention on the Law of the Sea (UNCLOS), (Montego Bay, 10 December 1982)

National Law

Denmark

Constitution Of The Kingdom Of Denmark Act – (1953)

Greenland

Act on Greenland Self-Government, Act- (No. 473 of 12 June 2009)

The Greenland Working Environment Act – (No. 1048 Of 26 October
2005)

Table of Cases

International Courts

Permanent Court of International Justice

Legal Consequences for State of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (Advisory Opinion) [1971] ICJ Reports 16

Inter-American Court of Human Rights

Saramaka People v Suriname, Interpretation of the judgment on preliminary objections, merits, reparations and costs, IACHR Series C No 185, IHRL 3058 (IACHR 2008), 12th August 2008, Inter-American Court of Human Rights [IACtHR]

Human Rights Committee

Lovelace v Canada, Merits, Communication No 24/1977, UN Doc CCPR/C/13/D/24/1977, IHRL 1729 (UNHRC 1981), 30th July 1981, United Nations [UN]; Human Rights Committee [CCPR]

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This goal would never have been achieved without you. Thank you.

Every error remains the responsibility of the author.

1 Introduction

1.1 General Overview

Greenland is a vast island country located to northwest of Iceland and the northeast of Canada between the North Atlantic and Arctic Oceans. Despite its immense vastness, Greenland is inhabited by fewer than 60,000 people, of whom 90% are Inuit and the rest are Danish and other small ethnic minorities². Over the course of its history, this island has attracted much international attention due its strategic location, mineral resources exploitation and new land to explore. The United States still maintain the Thule air base in the Northwest. China continues to attempt negotiations that can facilitate cross-border access³. Most of the population of the country lives in the West- South and along the coasts. The island's economy is primarily made up of commercial and traditional activities such as fishing, hunting and grazing, and other activities such as infrastructure, mining and other trades introduced by Denmark. Among the major problems that Greenland is called to solve are the falling educational system due to the few primary and secondary schools and massive emigration, particularly of women. Outwardly migration of women who seek employment opportunities in other countries has not only led to a clear gender imbalance between men and women in Greenland, but also an important cultural loss. Despite this, globalization and the strong relationship with Copenhagen has influenced the cultural identity of the region or the independent spirit of nationalists. Despite the skepticism of many, a large part of the population believes in a possible future independent from Denmark, paying much attention to opportunities offered by the geological richness of Greenland. In recent years, the number of foreign mining companies in the country has grown, despite the fact that

² INTERNATIONAL WHALING, "*Management and utilisation of large whales in Greenland*", Official website (<https://iwc.int/greenland>, last accessed on 1st April 2019)

³ TÊTUA L.,,LASSERREB F, "*Chinese investment in Greenland's mining industry: Toward a new framework for foreign direct investment*", The Extractive Industries and Society, Elsevier Ltd., 2017, p. 1-11 (<http://dx.doi.org/10.1016/j.exis.2017.05.008> last accessed on 1st April 2019)

Greenland does not have a very long mining governance tradition⁴. However, despite the potential wealth of the territory, complicated bureaucracy surrounding the issuance of mining licenses, and the huge initial capital required to establish industry, has pushed many companies to give up. This situation is also due to the particular political situation in Greenland, which makes investments in the sector uncertain and already affected by fluctuations in market⁵.

Greenland has a self-government, established following the Self Government Act in 2009, which granted full control many policy areas, including the exploitation of mineral resources. Some domestic legislation remains the remit of Denmark, which also governs, foreign affairs and national security⁶. Precisely these last two matters make it difficult to negotiate and trade in the materials extracted, especially when the latter could cause significant environmental damage in the event of technical failures but also proliferation of fossil material.

These circumstances are not the only ones to slow the race for independence. In fact, despite most of local political parties holding separatist views, the general population believes favours independence only if the current standard of living remains unchanged. It must be considered that, at present, Greenland's association with Denmark includes many economic benefits such as free access to the Danish education system up to and including university level and an annual national subsidy of 3.5 billion crowns. This subsidy is not little, considering that it is equal to the third of the GDP and almost 60% of the national budget⁷. Therefore, the relationship between Greenland and Denmark is not merely cultural or historical, but also economic.

A potential revenue stream, though perhaps geopolitically risky, is the welcoming of foreign investments, especially Chinese ones, which could bring huge capital and new infrastructure to facilitate transport routes. To

⁴ See: GRAY B., "As Greenland Ramps Up Mining, Who Will Benefit?", HIGH NORTH NEWS, 2016 (<https://www.highnorthnews.com/en/greenland-ramps-mining-who-will-benefit>, last accessed on 1st April 2016)

⁵ *Ibidem*

⁶ GOVERNMENT OF GREENLAND, "Politics in Greenland", Official Website (<https://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Politics-in-Greenland>, last accessed on 1st April 2019)

⁷ TAAGHOLT T., BROOKS K., "Mineral riches. A route on Greenland's independence?", Cambridge University Press, Cambridge 2016 (<https://doi.org/10.1017/S0032247415000935>, last accessed on 1st April 2019)

date, Greenland lacks roads to connect major towns and cities with air the most widely used mode of long-distance transport. This lack of connectivity causes not only economic, but also social issues. Many cities do not have secondary schools, forcing children to fly over the island to pursue their studies in the capital, Nuuk. Family reunification is often prevented by the high costs of travel, which the average Greenlander simply cannot afford. More widely, depression is the major contributor to death rates annually. There are limited means of international travel, with connections between Greenland, Denmark and Iceland available through the three main airports of Kangerlussuaq , Narsarsuaq and Nuuk, built by the Americans during the Second World War. This situation is set to improve however, as from September 2018 the enlargement of the airports of Illulisat, Nuuk and the construction of another airport in Qaqortoq is being evaluated, which are anticipated to boost tourism and internal mobility⁸.

As mentioned above, current political interests gravitate around the exploitation of natural resources. The island enjoys huge mineral deposits, including gold and rubies in the south and titanium, cryolite and iron on the west and north coasts. Currently, the major companies (Sinosteel, CHALCO, London Mining, GME etc..) employ staff of Canadian, British, Australian and even Chinese nationalities. Chinese presence is notable in many projects, the most important of which are the proposed extraction of uranium and other rare ores at Kvanefjeld⁹. The burgeoning mining sector, has pushed the Government, supported by labor unions representatives of indigenous communities (ICC), to legislate for the creation of new jobs, and strengthened job training in this field. In fact, the current law (MRA 95 (a)) forces mining companies to hire the largest number of local workers and in 2008 the Greenland School of Minerals and Petroleum was formed to train young people in skills required to work in the mining sector. Unfortunately, though, despite the growing number of diplomas awarded each year, the school is not equipped with the technology necessary for the mining extraction and screening processes, thus making the training incomplete

⁸ JARVIS H, “*Plan to fund Greenland airports causes crisis*”, Standby, Nordic.com, 2018 (<https://standbynordic.com/plan-to-fund-greenland-airports-causes-crisis/>, Last accessed 8th March 2019)

⁹ ZEUTHEN W. J, RAFTOPOULOS M., “*Promises of hope or threats of domination: Chinese mining in Greenland*”, *The Extractive Industries and Society* 5 (2018) 122–130 ,pp.128-129

which could affect the employability of young workers in active mines¹⁰. The language barrier is another problem for local workers, who already have to navigate a bilingual society. Greenlandic and Danish are of little use in the international and national mining markets, leading to other types of problems, as companies prefer to import their workers from abroad, thus threatening the strong identity of the country¹¹.

Despite ambitious projects, Greenland is still in an economic crisis compounding its dependence on Denmark. Although the Greenland Government is trying to grant as many exploratory mining licenses as possible the current active mines cannot support full economic independence¹². Mining activities also threaten negative impacts. Having already touched a little on social and economic issues, the greatest enemy of mining activities is undoubtedly environmental pollution. Be it noise pollution, air pollution or ground water pollution, the impact of mining on the physical environment cannot be undervalued. Traditional Inuit society is intimately linked with nature, meaning that any change to the health of the natural environment of the territory inevitably affects the lifestyle and all the subsistence activities of the indigenous peoples who live there.

This thesis intends to reconstruct the internal regulation of mining activities in the territory, paying particular attention to the role of the Inuit population, and to the effectiveness of public consultations regarding the licensing process and the maintenance of the secular land rights of indigenous peoples.

The research opens with a reconstruction of the legal history in Greenland, going through the most important phases of its constitutional position (§2).

The third chapter will attempt to reconstruct the history of mining in Greenland, retracing the most important stages from the first explorations to full control over the mining activities by the Greenland Government.

¹⁰ FUSCO S. , “*The mining impacts on youth in Greenland*”, Interview at the Greenland School of minerals and Petroleum, Field Project, University of Greenland, 2019

¹¹ HANSEN MA, VANCLAYB F., CROALA P., HURUP SKJERVEDALC AS , “*Managing the social impacts of the rapidly-expanding extractive industries in Greenland*”, *The Extractive Industries and Society* 3 (2016) 25–33, Elsevier Ltd., 2015, Pp. 27-8 (<http://dx.doi.org/10.1016/j.exis.2015.11.013>, last accessed on 28th March 2019)

¹² AMBASCIATA D’ITALIA COPENAGHEN, “*Groenlandia - Nuove Linee Di Politica Mineraria*”, Translation: Italian Embassy in Copenhagen, “Greenland: New lines of Mining Politics”, 15 May 2013 (Available on official website https://ambcopenaghen.esteri.it/ambasciata_copenaghen/it/ , accessed on 9th March)

The fourth chapter paints a general overview on the recognition of indigenous rights and land rights in the Arctic on an international basis, and then goes into more detail regarding Denmark's position on the ratification of the major conventions to safeguard indigenous peoples (ILO Conventions, UNDRIP).

The fifth chapter deals with internal legislation in close detail describing the current Mineral Resources Act and national regulations.

The sixth chapter examines the consultative power of the Inuit population and the democratic systems envisaged by the current act and the methods of scientific dissemination concerning current projects.

Finally, the last chapter is dedicated to my fieldwork in Greenland between September 2018 and January 2019.

The preparation of reports by the mining companies and the effectiveness of popular consultations will be explained in detail. The discussion will focus on the major issues and the actual effectiveness of these systems.

1.2 Research question

This thesis aims to investigate the Greenland mining legislation and reconstruct the democratic and consultative systems that include the Inuit people in decision-making processes.

This research lends itself to a range of different objectives:

- Establishing the impacts of mining on Greenlanders
- Establishing Greenland's active policies to protect the environment and indigenous rights
- Identifying Denmark's position in the context of indigenous policies and understanding the actual position in the protection of indigenous rights
- Determining the possible developments of legislation and mining policy in Greenland
- Establishing major issues regarding the inclusion of indigenous peoples in the Greenland mining industry and proposing possible resolutions

1.3 Methodology

The information contained in this thesis was obtained by consulting educational manuals in international law and mining and administrative matters. Scientific journals and teaching materials have been consulted to support the courses attended at the University of Akureyri and University of Greenland.

Additionally, Chapter 7 features some projects conducted using interviews, structured, semi-structured and / or informal conversations with the local population, representatives of NGOs, directors of mining companies and operators in the Greenland School of Minerals and Petroleum training school in Greenland.

2 Legal history of Greenland

2.1 Dispute resolution systems in pre-colonial Greenland

The pre-colonial Inuit society of Greenland had no comparable dispute resolution system to the Western legal system. Shamans and elders were gatekeepers of the body of social and legal rules, handed down generationally and heavily based upon myths and legends which defined what was morally right behavior and what was a profoundly wrong act¹³. The sources of the rights were mostly customary laws. A method of resolving the disputes in this pre-colonial period was by so-called "singing proofs", that is to say, exhibitions that were held during the summer festivals, the winner of which was also deemed to have won the dispute. These singing duels not only solved conflicts and controversies, but also re-established the so-called "emotional" order¹⁴.

The important role of traditional dispute resolutions in legal life has been maintained even now, with only certain disused practices renounced in modern Greenlandic society. Even now, the ICC has requested that on the occasion of the administrative reform in the country, some customary forms remain in the sources of rights¹⁵. The ICC has also invoked Article 8 of ILO No. 169, in which governments are asked to maintain the institutions and customs of local populations when new laws are imposed on them¹⁶.

For these reasons, when Greenland adopted a legal system, based on written sources of Danish derivation, it took wise measures to adapt them to the Greenlandic society of the time.

¹³ LOUKACHEVA N., "*Autonomy and legal systems of Greenland and Nunavut*" (http://www.uniset.ca/microstates/greenland_Loukacheva.pdf, last accessed on 10th April 2019)

¹⁴ *Ibidem*, p.10

¹⁵ ICC, "*Background Information For The Committee On The Elimination Of Racial Diskrimination -Relative To The 18th And 19th Periodical Report Of Denmark*" (CERD/C/DEN/18-19) ("http://inuit.org/fileadmin/user_upload/File/2011/Reports/ICC_CERD_Submissi on_2010.pdf, last accessed on 10th April 2019)

¹⁶ *Ibidem*

The Greenlandic administrative structure was very complex. In 1921, local councils and two provincial councils were established. In 1925 (n.139 dated April 19), these provincial councils became supported by district councils which administered subsidies, loans and labor market affairs¹⁷.

2.2 Legal reforms of the 1950s

Until 1950, Greenland maintained its status as a Danish colony which affected many policies applied in the country. On one hand Denmark was interested in maintaining trade relations with the island, on the other, the Realm left dispute resolution to the people.

Before the constitutional reforms of 1953 Greenland had a justice administration consisting of local courts. The sources of law were the laws enacted by the local councils, municipal provisions, and ,above all, customs. Civil and criminal disputes between Inuit were isolated through local courts, while disputes between Danes were resolved through Danish law. Thus a dualistic legal system was formed¹⁸.

In 1951, the district councils were replaced by municipal councils and a joint provincial council (No. 271, 27 May 1950)¹⁹.

The Danish Parliament redefined administrative divisions in Greenland, creating three new counties (West, East and North). These reforms saw some municipalities and city councils halved²⁰.

¹⁷ GOVERNMENT OF GREENLAND, "The Greenland Danish Self-Government Report on Self-Government in Greenland" p.1-3 (<https://naalakkersuisut.gl/~/media/Nanoq/Files/Attached%20Files/Engelske-tekster/Summary%20of%20the%20paper.pdf>, last accessed on 12th April 2019),2008,Pp.1-3

¹⁸ ØREBECH, P. "Terra nullius, Inuit Habitation and Norse Occupation – With Special Emphasis on the 1933 East Greenland Case". Arctic Review, 7(1), 2016 (doi:10.17585/arctic.v7.262, last accessed on 10th April 2019)

¹⁹ Ibid. GOVERNMENT OF GREENLAND, 2008, pp. 3-5

²⁰ HANNUM H., "Autonomy, Sovereignty, and Self-Determination -The Accommodation of Conflicting Rights", Series: Procedural Aspects of International Law University of Pennsylvania Press, 1996, p.342

(https://books.google.is/books?id=gOq52_guRUoC&pg=PA343&lpg=PA343&dq=gronland+n.577+commission&source=bl&ots=Oq3pnx-sm0&sig=ACfU3U2o8K1vhs4FqkkQUJhNL-v4YvmN4Q&hl=it&sa=X&ved=2ahUKEwirl56Ss8vhAhUwVBUIHXSSDKUQ6AEwAHoECACQAQ#v=onepage&q=gronland%20n.577%20commission&f=false, last accessed on 12th April 2019)

Between 1948 and 1950, Denmark was persuaded to ratify two important rules: the Law on the Administration of Justice (*Retsplejelov*) n. 271 of 14 June 1951²¹ and the Criminal Law (*Kriminallov*) of 1954, which governed substantive criminal law. The *Kriminallov* provided for the forms of crime, the conditions for imputability and punishment, the sanctions and the principles of responsibility and guilt. As for the civil law, the Danish government decided to maintain the rules of the Province, ancient Danish legal standards, with some changes to the Inuit practices²².

Before the incorporation in the Kingdom of Denmark, Greenland was a non self-governing territories in the Chapter XI of UN Charter and Denmark had to provide periodic reports to the decolonization body of UN.

In 1953, Denmark revised its Constitution, no longer considering Greenland as a colony, but as a county. This resulted in a legal equality between Greenlanders and other citizens of the Kingdom²³. The Danish law was unique and applied also in the detached regions, unless the same rules provided otherwise were not applicable to the island in nature of its particular characteristics. From that event, Denmark had not to submit any reports to UN²⁴.

The new constitutional charter provided for the possibility of applying specific provisions for Greenland. Some examples are the art.31.5 for the Parliament, art. 42.8 on popular referendums and art.86 on the minimum age of voting rights in municipal elections²⁵.

At this time, the only recognized legislative body was the unicameral Danish Parliament (Folketing).

²¹ New version of 2007: Forslag til Retsplejelov for Grønland (2007/2 LSF 34) (<https://www.retsinformation.dk/Forms/R0710.aspx?id=113833>, last accessed on 12th April 2019)

²² BRØNDSTED H:” *Grønland - retssystem (kriminallovgivning)*”, Den Store Danske, Gyldendal. Hentet (<http://denstoredanske.dk/index.php?sideId=86572>, last accessed on 12th April 2019)

²³ JHONSTONE L.R, “*The impact of international law on natural resource governance in Greenland*”, 2018, p.12-13 This paper was presented at the Polar Cooperation and Research Centre in Kobe during the symposium on International Law for Sustainability in Arctic Resource Development: Integrating economic, social, environmental and scientific dimensions. Rachael Lorna Jhonestone: rli@unak.is

²⁴ Ibid. GOVERNMENT OF GREENLAND, “*The Greenland Danish Self- Government Report on Self-Government in Greenland*”, 2008, p.2

²⁵ THE CONSTITUTIONAL ACT OF DENMARK OF JUNE 5, 1953 (http://www.stm.dk/ p_10992.html, last accessed on 12th April 2019)

2.3 The statute of Governmental autonomy of the 1970s

In the 1970s, greater liberties and equality between citizens of the Kingdom aroused the desire for greater governmental autonomy in Greenland. For these reasons, a new commission (the Home Rule Commission) formed by seven Inuit representatives, seven Danish parliamentarians and a professor of neutral constitutional law was established to investigate the benefits of a Self-Government in Greenland.

In 1973, Greenland accessed the EU via Denmark. In 1985, Greenland decides to retire and obtained the OLT, Overseas Countries and Territories Agreement.

The investigations of the Commission led to positive results and in 1979, the law n.577 officially entered the vigil, creating the organs of the new Self-government²⁶.

The legislative power was devolved to a Parliament (Landsting) with 31 members subdivided into four parties and elected by the people every four years according to a proportional system.

Executive power went to the Government (Landsstyre), of which the Prime Minister and other members are elected by the Parliament. Furthermore, there is also an Ombudsman who represents the Danish government with powers of control.

If the Landsstyre and the Danish Government disagreed, a committee formed by two representatives from each Government attempted to resolve the conflict. In the event of impossibility of agreement, the dispute was brought before the Danish Supreme Court²⁷.

2.4 The New Statute on Autonomy of 2009

The desire for independence did not stop with the law in 1979. On the contrary, in 2004 a commission for self-determination was created (*Grønlands selvstyre-kommission*) made up of half Danish and half Greenland parliamentarians with the aim of probing the possibility of extending the subjects of competence of self-government²⁸.

²⁶ *Ibid.* HANNUMp.343

²⁷ *Ibid.*, JHONSTONE L.R, p.17

²⁸ *Ibidem*

The Commission was tasked with envisaging a new economic agreement between the two countries, seeking to improve the economy of Greenland in order to reduce the annual subsidy by Denmark.

In 2008, the citizens of Greenland were invited to participate in a referendum on the matter of self-government. If passed, the poll would give the parliament in Nuuk greater control over certain matters of national interest. The turnout at the polls was very high and with a 75.5% vote in favor of the motion, Greenland introduced self-government, opening a new chapter in the history of the island²⁹.

On 21 June 2009, a law on self-government came into force which replaced the provision on Home Rule established in 1979. This act was based on White Paper n. 1497 drawn up by the Commission to the Danish-Greenlandic self-government in 2008. With the Act on Greenland Self-Government, Greenlanders gained the ability to elect their own parliament (Inatsisartut) and government (Naalakkersuisut) with executive powers. The Greenland government now controls economic activities such as fishery management, the education system and mining activities, and has officially recognized Greenlandic as an official national language. This symbolic act asserts Greenlandic as the national tongue, even though Danish is widely spoken and taught together with other languages that could potentially allow for more job opportunities inside and even outside the national territory³⁰. The body of laws that regulates the business of Greenland is the Danish Constitution, the Act on Greenland Self-Government, the Greenlandic civil and penal law and the Danish family law. At the legal level, Greenlandic has taken full responsibility for administrative affairs and partly for the judicial system, which is still inspired by Danish law. It was necessary to make some changes to the criminal and civil law in Greenlandic considering the cultural diversity between the two countries³¹.

²⁹ GÖCKE K., “*The 2008 referendum on Greenland's autonomy and what it means for Greenland's future*”

Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (2009) Bd.69: n°1, p.103-121 (Available in http://www.zaoerv.de/69_2009/69_2009_1_a_103_122.pdf, accessed on 15th March 2009)

³⁰ GOVERNMENT OF GREENLAND, Official website, “*Fact about Greenland*” (<https://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Facts-about-Greenland>, last accessed on 27th March 2019)

³¹ I suggest the article : PETERSEN H., “*Privileges, Rights and Advantages : Inuit, Danish and European Subjects in the Making*” in: *Scandinavian Studies in*

The Act on Greenland Self Government points out that the people of the Greenland are internationally recognized as peoples and then the holder of the right to self-determination³². The relationship between Denmark and Greenland is considered equal in this Act. While Greenland has been granted some subjects on which it can decide arbitrarily, Denmark has retained control of other sectors such as:

- Justice affairs, including policing, criminal procedures and the courts of law
- Defense and National security
- Financial sectors and monetary system, for example, the currency used in Greenland is Danish Kroner DKK
- Civil right law and family and succession, citizenship matters etc.
- Foreign affairs³³

These matters were not transferred to Greenland because the Danish Constitution did not allow it, a circumstance which created difficulties in transferring further authority and responsibility to the Greenland authorities. A further obstacle was also the lack of experience of the Greenland authorities on some matters, for example immigration and finance, which required negotiation with the experts of the Danish government.

The governmental system concerning Greenland includes the Government, the Parliament and the Greenland Commission within the Danish Parliament. Furthermore, the Danish Parliament hosts two parliamentarians for each detached region, Greenland and Faroe Islands.

Law, Vol. 53, 2008, p. 205-218 (available in <http://www.scandinavianlaw.se/pdf/53-9.pdf>, last accessed 15th March)

³² MORTENSEN B.O.G, BARTEN U., “The Greenland Self-Government Act: The Pitfall for the Inuit in Greenland to Remain and Indigenous People”, *The Yearbook of Polar Law VIII* (2016) 103-128, Brill ed. p.103

³³ GOVERNMENT OF GREENLAND, Official website, “*Politics in Greenland*” (<https://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Politics-in-Greenland>, last accessed on 27th March 2019)

2.5 Constitutional Arrangements in Greenland

2.5.1 The Self-Government of Greenland

Greenland adopted self-government with the Parliament Act on Greenland Self-government 2009 (Act no. 473 of 12 June 2009), which expanded upon the powers already established by the Home Rule act of 1979 (Act No. 577 of 29 November 1978)³⁴.

The Greenland Self-government is a constitutional monarchy and recognizes the Queen of Denmark as head of state. The Government holds the executive power and organ of political direction of the country. The rules on the functioning and structure of the Government are not provided for either in the Constitution of Denmark or in the Self-Government Act, rather the Government determines this independently. This system is still not very clear and transparent.

Clearly, the Government must still act in compliance with the Constitution, Self-Government Act and other international conventions³⁵. The Government draws up the political guidelines by presenting the bills to Parliament, which if approved, are passed as acts. The Greenland Government has adopted a multiparty system in which the Prime Minister is appointed and dismissed by the Parliament. The Prime Minister appoints their own Cabinet from elected members of the various political parties that have obtained higher percentage votes³⁶.

The Queen of Denmark is also Greenland's head of state and is represented by a High Commissioner elected by her.

The High Commissioner manages affairs between Denmark and Greenland. The Government of Greenland must notify the High Commissioner of all statutes and bills proposed by

³⁴ GOVERNMENT OF GREENLAND, “*The Government*”, Official Website(<https://naalakkersuisut.gl/en/Naalakkersuisut>, last accessed on 30th March 2019)

³⁵ JHONESTONE L.R.,” *The Principle of "Full Reparation" for Environmental Damage and Very Small States*”, In Responsibilities and Liabilities for Commercial Activity in the Arctic- The Example of Greenland , eds Ulfbeck, Anders Møllmann, Bent Ole Gram Mortensen., Routledge, , 1st Edition 2016

³⁶ PARLIAMENT OF GREENLAND, “INATSISARTUT THE PARLIAMENT OF GREENLAND”, 2018, p.4 (<https://ina.gl/media/2534688/om-inatsisartut-vers-2018-en-web.pdf>, last accessed on 30th March 2019)

the Greenland Parliament and Government³⁷. The High Commissioner can attend the Greenlandic Parliament but does not have the right to vote. The High Commissioner may be invited by the Greenland Government to negotiate certain business. The High Commissioner's Administrative Director negotiates particular matters concerning civil law, particularly family law³⁸.

According to the law the leader of whichever party that receives the most votes in an election creates a new coalition, unless the current prime minister is still in office. The new coalition must win trust from the Parliament. The Prime Minister is the guarantor of the work of the ministers, ministries and associated departments. The Prime Minister's mandate lasts 4 years and is overseen by the Accounts of the Greenland Treasury³⁹.

The Prime Minister conducts the general policy of the Government and is responsible for it. He maintains the unity of political and administrative direction, promoting and coordinating the activities of the ministers.

The ministers head up their respective departments, of which are currently 10, and perform functions delegated by the Prime Minister.

The different Ministries are:

- Ministry of Nature, Environmental and Research
- Ministry of Finance
- Ministry of Housing and Infrastructure
- Ministry of Education, Culture, Church and Foreign Affairs
- Ministry of Foreign Affairs
- Ministry of Fisheries, Hunting and Agriculture
- Ministry of Health
- Ministry of Social Affairs and Justice
- Ministry of Industry and Energy
- Ministry of Mineral Resources and Labor⁴⁰

The Government can make international agreements in matters within its competence.

³⁷ GOVERNMENT OF DENMARK, "*The High Commissioner of Greenland*", Official website (http://www.stm.dk/p_10984.html, last accessed on 30th March 2019)

³⁸ *Ibid.*

³⁹ GOVERNMENT OF GREENLAND, "*The Government*"

⁴⁰ GOVERNMENT OF GREENLAND, "The Ministries" (<https://naalackersuisut.gl/en/Naalackersuisut/Departments>, last accessed on 30th March 2019)

As regards relations with the European Union, Greenland is not a member. Greenland, being a colony and county of Denmark, was part of the European Community and its related obligations, but chose to leave the union in 1985 following the referendum of 1982⁴¹.

The divergences in fish quotas sparked Greenland's exit from the European Community. Greenland currently holds the status of OCT (Overseas Countries and Territories of the European Union) and has solved some problems with the ratification of specific agreements, particularly with regards to fishing. This partnership allows Greenland to receive EU funds, and citizens of Greenland are also considered European citizens, as they have Danish citizenship too.

In fact that the of Greenland is autonomous and totally independent in its subjects of competence, it cannot be said that it is also autochthonous. In practice, most institutional and administrative roles in Greenland are held by Danish citizens⁴².

For these reasons, the creation of an autonomous government, so to speak Inuit, promoted many indigenous initiatives and has been an example to indigenous peoples in other Arctic countries to participate more in political life.

As Mortensen and Barten suggest, for Greenlanders the concept of self-government implies the conception of Western governance, a very similar to the Danish parliamentary system. It is a question of "representation", rather than the adoption of traditional systems and principles⁴³.

⁴¹ ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES OF THE EUROPEAN UNION (OCTA), "Presentation of Greenland" (<http://www.octassociation.org/presentation-of-greenland>, Last accessed on 30th March 2019) See also: GOVERNMENT OF GREENLAND, "OCTA", <https://naalakkersuisut.gl/en/Naalakkersuisut/Greenland-Representation-to-the-EU/Overseas-Countries-and-Territories/OCTA> (last accessed on 30th March 2019)

⁴² NUTTALL M., 2015, "subsurface politics : Greenlandic discourses on extractive industries" in JENSEN L-C., HØNNELAND G., , Handbook of the Politics of the Arctic, Cheltenham, Edward Elgar Publishing, p. 105–128.

⁴³ MORTENESEN G.O., BARTEN U., "*The Greenland Self-Government Act- The Pitfall for the Inuit in Greenland to Remain an Indigenous People?*", The Yearbook of Polar Law VIII (2016), Brill, p.119

2.5.2 The Parliament

The Parliament is the legislative body of the state that issues laws under the Constitution dictates, embodying the organ of representative democracy.

The Greenland Parliament has 31 members who are elected for a four-year term through a proportional electoral system. The adoption of this system is justifiable from the high number of parties and from the aim of guaranteeing an equal representation of all political forces. Indeed, political forces tend to create coalition, not allowing a single party to gain complete control of the Government⁴⁴.

Following an election, the Parliament elects own President and Vice-presidents who constitute the Presidency of Parliament and work as external representatives of the body. The president had different duties as:

- He is the public representative of Inatsisartut, the Parliament of Greenland
- He attends the meetings of Parliament as the Speaker
- He controls the works of Parliament and of its committees⁴⁵

Parliament also consists of specific committees that work on individual subjects. They are composed of five members who, for reasons of conflict of interest, cannot be members of the Government. These committees work closely with the public in order to take note of citizens' requests and monitor Government policies.

The active parliamentary electorate includes all adults aged 18 and over and who have resided for more than six months in the area.

The parliament elects the First Minister and the Landsstyre, a committee with executive powers. The Prime Minister must confirm its mandate with the regulations and law of the Parliament. The Parliament can also appoint an Ombudsman, who controls the Government's good practice. Greenland also has two parliamentary representatives in the Folketing, the Danish parliament.

⁴⁴ THE COALITION AGREEMENT 2014- 2018, October 27th, 2016 (<https://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Naalakkersuisut/DK/Koalitionsaftaler/Koalitionsaftale%202014-2018%20engelsk.pdf>, last accessed on 30th March 2019)

⁴⁵ PARLIAMENT OF GREENLAND, "*The President of Inatsisartut*" (<https://ina.gl/organisation/formanden-for-inatsisartut/> last accessed on 30th March 2019)

The organization of the Parliament is delegated to The Bureau For Inatsisartut, which assists the Presidency and deals with official publications. As mentioned above, the laws promulgated by the Danish Parliament are applicable in Greenland, unless there is a specific exemption. Greenland can make laws but only in matters of the listed in the Parliament Act⁴⁶.

2.5.3 The role of Greenland Committee in Danish Parliament

The Danish Parliament is an independent body following the constitutional reform that took place in 1953. Since 1953, the Danish Parliament has been made up of 179 members who constitute the legislative guarantee body. Bills come from the political parties of the Government but also from the various committees that work in specific sectors.

One of these is the Greenland Committee, which, like the Faroese Committee, manages the matters concerning Greenland but still under Danish jurisdiction (foreign defense, national policies, law and financial matters⁴⁷).

According to the official website of the Danish Parliament, the objectives of the Greenland Committee are:

*"- Handling bills and motions in areas not handled by the government but that apply only to Greenland or which is of special significance to Greenland -ongoing parliamentary scrutiny of the Greenland legislation, for which the Danish Commonwealth authorities are responsible "*⁴⁸

The Greenland Committee manages relations between the Danish and the Greenland Parliament, but also works on European matters on which Greenland has concluded agreements such as the European market, defense policies, and security.

Furthermore, the Greenland Committee also plays an important role in Parliamentary scrutiny, through questions of the representatives of the members to the competent ministers.

The Greenland Committee also takes care that democratic and informational processes are the same throughout the island. Often, the Committee investigates information disclosure, and also the various social

⁴⁶Ibidem, p.9

⁴⁷ PARLIAMENT OF DENMARK, "The Greenland Committee" (<https://www.thedanishparliament.dk/en/committees/committees/the-greenland-committee>, last accessed on 25th March 2019)

⁴⁸ Ibidem

situations concerning young people and children such as education, alcoholism, depression, unemployment etc.

For these reasons, the Committee uses the collaboration of various organizations and NGOs for the fight against corruption and other problems in the social sphere.

3 The history of mining in Greenland

3.1 The beginning of mining and first mines in Greenland

Greenland has always attracted the attention of poets, artists and explorers. Indeed, literary and imaginary maps of one of the most unexplored and therefore most mysterious territories of the ancient era are not lacking.

The first to land in Greenland were the Vikings from Norway and Iceland, who coined the name "Greenland " or "Green Earth" in order to unseat Scandinavian expansionist aims. Most probably Greenland at the time of Erik the Red, circa 1000 AD, appeared instead as a mass of snow and ice. The indigenous population had migrated from North America, with which it shares its physical features and traditional activities. Erik the Red settled mainly in the southern part of the island, which has a more moderate climate conducive to pastoralism and agriculture. Indeed, the southern region of Greenland is still the largest exporter of potatoes and lamb on the whole island⁴⁹.

In the eighteenth century, Norway and Denmark began to stake their claims in the territory. It was the Norwegians who founded the capital Nuuk, naming it “Godthåb”, the hope of God in Norwegian, thanks to the determination of Egede who also brought the Christian religion. The Kiel Treaty however overturned the situation, delivering Norway to Sweden and Greenland to Denmark⁵⁰.

For about a century, from 1850 to the Second World War, Greenland experienced a period of peace but also instances of territorial and human exploitation as Americans and Danes began the first mining explorations in the area. While Denmark was occupied by Nazis, the US wanted to protect Greenland's mineral deposits and military bases. Therefore, Greenland

⁴⁹ BEUKEL E., JENSEN F.P., RYTTER J.E, “Phasing out the Colonial Status of Greenland, 1945-1954- A Historical Study”, Museum Tusulanum Press, university of Copenhagen, Denmark, 2010, pp.13-16

⁵⁰ *Ibidem*

became an American protectorate and the first strategic airports were built. These airports were also used during the Cold War⁵¹.

The US presence in the territory radically changed the relations between the United States and the local population, who grew to feel very close to North America. US had great interest to maintain military bases in Greenland too. For these reasons, the United States made an offer to Denmark in order to seize it, but Denmark refused because it was aware of benefits by holding Greenland (geostrategic position, access to Northwest Passage, fishing grounds, natural resources exploitation). Denmark and the United States made the Hull- Kauffmann agreement with which permitted the construction of military bases on the territory provided that no nuclear weapons were used. The agreement came shortly after a plane crashed and caused a nuclear warehouse to explode resulting in air contamination⁵². Over the years, the United States delivered many sites back to Denmark but never completely abandoned the island.

In 1953, Denmark granted more constitutional independence to the region. Greenland was no longer considered a colony but a county. This new title gave new freedoms to Greenland but also had some repercussions on the national and international political level. In fact, as an equal part of the Kingdom, Greenland could have greater political participation (through parliamentary representation in the Folketing) and administer its business.

In 1854, the first mine was opened in Ivittuut, a small village in the South-West of Greenland. The first mining explorations in the area had begun much earlier, but only the Kriolit Mine og Handels Selskabet obtained the monopoly for the extraction. This mine was later granted to the Americans whose had many interests in the extraction of cryolite, a useful material to aluminum processing. After the Second World War, cryolite was successfully extracted by the Danish firm Kryolitselskabet Øresund, which helped finance the creation of Grønlandsfly, today's Air Greenland⁵³.

In the years before the First World War, European industrialization required huge quantities of raw materials. Many copper and graphite deposits were found in the south of the country, and one of the most advanced mines

⁵¹ NUTTAL M., “*Climate, Society and Subsurface Politics in Greenland*”, Routeledge, NY, 2017, pp. 62-87

⁵² The American Journal of International Law, Vol. 35, No. 3, Supplement: Official Documents (Jul., 1941), Cambridge University Press, Cambridge, 1941, pp. 129-134 (<https://www.jstor.org/stable/i312492>, last accessed on 9th March 2019)

⁵³ HEDEGAARD C, “*Ivigtut Cryolite deposit*”, Mindat.org, 8. 12. 2007 (<https://www.mindat.org/loc-1958.html>, last accessed on 9th March 2019)

of the time was Josva Copper Mine, managed by the GMA (Grønlandsk Minedrifts Aktieselskab A / S) and its director Nyeboe . Like today's mining activities, the opening the Josvas mine required the use of machinery and specific infrastructure that did not exist in Greenland. Furthermore, the naval technologies of the early twentieth century were not yet very advanced, and this prompted the engineer Nyeboe to create a special foundry to facilitate its usability⁵⁴.

In 1911, the Josvas mine was running at full speed and had also evolved its technology, including the use of diesel engines to replace steam engines and a vast electrical system. The largest buyer of copper was Germany, but also the factories of Denmark ended up reaching many agreements with the Greenlandic companies.

When the Josvas mine closed, the works passed to the twin graphite company of Amitsoq which operated until 1924. Amitsoq mine was first funded by international capitals⁵⁵.

In the same year, 1924, the first coal mine was opened in the Disko Bay area, in the small town of Qullissat. This mine has greatly marked the Greenlandic society of the time, as the settlement grew very much given the high job opportunities that the mine offered. The mine was owned by the Danish state, but most of the workers were Greenlanders. However, Qullissat became the center of military strategies during the World War II. Especially during the Nazi occupation of Denmark, the mine now supplied the American troops settled on the island and constituted a valid point of supplying materials during the movements towards the other positions (for example towards Nuuk or along the whole west coast). In 1950, the media began to describe the Qullissat mine as a depleting depot. Rumors of a possible closure hovered around the low quality of the coal and the instability of the Greenlanders' workload. Subsequently the accusations made by the media are declared false, but nevertheless, the closure of the mine plagued the Greenlandic society in the area that had by now become accustomed to a certain lifestyle and for years had represented Greenlandic "modernity"⁵⁶.

⁵⁴ *Ibidem*

⁵⁵ SECHER K. AND BURCHARDT J., " *The Josva Copper Mine Modern mining technology in Greenland 100 years ago - a look at a pioneer mining operation in Southern Greenland*" (<http://explorenorth.com/library/weekly/aa112400a.htm>, last accessed on 9th March 2019)

⁵⁶ PRIEBE J., "A modern mine? Greenlandic media coverage on the mining community of Qullissat, western Greenland, 1942–1968", *The Polar Journal*, 8:1, 2018, pp.141-162,

The Kvanefjeld Mine is a proposed multi-element open pit mine located in southwestern Greenland. In the 1980s Kvanefjeld mountain was mined for uranium, but drilling was stopped until recent years. The area is a huge deposit of rare earth oxides (REO) and elements (REE) and zinc.

The mine is located 10km from the village of Narsaq and 45km from Narsarsuaq Airport. The facilities are located near the heliport and the harbor. Between the 1950s and 1980s, the first explorations took place by the Danish Atomic Energy Commission.

Since 2007, the mine has been owned by the Greenland Minerals and Energy Limited (GME), an Australian domiciled company⁵⁷.

GME is still waiting for the final license from the Government of Greenland to begin full operations but some projects have been since 2012. In 2011, some independent companies started to conduct social and environmental studies of the area, reviewed by the Greenland's Bureau of Minerals and Petroleum in 2013⁵⁸.

Kvanefjeld case deserves to be analyzed on several levels as it is also worthy of being counted among the most recent jurisprudential cases of environmental law.

The independence perspective has divided Greenland into two parties, and even more so in Narsaq which has 1000 inhabitants, since the high level of unemployment and general poverty reinforce the economic dependence with Copenhagen and Nuuk and create great expectations on the mine. Unsurprisingly, many traditional activities (such as grazing, agriculture, fishing), handed down for generations, are ceased locally, a trend which could predict a slow dispersion of local culture.

What makes the Kvanefjeld case interesting is undoubtedly uranium which, having a high toxicity, creates enormous concerns about the protection of the human health and farming. A concern is to create a fair balance between profit and environmental and human health, especially when the area suffers a high rate of employment and emigration. It is also a concern to make public consultations and hearings efficient as they should be.

Narsaq may host one of the largest deposits of uranium and rare earth metals in the world, with experts estimating that it could be one of the richest

(DOI: 10.1080/2154896X.2018.1468620, last accessed in 11th April 2019)

⁵⁷ *Ibid.* WILLAING ZEUTHEN J., RAFTOPOULOS M. (2018), pp.128-130

⁵⁸ See: GME, Official Website (http://gme.gl/en/projekt_kvaneffjeld, last accessed on 10th March 2019)

four. Mining activities are among the most profitable economic activities and are useful for creating new high-tech products, but the mining sector requires commitment and skilled labor, which is not readily available locally, therefore the employment of local Narsaq workers is not guaranteed.

As mentioned before, a further problem surrounds the transparency of decision making and local participation in this decision-making process⁵⁹.

The management of local consultations is indicated in the Mineral Resources Act of 2009, which requires companies to give eight weeks' notice of the project plans, including details of the possible environmental and social risks. This implies that the population has eight weeks in which to understand the real risks and benefits that that particular project can bring to their locality⁶⁰. In practice, the response of local communities to consultations depends very much on the location. In some areas, where unemployment levels are high for example, interest in environmental risks drops drastically. In current experience, the final planning decision does not seem to take into consideration the results of public hearings⁶¹. When the company draws up the reports and expresses its bureaucratic duties, the Government releases the license⁶².

The indigenous identity of the Inuit of Greenland is internationally recognized. Article 32 of the UN Declaration on the Rights of Indigenous Peoples requires a free, prior and informed consent of the indigenous population on land use⁶³. At present, GME has only published a detailed summary of the impacts of the mining activity in Narsaq and the geological assessment of the plant.

⁵⁹ Transparency and local participation issues will be more analyzed in the chapter 5 of this thesis.

⁶⁰ GREENLAND PARLIAMENT ACT, No. 6 of 8 June 2014 (art. 87b)

⁶¹ Interview at the Greenland Transparency, cited in chapter 6.

⁶² GREENLAND PARLIAMENT ACT, No. 7 of 7 December 2009 (art. 19-21)

⁶³ UNGA, UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, 2007 (full text available on <https://www.un.org/development/desa/indigenuspeoples/declaration-on-the-rights-of-indigenous-peoples.html>, last accessed on 9th March 2019)

The feasibility report of GME describes in detail the greatest social and environmental impacts:

- Discharges to water
- Potential for contaminants to enter the food chain, for example, fluorine, heavy metals and uranium;
- Conservation of terrestrial and aquatic biodiversity
- Atmospheric emissions, such as radon gas, dust, combustion products and other gas emissions
- Radiation from radioactive sources within the project area
- General waste management
- Alienation property and the impact of the project on subsistence, artisanal and commercial fishing and hunting

Concerns are also highlighted about the shipping of uranium and possible accidents. Denmark and Greenland made an agreement on the trade and transport of uranium, but the bill has still not been ratified by the parties⁶⁴.

3.2 From the Greenland Incorporation of 1953 to Home rule of 1979

In 1953, Greenland was officially recognized as a county of the Danish Kingdom, to which the application of a regionalist government model was reserved, giving the region the supremacy over certain subjects. Greenland also had representation in the Danish Parliament, the Folketing. From that moment on, Denmark began to devise many policies to safeguard the territory and improve the living conditions of the Inuit. For these reasons, many small population centers have been incorporated into cities with orders to relocate these settlements in major centers such Paamiut, Nuuk, Sisimiut and Maniitsoq⁶⁵.

In 1979, by referendum, Greenland adopted the Home Rule that would expand the Greenland administration in some sectors, in addition to managing internal affairs. Domestic rule does not delegate mineral resources,

⁶⁴ GREENLAND MINERALS ENERGY Ltd (GME), “Kvanefjeld Prefeasibility Study Confirms a Long-Life, Cost Competitive Rare Earth Element - Uranium Project”, May 2012, pp. (available on http://gme.gl/en/projekt_kvaneffjeld , seen on 9th March 2019)

⁶⁵ See: BEUKEL E., JENSEN F.P., RYTTER E.J, (2010), pp.287-315

so Greenland could not yet manage the exploitation of natural resources until the Self-Government Act of 2009⁶⁶.

3.3 The mining process after the Self- Government of 2009

The greatest changes to Greenlandic national status came in 2009 with a referendum that declared Greenland an independent region with a self-government. On June 21, 2009, the Act on Greenland Self Government was issued, replacing the Greenland Home Rule of 1979. The current Self Government Act was based on the White Paper No. 1497 of 2008⁶⁷.

On December 2009, the Danish Parliament issued the Greenland Parliament Act which reorganized the matters that would have been incorporated into the Greenland supremacy and which were still under the central government. Of the subjects that fell under the Greenlandic sovereignty, the exploitation of natural resources, commanded greatest discussion at the negotiating table. At this time, Greenland was already gradually attracting lucrative foreign business, and it was known that Greenland has always believed that mining activities could one day play an important role in the achievement of coveted independence⁶⁸.

Indeed, the critical economic importance of mineral exploitation is underlined in the preamble of the Greenland Parliament Act, which ensures that the mining of natural resources always takes place in an appropriate manner, respecting human and environmental security and maintaining economic sustainability. Greenland took over powers on the management of mineral resources with MRA, which stated the right to use mineral resources in the subsoil and all the proceeds of the sector. Furthermore, Denmark has 50% owned by Nunaoil A / S and will continue to appoint a member in the

⁶⁶ JOHNSTONE L.R., *"The impact of international law on natural resource governance in Greenland"*, p. 15. This paper was presented at the Polar Cooperation and Research Centre at Kobe University, Japan, during the fourth international symposium on International Law for Sustainability in Arctic Resource Development: Integrating economic, social, environmental and scientific dimensions of 2018.

⁶⁷ MORTENSEN B.O.G., *"Self-Governance and the Overall Framework Concerning Greenland"*, In Responsibilities and Liabilities for Commercial Activity in the Arctic- The Example of Greenland, 1st Edition, eds. Vibe Ulfbeck, Anders Møllmann, Bent Ole Gram Mortensen, Routledge, 2017

⁶⁸ *Ibidem*

company until the Danish government subsidy to the self-governing authorities is reduced to zero kroner⁶⁹.

Obviously, the revenues of the mining sector have influenced the annual subsidy by Denmark which predicts a radical decrease in the future.

Since 2009, the government authorities which took charge of licensing was The Bureau of Minerals and Petroleum (BMP), renamed in 2013 Mineral and License Safety Authority (MLSA) due to changes to the law on mineral resources approved in December 2012⁷⁰.

⁶⁹ GOVERNMENT OF DENMARK, “*The Greenland Self-Government Arrangement*”(http://www.stm.dk/p_13090.html, last accessed on 17th March)

⁷⁰ GOVERNMENT OF GREENLAND, “*Greenland Minerals Authority*” (<https://www.govmin.gl/>)

4 The international protection of indigenous rights in the exploitation of natural resources

4.1 Brief introduction to the international indigenous and land rights in the Arctic

The practice of colonization phenomenon has existed since antiquity with the expansionist aims of every civilization driven by economic and political ambitions.

Etymologically speaking, "colonization" refers to the expansion of states beyond territorial borders, encompassing the peoples and natural resources of the occupied territories. The phenomenon of colonization is completed by different phases and is framed within an ideology that justifies the right of conquest and the reduction to *res nullius* of the colonized lands and peoples. Usually, the exploitation perpetrated by these powers also concerned the traditional knowledge of the peoples, depersonalizing them from the juridical sphere⁷¹.

In the 1960s, indigenous peoples globally began to organize politically, emerging as subjects of international law. The major claims made by the first indigenous organizations were directed towards the appropriate use of land, the exploitation of natural resources, and also the maintenance of cultural prerogatives. In particular, United Nations organs such as the Working Group on Indigenous Populations, and the Permanent Forum on Indigenous Issues, initiated positive initiatives focused on the conservation and respect of indigenous rights. Indigenous peoples began to be mentioned in many conferences on the protection of human rights, namely the Rio de Janeiro Conference on Environment and Development (1992), the Vienna

⁷¹ See: GILBERT J., "*Indigenous peoples' land rights under international law: from victims to actors*", Transnational Publishers, Inc , NY,2006 (https://www.academia.edu/732406/Indigenous_peoples_land_rights_under_international_law_from_victims_to_actors?auto=download, last accessed on 2nd April 2019)

Conference on Human Rights (1993), the Istanbul Population Conference (1994), the Copenhagen Convention on social development (1995) the Beijing Convention on women (1995) and that of Durban against racism (2000)⁷².

Among the key results of this movement, was the adoption of the 2007 Declaration on the Rights of Indigenous Peoples, which consecrates the right to self-determination. It is important to take into account that this right does not guarantee secession towards statehood but defines the recognition of the rights of peoples not to be dominated, and to be recognized as subjects of law, as well as outlining their collective identity. In fact, the evolution of an indigenous legal doctrine allows for greater protection against the supremacy of states, which prevents the latter from suppressing their rights⁷³.

In legal terms the Declaration on the Rights of Indigenous Peoples, along with other notable conventions which will be detailed below, is not however binding, a circumstance which attests to the weakness of the legislative system of indigenous matrix.

Other international sources that emphasize the need for protection of indigenous rights include the International Covenant on Civil and Political Rights, and in particular its articles 1 and 27, which deal respectively with the right to self-determination and the rights of minorities, while article 25 of the same pact asserts that indigenous peoples have the right to participate in the decision-making process⁷⁴.

Indigenous rights are also protected by agreements regarding the right to certain forms of compensation in the event of expropriation of land by the government of the state of belonging. There is no lack of cases in which the indigenous peoples who live in territories affected by mining interests have been invited to leave their homes and landscapes occupied for centuries⁷⁵.

⁷² S. JAMES ANAYA, " *Indigenous Peoples In International Law*", Cultural Survival Quarterly Magazine, 1997 (<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/indigenous-peoples-international-law>, last accessed on 2nd April 2019)

⁷³ UNDESA, UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (A/RES/61/295) (UNDRIP), 2007, (<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>, last accessed on 9th March 2019)

⁷⁴ OHCHR, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), 1966, (<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, last accessed on 9th March 2019)

⁷⁵ I am referring to Kiruna case, in which the city population will be relocated in few years. Indigenous community must move due also pollution from the mine.

The violation and non-recognition of these land rights inevitably denies the traditions of these peoples who, together with nature, have woven an economic, but above all, spiritual relationship. This type of ideology has been carried out up to the ILO Convention No. 107/1959⁷⁶, of which I will speak in more detail in the second paragraph of this chapter.

The Indigenous and Tribal Populations Convention sanctioned a revolutionary movement that has brought changes not only at the level of international law, but also at the national level. In fact, some states with indigenous populations have included special mentions in their constitutional charters or have ratified important conventions that bind them to respect certain rights and impose negative and positive duties on them.

For some authors, as Odello⁷⁷, the recognition of indigenous rights is due to the globalization process that has managed to make even the most marginalized cultures appreciated again. In fact, globalization, having conveyed the different cultures towards a homogeneous social and economic model, has favored the discovery of minority cultures and the need to make them survive.

This brief introduction finds fertile ground in the Arctic, in which many indigenous communities live, which over time have given impetus to the struggle for the recognition of their rights. Six indigenous Arctic organizations hold the status of permanent participants in Arctic Council, Aleut International Association, Arctic Athabaskan Council , Gwich'in International Council , Inuit Circumpolar Council , Russian Association of Indigenous Peoples of the North, and the Saami Council⁷⁸ .

These organizations have the objective not only to promote the rights of indigenous peoples but also to expose the environmental problems linked to climate change and pollution on a larger stage. Radical changes in biodiversity and the ecosystem greatly affect the lives of these peoples who, as repeatedly stressed in the introduction of this thesis, have a close

⁷⁶ ILO, INDIGENOUS AND TRIBAL POPULATIONS CONVENTION, 1957(https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P1210_0_ILO_CODE:C107, last accessed on 9th March 2019)

⁷⁷ ODELLO M., “*Popolazioni indigene, costituzione e multiculturalità*” , ISSN 2240-9823, N. 1/2012 del 15/01/2012 pp. 1-9(available on www.dirittifondamentali.it, last accessed on 9th March 2019)

⁷⁸ ARCTIC CIRCLE, “*The Arctic Council: A backgrounder*”, 2018 (<https://arctic-council.org/index.php/en/about-us/working-groups/33-about-us>, last accessed on 2nd April 2019)

relationship with nature⁷⁹. For these reasons, in recent years, there has been a major inclusion of indigenous peoples in international conferences and environmentalist policies. Lately, the Arctic has come to face many challenges given by terrestrial overheating, which causes the melting of ice and the rise of the seas and increasingly acidic waters. Many native animal populations of the Arctic are already reacting to these changes, modifying their migratory flows. These drastic changes to habitat in turn endanger the survival of Arctic peoples, as vital traditional hunting and subsistence activities are severely damaged. Environmental damage in the Arctic is not only due to the gradual rise in global temperatures, with evidence that widescale industrial mining activities negatively impact many areas dedicated to grazing and fishing. The waste products from mining reduces fertile areas, pushing the natives to withdraw further and further to regions where it is still safe to live.

Although, as demonstrated, many international instruments exist, these regulations prove to be insufficient. The effectiveness of many treaties depends a great deal on the willingness of individual states, leading to a situation whereby the protection of populations of the same ethnic groups varies between national borderlines⁸⁰.

There is reason to think that as long as the instruments to protect indigenous peoples remain soft in nature, it will not be possible to achieve full recognition of this category of rights. It is evident that ILO NO. 169 is the most important result achieved in recent years.

4.2 From the ILO No.107 to the ILO No.169

The International Labour Organization (ILO) is the specialized agency of the United Nations that deals with the maintenance of social justice and the recognition of human rights, particularly in the workplace. Founded in 1919 and headquartered in Geneva, the ILO has reserved a special covenants on defending indigenous rights. In particular, the right of non-discrimination, equality, and the right to consultation and local participation in decision-

⁷⁹ *Ibidem*

⁸⁰ See: BARELLI M. "The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples." *The International and Comparative Law Quarterly* 58, no. 4 (2009): 957-83. (<http://www.jstor.org/stable/25622251>, last accessed on 9th March 2019)

making processes have made the ILO Conventions the most effective legal instruments for the protection of indigenous rights.

The ILO began to demonstrate its commitment to the defense of indigenous peoples as early as 1957 with the drafting of the ILO Convention 107/57, which was later superseded by the most recent ILO No. 169/89.

Its 1957 Convention represents the first legally binding instrument for the protection of indigenous rights at the international level, with the contribution of the abolition of indigenous rights and the recognition of the collective ownership of communities on their lands⁸¹.

Despite its pioneering content, the ILO 107 Convention still showed traces of the colonial ideology of the time. Indeed, indigenous peoples were commonly considered to be at a lower evolutionary level than mainstream Western society, a mindset which inevitably led to the downgrading indigenous cultures and traditions, in some minds, to a more primitive state. Moreover, the certainly positive intentions of including indigenous people in the labor market, did not consider in any way the fact that these communities only wanted to pursue their own subsistence activities and not Western-style jobs.

Furthermore, article 12.1 of the Convention No. 107 still allowed the nations to oppress and relocate the natives from a given territory if the government had an interest in developing its purposes.

For these reasons, the ILO, driven also by indigenous organizations and by the criticisms advanced by academics, revised the content of the Convention so as to eliminate any colonial tones in the text.

In 1989, the ILO adopted a new Convention, No. 169/89. Like its predecessor, the Convention is an international and legally binding instrument in the countries that have ratified it. The ratification implies the assimilation of the normative text in the national legislation and the states were invited to prepare themselves juridically and politically to avoid the emergence of incongruences that may invalidate the effectiveness of the Convention. Convention No.69 requires periodic supervision of the state of implementation of the Convention in states that have ratified, annual supervision which is still extremely important today, because the states may encounter difficulties in the implementation of the Convention, both on the

⁸¹SMITH K.M.R.,"*International Human Rights Law*", Oxford Press,Eighth Edition, United Kingdom ,2017, pp.156-182

legal and on the political level, especially with regards to the adequate consultation of indigenous peoples⁸².

Another element in common with the Convention No. 107 is the lack of a definition of "indigenous and tribal peoples" which would be an important element in determining the holder of the rights enunciated in the same Convention. The same disquisition on the term "people" and "peoples" was widely discussed among the member states as the two terms risked confusing and creating interpretative tensions in connection with "self-determination". In fact, the risk of secession would not have pushed states to ratify the Charter⁸³.

Although the Convention No.169 does not give a definition of indigenous and tribal peoples, article 1.2 introduces a criterion of self-identification which includes various parameters, such as:

- traditional lifestyle;
- culture and way of life different from other segments of the national population (eg: habits, languages, customs, etc.);
- own organization, laws and traditional customs;
- a life conducted in historical continuity with respect to a certain area already occupied before the arrival of other peoples.

Among the rights mentioned in the Convention are the right to non-discrimination in the enjoyment of fundamental freedoms (Art. 3) and the principle of consultation and participation of indigenous peoples regarding the development plans that the state would like to bring to their territories. Article 6 describes the guidelines on how the consultation should be performed:

"Consultations should be conducted in accordance with appropriate procedures, in good faith, and through the representatives of these peoples;

The peoples involved should have the opportunity to participate freely in the various levels of formulation, implementation and evaluation of the measures and programs that directly concern them;

The parties involved should endeavor to establish a dialogue that allows a common agreement and appropriate solutions to be found in an atmosphere of mutual respect and full participation;

An effective consultation is such if all parties have the opportunity to influence the decisions taken " .

⁸² *Ibidem*

⁸³ *Ibid.* SMITH K.M.R, pp.38-51

Therefore, consultation should not be a mere formative encounter, but must be able to be understood and accepted by all members of the community. The concept of representativeness refers to the need that all indigenous and tribal institutions with the organizations that are effectively representative of the people indigenous to be present at consultations.

The most important part of the Convention refers to land rights (Articles 13-19). The Convention defines as "territory" the whole area in which indigenous peoples live, or otherwise use. The convention can apply to offshore spaces too. In the event that the Government wants to exploit the mineral resources of the indigenous territories, it must consult the local populations thoroughly, and relocation is allowed only after having obtained their free, prior and informed consent.

Since the relocation and effective expropriation of land is permitted, the Convention provides for a monetary compensation system or the acquisition of a territory of equal quality to the previous one, but only in particular circumstances. Although this system is not exhaustive and still arguably weighted against indigenous peoples, the Convention does not exclude the possibility of a return to the dispossessed territories⁸⁴.

4.3 Denmark's position in the frameworks of the indigenous and human rights protection

The protection of human rights began to materialize in 1941, when US President Franklin D Roosevelt outlined the four-fundamental freedom of speech, belief, need and fear. In his speech of 1941 Roosevelt believed that by respecting these four freedoms it would be possible to achieve and maintain peace in the world⁸⁵. Article 1 of the United Nations Charter adopted at the 1945 San Francisco Conference indicates the goals of the new organization to maintain international peace and security while respecting the human rights and fundamental freedoms of each individual. To avoid problems with interpretation and application of the Charter, the proposal to

⁸⁴ ILO No 169, Art. 16

(https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL O_CODE:C169, last accessed on 3rd April 2019)

⁸⁵ More details: ENGEL A. J., "*The Four Freedoms: Franklin D. Roosevelt and the Evolution of an American Idea*", Oxford Scholarship Online: December 2015 (DOI:10.1093/acprof:oso/9780199376216.001.0001, last accessed on 3rd April 2019)

include a real catalog of human rights was not accepted and it was decided to create a commission (Commission of Human Rights, CHR) to develop the current Charter.

The Charter provided for the creation of the Economic and Social Council, with the objectives of making recommendations and promoting respect for human rights, supported by a commission which was subsequently replaced by the Human Rights Council⁸⁶.

On 10 December 1948, the United Nations General Assembly approved the Universal Declaration of Human Rights. For the first time in the history of mankind it was written that there are rights which every human being must be able to enjoy for the sole reason of being in the world.

The Universal Declaration of Human Rights includes the classification of human rights. The drafting of the Declaration was the wise conclusion of the Second World War and seen as a good omen for the future generations, hoping would never relive the horrors of that war.

The declaration is not legally binding but is felt extremely important for its moral content. Provisions of the Declaration are able to bind states by virtue of their customary nature. Many fundamental rights of the Charter were crystallized in the Constitutional charters of the 58 countries that voted for it at the GA.⁸⁷

Even today the Declaration is not binding and its universality has begun to fragment with the birth of new states. For these reasons, the best guarantees on human rights will come from the Regional Systems.

The Human Rights Commission worked on the drafting of the two Covenants: International Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights. The idea in preparing these two legally binding documents was to create a more detailed list of rights and freedoms. The ICCPR focuses on issues such as the right to life, freedom of speech, religion and voting. The ICESCR focuses on the right to work, the right to education, health and asylum⁸⁸.

⁸⁶ Ibid. SMITH .M.R, pp.30

⁸⁷ THE DANISH INSTITUTE OF HUMAN RIGHTS, "*Human Rights in Danish Law*"(<https://www.humanrights.dk/about-us/human-rights-in-denmark/human-rights-in-danish-law>, last accessed on 3rd April 2019) See: Ibid SMITH MR, pp. 38-39. The customary content of the Declaration was declared by Judge Ammoun in its separate opinion in Namibia case.

⁸⁸ Ibid. SMITH K.M.R, pp. 27-30/46-50

Although from 1966, these Covenants began to see the light starting from the 1950s. Also in this case, the states did not agree on the obligation and on the implementation of these agreements.

Since no agreement was found, these two agreements were stipulated and the Commission, therefore, worked on two different but interconnected texts which could not be separated from one another. The Commission sent them to the Assembly in 1954 but until 1966 no agreement will be found. Once they became in force until 1976, they did not enter into force because the minimum number of ratifications was not reached.

While the Declaration has a Universal value (valid for all States as it was adopted by the Assembly), the Pacts are treaties and they are valid for the States that have ratified them. These pacts have big points in common: The preamble, art 1 in relation to the principle of self-determination and the art. 5 relating to the principle of non-discrimination.

The control mechanisms set up within the Covenants are aimed at ensuring that the Member States have a concrete activity of adapting their regulations to the rules established by the pacts.

Between the two mechanisms, the big difference concerns precisely the methods of control: in the International Covenant on Civil and Political Rights, unlike the one on economic, social and cultural rights, the Committee examines both the individual and interstates results.

With regard to the control function it is possible to distinguish three types of mechanisms: Periodic Report, Inter- state complaint and individual complaint.

Periodic reports are governed by art. 40. This is the mechanism that makes it possible to equate the Pact with all other conventions on the protection of human rights.

According to the art. 40 for the States party to the Pact there would be an obligation to produce reports⁸⁹. The problem is that the States do not comply with this obligation so much so that the Committee in 2002 adopted a General Comment (obligation to submit reports every 5 years), according to which, the States should present the report when this is requested by the Committee

⁸⁹ Ibid. SMITH K.M.R p.69

The General Comment No.30 concerns the content of the periodic report according to which it requires a more detailed description of the decisions taken by the States⁹⁰.

The Committee can also take in consideration of NGOs reports. When the Committee concluded the examination of the reports, as required by the art. 40, sends its opinions to the State. In the General Comment No. 30 it is envisaged that the Committee can establish a follow-up procedure appointing a special reporter who has the task of verifying how the State behaves following the observations presented by the Committee⁹¹.

ICCPR provides also Inter-states complaints and individual complaints. The firsts are governed by art. 41. Unlike the provisions of art. 40, the competence is not obligatory. Not all States party to the Pact have accepted the competence provided for by the former art. 41. Individual complaints are foreseen in the optional protocol but not all the states that adhered to the Pact have joined this protocol⁹².

With regard to the Covenant on economic, social and cultural rights, control is governed by the articles 16 and following. The control over the periodic reports is delegated not to an ad hoc body but to the ECOSOC which in 1987 created a Committee to verify the implementation of the rules provided by the pact. Every 5 years the States should present the reports and this Committee has admitted the possibility that in the absence of reports it can assess the situation within a State alone based on what is reported by NGOs. In this work, this Committee also uses a special rapporteur.

In 2013 the Option Protocol for ICESCR entered into force. It concerns the individual petitions⁹³.

In addition to the Committee, the United Nations Council also maintains important monitoring systems on the member states of the United Nations. The control systems are the public procedure, special procedures and universal periodic review.

The public procedure deals with serious and systematic violations of human rights, otherwise known as gross violations. This system is not perfect as the evaluation of the seriousness of human rights violations is still linked

⁹⁰ CCPR/C/21/Rev.2/Add.12
(https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11)

⁹¹ *ibidem*

⁹² *ibid.* SMITH K.M.R, pp.39-41

⁹³ *ibidem*

to the internal judgment of the states and the complaints presented by other states against others are still strongly conditioned by political and economic relations. For these reasons, the United Nations Assembly has proposed some solutions to overcome the problems of effectiveness of the system, inviting member states to collaborate more, or to authorize UN experts and special speakers to do field investigations on national territories⁹⁴.

The complaint procedure arises on the initiative of the Economic and Social Council. This council proposes a procedure be initiated directly by individuals, or groups of individuals, who claim to be victims of human rights violations, by anyone who has direct knowledge of human rights violations or non-governmental organizations. Over time, this closed-door procedure has increasingly become a mediation between states that has greatly reduced the time for resolving disputes. A special procedure is applied for specific violations with information gathering in the field⁹⁵.

Last but not least, the Universal Periodic Review already provided by the General Assembly in its resolution establishing the council. Among the principles governing this procedure are the “*universal coverage and equal treatment of all states*”⁹⁶ according to which, the examination of the human rights situation in all member states of the United Nations will be carried out. The review is conducted by a working group in which all 47 council members are represented, and which uses information provided by the same state or made available by the office of the other commissioners for human rights based on the reports of the committees, special procedures or other documents of the United Nations. This system aims to prevent states from breaking their promises and can also help members to comply with international obligations⁹⁷.

With this brief description of the UN control system for context, it is now easier to understand Denmark's position with respect to international agreements. Above all, this paragraph is intended to indicate the position of

⁹⁴ MARCHESI A., “*La protezione internazionale dei diritti umani- Nazioni Unite e organizzazioni regionali*”, studi di Politica, FrancoAngeli, Milano, 2011, pp. 69-94

⁹⁵ *Ibidem*

⁹⁶ UN HUMAN RIGHTS COUNCIL, “*Basic facts about the UPR*” (<https://www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx>, last accessed on 3rd April 2019)

⁹⁷ UN HUMAN RIGHTS COUNCIL, “*Universal Periodic Review*” (<https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>, last accessed on 3rd April 2019)

Denmark within the framework of international commitments such as the UN Conventions.

Denmark voted the Universal Declaration of Human Rights, thus it is committed to complying with international obligations arising from the UN Charter. Furthermore, Denmark has ratified both the Covenants and is therefore subject to periodic checks by the CESCR and the HRC and to periodic state reports⁹⁸.

If Denmark has also ratified the ICCPR protocols that allow the Human Rights Committee to monitor compliance with the obligations of the Pact, it cannot be said for the optional ICESCR protocol. This Optional protocol is very similar to that of the other Pact and therefore would allow its citizens to report violations or submit requests and communications to the CESCR, which is the means by which the complaint reaches the table of the General Assembly.

The reasons why Denmark has not accepted, and therefore is not obliged to respect the responsibilities of the additional protocols of the CESCR, are multiple⁹⁹.

The Government of Denmark has declared that the reasons why it has not ratified the Additional Protocol is because it thinks that the Convention is too vague. Conversely, some NGOs argue that Denmark's motivations are not limited only by the major financial commitment and the imprecision of the Convention but indeed that the real reason is the weak implementation of Covenants in national legislation¹⁰⁰.

In 2011, the Universal Periodic Review of Denmark had received two recommendations from Iran and South Korea, who had expressed some concerns on the implementation of the UNDRIP and proposed strengthening of measures to protect human rights in the Greenlandic territory, considering also that the current Danish Constitution doesn't make mention of indigenous rights¹⁰¹.

⁹⁸ Ratification Status of Denmark, (available on <http://indicators.ohchr.org/>, last accessed on 14th April 2019)

⁹⁹ HIRSCHL, R. *“Negative’ Rights vs. ‘Positive’ Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order.”* Human Rights Quarterly, vol. 22, no. 4, 2000, pp. 1060–1098. JSTOR, (www.jstor.org/stable/4489315), last accessed on 10th March 2019)

¹⁰⁰ *Ibidem*

¹⁰¹ UNGA, Rapport du Groupe de travail sur l’Examen périodique universel-Danemark (A/HRC/18/4) ,2011(<https://documents-dds->

In favor of the Danish position, the granting of self-government to Greenland and the ratification of the ILO Conventions demonstrates the Kingdom's commitment to participate in, and promote indigenous rights such as the right to consultation and participation in decision that, although the ILO Convention No. 169 and the UNDRIP represent a decisive step in the struggle for indigenous rights, they do not indicate any definition of "indigeneity", placing many doubts about the system of protection of the rights of the Inuit.

4.4 The Status of Greenland and the Inuit as legal subject under international law

4.4.1 Greenland under international Law

Although Greenland has self-government, the region continues to be legally linked to the Kingdom of Denmark. Therefore, Greenland, in practice, appears to be a Parliamentary Democracy within a constitutional monarchy. While Greenland is not a state in international law, it does play a prominent role in Arctic affairs.

The constitutional settlement due to the establishment of Home Rule, provided that Greenland could not make unilateral agreements with other countries, and that consequently, it is not a subject with legal capacity in international law. This situation has remained almost unchanged. In 2003 however, Denmark and Greenland reached an agreement according to which Greenland could request Denmark to access some treaties or enter into agreements in the event that these were deemed to be of extreme importance for Greenland. Furthermore, Denmark granted Greenland the possibility of deciding that international treaties ratified by the Kingdom would not extend to the island. This provided the only exception for human rights conventions, whose effectiveness extends irrevocably to both the autonomous territories, Greenland and the Faroe Islands. If Denmark fails to ratify a human rights convention however, these would prove ineffectual in both the regions, and neither Greenland, nor the Faroes, could access it regardless.

ny.un.org/doc/UNDOC/GEN/G11/145/42/PDF/G1114542.pdf?OpenElement,last accessed on 3rd April 2019)

This situation has changed much since the Self-Government of 2009. Now, Greenland may stipulate agreements and ratify conventions in matters within its competence, but it must ask for approval from Denmark in the event that matters are not within its competence but are important for the island.

This system has raised several perplexities, above all because dialogue is not required between the Copenhagen government and overseas regions when it is Denmark that ratifies a Convention, even when such conventions effects are carried out throughout the Kingdom.

To date, Greenland has access to various conventions especially in the field of environmental law, as it has obtained absolute control over natural resources.

Among other things, the largest international co-operations in which Greenland participates are:

- The International Convention for the Prevention of Pollution from Ships (MARPOL)
- The Nordic Environmental Protection Convention
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
- The Convention on Long-range Transboundary Air Pollution (LRTAP)
- The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPCR Convention)
- The Convention on the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)
- The Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention)
- Canada-Denmark (Greenland) agreement on cooperation in pollution control (CANDEN agreement)¹⁰²

Nature is an important element for the Greenlandic culture. Greenlandic people have a very close relationship with the environment as most subsistence activities are in contact with nature. Such activities are still handed down today, such as fishing, hunting and sheep farming. According to Inuit culture, wasting any part of an animal an insult to the generosity of

¹⁰² GOVERNMENT OF GREENLAND, “*International Conventions and Agreements*” (<https://naalakkersuisut.gl/en/Naalakkersuisut/Departments/Natur-Miljoe/Miljoe-og-beredskabsafd/Internationale-aftaler-paa-miljoeomraadet> ,last accessed on 12th March 2019)

Mother Nature who could thus decide not to grant her riches anymore. Therefore, alongside hunting, the processing of leather and ornamental objects of animal origin is still flourishing.

For these reasons, Greenland has had to withdraw from the European Union. Access to the EU occurred in 1973, but EU fish quotas did not convince Greenland that he decided to retire withdraw.

Traditional activities are part of the Inuit culture, which makes up 90% of the island's population. These activities are fundamental for maintaining the regional identity of individuals who have wanted to keep a connection with their indigenous culture alive. The "indigenoussness" of a people subjected to a foreign power generates a discipline called indigenous rights. These rights guarantee the rights of the land but also that of being able to achieve traditional and subsistence activities without restrictions and discrimination. Anyway, indigenous whaling is not covered by IWC moratorium¹⁰³. IWC said Greenlandic whaling as an integral part of the Inuit culture¹⁰⁴.

The Inuit people, like all other indigenous peoples are fighting for their prerogatives, and have created committees and organizations to formally represent their opinions and the need for foreign and national governments.

On a national level the Inuit Circumpolar Council (ICC) is an international indigenous peoples' organization with the recognized status of NGO¹⁰⁵.

The ICC represents all the Inuit who live in the Arctic countries and the goals they set themselves are many, including:

- To strengthen unity among the Inuit of the Circumpolar region
- To promote Inuit rights and interests on the international level
- To ensure and further develop Inuit culture and society for both the present and future generations
- To seek full participation in the political, economic, and social development in our homelands
- To develop and encourage long-term policies which safeguard the Arctic environment
- To work for international recognition of human rights¹⁰⁶

¹⁰³ IWC "Management and utilisation of large whales in Greenland" (<https://iwc.int/greenland>, last accessed on 3rd April 2019)

¹⁰⁴ IWC, "Aboriginal Subsistence Whaling" (<https://iwc.int/aboriginal>, last accessed on 11th April 2019)

¹⁰⁵ ICC, ICC GREENLAND, (<http://www.inuit.org/>, last accessed on 3rd April 2019)

¹⁰⁶ ICC, About ICC, (<http://inuit.org/icc-greenland/>, last accessed on 3rd April 2019)

The ICC is also member of the Arctic Council Member, an intergovernmental forum promoting cooperation, coordination and interaction among the Arctic States and Arctic indigenous communities .

Greenland is a member of the Nordic Council and member of the UN Permanent Forum on Indigenous Issues (UNPFII) which carries out the following activities:

- Providing suggestions and recommendations to United Nations programs, funds and agencies on indigenous issues at the Economic and Social Council;
- Increasing awareness and promoting the integration and coordination of activities relating to indigenous peoples within the United Nations;
- Preparing and disseminating information about indigenous issues¹⁰⁷.

Greenland also pursues cooperation with the North Atlantic Cooperation and the World Trade Organization (WTO) and participates in the Nordic Events Council, West Nordic Council and collaborates with research institutes such as the Arctic Science Committee.

4.4.2 Identifying Inuit: between peoples and Indigenous

In the last few years, Greenland has tried to carve out more and more space in the management of its own business, and has taken on an increasingly important role in international affairs.

Greenland's international profile extends above all to the perimeter of the geopolitics of the Arctic. More so than its barren polar opposite, the Arctic region, offers many subjects to discuss. Indigenous rights, environmental rights, and the race towards industrializing the North Pole are among the major themes of international law focused on the region.

With particular regard to indigenous rights, Greenland isn't one of the most active countries in promoting and safeguarding the rights of local

¹⁰⁷ UNDESA, "*Permanent Forum*" (<https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>, last accessed on 23th March 2019)

communities, especially in the growing debate surrounding the exploitation of natural resources.

As has been repeated many times in this thesis, the potential exploitation of natural resources is a crucial point for the economy of Greenland. Greenland calls for full economic independence through their own profits from mining and fishing. Unsurprisingly therefore, the Mineral Resources Act establishes the full Greenlandic sovereignty on mining and fishing issues. Mining activities are not only important for economic reasons, but full control of the territory guarantees the full performance of other activities that contribute to keeping the Inuit culture alive. Indigenous rights are the most strongly fought for by indigenous peoples and in the major Conventions, ILO No. 169 and UNDRIP, they are well explained. In some cases, the access to these Convention and treaties determined the constitutional revision of the countries that host indigenous communities, which have thus recognized certain rights beyond territorial ones. To recognize the presence of indigenous locations on its territory, is not always so simple. It is an act of transparency and good practice for a state that is seen, to some extent, to have diminished its influence on the national territory. It is not difficult to believe that many states do not succeed in this arena.

It is precisely for this reason that the international community wanted to establish empirical criteria to establish the presence of an indigenous community on the national territory.

The greatest contributions to the definition of "indigenous people" were offered by the ILO to the United Nations through the special rapporteur Martinez Cobo and the World Bank.

The ILO, with the aforementioned Convention No. 169 defines the terms "tribal peoples" and "indigenous peoples" in its preamble: "*(A) Tribal peoples in independent countries whose social, cultural and economic conditions are distinguished by other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*

(b) Peoples in independent countries who are regarded as indigenous on account of Their descent from the populations Which inhabited the country, or a geographical region to Which the country Belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. "

Despite the effectiveness of this deed to the ratification by the State, it underlines one of the main concepts of general law, namely the legal personality of the person with respect to the law. In essence, Convention No. 169 wanted to make it clear who the real holders of indigenous rights are.

In the same way, Martinez Cobo contributed to this definition, adding two criteria:

- An objective criterion: the historical continuity, or the presence of indigenous communities in the territory antecedent to colonization and invasion by a state.
- A subjective test: the indigenous group is a group that feel itself distinct from the State that represents the dominant majority (self-identification)¹⁰⁸

These two details have been very important in the doctrine of international law, but on a practical level these criteria have been repeatedly exceeded given the non-homogeneous case studies. In the case of Suriname vs Saramaka, the indigenous community won its territorial struggle against the expansion of a mining project, not for its pre-colonial presence in the territory, but for the lifestyle and customs considered to be similar to other indigenous communities recognized in law international. Even the subjective criterion suggested by Cobo has raised some doubts in the past because, since self-identification is not an empirical criterion, it is often the communities themselves that decide the requirements to obtain and lose membership in the group. For example, a Sàmi member is an individual who has Sami descent, while in some populations they decide independently where expulsion from the community is expected (*Lovelace case*). Therefore, self-identification is not to be defined in individual terms, but emphasizes the collective nature of indigenous rights.

Finally, the World Bank also established a list of criteria for identifying an indigenous group, stressing the need for states to recognize such communities.

The list contains both objective and subjective criteria, such as:

- Indigenous identity
- Indigenous language
- Traditional cultural, economic, social and political institutions

¹⁰⁸ MORTENSEN G.O.B, BARTEN U., “*The Greenland Self-Government Act: The Pitfall for Inuit in Greenland to Remain an Indigenous People?*” The yearbook of Polar Law VIII, 2016, pp. 107-8

- Special relation with land (OP.14)¹⁰⁹

All these criteria, from those provided by the ILO to those of the World Bank, have created interpretative doubts that have complicated the application and effectiveness of these acts. Not only that, interpretative problems, such as linguistic or cultural ones, have invalidated the recognition of some indigenous communities that still struggle for their rights.

The case of Greenland is very controversial. If the criterion of the dominant presence of the Inuit on the territory were recognized, the Inuit population being 90% on the island, members could see themselves classified no longer as indigenous. The same result would be achieved one day with the independence of Greenland. The Inuit community might not even be just one and indivisible. Leaving aside the Inuit scattered between Russia, Alaska and Canada, the Inuit of the North-West of Greenland have repeatedly asserted their differences compared to the rest of the island. In fact, the Thule community is a community that has remained much more isolated than other places in Greenland that have gradually taken on a more western lifestyle. The Thule community speaks in unique and mutually incomprehensible dialect, and the development of the North-West Region is characterized by an absolute dependence on traditional activities, fishing and hunting. Even the populations living in the East region are characterized by a mixed economy a by a dialect not understood by the Greenlanders of the West and South Coasts. The dialect of Eastern Greenland is handed down orally, while the West Greenlandic is studied at the school¹¹⁰. This choice is due to greater job and education opportunities in the other part of the country. Moreover, the West Greenlandic is transmitted in the local media. Not surprisingly, the Thule community and the East communities identify themselves much closer to the Inupiat community of Northern Canada. In an independent future, the Thule community could also claim its minority nature on the territory, which at the moment would not be possible as the Greenland Inuit are also indigenous.

¹⁰⁹ *Ibidem*, pp. 108-110

¹¹⁰ From Interview to Student in Nuuk. See Chapter 6.

It is certainly a complex situation that offers many interpretations. The ICC itself mentioned in the previous paragraph, may no longer exist or, at least, not in an independent Greenland¹¹¹.

As Bent Ole Gram Mortensen and Ulrike Barten suggest, and the criterion suggested by Cobo, in the context of Greenlandic independence, indigenesness may be lost. The term "dominance" should also be clearer. If we consider "to be dominant" as based on the number of settlements, then the Greenlanders would no longer be indigenous. If by "dominance" we mean the effective power of control over the territory, then the Greenlanders would stay still in a situation of extreme minority¹¹².

As it is easy to understand, these types of problems affect the political choices and the future of the island. The dream of full independence is strong, but the consequent economic and political implications may not yet convince everyone to take the big step.

¹¹¹ STRANDBJERG J., *"Making sense of contemporary Greenland: indigeneity, resources and sovereignty"*, 2014, Pp. 272-4 (DOI: 10.4337/9781781009413.00024, last accessed on 3rd April 2019)

¹¹² *Ibid.* MORTENSEN B.O.G , BARTEN U., pp.119-124

5 The current Mineral Resources Act and national regulations

The Mineral Resources Act (MRA) was adopted in 2009 and entered into force in 2010. This act is based primarily on Danish law, in particular the Danish Act on Mineral Resources in Greenland of 1994 and the Danish Subsoil Act of 1981.

The Danish Subsoil Act of 1981 is based on the previous Danish Subsoil Act of 1935 and on the Petroleum Act in Norway¹¹³.

IL MRA contains specific rules for managing the ownership of licenses, the requirements of licensees and applicants, taxation, environmental protection and the assessment of environmental and social impacts (EIA, SIA) and the drafting of the Impact Benefit agreement (IBA) on the economic prospects of the mining project.

Over the years, Greenland has evolved its licensing system through various amendments. The licensing system in Greenland is characterized by the small use of executive orders and the case-by-case analysis for each license. Furthermore, MRA is accompanied by many guidelines and standards in accordance with international regulations¹¹⁴.

This chapter will explain in detail the MRA, the rules for the correct drafting of the EIA, SIA and IBA, the jurisdiction applied to the licenses, the other important regulations and governmental agencies of Greenland.

Finally, a section will be devoted to the regulation of state environmental liability in Greenland.

5.1 Structure and purpose of the Mineral Resources Act of 2009

The current Mineral Resources Act is divided into 20 parts , divided as follows:

¹¹³ SANDROOS B. *“The Greenland Mineral resources Act – The law and Practice of Oil, Gas and mining in Greenland”*, Djof Publishing, Denmark, 2015, pp. 21

¹¹⁴ Ibidem

Table 1: Structure of MRA 2009

Section	Part	Topic
1	I	General Rules
	II	Definitions
	III	Scope
	IV	Prospecting
	V	Exploration and exploitation
2	VI	Special rules on exploration and exploitation of hydrocarbons
	VII	Special rules on exploration and exploitation of minerals
	VIII	Special rules on small-scale exploration and exploitation of minerals
	IX	Subsoil licenses
	X	Termination of activities under licenses
3	XI	Collection and extraction of minerals without a license
	XII	Scientific surveys
4	XIII	General rules on environmental protection
	XIV	Environmental liability and responsibility
	XV	Environmental Impact Assessment (EIA)
5	XVI	Social Sustainability Assessment (SSA)
	XVII	Health and safety on offshore facilities
6	XVIII	Authority consideration, etc...
	XIX	Other rules
	XX	Sanctions, commencement, etc ¹¹⁵

Generally speaking, the main objective of the Mineral Resources Act is to ensure the correct management of mineral resources. This is achieved through the application of the criteria for the assignment of licenses, which are diversified according to the particular purpose, and the guidelines on how to compile and achieve assessments on social, economic impacts and environmental aspects of the mining project.

The present act can be divided into six major sections.

The first section (from Part I to V) concerns the declaration of the Greenland Government to take full responsibility for the management of

¹¹⁵ MRA, Unofficial translation, December 2009 (available on <https://www.govmin.gl/en/acts-regulations-and-guidelines/the-mineral-resources-act>, last accessed on 27th March)

the exploitation of natural resources, and ensures that mining activities are carried out in a way that respects health and safety, the environment, the adequate exploitation of resources, and social sustainability.

The second section (from Part VI to X) describes the criteria and duties for companies that intend to request, maintain, renew, modify or terminate a license. Licenses are categorized as exploratory or exploitation licenses and can be exclusive or non-exclusive. Furthermore, the Act also mentions small-scale licenses and the ability to collect minerals even without a license.

The third section (Part XI) gives some rules about conducting surveys and scientific research on the territory. This possibility is also contemplated in the Self-Government Act (Act no. 473 of 12 June 2009), in which the Greenland Government expresses its confidence and does not renounce a fruitful collaboration with Denmark regarding the management of the exploitation of natural resources¹¹⁶. This collaboration is concerned with supporting the Greenland government in this sector.

The fourth section (Part XIII to XV) refers to the environmental and social assessments that mining companies must draw up in order to obtain a license for the exploitation of mineral resources. This phase is extremely important, with companies compelled to invest time and capital providing assurances the Government that the project does not present dangers to public and environmental health.

The fifth section (Part XVII) describes the guidelines to ensure the safety of these activities. This section underlines the Government's commitment to guarantee the correct exploitation of natural resources, as stated in Article 1 of the Act.

The sixth section (Part VIII-XX) closes the Act with the latest observations of the Government, and outlines possible sanctions for breaking the terms therein, and other bureaucratic matters.

The Mineral Resources Act has undergone some modifications since its drafting in 2009. These changes have been made through amendments, which occurred respectively in 2012, 2014, 2015 and 2016. These amendments concerned changes in taxation, shipping and other activities with the goal of improving governmental management of the mining sector in Greenland.

¹¹⁶ACT ON GREENLAND SELF-GOVERNMENT, June 2009 (<https://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Engelske-tekster/Act%20on%20Greenland.pdf>)

5.2 Types of licenses and methods of granting by the Act

The Mineral Resources Act of 2009 provides for the granting of different types of licenses. Exploratory licenses are limited to assessments of deposits within the territorial limits defined in the concession. Exploitation licenses however permit the mining and processing of minerals assigned in the license¹¹⁷. Licenses also differ according to the natural resource extracted, namely minerals or hydrocarbons. The Mineral Resources Act also reserves a Party for small-scale companies (1km²) that use only manual tools. Finally, the licenses may be exclusive or non-exclusive depending on the possibility of granting the license of an area, or a particular deposit to several companies¹¹⁸.

Each license defines different responsibilities and obligations, but there are shared criteria above all for example, license holders must have maintained residence in Greenland for a minimum period of five years and must be subject to state tax. There are few exceptions to these criteria, and the five-year residence requirement can be waived if the license holder has resided abroad for educational reasons.

The definition of these license types is outlined from article 15 to 19 of the Act.

The first prospecting license described is reserved for inspecting activities, in article 15. This license permits licensees “*to prospect for mineral resources, mineral resources activities, use of the subsoil for storage or purposes relating to mineral resource activities or related activities*”¹¹⁹. The license is valid for five years, and the evaluation of the exploitation of the deposit takes place after data collection, assessments, and reports on the area. These documents are sent to the Government’s Department of Geology for consideration, and if the deposit is considered promising, the Government will ask the company to present an exploitation plan. At this point, the Greenland Government will decide on the viability of the exploitation project. If the plan is not accepted, then the Government will

¹¹⁷.SCHRIVER P, “*Mining-Greenland*”, About Getting the Deal Through (online research platform in comparative law)
(Available on <https://gettingthedealthrough.com/area/22/jurisdiction/120/mining->, last accessed on 18th March 2019)

¹¹⁸ MRA, art.8

¹¹⁹ *Ib.*, art. 15

not extend the license. Otherwise, the Government will extend the validation license for up to 30 years¹²⁰.

Exploration and exploitation permits can be successfully granted jointly, or separately, and may never exceed the deadlines imposed by the Act.

Article 16 describes the legal and financial criteria that companies must meet to obtain a license. The Greenland Government sets the fees that the company will have to pay under the law and reserves the right to share in profits of the licensed mining. Furthermore, the company must present a plan of the project with the plans to exploit the energy and all the structures useful for the continuation of the work. This must be approved by the Government before the exploration activity begins¹²¹.

Generally, securing an exploration license is the first phase that a mining company must complete in order to exploit a certain deposit. Having adhered to terms of the first license, a period which may last from 10 to 16 years, the company is invited to present various assessments and reports through which it will have to demonstrate the complete safety of the project from the environmental, economic and social points of view. The methods and contents of these assessments are prescribed in the mineral Resources Act, from article 50 to 78. The period that can elapse between the issuing of an exploratory license and the final one can be extensive, as the evaluation on the social impacts of the mining project must also include public consultations and public hearings in the region where the project will take place.

Exploitation licenses however, allow the company to start mining operations immediately in the area limited by the license. An exploitation license can last 30 years, and may be renewed for a period of time up to a maximum of 50 years. This license allows for many possible activities including:

- Exploration
- Exploitation
- Processing
- Storage
- Depositing
- Carry

¹²⁰ Ib., art. 25

¹²¹ MRA, art.50

- Trading
- Exports
- Imports
- Certification Of Minerals¹²²

The Mineral Resources Act provides a specific framework for the exploitation of hydrocarbons. Licenses are granted through public announcement systems, and recognition is possible within 90 days following publication in the Official Gazette on the Greenland Government website¹²³.

Candidates must also demonstrate specific competencies .

In detail, the Government of Greenland requires some experience in the sector, and proof of financial capacity to complete the project. Licenses on hydrocarbons are issued for a period of 30 years and may be shared between several companies who even combine exploration and exploitation licenses together¹²⁴.

The Mineral Resources Act also includes special rules for the export and exploitation of natural resources on a small scale. In this case, a license may be granted to persons who have resided in Greenland for at least five years and pay the state taxes. Licenses for exploration and exploitation activities can also be granted simultaneously, and to more than one person with a limit of five. An owner and family members can participate in the business. This license is granted for an area of maximum 1km², and only manual tools such as hammers, pickaxes, crowbars and chisels can be used. This type of license does not oblige the holder to draw up the environmental or social assessments of their own activity¹²⁵.

Part XI is reserved for the collection of unlicensed minerals. Although this provision may appear to be less important than the licenses indicated above, these regulations seek to protect the environment from tourist activities, and manage the use of waste materials for the production of concrete and other useful substances in the construction sector.

In recent years, Greenland has tried to promote several useful initiatives to attract foreign capital to the territory. As outlined in the next few paragraphs, the state has started issuing many more licenses of late, and

¹²² Id., art. 31

¹²³ Ib., art.23(2)

¹²⁴ Ib., art 23 (b)

¹²⁵ Ib., art.32

giving companies the possibility of hiring foreign, non-local personnel in certain cases¹²⁶.

Despite this, there are still few mines active in the area¹²⁷. The lengthy procedure for obtaining the final license discourages investors and company managers from abandoning the project or transferring the license. Furthermore, the requirement of the initial payment of a high deposit in the event of an environmental disaster is likely to be another deterrent to the development of the sector¹²⁸.

5.3 Evaluation of impacts during licensing process

Every human activity results in an impact of one form or another. Whether the impact is social or economic, any activity, especially if carried out in an industrial manner, can cause damage and profit simultaneously. Generally speaking, extractive activities, due to their profitable nature and intrinsic contact with nature, have three different types of impacts: environmental, social and economic.

The environmental impacts of mining are well known: Air pollution, waste disposal in lakes and progressive deforestation. These consequences inevitably impact lifestyle, especially those who live in small local communities still linked to economic subsistence activities such as fishing, hunting, grazing or farming. There are several cases in which the impact of mining has damaged lives of those who had lived in those places for centuries. For example, the Kiruna mine in Sweden is a source of controversy due to the severe damage of local fishing activities in the area resulting from the continuous waste from mining activity¹²⁹.

¹²⁶ EMBASSY OF ITALY COPENHAGEN, “*Groenlandia - Nuove Linee Di Politica Mineraria*” (translation: Greenland: New lines of Mining Politics”, Copenhagen (Available on <http://www.esteri.it/>, last accessed on 25th March 2019)

¹²⁷At present, only six mining companies have been licensed to exploit natural resources. Checked on :MINERAL LICENCE AND SAFETY AUTHORITY (GOVERNMENT OF GREENLAND), “III. EXPLOITATION LICENCES (EXCLUSIVE) FOR MINERALS” In LIST OF MINERAL AND PETROLEUM LICENCES IN GREENLAND, 16 March 2019 ([https://www.govmin.gl/images/Documents/Current Licences and Activities/List of Licences_16-03-2019.pdf](https://www.govmin.gl/images/Documents/Current_Licences_and_Activities/List_of_Licences_16-03-2019.pdf), last accessed on 27th March 2019)

¹²⁸ MRA, art.16(7), 17, 20(3), 21(3), 38 (a)

¹²⁹ I suggest the reading of this article: NILSSON B., “*Ideology, environment and forced relocation: Kiruna - a town on the move*”, European Urban and Regional

For Inuit populations, this type of activity is linked to its regional identity and contributes to social inclusion and maintenance of traditions and customs. An incisive impact of the mines could undermine the economic activities listed above, pushing many people to move from rural areas or to abandon the family unit for higher education or employment in other sectors. On some occasions, the pollution has forced the relocation of indigenous population from one region to another, possibly resulting in the loss of important knowledge and practices handed down for generations and generations, notably especially grazing and agricultural activities.

Nevertheless, environmental impacts can vary from area to area, and also depend on the nature of the deposit and the type of material extracted.

Mining activities can also affect the lifestyles of citizens, especially those living in small communities. The fact that these populations have preserved their traditional lifestyles over time shows a high degree of resilience, despite the gradual process of homologation due to globalization. Mining activities have a decidedly masculine connotation and indeed, most of the workers involved in the mining industry are men¹³⁰.

As mentioned above, extractive activities are very profitable. The companies in the mining sector invest huge amounts of money to establish infrastructure and hire specialized personnel. These activities make improvements to public services and facilities such as airports, harbors and roads and the enrichment brought about by these activities also includes education and vocational training. In fact, many companies provide costs for specialized courses in mining practice¹³¹.

Despite the economic opportunities that these activities promised, the biggest challenge is maintaining these profits within the local economy. In

Studies, July 13, 2010
(<https://journals.sagepub.com/doi/pdf/10.1177/0969776410369045>, last accessed on 27th March 2019)

¹³⁰ See: HACQUEBORD L., “*Lashipa: History of Large Scale Resource Exploitation in Polar Areas*”, *Circumpolar Studies* 8, 2012 (available on <https://books.google.is/books?id=zvYF5F5fUY0C&pg=PA97&lpg=PA97&dq=masculinity+in+mining+sector+arctic&source=bl&ots=Y7byXhEgZR&sig=ACfU3U3f4Q1tHgSzKHdR4Lttbi5UsZuM7g&hl=it&sa=X&ved=2ahUKEwjgrqf56LhAhUWU BUIHSvzCFMQ6AEwAHoECAkQAO#v=onepage&q=masculinity%20in%20mining%20sector%20arctic&f=false>, last accessed on 27th March 2019)

¹³¹ See the draft of SSA from GME: GREENLAND MINERALS ENERGY Ltd (GME), “Kvanefjeld Prefeasibility Study Confirms a Long-Life, Cost Competitive Rare Earth Element - Uranium Project”, May 2012, pp. (available on http://gme.gl/en/projekt_kvaneffjeld, seen on 27th March 2019)

fact, despite the Greenland law promotes territorial employment and the reduction of unemployment rates, the specificity of the sector does not see the totality of the recruitment of indigenous peoples in practice. This means that many workers, experts and workers, are from abroad and local people are not included in the business¹³².

For these reasons, the Government of Greenland wanted to make it compulsory for companies to take specific reports on environmental and social risks and assess the actual economic local benefits that would derive from the project. The economic evaluation of the project is an essential element since these activities, being granted by the Government, are highly politicized. The Government is also aware of the great responsibility to guarantee the safe and appropriate use of natural resources, including human health, and therefore the EIA and SSA are two elements necessary to finalize the license to proceed with the extraction works¹³³.

In summary, these are the positive and negative impacts mining divided into three categories:

Table 2: Positive and negative impacts

Enviromental impacts	Social impacts	Economic impacts
Environmental pollution (soil, fine dust in the air, aquifer)	Training	Abandonment of secular and traditional subsistence economy activities
Noise pollution	Strengthening public infrastructure and services	Unemployment / employment
Decline in agricultural and pastoral activities	Mass migration of foreign workers	Highly lucrative activities (above average salaries)

¹³² MRA, preamble

¹³³ MRA

Possible risk to animal and human health	Inequality between men and women High work expectations, often not supported by concrete job offers Crime outside and inside the mining sites Change of lifestyle
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5.3.1 Environmental impact Assessment (EIA)

Recognizing the high value of the EIA (Environmental Impact Assessment), the Greenlandic Government has drawn up and updated the guidelines for the preparation of this assessment by the companies. The obligation to carry out evaluations of possible environmental impacts is also mentioned in the present Minerals Resources Act of 2009 (from Part XIII to XV) and has been confirmed in the following amendments. In addition, companies must the safe management of NORM, an acronym for Naturally occurring Radioactive Materials, that is, of materials considered non-radioactive, but containing natural radionuclides in concentrations higher than the average of the earth's crust. NORM can be the raw material, the product or the residue of processing in numerous industrial activities, in which the radiological risk is generally incidental. Therefore, it is necessary for the companies to assess these risks during industrial processes¹³⁴.

The purpose of the EIAs are not only related to the prevention of environmental risks, but these assessments also help the dissemination of all the information related to the project that the company wants to start in a given territory, and lays the foundation for the public consultations carried out between the company and the local community. The Government is very keen to promote transparency in these matters and also allows representatives

¹³⁴ MINERAL RESOURCES AUTHORITY “*Guidelines for preparing an Environmental Impact Assessment (EIA) report for mineral exploitation in Greenland*” 2015, p.4 (Available on https://govmin.gl/images/Documents/Terms_guidelines_minerals/Guidelines_for_preparing_an_Environmental_Impact_Assessment_EIA_report_for_mineral_exploitation.pdf , last accessed on 27th March 2019)

of NGOs, researchers or representatives of different communities affected by a mining license, to find relevant information or clarification within the Government white papers¹³⁵.

The Greenland Government evaluates the EIA both based on its own assessments, decided with groups of scientific experts, and on the international level. Mining activities must always respect the international principles of good practice, safety and environmental and socio-economic sustainability.

The fundamental elements of the EIA are numerous and have different objectives. Firstly, the company must draw up a non-technical summary explaining the project and its possible impacts on the environment. This summary must be clearly understandable by lay people, and easy to read. Subsequently, the company must make a more detailed introduction of the project and also propose an alternative if the initial proposal is rejected. Environmental assessments also include monitoring plans and closure plans. Finally, the company must present the public consultation management plan accompanied by a white paper report of the meetings, including mentions of all the interventions and answers given¹³⁶.

EIAs also serve to present the project in all its phases to the Government. They should include different types of environmental evaluations on the whole area to be licensed, and should highlight the positive impacts and predict negative effects and mitigation measures. Furthermore, the environmental assessment must start from a comparison between the current environmental situation, the situation in the medium term and after the mining activity is completed. In fact, the companies undertake to carry out clean-up activities at the end of the activity, restoring the quality of the territory before work starts¹³⁷.

Companies are invited to submit a draft of the EIA, so that the MRA will affix changes so that the company may adjust their valuation and commence work.

The aims and EIAs are published by the Government, in order to inform the community of that project and give the opportunity to local representatives to prepare for public consultation.

¹³⁵ Ibid., p.6-15

¹³⁶ Ibidem

¹³⁷ Ibid. 6-7-17 (It refers to closure plan)

The public consultations last eight weeks and every question and answer must be noted in the white paper that will be delivered to the Government. Very often, these public consultations involve Greenlandic interpreters and representatives of workers' committees and indigenous organizations and NGOs. It is important that the relationships between these organizations and the companies be close and of absolute trust so that transparency and good faith are guaranteed.

It is a very long procedure. It is estimated that for the EIA alone the time required is between 2 to 3 years of work.

5.3.2 (Social Impact Assessment) SIA

The Parliament Act No. 7 of 7 December 2009 on the mineral Resources Act and following amendments, oblige extractive companies to also present an evaluation on the social impacts of their proposed project. In the five years following on from the publication of the Parliament Act, the guidelines for drafting the SIA have been updated, and include international principles and regulations in favor of respect for human rights.

Therefore, the SIA merged its own regulation in the mineral Resources Act (art.16) and the Greenland Parliament Act No.25 of 18 December 2012.

The objective of SIAs is to assess the impacts of the mining sector, specifically on the company's project, on the communities that live near the area granted by the license, and to inform the locals and stakeholders of the socio-economic benefits of the project. As for the EIAs, the description of the social impacts must take into account the situation prior to the mining activity and must include all the mitigation measures of the effects, already estimated or possible, negative on the company. The evaluation must include all the settlements inhabited in the area limited by the license.

According to the governmental guidelines, the SIA must cover both negative and positive impacts:

- National, regional and local economy
- Public services and sector
- Labor market
- Demographics, housing conditions and mobility
- Local business community and suppliers
- Labor and conditions regarding employment

- Education and upgrading of skills
- Apprenticeships and placements
- Infrastructure
- Social and health conditions
- Hunting / fisheries, recreational opportunities
- Tourism
- Socio-cultural values
- Relevant current and planned projects¹³⁸

The SIA drafting process involves several stages. The first phase is called a "scoping study" and serves to collect the basic data for public consultation, and must also provide the term of reference. The term of reference is a much more detailed document than the second step, namely the "pre-consultation", since it includes the timetable, the project budget and various inputs for the "pre-hearings phase". The pre-consultation, however, is a non-technical document which describes the project in general and is a formal statement of the company confirming the responsibility taken its willingness to conduct social assessments in accordance with national law and general international principles¹³⁹.

After that, the company is invited to present the draft assessments to the Government and prepare for public consultation. This period is very important for both the local community and the company. Generally the social impact meetings are those most appreciated by the actively participating public, likely due to the greater comprehensibility of these issues with respect to those EIA techniques that are not always completely understood by people. In these eight weeks, the company exhibits its project on several occasions depending on the purpose of the meetings. There are four types of meetings that the company must organize:

¹³⁸ MINISTRY OF INDUSTRY, LABOUR AND TRADE (GOVERNMENT OF GREENLAND), "

Social Impact Assessment (SIA)- Guidelines on the process and preparation of the SIA report for mineral projects", 2016, p.25 (Available on https://www.govmin.gl/images/Documents/Socio_Economics/SIA_guideline.pdf, last accessed on 27th March 2019)

¹³⁹ Ibid.p. 11 -15

Table 3: Types of meetings organized by the company

Type of meeting	
Stakeholders meeting	Used to include and invite possible stakeholders in the extraction project
Public consultation meeting	Attended by a keeper of minutes and a chairperson. It is also important that these meetings reach a high degree of scientific dissemination and understanding of the social impacts of the project
Community meeting	These are meetings in the communities that fall within the area surrounding that license. They are held in the most important social meeting points of each city and have many purposes: to give input to public consultation and explain the details of the project.
Information meeting	These meetings define the current status and any developments of the project ¹⁴⁰ .

Also in this case, after the public consultations, the company writes a white paper about what took place in these meetings including details of questions and answers. The company is obliged to publish the white paper in both Greenlandic and Danish.

The next step in the process is the drafting of the IBA, or Impact Benefit Agreement, which will be explained in more detail in the next paragraph.

If the Government of Greenland accepts the IBA, it then releases the final license of exploitation of resources. As already previously handled, these activities, given their economic and social importance, are highly politicized. This means that the last step is represented by the "Political Approval". In fact, the company must wait to obtain administrative

¹⁴⁰ Ibid., p. 16

and political approvals pursuant to articles 19, 43 and 86 of the Mineral Resources Act.

5.3.3 (Impact Benefit Agreement) IBA

The IBA, or the Impact Benefit Agreement, is an agreement between the company, the municipalities and the Government regarding the prospective economic gains and benefits of the project. It must be completed as soon as possible before the eight weeks of public consultation.

The purpose of the IBA's are to establish a dialogue between the Government, which wants to protect the interests of Greenland, and local communities. The IBAs represent a very delicate assessment of the economic situation of the project and of the communities affected by the license, and the company must try to establish contact with the local people in order to obtain the greatest possible support. In other words, the company must defend the IBA's good intentions, taking into account the needs of the Greenlanders, their subsistence economy and the high unemployment rate that affects some areas of the country.

- Continues next page -

In detail, the IBA must include:

- Legal section (National regulations)
- Economic benefits
- Local inclusion

Table 4: IBA contents

Legal Section (National Regulations)	Economic Benefits	Local Inclusion
National regulation. (MRA, art.16 and 19/43)	Local economy growing.	Involve Greenlandic labor and enterprises.
Resolution tools.	Infrastructure and alternative.	Ensuring local processing, local supplies, training and education, knowledge transfer and upgrading of skills as well as socio-cultural aspect ¹⁴¹ .
Economic gains.	Revenues to the public sector.	
Employment.		

5.4 Regime of renewal and transfer of mineral licenses

The regulation of the renewal of the license is governed by the article of the Mineral Resources Act.

The necessary condition for it to be possible to request a renewal is that the company demonstrate that the mining or hydrocarbon storage still has potential for exploitation.

The renewal process changes according to the type of license. For example, the exploration license lasts five years and is exclusive, so no other party can carry out any active activity in that specific area. The licensee may request a license renewal for the same area for other 5 years. At the termination of the second license (6 to 10), the licensee may request a

¹⁴¹ Ibid., p. 21-2

new license for years for years 11 to 13, 14 to 16, 17 to 19 and 20 to 22 for the same area, wholly or partly ¹⁴². With regards to financial obligations, the licensee must however spend a certain amount for explorations calculated on the basis of the annual license amount and the square kilometers per year.

The regulation of the renewal of exploitation licenses recalls Article 16 of the Mineral Resources Act, which establishes the renewal of the license to the licensee already in possession of the exploration license. Furthermore, as mentioned above, the licensee must in any case demonstrate the commercial value of the deposit with technical data.

In the process between the exploratory license and the exploitation license, certain circumstances may arise which lead the company to transfer its license to another company. Usually, this happens for financial reasons.

According to Article 27 of the Mineral Resources Act, the transfer of the license must take place under the approval of the Government of Greenland. The transfer of the license to third parties can take place either directly or indirectly.

In both cases, the Greenland Government must make careful assessments in order to ensure that the transfer does not weaken the previous agreement. However, the Act allows a certain freedom of negotiations on licenses, while also allowing agreements out of official regulations. Indeed, it may happen that the parties can agree independently, but that the obligations of the licensee must remain unchanged until the end of the license.

The Government of Greenland plays an important role of responsibility, as established by the preamble of the MRA, and therefore reserves the power to cancel or revoke a license in certain circumstances.

The Mineral Resources Act also provides for the dispute resolution system between the Government of the Greenland and the licensee. In these cases, disputes must be presented before the Arbitration Court has the final decision.

5.5 The jurisdiction applied on mineral licenses

The history of Greenland and its relationship with Denmark has greatly influenced the domestic law of the island. As a colony, Greenland adopted progressively the Danish law, although the application of customary rules is not excluded. Therefore, Greenland has a legal background typical

¹⁴² ST, §15

of Nordic countries. In 1979, home rule was issued which gave Greenland greater control over some administrative issues. The greatest change occurred in 2009, when finally, the Greenland Parliament Act on Self-Government, recognized the Greenland authority on some matters. The subjects that fall under the Greenland jurisdiction are for the most part of an administrative nature. The subjects are mining, health care, road traffic area, property and commercial law and the diving sector.

Areas which remain under the control of Denmark, include foreign affairs including trading and monetary affairs, national security including policing, passport control, immigration and weapons ,and the administration of justice such as law practice, namely, family, criminal and civil law .

There are also other subjects on which Denmark and Greenland consult each other, adapting Danish expertise and experience to Greenlandic needs.

After obtaining full jurisdiction over mining activities, the Mineral Resources Act was issued in 2009 ,and came into force in 2010. The MRA is not the only source of mining law as these activities are also regulated by other national regulations.

One of these is Working Environmental Act, which guarantees the health and safety of every Greenlandic worker and economic and social development¹⁴³.

The financial issues are managed by the Income tax Act¹⁴⁴. According to the official poster of the Greenland Government, the system of taxation in Greenland is “*based on a flat- rate taxation of labor income and certain capital income* ”. Mining companies are taxed at 30 %.

Standard terms for exploration licenses for minerals and the mineral models license, ie the guidelines for the acquisition and correct exploitation of the license with dispute resolution methods.

For other matters and disputes that are not regulated directly, and the regulation refers to the domestic law of Greenland including penal, criminal, civil, use of personal data, act of processing, and civil procedure . There are also special rules such as the

¹⁴³MINISTRY OF EMPLOYMENT OF GREENLAND, “The Greenland Working Environment Act” -Executive Order No. 1048 of 26 October 2005 subsequently amended - unofficial version (available on <https://at.gl/regler/love/lov-om-arbejdsmiljoe-i-groenland-uk/>, last accessed on 27th March 2019)

¹⁴⁴ GREENLAND INCOME TAX ACT, 2017(https://www.govmin.gl/images/Documents/Mineral_geology/Events/PDAC/2017/Session-4.2---Kim-Neumann-Nielsen-Tax-Authority-in-Greenland---The-Tax-System-in-Greenland.pdf last accessed on 27th March 2019)

regimentation of hazardous materials, such as high transmission radioactive and toxic substances and explosive materials.¹⁴⁵

5.6 Expropriation of licenses and compensation

In legal technical terms, the expropriation represents the loss of the right to property for reasons of public utility or to satisfy pecuniary debts. This event occurs for the most part through an executive process and, in cases where there is no fault of the owner. It is followed by compensation or compensation. Compensation in countries that belong to the family of civil order numbers law can be configured with the substitution of the asset with the same qualities or can take place in a pecuniary manner, with increases or reductions in the price based on the cases.

In the case of mining licenses Greenland foresees the possibility of expropriation Article 73 of the Constitution of the Kingdom of Denmark. The Danish Constitution is also applied in Greenland. Expropriation cases have also been addressed in the Greenland Parliament Act and in subsequent amendments.

The expropriation is valid if the following criteria are:

- That the owner of the property is expropriated is fully compensated;
- That the alienation is motivated by the interests of the public good; and
- That the restraint is authorized by the Act¹⁴⁶.

5.7 The Standard Terms for Exploration Licenses for Minerals

In 1998, Greenland realized that foreign interest in mineral resources was substantially increasing. Therefore, the Government of Greenland promoted some initiatives as foreign investors focused more on the mining sector. The

¹⁴⁵ SANDROOS B., “*Greenland: Mining Law 2019*”, ICGL, 2018(Available on https://www.govmin.gl/images/Documents/Mineral_geology/Events/PDAC/2017/Sesion-4.2---Kim-Neumann-Nielsen-Tax-Authority-in-Greenland---The-Tax-System-in-Greenland.pdf , last accessed on 27th March 2019)

¹⁴⁶ CONSTITUTION OF THE KINGDOM OF DENMARK ACT, section 73 (Available on http://www.stm.dk/p_10992.html last accessed on 27th March 2019)

absolute prohibition for the extraction of uranium was removed and the possibility of companies importing their own workers without being obliged to employ local personnel was made more flexible. The initiatives were positive but required more control in the granting of licenses.

Therefore from the late 90s until 2013, the Standard Terms for Exploration Licences for Minerals were issued to establish general rules about mineral licensing.

The Standard Terms is divided into 22 categories and is used to help companies apply for a license in Greenland.

- Mineral Resources Covered by the License
- License Area
- License Period
- License Fees
- Activities of Other Parties in the License Area
- Exploration Obligations
- Approvals, etc Regarding Activities
- Inspection
- Obligations at the Termination of the Activities
- Reporting
- Confidentiality
- Information to Local Authorities
- Personnel, Supplies, etc.
- The Transition from Exploration to Exploitation
- Transfer of the License
- Revocation of the License
- Liability and Security
- Liability
- Relationship to Other Legal Requirements
- Arbitration
- Obligations at the Termination of the License
- Translations¹⁴⁷

¹⁴⁷ GOVERNMENT OF GREENLAND, STANDARD TERMS FOR EXPLORATION LICENCES FOR MINERALS (EXCLUDING HYDROCARBONS) IN GREENLAND, (Available on [https://www.govmin.gl/images/stories/minerals/standard terms exploration licence.pdf](https://www.govmin.gl/images/stories/minerals/standard%20terms%20exploration%20licence.pdf), last accessed on 27th March 2019)

The Standard Terms apply to all mining licenses, except those for hydrocarbons and explosive materials. Between the Standard Terms and the Mineral Resources Act there is a relationship of mutual recognition, as many clauses refer to the discipline of one or other document.

The Standard Terms not only regulates in detail all the rules for the correct application and use of a license, but also refers to two important matters, namely the liability for environmental damage, and the obligation for mining companies to hire local staff as often as possible.

As for the environmental damage, which will be the subject of a separate paragraph, the company must endeavor to inflict as little damage as possible and to provide adequate reparation measures for damage caused even if the environmental damage occurs outside the area covered by the license (§17, articles 706-708).

Only if the necessary capacities are not found among the local population, is the company is free to employ foreign workers (§13, art. 1301).

This clause has been much criticized over time. If, on the one hand, the flexibility of hiring foreign workers was designed to invite more foreign capital and attract more international interest, on the other it had created several problems of inclusion of local people in the sector. The Government has tried to resolve the issue by adding a course dedicated to mining to the school for masons, but there are still few registrations. There are many reasons why there is still a large number of skilled workers, above all of an economic and linguistic nature.

5.7.1 Addendum to the Standard Terms specifically concerning payment of royalties

The standard terms for exploration licenses for minerals (excluding hydrocarbons) in Greenland of 1998 have been updated with the Addendum No. 3 of 1 July 2014. In this document some essential rules are updated, including the regulation of royalties and the official language of the document¹⁴⁸.

¹⁴⁸ GOVERNMENT OF GREENLAND, ADDENDUM NO. 3 OF 1 JULY 2014 TO STANDARD TERMS FOR EXPLORATION LICENCES FOR MINERALS (EXCLUDING HYDROCARBONS) IN GREENLAND (https://govmin.gl/images/Documents/Terms_guidelines_minerals/Addendum_No._3_to_Standard_Terms.pdf , last accessed on 27th March 2019)

According to the Addendum No.3 of the Standard Terms for Exploration Licenses for Minerals, there are different types of royalties based on the type of license:

- If the company has an exploiting minerals license (no rare earth elements (REE), uranium and gemstones) it is invited to pay royalty of 2.5 per cent of the value of minerals.
- If the company has a license exploiting rare earth elements it will pay royalties of 5 per cent of the value of the elements.
- For an exploiting uranium license, the royalty is the 5 per cent of the value of the uranium
- If exploiting gemstones, the licensee must pay royalties of 5.5 per cent of the value of the gemstones and a surplus royalty of 15 per cent based on gross profit exceeding 40 per cent (Article 2, AST).

Regarding the language of the document, the Government of Greenland decided that the only translation of the valid Addendum was in English.

This further detail underlines the belief that the mining sector should be an exclusively Greenlandic affair and the promotion of foreign projects reinforces the idea that it may be the right path for full independence in the future.

After 2009, the Greenland Government assumed full control over mineral resources and began to collaborate with the parliament in an ad hoc system that controls land mining.

The governmental system that manages the activities of exploration and exploitation of natural resources is represented by the Greenland Mineral Authority which includes several government bodies that cooperate to safeguard the environment.

One of these organisms is the Ministry of Mineral Resources and Labor which is responsible for strategies and policy makers, but also for the bureaucratic and legal aspects of the sector. The Ministry is supported by the Mineral License and Safety Authority (MLSA) which supervises and inspects licenses issued by the Government. The MLSA offers valuable assistance to agencies and individuals who want to start a business in Greenland. License holders must contact the MLSA to send documents and receive important communications and decisions from the same organ.

The Greenland Mineral Authority also uses geology in order to have a complete technical assessment and perform field research. The research data carried out by the Department of Geology have an international value and the

Department share their findings with the scientific community around the world.

The system requires that the Ministry of Industry and Energy takes care of the evaluations economic schools of mining projects and agreements concluded between companies and the government on economic benefits (IBA). The Ministry of Industry and Energy deals with both mining and hydrocarbon extraction projects and ultimately it regulates the relations between the Government of Greenland and Denmark based on mutual trust.

5.8 The new Environmental Agency for the Mineral Resources Area

In 2013, the Parliament of Greenland issued an update to the Mineral Resources Act, created a new body to guarantee the proper conduct of mining activities. Furthermore, the Parliament wanted to strengthen the monitoring system for extractive activities with respect to safeguarding the environment.

The Environmental Agency for Mineral Resource Activities (EAMRA) falls under the Ministry of Nature, Environment and Research, and collaborates with the Greenland Institute of Natural Resources and the Danish Center For Environment And Energy (DCE).

EAMRA works also with the Department of Environment and Contingency Management and Department of Nature and Climate within the Ministry of Nature, Environment and Research, and with The Mineral License and Safety Authority.

The major functions of the Environmental Agency are to:

- Ensure the correct execution of mining activities
- Guarantee the correct fulfillment of the obligations of the companions given by the license and by the Mineral Resources Act
- Make evaluations on the Mineral Resources Act and present proposals for changes and improvements
- Collaborate with research institutes
- Ensure that human, environmental, fauna and flora rights are respected¹⁴⁹.

¹⁴⁹ GOVERNMENT OF GREENLAND, Environmental Agency for Mineral Resources Activities (EAMRA)- Official website (Available on

5.9 State liability for environmental damages

5.9.1 Discipline of State environmental responsibility in the Arctic: the case of Greenland

As already reiterated in the previous sections, the Arctic is an environment rich in natural resources, minerals and hydrocarbons, but it is also endowed with an immense wealth of flora and fauna that compile the great biodiversity of the region. Nonetheless the Arctic is also very vulnerable that is already fighting with the inexorable consequences of the climate change and pollution.

Greenland has concluded several agreements with regards to mining, both offshore and onshore, with respect to the international principles and customary due diligence, but was obliged itself to meet the obligations and responsibilities outlined in the Mineral Resources Act (preamble).

Generally, the mining sector includes the presence of many states, which share the same environmental responsibilities. Precisely for these reasons, states feel it is necessary to stipulate agreements concerning persons responsible for environmental cross-border damage, especially as regards the possible risks of spill off or transport of raw materials.

As discussed in § 5.7, Greenland has had access to many conventions in the environmental field and, on behalf of Denmark, is committed to the principles and international norms.

The first noteworthy Convention is the Espoo Convention, 1992, which defines the EIA as “*evaluating the likely impact of a proposed activities*” (article 2), and draws up the guidelines and contents that these assessments must include (3.1, 4)¹⁵⁰.

In 1992, Denmark ratified two other important Conventions: The Convention on Biological Diversity and the Convention for

<https://naalakkersuisut.gl/en/Naalakkersuisut/Departments/Natur-Miljoe/Miljoestyrelsen-for-Raastofomraadet#OmOS>, last accessed on 27th March 2019)

¹⁵⁰ ESPOO CONVENTION, 1992 (<https://www.unece.org/environmental-policy/conventions/environmental-assessment/about-us/espoo-convention/enveiaeia/more.html>, last accessed on 27th March 2019)

the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention).

The Convention on Biological Diversity asserts the " *conservation of marine biological " as its objectives diversity* ". The contracting parties must present environmental impact assessments (14.1 (a)) and promote the exchange of information and all activities under their jurisdiction which could have an environmental impact on the location (14.1 (c))¹⁵¹.

The OSPAR is a 1992 convention and was concluded in Paris. The OSPAR is the only legislative instrument that regulates cooperation for environmental protection in the North East Atlantic, including the sea that embraces the east coast of Greenland (article 1 (a)). The Convention was accepted and assimilated by Denmark in 1992. The OSPAR Convention also established a commission that carries out important initiatives in 5 areas:

- Protection and safeguarding of the ecosystem and biological biodiversity
- Hazardous substances
- Radioactive substances
- Eutrophication
- Environmental goals and Management Mechanism for Offshore Activities¹⁵²

The OSPAR Commission helps states to meet their obligations and promotes the implementation of measures (Art. 23).

State parties are obliged to comply with their obligations and to work to limit pollution and its consequences, especially when the effects affect the performance of human activities (2.1 (a)). Although an implementation method has not been established in the Convention, states are invited to harmonize environmental policies so as not to jeopardize the environmental protection system (2.1 (b)) .

As for the Law of the Sea, in 2004, Denmark, doubly represented by the participation of the European Union, ratified the United Nations Convention on the Law of the Sea (UNCLOS), which regulates the rights and responsibilities of states in the use of the world's seas and oceans, defining guidelines for the management of mineral resources.

¹⁵¹ CONVENTION ON BIOLOGY DIVERSITY
(<https://www.cbd.int/convention/> last accessed on 27th March 2019)

¹⁵² OSPAR, 1992 (<https://www.ospar.org/convention/text> last accessed on 27th March 2019)

The obligations of states that have ratified the LOS Convention are essentially to protect and preserve the marine environment (Article 192). In other words states must strive to prevent pollution and environmental damage, and empower the creation of precautionary measures and domestic regulations (Article 208-214)¹⁵³.

In 2009, Denmark, together with the other Arctic states (Canada, Iceland, Finland, Russia, Sweden, Norway and the United States of America) accepted the Arctic Offshore Oil and Gas Guidelines developed the AEPS. These guidelines, as the Preamble says, were accepted after the 1997 guidelines adopted in Alta, and the parties “agree That These Guidelines be applied”¹⁵⁴, but not as treaty obligations.

The 2009 Arctic Offshore Oil and Gas Guidelines are non-legally binding rules on planning, exploration, development, production and disposal to help ensure common policies and practices.

The guidelines have the objective of raising environmental protection standards by mining activities and are written based on the five principles of international environmental law: Precautionary principle, Polluter Pays, Continuous improvement and Sustainable development .

5.9.2 Compensatory measures in the self-determination perspective

The analysis of environmental problems in the indigenous context commenced when the right of self-determination of peoples was stated by international conventions. From that moment on, the management of mineral resources had to consider human rights and, in particular, indigenous rights.

Usually, the human rights discipline includes several generations of human rights. From the first fundamental freedoms¹⁵⁵, often already constitutionalized, to the rights of new generations enshrined as felt as

¹⁵³ LOS CONVENTION
(https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf, last accessed on 27th March 2019)

¹⁵⁴ AEPS,
(https://govmin.g1/images/stories/petroleum/Arctic_Offshore_Oil_and_Gas_Guidelines_2009.pdf, last accessed on 27th March 2019)

¹⁵⁵ From the famous Roosevelt’s speech in 1941

necessary the right to a healthy environment, and right to natural resources¹⁵⁶.

In their own way, indigenous rights have also evolved. From the mere recognition of the needs of indigenous peoples, the discipline of indigenous rights has managed to obtain the qualified consent for the use of land and the right to participate in decision making processes.

This evolution is clearly visible in the argument discussed in Chapter 4.

In 1998, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters¹⁵⁷, or the Aarhus Convention, was signed. It entered into force in 2001. Among the ratifying countries are all states belonging to the European Community. The current text promotes the rights to information and public consultation and access to justice for environmental matters.

The Convention gives people the right to get informed about what happens on their territory, and indeed, it finally raises the indigenous peoples as subjects of law¹⁵⁸.

The text protects three fundamental rights:

1. Access to information (Article 4 -5) : The right to receive information from public authorities. The administrations must make important documents regarding the projects in progress and their impact on the environment accessible and transparent.
2. Public participation (art. 6,7,8) : In compliance with national legislation, administrations must satisfy the public that they can participate before and during the decision-making process. These mechanisms must be able to involve all or some of the most representative, the members of the communities and make these systems more effective and possible training. For "participation" we

¹⁵⁶ SMITH, International Human Rights Law, Oxford University Press, 2017, p.

¹⁵⁷ AARHUS CONVENTION, (<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf> ,last accessed on 27th March 2017)

¹⁵⁸ LOUKACHEVA N., “*The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut*”, University of Toronto, Advanced Knowledge, 2017 (Available on https://books.google.is/books?hl=it&lr=&id=HzPzwrUYdgkC&oi=fnd&pg=PP1&dq=greenland+and+international+relations&ots=J-zEBj-1-1&sig=G47TfV0C7yb079f5Ay7f4BRzIVE&redir_esc=y#v=onepage&q=greenland%20and%20international%20relations&f=false, last accessed on 2019)

understand the cooperation between representatives of the local communities and authorities in the various stages of decision making.

3. Access to justice (Article 9.) : All persons who experience a violation of a right listed above, such as, a failure to reply to the request for access to certain information, may, according to national law, bring the delegated administrative body to court. The holder of this right must jointly meet two requirements: that the holder has a sufficient interest in the matter and asserts the violation of the right.

At the moment, the Aarhus Convention isn't applied in Greenland. Denmark has not extended the effects on the country and Greenland has never show the will to do it.

Briefly, I analyze the current situation in Greenland in terms of protecting public participation rights to decision-making processes.

Table 5: Greenland public participation rights

Right	Status	Sources
Access to information	Granted	MRA
Public participation	Granted	MRA
Access to justice	No data	No data

Regarding the liability for environmental damage, the courts tend to distinguish between three categories of repairing the damage: repair, compensation, and guarantees of non-repetition and satisfaction measures.

Repair: Restore as before the damage¹⁵⁹

Compensation: Repairing the damage by granting an asset of equal value. Monetary compensation possible if the parties agree. Compensation must include current and future damage in economic terms and lost earnings¹⁶⁰.

¹⁵⁹ JOHNSTONE L. R.,” The Principle of "Full Reparation" for Environmental Damage and Very Small States” in Responsibilities and Liabilities for Commercial Activity in the Arctic -The Example of Greenland, 1st Edition,

Edit. Vibe Ulfbeck, Anders Møllmann, Bent Ole Gram Mortensen, Routledge, 2016

¹⁶⁰ Ibid.

Satisfaction: Alternative compensation measure to the explanation and return. It especially concerns compensation for moral damages¹⁶¹.

Within the framework of indigenous rights and their rights over nature, all three forms of compensation are not exhaustive. Therefore, it is said that the environmental damage that affects indigenous rights does not allow a full reparation, or in most cases, the compensation measures are "*not in integrum*"¹⁶².

Regarding environmental damages in Greenland, there is no difference in compensation to local people (Inuit) or other citizens. Notes that Greenlanders have political rights of their own country so there is no special rights to native people as they know them from USA and Canada¹⁶³.

This situation is interesting how complex. As Jhonstone says, in the event that Greenland gained independence, it should theoretically compensate for environmental damage caused by mining activities. That circumstance is now quite utopian, as Greenland, like Iceland and other small states, is not in an optimal economic situation to sustain high repair costs¹⁶⁴.

The previous example applies the principle of Common But Differentiated Responsibilities (CBDR). This system emerged in the context of the United Nations Conference on Environment and Development held in Rio in 1992, the so-called Earth Summit. The principle finds its origins in the considerations and general principles of equity of international law¹⁶⁵.

Principle number 7 of the Rio Declaration distinguishes two types of responsibility: a municipality, which refers to the protection of flora and fauna established in various international treaties, and a differentiated

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ USHER J.P., "*Environment, race and nation reconsidered: reflections on Aboriginal land claims in Canada*", *The Canadian Geographer / Le Géographe canadien* 47, no 4, 2003, pp. 376-380 (<https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.0008-3658.2003.00029.x>) last accessed on 8th April 2019)

¹⁶⁴ JOHNSTONE L. R., "*The Principle of "Full Reparation" for Environmental Damage and Very Small States*" in *Responsibilities and Liabilities for Commercial Activity in the Arctic - The Example of Greenland*, 1st Edition, Edit. Vibe Ulfbeck, Anders Møllmann, Bent Ole Gram Mortensen, Routledge, 2016

¹⁶⁵ EPSTEIN C., "*Common but differentiated responsibilities*", *INTERNATIONAL ENVIRONMENTAL LAW*, (<https://www.britannica.com/topic/common-but-differentiated-responsibilities>, last accessed on 27th March 2019)

responsibility that refers to the socio-economic situation of the countries, especially developing countries¹⁶⁶.

The Rio Declaration also refers to liability for cross-border damage, thus limiting territorial sovereignty to the rights of other states not to suffer environmental damage.

In fact, the No.2 principle of the Rio Declaration says: "

*" States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."*¹⁶⁷.

From Latin "*Sic utere tuo ut alienum non laedas*", comes a longstanding principle according to which you should not use your property if it damages another's property. This principle derives from the arbitration sentence between the United States and Canada, known as the *Trail Smelter case*. This ruling is of great importance in the context of extractive activities, as such activities often face the risk of creating transboundary damage¹⁶⁸.

The CBDR principle indicates a proportionate and equitable responsibility, correcting historical responsibilities and considering the socio-economic situation of the country. Obviously, the declaration aims to protect a state from getting environmental damages from others, but still there are perplexities about the content of the principle of due diligence in the part of "differentiated responsibilities".

Like many other small states which have small populations or limited/high GDP, if ever Greenland became independent there would be great doubts about the island's compensatory availability¹⁶⁹.

¹⁶⁶ UN THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT (1992) (http://www.unesco.org/education/pdf/RIO_E.PDF, last accessed on 27th March 2019)

¹⁶⁷ Ibid.

¹⁶⁸ Trail Smelter case (USA vs Canada)- Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)

¹⁶⁹ JHONESTONE, Ibid.

6 Inuit decision-making: the public hearings and corporate social responsibility in Greenland

Over the last decade, Greenland has given greater importance to environmental information both in terms of increasing the amount of spatial data and improving the flow of data, and in terms of data sharing between governments, companies and citizens. In this regard, the right to environmental information is recognized as an indispensable tool for the effective and conscious involvement of citizens.

The Mineral Resources Act and other international conventions have supported the need to consult and inform members of the indigenous communities of the social, environmental and economic impacts of mining projects on their territories. Greenlandic and Danish legal system not include the right of ownership on the land, in this context we talk "their" territories as places where such communities live and practice their activities between traditional livelihood.

Denmark has ratified international conventions that include public consultations and hearings, and to obtain consent prior, free and informed by indigenous peoples to the use of the land.

Access to information, public participation in decision-making processes, and access to justice in environmental matters are regulated internationally by the so-called Aarhus Convention, signed in Aarhus (Denmark) in 1998. This convention is binding for institutions and community bodies and has been implemented with the regulation (CE) n. 1367/2006. The Aarhus Convention was, in turn, applied through the two Commission Decisions 2008/50 / EC and 2008/401 / EC, Euratom. The Aarhus Regulation guarantees the rights of the public and imposes certain obligations on the institutions and bodies of the community regarding access to environmental information (Section I), public participation in environmental plans and programs (Section II) and all access to appeal procedures (Section III). The purpose of this guide is to assist members of the public in asserting their rights under the Aarhus regulation, thereby contributing to a more transparent and reliable functioning of the European Community. Although the Aarhus Regulation

applies to all institutions and all community bodies, for practical reasons, the guide is mainly focused on the implementation and application of this regulation by the European Commission.

At the time of signing, Denmark did not want to extend the application of the Convention to Greenland and the Faroe Islands. In the following statement, Denmark granted the two detached regions the opportunity to decide whether to accept the Convention in respect of their Home rules Governments.

*" Both the Faroe Islands and Greenland are self-governing under Home Rule Acts, which implies inter alia that environmental affairs in the areas covered by the Convention are governed by the right of self-determination. In both the Faroe Islands and the Greenland Home Rule Governments there is great political interest in promoting the fundamental ideas and principles embodied in the Convention to the extent possible. However, it is not a matter of course that the company is in charge of. Faroe Islands and of Greenland. Thus, full implementation of the Convention in these areas may need less and inadequate bureaucratization. The authorities of the Faroe Islands and Greenland will analyze this question thoroughly Signing by Denmark of the Convention, therefore, includes the Faroe Islands and Greenland ."*¹⁷⁰

Greenland implemented the Strategic Environmental Assessment (SEA) in 2006, but the public hearings began much later.¹⁷¹ The SEA includes the analysis of environmental problems and solutions to problems

¹⁷⁰ UNTC, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998, Upon signature of Denmark

(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=xxviii-13&chapter=27&lang=en last accessed on 24th March 2019)

¹⁷¹ PELAUDEIX C., "Governance of Offshore Hydrocarbon Activities in The Arctic and Energy Policies: A Comparative Approach between Norway, Canada and Greenland/Denmark", In Governance of Arctic Offshore Oil and Gas

Eds. Cécile Pelaudeix, Ellen Margrethe Basse, 1st Edition, Routledge, 2018, P. 115-

118(https://books.google.is/books?id=LgcqDwAAQBAJ&pg=PA115&lpg=PA115&dq=greenland+has+ratified+aarhus+convention&source=bl&ots=jm3tLN_11i&sig=ACfU3U24HHsXdBRXUeucaaHfMG5tfHu-cA&hl=it&sa=X&ved=2ahUKewj5it-r5JrhAhXwUhUIHQylAaIQ6AEwBHoECAkQAO#v=onepage&q=greenland%20has%20ratified%20aarhus%20convention&f=false, last accessed on 25th March 2019)

concerning decision-making processes and public participation in the early stages of the planning of extraction projects.¹⁷²

In any case, the SEA can be a valid support for the production of EIAs, even if the legislation of Greenland does not provide any specific regulation on the SEA and indigenous rights¹⁷³.

6.1.1 Public hearings and public consultations

Although they may to be similar, public hearings and consultations are two different things.

Public hearings play an essential role in the investigation public. They allow the dissemination of communications and the opinions of the parties involved.

Public consultation is an instrument for improving the quality of regulation through which the interested parties, solicited by a public authority, have the opportunity to intervene in the decision-making process before they are formally assumed. In the first phase, the parties must take decisions on issues related to projects and initiatives already begun through regulatory frameworks, regulation policies, reforms, public works, etc. This first phase is essential to inform the parties on the issues on which feedback will be based in the second phase of the consultations.

Beyond these differences, both public hearings and consultations pursue the same objectives:

1. To obtain subsidies and additional information regarding the draft of the project and the license
2. To furnish to economic agents , local people and other interested parties
3. To identify a wide range of public hearing
4. To give publicity, transparency and legitimacy to the EIA and SIA and licensing process¹⁷⁴.

¹⁷²GOVERNMENT OF GREENLAND, “*Strategic Environmental Assessment (SEA)*” Official Website (<https://www.businessingreenland.gl/en/Erhverv/Vandkraft/Vandkraft-og-aluminium/Klima-og-miljoe/Strategisk-miljoevurdering,last> accessed on 25th March 2019)

¹⁷³ The reasons why indigenous rights are not mentioned have been explained in §4.9.1. The motivations are however related to Greenland Self-government which recognizes full control of natural resources by Greenland citizens.

These procedures guarantee transparency and proportionality between the parties, providing a guarantee for the proceedings.

6.1.2 Minimum Standards: The Aarhus Convention

The Aarhus Convention provides the basic requirements and standards for efficient collective information processes¹⁷⁵.

The convention includes procedural rules that the authorities must follow including:

- Timely and effective notification between parties
- Reasonable timeframes for participation in the decision-making process
- Availability of relevant documentation, two accounts of the outcome of public participation, and prompt notification and publication of the decision¹⁷⁶.

Clearly, the effectiveness of these two public proceedings depends on the organization of the institutions and mining companies that are facing the preparation of the EIA and SIA.

It is crucial for companies that need to gain the trust of the local community, offering a clear and easy-to-understand scientific dissemination system and ensuring full community participation, including stakeholders, NGOs, all those who have a relative interest to the project and the territory. The public must have access to documentation in the official language of the place or in any case the most appropriate one.

Consultations can also be done electronically and must use the internet and other technologies, but in many regions of Greenland internet access is very slow and very expensive.

However, this Convention isn't applied in Greenland¹⁷⁷.

¹⁷⁴ ANP, “*Public Consultation and Public Hearing 9/2017 – Summary and decisions concerning the contributions received*”, 2018(<http://rodadas.anp.gov.br/en/14th-bidding-round/public-consultation-and-public-hearing>), last accessed on 25th March 2019)

¹⁷⁵ Aarhus Convention, *Introduction*

¹⁷⁶ COMMISSION OF THE EUROPEAN COMMUNITY , “*Green Paper: Promoting an European framework for Corporate Social Responsibility* ”Brussels, 18 July 2001.

¹⁷⁷ Further details in Chapter 5(§5.9.2)

6.1.3 The effectiveness of public participation processes

Consultation is only one of the possible stages of stakeholder involvement in decision making. Before the consultation only publicly available information allows the communities to be aware of the projects in progress and the possible impacts. All members of the community, representatives of other communities or NGOs must participate at the meetings and may also invite external parties, such as experts, who can make informed judgments or more structured observations. Above all, public consultations must allow the local community to collaborate in the project but also to the investigation activities that the company must carry out on the site.

Whatever the form of participation one wishes to apply, it is essential to establish clear and precise rules of engagement, informing potential participants of the objectives, characteristics of the participatory process including the duration, participation modalities, subjects that can take part in them, etc. and the effects it will have on the final decision. It is therefore necessary to specify from the outset if participation implies components of "negotiation" on the decision, or if instead it has characteristics more particular to consultation.

6.1.4 Corporate Social Responsibility in Greenland (CSP)

CSR (*Corporate Social Responsibility*) formally entered the agenda of the European Union since the Lisbon European Council of March 2000, where it was considered as one of the strategic tools to achieve a more competitive and socially cohesive society and to modernize and strengthen the European social model.

In the Green Paper of the European Commission, published in 2001, corporate social responsibility was defined as: "*essentially a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment*".¹⁷⁸

¹⁷⁸ WILSON E., "*Negotiating uncertainty: Corporate responsibility and Greenland's energy future*", Energy Research & Social Science, Volume 16, June 2016, Pages 69-77, (available on <https://www.sciencedirect.com/science/article/pii/S221462961630038X>, accessed on 25th March 2019)

CSR goes beyond compliance with legal requirements and identifies practices and behaviors that a company takes on a voluntary basis, in effort to get results that can bring benefits and advantages to the company itself, and to the society in which it operates.

Particular attention is paid to relations with its stakeholders, such as suppliers, customers, partners, communities and local institutions, realizing concrete actions towards them.

Many factors are driving this move towards corporate social responsibility:

- New concerns and expectations from citizens, consumers, public authorities and investors in the context of globalization and large scale industrial change
- Social criteria are increasingly influencing the investment decisions of individuals and institutions both as consumers and as investors
- Increased concern about damage caused by economic activity to the environment
- Transparency of business activities brought about by the media and modern information and communication technologies¹⁷⁹.

Compared to other countries, especially European ones, Greenland has recently begun to take a particular interest in CSR. The main reason is related to the increase in interest in mining in the country and full control over this activity has increased the social pressure on the Government that is committed to ensuring transparency and security in the natural resources sector (MRA, preamble). In Greenland, CSR translates into respect for indigenous rights (FPIC and land rights), anti-corruption control and compliance with the obligations of international agreements (UNDRIP- ILO No.169). The Government of Greenland is primarily responsible for the obligations due to international treaties, but also companies must ensure the proper conduct of transparency practices and compliance with international standards.

Mining companies must comply not only with internal rules (MRA, for example) but must also take into consideration the international conventions to which Greenland is subject to through Denmark, or by free will.

¹⁷⁹CSR, “*CSR Greenland*”(<http://www.csr.gl/Home/tabid/173/language/en-GB/Default.aspx> last accessed on 25th March 2019)

Among the most important standards are the OECD (Guidelines for Multinational Enterprises, 2001), the UN Global Compact (2000), the ISO 26000 (Guidance Standard Social Responsibility, 2010), the UN Guiding Principle on Business and Human Rights (UNGPs, 2011) and the International Finance Corporations (IFC). These all dictate the guidelines that serve as a warning to companies and governments on how to manage the processes of public participation during the granting of exploitation licenses. The IFC, for example, makes a mention to the FPIC in cases mega-projects have decisive impact on the local way of life¹⁸⁰.

Compliance with CSR in Greenland is represented by environmental and social assessments (EIA, SIA) and by the agreement on economic benefits made by the company and the Self Government (IBA). These assessments are of fundamental importance because they allow the Government and the local population to be informed about future projects. For the CSR Greenland group, these evaluations are useful to the Government to manage the development of the mining sector positively and help the companies to face the possible risks and envisage measures to mitigate the negative effects¹⁸¹.

Greenland does not have a long tradition of governing extraction and even less for CSR practices. The Greenland CSR group, with the support of the Employers Association of Greenland and NGO's (such as Greenland Transparency) seek to promote and improve the standards of transparency and democracy, helping science, trying to train locals, and calling for clarification in unclear situations¹⁸².

It will take some time to understand the effects of CSR and the application of the MRA on the territory, but the joint work of these organizations and the Government can only benefit the companies involved in the sector and the local communities that still fear the upheaval of their territory and consequently of their lives.

¹⁸⁰IFC, "IFC Performance Standards on Environmental and Social Sustainability", Section; Performance 7: Indigenous Peoples, 2012 p.47 (https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES, last accessed on 13th April 2019)

¹⁸¹ *Ibidem*

¹⁸² *Ibid.*

6.2 Local democratic system in Greenland

6.2.1 Public Participation: Participatory or deliberative practices

Setting aside the practices of representative democracy such as elections, the institutions of direct democracy, etc., a process of democratic participation can take two different forms: participatory and deliberative. Participatory democracy involves practices that allow all potentially interested parties to take part in decision-making procedures. These practices, therefore, allow both citizens and their associations to put pressure on the decision maker, even without a comparison between the positions taken. Deliberative democracy involves a democratic social process that focuses on dialogue and communication in fair procedural conditions between free and equal participants, aimed at producing careful reflection with the aim of reaching a non-coercive decision on a significant collective issue.

The dialogic-deliberative interaction aims to examine in depth the questions addressed by identifying and evaluating points of view, interests, values, needs, opportunities and problems at stake, carefully weighing the range of possible options and their positive and negative implications.

Deliberative theory is the fruit of the confluence of a plurality of reflections, practices and different political cultures, in particular those more properly of deliberative democracy from the Anglo-Saxon world to that northern Europe¹⁸³.

Democracy is based on the idea of intrinsic equality of citizens. A system that makes collective decisions through the participation of its citizens, according to Dahl¹⁸⁴, must reflect a strong principle of equality where everyone has the right to participate in political life and all individual opinions regarding decision making have the same weight. Equality, not only of status, but of political power among citizens, together with personal freedoms, is a central element of the very notion of democracy. Even in direct assembly democracy, equality between participants is illusory. Deliberative democracy intends to go beyond the formal data, seeking the conditions for an effective equality, at least in the context of the

¹⁸³ *Ibid.*

¹⁸⁴ Dahl, R.A. “*Democracy and its Critics*”, New Haven: Yale University Press, 1989 (Available on ,Last accessed on 25th March 2018)

participatory process. The deliberative processes try to contain possible dominance phenomena by individuals who have greater resources and skills.

Examples of deliberative practices are participatory budgeting, public debate and town meetings. These experiences are activated, more frequently, on specific topics such as the construction of landfills, around which there are very conflicting positions, and on circumscribed territories, for which the organization of live meetings is made possible. Unlike deliberative participation, the participatory form is linked to an ideological movement that sees the community as the sole protagonist. In other words, participatory democracy exalts the possible virtues of an active citizenship where it can be educated and nurtured by direct forms of empowerment, by the exercise (even partial) of a direct responsibility for autonomy, self-government and self-determination.

Greenland has only recently begun to mention public participation in decision-making processes. In fact, only in 1991 did Greenland change the 1978 law, which provided for a joint administration and responsibility of the area with Denmark¹⁸⁵. Even today, however, public participation (PP) is not specifically regulated by any rule, and non-ratification of the Aarhus Convention does not help the full effectiveness of these democratic instruments. For others, the non-regulation of rules for the PP would allow for democratic demonstration in different forms, often more suited to the type of social context in which the project should be realized.

Habermas and Dahl have identified five criteria for the implementation of deliberative democracy:

- **Criterion 1:** Interests must not be in conflict with each other. This means that all participants must be able to express their opinion, and that no hierarchy of power must take an interest in favor of another. There may be, says Aaen, topics not included in the meetings, but in general the authorities must ensure that all the interests are included in the projects¹⁸⁶.
- **Criterion 2:** The most important authorities and investors, in terms of knowledge and influence, must not abuse their power but maintain transparency and equal decision-making power among all participants. In this case, the BMP has failed on several occasions, completely leaving the management of town meetings

¹⁸⁵ M. ACKREN. "Public consultation processes in Greenland regarding the mining industry." *Arctic Review on Law and Politics*, (Vol. 7, No. 1, 2016, pp. 3_19. <http://dx.doi.org/10.17585/arctic.v7.216>)

¹⁸⁶ WILSON, P.7

to the companies. This fact, as I will illustrate in the course of this chapter, risks creating information leaks due to the different level of education between the population and the experts in the Government and in the companies¹⁸⁷.

- **Criterion 3:** All participants must have fair access to information. This implies that all the means of information transmission must be independent of the power and financial systems. Although in Greenland the competition between media is very low, the newspapers and the state radio are dependent, first of all by the few sources of information and are financially supported by the annual budget negotiations and licensing structure¹⁸⁸.
- **Criterion 4:** All participants must be aware of political initiatives and their consequences. To date, the Government has done little to create an information network that could divulge important initiatives and policy proposals that would interest the local population¹⁸⁹.
- **Criterion 5:** Consultations must have effective influence in decision-making processes. It is still not clear how consultations can influence the granting or rejection of licenses¹⁹⁰. One of the worst problems is that these public consultations will be made in the vicinity of the works or the obtaining request of the final license. This circumstance, in addition to reducing the effectiveness of these consultations, fails to allow local people gain an understanding of the real weight of their opinions. A solution could be the publication of the white papers that the companies send to the authorities after meeting them. White papers are a detailed account of everything that happens during the consultations and the hearings, questions and answers. The white papers cannot be published as the social Impact Assessments (SIA). Furthermore, another possible solution proposed by Aaen could also be to increase the time gap between public consultations and the start of work by the company¹⁹¹.

Greenland has however included PP in the social and environmental assessments necessary for the request of the final license. This means that PP is nothing more than a formal requirement for a certain event

¹⁸⁷ Ibid, P.10

¹⁸⁸ Ibid, P.12-3

¹⁸⁹ Ibid, P.18

¹⁹⁰ P.20-22

¹⁹¹ *Ibidem*

to occur. The lack of internal regulation of PP has created an important information asymmetry between the consultants and the consulted. In addition, PP in Greenland does not imply recognition the values of Inuit culture. For these reasons, it is not difficult to believe that the obligation to obtain an FPIC from the local community of ILO No.169 is not completely respected.

6.2.2 The principle of transparency in democratic administration: EITI in Greenland

In order for PPs to be transparent and effective, the process must involve as many stakeholders as possible. Regardless of the methods of involvement, the PP must comply with a series of international principles through procedures that are clear and accessible.

According to the principles of deliberative democracy, citizens must be able to participate in decision-making, so as to influence political decisions. The objectivity of participation and citizen feedback is measured based on the degree of independence, above all economic, of the members. The Self-Government of Greenland, aware of the high risk of corruption in the administrative sector, has strengthened anti-corruption policies by changing the regulatory text of the Penal Code¹⁹².

Denmark has not yet accepted the EITI program (Extractive Industries Transparency Initiative), which is a set of rules that encourages governments to publish all the documents they receive from companies, and vice versa¹⁹³.

Denmark, which boasts excellent positions in the indices of perception of corruption, did not feel it necessary to accept the EITI program, but has adopted some international solutions. For example, Denmark is a member of the Organisation for Economic Co-operation and Development (OECD) from 1961 and has adopted the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas in 2011. These guidelines are addressed to the entrepreneurs of the extractive

¹⁹² ULDUM A.R (Minister for Finance and Mineral Resources) “Anti-Corruption Policy of the Ministry of Mineral Resources and its subordinate institutions”,2015(Available on https://www.govmin.gl/images/stories/ccnewsletter/Anti-corruption_policy_english_version.pdf, last accessed on 25th March 2019)

¹⁹³ EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI), Official Website (<https://eiti.org/>),last accessed on 8th March 2019)

companies so that they consider human rights, assess the impacts of mining and provide for mitigation measures of the negative effects on the local population and the environment¹⁹⁴.

However, the decision of Denmark to not accept EITI has raised considerable doubts between the population and the NGOs because Greenland has many risk situations such as a high turnover of staff in administration, nepotism and weak and inconsistent legislation, that can make political choices very vulnerable to the perception of corruption¹⁹⁵.

Among the major concerns already listed, Emma Wilson has indicated three situations on which the Government should ensure greater transparency in the procedures related to public participation and, consequently, to the effectiveness of democracy.

These three areas are:

- Asymetric cognoscitive between mega-projects and the Government's experts and local communities
- Great differences between the cultural capital of the authorities and local communities
- PP methods not accepted by the community¹⁹⁶

All three areas outlined above refer to PP. The population complains that they are neither able to access information in equal measure, even if made public, nor able to deal with meetings with experts. In fact, company and authority experts are often the only ones to understand the technical and scientific data of the projects. Failure to understand the basic concepts of the projects limits active participation by communities during the meetings. It is often men or the elderly who ask questions, while little is known about the aspirations of women and young people. Moreover, as already mentioned in the previous paragraphs, active participation changes depending on various factors such as degree of unemployment, percentage of traditional activities carried out in the territory, average age of the population, possibility or not to access an internet network.

¹⁹⁴ OECD, "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas", 2011 (<http://www.oecd.org/daf/inv/mne/mining.htm> ,last accessed on 8th March 2019)

¹⁹⁵ WILSON, Ibid. P.39

¹⁹⁶ ACKREN, Ibid.

Ackren referred to another important aspect, that is, the methods by which these meetings are held. Indeed, Greenlanders not only complain about not understanding the data well enough, but also that the town meetings do not conform to the traditional methods of resolving disputes in the Inuit culture¹⁹⁷. Nuttall has also pointed out the lack of knowledge of Inuit culture exposes companies to making mistakes in the choice of the periods in which to conduct meetings. They are often held in summer, or on sunny days, when the Greenlanders are engaged in fruit picking, fishing or other traditional activities¹⁹⁸. This circumstance reduces drastically the PP, so the companies and the Government have to change the mode of seminars and hire more Greenlandic staff and interpreters¹⁹⁹.

Unfortunately, the problems of transparency in democratic processes do not stop at public consultations. Deliberative democracy should theoretically put the social preferences of the participants ahead of those for who hold the power to decide, though in practice civic judgment is given top priority.

Beyond the phase of the environmental and social assessments with PP, the final decision is made of the Interior of the Government, without any parliamentary review. This is possible given the complex nature of the Greenlandic political system that controls mining activities. In fact, the Government grants the license after having received all the documentation from the company, requests an assessment from the authorities (for example, MRA, research institutes, Environmental Agency) and specific departments (such as Geology and Licenses). If the documentation is acceptable, then the license is granted. Therefore, what could be considered democratic, like the PPs, are placed in the background by administrative mechanisms²⁰⁰.

Additionally, these administrative mechanisms often take a long time and the value of meeting content is not updated to new discoveries and more modern technologies.

¹⁹⁷ Ibidem.

¹⁹⁸ NUTTALL, Mark. “Zero-tolerance, uranium and Greenland’s mining future”, *The Polar Journal*, 2013, vol. 3, n° 2, p. 368–383.

¹⁹⁹ Aaen, P.17

²⁰⁰ Marine Duc, « L’extractivisme sans extraction ? Au Groenland, des politiques de développement territorial entre volontarisme minier et dépossessions », *Géoconfluences*, 2017.

(URL : <http://geoconfluences.ens-lyon.fr/informations-scientifiques/dossiers-regionaux/ailleurs/extractivisme-mines-groenland>, last accessed on 25th March 2019)

7 Fieldwork Study

This chapter investigates the opinions of the local population on the management of natural resources, especially with regard to future expectations and the concrete opportunities of the mining sector. The first part is dedicated to the analysis of the Inuit position in the decision making process. The author makes a historical *excursion* of Inuit governance on the sector and outlines the major contrasts between Inuit culture and the public consultation and hearings model applied by the companies.

Furthermore, the inclusion criteria of the local community will be described through the analysis of the EIA and SIA.

In the second part, the author will outline the point of view of the mining companies in Greenland, between bureaucracy and promising economic prospects.

The last part will be dedicated to the field-project "The mining impacts of mining sector on youth in Greenland" conducted at the University of Greenland, between September 2018 and January 2019. The author will briefly explain which are the main difficulties and hopes of young Greenlanders in the mining sector.

All the data that emerged from the survey were used to discuss the entire analysis of the chapter.

7.1 Inuit identification in Mining Sector: included or excluded?

90% of the Greenland population has Inuit descentance, while 10% are Scandinavians, mostly Danes, among other immigrants. It is assumed that the earlier population emigrated from the territories of North America and settled along the coasts of the island. The Inuit have been traditionally the only peoples to live in the inhospitable Greenland and are the first to experience a totally indigenous self-government in the Arctic.

Despite this evolution in Inuit governance, the population has maintained its traditions and customs over time. Like other indigenous cultures that live

in nations with non-indigenous citizens, the Greenlandic economy is mixed, combining subsistence economic activities with more western and industrial ones. Based on the relationship with the international community, some cities have had a different industrial development and culture. Nuuk, the capital has a much more European economy compared to Narsaq where traditional activities such as fishing, hunting and herding are still practiced. The different experience in international relations has greatly influenced the perception of the mining sector of the population.

Over time the Inuit have adapted to their territory including very cold weather, developing hunting and fishing techniques necessary for survival. The majority of the population prefers to be outdoors and lead a life without fixed schedules, therefore, the urban landscape with structured office jobs are not suited to the history of this people. Even if in some parts of Greenland, as in Nuuk, people has adopted a western lifestyle more than in other regions (East or North). The transition but a none a subsistence economy and an industrial one is deeply felt by the young Greenlanders, who, despite having adopted a western lifestyle, still enjoy activities like hunting or fishing²⁰¹.

The difficulties of integrating the Western model into the Inuit culture are also clearly visible in the educational sector, where, also due to the lack of structures, many young Greenlanders fail to complete higher education. Compounding the problem, is the lack of infrastructure and communication networks by land and economy which has greatly reduced the mobility of the population. This immobility has had two effects. Firstly, it has allowed the continual transmission of the traditional lifestyle, but on the other hand it has made the inclusion of the population in some sectors such as mining even more difficult. The low mobility of the population has also limited the inclusion of part of the population in the decision-making processes.

Since Greenland gained full control over mining activities in 2009, Self-Government has shown that it does not have the necessary experience to manage all aspects of the industry. The lack of transparency and the difficulty

²⁰¹ HANSEN A.M, VANCLAYB F., CROALA P., ANNA-SOFIE HURUP SKJERVEDALC A.S, “Managing the social impacts of the rapidly-expanding extractive industries in Greenland”, *The Extractive Industries and Society* 3 (2016) 25–33, p.27-28 (<https://www.sciencedirect.com/science/article/pii/S2214790X15300071>) last accessed on 29th March 2019)

of accessing documents relating to ongoing mining projects has lowered the trust of the Greenlanders in their own Government ²⁰².

The government and local NGOs (e.g. Greenland Transparency) have tried to resolve the situation by increasing the democratic process, through the PP, especially during the whole period from the granting of prospecting final license²⁰³.

As explained in the previous chapters, the Government promotes public participation, recognizing the PP as an essential element for the drafting of the EIA and SIA. Furthermore, the MRA's amendment of 2014 highlighted the practice according to which the company must present a detailed project of the probable risks and mitigation measures when the Government assumes that the mining project can have a very strong impact on the state and the environment. To facilitate this process, the Government assumes the responsibility to create a foundation with the aim of training the population on real risks.

The second category of consultation focuses more on social dynamics and economic aspects. Usually, this kind of meetings is the most appreciated and followed by the population, especially in those areas where the unemployment rate is very high²⁰⁴.

In these 10 years of Self-Government, the Government has aspired to increase the participation of the population in the mining sector also at the working level. Article 95 (a) of the MRA invites companies to hire ever more local workers²⁰⁵. However, companies may employ external workforce if they do not find the adequately qualified labor in the area.

“ Unemployment must be fought with skill development initiatives focused on the mineral resources sector. ” (Government of Greenland, 2014, 13)²⁰⁶.

²⁰² *Ibidem*.

²⁰³ HURUP SKJERVEDALC OLSEN A.S ,HANSEN M.A, “*Perceptions of public participation in impact assessment: a study of offshore oil exploration in Greenland*”, Impact Assessment and Project Appraisal, 2014, 32:1, 72-80, p. 72-3(DOI: 10.1080/14615517.2013.872842), (<https://www.tandfonline.com/doi/abs/10.1080/14615517.2013.872842>) last accessed on 29th March 2019)

²⁰⁴ *Ibid*. FUSCO S., pp. 29-32

²⁰⁵ TIAINEN H. “*Contemplating governance for social sustainability in mining in Greenland*”, Elsevier Ltd., 2016, p.285-286 (<https://www.sciencedirect.com/science/article/pii/S0301420716300551>) last accessed on 29th March 2019)

²⁰⁶ *Ibidem*

In 2008, the Government invested to create a special school for training in the mining sector²⁰⁷.

Despite the small numbers in the registrations, the number of graduates is growing very slowly. In fact, the weak school system and the long distances from the family put a strain on the young Greenlanders who eventually decide to leave school.

Table 6: Number of enrollment and diploma granted by school²⁰⁸

Year	Applications	Enrollment	Diploma
2018	27	11	8
2017	26	17	7
2016	No data	No data	5

The abandonment rate of the Greenland School of Minerals and Petroleum studies is very high due to several factors such as difficulty in respecting class schedules, homesickness, smoking, alcoholism and depression.

Furthermore, young Greenlanders are losing trust in a future in mining, as the companies fail to hire local workers. Considering that there are still very few active mines in the area, the risk of unemployment in the sector is still very high.

Furthermore, China's growing interest in the exploitation of natural resources in Greenland creates perplexity among the population which does not place trust in Chinese safety standards²⁰⁹. Additionally, a wave of Chinese immigration could create social tensions in equal measure. The city of Maniitsoq is already experiencing this situation, where apparently the Chinese community has not established close ties with the local community²¹⁰.

Speaking of security, the consequences for human health are another deterrent to the motivation of young people to pursue a career in

²⁰⁷ Official Website of GREENLAND SCHOOL OF MINERAL AND PETROLEUM (<https://www.kti.gl/da/uddannelser/raastof> last accessed on 29th March 2019)

²⁰⁸ Ibid. FUSCO S. pp. 36-39

²⁰⁹ Ibid. FUSCO S. 2019, pp. 32-24

²¹⁰ Ibidem

mining. Most young people are afraid of fine dust and potentially toxic materials that could lead to the development of diseases in the future.

However, the biggest problem facing the local population and NGOs is still misinformation. For NGOs, the PP is an important training and sharing tool for the sector²¹¹.

Summarizing what has already been stated previously, disinformation can occur in three ways:

- Lack of access to documents concerning mining projects
- Cognitive asymmetries and difficulties in understanding risks and technicalities
- Incorrect consultation methods that are not compatible with traditional Inuit dispute resolution systems

According to O'Faircheallaigh, the term PP can be interpreted in different ways. Everything depends on the expectations of the various investors. According to this statement, the PPs would not refer to a single consultative method, but for the sole purpose of informing the local population and helping it participate in decision-making processes²¹².

Many questions were raised during the consultations conducted in Narsaq. Despite the online publication of the feasibility report from the company (GME), the population continues to be divided into two between those in favor of the reopening of the uranium mine and those who are opposed. The people in favor of the reopening are convinced that the mine could reignite the slow-down economy of the country. In addition summer tourist activity in Narsaq is in a slow state of disrepair. Activities close and many young people go away and buildings built in the 1980s to accommodate mine workers, to date, are completely empty. On the other hand, people are less afraid of environmental risks and of the cessation of traditional activities that have made South Greenland famous such as sheep farming and agriculture, as the Southern region is the only one that can be cultivated throughout the island.

People still complain about inadequate information from the company. Furthermore, despite the fact that GME has negotiated with the

²¹¹ Ibidem

²¹² HANSEN A.M, VANCLAYB F., CROALA P., HURUP SKJERVEDALC A.S., p.29-30

labor union and the ICC, still many questions from citizens have not been met²¹³.

In 2015, ICC Greenland published the project named '*Better citizen involvement on Kuannersuit*' made by the Eskimologist Mads Fægteborg and Mia Olsen Siegstad, with the aim of evaluating the quality of the public consultations made during the Kvanefjeld uranium mine project. The project revealed a strong discontent and concern among the inhabitants of Narsaq and the neighboring cities, especially among those who carry out grazing and agriculture activities. The biggest concerns are around the environmental pollution, especially on waste materials in Lake Taseq. Many problems, such as radioactivity in the air, appear not to be fully understood and do not meet reasoned answers on the part of the interviewees²¹⁴.

7.2 “REE” Like Gold: Voice To Mining Companies

Taking O'Fairchealaigh's analysis, the perceptions of public consultations depend on the investors' different expectations. Obviously every investor interprets PPs differently based on the use made of them.

As outlined, the NGOs and the population retain the PP as a tool to increase people's influence in decision-making processes.

The Government, on the other hand, as Hansen says, take care of the PP in order to confirm its complete control over the administration of natural resources²¹⁵.

Finally, for mining companies, PPs are a legal requirement to complete the request for obtaining the final license.

Despite this, the mining companies interviewed have revealed other important data. First of all, the mining sector is not so prosperous in Greenland. In fact, the long bureaucracy and the high investments required to establish critical infrastructure in the territory, greatly discourages investments.

Obviously, mining companies exert a lot of social pressure, promising jobs, training and economic benefits.

²¹³ *Ibid.* FUSCO S.

²¹⁴ FÆGTEBORG M., SIEGSTAD O.S, "*Ajorpoq' - we get no answer!*", published by ICC Greenland, 2015, pp.80-87 (last <http://inuit.org/news/ajorpoq-we-get-no-answer/> accessed on 8th March 2019)

²¹⁵ HURUP SKJERVEDALC OLSEN A.S ,HANSEN M.A, p. 75

Furthermore, the exploitation of mineral resources has always been considered essential to support the island's independence movements.

Given these drawbacks, it is natural to wonder why many companies then decide to continue or start a business in Greenland. Mostly, many mining companies find less bureaucracy and less restrictive environmental regulations than those of their countries of origin. Like China, many countries have begun to invest in countries with a high rate of transparency and a more stable political situation²¹⁶.

Furthermore, Greenland gained full control of mining activities when the price of raw materials rose, attracting a large number of foreign investments.

In this dynamic of interests, Denmark has raised many doubts about immigration law and environmental problems, especially in the case of partnerships with China. Other questions arose from the fact that China has expressly announced that, for reasons of maximizing the proceeds, it would pay lowered the minimum wages. Greenland has responded to the declaration with an act, the Large-scale Project Act, which not only favors the immigration of foreign workers but also grants lower wages for workers employed in mines of a certain size. This Act has reached its legal effectiveness through an amendment to a 2013 Danish law²¹⁷.

Furthermore, financial statements are high, especially when it comes to the trade and processing of uranium. Given the uses of this element the market would open up immediately. The trade of uranium, however, involves many political tensions, because the list of probable stakeholders is very long and choices must be made in view of a future independence.

²¹⁶ WILLAING ZEUTHEN J., RAFTOPOULOS M., “*Promises of hope or threats of domination: Chinese mining in Greenland*”, *The Extractive Industries and Society* 5 (2018) 122–130, p.123 (<https://www.sciencedirect.com/science/article/pii/S0301420716300551> last accessed on 29th March 2019)

²¹⁷ WILLAING ZEUTHEN J., RAFTOPOULOS M., p. 124-5

7.3 Field-project : The Mining impacts on youth in Greenland: expectations and real opportunities

This section is based on a combination of desk-based research, field research and post-fieldwork interviews and correspondence with key respondents. The fieldwork took place in Greenland during the Fall semester between September 2018 and January 2019 . This was supplemented by follow up email correspondence. The fieldwork took place in Narsaq (population 1300) in Kommune Kujalleq , Sisimiut (population 5500) and Maniitsoq (population 2530) in Qeqqata Kommunian, Nuuk (population 16,992) in Kommuneqarfik Sermersooq. The field research involved over 16 formal and informal interviews, and other forms of engagement, including spontaneous conversations and school visits.

Some of these conversations have been mentioned in the references of this thesis, but none with the name of the interviewee. This decision is due to the choice of respondents to be not mentioned in an official document. Among these interviews, three are indicated with the name of the company or organization they represent. During the visits, notes were taken that increased my knowledge of whether or not my point of view in the sector was clarified. This work was supported with the analysis of documents published online by the companies and made accessible by the Government of Greenland. The data collected was used for the "Field-Project" course offered by the University of Greenland. Subsequently, this project has been updated with the analysis of academic articles.

The goal of field-work was to see the impact of the mining sector on society, the economy and the environment. In particular, the impacts on the young people of Greenland were considered.

Despite this, the data has shown tensions between the local population and the intentions of the managers of the mining companies. This analysis has provided many inputs to understand the anointed point of view of the sites, including the paradox of those who are afraid of losing their land and traditions, but who also fear not being included in, and thus losing the benefits of the mining sector, and attracted mining companies from the commercial utilities of the Greenland natural resources. Among the interviewees, the NGO Greenland Transparency also contributed to increasing the content of this project.

To begin, it is necessary to geographically contextualize the research sites, accompanied by the objectives for each site.

Narsaq: Research at Narsaq was based on the interviews with the locals, an inspection of the place in order to determine how far it is from the mine (10km from the inhabited center) and influence of the mine on the life of the citizens. As the Kvanefjeld case was much discussed, the research was conducted as objectively as possible and by respecting the principle of transparency, drawing on data from official sources without any political influence.

Maniitsoq: Research was focused on the public hearings, essential for obtaining the final license for the companies. The assisted during a public re-examination attended by the Mayor, in which locals were able to participate and discuss their concerns and proposals regarding mining.

Sisimiut: Research conducted at the Greenland School of Mineral and Petroleum focused on the socio-economic impact of mining.

The research was also conducted in **Nuuk**, during meetings and interviews with the major exponents of local NGOs and in the headquarters of the mining companies.

The following is a list of interviews conducted during the four months of research:

Table 7: List of interviews²¹⁸

Investigative Method	Location	Number of Participants	Age group	Gender	Interwiewee's Occupation
Personal interviews	Nuuk (HQ of Mining Company)	2	40-50	M/M	Mining company's Manager/ Director of construction company
-	Nuuk (Transparency International Greenland)	1	50-60	F	Main exponent of organization
-	Nuuk (Government of Greenland)	1	30-40	M	Officer of Department
Informal conversation	Nuuk (city)	2	60-70	F/M	Employers
Semi-structured conversation	Nuuk (city)	2	20-30	M/M	Students
Personal interview	Sisimiut	1	50-60	M	School Director
Informal conversation	Sisimiut	2	60-80	F/F	Municipality employer, Housewife
Mail interviews	Sisimiut	1	40-50	F	School employer
Personal interview	Narsaq	1	20-30	M	Employer
Semi-structured interview	Maniitsoq	2	60-70 20-30	M F	Fisherman Student
Informal conversation	Maniitsoq	1	40-50	F	Dentist
Total		16			

²¹⁸ Ibid. Interview to the personnel in the Greenland School of minerals and Petroleum.

The results of the survey confirm the great benefits and high expectations of mining in Greenland. In particular, young people think that this sector guarantees a good income, the possibility of being emancipated from the family, of receiving training and traveling. Despite the great advantages, the state subsidy to support the unemployed (tax relief, monthly social allowances) creates a strong deterrent for young people who would be forced to leave home and take daily courses.

Despite the cultural differences between the vast regions of Greenland, young people interested in the mining sector come from all parts of the country. Therefore, there is no prevalence of boys from the South, although there are most of the mining projects in progress. In fact, many young people from Narsaq, for example, are much more interested in the tourism sector or in sports than in mining. Even in the cities of Maniitsoq and Sisimiut, among the largest cities in the country, young people look to a future outside the sector.

Moreover, the sense of non-inclusion of the population in the sector and the high risks of mining work, creates a great deal of mistrust but also pre-health care. However, the mining sector does not always guarantee the expectations of young people who intend to undertake training. In fact, most of the companies in the area are foreign and many of them prefer to import specialized personnel from their country of origin. This choice is also due to the language barriers of the Greenlanders (whose second language is Danish, not English) and also to the educational limitations of the only school in Greenland that does not allow for a complete specialization.

" Therefore after More than 12 years of continuous drilling in Greenland there is not one skilled Greenlandic diamond core driller"²¹⁹

This situation has led many Greenlanders to leave Greenland for work and education reasons. It is very rare that young people, having finished their studies, return to their country of origin. According to the author, the mining sector could be a valid tool for the repatriation of Greenlandic youth. The Government could allocate more funds to local training but above all offer jobs in the administration and management of the sector.

²¹⁹ FUSCO S' "The impacts of mining sector on youth in Greenland", Field-project, University of Greenland, January 2019. Supervisor: Associate professor, ph.d., research coordinator, Ilimmarfik, E-mail: maac@uni.gl

8 Conclusion

Extractive industry is not new in Greenland, with a long history of mineral exploitation. What has changed over time however, is the role played by the Inuit population in the sector. Moving from being an indigenous population and subject to a colonial system characterized by the exploitation of natural and human resources by outside powers, to being an affirmed self-governing country with full authority over resources.

This process of administrative transfer in Greenland has profoundly changed the legal status of the island, transforming it from a colonial-style legal system to a purely dualistic one.

This new governance allows Greenland to independently manage the exploitation of natural resources, such as fishing and mining resources, standing autonomously in negotiations on the international market. This passage of greater responsibility has profoundly changed the Greenlandic society. Many cities along the west coast of the island have adopted a more western style of life. While in the North and East there remain small traditional settlements where people lead lives much more devoted to indigenous activities, and identify themselves as a separate ethnic group. This clear distinction has jeopardized opinions on indigeneity in Greenland, and on the current management of natural resources, including methods of public participation in decision making processes.

On the practical side, Greenland does not yet have the governance experience and knowledge to manage the sector, either from an economic point of view, or in the assessment and mitigation of environmental and social impacts. Even today, self-government uses peaceful cooperation with Denmark through the use of external personnel and bilateral agreements.

The current dualistic system of Greenlandic governance does not allow the Self-Government to ratify international treaties, though it can decide whether to extend or limit the effects of the international obligations to which Denmark wants to commit itself.

Among the international instruments that Greenland enjoys the effects of are the ILO No.169 and the UNDRIP. Both of these instruments are legally

binding thanks to the ratification of Denmark. ILO No.169 and the UNDRIP form the basis of the protection of indigenous rights, elevating the Inuit to subjects of international law. With regard to the legal implications of these conventions, the ILO No. 169 and the UNDRIP affirmed the obligation of states to respect the rights of the land occupied by local communities, and the inclusion of PICF for exploitation natural resources and possible relocation of populations.

Greenland is aware that the mining sector contributes to the social and economic development of the island, especially if all stakeholders are included in the planning and decision-making processes. The Greenlandic Government has taken note of the difficulties and has worked to ensure that consultation of local communities on critical matters, and the education of communities about the possible risks and benefits of mining projects. Precisely for this reason companies have been asked to evaluate the environmental, social and economic impacts of potential projects (EIA,SIA, IBA), including in the analysis the public consultation of local communities.

In addition to the MRA forecasts, the Greenlandic Government has also drafted documents to support the good practice of public consultations. The Standard Terms for Licenses of Minerals for example, outlines the essential guidelines for companies to conduct appropriate consultations. Public consultations are intended to inform the public but also as fora for the exchange of opinions and ideas.

Despite this, based upon recent analysis conducted on the spot, and the results obtained from the projects of NGOs and research institutes, local populations do not reportedly feel involved in these decision-making processes. Meetings and seminars offered by the mining companies do not seem sufficient to guarantee public education on the risks and benefits of mining or ease of access to public documents.

To cite an example, the aforementioned case of the uranium mine in South Greenland has brought to light the weaknesses of the Greenlandic legal system. The population of Narsaq is completely divided into two, between those who consider themselves favorable to the mine, and those who are afraid of possible damage to the environment and human health associated with uranium extraction. Most are dissatisfied with public hearings and consultations, and conflicting opinions often depend on whether or not they are directly affected by the mine. Moreover, the long disputes and political uncertainties over the commercialization of uranium and the division of responsibilities between the Danish and Greenland authorities leave the

population to glean their information from a poorly resourced Greenlandic media, categorized by few broadcasters who often use the same sources of information or are financed by the Government.

ILO No. 169 and UNDRIP do not establish any standards according to which the EIA and SIA should be conducted. Furthermore, Greenland's withdrawal from the EU, and renunciation of EU programs to protect and control the use of uranium, saw the renegotiating of agreements by Denmark.

This conduct by Denmark and Greenland creates a great deal of mistrust among the Greenlanders and pushes the largest local NGOs to complain about the lack of application of some international legal instruments on the right to information and transparency.

In particular, major concerns surround the failure to extend the effects of the Aarhus Convention to Greenland, which would enshrine the right of public participation in decision-making processes and access to justice in environmental matters. Greenland has shown no will to formally apply this.

The non-application of the OECD Due Diligence Guidance in Greenland is also disputed.

According to Greenland Transparency, the lack of reservations on the application of the Greenland Convention would extend the effects of these documents also to companies operating on the island. Greenland has never explicitly expressed the will access, so do not bind companies unless they do not come from member countries of the OECD.

From the analysis of these documents it has emerged that public consultations do not hold real political weight. In fact, decisions for final licensing seem to be taken at the administrative level without knowing if these decisions were taken based on the results of the PPs. This fact unfortunately strengthens the requirement for greater transparency of actions by companies and Governments for the smooth running of democratic processes.

This lack of transparency has ignited many debates, above all because Greenland still has a very narrow post-colonial elite, among which cases of nepotism and corruption are still very frequent. In the administrative field in particular, there should be complete transparency as it focuses more Inuit representation to the political level. Also in this case, Greenland has not declared its intention to adopt the Extractive Industries Transparency Initiative (EITI), which sets standards is transparency and accountability for the exploitation of natural resources.

The fragility of Inuit representation in the processes of decision-making greatly undermines the democratic systems in the mining sector, which by virtue of attracting political and economic interests, is very vulnerable to corruption.

Such a finding highlights the asymmetry of expectations and interests among different stakeholders in Greenland. On the one hand, companies try to perform every task assigned to obtain the license, while on the other, the Inuit communities try to understand the benefits and risks of the projects. In addition to the MRA provisions, the Greenland Government has also drafted documents to support the good practice of public consultations. The Standard Terms, for example, offers the essential guidelines for companies to conduct appropriate consultations. Public consultations are intended to inform the public, but is also an important opportunity for the exchange of opinions and ideas.

In reality, the whole system appears to be very vague and the Greenlandic media, being partly funded by the Self-Government, cannot be trusted to hold it to account.

Finally, some final considerations regarding the possible resolutions that Denmark and Greenland could adopt, especially in a probable independent future.

First of all, it is not surprising that many NGOs and local associations have requested a reinforcement of the internal Greenland laws and the ratification of further international treaties by Denmark.

The lack of clarity of the status of the Inuit confuses their political strength. Also in terms of compensation for damages, the Inuit, in the nature of their Self-Government, do not enjoy any special protection. Not even in line with their spiritual bond with Nature or with traditional activities (fishing and hunting).

Denmark could also repeal the land reserves in line with some of the most important international conventions and also ratify the additional UN protocols, such as the OP-ICESCR in order to help Greenland better monitor the social situation surrounding mining.

As far as independence is concerned, Greenland should strengthen the system and the management of natural resources, implementing more consultative measures and adopting higher standards of transparency. Greenland should also begin to predict a system that would strengthen the rights of citizens, abandoning the indigenous issue but taking appropriate measures for the protection of local traditions.

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