



Economic and Social Council

Distr.: General

_____ 2012

Original: English

Permanent Forum on Indigenous Issues

Eleventh session

New York, 7 – 18 May 2012

Item 9 of the provisional agenda¹

Future Work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues

Study, as examples of good practice, of the Indigenous participatory mechanisms in the Arctic Council, the Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat, and the Laponia management system

Summary

At its tenth session in May 2011, the Permanent Forum has decided to appoint Dalee Sambo Dorough, a member of the Forum, to conduct a study, as examples of good practice, of the Indigenous participatory mechanisms in the Arctic Council, the Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat, and the Laponia management system, to be submitted to the eleventh session of the Permanent Forum.²

¹ E/C.19/2012/1

² The author wishes to acknowledge the assistance of Carina Green, PhD, and Michael Teilus, Chairperson of Laponiatjuottjudus, for their elaboration of the Laponian World Heritage process.

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I. Introduction

1. The UN Declaration on the Rights of Indigenous Peoples [UNDRIP] crystallizes many of the necessary standards needed to ensure direct Indigenous participation in all matters that directly affect them, including those within the Arctic region.

2. This study provides a preliminary review of “examples of good practice” of participation of Arctic Indigenous peoples in the Arctic Council, the Lapland Management System, and the principles outlined in the Circumpolar Inuit Declaration on Resource Development. These three examples are reviewed against the backdrop of the relevant UNDRIP articles. Where appropriate, practices that are consistent or inconsistent with UNDRIP will be identified as well as conclusions and recommendations to potentially remedy shortcomings.

3. Emerging from the overall international trend to acknowledge and accommodate the status and human rights of Arctic indigenous peoples has been the willingness of nation-states to engage indigenous peoples and resolve outstanding claims to lands, territories and resources, especially recently in Canada and Greenland. At the same time, we have not seen uniform recognition of such human rights. For example, in Alaska, Scandinavia and the Russian Federation much remains to be done to secure respect for and recognition of the individual and collective human rights of the indigenous peoples of the North.

4. Though Arctic indigenous peoples are not all at the same level of development and security in relation to their rights to lands, territories and resources, they have made serious inroads toward the re-conceptualization of their relations with nation-states. The synergy generated by human rights standard setting and indigenous advocacy has centered on their status as the rightful owners of lands and resources in the Arctic.

5. Indeed, many Arctic indigenous peoples, through successful efforts to secure their collective human rights have progressed to a stage where they have an unarguable role and

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absolute responsibility, in the context of their collective human rights, to be direct participants in any and all regimes, mechanisms, and matters that affect their lives, lands, territories and resources. There are numerous examples of the collective manifestation of this capacity. To date, the best example is embodied in the provisions of the Labrador Inuit Land Claims Agreement. The Labrador Agreement illustrates the genuine nature of the indigenous right of self-determination in all of its inter-related, indivisible, inter-connected dimensions.

6. This study first briefly reiterates the relevant UNDRIP articles that engender good practices and are necessary to ensure and enhance indigenous participatory rights. This is followed by an abbreviated survey of conditions of Arctic indigenous peoples. Thereafter, the three examples and associated good practices are outlined. The conclusions and recommendations strive to be responsive to the ultimate objective of implementing UNDRIP standards in order to underscore elements indispensable for effective and meaningful participation of indigenous peoples throughout the Arctic.

7. It is extremely difficult to identify “good practice” generally due to the lack of consistency and equality of treatment within the cultural context of Arctic indigenous peoples’ human rights and fundamental freedoms as well as lack of UNDRIP’s comprehensive implementation. Certainly, if Arctic-rim states effected more specific, far-reaching strides to implement UNDRIP as well as other relevant international and national human rights, this study would have much more to reflect as “examples of good practice.”

8. Other applicable recent work expressly addressing the issue of indigenous peoples’ right to participate must also be noted. Most significantly, the Final report and Progress report on the study of *Indigenous peoples and the right to participate in decision-making* prepared by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)³ as well as various reports and documents generated by the Special Rapporteur on the Rights of Indigenous Peoples.

II. Relevant UNDRIP articles

³ A/HRC/EMRIP/2011/2 and A/HRC/EMRIP/2010/2.

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9. Article 3 addressing self-determination and Article 4 on the right of indigenous peoples to autonomy and self-government are central to any discussion of participation by and for indigenous peoples, nations, and communities. The right of self-determination, as articulated in Article 3 provides that: “Indigenous peoples have the right to self-determination.” This includes the right to “freely determine their political status” and to “freely pursue their economic, social and cultural development.” Article 4 emphasizes that in exercising the right of self-determination indigenous peoples have the right to “self-government” of their “internal and local affairs” and the “means for financing” these functions.

10. These two straightforward clauses succinctly describe the substance of indigenous human rights and the inter-related nature of those rights.⁴ Arctic indigenous peoples have demonstrated capacity and effective participation in local, regional, national or domestic, and international affairs through genuine self-determination and advances made in autonomy and self-government through land claims agreements or other constructive arrangements.

11. Articles 25-32 embrace related land, territorial and resource rights. Some of these standards have been effected through Constitutional or legislative provisions, land claims agreements or other forms of recognition of ownership, control, and jurisdiction by Inuit, Sami, and other Arctic indigenous peoples.⁵ Here, it is worth stressing not only the land, territorial and resource provisions of UNDRIP but also International Labor Organization Convention No. 169 and the ratification of this legally-binding instrument by Norway (in 1990) and Denmark (in 1996).

⁴ See also the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR); UN General Assembly 1970 Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations; and the Final Act of the Conference on Security and Cooperation in Europe, August 1, 1975. Reprinted in (1975) 14 I.L.M. 1295, Principle VIII.

⁵ See also Universal Declaration of Human Rights (1948), Article 17; International Convention on the Elimination of all forms of Racial Discrimination (1965), Article 5; ICCPR, Article 27; International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples (1989), Articles 7, 13(1) and (2), 15, 16(4) and other relevant articles; relevant instruments in the context of the Convention on Security and Cooperation in Europe; Convention on Biological Diversity, Article 8(j); Rio Declaration, Principle 22; and the General Comments issued by various human rights treaty bodies, e.g., CERD/C/RUS/CO/19; CESCR General Comment E/C.12/GC/21; and others.

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12. Articles 18 and 27 reflect direct Participation as an element of self-determination that is further reinforced by the concept and right to Free, Prior and Informed Consent (FPIC). The content and manifestation of the right of indigenous peoples to FPIC presumes direct participation and engagement in decision-making through their chosen representatives and procedures.

13. Article 40, related to resolution of conflicts and disputes, bolsters Article 18. Articles 7 and 8 concerning physical and mental integrity as well as peace and security are also integral to participation in processes that may adversely affect indigenous lands, territories and resources. These provisions are inter-connected with the issue of militarization addressed in Article 30 of UNDRIP. Article 29 concentrates upon environmental protection while Article 32 provides in relevant part that: 1. Indigenous peoples have the right to determine the terms for development of their lands, territories and other resources; 2. States must “consult and cooperate in good faith” with Indigenous peoples to obtain their “free and informed prior consent” prior to approving projects affecting Indigenous lands, territories or other resources; and 3. States must provide “effective mechanisms for just and fair redress” for the adverse effects of development and take “appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impact.”

14. The preambular language addressing sustainable and equitable development and Articles 17, 20, and 23 also should not be overlooked in relation to Arctic indigenous peoples’ participatory rights. Specifically in relation to Arctic indigenous peoples, many of which transcend national state borders. Article 36 is significant and requires the effective participation of indigenous peoples in order to ensure that their full range of human rights is adequately safeguarded.

15. Finally, the necessary contextual interpretation of the whole of UNDRIP dictates the need for states to recognize the rights of indigenous peoples to participate in any and all decision-making; such a dictate is especially obvious in the language of Articles 12, 27, and 31 that emphasize the duty of states to undertake actions and decisions “in conjunction with the peoples

concerned.”⁶ Article 46(3), which many states insisted upon including, implicitly embodies the concept of the right of participation of Indigenous peoples – a basic element of good governance.

“The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.”

III. Brief Survey of Conditions for Arctic Indigenous Peoples

A. Russian Far East

16. That neither local nor national authorities have provided any substantive response to the appalling conditions facing the approximately 1,700 Siberian Yup’ik in the Russian Far East begs for an overall strategy to secure their rights and interests to their traditional lands, territories and resources⁷ Though the regional government has made some progress, the national government has paid little attention to substantive recognition of Siberian Yupik rights.

17. The Inuit of the Russian Far East as well as all other ‘small nations of the Russian North’ face rapid industrialization due to non-renewable resource exploitation. The Inuit do not have any measure of control over or direct participation in these initiatives. In 2001, the Russian Federation adopted a law to establish permanent legal status for the territories traditionally used and inhabited by indigenous communities: Territories of Traditional Nature Use or ‘TTP,’ which is similar to the former Soviet concept of clan lands. Under this law, indigenous peoples would have a measure of control over the territories, and such lands and environment are to be protected from adverse impacts of resource exploitation. Few, if any, of these minimal laws have been implemented to date.

⁶ In addition to Articles 11, 14, and 22.

⁷ Discrimination against indigenous small-numbered peoples of the Russian North, Siberia and the Russian Far East, June 13, 2008, CERD/C/RUS/19, 23, October 2006; NGO Submission to the Human Rights Council, UPR 4th Session, 2–13 February 2009, transmitted 4 September 2008; and Parallel Information concerning the economic, social and cultural rights of the indigenous small-numbered peoples of the North, Siberia and Far East of the Russian Federation submitted to the Committee on Economic, Social and Cultural Rights, Fifth Periodic Report of the Russian Federation UN Doc E/C.12/RUS/5, 25 January 2010.

18. The UN Special Rapporteur on the Rights of Indigenous Peoples, S. James Anaya, has recommended that in the Russian Far East “Special attention should be paid to ensuring the successful implementation of legal guarantees at the local level for all Indigenous communities, such as by establishing reliable ways to monitor implementation and to remedy breaches of the guarantees.”⁸ He also noted the need for “certainty to the various laws that concern the right of indigenous peoples and particularly their access to land and resources”; impacts of extractive and other industrial activities; lack of opportunities for political participation, self-government, protections for traditional economies, and substandard conditions for health and education. Given this array of circumstances and lack of commitment on the part of the national government for direct dialogue with the indigenous peoples as well as no substantive implementation of UNDRIP, there is a very real possibility that the Inuit (among other small nations) of the Russian Far East will disappear.

B. United States (Alaska)

19. The Alaska Native Claims Settlement Act (ANCSA) of 1971 provided for 45 million acres of land (roughly 12% of the original indigenous territory) and \$962.5 million in exchange for lands lost. The lands and assets were placed in the hands of profit making corporations: 12 regional corporations and over 200 village corporations. The regional corporations retain surface and subsurface rights to lands conveyed to them as well as subsurface rights to those lands conveyed to the villages. There was no recognition of self-government or self-determination. In regard to examples of good practices of indigenous participatory mechanisms, the ANCSA corporations are intentionally focused upon economic development and the role they play in the free-market economy. They have been characterized by many as the furthest example from good corporate governance or corporate democracy. It is crucial to recognize the right of Alaska Native peoples to self-determination and self-government in order to give full effect to Alaska Native rights to participation in decision-making, even in the context of beneficiaries of their “own institutions,” e.g. the ANCSA state chartered corporations.

⁸ Report of the Special Rapporteur on the Situation of indigenous peoples in the Russian Federation, Conclusions and Recommendations, A/HRC/15/37/Add.5.

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20. The role of Alaska Native Indigenous governments, especially in relation to self-determination and self-government in the affairs of their respective members must be stressed. Many Alaska Native governments have been organized under the terms of the 1934 Indian Reorganization Act, amended in 1936 to apply to Alaska Natives. The most definitive listing of Alaska Native tribes was undertaken by then Assistant Secretary of Indian Affairs, Ada Deer (a Menominee Indian woman from Wisconsin), in 1993. Through this listing, Assistant Secretary Deer attempted to clarify the status, rights and authority of Alaska Native tribes in the face of the ANCSA. As noted, ANCSA did not address the right of Alaska Native people to self-determination and in particular the opportunity to transfer ANCSA lands to traditional institutions of indigenous government.

21. The exercise of local control through the state of Alaska chartered borough governments has met with some success. The North Slope Borough and the Northwest Arctic Borough are two examples of public government, with a majority indigenous population, that allows for extensive indigenous participation in matters that affect their status, rights, and lives. In addition, because of the primary importance of harvesting rights in rural Alaska Native economies, the numerous management and co-management regimes that have effectively functioned and furthered indigenous peoples' participatory mechanism and rights must be acknowledged. In particular, the Indigenous People's Council for Marine Mammals has become one of the key bodies incorporating management and co-management regimes dealing with beluga whales, polar bear, harbor seals, sea otters and Steller sea lions, walrus, and other marine mammals. One of the premier examples is the work of the Alaska Eskimo Whaling Commission, organized to safeguard the bowhead whale harvesting rights of the Alaskan Inuit in the context of the International Whaling Commission.

22. ANCSA purportedly 'extinguished' hunting and fishing rights as well as rights to all lands lost. The Act provided that those alive and born on or before December 18, 1971, and at least one quarter Native blood were eligible for enrollment as shareholders in the corporations.

23. In contrast, the language of Articles 20 and 33 (respectively) of UNDRIP recognize the right of an indigenous peoples to 'maintain and develop their political, economic and social systems or institutions' and to 'determine their own identity or membership in accordance with

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their customs and traditions,’ both of which are important dimensions of the right of self-determination. Further, despite the existence of the 1966 International Covenants, which state that ‘[i]n no case may a people be deprived of their own means of subsistence,’ ANCSA purportedly “extinguished” Aboriginal hunting and fishing rights, essentially “their own means of subsistence.”

C. Canada

1. James Bay and Northern Quebec Agreement 1975(JBNQA)

24. The James Bay and Northern Québec Agreement of 1975 provided for 8,151 square kilometers for the Inuit and \$225 million (Cdn) to Makivik Corporation on behalf of the Inuit (and to the Cree Regional Authority). In contrast to ANCSA, the Inuit were able to affirm exclusive harvesting rights throughout the lands transferred as well as over an additional 15,000 square kilometers of land. Provisions for the parties to re-visit the original Agreement were included and in 2005, a Partnership Accord was agreed upon. This provision is being implemented now, which allows for the recognition of this important modern day treaty as a living agreement and not one frozen in time.

2. Inuvialuit Final Agreement 1984 (IFA)

25. The Inuvialuit and Canadian government signed the Inuvialuit Final Agreement (IFA) in 1984. The Agreement provided for 90,600 square kilometers of land, including 12,980 square kilometers of subsurface mineral rights and \$152 million. In addition to hunting and fishing, the Inuvialuit have co-management roles in matters related to fisheries, wildlife, and environmental impact through various joint boards and councils. Self-determination and self-government were not addressed, instead the IFA generally replicated the ANCSA corporate model.

26. The major distinctions between ANCSA (in the USA) and the JBQNA and the IFA are the latter included actual and extensive negotiations through appropriate procedures involving individuals from their representative institutions, (rather than merely an Act of Congress or Parliament); a full and formal referendum allowing for free, prior and informed consent of the peoples concerned; and the final negotiated instruments are regarded as agreements rather than a

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“settlement.” Potentially more significant, these agreements affirmatively recognize hunting, fishing, and gathering rights as well as management and co- management. Finally, all of the Canadian agreements are explicitly recognized under Section 35 of the Canadian Constitution.⁹

3. Nunavut 1993

27. The Nunavut Land Claims Agreement is the largest Aboriginal land claim settlement in Canadian history. When the Agreement was signed, legislation was also passed leading to the creation of a new Canadian territory called Nunavut on April 1, 1999. The new territory is a public government serving both Inuit and non-Inuit in the form of a unicameral legislative assembly. Provisions for a form of self-government for the Nunavut Inuit were also included in the agreement. Inuit have title to approximately 350,000 square kilometers of land and of this about 35,000 square kilometers include mineral rights. Inuit and government are represented equally in matters concerning wildlife management, resource management and environmental boards. Inuit rights to harvest wildlife on lands and waters throughout the Nunavut settlement area were secured. A scheduled distribution of compensation over a 14 year period totals approximately \$1.161 billion (Cdn) as well as revenue sharing from royalties generated by oil, gas and mineral development on Crown lands.

28. Unfortunately the Canadian government has failed to uphold or respect the terms of the Nunavut agreement. The formal submission of views by the Land Claims Agreement Coalition¹⁰ (Canada) in the context of the Universal Periodic Review of Canada by the UN Human Rights Council puts the matter in stark contrast to what might be generally deemed cooperative relations between the government of Canada and Inuit.¹¹ Nunavut representatives

⁹ Constitution Act, 1982, Section 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, "Aboriginal Peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada. (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired. (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

¹⁰ Land Claims Agreement Coalition members include: The Council of Yukon First Nations (which represents land claim governments in the Yukon); Grand Council of the Crees (Eeyou Istchee), Gwich'in Tribal Council, Inuvialuit Regional Corporation, Kwanlin Dun First Nation, Makivik Corporation, Naspaki Nation of Kawawachikamach, Nisga'a Nation, The Nunatsiavut Government, Nunavut Tunngavik Inc., Sahtu Secretariat Inc., and the Tlicho Government.

¹¹ Universal Periodic Review of Canada, Submission of the Land Claims Agreements Coalition (LCAC) to the United Nations Human Rights Council September 8, 2008. See

http://www.upr-info.org/IMG/pdf/LCAC_CAN_UPR_S4_2009_LandClaimsAgreementsCoalition_JOINT.pdf

initiated a lawsuit in December 2006 against the government of Canada for failure to uphold the terms of this modern day land claim agreement.¹²

4. Labrador 2005

29. The Labrador Inuit adopted the Labrador Inuit Land Claims Agreement by referendum in December 2004. According to the Nunatsiavut Government web site the “The Labrador Inuit Land Claim Agreement (LILCA) defines the rights of Labrador Inuit in and to our ancestral lands. It is basically a contract between the Inuit of Labrador (represented by the Labrador Inuit Association), the Government of Canada and the Government of Newfoundland and Labrador. The LILCA was ratified by the Labrador Inuit; the legislative assembly of Newfoundland and Labrador; and the Parliament of Canada.” By virtue of their years of negotiation, the Labrador Inuit now own 15,800 square kilometers of land as well as traditional use rights (including hunting, fishing, harvesting and social and ceremonial use) to 72,500 square kilometers of land and 48,690 square kilometers of sea. This agreement specifies indigenous self-government and like other Canadian Inuit agreements provides for a management and co-management role for Labrador Inuit. The Agreement also provides for \$130 million (Cdn) in compensation and an additional \$120 million (Cdn) for development of self-government. It is highly significant that this agreement addresses off-shore water rights and the adjacent ocean zone extending to the limit of Canada’s territorial sea as well as specifying Inuit self-government, rather than merely public government or a corporate structure. The agreement also sets out “the requirement for a Labrador Inuit Constitution and identified fundamental matters that it must address.”¹³

D. Denmark (Greenland)

30. The 1979 establishment of the Home Rule Government in Greenland was the first step toward local, Greenlandic administration of domestic affairs. The Act recognized rights to natural resources and incorporated the element of consent by both parties in the event of exploitation. Though foreign relations and national security were originally left to Denmark, the Home Rule Government was consistently consulted on matters of direct or indirect impact upon

¹² See the Nunavut Tunngavik Inc. web site at <http://www.tunngavik.com/category/nti-documents/litigation/> for all relevant litigation documents; and Canadian Bar Association web site at http://www.cba.org/nunavut/main/sections_abor/news_2006-12-06.aspx for additional details.

¹³ See <http://www.nunatsiavut.com/index.php/en/lilca> for highlights and details of the LILCA.

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Greenland's interests, Council of European Communities legislation and means for Greenland Home Rule authorities to advance their own interests within the European Community.

31. On November 25, 2008, 75.5% of the Greenlandic electorate voted 'yes' on a referendum to pursue independence and nationhood.¹⁴ The 2008 referendum resulted from a comprehensive review and study by the Commission on Self-Government established by the Parliament in 2002. In follow up, on May 19, 2009 and June 12, 2009 adoption of the Greenland Self-Government Act, by the Danish and Greenlandic Parliaments respectively has dramatically advanced the public government of Greenland and also makes specific reference to subsurface and offshore oil, gas, and mineral rights as well as wide range of other key rights and responsibilities.¹⁵ As a joint action, both governments have a common responsibility for the Act. Though Greenland remains in the Danish realm, it is highly significant that the Act makes explicit reference to Greenlanders as a "people" as understood in international law.

32. The future efforts of the Greenlanders to re-define and re-conceptualize their relations with others, in this case initially through self-government but potentially through full sovereignty and independence, can clearly be traced to the constant, peaceful, and respectful dialogue and engagement of both parties: the peoples of Greenland and the Danish government. Issues as far-ranging as defense of Greenland and the strategic role of the Thule Air Base¹⁶ to cooperation with NATO and North Atlantic security to protection of the environment and the 2006 EU Partnership Agreement¹⁷ all signal an extraordinary shift towards real autonomy for the people of Greenland. At the same time, however, it must be recognized that this arrangement is not an

¹⁴ Ministry of Foreign Affairs, Denmark news release on referendum:

<http://www.ambprag.um.dk/nr/exeres/90374b68-bcca-4139-b538-614533ebcdd1.htm>

¹⁵ Act on Greenland Self-Government, Act no. 473 of 12 June 2009 (English translation) at

<http://uk.nanoq.gl/sitecore/content/Websites/uk,-d->

[.nanoq/Emner/Government/~/_media/6CF403B6DD954B77BC2C33E9F02E3947.ashx](http://uk.nanoq.gl/sitecore/content/Websites/uk,-d-.nanoq/Emner/Government/~/_media/6CF403B6DD954B77BC2C33E9F02E3947.ashx)

¹⁶ Agreement between the United States and Denmark, including Greenland, amending and supplementing the agreement of April 27, 1951, as amended, concerning the defense of Greenland, with joint declarations. Signed at Igaliku August 6, 2004. Entered into force August 6, 2004. With related joint declarations on environmental cooperation in Greenland; and economic and technical cooperation also signed in Igaliku (Greenland) by the same three parties. See www.nanoq.gl

¹⁷ COUNCIL DECISION on relations between the European Community on the one hand, and Greenland and the Kingdom of Denmark on the other, 9802/06 VL/cz, DG E II EN, COUNCIL OF THE EUROPEAN UNION, Brussels, 20 June 2006 (OR. en) 9802/06, GROENLAND 3.

Inuit specific one but rather a public government for all people of Greenland: Danish and Inuit alike. Therefore, UNDRIP remains relevant in terms of good practices for indigenous participatory rights in addition to Inuit economic, social, and cultural rights.

E. The Sami of Norway, Sweden, Finland, and the Russian Federation

33. Similar to the Inuit, the Sami inhabit a territory that transcends four different state boundaries: Norway, Sweden, Finland, and the Russian Federation, each presenting similar but inconsistent approaches to affirmatively addressing Sami human rights. Sami Parliaments have been established in the three Scandinavian countries (Norway. 1984) (Sweden, 1992) (Finland, 1995), but the Sami have had difficulty at the domestic level gaining full recognition of and respect for their right of self-determination and their respective rights to lands, territories and resources. The Sami Parliamentary Council,¹⁸ created in 2000, coordinates issues amongst the respective major Sami political institutions throughout Norway, Sweden, Finland and Russia. Yet, distinctions remain as to how each of the four relevant nation-states has (or has not) responded to Sami status, rights and interests.¹⁹ These distinctions require separate analysis to reflect the conditions facing these distinct Arctic Indigenous peoples. Reports specific to the Sami by the UN Special Rapporteur on the Rights of Indigenous Peoples should also be consulted due the limited scope of this study.

1. Norway

34. The Sami of Norway have made some progress following Sami custom and use in the treatment of their rights to lands, territories and resources under the Finnmark Act of 2005²⁰ based on recommendations from the Sami Rights Committee established in 1984. The 2005 Act mandates a Commission to address Sami land and resource rights, including those to particular “watercourses.” To date, little concrete action has been taken to affirm Sami rights to lands,

¹⁸ See http://www.eng.samer.se/servlet/GetDoc?meta_id=1088

¹⁹ See Preliminary Note on situation of the Sami people in the Sápmi region of Norway, Sweden, and Finland, UN Document A/HRC/15/37/Add.6; The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, UN Document A/HRC/18/35/Add.2; and Cases examined by the Special Rapporteur (June 2009 – July 2010) UN Document A/HRC/15/37/Add.1, 15 September 2010

²⁰ See Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (the Finnmark Act) at

http://www.galdu.org/govat/doc/the_finnmark_act_act_17_june_2005_no_85.pdf and http://www.galdu.org/govat/doc/eng_finnmark_act.pdf

territories, and resources under the Finnmark Act and its associated Commission. The need to address Sami reindeer herding rights as well as rights to marine resources and fisheries in particular also remain outstanding.

35. Some headway has been made to realize Sami political rights through the Sami Parliament or the “Sámediggi”, which “is an elected, representative assembly for the Sámi in Norway, with representatives chosen by direct elections in 13 constituencies across the country.”²¹ Although useful to engage the state in matters of Sami concern, it is unclear whether this mechanism is reflective of Sami desires or customs, practices and institutions as it seems entirely state prescribed.

2. Sweden

36. The Sami of Sweden have had far less success in attaining any substantive or comprehensive resolution of their economic, social, cultural or political human rights. The modest Sami Parliament Act confines the realm of Sami rights to “achieving a living Sami culture” without highlighting the vital ways and means to do so.²² In April 2011, the Swedish Supreme Court affirmed that three Sami reindeer herding villages have grazing rights to lands they traditionally used.²³ Except for the Laponia management system of the World Heritage Site discussed below, there has been no satisfactory resolution of greater Sami rights to lands, territories, and resources.

37. The Swedish government struggles with the differences between Sami nomadic life ways and the state development perspective. Yet, the recognition of Sami reindeer herding as an “occupation” though not adequate in terms of recognizing the inter-related, indivisible, and inter-connected human rights of the Sami people, may afford them the opportunity to advance such rights in the face of what appears to be near complete Swedish government control over everything Sami.

²¹ See web site of the Sámediggi at: <http://www.samediggi.no/artikkel.aspx?AId=884&MIId1=270>

²² See http://www.eng.samer.se/servlet/GetDoc?meta_id=1103

²³ Nordmaling case, April 2011 and related case being brought in the European Court of Human Rights, both referenced in an English news article at <http://www.sweden.se/eng/Home/Society/The-Sami-People/Reading/Supreme-Court-decides-Sami-land-dispute1/> accessed on 2/12/12

3. *Finland*

38. Though Finnish legislation appears quite progressive, the reality on the ground is far different.²⁴ Like Sweden, the reference to safeguarding language and culture is regarded as the basis for domestic legislation with little or no recognition of land or other fundamental human rights. Finland, however, does not provide for any acknowledgment of Sami reindeer herding rights. The most recent commentary on issues related to Sami land rights in Finland comes from the Committee of Ministers of the Council of Europe in relation to implementation of the Framework Convention for the Protection of National Minorities by Finland.²⁵ The Council specifically found that: there is a “lack of coherent government position towards issues related to the Sami.” The Council also noted shortfalls in protecting and promoting Sami language, culture and education and “limited progress” in resolving Sami land rights.

39. The full measure of Sami political rights of self-determination and self-government remain outstanding. The Council of Europe urges that the government “take rapid measures to unblock the current stalemate and re-establish a constructive dialogue with the Sami Parliament.”

4. *Russian Federation*

40. Like the Inuit of the Russian Far East, the Sami of the Russian Federation are far from realizing their basic human rights, let alone their distinct human rights as indigenous peoples. The small number of approximately 2,132 Sami on the Kola Peninsula have had a long struggle to simply clarify their status as a people not to mention difficulty safeguarding their rights to reindeer husbandry. They have been empowered by and maintained liaisons with the Sami Council and are observers to the Sami Parliamentary Council. Nevertheless, like many other Arctic Indigenous peoples, they face dramatic incursions onto their lands and territories at the hands of state driven initiatives for mining, hydroelectric schemes, and other development.

²⁴ The Finnish Sami territory is designated as Sami “homelands” but the Sami do not have any actual ownership rights.

²⁵ See Committee of Ministers of the Council of Europe documents CM(2011)168 and related document ACFC/OP/III(2010)007.

5. *Nordic Sami Convention*

41. An initiative to develop a Nordic Sami Convention has been under discussion between the three Sami Parliaments in Norway, Sweden, and Finland and representatives of each of these respective nation-states with the objective of finalizing a Sami regional-specific international instrument. The draft Convention aims “to confirm and strengthen such rights for the Sami people as to allow the Sami people to safeguard and develop their language, culture, livelihoods and way of life with the least possible interference by national borders.”²⁶ It remains to be seen whether this initiative will be effectively advanced. Most recently the UN Special Rapporteur urged the states concerned to re-engage in dialogue with the Sami to further this innovative objective.

42. The Sami Council, as an international ECOSOC consultative NGO, has played and will continue to play an important role in advancing Sami human rights locally, nationally, regionally, and internationally dating as far back as 1956. They are one of the Permanent Participants in the Arctic Council, discussed immediately below.

IV. The Three Participatory Mechanisms

A. *Arctic Council*

43. Inuit have espoused a circumpolar environmental protection plan dating back to the adoption of Resolution 77-01²⁷ at the 1977 Inuit Circumpolar Conference [now “Council” or ICC] gathering in Barrow, Alaska, as well as the later ICC Principles and Elements for a Comprehensive Arctic Policy,²⁸ The effort crystallized in 1991 when the Arctic Eight adopted the Arctic Environmental Protection Strategy, followed in 1996 with establishment of the Arctic

²⁶ See <http://www.regjeringen.no/upload/BLD/Nordic%20Sami%20Convention.pdf> for a copy of the Convention in English; and http://www.galdu.org/govat/doc/samekoneng_net.pdf

²⁷ See <http://www.ebenhopson.com/icc/ICCBoklet.html#RESOLUTIONS> and in particular, Resolution 77-01, which called for the drafting of a Charter to include “the development of a meaningful Arctic policy.

²⁸ Inuit Circumpolar Conference *Principles and Elements for a Comprehensive Arctic Policy*, p. 16, para. 3.

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Council,²⁹ a multilateral declaration to further international cooperation concerning environmental protection and sustainable development in the Arctic.

44. The Arctic as the traditional homelands of both Inuit and Sami, affords them a seat at the table. This was done through the designation of “permanent participant” status within the Arctic Council.³⁰ The Sami and Inuit as well as four other indigenous organizations participate directly with the Arctic Eight states in the deliberations and work of the Arctic Council. The Council’s Rules of Procedure³¹ ensure extensive consultation with the Permanent Participants ranging from lead of delegation to agenda items to participation in a number of international working groups focused upon specific issues. And, much of the work is undertaken on a consensus basis between state representatives and the Permanent Participants.

45. UNDRIP and more importantly, the substantial gains that indigenous peoples have made in securing the legitimate, collective right of self-determination and self-government combined with rights, responsibility and authority over vast territories, lend an urgent need to strengthen their status and role within the Arctic Council by upgrading their role from consultative to voting members.³² That issues related to international peace and security and in particular, the military activities of the Arctic rim states are not on the table, emphasizes the need to address the full array of indigenous peoples’ political, economic, social, and cultural rights in an inter-related, indivisible fashion. Furthermore, the actual Arctic Five (coastal states) have held extensive multilateral dialogues that have not included the Arctic Council Permanent Participants, which may have serious implications for Arctic Indigenous peoples.

²⁹ Declaration on the Establishment of the Arctic Council, ILM, Vol. 35, 1996, pp. 1,387ff.

³⁰ The initial organizations designated as Permanent Participants included the Inuit Circumpolar Council, the Sami Council and the Russian Arctic Indigenous Peoples of the North. There are now three additional organizations involved, including the Arctic Athabaskan Council, the Gwich’in Council International and the Aleut International Association.

³¹ SAO REPORT (Iqaluit): ANNEX 1, ARCTIC COUNCIL RULES OF PROCEDURE as adopted by the Arctic Council at the FIRST ARCTIC COUNCIL MINISTERIAL MEETING, Iqaluit, Canada, September 17-18, 1998 at <http://www.arctic-council.org/index.php/en/about/documents/file/13-ottawa-declaration>.

³² <http://www.inuit.org/index.php?id=436> accessed on 2/11/12 wherein ICC Chair, Mr. Aqqaluk Lynge stressed that: “In the future we hope the Arctic states and Permanent Participants can become equals in the working and decision-making processes and further strengthen the Council.”

B. Circumpolar Inuit Declaration on Resource Development Principles

46. The 2010 ICC General Assembly in Nuuk, Greenland, prompted discussion of extractive industries and in particular, non-renewable resource development throughout the Inuit homelands. The Assembly delegates decided “as a matter of urgency, to plan and facilitate an Inuit leaders’ summit on resource development with the aim of developing a common circumpolar Inuit position on environmental, economic, social and cultural assessment processes...” The ICC successfully organized the summit in February 2011 and released the Circumpolar Inuit Declaration on Resource Development Principles on May 11, 2011.

47. The Inuit Resource Development Declaration references the Arctic Sovereignty Declaration Inuit leaders adopted in April 2009. The 2011 document states that “those who face the greatest and longest-lasting impacts must have the greatest opportunities, and a primary place in the decision-making” concerning non-renewable resource development in Inuit Nunaat or the Inuit homeland. The Declaration underscores UNDRIP and affirms that: “Partnerships must include the meaningful engagement and active participation of Inuit in local communities who are most directly affected by resource development in *Inuit Nunaat*,” noting that “there is no free-standing or unqualified “right” to proceed with non-renewable resource development in *Inuit Nunaat*.”

C. The Laponian World Heritage Site

48. The Laponian area is a mixed World Heritage Site (WHS) in northern Sweden with a formal regime established to ensure a direct role for the Sami peoples in the conservation and management of 9,400 square kilometers of national parks and nature reserves. The Sami of the region have both management and co-management (with local, regional, and national Swedish authorities) of this UNESCO site where both the natural features as well as Sami reindeer herding culture are protected.³³ In light of the strong Swedish bias toward emphasizing natural and geological concerns over Sami cultural rights, practices and customs, the final result did not

³³ The official 1996 Committee determination stated among other matters that: “The site has been occupied continuously by the Sami people since prehistoric times, is of the last and unquestionably largest and best preserved examples of an area of transhumance.”

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come easily and required assertive action on the part of the Sami peoples to advance their rights and interests.

49. Through such a designation, Sami reindeer herding and its role in shaping the landscape and maintaining biological diversity has been underscored. Sami cultural and spiritual connections to the land remain strong and are reinforced by the distinct Sami role in the overall WHS management.

50. The new WHS management organization was launched in 2011 included local Sami principles that effectively influence Laponia management structure and ensures protection of Sami cultural values, associated historical sites and the reindeer herding industry.

51. Consensus decision-making has also become the common working method. The *Laponiatjuottjudus* underscores the importance of respect, open communication and ongoing dialogue among all the actors as well as all other communications with the broader local community. Local participation is reinforced through public deliberation – *rádedibme* – held at least twice a year, allowing local residents, entrepreneurs, organizations, and other parties to meet, discuss, and influence the full range of issues concerning the management of Laponia. This progressive historical management reflects both World Heritage values and sustainable as well as equitable development.

52. As of January 1, 2012, the official decree of the Swedish government took effect, making the *Laponiatjuottjudus* responsible and accountable for the management of the area. The unilateral mandate of the county administration for management is broken -- local reindeer herding Sami no longer have to gain permission from the county administration for matters such as building huts or other structures. In recognition of the unique and positive provisions, *Laponiatjuottjudus* was presented with a WWF Award for its progressive work to guarantee the effective participation of the local peoples and the emphasis placed on communication and collaboration in conservation management.

V. Conclusions and recommendations

A. Conclusions:

53. Provisions of the James Bay and Northern Quebec Agreement (JBNQA) that allow Inuit to re-visit the terms of the agreement and in particular, those related to self-government and self-determination, provide recognition of this important modern day treaty as a living agreement.

54. A range of Canadian agreements [James Bay, Labrador, and Nunavut] all include rights of indigenous peoples to expansive territories; exclusive harvesting rights; financial support for implementation; compensation for lands lost; surface and subsurface rights; management and co-management rights and responsibilities; and clear provisions for the right of self-determination and self-government.

55. The Labrador Inuit Land Claims Agreement makes provision for Labrador Inuit specific rights to “ocean zones” extending out to the territorial sea, which is an important recognition of indigenous economic, social and cultural rights. There is also specific provision of funds for development of self-government of the Labrador Inuit.

56. The Greenland Self-Government Act provides for not only extensive autonomy in domestic affairs but also a substantial role in foreign affairs of the Greenland government, which ensures that there is no false dichotomy attached to a peoples’ right of self-determination.

57. The range of examples of Sami parliamentary structures expressly provides for self-identification; recognition of the importance of the Sami language; and the importance of inter-generational rights by allowing for inclusion of Sami descendents. There has been at least minimal recognition of the importance of Sami reindeer herding as a traditional activity with economic, social, cultural and spiritual elements. The innovative and creative initiative to pursue a Nordic Sami Convention should be welcomed and looked upon as an example of proactive efforts by and for indigenous peoples.

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58. The inclusion of Arctic Indigenous peoples by the Arctic Council does in fact allow for extensive consultation, dialogue, and partnership between Arctic-rim states and the “Permanent Participants” as well as consensus decision-making.

59. The Inuit Resource Development Declaration emphasizes a number of vital provisions, including but not limited to the importance of those who face the greatest and longest-lasting impacts having a primary place in decision making; partnership; recognition that there is no unqualified right to develop non-renewable resources,

60. The Laponian World Heritage Site underscores a range of highly constructive measures and outcomes, including: direct Sami management and co-management; recognition of the importance of Sami reindeer herding; recognition of biological diversity as well as Sami cultural and spiritual connections to the lands, territories and resources.

61. Every initiative addressed throughout the study highlights the important work of non-governmental organizations such as the Sami Council and the Inuit Circumpolar Council to raise awareness at the international level about the crucial matters facing Arctic Indigenous peoples.

62. A number of Arctic-rim states have made significant strides in responding to the status, human rights, and demands of Arctic Indigenous peoples. Additional efforts must be made and substantially more political will needs to be displayed to effectively and uniformly realize the good practices illustrated herein.

B. Recommendations

63. Arctic-rim states should heed the views, conclusions and recommendations expressed by the EMRIP Progress and Final Report on the study on indigenous peoples and the right to participate in decision-making.

64. The government of the Russian Federation is urged to take concrete measures in response to the recommendations contained in the Report of the Special Rapporteur on the Situation of indigenous peoples in the Russian Federation, Conclusions and Recommendations UN

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Document A/HRC/15/37/Add.5 and in particular, those related to land and resource rights, extractive and other industrial activities, self-government, protection of indigenous economies, and health and education conditions. They should also respond urgently and positively to the issues contained in the Parallel Reports and UN Documents registered through the HRC UPR process.

65. The government of the United States and indigenous peoples concerned are urged to review the language of the ANCSA to ensure consistency with UNDRIP specifically in relation to: the right of indigenous peoples to self-determination, particularly to maintain and develop their political, economic and social systems or institutions of self-government; to determine their own identity or membership in accordance with their customs and, to be secure in the enjoyment of their own means of subsistence and development, or for just and fair redress for its impairment; to denounce the policy of “extinguishment” of Alaska Native Aboriginal hunting and fishing rights; and to address the outstanding issue of transfer of lands to traditional institutions of the Alaska Native people.

66. The government of Canada is urged to dispense with the litigation concerning the implementation of the provisions for the creation and functioning of Nunavut as it is inconsistent with the provisions of UNDRIP and in particular the preambular language emphasizing the fact that member states solemnly proclaimed UNDRIP as “a standard of achievement to be pursued in a spirit of partnership and mutual respect.”

67. The government of Greenland should assess the relevant provisions of UNDRIP, the Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat, and the Laponia Management System for purposes of ensuring and upholding a human rights based approach to renewable and non-renewable resource development, especially in light of recent exploratory oil, gas, and mineral activity. The Greenlandic government should also recognize the distinction between existing decision making institutions and processes in contrast to indigenous-specific institutions and processes and mechanisms.

68. The governments of Norway, Sweden, Finland and the Russian Federation are urged to take all necessary measures to address and affirm the rights of the Sami and Inuit to their

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traditionally owned, occupied or otherwise used or acquired lands, territories and resources consistent with UNDRIP Articles 25, 26, 27 and 28 .

69. The governments of Norway, Sweden, and Finland are urged to take concrete measures in response to the recommendations contained in the Report of the Special Rapporteur on the situation of the Sami peoples in the Sapmi region of Norway, Sweden and Finland, Conclusions and Recommendations UN Document A/HRC/18/35/Add.2 and in particular, those related to Sami rights to self-determination and lands, waters and natural resources.

70. The governments of Norway, Sweden, and Finland are urged to move away from all measures that have the effect of prescribing the content of the right of self-determination in relation to the respective Sami Parliaments.

71. The government of Finland is urged to yield to the Council of Europe's Committee of Ministers call for finding a solution to the dispute regarding the land rights and self-determination of the Sami peoples.

72. The Arctic Eight (and the Arctic Five) member states of the Arctic Council are urged to review and upgrade the role of the Permanent Participants from one of a consultative status to one of full voting members, especially in light of the increased capacity of Indigenous peoples and their corresponding rights. The increasing threats to the Arctic environment require real partnership among all concerned, including the original, first inhabitants of this region. In this regard, UNDRIP Article 41 is of particular relevance due to its specific reference to intergovernmental organizations, such as the Arctic Council.

73. The Arctic Eight states are also urged to consider inclusion of development as well as military and security issues in the work and deliberations of the Arctic Council in order to address the full array of indigenous peoples' political, economic, social, and cultural rights in an inter-related, indivisible fashion.

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74. All Arctic-rim states are urged to take a human rights based approach for the realization of indigenous peoples' participation in all matters that directly or indirectly affect their status, rights, lives as well as their lands, territories and resources. UNDRIP provides the relevant minimum standards for doing so.

75. All Arctic-rim states should recognize the urgent need for and begin to establish mechanisms for the full, effective and meaningful participatory role of Inuit, Sami, and small nations of the Russian North, consistent with the recognition of the right of self-determination, especially considering that such indigenous peoples are direct stakeholders. Consistent with Article 39 of UNDRIP, such measures should include financial and technical resources.

76. All Arctic-rim states, consistent with elements of sustainable and equitable development and the right of indigenous peoples to determine their own priorities for development, should guarantee the direct and immediate role of indigenous peoples in defining and determining all forms of Arctic development and in particular with regard to extractive industries.

77. All Arctic-rim Indigenous peoples should consider convening an Indigenous peoples meeting in order to discuss the objective of finalizing an Indigenous international legal instrument concerning all matters related to Arctic economic, social, and cultural development.

78. The UNPFII or a relevant UN agency should consider convening an expert group meeting on Arctic development, involving representatives from all Arctic indigenous governments, Indigenous non-governmental organizations, national and sub-national governments, and that such a gathering be organized to discuss the future of the Arctic, indigenous human rights, and Arctic regional specific issues ranging from, inter alia, the environment to development to sustainable Arctic communities.