



INUIT CIRCUMPOLAR COUNCIL

Contribution to EMRIP Study on Indigenous Peoples and the Right to Self-Determination

Marts 2021

We are happy to provide the following information as our preliminary contribution to EMRIP's study on Indigenous Peoples and the Right to Self Determination. We look forward to reviewing the study as it develops and future opportunities to offer additional details on Self Determination throughout Inuit Nunaat, especially offering supplemental materials from our four offices in Greenland, Canada, Alaska, and Chukotka, Russia.

The Inuit Circumpolar Council (ICC) has worked to secure recognition and implementation of Indigenous peoples' rights by States, sub-national governments, as well as by intergovernmental organizations. ICC was founded in 1977 to strengthen collective Inuit advocacy, secure affirmation of Inuit rights, and advance Inuit priorities and the right of self-determination. In order to more effectively advance Inuit priorities, ICC has worked in partnership with other Indigenous peoples and their representative organizations through a variety of domestic and international fora, as well as through intergovernmental organizations such as the UN human rights regime; UN Convention on Biodiversity (CBD); UN Framework Convention on Climate Change (UNFCCC); and UN Permanent Forum on Indigenous Issues. For example, ICC was pivotal in drafting and negotiation of the *UN Declaration on the Rights of Indigenous Peoples* and securing participation by Inuit and other Indigenous peoples in the Arctic Council.

The ICC has contributed to the evolving international legal framework related to the right to self-determination of Inuit and other Indigenous peoples, particularly the post-2007 adoption of the UN Declaration. Though the right of self-determination is discussed in a range of interrelated contexts, such as the “internal” aspects of autonomy and self-government addressed in Article 4 of the UNDRIP, the right of self-determination is addressed by the ILA expert commentary as equal to the right of self-determination applicable to all other peoples:



The inclusion of Article 46 para. 1 in the text of UNDRIP confirms that the Declaration does not create for Indigenous peoples a right unilaterally to establish their own State, *i.e.* a right of secession as a form of exercising the broader right of self-determination. Rather, by virtue of the right of self-determination, the peoples concerned are entitled to exercise an opportune degree of autonomy and self-government within the State in which they live, without providing authorization to carry out acts contrary to the territorial integrity or political unity of States. This said, however, Indigenous peoples continue to have the same right that all other peoples have to move toward secession in appropriate cases. As explained by the Supreme Court of Canada, all peoples have the right to “external self-determination [...] where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development”. According to this position, under general international law Indigenous peoples who find themselves in such a condition have the right to pursue secession. In this and other self-determination-related-respects, Indigenous peoples must be exactly considered as all other peoples (the term “peoples” being intended as referring to all entities it covers according to international law).¹

When understood in the context of either general principles of international law or customary international law, the ILA has underscored the central feature of the right of self-determination in their conclusion:

The relevant areas of Indigenous peoples’ rights with respect to which the discourse on customary international law arises are self-determination, autonomy or self-government, cultural rights and identity, land rights as well as reparation, redress and remedies.²

In 2008 the UN Special Rapporteur S. James Anaya noted how the UNDRIP “can be seen as embodying to some extent general principles of international law. In addition, insofar as they connect with a pattern of consistent international and State practice, some aspects of the provisions of the Declaration can also be considered as a reflection of norms of customary international law”.³

And, on this basis, the ILA Conclusions and Recommendations provided that:

States must comply with the obligation – consistent with customary and, where applicable, conventional international law – to recognize, respect, protect, fulfil and promote the right

¹ The Hague Report, **INTERNATIONAL LAW ASSOCIATION, THE HAGUE CONFERENCE (2010) RIGHTS OF INDIGENOUS PEOPLES, p 10 .**

² The Hague Report, **INTERNATIONAL LAW ASSOCIATION, THE HAGUE CONFERENCE (2010) RIGHTS OF INDIGENOUS PEOPLES, p 43.**

³ **INTERNATIONAL LAW ASSOCIATION SOFIA CONFERENCE (2012), RIGHTS OF INDIGENOUS PEOPLES, p 28**



of Indigenous peoples to self-determination, conceived as the right to decide their political status and to determine what their future will be, in compliance with relevant rules of international law and the principle of equality and non-discrimination.⁴

Circumpolar Inuit Declaration on Sovereignty in the Arctic

ICC adopted a Circumpolar Inuit Declaration on sovereignty in the Arctic (CIDSA) in 2009 to acknowledge and recognize our right to self-determination.¹ The CIDSA is central to our rights as a people and the right to *self-determination*. It is our right to freely determine our political status, freely pursue our economic, social, cultural, and linguistic development, and freely dispose of our natural wealth and resources. States are obligated to respect and promote the realization of our right to self-determination.

CIDSA declares Inuit as united people, though Inuit lives across a far-reaching circumpolar region, representing the Inuit of Greenland/Denmark, Canada, USA, and Russia. Our sense of unity is fostered and celebrated by and through the Inuit Circumpolar Council (ICC). Inuit sovereignty is not 'located' in a territorially bound state or even in local Inuit governments. Instead, sovereignty is in relations between Inuit physical ties to Arctic lands and territory, and the ICC's role in the international community.

As a people, we enjoy the rights of all peoples. These include the rights recognized in and by various international instruments and institutions, such as the *Charter of the United Nations*; the *International Covenant on Economic, Social and Cultural Rights*; the *International Covenant on Civil and Political Rights*; the *Vienna Declaration and Programme of Action*; and other international human rights instruments. Such rights have been affirmed by the Human Rights Council; the Arctic Council; the Organization of American States; and the various UN and OAS treaty bodies. The significance of this growing body of jurisprudence is aiding in the crystallization of Indigenous human rights as conventional principles of international law.

⁴ INTERNATIONAL LAW ASSOCIATION SOFIA CONFERENCE (2012), RIGHTS OF INDIGENOUS PEOPLES, p 30



With the increasing interest in our homelands – Inuit Nunaat -- it is even more significant that the CIDA is understood by not only the littoral States of the Arctic, but more importantly by the non-Arctic States seeking to gain a foothold in order to exploit resources and commodities. In addition, the increasing geostrategic nature of the Arctic, requires recognition of and respect for Inuit right of self-determination as well as the interrelated rights of Inuit to lands, territories, and resources, including the coastal seas and Arctic Ocean.

Inuit are an Indigenous people

As ICC worked to gain our rights nationally and internationally, it also became apparent that there was a need for an Arctic Policy. Over the years, the Inuit Arctic Policy has become the main document for development on many Arctic issues and has contributed significantly in numerous ways as the Arctic has changed profoundly since the beginning of this work. Arctic States and others are invited to join with Inuit in the ongoing challenge of building and carrying out a shared Arctic vision supporting the Arctic environment and beneficial to humankind.

In 2010, ICC finalized the Inuit Arctic Policy. It is recognized that Inuit rights extend across the circumpolar regions, including marine areas, and transcend Arctic State' national boundaries. Inuit have the right to enjoy the full measure of human rights without hindrance or discrimination. Inuit are an Indigenous people with the rights and responsibilities of all Indigenous peoples. These include the rights recognized in and by international legal and political instruments and bodies, such as the recommendations of the UN Permanent Forum on Indigenous Issues, the UN Expert Mechanism on the Rights of Indigenous Peoples, the UN Special Rapporteur, the 2007 *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)*, and others.

- The ICC Arctic Policy affirms that it is critical that Inuit be recognized and referred to both nationally and internationally as a distinct "people." Inuit are not mere "populations" or "minorities." These latter terms serve to unfairly deny or undermine the true dignity, status, rights, and identity of Inuit as Indigenous peoples.



- In order to promote and protect the wide range of Inuit rights, it will be beneficial for Inuit in each circumpolar region to develop a national strategy that would be carried out within their own state.
- Inuit must be accorded all the rights enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples*.²

Denmark affirms Inuit in Greenland as Indigenous Peoples in the Constitution and affirms Inuit are the only Indigenous peoples within the Kingdom of Denmark. Consistent with this distinct status as Indigenous peoples, the ICC is happy with the good cooperation that the ICC has with Denmark. For decades, the government of Denmark has recognized and affirmed the rights of Inuit of Greenland as Indigenous peoples, engaging with them as such at the national level and working collaborative with them at the international level within various Indigenous-specific fora at the UN, the European Union, the International Whaling Commission, and elsewhere.

With that said, the last few years, the ICC has taken notice of present administration of the Naalakkersuisut (Government of Greenland) have not in just one statement but on several occasions been expressing the view that Indigenous Rights will be more and more irrelevant as a more Self-Governing Greenland becomes a reality.³ This is a serious concern, especially if it is being understood as an attempt of undermining or denying Inuit rights, our distinct status as Indigenous Peoples, and a violation of our right to self-determination. This highlights that working for our rights is a continuous and important objective, and we can never take our rights for granted. ICC hopes Advocating for Indigenous Rights as well as UNDRIP will continuously be spread across the states.

There is an increasing list of recognition of and cooperation with Indigenous self-determination from Nation states and sub-national governments, including through legislative and constitutional recognition. In Canada, the recognition of the distinct status and rights of Inuit in section 35 of the Constitution Act is one example. This recognition has led to significant, high-level dialogue relevant to all of the rights affirmed in the UNDRIP in the context of the Inuit-Crown Partnership Agreement in Canada.



Within one of the four regions in Canada, significant developments have emerged. Specifically, in the context of the James Bay and Northern Quebec Agreement of 1975, the Agreement has been recently the subject of future amendment to address the specific right to self-determination.

In 2019, Nunavik Inuit started a new round of negotiations towards self-government, based on Inuit values, heritage and language. Canadian Constitution also acknowledges self-determination for Indigenous groups: “The inherent right to self-government is recognized as an existing Aboriginal right,” it says. The passing on Nunavik Constitutional Task Force is a significant Self-Determination Resolution that ICC is very pleased to see happening in Inuit Nunaat.⁴

In Alaska, though one may quibble with how the Alaska Native Tribal Healthy Consortium was created, it is significant that their actions in the face of the pandemic have put Alaska in the number one position of vaccinations per capita in the whole of the United States. Yet, numerous issues concerning the right of self-determination for Inuit Tribal and Traditional Councils remain outstanding, especially in terms of jurisdiction and authority over their lands, territories, and resources, there are some examples of extraordinary expression of the right of self-determination in management of resources central to Inuit food security. One is the work of the Alaska Eskimo Whaling Commission, which provides for age old protocols and mechanisms to thrive through the self-determined management of the Inupiat bowhead whale hunt. These activities have domestic elements of collaboration with the federal government as well as international dimensions within the context of the Inupiat representing themselves within the International Whaling Commission.

Exercise of self-determination by Tribes in Alaska:

- Over 230 tribes exist, and therefore have some level of jurisdiction based on their status as tribes.
- Alaska tribes have clear jurisdiction to determine their own membership, determine their own form of government and justice system, and over their own internal affairs.
- There is currently little ‘Indian country’ in Alaska, the territorial jurisdiction needed to tax people and entities that do not want to be taxed, to set seasons and bag limits for fish and game, and other activities requiring territorial jurisdiction to enforce.
- Tribal jurisdiction in Alaska tends to be ‘member based’ rather than based on a territory such as a reservation. In other words, tribal courts can hear cases involving tribal members even if they do not have ‘Indian country.’



- Public Law 280 did not terminate any tribal powers or jurisdiction.
- Tribal jurisdiction in Alaska tends to be concurrent with the State of Alaska. In other words, both the State and the tribes share jurisdiction, and whichever court hears a case first assumes jurisdiction over the case.

We believe that many Inuit welcome President Biden’s re-engagement of the United States in the Paris Agreement and initiatives related to the UNFCCC. This recent positive development will also propel forward the role of Indigenous peoples within the Facilitative Working Group of the Indigenous Peoples’ Platform, the newest constituted body of the UNFCCC. At the domestic level, Tribes can raise their concerns and priorities through the Status of Tribes and Climate Change report. Beyond the US, across Inuit Nunaat, this development alone may create additional opportunities for increased expression of the adverse impacts of climate change and how they have stifled self-determination in the area of infrastructure deficits to food insecurity to concrete actions to mitigation.

Other examples of the current exercise of jurisdiction in Inuit Nunaat, including de jure and de facto self-determination as well as in relation to governance, land tenure, and related decisions about lands, territories, and resources; economic, social, and cultural rights; and civil and political rights can be found in relation to the extensive limitation of the exercise of self-determination by Inuit Tribes and Traditional Councils in Alaska. Furthermore, we are not fully aware of conditions of Inuit in Chukotka, though we know that they are severely limited by national authorities but have more capacity due to the regional Chukotka governing institutions.

Indigenous citizenship, and the rights and responsibilities of citizenship

Relevant to and potentially problematic for all Indigenous peoples, the ICC has prepared and distributed a policy paper on the increasing use of the term “Local communities” at various intergovernmental fora. Inuit and other Indigenous peoples continue to face resistance from States as well as intergovernmental organizations that overlook Indigenous peoples or actively work to diminish the distinct rights and status of Indigenous peoples, as well as our full and effective participation in conventions and intergovernmental fora whose activities impact our rights and way



of life. Since 1992, Indigenous peoples have been grouped and conflated with "local communities" by States and intergovernmental organizations within multiple international conventions and other multilateral agreements.

The grouping and conflating of Indigenous peoples with "local communities" in conventions and multilateral agreements have resulted in the slow and incremental erosion of the interrelated, interdependent, and indivisible rights of Indigenous peoples and diminishes the effectiveness and impacts of Inuit advocacy and representation, as well as the effectiveness and impacts of the conventions and agreements that employ such language. These actions are part of an alarming trend in the behavior of States to diminish the standards in the UN Declaration, including actions to devalue Indigenous peoples' status, rights, and participation rather than upholding their responsibilities and uplifting the status, rights, and participation of Indigenous peoples.

Indigenous peoples were grouped with "local communities" for the first time in three documents developed for the 1992 UN Conference on Environment and Development. Indigenous peoples are grouped with local communities in the *Rio Declaration on Environment and Development*, *Agenda 21*, and the Convention on Biological Diversity (CBD). Principle 22 of the *Rio Declaration* conflates Indigenous peoples with local communities and suggests that Indigenous communities are a variety of local community:

ICC puts forward five recommendations in our Policy paper for States and intergovernmental organizations to remedy this practice. They include reforming procedural rules to include the full and effective participation of Inuit and other Indigenous peoples; adopting and implementing a distinctions-based policy; and using the UNDRIP as a framework in developing any documentation or agreement implicating the rights and status of Indigenous peoples.

The policy paper concludes, "Inuit are rights holders, and we seek full and effective participation in all conventions, multilateral agreements, and international fora where our rights, culture, and way of life are impacted. This can only be achieved if States and intergovernmental organizations cease grouping and conflating Indigenous peoples with "local communities," reform outdated procedural rules that marginalize Inuit and other Indigenous peoples, and utilize the *UN Declaration on the Rights of Indigenous Peoples* as a framework for uplifting the status, rights, and participation of Indigenous peoples."



Please find ICC Policy on the matter of Local Communities Paper

here: <https://www.inuitcircumpolar.com/news/icc-policy-paper-on-local-communities-chronicles-opposition-to-the-undermining-and-erosion-of-inuit-rights/>

Integration of Indigenous legal orders, protocols, and traditions into self-government functions

Specific to economic development and self-determination, ICC's 2018 Utqiaġvik Declaration urged sustainable development and collaboration among Inuit businesses as Arctic economies continue to change rapidly and interest in the Arctic grows. Last year just before the pandemic started, representatives from Inuit businesses throughout Alaska (USA), Canada, and Greenland initiated the International Inuit Business Association (IIBA). ICC, in part, advocates for policies that facilitate cross-boundary trade, employment, and travel across the circumpolar Arctic. The IIBA will move forward independently and as an affiliate of ICC.

ICC is hoping to collaborate with Inuit own businesses across the Arctic, so that some percentile of economy, that is maked in the Arctic can stay in the Arctic. IIBA can help fight poverty and develop infrastructure in the Arctic to achieve better-thriving communities of Inuit communities and closer to Inuit self-determination.

The IIBA will be a resource for Inuit business leaders who have a collective interest in ensuring our northern economies' success. The IIBA is currently finalizing processes for membership and recruitment.⁵

Reconstitution of Indigenous Nations divided by State-imposed policies or borders and how self-determination may be managed or hindered, for example, the deployment of incorporation statutes by the State

Similar to this positive development, there is a need to consider the revitalization of customs, practices, values and institutions, now divided by state-imposed policies or borders and



how self-determination may be managed or hindered, for example by the deployment of incorporation statutes by the State.

In 2016 ICC worked on a report prepared by the Inuit-led Pikialasorsuaq Commission (with representatives of both Canada and Greenland), "People of the Ice Bridge: The Future of the Pikialasorsuaq"⁶. The Pikialasorsuaq is the North Water Polynya located between Canada's northernmost areas (Ellesmere Island in Nunavut) and Greenland. A number of Inuit communities in this region depend upon its rich marine life and have strong historical and cultural ties with one another. The report contains recommendations for this area, including the Establishment of a free travel zone for Inuit across this region.

One key difference with the Inuit situation is that there is more than one international border to consider. In addition to the US, there are the governments of Greenland, Denmark, and the EU, and provinces, territories, states, and Inuit settlement claims organizations. It may be difficult to identify solutions that cover all situations equally, especially in reciprocity with other countries.

In November 2017, the ICC project entitled Pikialasorsuaq Commission delivered their report on the critical Pikialasorsuaq area findings, also known as North Water Polynya, which constitutes the sea between North Greenland and Canada.

One recommendation states:

Establishment of a free travel zone for Inuit across the Pikialasorsuaq region. Inuit who lives and uses the Pikialasorsuaq must be recognized and respected as leaders in ensuring this area's protection. Inuit want to ensure the viability of this essential marine region for generations to come."

The *Torres Strait Treaty* has been mentioned as a possible model to consider regarding a way forward. The agreement is signed between Australia and Papua New Guinea and provides a framework for the management of the common border area. The Treaty deals with protections for the traditional way of life for the residents of various communities and the commercial fisheries. "A special provision of the Treaty allows free movement (without passports or visas) between Australia and Papua New Guinea for traditional activities. This is only for Torres Strait Islanders and coastal



people from Papua New Guinea who live in and keep the region's traditions." 4 There are restrictions on how far residents can travel and on specific activities.

ICC underscores that Pikialasorsuaq Implementation work is an Inuit self-determination on the area. ICC has expressed to the Government of Greenland that there is a wish to be included in the process. Still, no real involvement has been given yet from the Government.

Indigenous traditional sports and games as a manifestation of self-determination

The Arctic Winter Games⁷ is a high-profile circumpolar sport competition for northern and arctic athletes. The Games provide an opportunity to strengthen sport development in the participants' jurisdictions, promote the benefits of sport, build partnerships, and promote culture and values. The Games celebrate sport, social exchange, and cultures. The Games provide an opportunity for the developing athlete to compete in friendly competition while sharing cultural values from northern regions around the world.

The Arctic Winter Games International Committee believes in the values of: " cultural awareness and understanding." Arctic Winter Games bring our Circumpolar World closer together. Strengthening and showcasing our Communities and providing our young people an International Games opportunity to participate, showcase their talent, and share in sport's joy. The Arctic Games include many of the same games as in the Winter Olympics (hockey, speed skating, and curling). However, they also feature arctic sports such as dog mushing and snowshoeing and traditional Inuit games like the Ear Pull, One Foot High Kick, Kneel Jump, Airplane, and Knuckle Hop.

The Arctic Sports have ensured that Inuit games keep being practiced and ongoing with considerable interest from Inuit Youth.

Conclusion

All of the examples above demonstrate that there is still a need to reflect Indigenous peoples' rights in different states and the international community, including the need for the full, comprehensive implementation of the UNDRIP and self-determination in praxis. There seems to be an understanding among some Arctic States that the implementation of Indigenous self-



determination is a level up in human rights and, therefore, rights as Indigenous peoples not relevant. This highlights that working for our rights is constant and that we can never take our rights for granted. ICC hopes that our work to Advocate for the distinct rights of Indigenous peoples as well as the implementation of the UNDRIP will continuously be spread across the states.

It is also clear that there is still a lot of work to be done in RESPECTING, PROTECTING, and PROMOTING the human rights and Indigenous peoples' rights across Inuit Nunaat. We observe a general lack of the full respect for and recognition of our rights. For this reason, there is a need to collect more data on conditions and developments in human rights issues, especially Indigenous Peoples' Rights. There is a constant need for Inuit, Arctic States, and the international community to act on all of these issues. We thank EMRIP for spreading awareness and amplifying their voice in favor of Inuit and other Indigenous peoples in the call to make durable changes.

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² Inuit Arctic Policy, Made by ICC 2010: <https://www.inuitcircumpolar.com/project/inuit-arctic-policy/>

³ Answer to a §37 question to Foreign Minister in 2020, https://ina.gl/documents/para3637/2020/svar/172_2020_Opringdelige_Folk_MAPAV_svar.pdf (Only in Danish)

⁴ <https://www.makivik.org/nunavik-inuit-pass-significant-self-determination-resolution/>

⁵ International Inuit Business Association: <https://www.inuitcircumpolar.com/press-releases/circumpolar-inuit-forge-path-towards-international-business-cooperation/>

⁶ Report of the Pikialasorsuaq Commission - Nov 2017: <http://pikialasorsuaq.org/en/Resources/Reports>

⁷ Arctic Winter Games webpage: <https://www.arcticwintergames.org/index.html>

The Inuit Circumpolar Council (ICC) is an Indigenous Peoples' Organization (IPO), founded in 1977 to promote and celebrate the unity of 180,000 Inuit from Alaska (USA), Canada, Greenland, and Chukotka (Russia). ICC works to promote Inuit rights, safeguard the Arctic environment, and protect and promote the Inuit way of life. In regard to climate change, we believe that it is crucial for world leaders and governments to recognize, respect and fully implement the human rights of Inuit and all other Indigenous peoples across the globe.