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## Mining For Compromise In Pastoral Greenland: Promise, Progress, And Problems In International Laws' Response To Indigenous People

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# MINING FOR COMPROMISE IN PASTORAL GREENLAND: PROMISE, PROGRESS, AND PROBLEMS IN INTERNATIONAL LAWS' RESPONSE TO INDIGENOUS PEOPLE

LAUREN MANNING\*

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## I. INTRODUCTION

In November 2015, two mining dams located in the Minas Gerais region of Brazil collapsed, causing untold catastrophes as 50 million cubic meters of toxic iron-ore residue oozed into the surrounding region.<sup>1</sup> The water is now unsafe for human consumption, and the oxygen deprivation and rising temperatures that the toxic sludge creates have killed any wildlife living along the 500km stretch of a nearby river.<sup>2</sup> It was not long before the red sludge reached the Atlantic Ocean.<sup>3</sup> Brazil's former leader, President Dilma Rousseff compared the disaster to the Deepwater Horizon event that befell the Gulf of Mexico in 2010, stating it may be the most devastating environmental disaster in the country to date.<sup>4</sup> Rousseff lays blame for the incident entirely on the company responsible for operating the dams.<sup>5</sup>

As the toxic tailing dam sludge continues to wreak havoc on Minas Gerais and Brazil, the people of Greenland are also at a crossroads.<sup>6</sup> In addition to its largely ice-capped terrain, striking glaciers, and bucolic landscape, Greenland's southern Kujalleq region sits on top of a substantial mineral resource deposit containing gold, nickel, zinc, and what is believed to be the world's second largest deposit of

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1. See Bruce Douglas, *Brazil's Slow-Motion Environmental Catastrophe Unfolds*, GUARDIAN (Nov. 13, 2015), <https://www.theguardian.com/business/2015/nov/13/brazils-slow-motion-environmental-catastrophe-unfolds>.

2. See *id.*

3. See Alan Taylor, *Red Sludge from Brazilian Dam Collapse Reaches the Atlantic*, ATLANTIC (Nov. 24, 2015), <http://www.theatlantic.com/photo/2015/11/red-sludge-from-brazilian-dam-collapse-reaches-the-atlantic/417519/>.

4. Douglas, *supra* note 1.

5. See *id.*

6. See Saskia de Rothschild, *Greenland's Farmers Torn Over Tapping Pristine Land for Mineral Riches*, N.Y. TIMES (Sept. 6, 2015), [https://www.nytimes.com/2015/09/07/world/europe/greenlands-farmers-torn-over-tapping-pristine-land-for-mineral-riches.html?\\_r=0](https://www.nytimes.com/2015/09/07/world/europe/greenlands-farmers-torn-over-tapping-pristine-land-for-mineral-riches.html?_r=0).

rare earth elements (“REEs”). REEs are used to make smart phones, electric cars, precision-guided missiles, and televisions.<sup>7</sup> A large mountain in the Kvanefjeld region is also believed to contain the world’s sixth-largest deposit of uranium.<sup>8</sup>

Greenland is home to a large indigenous population, whose primary economies include sheepherding, cattle, reindeer herding, and fishing—activities that the earliest settlers in the region relied upon for subsistence.<sup>9</sup> Greenland’s economy also relies on exports of livestock with nearby partners Denmark and Iceland, with livestock and provisions constituting the largest export sector in 2012.<sup>10</sup> While some members of the indigenous population support the mining activities, others fear that it may destroy their native way of life and current economies.

Before mining activities begin in full force, Denmark and Greenland have the power to create a proactive framework for ensuring the protection of fundamental human rights in accordance with international law.<sup>11</sup> These instruments, combined with the United Nations Guiding Principles on Business and Human Rights (“GPs”), create a strong promise that a proactive approach to protecting and respecting human rights in Greenland can be achieved. Other indicia of progress toward a proactive scheme include opinions from the European Court of Human Rights (ECtHR), publications from the International Council on Metals and Mining, and the adoption of National Action Plans to implement the GPs. The emergence of the right to food and the right to water in international law are also timely developments for the people of Greenland, who rely on agriculture not only as a

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7. *Id.*

8. See Brian G.J. Upton, *Tectono-Magmatic Evolution of the Younger Gardar Southern Rift, South Greenland*, 29 *GEOLOGICAL SURV. DEN. & GREEN. BULL.* 1, 13 (2013).

9. See STATISTICS GREEN., *GREEN. IN FIGURES 2014*, 6-7, 20 (Bolatta Vahl & Naduk Kleemann, eds., 2014), <http://www.stat.gl/publ/da/GF/2014/pdf/Greenland%20in%20Figures%202014.pdf>.

10. See *id.* at 7. In 2012, provisions and livestock totaled approximately \$397 million.

11. See generally, Calin Georgescu (Special Rapporteur), *Report of the Special Rapporteur on the Human Rights Obligations Related to Environmentally Sound Management and Disposal of Hazardous Substances and Waste*, U.N. Doc. A/HRC/21/48 (July 2, 2012) [hereinafter *Report on Human Rights Obligations Related to Hazardous Substances and Waste*].

cultural practice, but also as a livelihood.

Despite this promise, problems remain and ultimately more action may need to be taken. As the Minas Gerais situation in Brazil indicates, there are signs that states remain unwilling to provide clear protections for indigenous populations. Such populations still lack a strong voice in international affairs, while current enforcement mechanisms are still too weak. It will take the joint effort of states, businesses, the international community, and the indigenous people themselves to strike an appropriate balance between mining, the right to food, and human rights at large.

Part II of this paper provides a brief introduction to Greenland's indigenous people. It also discusses the recent deregulation of mining in Greenland and presents the competing views regarding whether mining should be permitted in the region.

Part III of this paper provides an overview of the key international covenants that govern Denmark's and Greenland's duty to its indigenous people and examines two cases brought before the ECtHR, which shed light on how the Court may resolve any dispute brought by the Greenlanders alleging that the mining activities violate international law.

Last, Part IV of this paper focuses on the role that the GPs can play in helping both the mining companies and Greenland to respect and protect human rights, and remedy violations. It concludes by assessing whether current efforts by the states and/or businesses have been sufficient and highlighting the problems that remain.

## II. A REGION DEFINED BY HISTORY, POLITICS, AND NATURAL RESOURCES

Greenland has been populated for roughly 4,500 years by Arctic peoples whose ancestors migrated to the island from Canada.<sup>12</sup> Ac-

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12. See *Independence I*, NATIONAL MUSEUM OF THE PRINCE'S PALACE NY VESTERGADE, <http://natmus.dk/footermenu/organisation/forskning-og-formidling/nyere-tid-og-verdens-kulturer/etnografisk-samling/arktisk-forskning/prehistory-of-greenland/independence-i/> (stating that Independence I is the oldest culture in North and Northeast Greenland and that its sites are recognized from the Canadian High Arctic archipelago from which they spread into Greenland); see also *Saqqaq*, NATIONAL MUSEUM OF THE PRINCE'S PALACE NY VESTERGADE, <http://natmus.dk/footermenu/organisation/forskning-og-formidling/nyere-tid-og-verdens-kulturer/etnografisk-samling/arktisk-forskning/prehistory-of-greenland/independence-i/>

According to some researchers, Greenland's indigenous peoples descended from the Thule Culture, an Eskimo population that spread throughout the region during the tenth century.<sup>13</sup> Today, the island has a population of nearly 57,000, almost 80 percent of which is comprised of either Inuit descendants, or mixed Inuit/Danish.<sup>14</sup>

Agriculture has played a central role in supporting Inuit populations for centuries.<sup>15</sup> The current Inuit diet bears many similarities to the diet of the Inuit ancestors who first populated the island, consisting of whale, seal, fish, land and sea birds, and meat from land animals.<sup>16</sup> Food-gathering not only remains a central component of daily life for Greenlanders, particularly for those who choose a self-subsisting lifestyle, but it also provides the majority of jobs available in the region and contributes a massive amount to the island's economy.<sup>17</sup> Public administration and service provides 38 percent of jobs.<sup>18</sup> The next largest job sector is the fishing, hunting, and agricultural sector.<sup>19</sup>

Since 1814, Denmark has controlled Greenland.<sup>20</sup> In 1953, Greenland joined the Danish Realm through Denmark's Constitution.<sup>21</sup> In

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formidling/nyere-tid-og-verdens-kulturer/etnografisk-samling/arktisk-forskning/prehistory-of-greenland/saqqaq/ (noting that the Saqqaq culture, also appearing on Canada's Ellesmere Island, is the earliest known Palaeo-Eskimo culture in West and Southeast Greenland).

13. See Kevin Hillstrom, *Culture of Greenland*, COUNTRIES AND THEIR CULTURES, <http://www.everyculture.com/Ge-It/Greenland.html> (last visited Jan. 14, 2017).

14. *Id.*

15. See P. de Knijff et al., *Lipoprotein Profile of a Greenland Inuit Population: Influence of Anthropometric Variables, Apo E and A4 Polymorphism, and Lifestyle*, 12 J. OF THE AM. HEART ASS'N 1371-72 (1992).

16. *See id.*

17. See STATISTICS GREEN., *supra* note 9, at 13-16 (stating that fishing is the country's primary industry and providing data on fishing, whaling, livestock, and the hunting of birds, land mammals, and seals).

18. *Id.*

19. *Id.*

20. *World Facts: Nordic Countries*, WORLD ATLAS, <http://www.worldatlas.com/articles/nordic-countries.html> (last modified Sept. 27, 2016) (identifying Greenland as falling under Danish control at the conclusion of the Denmark-Norway union).

21. See *Compare Nations*, ASS'N OF RELIGION DATA ARCHIVES, <http://www.thearda.com/internationalData/multicompare.asp?c=43&c=94> (last visited Jan. 14, 2017).

1979, Greenland received the authority to operate under a so-called “home rule” scheme, further divesting it from Danish oversight.<sup>22</sup> In 2008, the Greenlanders approved the Self-Government Act by referendum, which transferred even more authority to the local Greenlandic government from the Danish royal authority.<sup>23</sup> According to the referendum, Greenland now oversees its policing power, judicial system, corporate law, legal systems, financial oversight and regulation, and mineral resource activities.<sup>24</sup> Still, Greenland remains reliant on a \$600 million annual subsidy from Denmark.<sup>25</sup> The subsidy is designed to reduce gradually overtime with the expectation that Greenland’s economy will become strong enough to sustain itself.<sup>26</sup>

#### A. A CULTURE TORN AT THE CROSSROADS

In October 2013, the Greenlandic home rule parliament voted to lift its long-standing “zero tolerance” ban prohibiting the mining of radioactive materials, a policy that originated in Denmark.<sup>27</sup> The vote was incredibly narrow; the lift on the ban passed with a 15-14 vote.<sup>28</sup> Discussions preceding the vote reflected many of the tensions underpinning Greenland’s conflicted views toward mining. Greenland Prime Minister Aleqa Hammond said: “We cannot live with unemployment and cost of living increases while our economy is at a standstill. It is therefore necessary that we eliminate zero tolerance

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22. See *Politics in Greenland*, NAALAKKERSUISUT, <http://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Politics-in-Greenland> (last visited Jan. 29, 2017) (describing Greenland’s political history, including the January 1979 referendum in which 64 percent of Greenland voters supported greater autonomy, which precipitated the Greenland Home Rule policy in May).

23. See *The Greenland Self-Government Arrangement*, STATSMINISTERIET, [http://www.stm.dk/\\_a\\_2957.html](http://www.stm.dk/_a_2957.html) (last visited Jan. 14, 2017).

24. See *id.* However, Greenland does not have complete control over its policing power, judicial system, and financial sector. See *Politics in Greenland*, <http://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Politics-in-Greenland>.

25. See Sarah Lyall, *Fondly, Greenland Loosens Danish Rule*, N.Y. TIMES (June 21, 2009), <http://www.nytimes.com/2009/06/22/world/europe/22greenland.html>.

26. See *id.*

27. See Katya Vahl et al., *Greenland Votes to Allow Uranium, Rare Earths Mining*, REUTERS (Oct. 25, 2013), <http://www.reuters.com/article/us-greenland-uranium-idUSBRE99O05A20131025>.

28. See *id.* (describing the debate that led to the vote as heated).

towards uranium now.”<sup>29</sup> Before the vote in Greenland, in February 2013, “Denmark’s parliament voted to allow uranium mining in Greenland in a historical policy shift after 30 years of opposition to nuclear power.”<sup>30</sup> According to Denmark’s Head of Geology for the Ministry of Mineral Resources, “Greenland is pro-exploration and pro-mining now, both across the board in government and also within the population.”<sup>31</sup>

Greenland’s predominantly Inuit population, however, is torn over whether to support increased mining activities in the region, or whether to oppose mining entirely. Many tout mining as the answer to weaning the island off of the Danish subsidy.<sup>32</sup> They believe that mining will provide Kujalleq and other regions with a better economic future, reduce the recent increase in local crime, and stall the steady stream of locals moving away from the region due to a lack of jobs.<sup>33</sup> Many of Greenland’s seal hunters are considering quitting the trade, which some view as a threat to the longevity of Inuit culture.<sup>34</sup>

Among some locals, the threat of increased “Westernization” and the extinction of the Inuit way of life create grave concerns, particularly if a mining operation were to bring a slew of foreign workers and their families to the region’s small towns.<sup>35</sup> Many view foreign workers who have already arrived to begin explorative activities as a potential source of competition.<sup>36</sup> Others have characterized an influx

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29. *Id.*

30. *Denmark Allows Uranium Mining in Greenland*, EUROPOST (Feb. 15, 2013), <http://www.europost.eu/article?id=6780>.

31. Vahl, *supra* note 27.

32. See Annegret Oster, *Greenland: Race for Underground Resources*, DEUTSCHE WELLE (Nov. 20, 2013), <http://www.dw.com/en/greenland-race-for-underground-resources/av-17242788> (“Gold, titanium, rare earths and uranium are fueling the debate over Greenland’s independence from Denmark.”).

33. Espen Rasmussen, *The Fight for Greenland*, VIMEO, <https://vimeo.com/84892912> (last visited Jan. 14, 2017) (stating that Uranium could become the island’s economic future and that companies like Greenland Energy and Minerals are seeking land rights for mining because such rare earth metals go into the production of cell phones and computers).

34. See *id.* (citing the ban on seal pelts in the European Union as causing the value of seal hunting to decrease dramatically).

35. See Oster, *supra* note 32.

36. See *id.* (expressing concerns that up to one thousand workers could migrate to the town after the mine opens bringing venereal diseases, an influx in children with unknown fathers, and competition for jobs with the local men).



of foreigners as potentially reducing the native population to a “secondary people,” something they see as unhealthy for the Inuit culture.<sup>37</sup> They see plenty of existing opportunities in agricultural and fishing in the region, and eschew the promise of relying on foreigners to build the local economy.<sup>38</sup>

Of course, exposure to radiation from uranium mining so close to the settlement of Narsaq is also on opponents’ minds.<sup>39</sup> Uranium mining is particularly damaging to the local environment.<sup>40</sup> Extraction produces waste referred to as “tailings,” which must be displaced.<sup>41</sup> Even for those in favor of mining, ensuring that extraction is done in an environmentally sound and non-harmful manner is a central concern.<sup>42</sup> Those in support of mining are largely aware of the risks that uranium extraction poses, with some believing that uranium mining is the riskiest option.<sup>43</sup>

The potential harm to Greenland’s communal land ownership scheme is also a source of concern for many locals, especially those who rely on agriculture for subsistence.<sup>44</sup> In Greenland, land is held

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37. Rasmussen, *supra* note 33 (“We saw this in Greenland in the 60’s and 70’s and how it is to be influenced by foreigners who arrive to rebuild the society. And then you are a spectator, a secondary people. That is not a healthy society.”).

38. *See id.*, *supra* note 33 (proclaiming that Greenlanders have land, the ocean, and people, and if they were to live off of others coming from across the globe, that would be “doing things in the wrong order”).

39. *See* Oster, *supra* note 32 (expressing concern about the uranium being mined so close to their town and what effects that will have on health).

40. *See* AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, PUBLIC HEALTH STATEMENT: URANIUM (2013), <https://www.atsdr.cdc.gov/ToxProfiles/tp150-c1-b.pdf> (explaining the negative effects of uranium exposure, which can come from eating exposed vegetables, drink it in the water, or get it through dirt (for example, a child playing outside), which can lead to health complications, particularly kidney failure).

41. *Uranium Mill Tailings*, U.S. NUCLEAR REGULATORY COMM’N (Apr. 8, 2015), <https://www.nrc.gov/waste/mill-tailings.html> (“Uranium mill tailings are primarily the sandy process waste material from a conventional uranium mill.”).

42. *See* Rasmussen, *supra* note 33 (acknowledging that the inherent risk in mining must be accounted for nonetheless).

43. *See* Oster, *supra* note 32 (registering concerns about the proposed location being the “most hazardous” to begin mining at and claiming that the mining company merely intends to cover the tailing from the mine with soil and rock fragments).

44. *See* Rothschild, *supra* note 6 (documenting the thoughts of several farmers who stand to abandon their land, which is their livelihood, should the mine be approved).

in communal ownership for mutual and non-exclusive enjoyment. Like most facets of modern day life in Greenland, this traces back to Inuit culture, which placed a premium on encouraging interdependence to promote survival.<sup>45</sup> According to some sources, “Inuit families that exceed normal living standards within their community typically distribute excess goods to poorer individuals.”<sup>46</sup> Some fear that mining companies will take advantage of this communal land ownership system and commandeer open space for mining activities or other applications.<sup>47</sup>

Not all Greenlanders are of the opinion that further independence from Denmark is in the region’s best interest, with some believing that the relationship has led to improved health care, education, and increased standards of living in Greenland.<sup>48</sup> The debate over extractive mining has become a taboo topic among the locals, who wish to avoid a conflict with friends and relatives who may hold a different perspective on what should take place.<sup>49</sup>

#### B. PRACTICAL CHALLENGES TO MINING IN THE ARCTIC

Geological uncertainty, logistical hurdles, environmental sensitivity, unforgiving weather and terrain, and technological inefficiencies have long plagued miners and extractors in the arctic region. Greenland is the world’s largest island: between 80 to 85 percent of its surface capped in ice, with the exposed areas creating a fringe along the island’s outer rim.<sup>50</sup> In some places, the ice cap covering Greenland is nearly 10,000 feet thick.<sup>51</sup> Transportation infrastructure is lacking

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45. See Hillstrom, *supra* note 13 (detailing that the nature of Greenlandic familial relationships, particularly kin groups and outside alliances, which stem from concerns of survival, both past and present).

46. *Id.*

47. See Rothschild, *supra* note 6 (relating the feelings of a woman suspicious of the potential miners and her government because if the mine construction occurs, she will lose her land where she farms and runs a bed and breakfast).

48. See Hillstrom, *supra* note 13 (explaining the tension between Greenlanders wary of Westernization and those more favorable to an ongoing relationship with Denmark).

49. See Oster, *supra* note 32 (interviewing a fisherman who says he only mentions the topic at home because his village is small and, with respect to future mining, the opinions of its residents are divided in two).

50. See *Greenland in Figures 2014*, *supra* note 9, at 5; see also Hillstrom, *supra* note 13.

51. See Hillstrom, *supra* note 13.

throughout the region as well.<sup>52</sup> Rough seas and nasty skies make sea and air travel difficult, if not impossible.<sup>53</sup> During the summer months, the island averages a high of 50 degrees Fahrenheit, and plummets to an average of 18 degrees Fahrenheit during winter—deadly conditions for anyone left exposed to the elements.<sup>54</sup>

One study regarding the feasibility of mining at Kvanefjeld has raised specific concerns about arctic mining in Greenland.<sup>55</sup> The April 2014 study estimates that a uranium mine located in Kvanefjeld would lead to devastating and irreversible impacts.<sup>56</sup> The proposed mine would constitute the first of its kind to be built atop a mountain, leaving the potential consequences and engineering nuances of the project a mystery.<sup>57</sup> Mining of REE ores would create substantial amounts of mining waste known as tailings, which consist “of a slurry of finely ground rock suspended in water and a mix of chemicals.”<sup>58</sup> According to one mining company, Greenland Minerals & Energy Ltd., the tailings would be relocated to Lake Taseq, and another waste site would be located “in a natural basin east of the Nakalak range.”<sup>59</sup> Both sites would house radioactive materials.<sup>60</sup>

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52. See *Greenland in Figures 2014*, *supra* note 9, at 8 (finding that there are “[p]orts in [only] 16 towns and harbours in [only] 60 settlements, [only] 14 airports” and no railways).

53. See *id.* at 22 (explaining that because the country is not connected by roads, “[p]assengers and supplies of goods are transported by sea or by air”).

54. See Hillstrom, *supra* note 13 (“The climate in Greenland [as] subarctic, with short, cool summers and bitterly cold winters.”).

55. See Jan Willem Storm van Leeuwen, *Uranium Mining Kvanefjeld*, CEEDATA CONSULTANCY 4, 11 (2014), <https://noah.dk/wp-content/uploads/2014/06/J.-W.-Storm-van-Leeuwen-Kvanefjeld-report-April-2014.pdf> (identifying the potential hazards associated with uranium mining as the primary concern).

56. See *id.* at 11 (finding that pollutants associated with uranium mines negatively impact the environment, particularly, water quality, sediments, soils, and air).

57. See *id.* at 2 (reiterating that “the consequences of these features are poorly understood and may pose unknown risks for the environment and quality of life of the local population”).

58. *Id.*

59. *Id.*

60. See *id.* at 2 (“Exposure to radioactive materials, even at low levels, can cause a wide range of cancers, lethal and non-lethal diseases, genetic malformations, stillbirths, premature aging and inheritable diseases, often with long latency periods (years to decades).”)

The report also suggests “[s]eepage and spills of heavily contaminated water from the mining pit and from both [storage sites] are practically unavoidable.”<sup>61</sup> Concern is also expressed over the long-term effect of mining operations on the quality of water in ground basins, and the rate at which radioactive elements and chemical species will leach into nearby rivers.<sup>62</sup> Exposure to radioactive material at even low doses has been linked to a variety of harmful and even fatal conditions, including “a wide range of cancers, lethal and non-lethal diseases, genetic malformations, stillbirths, premature aging and inheritable diseases, often with long latency periods [years to decades].”<sup>63</sup>

Most notable, however, is the report’s indication “that no uranium mines in the world have ever been rehabilitated in an acceptable way: after depletion, the mining sites are simply abandoned.”<sup>64</sup> This is due in large part to the fact that radioactive qualities remain in the tailings, rendering them extremely dangerous and incredibly toxic for thousands of years.<sup>65</sup>

### III. INTERNATIONAL LAW & EXTRACTIVE MINING

Many sources of international law come into play at the intersection of mining and human rights, particularly in the context of the rights of indigenous peoples, the right to food, and the right to self-determination. Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) are important bodies of international

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61. Leeuwen, *supra* note 55, at 2.

62. *See id.* at 2 (“Seepage and spills of heavily contaminated water from the mining pit and from both RSFs are practically unavoidable. It is not known which chemical species, including radioactive elements, and at which rate will routinely enter the groundwater and rivers in the region, not only during the operational lifetime of the mine but also in the centuries following.”).

63. *Id.* at 2.

64. *Id.* at 2, 15-17 (explaining that the first phase of mine rehabilitation is to reduce the potential hazards by chemically immobilizing all harmful elements immediately, while the second phase is to effectively isolate the harmful chemicals from the biosphere).

65. *See id.* at 10, 16 (“The tailings consist of a slurry of mineral powder, chemicals and water, and contains an assortment of dissolved metals from the processed ore.”).

hard law for the issues facing Greenland. The European Convention on Human Rights (ECHR) provides additional protections while also establishing the ECtHR.<sup>66</sup> Also, the Declaration on the Rights of Indigenous Peoples (DRIP) provides key guidance for addressing the special considerations that arise when mining activities occur in close proximity to indigenous populations like the proposed mining activities in Greenland.

#### A. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The ICCPR provides that “[a]ll peoples have the right of self-determination,” and that as a result they also enjoy the right to “freely pursue their economic, social and cultural development.”<sup>67</sup> The ICCPR imbues State Parties with a duty to “promote the realization of the right of self-determination . . . .”<sup>68</sup> Additionally, the ICCPR provides indigenous peoples with the power to control their natural resources. Article 1.2 of the ICCPR states: “All peoples may, for their own ends, freely dispose of their natural wealth and resources” and provides that “[i]n no case may a people be deprived of its own means of subsistence.”<sup>69</sup> The ICCPR also provides that everyone has a right to freely “seek, receive and impart information and ideas of all kinds, regardless of frontiers . . . .”<sup>70</sup> In fulfilling this duty, Greenland must be transparent in its decision-making process and not withhold information from the indigenous population or the general public regarding extractive mining. It must also allow residents to express their opinions about the mining activities without fear of retribution.

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66. European Convention on Human Rights, art. 19, June 1, 2010 [hereinafter ECHR]; see generally *Treaty List for a Specific State: Denmark*, COUNCIL OF EUROPE (Jan. 16, 2017), [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/DEN?p\\_auth=6BAdbeSg](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/DEN?p_auth=6BAdbeSg).

67. Denmark signed the ICCPR on March 20, 1968 and ratified it on January 6, 1972 with some reservations affecting criminal proceedings under Article 14 and Article 20. International Covenant on Civil and Political Rights, art. 1, ¶ 1, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

68. *Id.* at art. 1, ¶ 3.

69. *Id.* at art. 1, ¶ 2.

70. *Id.* at art. 19, ¶ 2.

Indigenous peoples who represent the minority of a population are afforded explicit protection under Article 27 of the ICCPR: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>71</sup>

The ICCPR places clear duties on States to uphold its provisions and to provide clear mandates for how the duties must be implemented. Article 2.2, for example, requires state parties to “take the necessary steps . . . to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”<sup>72</sup> Before it allows extractive mining to commence, Greenland would be well advised to enact legislation or take other steps to ensure that it has fulfilled its duties to the indigenous population under the ICCPR.

By these provisions, any extractive mining activities that prevent the indigenous population from engaging in seal hunting, shepherding, fishing, or the other cultural practices upon which they rely would violate Article 27’s mandate. In order to fulfill its duty under the ICCPR, Greenland must take steps to respect and protect the indigenous populations’ access to hunting, shepherding, and fishing.

#### B. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

The right to food is embodied in the ICESCR, which Denmark ratified in 1972.<sup>73</sup> “The right to food is the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations.”<sup>74</sup> For indigenous populations, securing

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71. *Id.* at art. 27.

72. *Id.* at art. 2, ¶ 2.

73. See G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, art. 11, ¶ 1 (Jan. 3, 1976) (“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”).

74. Olivier De Schutter (Special Rapporteur on the Right to Food), *Final Re-*

access to food often requires the population to produce its own supply, typically using its productive resources and land.<sup>75</sup> Indigenous populations must already strive for food security in the face of many existing challenges, including climate change, expanding development, and uncertain legal and political climates.<sup>76</sup> Extractive mining poses a threat to the right to food through environmental degradation and the forced evictions that often result in close proximity to mining operations and in areas where environmental harm results.

In 2012, United Nations representatives spoke out about human rights issues related to the establishment of an open pit coal mine in Bangladesh.<sup>77</sup> Reports indicate that areas within the proposed mining site include agricultural land and other land that supports occupations critical to the indigenous population.<sup>78</sup> In response, the Special Rapporteur on the right to food stated: “The human right to food would be violated if people depending on land for their livelihoods, including pastoralists, were cut off from access to land, without sustainable alternatives . . . .”<sup>79</sup>

The Special Rapporteur encourages a broad approach to identifying violations of the right to food caused by large industries like mining.<sup>80</sup> He states: “If local incomes were insufficient to compensate for the price effects resulting from the shift towards the production of food for exports; or if the revenues of local smallholders were to fall following the arrival of domestic markets of cheaply priced food, produced on the more competitive large-scale plantations developed

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port: *The Transformative Potential of the Right to Food*, ¶ 2, U.N. Doc. A/HRC/25/57 (Jan. 24, 2014).

75. *See id.* (identifying other methods for indigenous peoples to secure access to food such as earning an income and through social transfers).

76. *See id.* at ¶ 3 (emphasizing the importance of adopting initiatives to allow for greater access to food).

77. *See* Heather Plumridge Bedi, *Right to Food, Right to Mine? Competing Human Rights Claims in Bangladesh*, 59 *GEOFORUM* 248, 248 (2015) (“They warned that the project would displace hundreds of thousands of people, while destroying fertile agricultural land.”).

78. *See id.* (“A British mining company proposes the Phulbari open pit coal mine in an agriculturally important region of Bangladesh.”).

79. *Id.* at 253.

80. *See id.* (“The human right to food would be violated if people depending on land for their livelihoods, including pastoralists, were cut off from access to land, without suitable alternatives.”).

thanks to the arrival of the investor.”<sup>81</sup> In addressing the Bangladeshi government directly, a group of United Nations independent experts said: “The Government of Bangladesh must ensure that any policy concerning open-pit coal mining includes robust safeguards to protect human rights.”<sup>82</sup>

The mining problem in Bangladesh is not an isolated incident; states in Africa<sup>83</sup> and Latin America<sup>84</sup> experienced similar situations. There are numerous reports of how mining can threaten and even contravene the internationally recognized right to food.<sup>85</sup> In many contexts, extractive mining has led to poor quality farmland and low production, a reduction in self-sufficiency, and loss of livestock and/or other sources of cash income.<sup>86</sup> Disruption of farming cycles or livestock production cycles is an especially large problem, caused both by forced relocation and environmental harm that interferes with agricultural production.<sup>87</sup> A “‘firmly established’ aspect of the relationship between human rights and the environment is that ‘environmental degradation can and does adversely affect the enjoyment

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81. *Id.*

82. Press Release, *Bangladesh Open-Pit Coal Mine Threatens Fundamental Rights, Warn UN Experts* (Feb. 28, 2012), <http://freeassembly.net/news/bangladesh-coal-mine/> [hereinafter *Bangladesh Open-Pit*]. Of particular concern to the United Nations was the “mixed messages” coming from Bangladesh’s government regarding the extent to which human rights had been considered, along with clear evidence that the projects were proceeding.

83. See *Sierra Leone: Mining Boom Bring Rights Abuses*, HUM. RTS. WATCH (Feb. 19, 2014, 3:55 AM), <https://www.hrw.org/news/2014/02/19/sierra-leone-mining-boom-brings-rights-abuses> (identifying a mining company as the cause of villagers’ diminished access to food in Sierra Leone).

84. See Nancy Long Sieber & Joseph Brain, *Health Impact of Artisanal Gold Mining in Latin America*, *REVISTA*, 66-67 (2014).

85. See “*What is a House Without Food?*”, HUM. RTS. WATCH (May 23, 2013), <https://www.hrw.org/report/2013/05/23/what-house-without-food/mozambiques-coal-mining-boom-and-resettlements> (detailing a survey conducted on twenty-six households a part of a larger community in Mozambique forced to relocate due to mining operations. Human Rights Watch found that the number of households able to produce enough crops sufficient for the year plummeted from twenty to only one after resettlement).

86. See *Bangladesh Open-Pit*, *supra* note 82 (“Nearly half the Bangladeshi population is food insecure, and nearly one quarter severely food insecure.”).

87. See *id.* (emphasizing that if an “open-pit mine is permitted, it could displace hundreds of thousands of people and lead to the violation of fundamental human rights”).



of a broad range of human rights.”<sup>88</sup>

Ultimately, the Special Rapporteur has advised that national policies designed to promote the right to food “should be conceived as participatory processes, co-designed by all relevant stakeholders, including in particular the groups most affected by hunger and malnutrition—smallholder producers, fisherfolk, pastoralists, indigenous people . . . and agricultural workers.”<sup>89</sup>

### C. EUROPEAN CONVENTION ON HUMAN RIGHTS

Denmark is a member state to the ECHR, which the state implemented as law in 1992.<sup>90</sup> Article 1 of the ECHR provides that the State Parties “shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.”<sup>91</sup> The Right to Life is clearly delineated in Article 2, and the Right to Liberty and Security encompassed in Article 5.<sup>92</sup> Additionally, Article 14 prohibits discrimination against a number of groups, including national minorities.<sup>93</sup> Article 17 makes it clear that nothing in the treaty gives any individual, body, or group the “right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”<sup>94</sup>

One of the most important protections provided in the ECHR is the Right to an Effective Remedy, which states “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official

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88. Hum. Rts. Council, Rep. of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Compilation of Good Practices, 1, U.N. Doc. A/HRC/28/61 (Feb. 3, 2015).

89. *Final Report: The Transformative Potential of the Right to Food*, ¶ 44.

90. See *European Convention on Human Rights*, DANISH INST. FOR HUM. RTS., <http://www.humanrights.dk/about-us/menneskerettigheder-eu/european-convention-on-human-rights> (last visited Jan. 6, 2017) (noting the significance of the Convention and the duty of the Danish courts to enforce it).

91. ECHR, *supra* note 66, at art. 1.

92. *Id.* at art. 2, 5.

93. *Id.* at art. 14.

94. *Id.* at art. 17.

capacity.”<sup>95</sup> To that end, Section 2 of the ECHR establishes the European Court of Human Rights, providing an international enforcement mechanism for individuals to hold violators responsible.<sup>96</sup> Human rights laws are only as effective as the ability of the persons for whose benefit they were enacted to enforce those laws and to hold wrongdoers accountable. This judicial mechanism is critical when it comes to facilitating resolutions of disputes involving mining, indigenous populations, environmental harms because it provides a neutral and objective third party.

While the majority of the rights provided under the ECHR are negative rights, providing the right to freedom from a certain situation or impact, the European Court of Human Rights has concluded that the Convention imposes positive obligations on states.<sup>97</sup> Although the Court has not clearly defined what a positive obligation entails, one Judge determined that they “require[] member states to . . . take action.”<sup>98</sup> Other scholars have defined them as “the duty upon states to undertake specific affirmative tasks . . . .”<sup>99</sup> Although some Articles impose express positive duties, other positive duties can be derived from a holistic interpretation of the ECHR: drawing upon Article 1’s mandate that States ensure rights are extended to all residents, the Court’s ruling that the ECHR must afford practical and effective rights, and Article 13’s mandate regarding the provision of effective remedial mechanisms.<sup>100</sup>

These positive obligations add an additional layer to Greenland’s and Denmark’s obligations under the ECHR and further support the need for a proactive approach to investigating the feasibility of mining in the region and ensuring that private mining companies respect the indigenous population’s human rights.

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95. *Id.* at art. 13.

96. *Id.* at art. 19.

97. See Ganna Khrystova, *State Positive Obligations and Due Diligence in Human Rights and Domestic Violence Perspective*, 1 EUR. POL. & L. DISCLOSURE 109, 111 (2014).

98. *Id.* at 110.

99. Khrystova, *supra* note 97, at 111.

100. See Khrystova, *supra* note 97, at 111.

#### D. THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE

The Declaration on the Rights of Indigenous People (DRIP), which Denmark voted in favor of, lists a number of duties regarding the protection and the respect that the State Parties must afford to indigenous populations.<sup>101</sup> Many of DRIP's provisions are pertinent to the extractive mining issues facing Greenland today. From a proactive standpoint, DRIP requires States to take an inclusive and proactive approach to decision-making that impacts indigenous populations. Article 18 speaks to the role that indigenous peoples should be given in decision-making processes, providing them with "the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."<sup>102</sup> Additionally, Article 19 requires state parties to "consult and cooperate in good faith" with indigenous populations and their governing bodies.<sup>103</sup> Accordingly, Greenland and Denmark must consult with the indigenous Greenlanders when determining the extent to which extractive mining will take place in the region.

Next, Article 26.1 states: "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."<sup>104</sup> Based on Greenland's communal land ownership scheme, any mining activities that would drive the Inuit from their traditional lands would violate DRIP. Additional protection against removal is found in Article 10, which states: "Indigenous peoples shall not be forcibly removed from their lands or territories," and that relocation cannot occur "without the free, prior and informed consent of the indigenous peoples concerned and after agreement on *just and fair compensation*, and where possible,

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101. The UN General Assembly adopted DRIP on September 13, 2007, by a majority of 143 states in favor, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine). G.A. Res. 61/295, U.N. GAOR, 61st Sess., U.N. Doc. A/61/53, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

102. *Declaration on the Rights of Indigenous Peoples*, *supra* note 101, at 8.

103. *Id.* at art. 19.

104. *Id.* at art. 26.

with the option of return.”<sup>105</sup>

To the extent any mining activity has the potential to encroach on lands belonging to indigenous groups in Greenland, the government must take appropriate steps to obtain consent and to provide just compensation. Because uranium extraction is so harmful to the environment, some of the indigenous population may be unwilling to return to their land.<sup>106</sup>

DRIP also includes key environmental aspects that are particularly relevant to issues involving extractive mining. Article 29.1 states: “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.”<sup>107</sup> This same provision requires state parties to adopt and operate programs that assist indigenous peoples with conservation and protection.<sup>108</sup>

Also, DRIP clearly provides that its protections are relevant at both a collective and individual level. Article 1 provides: “Indigenous peoples have the right to the full enjoyment, *as a collective or as individuals*, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law. DRIP also states in Article 4 that indigenous populations have the right to “self-government in matters relating to their internal and local affairs . . . .”<sup>109</sup>

These provisions, taken together, mean that Greenland and Denmark must respect both their duties to individual indigenous peoples, in addition to any decisions or processes that the indigenous people organize to address the potential commencement of extractive mining. Should Greenland go forward with extractive mining, it must take into consideration the indigenous population’s cultural way of

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105. *Id.* at art. 10.

106. See Chelsea Gunter, *The Case for Uranium Mining in Greenland*, 48 CORNELL INT’L L. J. 424, 440 (2015) (highlighting that after the Thule accident, Greenland’s citizens may be particularly sensitive to radioactive contamination).

107. *Declaration on the Rights of Indigenous Peoples*, *supra* note 101, art. 29.

108. See *id.* (stating that indigenous people must give their free, prior, and informed consent before hazardous materials is stored or disposed of on their lands or territories).

109. *Id.* at art. 4.

life and the resources that are most important to it, like seals, livestock, and fishing—activities that are part of the indigenous peoples' cultural heritage. Unfortunately, extractive mining would pose grave risks to each of these industries, which is something that the state must consider before it allows extractive mining to commence.

#### E. INTERPRETATION OF INTERNATIONAL LAW

Article 28 of the ICCPR established a Human Rights Committee (“the Committee”), comprised of representatives from State Parties to the treaty.<sup>110</sup> Part of the Committee's responsibility is to review reports from member nations regarding their progress in implementing the treaty.<sup>111</sup> The Committee also hears disputes filed by private parties against states claiming that the state has violated the ICCPR's provisions.<sup>112</sup> For State Parties to be bound to adjudication before the Committee, they must have signed and ratified the Optional Protocol to the ICCPR, which Denmark did in 1972.<sup>113</sup>

A number of indigenous populations have brought claims under Article 28 of the ICCPR alleging that a governing state party has violated the population's right to enjoy its culture. Two cases from the nearby country of Finland shed light on the standard that the Committee will employ in analyzing any claim brought by the Greenlanders.

##### 1. *Länsman et al. v. Finland*

In this case,<sup>114</sup> the Complainants consisted of Ilmari Lansman and 47 members of the Muotkatunturi Herdsmen's Committee, as well as members of the Angeli local community. The members of the authoring party were of Sami ethnic origin and involved in reindeer husbandry.<sup>115</sup> In their complaint, they alleged that Finland violated Article 27 of the ICCPR by executing a contract with Arctic Stone

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110. ICCPR, art. 28, Dec. 16 1966, 999 U.N.T.S. 171.

111. ICCPR, *supra* note 110, at art. 40.

112. ICCPR, *supra* note 110, at art. 40.

113. *Sixth Periodic Report of Denmark Concerning the Int'l Covenant on Civil and Political Rights*, MINISTRY OF FOREIGN AFFAIRS OF DENMARK 1, 4 (2015), <http://www.ft.dk/samling/20142/almdel/reu/bilag/84/1550011.pdf>.

114. *Länsman et al. v. Finland*, Comm. No. 511/1992, U.N. Doc. CCPR/C/52/D/511/1992 (1994).

115. *Länsman*, Comm. No. 511/1992, ¶ 2.1.

Company (“ASC”) allowing the quarrying of stone from a mountain adjacent to lands that were traditionally used for reindeer husbandry.<sup>116</sup> According to their complaint, “[f]or reindeer herding purposes, special pens and fences, designed for example to direct the reindeers to particular pastures or locations, have been built around the village of Angeli.”<sup>117</sup> The permit awarded to ASC provided for the transportation of stone removed from the quarry directly through these special paddocks and pens.<sup>118</sup>

The Complainants also alleged that “the transport of the stone would run next to a modern slaughterhouse already under construction, where all reindeer slaughtering must be carried out as of 1994, so as to meet strict export standards,” potentially disrupting the slaughterhouse’s activities.<sup>119</sup> The Complainants also alleged that the site of the quarry, a mountain, was sacred to the old Sami religion and formerly served as a place where reindeer slaughtering took place according to traditional practices.<sup>120</sup>

At the time the Committee considered the Complainants’ contentions, only minimal test quarrying had occurred, with some 30 cubic meters having been extracted.<sup>121</sup> According to the permit, ACS was authorized to remove 5,000 cubic meters of stone.<sup>122</sup>

In response, the state alleged that “the company’s activity in the area [had] been insignificant, both in terms of amount of extracted stone (30 cubic meters) and the extent (10 hectares) of the quarrying area” on the mountain.<sup>123</sup> In contrast, the author’s total area covered nearly 2,600 kilometers.<sup>124</sup> The area that was sectioned off for quarrying contained only one hectare and was located four kilometers from the road.<sup>125</sup>

Turning to the Committee’s jurisprudence under Article 27, the State cited the Committee’s statement in *Lovelace v.*

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116. *Id.* at ¶ 2.3.

117. *Id.* at ¶ 2.2.

118. *Id.* at ¶ 2.5.

119. *Länsman*, Comm. No. 511/1992, ¶ 2.5.

120. *Id.* at ¶ 2.6.

121. *See id.* at ¶ 2.4.

122. *See id.* at ¶ 2.3.

123. *Id.* at ¶ 7.6.

124. *Länsman*, Comm. No. 511/1992, ¶ 7.6.

125. *Id.*

*da*,<sup>126</sup> which held that “not every interference can be regarded as a denial of rights within the meaning of Article 27 . . . [but] restrictions must have both a reasonable and objective justification and be consistent with the other provisions of the Covenant . . . .”<sup>127</sup>

In resolving the dispute, the Committee first framed the issue as “whether quarrying on the flank of [the mountain], in the amount that has taken place until the present time or in the amount that would be permissible under the permit issued to the company which has expressed its intention to extract stone from the mountain . . . would violate the author’s rights under Article 27 of the Covenant.”<sup>128</sup> Next, the court acknowledged that reindeer husbandry is an “essential element” of the author’s native Sami culture and that Article 27 protects an indigenous population’s native economic practices that have an essential nature.<sup>129</sup>

Based on these tenants, the Committee rejected the state party’s assertion that Article 27 only protects traditional means of livelihood. Instead, the Committee concluded that the Complainant’s adaptation of “their methods of reindeer herding over the years” and use of “modern technology does not prevent them from invoking Article 27.”<sup>130</sup> In addition, the Committee took the Complainants’ concern that the mountain constitutes a place of cultural significance as well as the Complainant’s concern regarding the preservation of the quality of slaughtered reindeer into consideration.<sup>131</sup>

Regarding the state’s interests, the Committee noted, “[a] State may understandably wish to encourage development or allow economic activity by enterprises.”<sup>132</sup> To that end, Article 27 precludes a State from denying a member of a minority his or her right to enjoy his or her culture. However, where a measure only has “a certain limited impact on the way of life of persons belonging to a minority,” then there will be no violation of this mandate.<sup>133</sup>

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126. Human Rights Comm., *Lovelace v. Canada*, Comm. No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).

127. *Id.* ¶ 15-16.

128. *Länsman et al. v. Finland*, Comm. No. 511/1992, ¶ 9.1.

129. *Id.* ¶ 9.2.

130. *Id.* ¶ 9.3.

131. *Id.* ¶ 9.3.

132. *Id.* ¶ 9.4.

133. *Länsman et al. v. Finland*, Comm. No. 511/1992, ¶ 9.4.

Applied to the case at hand, the Committee considered whether the impact of the quarrying activities on the mountain was so substantial that they effectively denied the Complainants' right to enjoy their cultural practices in the area.<sup>134</sup> In finding no violation of Article 27, the Committee noted the limited amount of quarrying that had taken place at the time of the complaint, and that the State party's consideration of the Complainants' interests during the proceedings leading up to the issuance of the permit.<sup>135</sup> The record showed that the government had consulted directly with the Sami before issuing the permit.<sup>136</sup>

The second factor compelling the Committee's decision was that the area did "not appear to have been adversely affected by the quarrying in the amount that had occurred."<sup>137</sup> Additionally, the permitting process showed that the State authorities only permitted quarrying activities that would have a minimal impact on herding in the region and on the environment, as shown by the conditions provided in the permit.<sup>138</sup> The permit also specified that any quarrying activities should be primarily performed outside areas used for reindeer husbandry, and that the local forestry authorities and mining company could appropriately accommodate their herding practices.<sup>139</sup>

Despite failing to find a violation of Article 27, the Committee included one important warning in response to the Complainants' concerns about future activities and the expansion of mining: "economic activities must, in order to comply with Article 27, be carried out in a way that the Complainants continue to benefit from reindeer husbandry."<sup>140</sup> In the event that mining activities in the region were "approved on a larger scale and significantly expanded by those companies to which exploration permits [were] issued, then this may constitute a violation of the Complainants' rights under Article 27 . . . ."<sup>141</sup>

The *Länsman v. Finland* case bears particular significance for the

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134. *Id.* ¶ 9.5.

135. *Id.* ¶ 9.6.

136. *Id.*

137. *Id.*

138. *Länsman et al. v. Finland*, Comm. No. 511/1992, ¶ 9.7.

139. *Id.*

140. *Id.* ¶ 9.8.

141. *Id.*



Greenlanders. If the Greenlandic government grants uranium or REE mining permits to foreign companies, it must consult with the indigenous population during the permitting process and find ways to accommodate the population's reliance on seal hunting, sheepherding, and fishing.<sup>142</sup> If the Greenlanders wish to bring a complaint to the Committee alleging a violation of Article 27, they should demonstrate that the mining activities have had, or will have, a tangible adverse effect on their ability to continue their customary practices, i.e., fishing, hunting, sheepherding, etc.<sup>143</sup>

Conversely, the *Länsman v. Finland* case provides importance guidance for Greenland regarding the steps it must take to protect the indigenous population's rights under Article 27. Greenland must ensure that permits for extractive mining do not incorporate any land used for seal hunting, sheepherding, or fishing, and only permit mining activities that would have a "minimal impact" on these practices. To the extent Greenland wishes to enlarge mining rights under a permit in the future, the *Länsman v. Finland* case suggests that the government would need to once again consult the indigenous population and ensure that any mining activities do not prevent the indigenous population from benefitting from their cultural practices and industries.<sup>144</sup>

## 2. Jouni Länsman et al. v. Finland

In this case,<sup>145</sup> a group of native Sami reindeer herders brought a complaint alleging that state-authorized logging violated the Complainants' rights under Article 27.<sup>146</sup> The Complainants alleged that the Finnish forestry authority approved logging activities in areas near and within the Angeli area, a region used by the Complainants and other Sami for reindeer husbandry.<sup>147</sup> The Complainants alleged that prior logging activities had a detrimental impact on their rights as indigenous reindeer herders, and that proposed logging activities

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142. *Id.* ¶ 9.5.

143. *Länsman et al. v. Finland*, Comm. No. 511/1992, ¶ 9.5.

144. *Id.* ¶ 9.6.

145. *Länsman et al. v. Finland*, Comm. No. 511/1992.

146. Jouni Länsman et al. v. Finland, Commc'n No. 1023/2001, U.N. Doc. CCPR/C/83/D/1023/2001 (2005), ¶ 10.6.

147. *Id.*

would exacerbate these issues.<sup>148</sup>

According to the complaint, “some 1,600 hectares of the Herdsmen’s Committee’s grazing area in Paadarskaidi [had] been logged, accounting for some 40 percent of lichen (utilized for feeding reindeer) in that specific area.”<sup>149</sup> The Complainants also alleged “reindeer tend to avoid areas being logged or prepared for logging,”<sup>150</sup> and that this prompts them to “stray to seek other pastures and thereby incur additional labour for the herders.”<sup>151</sup> The waste produced from logging activities also impeded the reindeers’ normal grazing activities, while compacted snow prohibited them from digging for forage.<sup>152</sup> As a result, the herdsmen complained that they were required to bear the expense of providing additional feed for their reindeer.<sup>153</sup>

At the time of the complaint, Finland had in place specific laws to limit the number of reindeer, known as the Reindeer Herding Act.<sup>154</sup> The dual intent of these regulations was to ensure the economic prosperity of the indigenous population’s reliance on the reindeer herding industry as well as to ensure that reindeer husbandry would remain a sustainable activity for the region.<sup>155</sup> In the years leading up to the complaint, the Ministry in charge of implementing these regulations determined that the availability of winter forage for the reindeer was so low that a herd reduction of 15 percent was appropriate.<sup>156</sup> According to the herdsmen, the limited availability of forage was primarily the result of logging activities in the region.<sup>157</sup> Despite this, the Herdsmen alleged, “the National Forest & Park Service continue[d] to conduct logging operations, destroying the Herdsmen’s Committee’s pastures, and further deteriorating husbandry conditions.”<sup>158</sup>

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148. *Länsman et al. v. Finland*, Comm. No. 511/1992, ¶ 3.1.

149. *Länsman et al. v. Finland*, Commc’n No. 1023/2001, ¶ 3.1.

150. *Id.* ¶ 3.2.

151. *Id.*

152. *Id.*

153. *Id.* ¶ 3.3.

154. *Id.* ¶ 3.4.

155. *Länsman et al. v. Finland*, Commc’n No. 1023/2001, ¶ 3.4.

156. *Id.*

157. *Id.*

158. *Id.* ¶ 3.5.

In response, Finland first acknowledged that the Herdsmen belonged to the native Sami population and were an indigenous people according to Article 27.<sup>159</sup> It also contended that “due care was exercised for all logging operations carried out in State-owned forests in northern Finland,”<sup>160</sup> and that the logging activities in recent years were performed primarily to ensure proper forest growth.<sup>161</sup> The State also noted that the Herdsmen’s Committee operates an area totaling roughly 248,000 hectares and that only 16,100 hectares of that land are used for State-implemented forestry activities, comprising 6.5 percent of the Herdsmen’s Committee’s area.<sup>162</sup> Finland denied there was additional logging activities planned for the Angeli region.<sup>163</sup>

Regarding the reduction of the herd limit per the Reindeer Herding Act, Finland cited the harsh climate and severe conditions affecting the region, and noted that the then-current maximum number of reindeer was substantially higher than the limit in prior decades.<sup>164</sup> Finland went on to argue that the unfavorable state of the herding lands was more attributable to the overgrazing of reindeer than any logging activity in the region.<sup>165</sup> Finland relied on a report from the Finnish Game and Fisheries Research Institute in making this argument.<sup>166</sup>

The Herdsmen refuted Finland’s allegations stating that the logging activity had a minimal impact on grazing, and noted that the same report identified supplemental feeding as a necessary condition for ensuring that the loggings do not have detrimental impact on reindeer grazing land.<sup>167</sup> Ultimately, the herdsman claimed that the “effects of logging operations are long-term, practically permanent, and that the measures employed create new damage, exacerbate existing damage, and extend the area affected by logging.”<sup>168</sup> As a result of these detriments, the reindeer herds became more susceptible

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159. *Id.* ¶ 7.2.

160. *Id.* ¶ 7.4.

161. *Länsman et al. v. Finland*, Commc’n No. 1023/2001, ¶ 7.4.

162. *Id.* ¶ 7.5.

163. *Id.* ¶ 7.6.

164. *Id.* ¶ 7.9-7.10.

165. *Id.* ¶ 7.10.

166. *Id.*

167. *Länsman et al. v. Finland*, Commc’n No. 1023/2001, ¶ 8.7.

168. *Id.*

to naturally occurring conditions like heavier snowfall, delayed arrival of spring, and increases in predatory pressure.<sup>169</sup>

In considering the merits of the parties' claims, the Committee first noted that the Complainants are an undisputed minority within the ambit of Article 27's protections, and that reindeer husbandry is "an essential element" of their economic viability and culture.<sup>170</sup> The court cited its statement in the prior case,<sup>171</sup> however, that measures having "only a limited impact on the way of life and livelihood of persons belonging to a minority will not necessarily amount to a denial of the right under Article 27."<sup>172</sup>

Building on this jurisprudence, the Committee stated that when assessing state action, a violation of Article 27 "may result from the combined effects of a series of actions or measures taken by a State party over a period of time and in more than one area of the State occupied by that minority."<sup>173</sup> As a result, the Committee "must consider the overall effects of such measures on the ability of the minority concerned to continue to enjoy their culture."<sup>174</sup> This consideration is not limited temporally, but includes evaluation of "the effects of past, present and planned future logging on the Complainants' ability to enjoy their culture in community with other members of their group."<sup>175</sup>

Applying this approach to the dispute at hand in *Jouni Länsman v. Finland*, the Committee concluded that Finland's logging activities did not constitute a violation of the Herdsmen's rights under Article 27.<sup>176</sup> It also noted the clear disagreement between the parties on the impact of the logging on reindeer husbandry and the Ministry's decision to reduce the maximum herd size, and found that both parties had raised legitimate concerns.<sup>177</sup> Moreover, while the forestry report did indicate that logging would place additional pressure on reindeer husbandry, the Committee made particular mention of other docu-

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169. *Id.*

170. *Id.* ¶ 10.1.

171. *Länsman et al. v. Finland*, Comm. No. 511/1992.

172. *Länsman et al. v. Finland*, Commc'n No. 1023/2001, ¶ 10.1.

173. *Id.* ¶ 10.2.

174. *Id.*

175. *Id.*

176. *Id.* ¶ 11.

177. *Id.* ¶ 10.2.

ments before it describing other factors contributing to the low profitability of reindeer husbandry, and that despite these difficulties, the total reindeer population remained high.<sup>178</sup> Accordingly, the Committee held that the logging activities were “not shown to be serious enough as to amount to a denial of the Complainants’ right to enjoy their own culture in community with other members of their group under Article 27 of the Covenant.”<sup>179</sup>

A main takeaway for this case is that extractive mining activities can be assessed altogether and across various regions and that have occurred over a long period of time. If there is approval for mining, the indigenous population ought to establish a network to communicate about the impact of extractive mining and to collect information from across the region in the event the indigenous population needs to bring a complaint before the Committee.<sup>180</sup> In addition, like the previous case, the Sami herdsman failed to show that the logging activities posed a “serious enough” impact on their ability to engage in reindeer husbandry.<sup>181</sup> If Greenland’s indigenous population brings a complaint, the Committee will assess whether extractive mining is having a “serious enough” impact on their ability to seal hunt, shepherd, and fish. The Committee will also assess whether any factors besides extractive mining are harming the indigenous populations rights.

#### F. DESPITE PROGRESS, PROBLEMS REMAIN

These cases illustrate that while the State is responsible for most permitting activities and oversight, private companies are the primary actors. The cases underscore the fact that corporate activities can affect human rights and that it is often difficult to hold multinational corporations accountable for human rights violations in foreign land.<sup>182</sup>

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178. *Länsman et al. v. Finland*, Commc’n No. 1023/2001, ¶ 10.3.

179. *Id.*

180. See, e.g., *Talking Transparency: A Guide for Communicating the Extractive Industries Transparency Initiative*, EITI 12-14 (2008) [hereinafter *Talking Transparency*] (introducing a multi-stakeholder initiative that forms a network to dialogue and debate oil, gas, and mining projects in various countries).

181. *Länsman et al. v. Finland*, Comm. No. 511/1992, ¶ 10.3.

182. *Länsman et al. v. Finland*, Comm. No. 511/1992; *Länsman et al. v. Finland*, Commc’n No. 1023/2001.

There are signs of both promise and progress when it comes to States' willingness to hold private businesses accountable. In December 2015, for example, a Dutch appeals judge overruled a 2013 decision of a lower court and ruled that a court in the Netherlands should hear a case against Royal Dutch Shell brought by four Nigerian farmers.<sup>183</sup> In January 2016, the Supreme Court of the United States upheld a lower court's ruling that an action brought by two Malian residents against Nestle, a leading global food manufacturer, alleging that Nestle aided and abetted human rights violations by purchasing cocoa from Ivory Coast could proceed in Federal Court.<sup>184</sup>

There are perhaps more signs, however, that judicial mechanisms remain insufficient, particularly in the context of extractive mining. In 2013, for example, a U.S. court dismissed a 13-year-long lawsuit against Anglo-Australian mining company Rio Tinto brought by Papua New Guinea residents alleging that the company improperly discarded tailings and waste rock from a mining operation, engaged in discriminatory labor practices, and other violations.<sup>185</sup>

Courts have dismissed a number of comparable lawsuits, including a lawsuit brought by Sudanese residents against Canadian-based Talisman Energy alleging human rights abuses in conjunction with oil extraction<sup>186</sup> and a lawsuit brought by Liberian residents alleging that Firestone Tire Company engaged in pervasive human rights abuses including illegal child labor.<sup>187</sup> Additionally, in 2005, a lawsuit

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183. See *Shell to face Nigeria oil spill lawsuit*, BBC NEWS (Dec. 18, 2015), <http://www.bbc.com/news/business-35134704> (explaining that Shell was held responsible for its Nigerian subsidiary's oil leaks and subsequent pollution).

184. Lawrence Hurley, *U.S. top court rejects Nestle bid to throw out child slavery suit*, REUTERS (Jan. 11, 2016, 1:02 PM), <http://www.reuters.com/article/us-usa-court-nestle-idUSKCN0UP1L420160111>.

185. *Sarei v. Rio Tinto, PLC*, 671 F.3d 736 (9th Cir. 2013).

186. See *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 259 (2d Cir. 2009) (holding that Talisman Energy was not liable for the human rights abuses because the Sudanese plaintiffs did not present evidence that the company acted with the purpose of harming civilians).

187. See Jonathan Stempel, *Firestone wins Liberian child labor case in US*, REUTERS (Jul. 13, 2011, 6:01 AM), <http://af.reuters.com/article/topNews/idAFJOE76C02L20110713?pageNumber=2&virtualBrandChannel=0&sp=true> (explaining that United States law can hold companies liable for human rights abuses abroad, but did not hold Firestone tire company accountable for the human rights allegations against it).

brought by Burmese residents alleging that California-based Unocal was complicit in human rights abuses committed in conjunction with the company's construction of a gas pipeline was settled in a confidential agreement on the eve of trial.<sup>188</sup>

#### IV. THE KEY ROLE OF BUSINESS HUMAN RIGHTS & THE U.N. GUIDING PRINCIPLES

As the last section illustrated, a serious gap in international law arises when injured parties seek to hold private businesses accountable for human rights violations, particularly in the context of extractive mining. The United Nations' Guiding Principles on Business and Human Rights ("GPs") are a welcome first step toward filling in this gap by creating a clear set of guidelines and expectations for private business while also encouraging states to take more affirmative steps in overseeing a private business' respect of human rights.<sup>189</sup> Unanimously endorsed in June 2011, the GPs discuss three core pillars of obligation: the state duty to protect, the business duty to respect, and the shared duty to remedy violations of human rights.<sup>190</sup>

##### A. THE STATE DUTY TO PROTECT & REMEDY

According to the GPs, States have an unequivocally recognized "*duty* under international human rights law to *protect everyone* within their territory and/or jurisdiction from human rights abuses committed by business enterprises."<sup>191</sup> Under this duty, "States must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations."<sup>192</sup> To accomplish this goal, the GPs advise States to create "clear expectations" that resident

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188. Rachel Chambers, *The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses*, 13 HUM. RTS. BRIEF 1, 14 (2005), <https://www.wcl.american.edu/hrbrief/13/unocal.pdf>. Sources indicate the settlement provided funds for programs to improve living conditions in Myanmar and to protect those living in the pipeline region. See *Unocal lawsuit (re Myanmar)*, BUS. & HUM. RTS. RESOURCE CTR., <https://business-humanrights.org/en/unocal-lawsuit-re-myanmar> (explaining that Myanmar alleged human rights abuses, which occurred during the building of a gas pipeline).

189. *The U.N. Guiding Principles on Business and Human Rights: An Introduction*, U.N. WORKING GROUP ON BUSINESS & HUMAN RIGHTS 2 (2011).

190. *Id.*

191. *Id.*

192. *Id.*

companies can use to guide their operations, ideally preventing the state from needing to intervene.<sup>193</sup>

If Greenland chooses to allow extractive mining, the GPs recommend that the government should heed. First, the GPs advise States to enact and enforce laws requiring businesses to respect human rights in addition to establishing a regulatory system that fosters this sense of respect for human rights.<sup>194</sup> Before Greenland issues permits for extraction, it should establish clear protections for the indigenous population that the companies must heed. The process for establishing these rules and regulations should involve participation and feedback from the public, including the indigenous population.<sup>195</sup> This would help set the tone for the mining industry's early years in the region,<sup>196</sup> and hopefully foster a proactive approach as opposed to a reactive approach that relies primarily on adjudication of individual claims.

Additionally, because extractive mining is an industry that encompasses many capacities, Greenland should pay special attention to GP 8, which encourages states to “ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.”<sup>197</sup> In implementing this guideline, states should take both “vertical and horizontal” approaches to ensuring policy coherence across the government.<sup>197</sup> Departments that may be involved in extractive mining

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193. *Id.*

194. *Id.*

195. See U.N. Hum. Rts. Office of the High Comm’r, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*, U.N. Doc HR/PUB/13/2, 14, 26 (2012) (rationalizing that indigenous populations should have the opportunity to consult “on matters affecting their rights and interests”).

196. See generally, *Talking Transparency*, *supra* note 180.

197. U.N. Hum. Rts. Office of the High Comm’r, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc HR/PUB/11/04, 10 (2011) [hereinafter *Implementing the United Nations “Protect, Respect and Remedy” Framework*].

197. See *id.* at 10-11 (explaining that vertical policy is when states apply their own laws and policies to international human rights obligations, and horizontal policy is when a state’s agencies and departments further comply with the state’s international human rights obligations through business practices).



include land use, finance, water, environmental health, and international trade, public housing, and cultural affairs.<sup>198</sup>

Because extractive mining often involves participation from foreign investors and companies, Greenland “should maintain adequate domestic policy space to meet [its] human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties and contracts.”<sup>199</sup>

In addition to providing adequate protection, the GPs call on states to ensure that there are appropriate remedies for violations.<sup>200</sup> This duty to provide appropriate remedy is necessary to ensure that the State duty to protect carries meaning and enforcement power.<sup>201</sup> Greenland should consider both procedural and substantive aspects of the remedy that it provides, bearing in mind that some groups may lack the resources or means needed to bring a complaint through existing mechanisms.<sup>202</sup> The GPs envision a broad interpretation of the types of grievances that are permissible, including those based on “customary practice, or general notions of fairness of aggrieved communities.”<sup>203</sup> Greenland should remove barriers that “prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable.”<sup>204</sup>

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198. *See generally id.* at 11-12 (explaining that, concerning business, human rights abuses come about in connection to territory and resources control, and supporting the proposition that government departments and agencies should observe and comply with human rights in this context).

199. *Id.* at 12.

200. *See id.* at 22 (supporting the proposition that in cases of business-related human rights abuses, States have a duty to ensure that affected parties have access to remedy).

201. *See id.* at 22 (affirming that unless States take appropriate steps to investigate, redress, and punish business-related human rights abuses, their duty to protect is weakened).

202. *Accord Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 197, at 24 (explaining that regarding protecting individuals from business-related human rights abuses, States should pay particular attention to individuals from groups and populations that face a heightened risk of vulnerability because such individuals often lack the resources needed to bring a complaint through existing mechanisms).

203. *Id.* at 22.

204. *Id.* at 27.

Also, reports have indicated that, “at the macro-economic level, particularly in developing countries, the prosperity achieved by the mining industry rarely translates into an adequate standard of living for the population.”<sup>205</sup> As a result, Greenland needs to consider fostering a benefit sharing of resources, paying special attention to the most vulnerable groups, while providing mechanisms to remedy a disparate allocation of benefits derived from the mining activities.<sup>206</sup> The same holds true for water, which is one of the largest inputs in the extractive industry.<sup>207</sup> Allowing a mining company to remove millions or even billions of gallons of water from a locality could have devastating impacts on the local population and constitute a direct violation of the population’s human right to safe drinking water.<sup>208</sup>

Ensuring sufficient access to remedy takes on special considerations in the context of indigenous populations, through insufficient finances, lack of information on how to bring a claim, or lack of sufficient legal counsel.<sup>209</sup> These deficiencies enter into even sharper relief when compared to the staggering resources and sophistication that many businesses enjoy.<sup>210</sup> Greenland should keep this imbalance in mind when developing regulations implanting its duty to protect and duty to redress. A non-judicial grievance mechanism tailored to extractive mining could prove to be the most effective and efficient

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205. *Report on Human Rights Obligations Related to Hazardous Substances and Waste*, *supra* note 11, ¶ 36.

206. *See id.* (emphasizing States’ need to engage in benefit-sharing of resources with special attention allocated to the needs of vulnerable groups).

207. *See id.* ¶ 39 (pointing out that no other resources regarding extraction industries and activities is more greatly affected by the extent and level of degradation, quality, and quantity than water).

208. *See id.* ¶ 40 (stressing that extracting industries’ removal of billions of gallons of water from the Earth’s hydrological cycle could undermine the availability of a continuous water supply for personal and domestic uses, requiring communities to travel to collect safe drinking water).

209. *See generally Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 197, at 23 (pointing out that, in efforts to bring a claim for a business-related human rights abuses, both practical and procedural difficulties can arise because of claimants’ lack of resources).

210. *Cf. id.* at 24 (emphasizing the barriers that inhibit victims of business-related human rights abuses from bringing claims due to an imbalance in financial resources and access to information).

mechanism for accomplishing both tasks.<sup>211</sup>

Of particular note in this provision is the requirement that states give due treatment and respect to an indigenous population's land tenure systems.<sup>212</sup> This would require Greenland to respect the communal land ownership system that has characterized the predominately Inuit populations in Greenland for many centuries.<sup>213</sup> Also, it reiterates the importance of Greenland and Denmark's duty to include the indigenous population in the decision-making process and to obtain their input regarding the introduction of an extractive mining industry.<sup>214</sup>

### B. THE CORPORATE DUTY TO RESPECT

Although the GPs provide recommendations, businesses have many incentives to adopt their tenants and to address human rights implications at the outset of a business venture. In 2015, the International Council on Mining & Metals ("ICMM") produced a Good Practice Guide regarding indigenous people's rights and mining ("GPG"). In advancing a reason why private mining companies should consult the GPG, the document states: ". . . companies that adopt good practice in relation to their interactions with Indigenous Peoples are likely to [enhance their reputation on the global stage as responsible companies]."<sup>215</sup> Also, in many instances, mining activi-

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211. *Accord Report on Human Rights Obligations Related to Hazardous Substances and Waste*, *supra* note 11, at 33 (advocating for States to provide non-judicial grievance mechanisms alongside judicial mechanisms as a means of allowing remedy for business-related human rights abuses).

212. *See id.* ¶ 61 (stressing Convention No. 169's dictates, mandating recognition of the need for special safeguards for the rights of Indigenous Peoples to natural resources).

213. JENS DAHL, SAQQAQ: AN INUIT HUNTING COMMUNITY IN THE MODERN WORLD 157 (2000) (describing the system in Greenland as utilizing territorial rights inherited through generations, referring specifically to rights to land, ice, and water).

214. *Accord Report on Human Rights Obligations Related to Hazardous Substances and Waste*, *supra* note 11, ¶ 69(g)-(h) (emphasizing that States, in accordance with their obligation to respect human rights, must establish spaces of consultation and collective decision-making at the local and national level when engaged in extracting activities).

215. INT'L COUNCIL ON MINING AND METALS, GOOD PRACTICE GUIDE: INDIGENOUS PEOPLES AND MINING 9 (6th ed. 2015) [hereinafter INT'L COUNCIL ON MINING AND METALS].

ties occur in close proximity to indigenous peoples. In Australia, for example, there is a 60 percent of mining activities conducted adjacent to Aboriginal communities.<sup>216</sup>

Additionally, companies can now expect to receive public attention and scrutiny regarding the practices they adopt affecting indigenous populations. The report recognizes that “[t]here is now widespread recognition at the international level that Indigenous Peoples have distinct rights and interests, and a growing expectation that these will be respected by responsible companies.”<sup>217</sup> Companies must acknowledge and respect the “special relationship” that indigenous groups often have with the land and territories that companies wish to mine.<sup>218</sup>

The GPs provide that “[b]usiness enterprises should respect human rights.”<sup>219</sup> Adhering to this principle means that businesses “should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”<sup>220</sup> Businesses’ minimum obligation for respecting human rights is recognizing the rights outlined in the International Bill of Human Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.<sup>221</sup>

The GPs recognize that “some human rights may be at a greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention.”<sup>222</sup> A number of United Nations

216. *Id.*

217. *Id.* at 10.

218. *Id.* (emphasizing the special relationship that Indigenous Peoples have to land and resources which companies seek to explore and mine).

219. *Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 197, at 7.

220. *Id.* at 13.

221. *See id.* (pointing out that, at a minimum, the responsibility of business enterprises to respect human rights refers to those rights expressed in the International Bill of Human Rights and in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work); *see also* G.A. Res. 217 (III) A, Universal Declaration of Human Rights arts. 1-3 (Dec. 10, 1948) (clarifying universal and fundamental human rights); *see generally* Int’l Labour Org., ILO Declaration on Fundamental Principles and Rights at Work, Int’l Labour Conf., 86th Sess., ¶¶ 1-5 (June 18, 1998) (speaking of human rights obligations related to work and business).

222. *Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 197, at 13.

reports have discussed the relationship between environmental harm and human rights.<sup>223</sup> These sources make it clear that functions associated with extractive mining, like the improper disposal of toxic waste, exposure to harmful chemicals and radiation, and water pollution, all pose threats to well-recognized human rights.<sup>224</sup> They have also recognized that indigenous populations are particularly vulnerable to environmental harm due to the “close relationship” that they have with nature.<sup>225</sup>

The Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste prepared a report providing valuable insight into the impacts that extractive mining can have on local populations.<sup>226</sup> One of the largest wastes generated by mining activities is waste rock, which often has radioactive properties, and can harm people through inhalation, ingestion, or physical contact.<sup>227</sup> Additionally, “[e]xposed surfaces and waste rock in impoundments or ponds, or buried underground, can react and create new and additional waste from excavation and beneficiation, which can contaminate and the surrounding surface and groundwater.”<sup>228</sup> Concerning uranium min-

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223. See World Comm. on Env't and Dev., *Our Common Future: Report of the World Commission on Environment and Development*, ¶ 75, U.N. Doc. A/42/427 (Aug. 4, 1987) (stating that starting point of a just and humane policy regarding rights to land and resources is connected to environmental awareness); see generally Rep. of the U.N. Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1, 5 (June 5-16, 1972) [hereinafter *Human Environmental Report*] (clarifying the need to avoid adverse effects to the environment, and to make efforts to obtain maximum environmental benefits).

224. *Accord Hum. Rts. Council, Rep. of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Report to the General Assembly*, ¶ 19, U.N. Doc. A/HRC/25/53 (Dec. 30, 2013) (stressing that all human rights are vulnerable to environmental degradation).

225. *Cf. id.* ¶ 40 (emphasizing that certain Indigenous Peoples are particularly vulnerable to environmental degradation, referencing the substantive and procedural rights of these Peoples as they relate to the environment).

226. See *Report on Human Rights Obligations Related to Hazardous Substances and Waste*, *supra* note 11, ¶ 20 (articulating the impacts and results on human health and society of introducing hazardous substances into the environment for extracting purposes).

227. *Id.* ¶¶ 19-20 (pointing out that the extraction activities can produce naturally-occurring radioactive materials, and discussing the disparate impact such materials have on human health when ingested or inhaled).

228. *Id.* ¶ 18.

ing, the decomposition of residual materials can create radon, “an airborne radioactive substance which, in some countries, is the second most important cause of lung cancer after smoking.”<sup>229</sup> Transportation of hazardous materials and waste also poses substantial risks, including transportation-related accidents that have resulted in serious injuries and even death.<sup>230</sup>

Any businesses that undertake extractive mining activities in Greenland should keep these unique dangers in mind and ensure that they are providing adequate safeguards. The companies should “[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.”<sup>231</sup> Businesses should also “prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services . . . .”<sup>232</sup>

These hazards pose specific risks to certain groups, including women, children, and indigenous populations who rely on agriculture.<sup>233</sup> “Due to the disposal of hazardous substances and waste from extraction activities resulting in contaminated agricultural soils, pollution continues even when production stops.”<sup>234</sup> Ingestion is one of the key ways in which hazardous substance exposure occurs.<sup>235</sup> For example, there is proof that plants, absorb uranium during growth, and acid rain can destroy vital soils.<sup>236</sup> In areas that have experienced uranium exposure and acid rain, fish stocks “have reduced signifi-

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229. *Id.* ¶ 21.

230. *See id.* ¶ 24 (discussing the dangers associated with the transportation of hazardous substances used, pointing out transportation-related accidents of these substances has resulted in injuries and deaths because of exposure to cyanide and other similar substances).

231. *Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 197, at 14.

232. *Id.*

233. *See Report on Human Rights Obligations Related to Hazardous Substances and Waste*, *supra* note 11, ¶¶ 28-31 (observing that children are uniquely vulnerable to the effects of mercury exposure resulting from extracting activities, and that pregnant women are also particularly vulnerable to substance exposure due to extracting activities).

234. *Id.* ¶ 34.

235. *See id.* ¶ 20 (explaining that the dangerous impacts of ingesting hazardous substances occur through inhalation, ingestion, and physical contact and exposure).

236. *See id.* ¶ 35 (explaining how plants uptake uranium, which in turn releases nitrous oxide into the atmosphere resulting in acid rain).

cantly, creating food scarcity and insecurity for communities who depend on fish as a main source of food, as well as a means of livelihood.<sup>237</sup> Considering that fishing is a critical industry for the Greenlanders, both as a food supply and a local economy, businesses should pay special attention to avoid having a negative impact on fishing in Greenland.<sup>238</sup>

Although the GPs discuss the corporate duty to respect as a burden that businesses should undertake, Greenland must keep the GPs recommendations for businesses in mind when approving mining licenses and applications. For example, Greenland could require mining companies to provide an overview of their policies on human rights, or to submit plans that show the measures these companies intend to use to prevent human rights abuses from occurring while also providing avenues for redress and communication.<sup>239</sup>

### C. DESPITE PROGRESS, PROBLEMS REMAIN

The GPs contain many well-aimed principles that would likely prove useful in establishing a proactive framework for mining in Greenland. Due to their voluntary nature, however, States have leeway to apply them in a piecemeal fashion or to adopt interpretations that gut their true spirit. Although Greenland has made progress toward implementing the GPs through the enactment of a National Action Plan, it fails to make any mention of extractive mining activities or the risks associated therewith.<sup>240</sup> And while Denmark has enacted a National Action Plan discussing its strategy for implementing the

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237. *Id.*

238. See Food and Agric. Org. of the U.N., FAO Fishery Country Profile – Greenland, FID/CP/GRL (Oct. 2004), <http://www.fao.org/fi/oldsite/FCP/en/GRL/profile.htm> (demonstrating the importance of the fishing industry to Greenland with quantifiable data specifying the value of exports and per capita).

239. *Accord About Our Human Rights Policy*, CHEVRON, <https://www.chevron.com/~media/chevron/shared/documents/AboutOurHumanRightsPolicy> (discussing corporate responsibility as it relates to human rights and extraction activities, emphasizing a need for companies and corporations to be cognizant of protecting human rights in the areas where they operate).

240. Cf. Sofie Erbs, *Government of Greenland, The National Action Plan in Greenland*, GOV'T OF GREENLAND (2015), [http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri\\_Fangst\\_Landbrug/Polarbear%202015/second%20day/75%20%20pp%20NAP%20Greenland.pdf](http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Polarbear%202015/second%20day/75%20%20pp%20NAP%20Greenland.pdf) (delineating the environmental concerns for Greenland).

UN Guiding Principles on Business and Human Rights, the document also fails to make mention of the unique and highly sensitive issues associated with extractive mining and indigenous populations.<sup>241</sup>

As a whole, the mining industry appears to be aware of the unique challenges and considerations that come with conducting extractive mining activities near indigenous populations and in environmentally sensitive regions. The International Council on Mining and Metals' Indigenous Peoples and Mining Good Practice Guide foster the same core principles of the GPs while also embracing general human rights principles.<sup>242</sup> They also advise mining companies to promote the social, cultural, and economic health of the regions in which they operate.<sup>243</sup> If the recent disaster in the Minas Gerais mining region of Brazil is any indication, however, the mining industry has a long way to go toward fulfilling the GPs' aims.<sup>244</sup> Minas Gerais also raises questions regarding how diligently States have approached their duties under International Law when it comes to extractive mining.<sup>245</sup>

## V. CONCLUSION

Greenland and its indigenous population have a major decision to make. The risks and dangers associated with extractive mining are many, touching almost every facet of society, including environmental integrity, public health, economic vitality, cultural preservation, and quality of life. Although there are a number of critical problems that remain to be addressed, there are signs of promise that a proactive approach can be achieved and indicia that progress is being made toward making that promise a reality.

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241. Cf. *Danish National Action Plan*, DANISH GOV'T (2015), [http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark\\_NationalPlanBHR.pdf](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf) (discussing the plans and strategy to implement the UN protocol).

242. See INT'L COUNCIL ON MINING AND METALS, *supra* note 215, at 17 (emphasizing that ICMM members commit to respecting the rights of Indigenous Peoples, in particular those set forth by the United Nations).

243. See *id.* at 31 (stressing that there are basic steps that can be taken to reduce the scale of negative impacts in mining projects).

244. See Douglas, *supra* note 1 (discussing the collapse of a dam in Minas Gerais, Brazil, resulting in the release of toxic mud).

245. See *id.* (discussing the efforts of the Brazilian congress to reform domestic law that would diminish environmental regulation).



If the government chooses to proceed with resource extraction, it must heed the requirements provided in the ICCPR, ICESCR, ECHR, and DRIP when implementing an extractive mining regime. Should the indigenous people find themselves needing to bring an action before the Committee alleging violations of the ICCPR, it must construct its argument carefully to show a readily ascertainable harm to its long-standing practices and enjoyment of its culture.

Ideally, Greenland and the private companies eager to mine the region will look to the Guiding Principles and Business Human Rights to create a framework that promotes access to information, includes public participation in decision-making, provides an avenue for legal redress, and which clearly encompasses private parties as duty bearers. These mechanisms and other approaches presented in this paper will help Greenland and private mining companies to ensure that there is respect, protection, and remedies for indigenous population's right to food. Through this paradigm, Greenland can hopefully avoid finding itself facing the same environmental devastation that the people of Brazil are facing today.