



**OHCHR Contribution to the European
Commission's call for evidence
for updating the European Arctic Policy**

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The Office of the United Nations High Commissioner for Human Rights (OHCHR), Regional Office for Europe, welcomes the opportunity to contribute to the updates to the European Arctic Policy.

We note and welcome several references to human rights in the European Arctic Policy. In particular, we welcome the clear reaffirmation that “EU action must be based on its values and principles, including the rule of law, human rights, sustainable development, gender equality, diversity and inclusion, support for rules-based multilateralism and the respect of international law”. We also appreciate the strong endorsement that “The UN Declaration on the Rights of Indigenous Peoples is integral to the EU’s human rights policy” and that “the EU will promote Indigenous Peoples’ rights and freedoms in line with the International Labour Organisation (ILO) Convention No 169, and encourage full consultation and cooperation with Indigenous Peoples, bearing in mind the principle of free, prior and informed consent, before adopting and implementing measures that may affect them directly.”

The European Arctic Policy explicitly identifies climate change as the most comprehensive threat facing the Arctic and underscores the importance of climate action. It could further elaborate on the implications of climate change on the enjoyment of human rights. Similarly, the policy’s prioritization of people living in the Arctic could benefit from a more explicit human rights-based approach.

To support the integration of a human rights-based approach into the updates to the European Arctic Policy, OHCHR provides the below five recommendations which are elaborated in the subsequent parts of this briefing paper. As the main human rights entity of the UN mandated by the UN General Assembly to protect and promote all human rights, OHCHR stands ready to provide full support to the European Commission to implement the recommendations below.

Recommendation 1. Recognize the impact of climate change and environmental degradation on the enjoyment of human rights and address ways in which the EU as a legislator for part of the European Arctic can contribute to the protection of human rights.

Recommendation 2. Ensure effective operationalization of the right to free, prior and informed consent (FPIC), as affirmed in the UN Declaration on the Rights of Indigenous Peoples and the current European Arctic Policy.

Recommendation 3. Ensure the right to self-determination of the Indigenous Peoples living in Arctic area including adequate recognition of the rights to their lands, territories and natural resources, as that recognition represents the cornerstone of their autonomy and self-government and is essential for their survival as distinct peoples.

Recommendation 4. Ensure the prevention of human rights harms associated with military operations by adopting effective legal, policy, and early warning mechanisms and guarantee access to adequate, timely, and culturally appropriate remedies, including restitution, compensation, rehabilitation, and guarantees of non-repetition.

Recommendation 5. Strengthen protection of human rights defenders, including environmental human rights defenders, by fostering a safe, supportive, and enabling environment in which they can operate freely and without fear of intimidation, harassment, or retaliation.

Recommendation 1. Protect human rights impacted by climate change

Recognize the impact of climate change and environmental degradation on the enjoyment of human rights and address ways in which the EU as a legislator for part of the European Arctic can contribute to the protection of human rights.

1. International human rights standards

- The Preamble of the Paris Agreement to the UN Framework Convention on Climate Change makes it clear that all States "should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights".
- The [UN human rights treaty bodies](#) have addressed climate change and human rights in statements, decisions, concluding observations, General Comments and General Recommendations, which provides guidelines for the interpretation and application of State party obligations in relation to climate action.
- The special procedures of the Human Rights Council have been actively involved in addressing the human rights impacts of climate change including in the following reports and statements ([see compilation of work](#)).

2. Impacts of climate change and environmental degradation on human rights in the Arctic region

Several international human rights treaty bodies have explicitly noted concerns about the impact of climate change on Indigenous Peoples living in the Arctic region. Extreme weather events such as floods, droughts and forest fires, long-term changes from shifts in rainfall patterns, permafrost thaw, and increasing temperatures disproportionately affecting Indigenous Peoples living in the Arctic region. An example is the large-scale thawing of ice which may expose layers of toxic substances previously trapped beneath the ice, including polychlorinated biphenyls and radioactive materials beneath the north-western Greenland ice sheet, due to climate change and accelerating ice melt ([A/HRC/54/52](#), para. 49). Another example is the impact on biodiversity which the Inuit people's culture, lifestyle and scientific knowledge of hunting, fishing, and agriculture depend on ([A/HRC/54/31/Add.1](#), paras. 51 – 61). Furthermore, impact from climate change is exacerbated by exploration and exploitation of petroleum and natural gas reserves in the Arctic Ocean ([E/C.12/NOR/CO/6](#), para. 10). Nonetheless, the oil and gas industry continues to expand with some countries granting new oil and gas exploration permits including in the Arctic ([CEDAW/C/NOR/CO/10](#), para. 48, [CEDAW/C/NOR/CO/9](#), para. 14. [A/HRC/43/53/ADD.2](#), para. 96).

Additionally, Arctic regions face several challenges to environmental impact and in turn the enjoyment of the right to a healthy, clean and sustainable environment. For instance, Greenland faces significant challenges in establishing a reliable system of pollution control and waste management ([A/HRC/39/48/Add.2](#), para. 82) and faces environmentally damaging consequences of the uranium mining project ([DNK 2/2021](#) and [A/HRC/54/41/Add.1](#), paras. 39-46).

3. A human rights-based approach to environmental action including climate action

The essential content of a human rights-based approach in environmental action including climate action is:

- (a) The main objective when formulating policies and programmes should be to fulfil human rights;
- (b) The rights holders and their entitlements and corresponding duty bearers and their obligations must be identified;
- (c) Principles and standards derived from international human rights law should guide all policies.

4. Further reference

- [Fact Sheet No. 38: Frequently Asked Questions on Human Rights and Climate Change](#)
- [Key Messages on human rights and climate change](#)
- [Set of information materials on climate change and human rights](#)

Recommendation 2. Ensure the right to self-determination

Ensure the right to self-determination of the indigenous peoples living in Arctic area including adequate recognition of the rights to their lands, territories and natural resources, as that recognition represents the cornerstone of their autonomy and self-government and is essential for their survival as distinct peoples.

1. International human rights standards

- The right to self-determination is recognized in the UN Charter which affirms that one of the core purposes of the United Nations is to foster international relations based on “respect for the principle of equal rights and self-determination of peoples.”
- The right to self-determination is also a fundamental principle of international human rights law, as enshrined in common article of the International Covenant on Civil and Political Rights ([ICCPR](#)) and International Covenant on Economic, Social, and Cultural Rights ([ICESCR](#)) which states that “all peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.”
- The fundamental norm of the [UN Declaration on the Rights of Indigenous Peoples](#) is the right to self-determination recognized in article 3: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

2. Features of the right to self-determination

- Cultural self-determination, as one of the four main pillars of article 3 of the [UN Declaration on the Rights of Indigenous Peoples](#), also includes language, ceremonial and cultural heritage, spirituality and sports rights.
- Article 4 refers of the [UN Declaration](#) to the exercise of the right to self-determination in the related context of autonomy and self-government. Autonomy is the power that indigenous peoples have to organize and direct their lives. Self-governance refers to indigenous people’s right to their own institutions, to administer their autonomy and self-governance and to participate fully in the political, economic, social and cultural life of the State.
- Self-determination is exercised as a collective right belonging to the indigenous group, membership of which is based on self-identification and collective acceptance of group members without discrimination.
- The exercise of self-determination is indispensable for indigenous peoples’ enjoyment of all their other rights, including, importantly, land rights and political participation.

3. Application of the right to self-determination

Several international human rights treaty bodies have invoked the right to self-determination in cases relating to indigenous peoples and in their consideration of State party reports, mainly in the context of indigenous land rights, economic rights, the right to participation and recognition of Indigenous institutions, laws and governance systems. Additionally, those bodies have recommended legal recognition of indigenous peoples, including by implementing the fundamental right to self-determination of indigenous peoples and the establishment of shared governance. Some of these measures are already in place, for instance, the Sami peoples have parliamentary structures across three countries (Finland, Norway and Sweden) ([A/HRC/48/75](#), para. 20) and the Inuit Circumpolar Council adopted the Circumpolar Inuit Declaration on Sovereignty in the Arctic in 2009 and an Inuit Arctic policy in 2010, to acknowledge and recognize the right to self-determination of the Inuit peoples. ([A/HRC/48/75](#), para. 30).

4. Further reference

- [Fact Sheet No. 37: Frequently Asked Questions on the Right to Development](#)
- Report on Self-Determination under the UN Declaration on the Rights of Indigenous Peoples ([A/HRC/48/75](#))
- Report on the right of indigenous peoples’ to autonomy or self-government ([A/74/149](#))

Recommendation 3. Ensure respect for free, prior and informed consent (FPIC)

Ensure effective operationalization of the principle of free, prior and informed consent (FPIC), as affirmed in the UN Declaration on the Rights of Indigenous Peoples and in the European Arctic Policy.

1. International human rights standards

Free, prior and informed consent (FPIC) is a human rights norm grounded in the fundamental rights to self-determination and to be free from racial discrimination guaranteed by the International Covenant on Civil and Political Rights ([ICCPR](#)), the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)) and the International Convention on the Elimination of All Forms of Racial Discrimination ([ICERD](#)). Several provisions of the UN Declaration on the Rights of Indigenous Peoples ([UN Declaration](#)) explicitly refer to FPIC (articles 10, 11, 19, 28 and 29).

2. Scope of free, prior and informed consent

FPIC constitutes three interrelated and cumulative rights of Indigenous Peoples: the right to be consulted; the right to participate; and the right to their lands, territories and resources.

- Free implies that there is no coercion, intimidation or manipulation - addressing both direct and indirect factors that can hinder indigenous peoples' free will.
- Any free, prior and informed consent process must also be prior to any other decisions allowing a proposal to proceed and should begin as early as possible in the formulation of the proposal.
- Consultation should be "informed", implying that information availability is sufficient, information is accessible to indigenous peoples and adequate resources and capacity should be provided for Indigenous Peoples.

3. Operationalization of free, prior and informed consent

When is FPIC required? States must obtain FPIC in specific situations, among others:

- The relocation of Indigenous Peoples from their lands or territories (article 10);
- The adoption of legislation or administrative policies that affect Indigenous Peoples (article 19). For instance related to the new legislation on the Finnish Forest and Park Enterprise (Metsähallitus) and adequate consultation with the Sami peoples ([FIN 1/2016](#) and [FIN 1/2015](#));
- Indigenous Peoples who have unwillingly lost possession of their lands (article 28);
- The storage or disposal of hazardous materials on Indigenous Peoples' lands or territories (article 29); and
- The undertaking of projects that affect Indigenous Peoples' rights to land, territory and resources (article 32).

The requirement of FPIC under articles 19 and 32 applies to measures and projects that "affect" Indigenous Peoples in matters of fundamental importance to their rights, survival, dignity, and well-being. Relevant factors in this assessment include: the perspective and priorities of the indigenous peoples concerned; the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned.

How should FPIC be documented? Free, prior and informed consent should be documented, capturing the steps for accomplishing such consent and the essence of the agreement reached by the concerned parties, in accordance with indigenous peoples' customary norms and traditional methods of decision-making, including diverging opinions and conditional views.

4. Further reference

- Report by on Free, prior and informed consent: a human rights-based approach ([A/HRC/39/62](#))

Recommendation 4. Prevent human rights harms associated with military operations and ensure effective redress for affected individuals and communities

Ensure the prevention of human rights harms associated with military operations by adopting effective legal, policy, and early warning mechanisms and guarantee access to adequate, timely, and culturally appropriate remedies, including restitution, compensation, rehabilitation, and guarantees of non-repetition.

1. International human rights standards

Direct reference to proscribe the effects of militarization on Indigenous Peoples is set forth in the UN Declaration on the Rights of Indigenous Peoples ([UN Declaration](#)) which states that “Military activities shall not take place in the lands or territories of Indigenous Peoples, unless justified by a relevant public interest [...]” and that “States shall undertake effective consultation with the Indigenous Peoples concerned”. “Public interest” does not constitute by itself a determinative factor. Any stated public interest must comply with the principles of necessity and proportionality as defined within an overall framework of respect for human rights (See, [A/HRC/54/52](#), paras. 5-13).

2. Impact of militarization on the rights of Indigenous Peoples

Militarization has several adverse impacts on the enjoyment of human rights. In particular, it places people at risk of violence, threatening the rights to life, personal integrity, and survival; severely hampers the enjoyment of the rights to land, territories, and natural resources; and is detrimental to economic, social, and cultural rights ([A/HRC/54/52](#), paras. 23-50). For example, the impact of military activities in Greenland led to Inughuit people being forcibly relocated without consultation and their free, prior and informed consent and have not been compensated for the relocation and consequent loss of ancestral land and resources ([A/HRC/54/31/Add.1](#), paras. 47-50). Another related example is the relocation of Inuit in Greenland in order for military bases to be constructed has had serious social and cultural effects. Once abandoned, these military sites leave a tragic remnant of contamination, filling these lands with hazardous and nuclear wastes affecting Indigenous Peoples for generations ([A/HRC/54/52](#), para. 15).

3. Prevention mechanisms and effective remedies

The Expert Mechanism on the Rights of Indigenous Peoples provides several advices on the impact of the causes and consequences of militarization on Indigenous Peoples ([A/HRC/54/31/Add.1](#), pg. 19), among others:

- States should not undertake any militarization on the basis of public interest, without any legal and justifiable ground in terms of the associated restrictions on the rights of Indigenous Peoples.
- States should undertake consultation processes with the Indigenous Peoples concerned, even where sufficient public interest can be found.
- States should implement effectively the international human rights obligations to prevent, protect from and remedy the effects of exposure of Indigenous Peoples to toxics in the context of militarization.
- States should refrain from contaminating Indigenous territories with military waste, and should remedy the damage already caused to Indigenous lands and territories, to Indigenous Peoples’ health and to their right to a healthy, clean and sustainable environment, from past polluting activities.

4. Further reference

- Report on Impact of militarization on the rights of Indigenous Peoples ([A/HRC/54/52](#))

Recommendation 5. Protect environmental human rights defenders

Strengthen protection of human rights defenders including environmental human rights defenders by fostering a safe, supportive, and enabling environment in which they can operate freely and without fear of intimidation, harassment, or retaliation.

1. International human rights standards

Environmental human rights defenders include individuals and groups who advocate for the environment and who strive to protect and promote human rights relating to the environment. Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders and should be protected in their exercise of several rights including the right to freedom of expression and opinion (article 19 of [ICCPR](#)), peaceful assembly (article 21 of [ICCPR](#)), freedom of association (article 22 of [ICCPR](#)), and the right to participate in public affairs (article 25 of [ICCPR](#)), among others.

Furthermore, the [UN Declaration on Human Rights Defenders](#) states that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (see articles 5, 6, 9 and 12).

2. Creating safe and enabling environment for environmental human rights defenders

Indigenous Peoples in all regions are expressing their self-determination by dissenting or refusing to consent to development projects on their land, often availing themselves of the national courts. Particular to the Arctic region, the Special Procedures raised concern related to the alleged arbitrary detention of 30 environmental activists after their participation in a peaceful protest against oil drilling in the Arctic Circle ([RUS 14/2013](#)).

States should maintain safe civic spaces where environmental human rights defenders are guaranteed freedom of expression, association, assembly and protest, and are safeguarded from threats, harassment, intimidation or violence.

3. Further reference

- [UN Declaration on human rights defenders](#)
- Declaration in [different languages](#)
- [Poster](#) on the Declaration