

**BRIEFING NOTE #16: 7 JUNE 2018
WORKSHOP ON PUBLIC PARTICIPATION
IN ARCTIC EXTRACTIVE INDUSTRIES**



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On 18th October 2017, the Arctic Oil and Gas Research Centre hosted a workshop examining public participation in Arctic Extractive Industries. This was an opportunity to draw together some of the main themes of the [public seminar](#) on the same theme, held at Ilisimatusarfik on 17th October 2017. Seventeen people attended the workshop, including the speakers from the seminar, students from Ilisimatusarfik and other invited guests.

The right to participation

The first discussion theme for the workshop was the right to participation. The meeting explored the wide range of international standards for participation by indigenous and other groups and pointed to the need for corporations to understand which were applicable in each jurisdiction. Extractive companies are not always aware of all the relevant standards. Most corporations today are familiar with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169 on Indigenous and Tribal Peoples. Following the endorsement of UNDRIP in 2007, corporations have been more sensitive to the rights and interests of indigenous communities. Extractive companies often defer to the 2011 UN [Guiding Principles on Business and Human Rights](#) and attempt to interpret and apply these when working with indigenous communities. The UN Guiding Principles contain very little that specifically relates to indigenous rights, referring only to relevant UN instruments in a footnote. Nonetheless, the increased focus on human rights in general has generated greater awareness about indigenous rights. The UN Guiding Principles require companies to self-regulate to fill the gaps between the national laws that apply where they operate and relevant international human rights standards. This is an aspect of the corporate responsibility to respect human rights. Companies are asked to consider the core international human rights treaties and labour conventions as a minimum; but they are encouraged to go beyond that base-line and explicitly consider other instruments, including ILO Convention 169.

Nevertheless, businesses and even governments are not always fully aware of the binding [human rights treaties and extensive jurisprudence](#) built upon these that are relevant to extractive industries. Although the primary obligation to uphold these treaties is owed by states, the workshop participants discussed the desirability of corporate actors being better informed so they can make better decisions that respect human rights.

The workshop also considered that international standards are continuously evolving as is their implementation into domestic legal systems.

The distinction between [binding and non-binding norms](#) was discussed with a general consensus that this distinction is not always important in participatory democracies. Where there is a mature civil society, social pressures can be as effective, even more so, than the threat of legal proceedings. The enforcement provisions in international human rights law are relatively weak and only apply directly to states (not companies) so social pressure can be as significant an influence. However, it was pointed out during the discussion that where societies do not have well-functioning democratic institutions, these social pressures are much weaker. The participants at the workshop also considered that legally-binding standards can sometimes push the emphasis onto formal compliance and ‘box-ticking’ rather than a deeper cultural compliance and the will to create outcomes that are positive both for the industry and the local communities. Legal requirements tend to be less ambitious than non-legal standards and legalisation can therefore lead to corporations seeing minimum legal standards as sufficient, instead of aiming higher. Therefore, participants suggested that the ‘bindingness’ of principles such as free, prior and informed consent is not indicative their influence as corporations should be encouraged to follow these in any case.

International standards frequently do not determine the detailed requirements, such as the methods for consultation or the ideal timelines. Even in cases where detailed guidelines are available, they may not be exhaustive. In the view of the workshop participants, involvement of indigenous people in the drafting of standards for participation was to be encouraged. Indigenous groups have particularly welcomed UNDRIP which advanced from the ILO Convention 169’s requirement for ‘consultation’ to a full and inclusive ‘participation’ of indigenous communities in decision-making with the goal of free, prior and informed consent.

Challenges in facilitating effective participation

The workshop participants turned to some of the challenges to meaningful community engagement in light of experience from around the World.

Experience reported from Alaska and Canada indicates that communities are better able to participate in consultation and decision-making if they prepare well beforehand. This includes securing access to adequate information, having adequate time and opportunity for discussions amongst themselves to identify their own priorities for development and how they would like to be involved, and so on, before engagement with external actors.

Information sharing came across as a key topic that is not merely linked to a ‘pre-consultation’ period but needs to take place on an ongoing basis, ideally led by the government. This might include providing information to the general public about the nature of the extractive industries, including technical aspects of the industries, the social and economic impacts, and what communities might expect from an extractive-industries-based economy. It will include evaluation of the potential for co-existence and to maximise opportunities from new industries to help promote and support traditional industries.

Sharing of “grassroots” knowledge and experience was discussed as a very useful addition to studies led by external experts. For example, citizens who have lived

through extractive developments in one region or one country could be invited to explain to those in areas marked for future developments what worked for them, what challenges they faced, what unexpected consequences they experienced and what they would have liked, in retrospect, to have handled differently.

The participants considered that “bottom-up” consultation processes must be balanced top-down approaches. This is an element of meaningful stakeholder engagement as set out in the UN Guiding Principles, and the OECD’s Guidelines for Multilateral Enterprises. The OECD Guidelines are particularly important to the extractive sector, especially multinational firms, including those operating in Greenland if their home state is an adhering state.

Debating the future is a powerful way to help inform national and local policy relating to potential future industrial development. A question posed during consultations in Scotland was “What would you like for your grandchildren?” This proved more effective than more generalised questions regarding one’s own hopes for the future. It also points to the principle of inter-generational equity. The participants considered it important to hold discussions like this outside of specific project-related extractive industry debates, including as a way to determine the extent to which extractive industries might offer a solution to people’s needs and wants.

The [culture of public debate](#) in a country has an important influence on the extent to which people (including young people, the vulnerable and so on) feel that they can take part in public debate, including public consultations on specific topics. Participants reported that some people fear to speak up because of social sanctions if they disagree openly with influential groups or individuals. Others do not want to speak up as they do not believe they will be taken seriously. In still more cases, the format of seeking feedback is not appropriate to the demographic. It is also important to know who is taking part today and who is missing from the debate so that steps can be taken to try to make the participatory process more inclusive. Young people are often left out based on a combination of these factors, yet it is their future that is being debated. Participatory processes must also be sensitive to different cultural approaches to expressing and handling disagreement. It was observed that being silent can also be a way to communicate views, and that silence does not necessarily entail consent.

The workshop explored the changing role of the media in compiling and disseminating information on extractive projects and discussed some of the challenges of doing so in remote environments and with small teams that may lack expertise in technical issues relating to extractive projects. Meanwhile, access to the internet, smart-phones and cell-phone cameras makes it much easier for the bottom-up sharing of current information on extractive industries. Social media is also a critically important medium for getting some people interested in issues relating to the extractive industries and future development scenarios, but is often under-used in public debate and consultation, especially as a way to attract and interest younger people.

The workshop participants noted that the right to participate is only as useful as the public’s *will* to participate. There is a need to make participation interesting and relevant, to avoid lengthy, over-technical lectures, and focus on genuine two-way dialogue in the participation process. This also requires timely information so

that people are confident that they have enough background knowledge to make an impact.

Participation in Greenland

Most of the above considerations applied to Greenland as much as to other Arctic communities but a section of the workshop was devoted to exploring the specific challenges facing Greenland in ensuring full and effective public participation. The participants did not go into depth as to how participation and consultation take place in Greenland but were generally in agreement that consultation does not reach the wider population and is therefore not representative enough, nor does it give people the opportunity to participate adequately. However, there have been efforts by the government to define consultation and to encourage people to participate. The government has responded to calls from citizens' groups such as Inuit Circumpolar Council and others, and have extended the time for consultation in Greenland from six to eight weeks. Nevertheless, the participants at the workshop did not consider eight weeks to be adequate. They did not define an ideal length of time as it may depend on the nature of the consultation, the particular issue(s) under discussion, the type of feedback required, and the volume of documentation that needs to be studied, etc. The time of year is also critical, with summer generally being considered a bad time, and other busy periods needing to be taken into consideration, such as harvest, lambing, and hunting seasons.

The participants noted that old projects were not systematically reviewed in Greenland, whether or not those projects had reached the extractive stage. Studies of these projects could show what worked well and identify unexpected impacts, both positive and negative.

Improving participation in Greenland

Given the importance of this topic, a separate briefing note was prepared on [Five Proposals for Improved Practice on Public Participation related to Extractive Industries in Greenland](#). The five proposals are as follows:

1. That initiatives are taken by actors such as authorities, research institutions, educational institutions and the media, to inform and engage the public about extractive projects before or during early exploration;
2. That during the consultation phases in impact assessment processes, people are given the opportunity to meet with or hear from people from other communities where exploration and/or production of minerals or hydrocarbons;
3. That companies and authorities consider how to accept and consider confidential information and to facilitate anonymous submission of views;
4. That companies and authorities consider how to hold smaller, targeted meetings to ensure both a safe space and to encourage people to speak;
5. That initiatives are taken to evaluate former extractive projects in Greenland and consider what lessons can be applied for future management.

The workshop participants discussed the potential to mainstream the principle of free, prior and informed consent in Greenland in extractive decision-making, to ensure that communities have the opportunity to grant and to withhold consent to extractive projects. They encouraged the implementation of international standards of good practice regarding extractive industries and indigenous peoples, irrespective of whether the Greenlanders consider themselves to be 'indigenous' in the legal sense. The more important factors are socio-economic conditions and cultural relationships to the land and sea.