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# INDIGENOUS SELF- GOVERNMENT IN THE ARCTIC

## Assessing the scope and legitimacy in Nunavut, Greenland and Sápmi<sup>1</sup>

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### Abstract

This chapter considers Indigenous self-determination in the Arctic from a comparative perspective with a focus on Canada, Greenland and Sápmi. Drawing on fieldwork with Indigenous research participants from the three regions, this chapter examines the meaning, scope and status of self-determination in the Arctic. The main results demonstrate that while the objectives and challenges regarding implementing Indigenous self-determination are similar across the Arctic, the circumstances and thus the prospects of self-determination vary considerably from region to region. Specifically, the author considers and compares the self-government institutions in Nunavut, Greenland and Sápmi.

### Introduction

Arctic Indigenous peoples, particularly the Inuit and Sámi, have been at the vanguard advancing self-determination since the early 1970s. The Arctic Peoples Conference held in Copenhagen in 1973 marked the beginning of close cooperation of circumpolar Indigenous peoples from Canada, Greenland and Scandinavia. The conference resolution called for Arctic Indigenous peoples' full and equal participation in negotiations dealing with land claims and other rights (Kleivan 1992). Four years later, the Inuit Circumpolar Conference (today Council, ICC) was established to represent the Inuit across the Arctic with regional offices in Greenland, Canada, Alaska and Chukotka, Russia. Since its inception in 1977, ICC has been at the forefront of the international advocacy for Indigenous self-determination. Inuit rights and political autonomy, together with the protection of Arctic environment, have been the organization's key policy areas. In Sápmi, the Nordic Sámi Council was established in 1956 to advance Sámi rights in Norway, Sweden and Finland. The Russian Sámi joined formally the Sámi Council in 1996.

The Inuit Circumpolar Council and the Sámi Council were among the first Indigenous non-governmental organizations in the world and have been among the most active Indigenous peoples globally in the work advancing self-determination in multilateral institutions such as the United Nations and Arctic Council.

This chapter considers Indigenous self-government in the Arctic. Indigenous governance arrangements in the Arctic consist of diverse models, from public governments, such as local boroughs in Alaska and the governments of Nunavut and Greenland, to Indigenous elected assemblies, corporations and resource management regimes. While some Arctic Indigenous peoples have been relatively successful in regaining and implementing political autonomy (e.g., Greenland and Nunavut), others are in the process of negotiating self-government agreements with states. In this chapter, my specific focus is on the scope and structures of the existing self-government arrangements in three regions: Nunavut, Greenland and Sápmi. I examine two interrelated issues: the degree of political autonomy and jurisdiction of each self-government model and the extent to which they are regarded as a form of Indigenous governance.

Indigenous governance is a term that recognizes that Indigenous peoples have had and, in many cases, continue to have their own forms and institutions of governance and law, ranging from local, often fairly informal, deliberative and decision-making processes to complex, formal and centralized structures. Self-government is a political theory and arrangement that enables a group to govern themselves according to their own will and through their own institutions. Indigenous self-government commonly refers to contemporary arrangements with the state in which an Indigenous people have been delegated certain administrative, representational or consultative authority and tasks. Given the limited space, I first provide a brief overview of the background and existing self-government structures and then discuss the two main questions posed for this chapter.<sup>2</sup>

### Nunavut: creating Inuit government

Since the 1980s, there have been a number of studies and initiatives in Canada, most notably the Special Committee on Indian Self-Government and its Penner Report (1983) and, in the 1990s, the Royal Commission on Aboriginal Peoples (RCAP) that have recommended the development of a process and framework for the implementation of Aboriginal self-government. The RCAP recommended a number of ways to restructure the relationship with the state, including the nation model, the public government model and the community interest model. The public government model was implemented with the establishment of the territory of Nunavut in the eastern Arctic in 1999. While the Inuit form the numerical majority (85%), the public government guarantees the participation of all residents of the territory.

As the newest, largest, northernmost and least populous territory of Canada, Nunavut was formally separated from the Northwest Territories on April 1, 1999, via the Nunavut Act and the Nunavut Land Claims Agreement Act (NLCA). The discovery of oil in the Arctic during the 1960s and 1970s stimulated Indigenous groups to bring several land claims against the Alaskan and Canadian governments and led to land claims negotiations with federal and provincial governments. In 1971, the Inuit Tapirisat of Canada (ITC) initiated a study of Inuit land use and occupancy, demonstrating the extent of Inuit aboriginal title in the Arctic and forming the geographic basis of the Nunavut Territory. A plebiscite held in the Northwest Territories in 1982 resulted in 54% of the voting public favouring the division of the territory. A separate land claims agreement was being simultaneously negotiated, leading to an Agreement-in-Principle in 1990. The Final Agreement was signed in 1993, following Inuit ratification vote. A separate

political accord, the Nunavut Act of 1993, was also negotiated to deal with division of powers, financing and timing for the political and legal framework of a new territory.

The Nunavut Land Claims Agreement provides Aboriginal title to the Inuit of approximately 20% of the territory of Nunavut (the rest remaining as the Crown land) and establishes harvesting rights and a range of wildlife, resource and environmental management boards, among others. The agreement further created regional five-year economic development programs, supported Native development corporations and provided for the training and development of an administration and staff to implement the settlement. The implementation, however, has been deficient, and the organization in charge of overseeing the land claim, Nunavut Tunngavik Inc., filed a lawsuit against the federal government for failing to live up to the terms of the NLCA in 2006. A settlement agreement was reached in 2015, providing funding particularly for training for Inuit employment.

The government of Nunavut was created in stages over 16 years. It consists of a unicameral legislative assembly of 22 members who are elected individually. There are no parties, and the legislature is consensus based. The head of the government, the premier and the cabinet are elected by and from the members of the legislative assembly. One of unique aspects of the government of Nunavut has been its explicit objective to create a public government structured and operating according to Inuit values and ways known as Inuit Qaujimagatuqangit (IQ). Since the 1970s, the Inuit vision of the Eastern Arctic has been not only strong political autonomy and jurisdiction over their territories but a form of self-government informed by the Inuit worldview and culture. This has, however, proven a monumental if not an impossible task, given the twin challenge of capacity-building (such as filling the vacancies in the administration) and seeking to imbue a Westminster-style governing structure by values that in many ways stand in opposition to standard bureaucratic practices and policy-making (Timpson 2006; White 2009). Another major difficulty has been different understandings of the substance and details of Inuit Qaujimagatuqangit within communities and among generations and gender groups (Wachowich et al. 1999).

Another central component in the endeavour of creating Inuit government has been decentralization. The experience from the Northwest Territories had been a high level of concentration of political and administrative power in the capital of Yellowknife, geographically distant from the Eastern Arctic. With Nunavut, there was a desire to establish government closer to the people and communities through a complex system of more localized administration and dividing the territory into three main regions, Kitikmeot, Kivalliq and Qikiqtaaluk/Baffin, which would also assist spreading “the economic benefits of government employment [and associated economic benefits] beyond the capital into communities where private-sector jobs are scarce” (Hicks and White 2015, 7).

A third unique component recommended by the Nunavut Implementation Commission in 1994 was the gender parity proposal. The idea behind the proposal was to create a political system that would restore and guarantee equal voice and equitable representation of women and men, something which was seen by proponents as a central part of traditional Inuit values (Minor 2002). In practice, it would have meant that “one male and one female MLA would represent each electoral district. Voters would elect two candidates: they would cast one ballot for their preferred male candidate and the other for their preferred female candidate” (Minor 2002, 83). There was, however, considerable confusion among the inhabitants of Nunavut about the gender parity proposal, and it was defeated in a plebiscite in 1997. Some Inuit women even feared that increased political participation of women would increase violence and social problems (Dahl 1997; Altamirano-Jimenez 2008).

In spite of the distinct features put in place to create a uniquely Inuit public government, particularly the incorporation of IQ and decentralization, the Government of Nunavut continued on the legislative and political path set by its predecessor, the Government of Northwest Territories, including the application of the NWT legislation until amended or repealed and the non-partisan 'consensus' parliamentary system (Hicks and White 2015, 8).

Twenty years since the establishment of Nunavut, some serious challenges remain, including "the lack of infrastructure, distances from markets, and sparse population," which seriously impede economic development of the territory (Hicks and White 2015, 6). Limited revenue creation cripples the government's ability to deal with persistent social problems related to housing shortage, domestic violence, suicide and others. Capacity building remains a major issue in building bureaucracy with Inuit representation numerically, culturally and linguistically (White 2009).

### Greenland: self-government as a road to independence

Before the Home Rule Act was introduced in 1979, Greenlanders were involved in running their own country and affairs in very limited terms. As a result of growing dissatisfaction with the Danish rule, an internal Home Rule Committee was created in 1973 with the intention of considering Greenland's increased political autonomy within the Danish realm. The Committee submitted a proposal for negotiation to the Danish government in 1975, and the joint Greenland-Danish Home Rule Commission was set up that same year. During this period, the political party Siumut ("Forward") was established, which gained widespread and long-lasting support in most towns and settlements among hunters, fishers and workers. Siumut became the leading voice in formulating the political propositions of the Home Rule Commission. The final report of the commission suggested a Home Rule Act, which was approved first by the Danish Parliament in 1978 and in a referendum in 1979. The same year, Home Rule was initiated in Greenland.

The overarching principle of the Greenland Home Rule Act was the devolution and delegation of legislative and executive authority from Danish to Greenlandic authorities, within certain areas of jurisdiction. These included domestic affairs, taxation, fisheries, planning, trade, church affairs, social welfare, labour market, education, cultural affairs, health, housing, supply of goods, transportation and environmental protection. One of the priorities of the Home Rule government was to reverse colonial urbanization and forced settlement policies and to improve living conditions in the settlements. Later, however, Home Rule enacted economic reforms that revoked economic benefits previously enjoyed by the settlements since the colonial era, such as the one-price system. Regardless, the settlements owe their continued existence to Home Rule (Dahl 2010). Though it was sometimes hailed as a leading example of Indigenous governance, Greenland Home Rule was a delegated authority with sovereignty vested firmly in the Danish crown. It did not recognize the *sui generis* self-determination of the Inuit Greenlanders. Home Rule was a public government focused on the building of the Greenlandic nation structured around key concepts and institutions of Western nation-state such as democracy and parliamentarianism.

After two decades of Home Rule, the Greenland Landstyre had assumed the responsibility of practically all areas of jurisdiction stipulated in the Home Rule Act. Recognizing the need for a reform of Greenland's political and legal status within the Danish realm, the Landstyre established the Greenland Commission on Self-Governance: "we knew we had to take another step from Home Rule. . . . The *Home-Rule Act*, and the framework that it represented was becoming

too tight. So, the leading politicians were saying that the 'Anorak' was [getting] too tight."<sup>3</sup> The Commission recommended expanding Greenland's autonomy in its 2003 report. The following year, a Danish-Greenlandic Commission was set up to develop a framework for a greater self-governance in Greenland. The joint Commission submitted its final report to the Danish and Home Rule governments in 2008. Later in the same year, a referendum was held in Greenland on expanded self-rule and 75% voted in favour. As the result, the Greenland Self-Government replaced the Home Rule arrangement on 21 June 2009.

The Act on Greenland Self-Government (commonly referred to as the Self Rule Act) establishes new political and legal opportunities for Greenland to gain extensive self-governance and ultimately independence if the population of Greenland so chooses in the future. The Act contains 33 areas of jurisdiction for the self-rule government (Naalakkersuisuit or the Government of Greenland) to exercise legislative and executive authority over. The most important of these is the mineral resources. Two other issues of major significance include the recognition of the Greenlanders as a people in international law and adoption of Greenlandic as the official language. Within the framework of the Self-Government Act, Denmark retains the control of the constitution, citizenship, Supreme Court, foreign affairs, defence and currency. Denmark is, however, expected to involve Greenland on foreign affairs and security matters that affect or are in the interests of Greenland. Moreover, since Home Rule, Greenland has been permitted to have missions in countries of special interest to Greenland.

Through the Home Rule Act and the Self-Government Act, Greenland has the right to elect its own parliament and government, the latter with executive authority over the areas of jurisdiction included in the Acts. The elected assembly or the Parliament of Greenland (Inatsisartut) consists of 31 members, who are elected by the population of Greenland for a four-year period. The elected assembly approves the government, which is responsible for the central administration, headed by a premier with a cabinet. The Parliament also appoints the premier, who nominates the ministers for the cabinet. There are currently eight ministers, all of whom are Inuit Greenlanders.

Greenland is a parliamentary democracy in which the party system has played a vital role. Political parties emerged in the mid-1970s before the establishment of Home Rule, as the well-educated Greenlandic elite was "eager to use the party system to take power from the Danes" (Loukacheva 2007, 56). The dominant social democratic party Siumut is supported by hunters, fishermen and workers, especially in settlements and smaller towns. Siumut has had a leading role in the process leading to Home Rule, and it has formed the government since, except the first term of the Self-Rule era (2009–2013). The first elections held after Self-Rule was won by the socialist Inuit Ataqatigiit (IA, Inuit Community) with its support base mostly among urban educated Greenlanders.<sup>4</sup>

Since Home Rule, Greenland's governance structure has been a Nordic-style unicameral cabinet-parliamentary system. The Home Rule administration was adopted from Denmark "element for element and law for law" (Nielsen 2001, 232). There were no changes to the governance structure in the Self-Government Act except a cosmetic name change: the Danish terms for the parliament (Landsting) and the government (Landstyre) were replaced with Greenlandic ones (Inatsisartut and Naalakkersuisuit, respectively). The "institutional inertia" and the lack of interest in developing specifically Greenlandic institutions have been explained by Greenland's "organizational dependency" on Denmark (Jonsson 1997).

During the self-government agreement negotiations in the early 2000s, there was no discussion of Inuit values or governance. According to a civil servant attending the negotiations,

considering 'the Inuit' separately from 'the people of Greenland' would have been regarded as undemocratic. The implicit assumption during the negotiations was that because the Inuit constitute an overwhelming majority of Greenland's population, the Inuit character of the new self-government regime is guaranteed and thus self-government would represent *de facto* Inuit governance. The focus of the negotiations was on voting rights and eligibility, resulting in the creation of a new category, 'the people of Greenland,' rather than considering Inuit principles of governance. While the term 'Greenlander' is commonly understood to refer only to the Inuit in Greenland, the term 'the people of Greenland' encompasses the entire population: the Inuit, Danes and everyone else who has lived in Greenland more than six months.<sup>5</sup> The Act does not recognize the Inuit as a people and consequently does not deal with the question of the self-determination of the Inuit.

### Sápmi: limited cultural autonomy

Historically, Sámi nationhood was recognized in the 1751 Lapp Codicil, a largely forgotten and little-known legal addendum to the Peace Treaty of Strömstad that demarcated the border between Norway (then a Danish territory) and Sweden. In spite of its historical significance, the Lapp Codicil has not featured in legal or political discourses of Sámi self-government or considerations with regard to the source, legitimacy or authority of Sámi self-determination.<sup>6</sup> An exception is the Draft Nordic Sámi Convention. Considered a development and renewal of the existing Sámi rights codified in the Lapp Codicil, the draft Nordic Sámi Convention is an international human rights instrument aiming to confirm and strengthen the rights of the Sámi people. The draft Convention was submitted in November 2005, and the negotiations commenced in 2011. The final draft was released in January 2017, with a number of compromises pertaining to the central rights of the Sámi as an Indigenous people.<sup>7</sup>

In the Nordic countries, there has been a general tendency to consider Indigenous rights as little as possible by the state and its institutions (Hannikainen 1996; Alfredsson 1999). While Indigenous political mobilization in Canada and Greenland has resulted in land claims and self-government agreements, Sámi land rights are only partially recognized in the northernmost county of Norway (through the Finnmark Act). Of the three Nordic countries, Norway (with the majority of the Sámi population) has had the most progressive Sámi policy since the 1980s. It has been of great strategic value for other Sámi, and it has served as a model to influence Sámi policy in Finland and Sweden.

Sámi policy in Norway took a radical shift as a result of the Alta River conflict in the early 1980s. In the late 1970s, the Norwegian government had decided to dam the Alta-Kautokeino River at the heart of the Sámi region in Northern Norway. In its original form, the hydroelectric dam was going to submerge the Sámi village of Máze (Masi) and a considerable portion of important reindeer grazing and calving areas in a significant reindeer-herding region. The government plans were met with unexpected resistance by a coalition of the Sámi, environmentalists and fishermen, the latter of whom were concerned about the destruction of a significant salmon river. The conflict culminated in a major demonstration at the construction site by the river, a hunger strike at the front of the Norwegian Parliament building in Oslo in 1979 and an occupation of the office of the Norwegian prime minister Gro Harlem Brundtland by 14 Sámi women in 1981. Viewed as a "political earthquake," the conflict "shook the political establishment in Norway [and] turned the traditional views on the legitimacy of policymaking towards the Norwegian Sámi upside down" (Josefsen et al. 2015, 44). Broad national and international

attention to the conflict pressured the government to promptly address Sámi rights, while Norway did not want its status of a leading international human and Indigenous rights advocate be tarnished (Semb 2001).

One of the outcomes of the Alta conflict was the appointment of the Sámi Rights Commission in 1980 to examine Sámi rights and draft a new Sámi policy in Norway. The report of the Commission, released in 1984, recognized the Sámi as a distinct people with the right to enjoy their culture according to standards established in international law, notably in Article 27 of the UN Covenant on Civil and Political Rights. The Sámi Parliament in Norway was established by the Sámi Act in 1987, and in 1988, the Constitution was amended to include Article 110a (as a result of 2014 constitutional revision, now Section 108) that obligates the state “to create the conditions necessary for the Sámi to protect and develop their language, their culture and their society” (quoted in Henriksen 1999, 37). The Sámi Parliament is considered the main means of implementing Section 108 of the Constitution. The Sámi Parliament is structured as a Western parliamentary system of a legislative assembly and the executive council, consisting of the President and four or more appointed members. The assembly consists of 39 representatives elected every four years by Sámi registered in a specific electoral roll. In order to be eligible to register, certain criteria must be met.<sup>8</sup> There are seven electoral districts that cover the entire country, and representatives are elected from lists created by Sámi national organizations, Norwegian political parties and local coalitions.

Since the first reindeer-herding acts in the late nineteenth century, the Swedish Sámi policy has been characterized by a two-pronged approach. The policy of segregation was specifically issued for the reindeer-herding Sámi whose way of life was nomadic and to be shielded from outside influence.<sup>9</sup> The rest of the Sámi were deemed for assimilation. In the 1950s and 1960s, Sámi policy in Sweden was integrated into national, interventionist welfare state policies aiming at modernization and rationalization of reindeer herding, now considered solely an economic venture among other industries. The Swedish Sámi Association, established in 1950 with a specific focus on the reindeer-herding rights, played a critical role in opposing Swedish Sámi policy, particularly with regard to Sámi land and resource rights. The government view of Sámi land rights as a privilege granted by the state was challenged by the organization, which posited that the Sámi use of their territories preceded the state. Since the 1960s, the association began to increasingly employ the discourse of Sámi as an Indigenous people as the foundation of their rights to land (Lantto and Mörkenstam 2008). It also launched a suit against the government known as the Taxed Mountain case, in which the organization sought the recognition of its resource rights (Beach 1995).

In 1981, after 15 years of litigation, the Supreme Court of Sweden decided in the Taxed Mountain case that the Sámi only possess a strong usufruct right, not an ownership right to land or water in the disputed reindeer-herding region. Formed in 1982, the Sámi Rights Commission released its final report in 1989, recommending the Swedish government revise legislation to conform to international law and the Taxed Mountain decision in a way that recognizes the rights of the Sámi as an Indigenous people, including their right to self-determination. Following the example from Norway, the recommendations also included the establishment of the Sámi Parliament. In Sweden, the Act on the Sámi Parliament came into effect in 1993. The legal status of the Sámi Parliament in Sweden is limited to a state administrative authority to which the Sámi can elect representatives. As part of the state bureaucracy, the capacity of the Sámi Parliament to independently represent the Sámi in Sweden is repeatedly questioned by Sámi and others (Kuokkanen 2019). The two roles are seen as in conflict with one another, placing the institution in a bind. Scholars have long maintained that the double bind

that characterizes the establishment of the Sámi Parliament in Sweden represents unworkable circumstances. Johan Eriksson called it “undoubtedly an impossible situation,” and argued: “if a Parliament representing an ethnic minority [sic] is to enjoy any legitimacy and to show any kind of power, it is obvious that it cannot at the same time represent its major opponent, in this case the state” (Eriksson 1997, 162). Others have similarly pointed out how the dual function is problematic when considering the Sámi right to self-determination and stands as a major obstacle in further developing the power and legitimacy of the Sámi Parliament (Vars 2009, 397; Lawrence and Mörkenstam 2012, 207).

In Finland, the establishment of the Sámi Parliament followed quite a different trajectory than in Norway and Sweden. In the early 1970s at the height of the global civil rights movement, the desire to establish an independent national Sámi organization in Finland emerged, especially among the generation of young, educated Sámi. The idea did not, however, take off, mostly due to a split between the younger, more radical Sámi and the older generation of politically active Sámi, who preferred an elected, representative body within the state. The growing demands of the Sámi movement and the pressure it created propelled the state into action by solving the “Sámi question” by containing it. The Sámi Committee was established in 1971 to examine the economic, social, educational and legal status of the Sámi and recommended holding “experimental elections” for an elected representative body for the Sámi in Finland (Lehtola 2005).

The first elections of the “experimental” assembly called the Sámi Delegation were held in late 1972. Besides the establishment of a representative body for the Sámi, one of the key recommendations of the 1973 report was the enactment of the Sámi Act – a proposal put forward by the first Committee of Sámi Affairs report already in 1952. Sámi land rights had been studied since the 1970s, followed by drafting legislation to recognize Sámi land rights. The proposal for the Sámi Act was submitted to the government in 1990, which coincided with the international adoption of the ILO Convention 169 the year earlier.<sup>10</sup>

The proposed Sámi Act would have recognized the Sámi rights to their territories and transferred the ownership and management of them to Sámi *siidas*<sup>11</sup> from the state. It failed, however, due to vehement opposition by non-Sámi population in Northern Finland and several state bodies refuting Sámi right claims to their territories. As a result of the broad-based antagonism, the question of Sámi land rights was separated from what became termed “Sámi cultural autonomy.” This led to the passing of the Act on the Sámi Parliament and the constitutional recognition of the right of the Sámi, as an Indigenous people in Finland, to “cultural autonomy” in 1995. Section 121 of the Constitution stipulates the scope of Sámi cultural autonomy: “In their native region, the Sámi have linguistic and cultural self-government, as provided by an Act” (Ministry of Justice Finland 1999). The administration and implementation of “linguistic and cultural self-government” was delegated to the newly established Sámi Parliament, which replaced the Sámi Delegation. While the Act on the Sámi Parliament somewhat strengthened the weak position of the Sámi Delegation, the Sámi Parliament in Finland has no power or decision-making authority except in a limited number of internal matters such as hiring its own staff and allocating funding to projects related to the Sámi language, education and culture.

The Constitutions of Norway and Finland have recognized a form of Sámi cultural, non-territorial autonomy exercised through elected, representative bodies of the Sámi Parliaments. The three Sámi Parliaments are also government agencies in charge of administering Sámi-related affairs, specifically Sámi cultural policy. All three Sámi Parliaments have somewhat ambivalent mandates, but all have been established as mainly consultative or advisory bodies