



Policy Brief 1

Decision-making for Sustainable Economic Development in the Arctic



When are citizens able to participate in decision-making process?

How to ensure citizen participation and the distribution of responsibilities?

How to balance minority and Indigenous rights with the broader Arctic societies' rights ?

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POLICY BRIEFS in the Series

JUSTNORTH Policy Brief 1:
DECISION-MAKING FOR A SUSTAINABLE ECONOMIC DEVELOPMENT IN THE ARCTIC

JUSTNORTH Policy Brief 2:
JUSTICE IN ENVIRONMENTAL AND SOCIAL IMPACTS ASSESSMENTS

JUSTNORTH Policy Brief 3:
OWNING AND MANAGING LIVING AND RENEWABLE NATURAL RESOURCES AND BIODIVERSITY

JUSTNORTH Policy Brief 4:
THE PLANNING OF ARCTIC LANDSCAPES AND SEASCAPES AND ITS IMPACT ON SUSTAINABILITY

JUSTNORTH Policy Brief 5:
CLIMATE CHANGE FACTORS IN MULTI-REGULATORY RESPONSES IN THE NORTH

JUSTNORTH Policy Brief 6:
GOVERNANCE INSTITUTIONS FOR THE ARCTIC



About these briefs

JUSTNORTH policy briefs are topical outputs drawing upon research previously conducted in the JUSTNORTH project, an undertaking funded by the European Union under Horizon 2020 programme. In these briefs, we build on the findings of the research conducted in 17 case studies (Work Packages 2-4), and underpinned by the comprehensive overview of various concepts, schools and forms of justice (Work Package 1).

The objective is to assess the sustainability of the regulatory frameworks influencing the sustainability of the economic activities developed in the Arctic. Sustainability, understood here as the responsible use and management of spaces, common goods and shared resources with the aim of guaranteeing a fair use and enjoyment of them by future generations, is intrinsically linked to the idea of justice.

With the aim to reach to a wider audience, the policy briefs constitute short analysis on different aspects of regulatory, policy and governance frameworks in the Arctic. As such, they are knowledge resources for policymakers, scholars and stakeholders/rightsholders. They will also serve as background papers in the process of co-producing an EU Policy Analysis Report and Recommendations(D6.4)

Beyond the valuable contributions made by the authors in their policy briefs, each brief opens with outlining relevant findings of the JUSTNORTH case studies, highlighting issues identified by researchers and

research participants as problematic, challenging or having implications on the actors' perceptions of justice. Second, we provide an overview of the regulatory and policy frameworks related to the earlier identified findings. We asked: Which frameworks correspond to or address these problematic issues? What public goods are to be promoted and harms mitigated? Are future generations considered? What is the spatial scale of these policies and regulations?

Third, we consider the outlined governance frameworks from the point of view of justice. The procedural, distribute, recognition and restorative forms of justice are highlighted, alongside the rights, balance of different values and interests and opportunities for participation. We ask if the governance frameworks themselves can be sources of social ills and injustices.

Fourth, the relevance of discussed policies and regulations from the perspective of the Sustainable Development Goals is captured. Finally, we provide initial thoughts on recommendations or areas where recommendations could be proposed and developed – these will become subjects for discussion with Arctic stakeholders and rightsholders leading towards proposing recommendations at the end of JUSTNORTH project.

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Paul Upham, Sussex University

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Niels Einarsson, Stefansson Arctic Institute
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JUSTNORTH

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Decision-making for Sustainable Economic Development in the Arctic

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EXECUTIVE SUMMARY

This policy brief has considered issues of decision-making in the Arctic through the prism of the main economic and production activities developed in the region. Special attention has been given to the development of new forms of stakeholder participation and to the protection of traditional livelihoods in decision-making processes. As an outcome of this research, decision-making appears to be a relevant feature in topics across the JUSTNORTH policy brief series. For instance, it connects with activities of planning and shaping northern landscapes and seascapes, as the management of spaces and their uses determine the opportunities for stakeholders to participate in the processes by which decisions concerning this management have been/can be adopted. In addition, decision-making is a tool of paramount importance to assess the environmental and social impacts of the economic activities developed in the Arctic.

KEY MESSAGES

Just “decision-making” relates to the idea of procedural justice. By virtue of procedural justice, those affected by a final decision should feel that this outcome – whatever its substance may be – is procedurally just because they have been treated by the decision-makers with dignity and respect; they have been given a voice in the process; and the decision-maker was neutral, transparent and conveyed trustworthy motives¹.

Citizen, or stakeholder, participation in public decision-making is an issue that is both increasingly in demand and controversial. Such participation appears as a basic requirement to make democratic legitimacy a reality and enhance the effectiveness of political decisions².

However, as procedural perfection seems to be unattainable³, relevant questions emerge:

- When are citizens able to participate and at what stage of the decision-making process does this participation begin?
- Is it possible to articulate a right to participation with sufficient guarantees to ensure both citizen participation and the distribution of responsibilities?
- Who responds and to whom when a decision proves to be counterproductive⁴?
- Which stakeholders have a say in decision-making? What is called “public opinion” is not always articulated in a democratic way and its legitimacy may be questioned⁵.
- How to balance minority and Indigenous rights with the broader Arctic societies’ rights to develop their environment through democratic decision-making processes and to enjoy the fruits of economic development, which in principle should benefit the whole society?
- How are different perspectives reconciled in the final decision?

¹Yale Law School, “Procedural Justice” <<https://law.yale.edu/justice-collaboratory/procedural-justice>> accessed 02 September 2022.

²E. Conde, “Foreword”, in M. Scopelliti, Non-Governmental Actors in International Climate Change Law. The Case of Arctic Indigenous Peoples (2022).

³L.B. Solum, “Procedural justice”, (2004) 78 SCLR 185.

⁴E. Conde, “Foreword”, in M. Scopelliti, Non-Governmental Actors in International Climate Change Law. The Case of Arctic Indigenous Peoples (2022).

⁵E. Conde, “Foreword”, in M. Scopelliti, Non-Governmental Actors in International Climate Change Law. The Case of Arctic Indigenous Peoples (2022).



RELEVANT FINDINGS

Just “decision-making” rests on three main pillars – access to information, capacity for participation, and access to justice – aimed at promoting transparent and inclusive mechanisms of justice⁶. Of these pillars, this brief focuses on existing frameworks regulating some of the Arctic’s main economic sectors regarding opportunities given to stakeholders to participate in decision-making⁷.

MINING

Mining is an important industry for Arctic nations, and the Arctic is seen as a critical source of minerals needed for the green transition. Expansion of mining will affect traditional livelihoods and the integrity of environments and ecosystem services. Therefore, the participation of stakeholders in decision-making processes regarding mining activities is a necessary prerequisite for their legitimacy. Examples of ongoing or future mining projects in Finland and Greenland raise questions of justice concerning decision-making.

Finland offers a good example of procedural consideration of stakeholders in decision-making concerning mining, but is not exempt from controversies as this activity often collides concurrent forms of land use and/or traditional activities such as reindeer husbandry. While the Sámi Homeland Area is particularly protected, mining activities also affect reindeer husbandry in southern areas where a lack of embedded protection of the law can result in both distributive and procedural injustice.

In Greenland, the controversial Kuannersuit mine project has been surrounded by different perceptions of associated risks across different groups. It has now been suspended by the newly-elected government. This situation thus poses the question of who defines what constitutes a risk and who is listened to in the decision-making process.

OIL AND GAS

Similarly, the oil and gas industry plays a strategically important role the economic development and geopolitical positioning of several Arctic nations. These states also have a high dependency on hydrocarbon exports⁸. Despite work within the Arctic Council to collaborate on oil spill prevention, Despite work within the Arctic Council to collaborate on oil spill prevention, there are high risks for communities being affected by these industries’ activities from the resulting ecological damage,

⁶M. Scopelliti, *Non-Governmental Actors in International Climate Change Law. The Case of Arctic Indigenous Peoples* (2022).

⁷Although not analysed here, interesting developments are taking place in regard to Arctic stakeholders’ participation in national and international courts and at the international decision-making level. See JUSTNORTH Policy Brief 6: *Governance Institutions for the Arctic*.

⁸D. McCauley et al., “Which states will lead a just transition for the Arctic? A DeePeR analysis of global data on Arctic states and formal observer states”, (2022) GEC 73.



WIND POWER

disturbance of traditional livelihoods, or potential illness, among others. However, the voices of stakeholders who rely on resources affected by fossil fuel developments are not usually included in decision-making processes.

In Norway, oil exploitation - such as the Goliat project - has been met with significant opposition due to concerns regarding long-term socioeconomic and environmental impacts, and due to what is perceived as a restricted local participation.

In Russia, where only three companies have the right to export liquified natural gas (LNG), the process of LNG project development is tightly controlled from the Kremlin. Therefore, there is little room for inclusive decision-making and measures that appear to further it in reality amount largely to public relations campaigns⁹. For example, Yamal LNG, Russia's first LNG project in the Arctic, underwent a voluntary Environmental and Social Impact Assessment. However, the assessment had little bearing on whether the project was going to proceed.

Wind energy – a rapidly growing renewable energy sector – can interfere with other economic activities that rely on the same space and environment, such as tourism and traditional livelihoods. Consultation and participation of affected parties regarding the implementation of wind power projects, although enshrined in national legal and regulatory regimes, are often found to be lacking. These green transition projects somewhat perpetuate utilitarian decision-making by prioritizing national (or even EU) needs and benefits over those of locally affected populations. There is concern that the top-down decision-making processes from faraway centres of power is merely a modern form of colonial practice. Arctic states thus find themselves in a double bind between international obligations to protect Indigenous rights and a commitment to developing green energy projects¹⁰.

As an illustration of this tension, we here focus on the Davvi wind power project proposed by Grenselandet AS to be located in Finnmark and on its potential impacts and stakeholders' reactions on both sides of the Norwegian-Finnish border.

⁹R. Sidortsov, "The Myth of Liberalization: The 2013 Changes in the Russian LNG Export Regime." (2014) *Energy Law Journal*, 35:2, 323.

¹⁰H. Hansen-Magnusson, "The Web of Responsibility in and for the Arctic." (2019). *CRIA* 32 132.



RELEVANT REGULATORY/POLICY FRAMEWORK

In its analysis of the relevant regulatory and policy framework related to decision-making issues in the Arctic region, the subsequent section of this brief has been guided by the following questions: What is the regulatory and policy framework that responds to or governs the issues identified as relevant? What are the justice questions and issues related to the described governance framework? Although the Case Studies that this brief draw on were mainly focused on national regulatory frameworks, relevant international instruments are also mentioned when they become part of the law of the land¹¹.

MINING

GREENLAND

To transfer authority over certain affairs from the Kingdom of Denmark, the 2009 Act on Greenland Self-Government expanded its fields of responsibility to include, among other things, the exploitation of mineral resources. The Greenlandic 2009 Mineral Resources Act provides that mineral exploitation follows principles and rules for environmental protection and for social sustainability. If any potential environmental or social impact is foreseen, the applicant must submit a project description for public comment prior to the environmental impact and social sustainability assessments being published - which will also be submitted to public consultation. Additionally, the

Act establishes that the Government must hold consultation meetings in towns primarily affected by the activities. Locals and environmental NGOs can appeal decisions to grant extractive licenses for a period of six weeks after the decision is notified.

The current Greenlandic regulatory framework thus does consider public views in all the stages of granting licenses for mineral resources exploitation. However, some stakeholders still perceive the process as unfair or uninformative. Some residents do not trust the Government's capacity to protect local values, as seen in the case of the Kuannersuit rare earth and uranium mine project that received approval from the authorities in 2020 in spite of earlier negative assessments and of the opposition from farmers and locals concerned with environmental impacts¹². Indigenous values and livelihoods were especially seen as being at risk, although allegedly protected by Denmark's ratification of the 1989 Indigenous and Tribal Peoples Convention (ILO 169) and endorsement of the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Nonetheless, this recently changed due to the 2021 electoral victory of independentist parties in Greenland and their subsequent ban on uranium mining leading to a suspension of the Kuannersuit project.

¹¹ Depending on its source, the reception of international law by states can be direct after the crystallization of the rule, as is the case of custom. International treaties become part of national law when they have been ratified by the particular state and when the state's constitutional requirements have been fulfilled. Other sources of international law generally follow these two ways of reception into national law.

¹² JUSTNORTH CS9 Mining



FINLAND

In Finland, the 2011 Mining Act stands out as a central piece of legislation promoting mining and organizing the use of areas for such activities, while committing to social, economic, and ecological sustainability. In general, it aims to reinforce the rights of affected landowners and residents and gives municipalities a greater role in the regulation of mining activities.

Finnish mining authorities have to assess licenses applications in cooperation with the Sámi Parliament and reindeer herding cooperatives in order to avoid or mitigate possible adverse impacts on reindeer husbandry and/or on the maintenance and development of Sámi language and culture. A failure exists in that there is no clear provision for what sustainability means in the context of the extraction of a finite resource, either in terms of community investment or other principles for just transition¹³.

The Sámi Homeland Area, located in the northernmost part of Lapland province in Finland, is autonomous on issues relating to the Sámi culture and language¹⁴. Based on Article 9.3 of the 1995 Law on the Sámi Parliament, any project to be implemented in the area and with possible impacts on Sámi culture (such as reindeer herding) must be negotiated with the Sámi Parliament. However, the Finnish legislation's obligation to protect appears to be geographically limited to Sámi Homeland¹⁵, in spite of Finland being committed to UNDRIP and to ILO 169 though the latter is not ratified. As a result, Sámi people living outside of this area do not enjoy the protection of the Sámi Parliament, thus potentially leading to an issue of recognitional justice.

Overall, stakeholders agree on mining's negative environmental impacts, but perceptions differ depending on specific local impacts¹⁶. The current legal framework seems to be a source of discrimination given that the representation and protection of Sámi rights through the Sámi Parliament do not extend beyond the Homeland Area, thus leaving reindeer herders located outside of it less protected in decision-making processes. In terms of the distribution of the benefits, there are no legal obligations for benefit-sharing between the mining industry and neighbouring communities, a situation encouraging the Finnish mining boom.

¹³ Just Transition Alliance, "What is Just Transition?", <<https://jtalliance.org/what-is-just-transition/>> accessed 26 September 2022.

¹⁴ Constitution of Finland 1999, (17) (121).

¹⁵ Environmental Protection Act 2014, s 49; Nature Conservation Act 1996, s 16; Act on the Protection of Wilderness Reserves 1991, s1; Reindeer Husbandry Act 1990, s2 (1-2).

¹⁶ JUSTNORTH CS14 Mining



OIL & GAS

NORWAY

In Norway, the 1996 Petroleum Act designates exclusive property and management rights over submarine oil deposits to the State. However, management is oriented towards the long-term benefit of the overall Norwegian society (social well-being, employment, protection of the environment) and exploitation proceeds are owned by the State on behalf of the Norwegian people. Beyond commercial and industrial interests, regional rights and local considerations are to be taken into account. Before making the final decision on licenses for exploration and exploitation, the Storting (Norwegian parliament) must consider the results of environmental, economic and social assessments in which public consultation is included. The Goliat project represents one of these ostensibly beneficial undertakings for the overall Norwegian society in which public interest and high environmental standards were to be upheld according to the existing legislation. However, since production started in 2016, the project has been said to disregard the conditions set by the government, resulting in technical and safety issues on top of a questionable profitability¹⁸.

Prior to the opening of new areas of exploration and exploitation, the Petroleum Act establishes that local authorities, commercial associations and other interested organizations must be consulted. However, it is unclear whether the word “organizations” includes Indigenous peoples or how binding are the positions expressed by different parties and, even more so, whether the consultation process is followed effectively and systematically. This raises concerns for a breach of the 1966 International Covenant on Civil and Political Rights (ICCPR), especially regarding the recognition of individuals’ rights to participate in public affairs. Indeed, stakeholders have maintained that local participation is excluded, thus curtailing their opportunities to move away from financial dependence on fossil fuels and to diversify their economic activities. Concerns about the short-term nature of the economic benefits of oil exploitation have led to a strong national opposition towards this activity. Additionally, stakeholders denounce that no debate or dialogue on the negative environmental impacts was organized.

¹⁸JUSTNORTH CS5-OilGas

RUSSIA

The Russian Federation holds significant interest in positioning itself as a dominant player on the global LNG market especially in light of the self-inflicted loss of the European export market due to its aggressive war in Ukraine. As noted above, under the current legal and regulatory regime, the right to export LNG is tightly controlled by the Kremlin, which has a cascading effect on any upstream development linked to an LNG terminal. In addition, access to any significant oil and gas deposits is granted on an ad hoc basis by the Government of the Russian Federation, a mega-agency with the authority over Russian economy. Therefore, a decision to develop an LNG project including export terminals, transportation infrastructure, and natural gas fields is made at the highest level.

The legal and regulatory framework aimed at environmental protection¹⁹, as well as the protection of the traditional homeland, livelihoods, and economic activities of Indigenous minorities²⁰, has been weakened since the rise of resource of capitalism in the early 2000s²⁰.

Although the framework provides for the participation of Indigenous minorities in decision-making processes affecting their homeland, ways of life and economic activities through authorized representatives, these broad provisions are disconnected with the provisions governing decision-making processes associated with the development of LNG projects. Therefore, these provisions are not de facto implemented or enforced, a situation worsened by the Russian Federation's lack of endorsement of UNDRIP since 2007.

Not only the decisions to greenlight these projects are made thousands of kilometres from where they

are sited, the onshore-based projects are not subject to environmental assessment making opportunities for



inclusive participation even more scarce²¹. As a result, local participation is often disregarded, thus curtailing these communities' options to diversify their economic activities and thus reducing reliance on hydrocarbon resource extraction. The Yamal LNG project stands as a clear example of the tensions surrounding gas extraction in the Russian Federation. While Yamal LNG created some tangible economic benefits, the project has been criticized for its detrimental effects on traditional livelihoods, its limited impact on the local job market, and its associated damage to an especially vulnerable and unique Tundra ecosystem²³.

¹⁹Ozawa and others., "The Power of Siberia: A Eurasian Pipeline Policy 'Good' for Whom?" (2018) CUP.

²⁰Federal law On Guarantees of the Rights of Numerically Small Indigenous Peoples of the Russian Federation 1999, s 5 (1)

²¹R. Sidortsov, "The Russian Offshore Oil and Gas Regime: When Tight Control Means Less Order, in Governance of Offshore Hydrocarbon Activities in the Arctic." (2017) Routledge, 127.

²²R. Sidortsov, A. Ivanova, & F. Stammer "Localizing Governance of Systemic Risks: A Case Study of the Power of Siberia Pipeline in Russia" (2016) Energy Research and Social Science, 16, 68.

²³JUSTNORTH CS5-OilGas

WIND POWER

Norway as a member of the European Economic Area, and Finland as an EU member state, are under EU climate change mitigation and neutral energy regulatory pressure to promote and invest in renewable sources of energy²⁴. Large wind power plants have been approved in reindeer herding territory; creating tensions between the promotion of green energy and industrial development on one hand, and the protection of traditional Indigenous livelihoods under international instruments such as ILO 169, UNDRIP, and ICCPR, on the other. Moreover, the implementation of wind power projects has raised issues of decision-making, representation, rights, and energy justice with regard to who should pay for the green energy transition and what the costs should be. This is the case of the Davvi power station project for which Grenselandet AS applied to Norwegian authorities for a concession to build in 2019. The project affects several reindeer herding districts in a borderland region where Sámi and both Norway and Finland have interests.

The Davvi project is located in Finnmark, which constitutes a part of the ancestral land of Norway's Indigenous Sámi people. Since the 2005 Finnmark Act, this region manages formerly state-owned land in Finnmark under the authority of the Finnmark Estate (half of which is composed of Sámi Parliament members). However, existing Sámi land-use rights remain at the discretion of the state-appointed Finnmark Commission. According to its responsibilities, the Commission investigates land-use matters in accordance with national law, and especially with the 2008 Planning and Building Act (PBA).

In relation to wind power, PBA establishes the parameters of the necessary impact assessments but also dictates that municipalities can choose whether or not to

approve these assessments, thus effectively amounting to a veto power. In this sense, Norwegian municipalities have a significant say and control over decision-making processes surrounding wind power projects, although the right of the Sámi Parliament to participate in planning decisions and general appeals by affected parties are both contemplated. Similarly, the Finnish Land Use and Building Act (LBA, 1999) establishes that municipalities have a monopoly on land-use planning. However, the Act also promotes the participation and cooperation of different stakeholders in different stages of development. Moreover, national interests concerning ecological sustainability must be respected and all large-scale infrastructure projects must undergo Environmental Impact Assessments in which public participation is key.

The Davvi wind power plant project has been met with widespread opposition across the Norwegian-Finnish border. For instance, Sámi living on both sides have denounced that such projects constitute instances of “green colonialism” if Indigenous concerns are not appropriately considered. Although public events discussing wind power projects are sometimes organized for residents to voice their views, this is often perceived as a one-way discussion monopolized by municipalities leaving local communities like outsiders in the planning process. There are also concerns that municipalities may be attracted by the higher property tax revenues coming from wind farms, at the expense of reindeer husbandry and, thus, of Indigenous rights, livelihoods and traditions. The Norwegian Supreme Court recently declared that wind farms similar to the Davvi project are in violation of the Sámi rights to enjoy their cultural practices under article 27 of the ICCPR (Storheia and Roan, Fosen Peninsula), although there is an indication the State is looking for ways around this decision²⁵.

²⁴JUSTNORTH Policy Brief 6: Climate Change Factors in Multi-Regulatory Responses in the North

²⁵S. Nysten-Haarala; T. Joona, T & I. Hovila, “Wind energy projects and reindeer herders’ rights in Finnish Lapland: A legal framework” (2021) 9 *Elementa*.



SUSTAINABLE DEVELOPMENT GOALS AND DECISION-MAKING

National regulatory frameworks concerning decision-making in the areas of mining, oil and gas, and wind power are often intertwined with several SDGs, either directly or indirectly. For instance, we observe how they (intend to) promote the strengthening of local and regional economies and employment opportunities (Decent Work and Economic Growth (SDG 8); Industry, Innovation, and Infrastructure (SDG 9)). Similarly, most of these national regulatory responses contemplate questions relating to Affordable and Clean Energy (SDG 7), Sustainable Cities and Communities (SDG 11), and Responsible Consumption and Production (SDG 12).

However, while the analysed regulations generally share an orientation towards a degree of protection of the ecosystems from the risks associated with resource exploitation activities, some concerns arise when considering SDGs. Arguably, goals related to the protection of the environment - such as Climate Action (SDG 13), Life Below Water (SDG 14), and Life on Land (SDG 15) - are often found in tension with and put at risk by decision-making processes in which nature is not recognized as a subject of justice nor sufficiently protected (e.g., limits of the environmental assessment processes in terms of consultation or transparency). Additionally, stakeholders have expressed concerns regarding the impacts of these industries' development on already existing inequalities, exacerbating the impacts of colonial practices and deepening intergenerational inequalities (and thus putting SDG 10 at risk).

RECOMMENDATIONS

- 1** The involvement of local communities in decision-making is found to be both crucial and challenging across case studies and national contexts. Legal provisions on the issue are not always fully implemented. Thus, it is imperative that the necessary procedures be strengthened to ensure compliance with the law. For instance, supervising bodies could be created to guarantee inclusion and consideration of local voices and proposals, especially when local and/or traditional livelihoods are threatened by economic activities.
- 2** Across the Arctic region, greater coordination and transparency in decision-making procedures is required to ensure a balance between development interests and Indigenous rights and flourishing for all Arctic communities. Therefore, regulations and guidelines should be implemented to guarantee the inclusion of local stakeholders and rightsholders in decision-making processes and representation from organizations advocating for Indigenous interests should be strengthened.
- 3** Across the region, consideration should be given to achieving a uniform status and representation in decision-making processes for the diverse economic activities and interests competing for land use. This could include the involvement of reindeer herding cooperatives or tourism operators in the license-granting process across areas where and when these activities would be affected by changes in land use.
- 4** Overall, policy-makers should strive to ensure that public policy and regulation, as well as social corporate responsibility, are guided by high ethical standards ensuring both science-based decision-making, inclusion of traditional and local knowledge, and open democratic processes with effective local influence on where and how resource extraction activities are conducted and managed.
- 5** Community-based energy production initiatives and the establishment of energy communities could represent a beneficial avenue to increase the role of local communities in the ownership, decision-making and benefit-sharing surrounding these economic activities.





JUSTNORTH

Toward Just, Ethical and Sustainable
Arctic Economies, Environments and Societies



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