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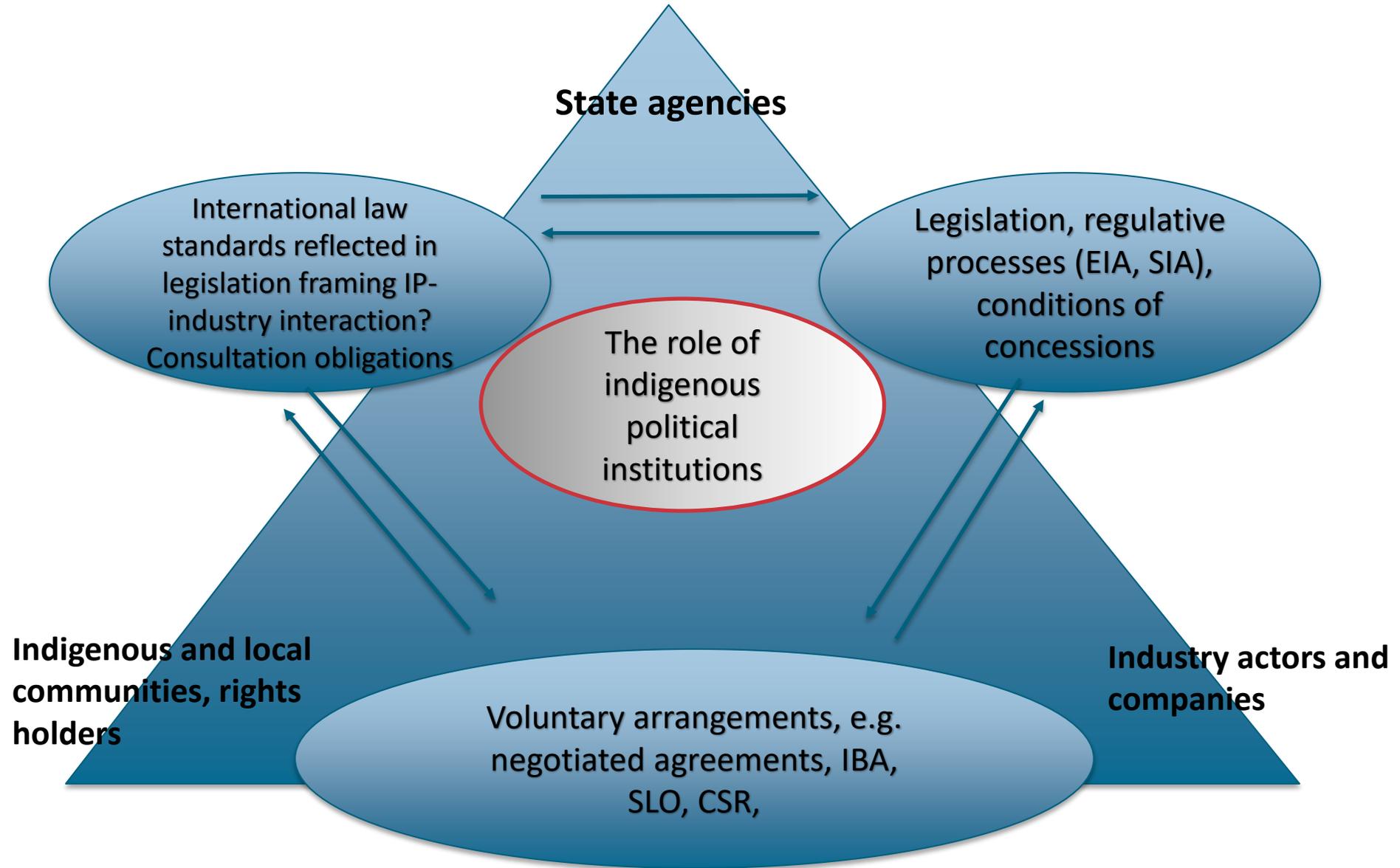
# **The State, Business and Indigenous peoples: Comparing Negotiations for Mineral Extraction in Norway and Australia.**

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# The State, Business and Indigenous peoples: Comparing Negotiations for Mineral Extraction in Norway and Australia.

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- This presentation offers some tentative comparative findings from the Norwegian Research Council funded project "Tri Arc", which seeks to identify how Indigenous involvement in processes of resource and energy development is informed by international and national political and legal realities, the behavior of various corporate actors, and Indigenous peoples' own institutions.



## Some questions we seek to address

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- State-indigenous or indigenous-industry interactions reveal themselves differently in the triangle dependent on the country contexts they are placed in, so ....
- What do these varying interactions look like in each domain?
- What impact do the arrangements of these relations have upon opportunities for Indigenous agency in each context?
- What do legislation, state regulations and policies tell us about degree of government involvement in industry-Indigenous interactions and negotiated agreements?
- What can we draw from this analytically?

## Norwegian Context

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- The Norwegian government recognised the Sami as distinct Indigenous peoples and a Norwegian Sami Parliament (Samediggi) was established in 1989 – not solely focused on Reindeer Herding
- Norway was the first country to ratify the protection of land rights pursuant to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries in 1990
  - a solid platform in international law from which to put forward demands and claims to rights - leverage
- *Consultation Agreement 2005* – right to participate and influence decision making in matters which will affect them
- As a result of increased Sami activism, the controversial Finnmark Act of 2005 gave Sami and the population in Finnmark rights to the land and water in Finnmark (ILO is incorporated in law in Finnmark Act)

# Legislative regimes affecting mineral developments on Sami land in Norway

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- *The Minerals Act 2009*
  - Sami Parliament wanted share of mining tax, rejected by the state
  - Passed without the consent of the Sami Parliament
- *The Planning And Building Act 2009*
  - Lays foundation for municipal planning of land use. *“The Act shall protect the natural basis for Sami culture, economic activity and social life.”* This new paragraph implies that the municipality must consider the effects of all kind of land use and land changes that affects a wide range of Sami interests –means that the municipal council actually has a veto and can stop the development of a planned mine –national government cannot issue lease without Municipal approval
  - Artic Gold Case in Kautokeino

# Large interest – small industry

- The Norwegian government adopted a Strategy for the Mineral Industry in March 2013 to make Norway a more attractive country for mineral activity.
  - Support for exploration
  - Expectations for industrial development
- Criticism from Sami Parliament about the strategy.

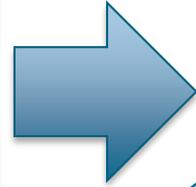


# Mining and environmental concerns

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- Few new mining projects
  - Time-consuming processes
  - Efforts to speed up processes have not succeeded.
- Two main conflict cases in the last decade
  - Nussir/Kvalsund (Northern Norway) Objections from Reindeer Herders and Sami Parliament
    - Copper. Application 2011, permit 2019. Not started. (Former mine)
  - Engebøfjellet/Førdefjorden (Western Norway),
    - Rutile, 50 years of production. Application 2008, permit 2016. Not started
  - Common environmental criticism: Fjord deposit of material from the mines
    - Pollution of sea
    - Harming fisheries

Review of Mining Act = special procedural rules protecting Sami interests in mineral issues, **if implemented**



Complaints from the mining industry - Impossible to discuss mining, and to propose specific projects



Mining and Sami in Norway  
– a deadlock?

Cumulative affects with other developments – eg. Windfarms, power lines



Conflict with the state, **and within state positions** – aligning national legislation with international law



# Thoughts on native title legislation in Australia

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- Bare minimum in terms of negotiation practice, and are silent on agreement content – left to the ‘free’ market – to be negotiated via commercial in confidence processes between TOs and commercial interests (O’Neill, Thorburn and Hunt 2019, p.4)
- Pro mining culture permeates bureaucracies charged with regulating mineral developments
  - *‘Our role is to facilitate mineral and petroleum development, not regulate corporations’* (Principal Project Officer, Native Title Services, Dept of Natural Resources and Mines, QLD)
- Native title arrangements create an uneven playing field (O’Faircheallaigh 2015)
- Era of agreement making operates to facilitate industry access to Indigenous lands (Howlett and Lawrence 2019)

## Themes for further analysis: Mining on in Australian Indigenous lands vs mining in Norwegian Sapmi

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- Mining in remote *and* regional Australia often presented as panacea to 'lack of opportunity' discourse – employment, education, material wellbeing etc.
  - Aboriginal peoples' entry ticket (and often only opportunity) into modernity and all its benefits
- In Sapmi, Sami peoples (particularly Reindeer herders and fishing communities) are already part of market economy
- Therefore mining doesn't offer same panacea - in fact offers disruption to traditional livelihoods via environmental disturbance and risk

# And....

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- Neoliberalism and the role of the state?? Norwegian state takes its role as guardian of Sami rights more seriously
  - The withdrawal of the state seen in other western nations in favour of the free market/deregulation (and trend to agreement making), not as evident in Norway
- The ‘political settlement’ in Norway is more conducive to the protection of Sami rights in mineral development processes – ***despite the absence of a specific land rights regime*** - than what the political settlement in Australia currently offers
- *‘The equilibrium or political settlement in relation to the recognition of native title may have swung back in a regressive direction’* (Dillon 2017, p.3).