



## Sami-state collaboration in the governance of cumulative effects assessment: A critical action research approach



Rasmus Kløcker Larsen <sup>a,\*</sup>, Kaisa Raitio <sup>b</sup>, Marita Stinnerbom <sup>c</sup>, Jenny Wik-Karlsson <sup>d</sup>

<sup>a</sup> Stockholm Environment Institute, Postbox 24218, 104 51 Stockholm, Sweden

<sup>b</sup> Swedish University of Agricultural Sciences, Department of Urban and Rural Development, Unit for Environmental Communication, Box 7012, 75007 Uppsala, Sweden

<sup>c</sup> Vilhelmina norra reindeer herding community, Slingan 45, 923 94 Dikanäs, Sweden

<sup>d</sup> Swedish Sami Association, Formvägen 16, 906 21 Umeå, Sweden

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### ABSTRACT

Indigenous-state collaboration in the governance of cumulative effects assessment (CEA) is often hampered not only by legacies of colonialism and inequality but also disagreement on what the 'CEA governance problem' is in the first place. In this paper, we draw on critical theories on dialogue and collaboration to present a novel approach to joint problem analysis between Sami reindeer herders and civil servants in Swedish permitting authorities on mining, wind energy and forestry. We discuss process design choices, insights on CEA governance and ways to tackle these barriers in practice. We argue that indigenous-state collaboration may play a constructive role in improving CEA governance, including the recognition of indigenous peoples' rights. However, this requires a process that carves out new spaces for exploring divergent problem definitions and supports the participants in challenging institutionalized inequalities within their positioned realities.

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### 1. Introduction

One of the most complex and acute challenges of contemporary land use planning concerns multiple, competing claims over land and natural resources spurred by a pressure to produce 'more of everything' (Westholm et al., 2015). Despite established impact assessment (IA) procedures to address these developments (Morgan, 2012), the use of cumulative effects assessment (CEA), i.e. the effects caused by the combined results of past, current and future activities across the landscape (MacDonald, 2000), remains a substantial challenge when seeking permits for new infrastructure and development. In Sweden, the Environmental Protection Agency (EPA) has concluded that the current policy tools are inadequate, and called for improved mapping of multiple land claims and more comprehensive landscape planning (Swedish EPA, 2013, 2014).

The IA literature is full of observations on how countries with well-established CEA-regimes continue to struggle to enact their ambitions (e.g. Tollefson and Wipond, 1998; MacDonald, 2000; Connelly, 2011; Noble and Hanna, 2015). From a global review, Bidstrup et al.

(2016:157) recently commented that CEA appears to be still 'done badly across the world'. Whereas much has been written on the challenges in the *assessment* of cumulative effects, research gaps have been identified as regards to the *governance* of cumulative effects (e.g. Boutilier and Black, 2013; Noble and Hanna, 2015). That is, the extent to which CEA is embedded in regulation and permitting practices and actually affects decision making. As Heggman and Yarranton (2011:486) noted in a previous special issue on CEA in this journal, 'much has been said and written on how to do a "good CEA". However, not as much has been said and written on how to use the results of CEA to "make a good decision"'.

CEA governance is of particular significance on indigenous territory, when the land rights and traditional land uses of the indigenous communities are affected by competing land uses. Hence, on indigenous territory, addressing indigenous peoples' rights to land is an inevitable part of CEA governance, and vice versa: questions of CEA governance will bring into play – or serve as proxy for – larger and often unsettled questions linked to indigenous relations with the state, notably demands for self-determination. It is along these lines that Tollefson and Wipond (1998:389) comment that 'both the concept of cumulative impacts and the concept of aboriginal rights fundamentally challenge governments' ability to continue to rely on large-scale, corporate resource extraction as a primary economic activity'.

Despite this connection between CEA and the need to address indigenous peoples' rights, IA in general and CEA governance in particular is

\* Corresponding author.

E-mail addresses: [rasmus.klocker.larsen@sei-international.org](mailto:rasmus.klocker.larsen@sei-international.org) (R.K. Larsen), [kaisa.rautio@slu.se](mailto:kaisa.rautio@slu.se) (K. Raitio), [marita.stinnerbom@biegga.com](mailto:marita.stinnerbom@biegga.com) (M. Stinnerbom), [jenny@sapmi.se](mailto:jenny@sapmi.se) (J. Wik-Karlsson).

most often shaped by inherently disabling institutional conditions that have been shaped by legacies of colonialism and inequality (e.g. Tollefson and Wipond, 1998; Lane, 2003; O’Faircheallaigh, 2011; Lawrence and Larsen, 2017). The focus is on monitoring or governing already existing activities and seeing indigenous participants as ‘stakeholders’ on a par with industry and not as rights-holders who are, for instance, entitled to nation-to-nation negotiations with the state (Boutilier and Black, 2013; Porter et al., 2013). Typically the purpose is to generate sufficient consensus around co-existence (on premises determined by the developer) rather than allowing for the possibility that the development may be unacceptable in the first place (e.g. Lawrence and Larsen, 2017). In other words, CEA governance tends to limit itself to mitigating the impacts of new development projects while ignoring the structural barriers to securing indigenous peoples’ rights.

In this paper we use the term ‘CEA governance dilemma’ to describe the situation that emerges from the divergence between problem frames held by different actors. In such contexts, the challenge is how to address the multiple, competing understandings of the ‘problem’ as identified by indigenous communities, the state and the industry. If CEA governance is entrenched in any single perspective then it will be unable to address the conflict between different problem frames (Gray, 2003). Instead, such dilemmas call for reflective and critical approaches between parties to jointly explore their underlying view(s) on the problem and based on that draft legitimate strategies (Ravetz, 1999; Toderi et al., 2007; Saarikoski and Raitio, 2013). In order to be meaningful for the indigenous communities, this must inevitably include attending to the disabling institutional conditions and other structural barriers to the fulfilment of their rights.

In this paper, we present results from an action research project that sought to consider the divergent problem frames between representatives of the Swedish state and the indigenous Sami people. The work comprised a dialogue that aimed to create an understanding of the underlying CEA governance dilemma, and support the participants in improving the situation. Drawing on critical theories on dialogue, collaboration and action research (e.g. Midgley, 2000; Mouffe, 2000; Bacchi, 2009; Larsen, 2013), this paper asks:

*How may collaborative problem analysis between state authorities and indigenous peoples, facilitated by researchers, play a constructive role in conflict situations where even the exact nature of the ‘CEA governance problem’ is under dispute?*

In structuring our inquiry below, we distinguish three more detailed sub-questions:

- 1) How may such a critical collaborative approach to CEA governance be designed?
- 2) How is *understanding* of the CEA governance dilemma improved?
- 3) How may the process contribute towards *tackling* the CEA dilemma in practice?

In the next section (Section 2) we present the empirical context of the study, namely the mounting exploitation pressure in the Swedish part of Sápmi – the customary lands of the indigenous Sami now located within the Swedish nation state. We then engage more closely with the critical literature on dialogue and collaboration (Section 3). After presenting the data and methods of the study (Section 4), we answer the first research question regarding the design of the collaborative process (Section 5). We then summarise the results on the CEA governance dilemma in order to answer the second research question, also positioning these insights in relation to the existing international literature (Section 6). We address the third question, concerning the contribution of action research(ers) to eventually tackling the CEA dilemma (Section 6), before we end by discussing the limits of our work and pointing to ways forward (Section 7).

## 2. Context: current knowledge on CEA governance challenges in Sápmi

The Sami are indigenous people in Sweden, Norway, Finland and Russia. Reindeer herding comprises a fundamental part of traditional Sami culture and livelihood, exercised on close to 55% of Sweden’s land area. The exploitation of customary Sami land and reindeer pastures has escalated in recent years. There has been a rapid increase in the number of exploration permits for mining projects (from 11,000 ha in 2000 to 18,700 ha in 2011) and in the number of operational wind farms in the reindeer herding area in northern Sweden (from 48 wind mills in 2003 to 704 in 2014) (Österlin, 2016). Industrial forestry is practiced in the majority of lowland forests areas, resulting in reduction and fragmentation in the lichen-rich forest that reindeer depend on during the long winters (Sandström, 2015). These developments have severe consequences for Sami reindeer herding communities (*sameby* in Swedish, henceforth ‘Sami community’) that form the geographical and administrative units for practicing reindeer herding and related fishing and hunting (Fig. 1) (on the colonial legacy of these communities see e.g. Lawrence and Åhrén, 2016).

Over the last decade or more, international law on indigenous peoples (e.g. United Nations Declaration on the Rights of Indigenous Peoples, UNDRIP, and the ILO-169 convention) has set out clearer duties for states and rights for indigenous peoples to influence decision making. Notably, this includes norms such as the state duty to consult and the right for affected traditional resource users to give or withhold so-called Free Prior and Informed Consent (FPIC) to new projects on their lands (Åhrén, 2016).<sup>1</sup> These norms are also reflected in general impact assessment standards such as social impact assessment (SIA) and human rights impact assessments (HRIA) (e.g. Vanclay et al., 2015). Yet, Sweden has not yet ratified ILO-169 and, despite the general recognition by the Swedish state of the Sami as an indigenous people, Sami communities have few statutory rights to influence permit and IA processes. For instance, Swedish legislation on EIA, mining, wind energy and forestry lacks an explicit duty for the state to consult the Sami as an indigenous people (Allard, 2016). Instead, the state expects developers to consult Sami communities in what is often merely information exchange with little possibility for real influence. Solving potential conflicts is seen as a matter for the developer and the affected Sami community as private parties (Allard, 2006).

The limited possibilities of the Sami communities to influence permitting and IA processes are further weakened by the fact that the Swedish Environmental Code does not have clear requirement concerning CEA. In fact, the Code does not even mention the concept of cumulative effects, and the Ministry of Environment (2009) has earlier noted that it is unclear if the Environmental Code, as regards CEA, actually conforms to EU directives.<sup>2</sup> The IA Directives (85/337/EEC and 2001/42/EC) pose a requirement on Member States to ensure that EIAs consider ‘the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources’ (Annex IV re. Art. 5(1), 85/337/EEC). These minimum directives allow much discretion to member states in their interpretation. The Swedish regulations have remained ambiguous about the demands on developers and permitting authorities concerning CEA. As a result, developers and consultants across different fields of application rarely consider cumulative effects in their

<sup>1</sup> While some conventions, such as UNDRIP, are not legally binding, individual provisions may be indicative of binding international norms. There is ongoing debate regarding the legal status of the international legal sources on indigenous peoples, see further in Åhrén, 2016.

<sup>2</sup> The formulation in government’s recent draft of the updated Environmental Code chapter 6 does however introduce specific reference to cumulative and interactive effects in the near, medium and long-term.

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