

Cumulative impact assessments and Sámi indigenous rights

Providing meaningful participation opportunities for affected communities and individuals is central to environmental impact assessment processes. On Indigenous territory, governments and project proponents have additional duties toward Indigenous people, to treat them as rights-holders rather than stake-holders. According to international law, it is the duty of the state to secure the right of Indigenous peoples to their culture and land, and to guarantee the right for Indigenous representatives to give or withhold their Free, Prior and Informed Consent (FPIC) to land use decisions.

A robust assessment of the cumulative effects of past, present and planned land uses is a prerequisite for the protection of Indigenous rights. Informed consent is only possible if adequate information on the impacts of a project or a plan is available to the affected Indigenous actors as a part of the negotiations. Cumulative impact assessment is also necessary for determining the significance of impacts on Indigenous livelihoods, culture and rights. Without a significance determination, it is not possible for the

RECOMMENDATIONS

1. Identify relevant actors and geographical scale of assessment.
2. Establish a comprehensive collaboration agreement with each Sámi actor.
3. Secure adequate funding to the potentially affected communities.
4. Include all type of impacts the Sámi actors identify as relevant.
5. Establish the baseline before assessing the impacts of proposed future activities.
6. Use multiple knowledges and data sources for assessing impacts.
7. Develop a culturally appropriate consultation process.
8. Evaluate assessments based on explicit significance thresholds.
9. Couple the impact assessment to decision-making.
10. Follow up and evaluate together with impacted communities.



permit authorities to judge whether a project should be granted a permission or not.

The legal status of the Sámi as Indigenous people in what today comprises Nordic countries guarantees a right to their culture, including traditional livelihoods. However, traditional Sámi land usage is affected by the cumulative effects of industrial competing land uses, such as forestry, infrastructure development, mining, wind farms and hydro power. Sweden and Finland both lack procedures for cumulative effects assessment, meaning that new project proposals are not adequately appraised in relation to existing projects. This regulatory failure has contributed to the continuous violation of Sámi rights, and stands in the way of just green transition in the Northern region.

10 principles of cumulative impact assessment and Sámi Indigenous rights

This policy brief outlines 10 procedural principles for conducting a cumulative impact assessment to ensure the protection of Sámi rights as an Indigenous people. The list is based on established international guidelines, scientific literature and results from three research projects from 2016–2022. The focus is on Sámi reindeer herding, however the principles can be applied also to other parts of Sámi culture and livelihoods.

1. Identify relevant actors and geographical scale of assessment

Impact assessments are commonly done on a scale relevant for project proponents or public agencies. The relevant scale should instead be defined by the Sámi cultural practice that is impacted. Impacts on reindeer herding need to be assessed separately for each potentially affected reindeer herding community (*sameby, paliskunta, reinbetesdistrikt, siida*).

2. Establish a collaboration agreement with each Sámi actor

Prior to an assessment, the responsible public agency and/or project proponent should agree with each affected Sámi community (and Sámi Parliament, when relevant) on the assessment process. The process plan should include a written agreement that secures the community the continued ownership over their data and influence over its use, potentially accompanied by confidentiality agreements regulating disclosure of knowledge. Sámi actors should also be provided with opportunities to present their views on the outcomes of the CIA. Moreover, agreements should provide a mechanism for resolution of disputes, including how developers or government agencies report results provided by the Sámi actors, and how potential disagreements are reported in conclusions.

3. Provide adequate funding to ensure effective participation (not conditioned upon approval of the project)

Need for CIAs arises from the interests of public agencies or project proponents, not from the impacted Sámi communities. Yet CIAs depend on community participation and knowledge. Adequate compensation for time and expertise is therefore a necessary part of ethical engagement with Sámi communities. Lack of such funding has been a major obstacle for impact assessment processes in Sweden, according to both Sámi and state representatives.

Internationally, there are two common ways to channel resources: *co-management of the CIA*, e.g. with a steering group whose members are equally nominated by Indigenous and government actors; paid government agency staff with expertise in CEA and Indigenous culture; and remuneration for all Indigenous participants. The scale of compensation should be agreed up front, e.g., in collaboration agreements between the parties. Consultants should be recruited only with the consent of impacted Sámi actors. In *community-led impact assessment*, funding is instead provided to impacted communities to, themselves, lead the entire assessment process and pay for necessary internal and external expertise.

4. Include all type of impacts the Sámi actors identify as relevant

National impact assessments are still mostly limited to “environmental” impacts. It is good international practice to include *all* types of impacts that impacted Indigenous groups consider relevant. Approaches to social, cultural, health and human rights impact assessments are available. These can be adapted to, or otherwise inspire, CIA concerning Sámi land use.

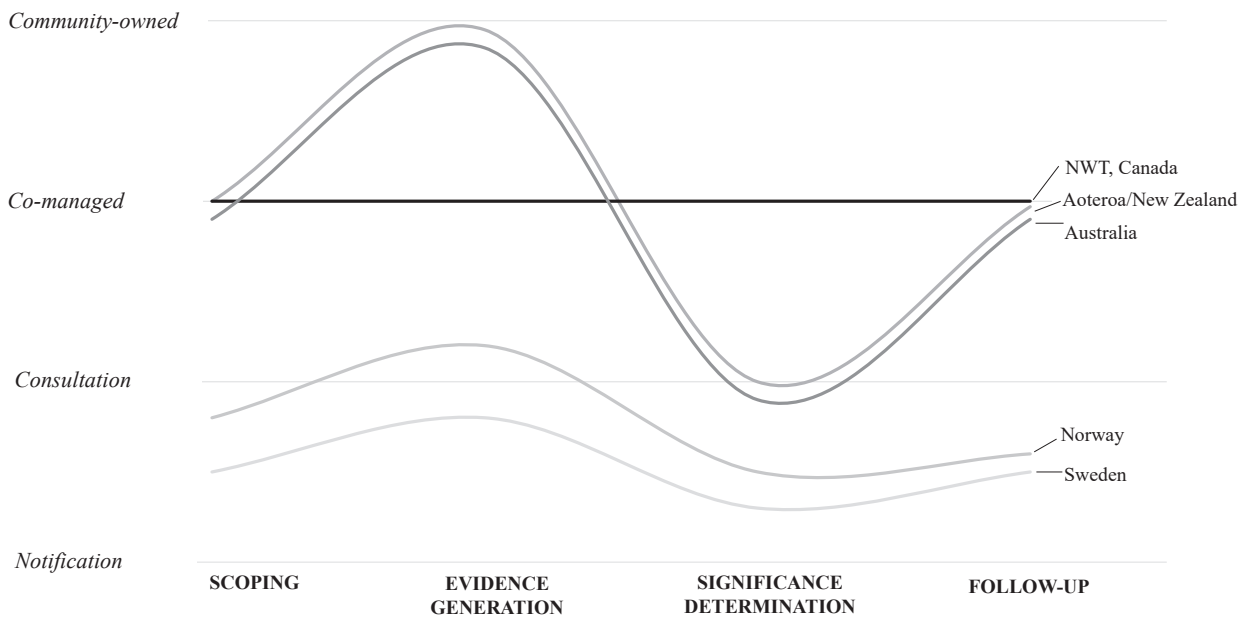
5. Establish the baseline through retroactive cumulative impact assessment before assessing impacts of future activities

Today’s situation reflects centuries of colonial history, with competing industrial land uses and their cumulative impacts on reindeer pastures and other Sámi needs. These impacts may already constitute a significant harm to Sámi culture, making new projects with adverse impacts in an area impossible. A retroactive cumulative assessment of all currently existing competing industrial land uses and their social, cultural, health and human rights impacts on the affected communities is therefore necessary, before complementing the assessment with impacts of future activities.

6. Use multiple knowledges and data sources for assessing impacts

Conducting a robust CIA requires multiple types of knowledge and data sources. Affected communities hold Indigenous place-based knowledge as to e.g. the value of different areas as reindeer pasture; behavior of reindeer; herding practices and needs; and the type and severity of impact that they experience. This must be recognized as a highly relevant form of expert knowledge that is paramount to the CIA and cannot be replaced with other types of

Indigenous participation in CIA:s



Kløcker Larsen 2017, Impact Assessment and Project Appraisal



data. Assessment findings or methods from one community cannot be directly transferred to another, e.g., as herding practices may differ. The collection, interpretation and use of Sámi knowledge through interviews, photographs, maps etc. should be agreed upon through appropriate consultation processes. Different databases on land use, pastures and reindeer movements constitute other important sources. However, the relevance of academic and government data needs to be verified with the affected communities.

7. Develop culturally appropriate consultation processes

Impacted Sámi communities should be enabled to engage in the CIA process in culturally appropriate ways, e.g. by adjusting the timing of the process to not conflict with the seasonal activities in traditional

livelihoods, even if this means delays from a developer's point of view. Ensuring ample time for oral submissions and hearings may also be important. Community members may also prefer contributing to the process without being challenged in culturally inappropriate ways, e. g., in adversarial meetings with project developers.

8. Evaluate assessment results based on explicit significance thresholds

Assessing the significance of the impacts of past, present and proposed land uses requires that the threshold for what constitutes a significant impact is made explicit, based on a transparent process of reasoning. Without such significance threshold, the state party cannot know whether a proposed project may exceed the threshold, hence being unable to enact its duties to protect Sámi rights.

9. Couple impact assessments to decision-making – ensure FPIC and no-go as an alternative

A CIA can only work to protect Sámi rights if it is clear how assessment findings will inform decision-making. Following international Indigenous rights norms, the objective of the CIA process should be to reach an agreement with the affected Sámi actors on the assessment of the anticipated impacts and their significance. Without agreement on the CIA, it is highly unlikely that the community will grant its free, prior and informed consent (FPIC) to the project. To not go ahead with a proposed project or plan should be among the possible outcomes, should the CIA demonstrate significant harm to one or several Sámi communities. If agreement on the CIA is not reached, or the permit authorities endorses a project despite the CIA having shown risks of significant harm, then this decision must be transparently reported – enabling Sámi actors to pursue effective legal remedies, e.g., through an appeal process.

10. Follow up and evaluate together with impacted communities

An oft-forgotten but important part of CIA is – in the case a project or plan is granted approval in one form or another – the establishment of appropriate institutions for monitoring and follow-up. The establishment of institutional forms of monitoring with paid staff should be considered for larger projects. One option is for developers and Sámi communities to enter into private agreements guaranteeing Sámi decisive roles in management committees, with earmarked funding for follow-up activities. Another, and often preferred option, is the establishment of long-term co-management and performance monitoring bodies, governed jointly by the state and concerned Sámi actors.

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