

Mining and Sami rights in Sweden

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Mining in Sápmi

- Nasafjälls silververk 1635
- 9 of 12 Sweden's operational metal mines and vast majority of the mining sector revenue generated in Sápmi
- Sami rights:
 - Reindeer herding right is a property right
 - Sami rights as an Indigenous people
- No royalties
- No treaties/settlement of land rights
- Escalating conflicts since 2010s



Foto:Henrik Blind

UN Committee on the Elimination of Racial Discrimination November 2020:

Rönnbäcken Case

“...The facts before it disclose a **violation by the State party** of articles 5 (d) (v) and 6 of the Convention”

“The Committee recommends that the State party provides an effective remedy to the Vapsten Sami Reindeer Herding Community by **revising effectively the mining concessions after an adequate process of free, prior and informed consent.**”

“The Committee also recommends that the State party **amends its legislation**, in order to reflect the status of the Sami as indigenous people in national legislation regarding land and resources...”

(CERD/C/102/D/54/2013)

Mining regulations and permitting practices

Raitio, K., Allard, C. & Lawrence, R. 2020. Mineral extraction in Swedish Sápmi: The regulatory gap between Sami rights and Sweden's mining permitting practices. *Land Use Policy*, December 2020.



Socio-legal analysis

- Mineral Act and Environmental Code with preparatory works
- Policy guidelines
- Interviews with permit authorities (Mining Inspectorate, County Boards)
- Three workshops with actors (2015 -2017)
- Case Law (Norra Kärr etc)
- Critical cases
 - Kallak/Beowulf
 - Laver/Boliden
 - Rönnbäcken/ Nickelmountain
 - Eva/Copperstone
 - Viscaria/Avalon
 - Kyrkberget/Tertiary Gold
 - Ylipääsnjaska/LKAB
 - Vindelfjällen/Canadian Blackstone

Additional publications

1. Pölönen, Ismo, Christina Allard and Kaisa Raitio, 2020. "Finnish and Swedish law on mining in light of collaborative governance", *Nordic Environmental Law Journal*, 2/2020: pp. 99–134.
2. Österlin, C and Raitio, K. 2020. Fragmented Landscapes and Planscapes—The Double Pressure of Increasing Natural Resource Exploitation on Indigenous Sámi Lands in Northern Sweden. *Resources* 9, no. 9: 104.
3. Kløcker Larsen, L. and Raitio, K. (2019). Implementing the state duty to consult in land and resource decisions: perspectives from Sami communities and Swedish state officials. *Arctic Review*, 10. 4–23.
4. Allard, Christina, "The Rationale for the Duty to Consult Indigenous Peoples: Comparative Reflections from Nordic and Canadian Legal Contexts". *Arctic Review on Law and Politics*, 2018, Vol. 9: pp. 25–43.
5. Kløcker Larsen, L. Österlin, C. and Guia, L. (2018). Do voluntary corporate actions improve cumulative effects assessment? Mining companies' performance on Sami lands. *The Extractive Industries and Society*.
6. Kløcker Larsen, L. Raitio K, Stinnerbom M, Wik Karlsson, J. (2017) Sami-state collaboration in the governance of cumulative effects assessment: a critical action research approach. 64: 67-76.
7. Kløcker Larsen, L. (2017). Impact assessment and indigenous self-determination: a scalar framework of participation options. *Impact Assessment and Project Appraisal*, pages 1-12. Published online: 23 Oct 2017
8. Lawrence, R. and Larsen, R.K. (2017). The politics of planning: assessing the impacts of mining on Sami lands. *Third World Quarterly*. Pages 1-17.

Results

- The permitting process for new mines **does not**
 - Provide Sami reindeer herding communities with effective means to influence the outcome
 - Ensure adequate protection of Sami rights
- Deficiencies in both regulations and practices



Key problems

1. Lack of state duty to consult the affected Sámi herding communities
 - Corporate consultations lack requirement to obtain Sámi consent
2. A priori assumption that reindeer herding and mining can coexist
 - Full impacts of a project never assessed to verify whether co-existence is possible
3. Inadequate assessment of cumulative impacts of all land use



Key problems cont.

4. Weak recognition of reindeer herding as a property right

- Property rights > public interest
- Right-holders > stake-holders

5. Lack of access to justice

- Government decisions on mining concessions cannot be appealed based on the merits of the case (limited trial at Supreme Administrative Court)



Foto: Mats Berg

How to navigate this governance gap?

- "Sweden has some of the most progressive and ambitious regulations on mining permitting" – **not true re:Sámi rights**
- What is the SLO of a permit granted under such inadequate regulations?
- What can mining companies do to improve their SLO?
 1. Urge the government to revise the Minerals Act
 2. Support new regulations that safeguard Sami rights
 3. Commit to 'no' as one possible outcome from corporate consultations
 4. Commit to consent from affected *sameby* as a condition for new projects
- Conflicts and appeals to UN likely to continue under BAU

Giitu! Thank you!

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