What's in a Social License to Mine?

Indigenous rights, rules and company-community engagement

Learning from Canadian – Swedish comparison

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Introduction

Sweden has experienced an increasing level of tension and conflict over mine establishment during the last decade, particularly in relation to Indigenous rights and traditional land uses. The Swedish government, involved state agencies, industry and affected actors call for better legal and other tools to handle mining related conflicts with Indigenous communities. The Vinnova funded project "What's in a Social License to Mine?" was initiated to explore the Canadian experience. Canada offers a comparable context in the sense that it represents a Western democracy with an economically important mining industry. On the other hand, the Canadian institutional context (especially rights and rules) has significant differences from the Swedish context and, further, varies among the Canadian provinces and territories themselves. There are also interesting examples of well-developed company-community engagement practices and collaboration in Canada.

This is one of two project briefs. This brief focuses on ***institutions*** and on ***interactions*** between Indigenous communities and mining companies across Canadian and Swedish jurisdictions. It complements the other brief about ***Canadian best practices.***

The interactions between the mining industry and local/Indigenous communities are often framed around the concept of Social License to Operate (SLO). Originally addressing companies' voluntary/extra legislative activities to gain local communities' acceptance, SLO is increasingly situated in a larger governance context where governments set the "rules of the game". The project "What's in a Social License to Mine" explores how governments, Indigenous communities and industry interact to produce various outcomes, e.g. community opposition, acceptance or support, under the influence of different regulatory frameworks (including rights and rules). The researchers in the project compared five mining projects in different jurisdictions chosen to illustrate important regulatory, corporate and contextual differences: Saskatchewan, Northwest Territories and British Columbia in Canada, and Gällivare and Jokkmokk municipalities in Sweden. Using a comparative approach, the researchers sought to understand important factors affecting interactions and outcomes. The study was conducted between 2018 and 2021.

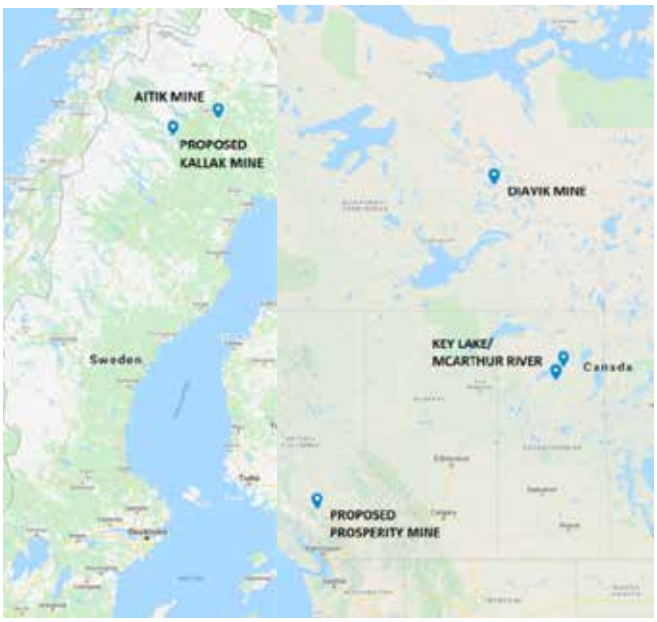

Figure 1. Locations of the research cases' existing or planned mine sites (Source: Self-Produced on Google Maps)

Basic regulation in the different jurisdictions

The general legal context

For a better understanding of the outcomes of the five cases compared in this project (see full case descriptions in Appendix 1 and a summary below) it is important to have a basic knowledge of the legal environment. This section provides such a context on a general level and points out to important differences.

First, unlike Sweden's unitary political system, Canada has a federal system in which powers are divided between the federal government and the provincial governments. Canada's Arctic region includes three territories, which have specific powers delegated to them by the federal government. The federal structure means that the legal environment within Canada differs among provinces and territories. This creates a complex multi-governance environment: Canada's non-renewable and renewable, terrestrial natural resources, such as minerals

and forest resources, are under provincial authority; yet, both the federal and provincial governments have responsibility for environmental protection. Overlapping jurisdictions complicate the relationship between federal and provincial laws. Finally, an increasing number of Indigenous governments now exercise concurrent power with both the federal and provincial governments in particular areas of jurisdiction on their traditional lands. This adds a further layer of governance complexity.

Second, the two countries legal systems function in different ways. Canada, a former British colony, has inherited its basic structure and legal culture from British law. Therefore, Canada is a common law-country (except for Quebec). In Sweden, civil law operates. This basic difference, for instance, helps explain the broader focus on litigation before courts in Canada, and, thus, the importance of courts in creating law. In civil law-countries, like Sweden, state legislation is the prime legal source, and the courts, although important, do not have quite the same status or autonomy.

The role of courts is, thus, different in Canada and Sweden. The Supreme Court of Canada is the final court of appeal and has decided numerous cases concerning Indigenous rights and resource extraction. In contrast, Sweden has two branches of courts: general courts and general administrative courts (settling cases involving public authorities). Therefore, two courts sit on the top, as well as specialist courts, such as the land and environmental courts that decide environmental permits for mines. Only the Swedish Supreme Court (general court) can finally resolve civil law matters regarding the nature of Sami rights. Consequently, Sweden has very few cases addressing the *nature* of Indigenous Sami rights (notably the existence and/or content of Sami (land) rights, as relating to private law) but many court cases stemming from the specialist and administrative courts (which means an application of sector legislation, such as development and extraction of natural resources on traditional Sami lands).

Third, Canada has historic (and modern) treaties between the Crown (state) and Indigenous peoples. Sweden does not have a similar historical framework in relation to Sami people. Historic treaties are agreements made between the Crown and First Nations that define ongoing rights and obligations in exchange for land. Treaty making began under the British Crown and this process continued post-Confederation (the founding of Canada was 1867). Canada continued this process through late nineteenth and early twentieth century. All of Western Canada is under treaty, with the exception of British Columbia, where historic treaties (Treaty 8) exist with eight First Nations in the northeast of the province (in 1899) and on Vancouver Island, called the Douglas Treaties (between 1850-54). In Saskatchewan, the historic treaties include Treaty 2 (1871) and Treaty 7 (1877); however, the five major are Treaty 4 (1874), Treaty 5 (1875–76), Treaty 6 (1876), Treaty 8 (1899–1900), and Treaty 10 (1906–07). The historic treaties have played a significant role in the increasing legal recognition and definition of Indigenous rights in Canada. There are multiple strategies currently being employed to recognize and advance Indigenous rights. The Tsilhqot'in Nation, for example, is unique in that it does not have a treaty and it has secured a portion of its Territory as Aboriginal Title lands.

Fourth, because of the differences in the legal systems (common law/civil law), the constitution plays a different role in Canada than in Sweden – thereby affecting the constitutional protection of Indigenous rights. There is an explicit protection of Indigenous rights in section 35(1) of the Constitution Act, 1982. This provision states that the "existing aboriginal and treaty rights of the aboriginal peoples of Canada are (…) recognized and affirmed." This provision shields already existing treaty rights (historic treaty rights and rights based in modern treaties) and aboriginal rights that Indigenous communities throughout Canada have. Note that the concept "aboriginal rights" may refer

to user rights and/or ownership (aboriginal title), and not all Indigenous groups in Canada have signed treaties.

Through a series of important decisions, the Supreme Court of Canada established the legal principle of the State's (Crown's) *duty to consult* with Indigenous peoples. As a strong procedural right, the duty to consult Indigenous peoples obliges the federal and provincial and territorial governments to consult, and if necessary, accommodate the concerns of Indigenous people when the Crown wishes to act in a manner that may have adverse consequences for potential or established aboriginal treaty rights. Mitigating measures are not merely left to the mining company seeking approval (as common in Sweden). It was common in Canada that the Crown delegated some procedural aspects of its duty to companies, thereby expanding the scope of interactions beyond a bilateral one; however, this is becoming less common with increased litigation between the Crown and Indigenous groups respecting the adequacy of the duty to consult. Whether consultation has been adequate or not is often a source of controversy and may be litigated before the courts.

The Swedish constitution offers weak protection of Sami rights and the key provision targets the State, in particular the legislature, and cannot alone be evoked before courts. Chapter 1, section 2 of the constitution (*Instrument of Government*, 1974) reads: "The opportunities of the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted." It was only after an amendment in 2010 that the Sami now are mentioned as a (Indigenous) "people", not merely a "minority". In general, the Swedish constitution does not offer as strong protection of Indigenous rights as is the case in Canada. Instead, specific state legislation defines and protects Sami rights, specifically the *Reindeer Herding Act,* 1971. Sweden also lacks constitutional provisions, case law and, for long, legislation concerning the State's duty to consult the Sami in matters important to them. However, as of March 1, 2022, a new short act is in force that recognizes the State's duty to consult the Sami.

The nature of the legal systems and constitutional provisions outlined above affects the way mining projects evolve and the way Indigenous rights are protected within the permit processes of each country and jurisdiction. Of crucial importance is the specific mining-related legislation that determines the approval processes and to this we turn next.

Mining laws and environmental assessments

In Canada, legislation concerning the development of mineral resources falls under provincial and territorial jurisdictions. Many of Canada's provincial laws continue to reflect qualified free entry principles, meaning that a proponent may secure acquisition of mineral resources through exploration work within the parameters of the respective and applicable provincial laws, policies and regulations. A company or individual can obtain subsurface rights (which belong to the Crown) but still needs to negotiate the surface rights (a lease) with whomever owns the property/land, which often is Crown land. However, the extraction of minerals over a certain amount commonly requires a specific approval process. Under Swedish mineral legislation, the exploration and extraction of mineral resources require separate permit processes. In addition, several other approvals under other legislation are required for mine developments, both in Canada and Sweden, for instance environmental permits.

Companies wishing to develop mineral resources in Canada are subject to impact assessment (IA, Overview of the Impact Assessment Act (canada.ca), or an environmental assessment (EA) process, prior to other permit decisions. Normally both with a broader scope than only environmental aspects. Such assessment is enshrined in federal, provincial and territorial law. As with mineral laws,

Source: Tŝilhqot'in National Government.

the EA requirements for mining operations vary across Canada, depending on the jurisdiction in which the project will be located, the size of the proposed operation, and the potential for adverse effects. Generally, the federal and provincial governments are obliged to engage with Indigenous communities following federal/provincial legislation that mandates consultation or collaborative decision-making. Moreover, a number of First Nations governments have their own authority to undertake EA processes as a result of comprehensive land claims agreements or modern treaties. On certain occasions, two EAs can be mandatory for the same mine project, at both provincial and federal level, which is relevant to our case in British Columbia (see below).

The scope of impacts considered under *federal* IA are quite broad and include biophysical impacts, impacts to human health and social and economic conditions, and impacts to Indigenous peoples including the use of lands and resources for traditional purposes. If a federal IA is required, the proponent must prepare an impact statement, which is then assessed by the Impact Assessment Agency of Canada. For large projects, the assessment is conducted by an independent review panel. All designated nuclear projects are automatically referred to review panels. Federal IAs require an early planning phase, that includes public participation and Indigenous engagement activities. Provincial EAs also have a requirement for early and on-going consultation and engagement with Indigenous communities, and the consideration of scientific information, Indigenous knowledge, and community knowledge. An important purpose of the federal IA legislation is to make sure the rights of the Indigenous peoples of Canada are respected and to promote communication and cooperation with respect to EAs. The final decision to approve or reject a project resides with the responsible federal Minister.

Provincial EA legislation, among other things, varies in content and the degree of Indigenous involvement. Across Canada, most EA legislation does not speak specifically to Indigenous rights or engagement. However, all provincial governments, including Saskatchewan, have duty to consult frameworks that guide the operationalization of provincial legislation when it potentially impacts Indigenous rights. North of 60th parallel, the

federal EA legislation largely does not apply. Here, EA is carried out primarily under a co-management system, established under comprehensive land claims agreements with Indigenous communities. In the Northwest Territories, for example, mining operations are subject to EA under specific legislation, the *Mackenzie Valley Resource Management Act*, and administered by a co-management board with equal representation of federal and territorial government and Indigenous land claim organizations. As a co-managed system, EA decision-making authority is shared between federal and territorial governments and Indigenous government organizations. There have been very recent developments in Canada that have pushed the envelope further. In British Columbia, for instance, the new EA legislation aims to implement the United Nations Declaration on the Rights of Indigenous Peoples, promoting consent-based and collaborative decision-making mechanisms, and Indigenous-led assessments.

Swedish environmental assessments, labelled environmental impact assessments (EIAs), are tightly connected to the permit process of specific mine projects. EIAs are required both for the mining permit under minerals legislation and for the environmental permit under environmental legislation. However, in EIAs (and permit processes) affected Sami and Sami reindeer herding communities (RHCs) are treated as any other stakeholder and seen as a public interest. Sami RHCs are recognized as right holders but treated as an interest among many other. Swedish EIA legislation is based on two European Union Directives and, because of the close connection to EU law, no specific rules target the Sami as an Indigenous people. In fact, the Sami are not mentioned at all. A difference from the typical Canadian EA is also the scope of the Swedish EIA, which typically addresses only *environmental impacts*, not social and cultural impacts on the affected Sami RHC, or possible long-term impacts on their Indigenous rights. Conducting an

Cases	Aitik	Kallak/Gállok	Prosperity	McArthur River/Key Lake	Diavik
Location	Gällivare Sweden	Jokkmokk Sweden	British Columbia Canada	Saskatchewan Canada	Northwest Territories Canada
Commodity	Copper	Iron	Gold/Copper	Uranium	Diamond
Project stage	Operating mine Expansion	Proposed mine	Proposed mine	Licensed to operate; production restart contingent on improved markets[1]	Operating mine
Owners	Boliden	Jokkmokk Iron Mines AB	Taseko	Cameco and Orano	Diavik Diamond Mines
Indigenous community	Gällivare Skogssameby	Jåhkågaska tjiellde and others	Tshilhqot'in Nation	English River First Nation and others	Tlicho Government
Institutional characteristics	• Weak Indigenous rights • No state duty to consult	• Weak Indigenous rights • No state duty to consult	• No treaty but strong aboriginal rights • Separate provincial and federal EAs	• Historic treaty • Surface Lease Agreements • Private IBA	• Modern treaties • Co-management Boards • Multi-level governance
Disputes	low	high	high	low	low

Table 1: Overview of the cases selected for study

1 Restart announced on February 9, 2022.

EIA in the Swedish mine permitting context is the sole responsibility of the proponent, both in terms of collecting scientific knowledge and carrying out (corporate) consultations with municipalities, state agencies and local people, including Sami RHCs who are recognized as right holders (other local Sami are not). The newly adopted act on the duty to consult Sami (se above) will modify the role of affected Sami RHCs, to what extent remains to be seen.

Comparing five cases in Canada and Sweden

The five cases explored and compared in this study (see Appendix 1 for case descriptions) illustrate a variety of geographic locations, institutions (rights and rules), corporate practices, and types of Indigenous responses, from opposition and conflict to collaboration. There are important differences between the Canadian cases. **The McArthur River/Key Lake** case represents advanced company-community engagement and collaboration practices (private agreements) in the context of established historic treaties and innovative government led Mineral Surface Lease Agreements (MSLA) promoting local benefit sharing. **The Diavik case** illustrates unique co-management and multilevel governance structures offering Indigenous communities influence in decision making and management at different levels and scales. **The Prosperity case** elucidates a highly controversial Canadian project in a context where aboriginal rights are relatively strong, but no treaties have been signed, and separate provincial and federal review processes complicated the assessment.

The two Swedish cases are generally characterized by weaker Indigenous rights, not fully integrated into environmental and mining legislation (Sami treated as public interests), and no State duty to consult[2]. **The Kallak/Gállok case** illustrates a conflict over a proposed mine project, while no open conflict has been documented in **the Aitik case** where mining is ongoing. Sami reindeer herding is a traditional Sami livelihood practiced in Northern Sweden. Reindeer herding adds complexity to the Swedish cases in which competing land use interests are primary sources of conflict and dissent.

What factors shaped interactions and outcomes?

Below is a summary of the most important factors that shaped the interactions and outcomes identified in the comparison of the investigated cases.

Geography and land use

Land use competition or conflicts are prominent issues in both countries; in Sweden, Sami RHCs depend on reindeer herding, and in Canada, First Nations rely on traditional hunting, trapping and fishing. These activities require extensive territories, parts of which can be affected by the environmental impacts caused by mining projects. Therefore, the geographical context, the extent of competing land uses and the location of mines play important roles. The cases with open conflicts (Prosperity and Kallak/Gállok), or significant Indigenous dissatisfaction (Aitik), are located in more densely populated areas with documented land use conflicts, and in proximity to villages and population centers (with non-Indigenous majority populations), or in culturally or environmentally sensitive locations (sacred sites, areas of "national interests", strategic passages). Cumulative land use impacts are an issue in all of these cases. In the cases where collaboration and partnerships have evolved, land use competition is less intense (Diavik), the locations of the mines are less controversial in terms of their position relative to communities (i.e., on an isolated

2 A new short act recognizing the State's duty to consult the Sami was adopted on March 1, 2022, but did not exist at the time of investigation.

island in the Diavik case), and/or land use conflicts have been possible to resolve through communication and collaboration between companies and Indigenous communities (McArthur River/Key Lake).

Governing states

There are important legal differences between Canada and Sweden which affect current relationships between the mining industry and Indigenous communities. Stronger constitutional rights (since 1982) and the State's duty to consult Indigenous peoples offer Canadian Indigenous communities a broader range of legal avenues to influence the development of, or challenge unwanted, mining projects, not least through the courts. In Swedish sector legislation (e.g. the Minerals Act), the Sami are treated as any other "public interest", and the weak constitutional protection of Sami rights seriously hampers their legal status in decision making. In contrast, the Canadian constitution, federal and provincial laws (although to various degrees) recognize Indigenous and treaty rights, government-to-government relations and the goal of reconciliation of past and present wrongs. Provinces without historic or modern treaties, in particular British Columbia, recognize rights based on historical and contemporary land use, i.e. aboriginal rights.

Questions related to Indigenous rights and the regulatory framework are important in the two Swedish cases, particularly in the Kallak/Gállok case where the mining issue has become intertwined with the struggle for recognition of Sami land rights. In Sweden, corporate actors also expressed frustration with unclear rights, inconsistent regulation and different authorities making diverging assessments. Similarly, inconsistently applied regulations and Indigenous rights politicized and polarized the assessment process in the Prosperity case. In British Columbia, the normal EA procedure for large-scale mining operations is a joint assessment by the provincial and federal governments. But in the Prosperity case, the province opted for a separate assessment and the provincial and federal assessments came to different conclusions. The Diavik case illustrates that jurisdictional structures also matter: the unique co-management structure in the Northwest Territories involving Indigenous communities has enabled the development of innovative partnerships and agreements. In addition, a generally broader scope of the EA legislation/procedures in the Canadian cases offered the affected First Nations more opportunity to address impacts than the Sami RHCs in the Swedish EIA processes.

However, it is critical to stress that development of Indigenous-business relationships in Saskatchewan and many other places in Canada preceded--not followed--the constitutional and court decisions that subsequently strengthened Indigenous legal rights. Indigenous-business relations in the Diavik and McArthur River/Key Lake cases emerged prior to stronger legal recognition of Indigenous rights and have continued beyond the current regulations. So, Indigenous legal rights were not a precondition for collaboration to develop. But in both cases, other institutional changes created opportunities that could be used by Indigenous communities to leverage their position and benefit from the mines. In the McArthur River/Key Lake case, the Mine Surface Lease Agreement (MSLA) associated with uranium extraction served this function. The MSLA ensured cooperative community engagement and measures to provide opportunities to local community business. In the Diavik case, the devolution of power and development of self-government in the Northwest Territories occurred in tandem with the establishment of mining-related co-management institutions.

Corporate culture and community engagement

Corporate cultures shape company behavior and corporate cultural differences exist between Canada and Sweden. Although not expressed in practice

in all investigated cases, Canadian companies generally operate with more extensive corporate policies, company-community engagement protocols, and build more comprehensive private agreements than those in the Swedish cases (see Brief about Canadian best practices). In the Nordic context, people typically expect the state to provide legislation that safeguards the environment and social benefits. Different corporate approaches are also reflective in no small part of the relative strength of Indigenous peoples and increasingly, since 1982, of constitutionally protected aboriginal rights. Another difference is the use of Impact Benefit Agreements (IBAs), i.e. privately-negotiated bilateral agreements between companies and Indigenous or local communities, which is much more developed in Canada. Typically, IBAs are used as a means to ensure mutual benefits from project development; they are an expected part of doing business and include provisions for benefits sharing, environmental stewardship, and ongoing relationship building and collaboration (for more information on IBAs, see Brief about Canadian best practices).

In spite of these differences, collaboration and private agreements between companies and Indigenous communities were found in both countries, e.g. in the Aitik, McArthur River/Key Lake and Diavik cases. But the practices and agreements applied in the Canadian examples, i.e. McArthur River/Key Lake and Diavik, are to a much higher degree formalized and institutionalized. Indigenous communities, particularly those with strong aboriginal and treaty rights, have both their own governments and land bases which make them "state-like" rather than simply "community-like" actors. This leverages the position of the Indigenous communities and has, in these cases, resulted in mutually beneficial agreements and long-term partnerships. This approach is different from the mitigation and compensation-focused agreements used in the Swedish Aitik case. A shift towards long-term partnerships and mutual learning in the Aitik case has begun in some ways with research agreements on reindeer herding between the company and the Sami RHCs. However, the Sami RHC maintains that existing agreements are limited in scope and call for more equal negotiations and shared ownership of projects.

Aitik Komatsu trucks. **Photo**: Boliden

The most advanced examples of corporate-community engagement and partnerships are found in the Canadian Diavik and McArthur River/Key Lake cases. Here, collaboration evolved under particular challenges that also may have opened opportunities. In the McArthur River/Key Lake case, the companies wanted to formalize their historic relationship with the Indigenous communities and to provide benefits with respect to these operations which involve the mining and milling of uranium, a commodity that is strictly regulated and monitored as well as polarizing in public opinion. In the Diavik case, the company wanted

government permission, in combination with local support, to extract diamonds during a time when power was being transferred to Indigenous nations in the Northwest Territories. Such challenges may have shaped and facilitated the development of truly collaborative corporate strategies.

In the conflict cases (Prosperity and Kallak/Gállok), the interactions between the companies and Indigenous communities were not perceived as meaningful by the Indigenous parties. In the Prosperity case, the provincial government's decision to abandon the joint federal-provincial environmental assessment process in favor of an additional and separate provincial environment assessment process shattered the Tsilhqot'in National Government's (TNG) confidence in the integrity of that process. Although this was well within the rights of the provincial government, the TNG questioned the legitimacy and credibility of the provincial assessment process. In the Kallak/Gállok case, the Sami RHCs felt that the company did not approach them in an appropriate and respectful way as the project was initiated. Moreover, in both the Prosperity and Kallak cases, the Indigenous communities strongly disagreed with the mining plans from the outset. From their point of view, the proposed locations were not suitable for mine development, consultation was not adequate, and the preconditions for further negotiations and collaboration were, therefore, not in place.

Indigenous community visions and strategies

Important to the different developments of the various cases are the visions and strategies of the Indigenous communities affected by the mine projects. While this research did not have the opportunity to systematically compare values, attitudes, and perspectives of community members among all cases, some observations can be drawn. In the two cases where collaboration and partnerships evolved (McArthur River/Key Lake and Diavik), mining was generally associated with positive socio-economic impacts and the negative effects on the environment and traditional livelihoods were resolved through negotiation. For TNG (Prosperity case), the environmental and cultural impacts of a mine in the vicinity of Teztan Biny/Fish Lake, are unacceptable and, as such, they responded with opposition. However, TNG does not unconditionally dismiss the potential positive

Type/quality of interaction	Case(s)	Outcomes
Mutually appreciated collaboration and partnerships	McArthur Key Lake, Sakatchewan, Canada	Project broadly supported; licensed to operate; production restart contingent on improved markets[3]
	Diavik, NWT, Canada	Project broadly supported; licensed to operate; ongoing mining
Dialogue and collaboration without Indigenous consent	Aitik, Gällivare, Sweden	Project accepted by compliance; licensed to operate; ongoing mining
	Liikavaara, Gällivare, Sweden	Project opposed; mining permit under assessment
No functioning dialogue and high conflict level	Prosperity, BC, Canada	Project opposed; mining permit rejected by federal Government
	Kallak/Gállok, Jokkmokk, Sweden	Project opposed; mining permit under assessment[4]

Table 2. Interactions and outcomes in the five cases.

[3] Restart announced on Febrary 9, 2022.

[4] The Swedish government decided to approve a mining permit on March 22, 2022. The company can now take the next step and apply for an environmental permit.

economic benefits of a mine in another location.

For the Swedish Sami RCHs, mining is primarily associated with loss of reindeer grazing lands, disturbance and other negative impacts. Opposition (as in the Kallak/Gállok case), or negotiation to mitigate unavoidable impacts (as in the Aitik case), are logical strategies. The majority of the Sami population in Sweden are not members of Sami RHCs. However, all Sami are supposed to be represented by the Sami Parliament, which generally has supported the Sami RHCs' negative positions vis a vis mineral extraction.

The perceived balance between positive and negative impacts affects Indigenous community responses. And, how impacts are perceived may reflect the location of the mine, corporate engagement strategies and mechanisms for benefit sharing, and/or the values, priorities and different economies of the Indigenous communities in question. Analysis of the causes of resistance in the Prosperity and the Kallak/Gállok cases suggest that the reasons for the opposition are markedly similar - environmental assessment processes are seen as illegitimate, distributional outcomes unfair, and values incompatible. Hence, the extent to which Indigenous community and corporate values and visions are compatible – or incompatible – stands out as a key factor affecting company-community interaction and outcomes.

What interactions and outcomes developed?

An analysis of the five cases revealed three types of interactions and outcomes (see Table 3). Mutually appreciated collaboration and partnerships in the Diavik and McArthur River/Key Lake cases resulted in broadly supported operating mines. Dialogue and collaboration also existed in the Swedish Aitik case, but the interactions were not mutually appreciated in the same way, and the Sami RHC never gave the project its consent. The now operating mine is accepted, but by "compliance" as the RHC did not see other alternatives, and the new Liikavaara project is in principle opposed by the Sami RHC. In the Prosperity and Kallak/Gállok cases, the Indigenous communities opposed the projects from the outset, no functional dialogue developed, and the projects generated open conflicts. While the Canadian federal government rejected the Prosperity project, the Swedish Kallak/Gállok project is still under consideration by the Swedish government.

Company, community and state interactions

Two cases, McArthur River/Key Lake and Diavik, illustrate well developed collaboration and partnerships which appear to be highly valued by the Indigenous communities and corporate actors. The quality of interaction is generally assessed as high. No major disputes, critical interventions, or legal litigation have been formally documented. These processes are marked by the involvement of Indigenous corporate actors (Indigenous led businesses), different forms of partnerships or formalized co-management structures that institutionalize a devolution of power and influence; and seemingly undisputed and coherent hierarchical multi-level governance frameworks.

In the Swedish Aitik case, company-community relationships have improved over time. The interactions between the Swedish state authorities and the company involved a high degree of dialogue, and company-community collaboration is continuously developing although the RHC never gave the project their explicit consent. While personal relations between the company and Sami RHC were mutually appreciated, the Indigenous community still perceives the interaction as unequal and lacking in terms of its ability to exert substantial influence. Mutually appreciated company-Indigenous-community collaboration or partnership of the kind observed in the McArthur/Key Lake and Diavik cases, are not to be found in the two Swedish cases. Indigenous corporate actors in the mining sector are rare in Sweden; the State's duty to consult is missing, other legal requirements set a

Photo: Jan Erik Läntta

low standard for consultations with Sami RHCs and consultations are only formalized in conjunction with the EIA.

Poorly functioning interactions exist in both Canadian and Swedish cases. In the conflict cases (Prosperity and Kallak/Gállok), very little company– community interaction occurred, and most actors assessed the quality of interaction as poor. In both cases, Indigenous and corporate actors tended to value their interaction with state actors that shared, and supported, their own perspectives, but distrusted state actors that went against them. As illustrated by the Prosperity case, a "duty to consult" is not in itself a blueprint to high quality interactions and its practical application in Canada has not been straightforward. Firstly, previously the Crown often delegated this duty to companies thereby expanding the scope of interactions beyond a bilateral one; however, this is occurring much less often given the increasing litigation related to the duty to consult. Secondly, it is not always clear who should be consulted as there are different form of governance within Indigenous communities. As a result, in practice the duty to consult is contentious and resource projects are also subject to court litigation initiated by Indigenous communities on the grounds that the duty to consult has not been adequately followed.

Outcomes

In three of the cases (Mc Arthur River/Key Lake, Diavik and Aitik), the projects were given the necessary formal approvals, the mines are, or were operational, and the relationships between the mining companies and Indigenous communities resulted in agreements between parties. In the McArthur River/Key Lake and Diavik cases, the agreements between the respective mining companies and Indigenous communities are perceived as beneficial for both parties, and innovative collaborative practices and business partnerships have evolved. The Aitik case also resulted in an agreement between the RHC and the mining company, and new modes of cooperation are currently being tested. However, these arrangements are not considered mutually satisfactory by all parties. These three cases illustrate a range of outcomes: from acceptance and support in the Diavik and McArthur River/Key Lake cases; and acceptance by compliance (absence of other alternatives) in Aitik and opposition of a new mine in Liikavaara.

Mining related resistance and conflicts exist in both Canada and Sweden regardless of differences in institutions (rights and rules) and company-community engagement practices, as illustrated by the Kallak/Gállok and Prosperity cases. In some places, or under certain conditions, mine development is not consistent with Indigenous communities' visions and practices. Accordingly, these projects were opposed by the Indigenous communities, resulting in open conflict. In the Prosperity case, the project did not receive formal approval, i.e. the outcome reflects the Indigenous community's position. At the time of this investigation, a mining permit for the Kallak/Gállok project was under review. However, as of March 22, 2022, the Swedish Government decided to grant the mining permit and the project can now proceed to the next step which is an environmental assessment. The outcome of the permitting process is still uncertain. While the TNG (Prosperity) has stated that it is not against mining as such, the position of

the Swedish Sami Parliament is that no additional mines should be developed in Sápmi as long as Sami rights are not properly respected in legislation and by the Swedish government.

Opposition and conflict are likely to occur in cases where Indigenous communities experience a lack of involvement and influence, and where corporate visions and values are not aligned. However, the Canadian cases show that ambitious company-community engagement has the potential to resolve many issues. They also illustrate how different forms of supporting regulation, including the protection of Indigenous rights, the right to be consulted (the State's duty to consult) and in some cases accommodated, may provide Indigenous communities with a better basis to adjust, or challenge, contested or unwanted projects.

The actors' overall satisfaction with the performance of the mineral governance systems varied between Canada and Sweden and across the cases. All Swedish Indigenous - and some corporate - actors expressed concerns regarding the Swedish regulatory system, particularly the permit process. The actors in the cases where participation and collaboration between Indigenous communities and the mining companies had worked well (McArthur/Key Lake and Diavik) seemed to trust the system and find it legitimate. In the other cases, the actors' assessments of the governance systems, or different parts of them, seemed to reflect their interests in the outcomes. State agencies, or review processes, that prioritized the preferred perspective, were trusted while actors or decisions supporting the opponent were seen as biased or illegitimate. In the Kallak/Gállok case, for example, both Indigenous and corporate actors considered the system flawed, albeit for different reasons. In this context, EA/IA/EIA legislation and practices play a central role. More comprehensive and independent EA/IA/EIA procedures, as found in some Canadian provinces and territories, can improve the legitimacy of the permit process.

Conclusions

Best company-community engagement practices in the development and operation of mines help:

- to improve the quality of communication and negotiation between industry and Indigenous communities, thus contributing to trust building and mutually beneficial outcomes;
- to foster collaboration, partnerships and business development and thus empower Indigenous communities;
- to strengthen the legitimacy of decision making.

However, institutions (rights and rules) are important:

- to recognize Indigenous rights to land and culture in the assessment, development, and operation of new, and existing, mine projects;
- to level the playing field and balance power relations between Indigenous communities, mining companies and the state;
- to ensure the predictability and legitimacy of decision making.

Hence, best company-community engagement practices and supporting legislation can reinforce each other and enable mutually beneficial and legitimate interactions and outcomes. In addition, local context matters: the specific geography, land use, values and visions of each Indigenous community define the range of possible options. Respecting the right of each Indigenous community to determine its own future is therefore crucial.

Finally, this study illustrates the complexity of company-community relationships and questions the suitability of defining these relationships in terms of "acceptance", as suggested by the SLO literature. Acceptance does not reflect dialogue or collaboration between equal partners with equally legitimate visions and strategies. This can hamper efforts to establish constructive company-community relations in contested situations as well as in cases where collaboration and partnerships exist or are envisioned.

Abbreviations

SLO	Social License to Operate	EU	European Union
IA	Impact Assessment	MSLA	Mineral Surface Lease Agreements
EA	Environmental Assessment	IBA	Impact Benefit Agreement
EIA	Environmental Impact Assessment	TNG	Tsilhqot'in National Government
RHC	Reindeer herding community		

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