



Policy Brief 2

Justice in Environmental and Social Impact Assessments



Environmental and social assessments as strategic and key instruments

How to ensure public participation in decision-making on Arctic issues?

How to bring together scientific and traditional knowledge?



POLICY BRIEFS in the Series

JUSTNORTH Policy Brief 1:
DECISION-MAKING FOR A SUSTAINABLE ECONOMIC DEVELOPMENT IN THE ARCTIC

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JUSTICE IN ENVIRONMENTAL AND SOCIAL IMPACTS ASSESSMENTS

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OWNING AND MANAGING LIVING AND RENEWABLE NATURAL RESOURCES AND BIODIVERSITY

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GOVERNANCE INSTITUTIONS FOR THE ARCTIC



About these briefs

JUSTNORTH policy briefs are topical outputs drawing upon research previously conducted in the JUSTNORTH project, an undertaking funded by the European Union under Horizon 2020 programme. In these briefs, we build on the findings of the research conducted in 17 case studies (Work Packages 2-4), and underpinned by the comprehensive overview of various concepts, schools and forms of justice (Work Package 1).

The objective is to assess the sustainability of the regulatory frameworks influencing the sustainability of the economic activities developed in the Arctic. Sustainability, understood here as the responsible use and management of spaces, common goods and shared resources with the aim of guaranteeing a fair use and enjoyment of them by future generations, is intrinsically linked to the idea of justice.

With the aim to reach to a wider audience, the policy briefs constitute short analysis on different aspects of regulatory, policy and governance frameworks in the Arctic. As such, they are knowledge resources for policymakers, scholars and stakeholders/rightsholders. They will also serve as background papers in the process of co-producing an EU Policy Analysis Report and Recommendations (D6.4).

Beyond the valuable contributions made by the authors in their policy briefs, each brief opens with outlining relevant findings of the JUSTNORTH case studies, highlighting issues identified by researchers and

research participants as problematic, challenging or having implications on the actors' perceptions of justice. Second, we provide an overview of the regulatory and policy frameworks related to the earlier identified findings. We asked: Which frameworks correspond to or address these problematic issues? What public goods are to be promoted and harms mitigated? Are future generations considered? What is the spatial scale of these policies and regulations?

Third, we consider the outlined governance frameworks from the point of view of justice. The procedural, distribute, recognition and restorative forms of justice are highlighted, alongside the rights, balance of different values and interests and opportunities for participation. We ask if the governance frameworks themselves can be sources of social ills and injustices.

Fourth, the relevance of discussed policies and regulations from the perspective of the Sustainable Development Goals is captured. Finally, we provide initial thoughts on recommendations or areas where recommendations could be proposed and developed – these will become subjects for discussion with Arctic stakeholders and rightsholders leading towards proposing recommendations at the end of JUSTNORTH project.

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JUSTNORTH

Policy Brief 2

Justice in Environmental and Social Impact Assessments

August 2022

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This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 869327

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EXECUTIVE SUMMARY

JUSTICE IN ENVIRONMENTAL AND SOCIAL IMPACTS ASSESSMENTS

Environmental and social assessments (EIA and SIA) and strategic assessments constitute a key instrument for establishing a knowledge basis for environmental decision-making on projects and plans. The research carried out in the JUSTNORTH case studies shows that EIAs/SIAs have implications from the point of view of justice, and could both enhance and hinder the pursuit of justice in the Arctic. Consultation participants often perceive EIA processes as occurring too late. Social impacts are not sufficiently considered and are not well regulated, especially in the European Arctic. Public participation in EIAs is their key feature but it remains a major challenge, due to limited capacities of stakeholders/ rightsholders, power disparities, and often disappointment with regard to its meaningfulness. Bringing together scientific and traditional knowledge in the EIA/SIA context remains a difficult task. Cumulative impacts are not sufficiently assessed, while they are of crucial importance for many stakeholders and rightsholders. Moreover, EIAs/SIAs usually do not capture well the legacies of past injustices. There is also a challenge with bringing together projects' benefits for global climate change mitigation and their adverse local environmental and social impacts. The regulatory framework for impact assessments is relatively well-developed across the Arctic, while there are significant differences between different northern jurisdictions. Involvement of young people and vulnerable groups in EIA/SIA consultations is limited.

KEY MESSAGES

- Environmental and social assessments (EIA and SIA) and strategic assessments constitute key instruments for establishing a knowledge basis for environmental decision-making on projects and plans. EIAs include formal procedures for examining the impacts of a project as well as identifying alternatives and mitigation measures.
- EIAs/SIAs are often perceived as occurring too late and having too little influence on decision-making, thus limiting their role as instruments for procedural justice.
- Social impacts are assessed in a limited manner, and the SIA process is not well regulated.
- Public participation is a key feature of impact assessments, but it is challenging (limited capacities of stakeholders/rightsholders, technical nature of assessment documents, limited involvement of certain groups, perceptions of disempowerment, different understanding of what constitutes meaningful participation). Participation is not only a question of procedures, but also has an intrinsic role in promoting recognition justice.
- Bringing together scientific and traditional knowledge in impact assessments remains a challenge. As is the case with participation, the inclusion of traditional knowledge inclusion is not only a procedural question, but also an issue of recognition (value of Indigenous/local knowledge) and restorative (traditional knowledge implies intimate relation to the land and resources, especially for Indigenous Peoples) justice.
- Assessment of cumulative impacts is often deficient, as individual projects are considered in a siloed manner, while for many stakeholders/rightsholders the accumulation of impacts is critical.
- Legacies of past injustices and centre-periphery relations affect the perceptions of impacts and the trust in decision-making processes, but they are not accounted for in EIAs/SIAs.
- It is challenging to assess and weigh the benefits of certain developments for national/global climate change mitigation and the local environmental and social impacts.

- Regulatory framework for EIAs is generally well-developed in all Arctic jurisdictions with international law and EU legislation being of relevance.
- In the Nordic Arctic and Russia, there is a limited regulatory framework for assessing social impacts, in contrast to Greenland and most North American jurisdictions, which has procedural justice implications.
- There are important differences in impact assessment regulatory frameworks between Arctic countries, including timing in relation to permitting processes, rules of the inclusion of traditional knowledge in decision-making, or the consideration of cumulative impacts.
- Over the last years, a number of principles and guidelines for inclusion of traditional knowledge into impact assessment and decision-making processes have been developed.
- Outputs of EIA and strategic assessments need to be considered in permitting and land use planning, but assessments' outputs are not directly legally binding in most jurisdictions.
- A key problem from the justice perspective is the distribution of power in impact assessment processes, including: the definition of whose knowledge is considered valid, the capacity gap between project proponents, public authorities and stakeholders/rightsholders.
- Involvement of young people and vulnerable groups in EIA/SIA consultations is limited.



RELEVANT FINDINGS

The empirical research in JUSTNORTH case studies highlights the role of the environmental (EIA), social (SIA) and strategic impact assessments, as potentially instruments limiting the scope of uncertainty with regard to an examined project or plan (e.g. CS13-Railway, CS14-Mining), contributing to knowledge-based decision-making and informed public participation. However, the research also identified or confirmed that the conduct of impact assessments may lead to perceptions of injustice or harm. In most projects covered by JUSTNORTH case studies, only an EIA was conducted, with limited attention given to social impacts.

EIAs and decision-making: too late, too little influence?

EIAs support decision-making but their results are **not automatically reflected in permitting processes**¹⁸. As the EIA/SIA process is time- and resource- consuming, it is carried out when the project is at a relatively **advanced stage of planning**. While there are cases of projects being cancelled following the EIA process (Arctic EIA Best Practices 2019), often participants feel that an assessed project is so advanced at the time of EIA conduct and consultations that it is not possible to stop it via administrative processes, leaving project opponents with political and litigation strategies (e.g. CS3-WindNO, CS14-Mining, CS16WindFIN).

Assessing social impacts: usually very limited

The JUSTNORTH case studies show that there are a **variety of negative social implications** that should be assessed in order to support just decision-making, including: cultural landscapes, transport accessibility, pressure on community infrastructure, the potential influx of fly-in and temporary workers, or access to jobs for local population, (CS3-WindNO, CS9-Greenland, CS13-Railway, CS14-Mining, CS16-WindFIN). There are social issues related to the eventual closure of the proposed activity, especially in the case of mining or exploration and extraction of hydrocarbons, with regard to community infrastructure investments or long-term effects on local labour market, which in turn affects choices made by individuals and municipalities (CS14-Mining). There is also some attention to the emotional aspects related to the project planning and development (e.g. anxiety, uncertainty) (CS16-WindFIN).

In the European Arctic (in contrast to Greenland and jurisdictions in the North American Arctic), the **regulatory framework for assessing social impacts is very limited**. Social issues are considered by project proponents and public authorities with focus on short-term and long-term job creation, economic multiplier effects and municipal tax income, and, less frequently, an increased need for public investment in social infrastructures (education, health). However, in most jurisdictions, a broader spectrum of social impacts is not formally

¹⁸In Russia, onshore oil and gas development is generally exempt from an EIA and therefore has little influence on decision-making and project parameters in the permitting process (CS5-OilGas), despite a relatively advanced formal regulatory framework.



evaluated as a part of legally required process; and as a result, such assessment constitutes only small sections of EIA documents. The exceptions are social implications directly originating from environmental change caused by a given project or plan.

A clear benefit of SIAs supported by public consultations is that they can draw **a more comprehensive picture of social impacts** compared to the promotional statements from project proponents focused on economic benefits (e.g. improvement of the purchasing power of Arctic residents or their access to affordable energy, CS5-OilGas, CS6-Energy). A crucial limitation of the SIAs, however, is that they cannot capture the early social impacts, which occur the moment a project is proposed, as value of land and stakeholders' planning for the future are affected (CS14-Mining, CS3-WindNO, CS16-WindFIN).

Public participation: a major positive development in EIAs/SIAs, yet a key challenge

Public participation has become an **integral**

feature of EIAs and is central to SIAs, when conducted. However, case studies also reveal that participants are often disappointed with public engagement and its outputs. The feeling of disempowerment can emerge when community perspectives are not meaningfully reflected in assessment and planning processes. The information produced in the impact assessments may be perceived as unreliable, the public input not properly taken into account, and the process may be biased towards the proponent of the development, who is the entity responsible for carrying out or commissioning the EIA. That leads to **structural asymmetries** in the level of expertise (CS2-DataCentres, CS9-Greenland, CS14-Mining, CS16-WindFIN). In some cases studies, reconciliation between divergent interests is not possible, which affects the perception of the EIA process (CS3-WindNO, CS16-WindFIN). Impact assessments and decision-making processes can become perceived as **a zero-sum game** where participants are not able to agree on what constitutes commonly agreed facts (CS13-Railway, CS14-Mining). These shortcomings have might render the public perception of a project or activity unequitable.



EIA processes do not necessarily capture the **diversity of voices** that could be meaningfully represented. The participation of **young people** in impact assessment and decision-making processes is seen as very important, as implications of projects and plans extend normally well into youth's adult lives (relevant for intergenerational justice perspective). However, young people rarely actively participate in public consultations (CS14-Mining). The **gender dimension** is also not always taken into account, although there is also increasing emphasis on the involvement of women in assessment processes and the production/co-production of knowledge. There are also sectors of society that are often not included at all (e.g. **foreign workers** in fisheries or tourism). Some of these groups gradually raise demands to have a voice in decision-making processes concerning their livelihoods (CS7-Fisheries, CS8-Tourism). The non- or under-recognition of rights and interests can also mask a potential conflict that, if it becomes active, can derail any project.

The effectiveness of impact assessments consultations are closely linked to the **capacities** of rightsholders, stakeholders and communities to be involved in assessment processes in a meaningful manner. Effective participation

requires time and resources that are not always available for small organisations or impacted individuals. Many participants are not able to fully access and process that complex EIA documentation (CS9-Greenland, CS14-Mining, CS16-WindFIN). Lay-language summaries in local languages are nowadays a legal requirement in most jurisdictions (i.e. Finland or Canadian jurisdictions). However, the long duration of the processes - both EIAs and decision-making in general - may cause distress. In principle, the EIA and the monitoring frameworks developed for the project implementation phase (normally set out in an EIA report) could **strengthen stakeholders capacities** in the long-term (CS10-Research), but that benefit has not occurred or been observed in any of the JUSTNORTH case studies.

Consultation processes, including within the EIAs, may suffer from **technical shortcomings** (CS16-WindFIN), including inappropriate timing for key stakeholders (due to their professional activities or seasonality of traditional livelihood activities), lack of consideration for people with visual or hearing impairments (e.g. the elderly), or lack of proper connectivity for persons participating remotely.

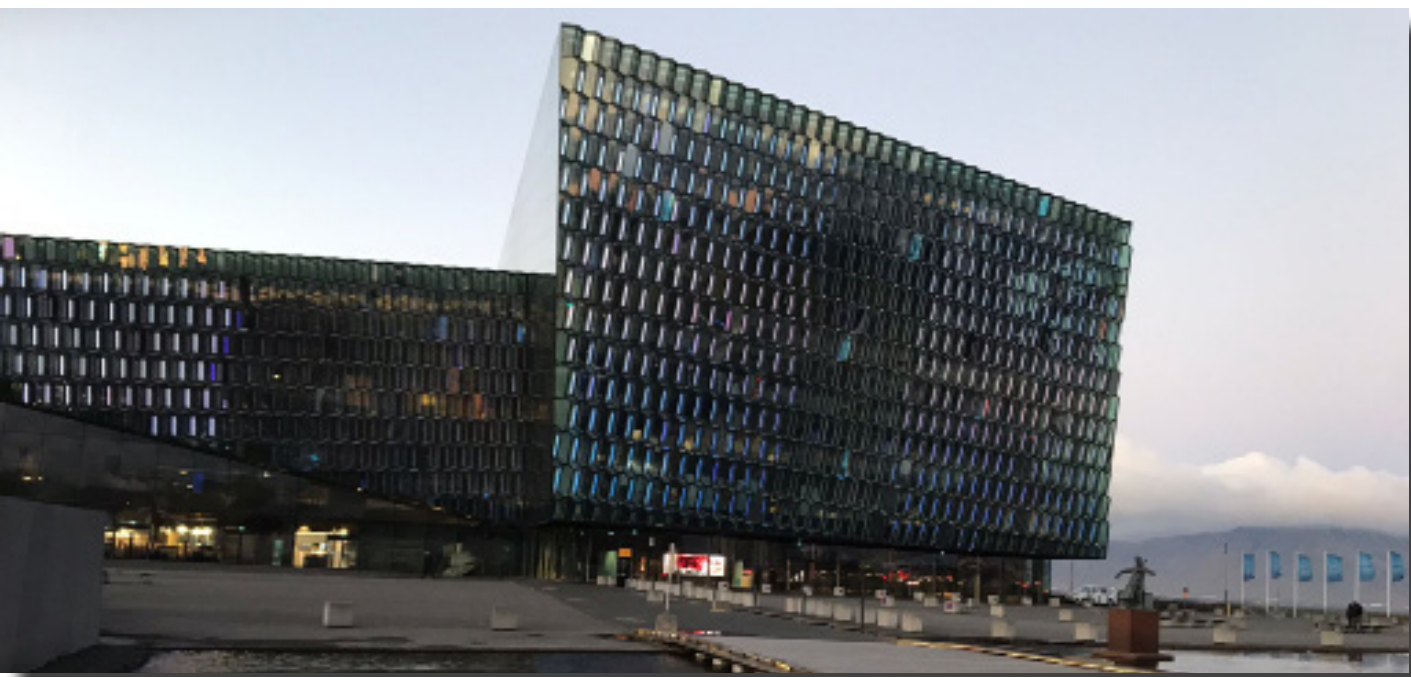


Scientific and traditional knowledge: still not fully equal forms of knowing

There is a broad agreement that **impact assessments benefit** from bringing together scientific and traditional knowledge. Certain values that in principle can be captured by the engagement with traditional knowledge-holders may be neglected in impact assessments, including access to pastures, the intrinsic value of landscape and the functions of cultural ecosystem services, (CS15-Livelihoods). The case studies (e.g., CS18-IndEntr) also revealed that stakeholders may have different understanding of **what constitutes valid data**, and traditional knowledge still tends to be seen as less reliable and not on par with scientific knowledge (CS10-Research). This is exacerbated by the **lack of appropriate training and capacity** of both scientists/consultants and locals to engage in co-production (CS9-Greenland, CS15-Livelihoods).

Deficient inclusion of cumulative impacts

Multiple case studies highlight that project appraisal requires attention to **cumulative impacts of multiple projects, past, present and planned** (CS13-Railway, CS14-Mining, CS15-Livelihoods, CS16-WindFIN), in combination with **other pressures** on ecosystems and livelihoods (e.g. CS18-IndEntr with regard to carnivores being one of the pressures on reindeer herding). The limitation of EIAs is that they are primarily designed for **large industrial projects**, such as mines or transport infrastructure. Many **small-scale activities** in the circumpolar North (tourism, small fisheries, small-scale agriculture) also have impacts and need to be considered when assessing cumulative impacts. The **spatial planning and the associated strategic impact assessment** could play a key role in the assessing cumulative impacts. An example is the current process of identifying areas suitable for wind power in Finnish Lapland (CS16-WindFIN).



Lacking acknowledgment of past injustices and centre-periphery relations

One of the key aspects of environmental decision-making identified in case studies (CS13-Railway, CS14-Mining) is the legacy of historical injustices (e.g. in Lapland, the imposition of hydropower or forestry in the past). The notion of **past injustices - particularly those not resolved, mitigated, compensated or even acknowledged - leads to mistrust** towards proponents of industrial developments and with regard to the public decision-making processes, especially if there is a perception that old patterns of dispossession and centre-periphery relations are being reproduced. Case studies (CS3-WindNO, CS14-Mining, CS16-WindFIN, CS18-IndEntr) revealed the ongoing challenge of **centre-periphery relations**, including diverging perceptions of which knowledge is valid and which impacts are considered significant (CS3-WindNO).

The challenge of weighing impacts at different scales

Environmental and social impact assessments include **issues at different scales**, ranging from local impacts

on habitats, species and water bodies, through region-wide effects on biodiversity and climate adaptation, to the national and global implications of the project for the climate mitigation goals and emission targets. Considering these different scales together constitutes a major challenge (CS3-WindNO, CS13-Railway, CS15-Livelihoods, CS14-Mining regarding critical minerals mining). It is particularly challenging to weigh **the local environmental and social impacts and the global benefits** of renewable energy developments or critical minerals extraction for national climate mitigation goals (C3-WindNO, CS16-WindFIN). Moreover, proponents of Arctic projects sometimes propose to consider the environmental and social impacts in the global context, by comparing impacts in the Arctic to the (higher) impacts that would occur elsewhere if a similar project was developed (CS2-DataCentres).

RELEVANT REGULATORY/POLICY FRAMEWORK

The environmental assessment emerged as a distinct tool for decision-making in the US in the 1970s and over the following decades had become a standard element of industrial developments worldwide. **Assessment processes** include “identifying, communicating, predicting and interpreting information on the environmental impacts and proposing “measures to avoid, minimise and mitigate negative impacts”, all done with public participation as an indispensable element of the process¹⁹. All Arctic jurisdictions have a **legal framework** for the assessment of environmental impacts. The EU has adopted legislation and standards to guide the process within its member states, with its legislation being partly applicable to Norway and Iceland via the European Economic Area Agreement. There are also **international agreements**²⁰ concerning transboundary EIAs and the international and Arctic-specific guidelines and best practices on how to conduct these processes. Various industries and major companies operating in the Arctic have issued standards and guidelines. **The EIAs process** normally includes screening, scoping, baseline definition, assessing possible impacts and their significance, proposing mitigation measures and preparing an EIA report.

Generally, impact assessments are carried out for **large projects**, and consider **significant impact** on the environment. The understanding of a “significant impact” thresholds differs between countries and is often contested. **Timing** of impact assessments in the decision-making process may also differ. In Finland, the EIA is conducted before the permitting process. In Sweden, these processes run in parallel, and, compared to Finland, the EIA process is less prescriptive and more flexible from the point of view of the project proponents. EIAs are supposed to act as bases for decision-making on projects; however,



their **actual influence** differs between jurisdictions and specific projects (Koivurova and Lesser, 2016). In Russia, the state environmental review (known as the “state environmental expertise”) has to be conducted by decision-makers. However, the experts are not necessarily bound by the results of the actual EIA, and, therefore, are not required to adjust the project parameters (CS5-OilGas)²¹.

The impact assessment processes should in principle also encompass the effects of the projects on society, but that is done to a very limited extent in the European Arctic (in contrast to the North American context). In some countries, like Finland, social aspects are to be included in an EIA report (as is the case e.g. in Finland). In Greenland, a separate social impact assessment report is produced. In some countries, however, social impacts are effectively excluded from the EIA process - this used to be the case e.g. in Sweden, although

¹⁹Sustainable Development Working Group (SDWG), *Good Practices For Environmental Impact Assessment and Meaningful Engagement in the Arctic* (Arctic Council, 2019), URL: <https://oaarchive.arctic-council.org/handle/11374/2377>

²⁰International frameworks for the EIA provide rules for dealing with transboundary impacts. While there are numerous provisions in the international law, including the International Court of Justice jurisprudence, in the Arctic context, the main agreement dealing with the impact assessments is the UN Economic Commission for Europe’s Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, 1991. Impact assessments have also been taken up in Arctic cooperation. The Arctic Environmental Protection Strategy’s (AEPS) produced Arctic EIA Guidelines in 1997. They highlighted the aspects specific for Arctic environment and social setting, stressing the need for meaningful engagement with Arctic communities, especially with regard to cultures of Indigenous Peoples. During the Finnish chairmanship 2017-2019, the Arctic Council also produced a compilation of best practices in the conduct of EIAs, compiled from examples coming from eight Arctic states (SDWG, op.cit., 2019).

²¹Timo Koivurova and Pamela Lesser (with Bickford, S., Kankaanpää, P., and Nenashva, M.), *Environmental Impact Assessment in the Arctic: A Guide to Best Practice* (Edward Elgar Publishers, 2016).

also there the approach to the appraisal of social impacts appears to be changing. In Alaska, Canada and Greenland, EIA/SIA processes are also linked to the elaboration of impact and benefit agreements (IBAs) between affected communities and project proponents.

There is usually a requirement for the EIA implementers to consider cumulative impacts of past, already operating and planned activities in addition to the direct effects of a proposed project. There are differences between Arctic jurisdictions in regard to how cumulative impacts are considered. For instance, in comparison to other Nordic countries, the EIA process in Norway is more integrated with land use planning and thus less siloed to one specific project.

Public participation should take place throughout the whole EIA/SIA process: during scoping, in the identification of impacts, in designing a plan for monitoring impacts during project implementation, as well as when EIA/SIA outputs are considered in the final decision-making. While it is a legal requirement, the prescriptive regulations (e.g. obligation to include lay-language summary, appropriate information on consultation processes, etc.) are limited. Usually, there are no policies in place to support the engagement of local stakeholders and rightsholders in complex EIA processes.

Legal requirements for the **inclusion of traditional knowledge** vary significantly between Arctic regions, with limited formal

requirements in the Nordic states and Russia, while legislation tends to be relatively strong in North-American jurisdictions and Greenland. The emerging practice is to bring the two systems together but keep them separately.²² In this context, of importance are the Convention on Biological Diversity's **Akwé: Kon Guidelines**.²³ The guidelines outline the ways how to involve Indigenous communities in impact assessment processes, considering their rights and relationship to the land, as well as how traditional knowledge should be included in EIA processes. Finland carried out a pilot implementation of these guidelines in the Hammastunturi wilderness area in Lapland²⁴.

The EU framework for environmental and strategic impact assessment²⁵ creates an important reference for common and minimal standards, applicable throughout much of the European Arctic. The EU legislation defines projects that require an EIA (e.g. open pit mines of certain size or major infrastructural projects) and types of projects where the Member States have discretion whether an EIA is needed or not, while applying a set of criteria defined at the EU level. These include, for instance, the environmental sensitivity of areas affected (.e.g protected areas, key water bodies, Natura 2000 areas), probability and reversibility of impact, cumulative impact with other existing or approved projects. The revised EIA directive also highlights the protection of culturally-significant landscapes. EU directives set out provisions for involving the public in assessment processes.

²²SDWG, op.cit. 2019

²³Convention on Biological Diversity, Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, Akwe:Kon, 2004.

²⁴Antje Neumann, Wilderness protection in polar regions: Arctic lessons learnt for the regulation and management of tourism in the Antarctic (Studies in polar law 2, Brill Academic Publishers, 2020). Furthermore, the Arctic Council has collected best practices, also with respect to the inclusion of traditional knowledge (SDWG, op.cit., 2019). Arctic Indigenous Peoples' organisations issued Ottawa Traditional Knowledge Principles, outlining the Indigenous expectations with regard to bringing traditional knowledge into the work of the Arctic Council. These principles can be applicable also to other decision-making contexts.

²⁵Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance) OJ L 124, 25.4.2014; and Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001. See also, for EIB standards: European Investment Bank (EIB), Guidance Note on Indigenous and Local Community. Participation in Environmental Impact Assessment in the European Arctic (2019).



Different alternative approaches to assessing impacts of projects, especially with regard to social impacts, have emerged over the years. **Sustainability impact assessments** are one such instrument, bringing together social, environmental and economic impacts, and usually applied to plans and strategies in order to enhance their integration of all three aspects of sustainability²⁶. They are, however, used very seldom for the appraisal of project impacts. Furthermore, methodologies have been developed for **human rights impact assessments** (HRIA) and sustainability impact assessments, which includes both environmental and social concerns²⁷. The HRIAs have been used thus far primarily in the development cooperation context, rarely in the circumpolar North. The EU's Taxonomy Regulation²⁸ together with its associated executive acts - specifying the characteristics of investments that can be considered sustainable - could be seen as a way to provide baselines for the assessment of sustainability of different economic activities, although it has been criticised for neglecting social impacts.

Justice perspectives on environmental and social impact assessment

Impact assessments are designed as instruments to understand and facilitate/support the prevention, minimising of and compensation for impacts. However, if not conducted properly, EIA/SIA processes may be a cause for various types of harm.

EIAs and social assessments are primarily procedural instruments for establishing knowledge basis and enhancing participation. Different stakeholders may have different views of what constitutes a meaningful involvement. From the perspective of procedural justice, EIAs can play a positive role in terms of empowering vulnerable groups within community/society and giving voice to those whose views, interests and values are less visible in public decision-making. The EIAs may be also utilised as instruments facilitating capacity-building (and thus, empowerment) for Arctic communities.

²⁶ e.g., OECD (Organization for Economic Cooperation and Development). Guidance on Sustainability Impact Assessment (2010). URL: https://www.oecd-ilibrary.org/environment/guidance-on-sustainability-impact-assessment_9789264086913-en

²⁷ Ashley Nancy Reynolds (Ed.), Human Rights Impact Assessment: Guidance and Toolbox (The Danish Institute for Human Rights, 2020). URL: https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hria_toolbox_2020/eng/dihr_hria_guidance_and_toolbox_2020_eng.pdf

²⁸ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance), PE/20/2020/INIT.

At the same time, deficiencies in EIA/SIA consultation processes (lack of stakeholders' and consultants' capacity to engage in public dialogue, intransparent data and documents, technical deficiencies, advanced stage of project planning) can cause the participants to feel disrespected and disempowered. In certain cases, the consultations may be misused or perceived as token engagement, carried out exclusively with the aim of fulfilling legal requirements (i.e. "tick a box") and serve the project proponents as part of their justification for the project, rather than being used to genuinely inform about the project, engage in dialogue, especially with those who have concerns or oppose the project, acquire additional information derived from traditional or practitioners knowledge, and discuss mitigation, compensation or different alternatives for project implementation. As Arctic stakeholders and rightsholders have limited resources and expertise, the support or facilitation of their effective participation via the regulatory framework and by authorities is an important justice issue, and JUSTNORTH case studies show that such support is minimal or non-existent.

Inappropriately implemented EIA/SIA processes – due to insufficient data collection, purposeful omissions, methodological mistakes, etc. – may miss out important information affecting e.g. the choice of mitigation measures or a proper understanding of certain effects on environment and livelihoods. Social impact assessments, if actually conducted, would in principle allow for inclusion and appreciation of nature-based livelihoods, culture, heritage, as well as provide context of past injustices.

The distribution of **power** in impact assessment processes has both **procedural and recognition justice** implications. The impact assessments are normally carried out by the proponent of a given project (EIA/SIA) or plan (SEA/StrategicIA) or, more often, by a consulting company commissioned to carry out the process. There is concern among stakeholders and rightsholders that the information included in the EIAs are biased towards project proponents' interests, who often hold much economic power and greater capacities - including human resources - to meaningfully influence impact assessment and decision-making processes. The situation is slightly different for strategic assessments, as they are commissioned by public authorities. Question of power arises also in relations between traditional knowledge and its owners and professional assessment experts and scientists, including their knowledge, methodologies and produced information.

FORMS OF JUSTICE

Distributive Justice: “to give everybody their due shares in benefits and costs” (Deplazes-Zemp 2019); equitable distribution of social and economic benefits and burdens within and across different generations and geographies.

Procedural Justice: “to give everybody their due voice and participation in decision-making processes” (Deplazes-Zemp 2019); adherence to due process and fair treatment of individuals under the law; justness of procedures that are used to determine how benefits and burdens of various kinds are allocated to people; not necessarily determining the substantive justice.

Recognition Justice: “respecting identities and cultural differences; the extent to which different agents, ideas and cultures are respected and valued in intrapersonal encounters and in public discourse and practice.” (Martin et al. 2016); Inclusion of the vulnerable, marginalised, poor, or otherwise under-represented or misinterpreted populations and demographic groups.

Restorative Justice: acknowledging past harms and possibly finding pathways for compensation and reconciliation, as well as ensuring that past conflicts, injustices and harms are not repeated; it should not be confused by the purely “retributive” form of justice, which is primarily concerned with punishment of wrongful acts (e.g. polluter pays principle).



EIAs and especially SIAs (when conducted) may play a role from the perspective of **distributive justice**. They can be used as bases for negotiations on benefit-sharing and compensation for environmental impacts. Understanding the implications of the given development for different stakeholders and rightsholders can help to outline an equitable distribution of economic outputs of the project within the community and equitably compensate for adverse impacts.

A key barrier for utilising the EIAs as vehicles for justice in its **restorative dimension** (also **postcolonial or Indigenous approaches**) are in EIAs' limited ability to deal with past injustices and dispossession. The impact assessments are also not suitable for identifying and highlighting underlying causes of injustices, such as lack of resolution of land rights, access to resources, or involvement in decision-making, even if such statements may at times appear in public EIA consultations. Here, impact assessments cannot replace political choices, e.g. the establishment of protected areas, resolution of land rights, decisions on taxation, even if they generate information that is relevant for policy-making.



SUSTAINABLE DEVELOPMENT GOALS and the ARCTIC EIA/SIA/StrategicIA

Questions towards recommendations

- 1 The concept of significant impact, used broadly in EIA legislation, including in the EU's EIA directive, may be problematic, especially in the peripheral regions and for cultures and communities with stronger linkage to lands, landscapes and traditional livelihoods (D2.4., p. 28). **Should the notion of significant impact be reconsidered or replaced by an alternative concept?**
- 2 EIAs, SIAs and StrategicIAs and associated consultative processes are potentially important sources of information for assessing the justice implications of specific projects but also identifying broader social background of injustices and legacies of past harm. **However, they are rarely used for this purpose. How to enhance potential of EIAs/SIAs to identify injustices and legacies of past harm via regulatory measures?**
- 3 Involvement of traditional knowledge holders need to be carried out in the spirit of respect and genuine appreciation of the value of the experiential knowledge, including compensation for the time and resources dedicated by knowledge-holders. **How could legal frameworks address better questions of ownership and control of traditional knowledge?**
- 4 The participants are often left in the dark on how their inputs have affected the process, influencing their perception of the decision-making systems and willingness to take part in the future processes. **How regulatory frameworks could facilitate an effective and honest feedback towards participants in EIA processes?**
- 5 EIAs and SIA rarely consider stranded assets and not always sufficiently deal with the closure of a given economic activity. Are there options for Arctic regulatory frameworks to facilitate better assessment of social impacts at the time of possible or expected end of a given economic activity or consider the question of stranded assets?
- 6 Assessment of social impacts (especially outside of the direct social consequences of identified environmental impacts) is usually not required or required to a very limited extent within Nordic jurisdictions, with an exception of Greenland. **How to strengthen the regulation, guidelines and practices of assessment of social impact in the European Arctic, perhaps building on North American experiences?**
- 7 The EIAs and SIAs tend to pay only limited attention to the needs of the vulnerable groups in society. **How to address the specific issues of vulnerable groups in impact assessments?**

Annex: Impact assessment national regulatory frameworks in the Arctic states and the EU:

Finland: Act on Environmental Impact Assessment Procedure 252/2017 and accompanying Decree on Environmental Impact Assessment Procedure 277/2017 (i)

Canada: Canadian Environmental Assessment Act (CEAA) (S.C. 2019, c. 28, s. 1)

Nunavut: Nunavut Planning and Project Assessment Act

Yukon: Yukon Environmental and Socio-Economic Assessment Act (YESAA)

Northwest Territories: Inuvialuit Settlement Region and the Mackenzie Valley have separate rules for impact assessment.

Sweden: Environmental Code (1998:808) and Environmental Impact Ordinance (2017:966), accompanied by specific EIA rules in The Minerals Act (1991:45) and road and railway infrastructure regulations (1971:948, 1995:1649)

Iceland: Environmental Impact Assessment Act (No. 106 of 2000)

Greenland: Environmental Act (including requirements for social sustainability assessment (SSA), Protection of Nature Act of 2003, with separate process for mining development under Mineral Resources Act (MRA).

Norway: Planning and Building Act, and associated a Regulation on EIA.

US: National Environmental Policy Act (NEPA), January 1, 1970.

Russia: The Federal Law on environmental protection No.7-FZ, 10 January 2002; Federal Law on ecological expertise (No.174-FZ, 23 November 1995).

EU: Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance)

EU: Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment



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This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 869327

