

# Legal tools of public participation in the Environmental Impact Assessment process and their application in the countries of the Barents Euro-Arctic Region

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## ABSTRACT

The article focuses on research of existing legal tools of public participation in the Environmental Impact Assessment (EIA) process and on practical issues of their application in the countries of the Barents Euro-Arctic Region (BEAR). The EIA is mandatory for projects which can have negative impacts on the environment and/or human health. Public participation in the EIA is one of the instruments used both on the international and national level that helps prevent or minimise the negative consequences of the project for the environment and human health. This article is based on research of national EIA legislation and on the analysis of the findings from interviews conducted with private and public organisations during benchmarking visits and fact-finding trips to the northern regions of Finland, Norway, Sweden and Northwest Russia. In addition, feedback was collected from participants during four seminars. Participatory methods, focused on public-private communication and participation during the environmental impact assessment process, provides the theoretical basis for the article. This research results from work in a two-year strategic project funded by the Finnish Funding Agency for Innovation Tekes.

**Keywords:** *Arctic, environmental impact assessment, public participation, law, regulations, legal tools, best practices.*

## INTRODUCTION

During the last twenty years, the Barents Euro-Arctic Region has endeavoured to be among the most dynamic developing regions in the world. Rich mineral and bio resources and the transport potential of the Northern sea route make this region attractive and economically profitable for companies planning or already realising large-scale national and international business projects. According to estimates by the Lapland Chamber of Commerce, investments worth tens of billions of euros are expected in the northern regions of Finland, Norway, Sweden and Russia in 2013–2017. The main investments are associated with projects in the oil and gas industry, mining industry, hydro and wind energy, and bio and nuclear energy (European High North business Yearbook 2013).

Increasing business activity no doubt promotes the economic growth of the BEAR. At the same time, it contains a potential hazard to the environment and public health. This is why it is crucial already in the economic planning stage to assess as much as possible the impacts and eventual consequences of the planned project for the environment and human beings. While there are emerging economic opportunities, there are also significant concerns about the levels of change which the region shall gradually undergo due to the development of the area. The levels of change will have a huge impact on the lives and livelihoods of many recognised indigenous peoples, who are important regional actors in Arctic resource governance. Given that international law provides a basis for both resource governance (Loukacheva, 2013) and the rights of indigenous peoples (Hanna and Vanclay, 2013; Koivurova, 2008; Anaya, 2005), the development of international law applicable in the Arctic will play an increasingly relevant role. Arctic governance is widely identified as a complex system of fragmented international and regional regulations, of which Environmental Impact Assessment (EIA) is an example. The goal of this assessment is to gather information for analysis of risks to the environment and, in some cases, to people, through social impact assessments of a proposed project. It must be noted that societal perceptions of risk may differ from those of the industry. In general, it is more complicated to communicate probabilities than to describe potential consequences. The goal must be to attain sufficient knowledge so that all relevant stakeholders are able to make their decisions, weighting the downside risk against the benefit of the activities in question. Thus, more and better knowledge and improved communication among the various stakeholders are important factors to bridge perception gaps among the impacted groups of people. Enhanced harmonisation and multilateral cooperation on risk-acceptance criteria are needed (ONS Summit, 2012).

The Environmental Impact Assessment is one of the legal instruments available. It is a legally required assessment process where the company planning a project with foreseen impacts on the environment, must evaluate the project in terms of the levels of impact significance and create options for the proposed project (Environment, 2013). Prno and Slocombe (2012) argue that developers require widespread approval for their projects by local community members to avoid potentially costly conflicts and business risks. They therefore have to employ the concept of social licence also in the governance structure, but there is currently no legal instrument requiring SLO of developers. Other principles that help guide public participation in EIA processes include the principle of free, prior and informed consent, which is also included in the United Nations declaration on indigenous rights (UN, 2008).

One of the main goals of the EIA is to assist stakeholders and decision makers involved in the process to make an environmentally-oriented decision about the proposed project's realisation. A significant role in this process belongs to the local people and public organisations. According to many researchers, public participation in project discussion at each stage of preparation is a key legal instrument which aims to minimise and prevent the possible risks of the proposed project to the environment and human health (Brinchuk, 2005; Holder and Lee, 2007; Public participation in ecological decision-making, 2006). Reference can also be made to the assessment of social impacts. As Vanclay (2003) explains, the process of social impact assessment (SIA) involves analysing, monitoring and managing the intended and unintended social consequences of planned developments and any social change that could be caused within or by the development process. SIAs' primary purpose is to bring about a more sustainable and equitable biophysical and human environment. For the purpose of analysing the public participation methods in EIA, social impact assessments could be seen as a part of this process, but in many countries such as in Sweden, the SIA is currently not required as part of the EIA and when conducted it focuses more on health aspects than on human considerations.

On the international level, the right of the public to participate in environmental decision-making is set out in both hard- and soft-law instruments such as the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991); Rio Declaration on Environment and Development (Rio de Janeiro, 1992); Convention on Access to information, public participation in decision-making and access to justice in environmental matters (Aarhus, 1998); Protocol on Strategic Environmental Assessment (Kyiv, 2003); the United Nations Declaration on the Rights of Indigenous Peoples (UN, 2008); and in the International Labour Relations Organization Convention 169 (ILO, 2009).

All of these documents highlight the following principles:

- the importance of public participation in the EIA,
- free access to information about the environmental consequences of the planned project, the right of people, especially indigenous members of the communities, to participate in discussions and comments on the EIA materials. The principle of free, prior and informed consent should be applied.
- In most countries, national legislation is based on these main principles. However, the methods and tools of public involvement in environmental decision-making vary. Worth mentioning, along with the regulatory framework, is also the concept of social licence to operate (SLO). Developers are recommended to obtain a social operating licence in order to gain acceptance and buy-in from the local community where the proposed development will take place and have an impact on. Prno and Slocombe (2012) note that there is now widespread recognition that developers, specifically mineral developers, need to gain a “social license to operate” (SLO) from local communities to avoid potentially costly conflict and exposure to social risks. They also state that because the concept is relatively new, there is only a limited body of scholarship around the SLO.

Below we will consider existing legal tools of public participation in the EIA and their application in the countries of the Barents Euro-Arctic Region. Interviews in the northern regions of each BEAR country were conducted. Typically one area / town was selected as the interview site in each country, with the exception of Russia: here, the vast expanse of the country led us to choose five areas in Northwest Russia for the interviews (Figure 1).

## **LEGAL TOOLS OF PUBLIC PARTICIPATION IN THE EIA: THEORY AND PRACTICE**

In the 1960s and early 1970s there was a need to increase public participation in planning and policy-making, which resulted in this major social movement spreading from North America to Europe and elsewhere (Sewell and Phillips, 1979). The International Association for Impact Assessment defines public participation as “the involvement of individuals and groups that are positively or negatively affected by, or are interested in, a proposed project, program, plan or policy that is subject to a decision-making process” (André, Enserink, Connor and Croal, 2006). The methods and tools of public participation can be different, but they should guarantee the right of people to a favourable environment.

To assess the level and type of public participation, semi-structured interviews were conducted during the course of this two-year project in all the BEAR countries with representatives from private and public sectors. The interviews were conducted on site as a result of benchmarking and fact-finding trips to each country. Feedback was also collected in four seminars held during the same period where representatives from both private and public sectors were present.

## FINLAND

EIA emerged gradually in Finland. For example, an extensive, inclusive and highly accepted assessment on the Iijoki river (*Iijoki-selvitys*) was conducted in Northern Finland by the regional planning authority of Northern Ostrobothnia (Pohjois-Pohjanmaan seutukaavaliitto) in 1981–1984 in cooperation with universities and other organisations. The assessment was published in several volumes in the mid-1980s before EIA legislation was officially introduced. The requirements of the 1991 Espoo Convention and the 1985 original EIA directive (now 2011/92/EU, amended 2014/52/EU), in conjunction with Finland's becoming party to the European Economic Area agreement, resulted in the adoption of the EIA Act in 1994. Environmental Impact Assessment in Finland became law with the Act on Environmental Impact Assessment (468/1994, EIA Act). This was last significantly reformed in 2006 (Act 468/2006) with the Decree on Environmental Impact Assessment (713/2006, EIA Decree).

One of the contributions of EIA to the development process is the provision of a mechanism to notify and consult the public about their opinions on a project that could potentially have significant consequences to them environmentally, socially and/or economically. According to the evaluation of the Finnish EIA system in 2009–2010 (Hokkanen and Jantunen, 2012), EIA legislation in Finland has made project assessment more democratic, especially in terms of public participation, scrutiny (in that it improves implementation) and transparency. While there are always informal participatory opportunities, there are two points during the EIA process in which the public can officially participate: 1) once the Assessment Programme, e.g. the contents of the future EIA Report specified in Section 9 of the EIA Decree, are determined (scoping phase) and 2) when the draft EIA Report is released. The EIA Act requires the public to be given early and effective opportunities to participate in the environmental decision-making process. The public can be consulted for the first time on the information gathered by the developer for the Assessment Programme (AP), which is a plan for the necessary investigations, their scope and arrangements

for the assessment procedure (including public participation). Once the draft AP is ready for review, there is an announcement by the Coordinating Authority (CA) of its availability for public comment. It is also the CA who organises the meetings for the interested public, municipalities and relevant authorities to provide their views and comments. (Sec. 8a, EIA Act). Their main purpose is to compile comments, which are typically written statements and opinions. In practice, anyone can participate. There are also voluntary briefings (for all participants) and/or meetings often supplementing the formal hearings. The deadline to hold the hearings and for the submission of written comments is within 30–60 days. On the basis of our interviews with government officials and companies operating in Lapland<sup>1</sup>, it appears that even with up to two months of broadly advertised public consultation on the AP, the public tend to comment less during the scoping stage than in the latter draft EIA Report stage discussed below. Primarily it appears to be the relevant agencies who comment on the Assessment Programme.

The second opportunity for public consultation comes with the preparation of the EIA Report itself, which provides a comprehensive analysis of impact predictions and must include a well-articulated public participation component. Once the draft EIA Report has been prepared, an announcement by the Coordinating Authority of the availability of the Assessment Report (AR) for public comment is made. (Sec. 11, EIA Act). The CA organises meetings for the public to express views on the Report and collects all opinions and comments submitted from other permitting authorities. On this basis, the CA issues its own opinion. The assessment procedure is over when the Coordinating Authority hands over its Statement on the Assessment Report to the developer and permitting authorities. At this point the formal EIA process in Finland ends, which also means there is no more chance for public input on the EIA Report.

Attendance by affected stakeholders at meetings on the Assessment Report can vary widely depending on how controversial a project is and if it is located next to a populated area. While public consultation intrinsically is positive because it encourages transparency and provides a forum for public opinion, too much consultation can actually become a negative factor for both the public and the companies. This is

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<sup>1</sup> Interviewees in Finnish Lapland: one regional and one municipal government official, two tourism-based companies, three companies each in the mining and wind power sectors, three EIA/engineering consultancies, one business each involved in peat production, shipping and hydropower.

expressed in the term “meeting fatigue”. It is a major problem in the Finnish EIA process, cited by all stakeholders: there are simply too many meetings to participate in, and the aims of the meetings are lost. This is compounded by the fact that Finland’s EIA and permitting processes come in two overlapping stages. There are thus multiple hearings for both processes, and interviews during a project for Tekes<sup>2</sup> revealed that the majority of the public (and companies) feel there are far too many hearings as a result. Many civil society actors are unaware as to which hearing they are in or what sort of questions they should be asking. That said, the companies still tend to host additional meetings in impacted communities.

Without question, the intent of public consultation is to engage the affected public; however, companies also benefit. For them, these meetings provide the opportunity to gauge whether or not there is popular support for their project and, if not, how far they have to go to win public support. Because social licence appears to have gained more traction in Finland than in other countries within the Barents Region, companies appear to strive harder to obtain a community’s acceptance. The concept of social licence originates from community opposition to mining projects but now the concept is being applied in a broader context. It is understood not as something granted by government, but rather as an intangible that is renewable daily and granted by the people only when their needs are met. Patience and constant attentiveness to the aspirations of the local people are necessary (Gunningham et al., 2004). The normative components of social licence imply that the companies must know and understand the norms of the community (Black, 2010). The form of this varies and can range from merely holding more meetings, to signing compensation agreements with reindeer herders, to providing different project design options at the consultation meeting and allowing the public to choose the option to be implemented. Interviews conducted in Lapland validate this and also point toward an increasing tendency to link the concepts of social licence and public engagement. Thus, the import of public hearings to companies is likewise increasing as they not only open a window into public opinion but also provide a venue for companies to try and win community support and the much coveted social licence.

Even if public participation is such an entrenched part of the EIA process, given the unique climatic, biophysical and cultural characteristics of the Barents-Euro Arctic

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<sup>2</sup> Tekes-funded project entitled Testing Improvement Processes of Finnish Environmental Impact Assessments and the Modes for Application in Arctic Regions of Finland and Russia. (2012-2014)

Region (e.g. rapid and significant climatic transformation of the Arctic, fragile ecosystems with long recovery times, sparse and widely scattered population, etc.), there is actually very little guidance for the region on how to engage with the public or incorporate stakeholder concerns. Companies have therefore taken it upon themselves to try and involve the public in a meaningful way, i.e. bringing in experts to explain the more technical aspects of projects, etc. It was noted by one of the mining companies interviewed in the north of Finland that there is no comprehensive method for identifying all potentially affected stakeholders. It should however be noted that focus groups and semi-structured interviews are both widely acknowledged methods specifically to identifying stakeholders (Reed, et al. 2009). To remedy the perceived deficiency in tools, the company is developing new stakeholder mapping tools to ensure all potential stakeholders are contacted.

Clearly without public participation opportunities, the public would be less able to influence large-scale industrial activities. However, the extent to which companies and government value the public's input cannot only be legislated, it must be a societal norm that gives value to public participation in and of itself. Interestingly, when public hearings first started as the result of EIA becoming law in Finland, there was actually very little participation, as it took a while to overcome the reticence of the Finnish culture to speaking in public.<sup>3</sup> In some sense, the pendulum has swung in the opposite direction with meeting fatigue now a common complaint. It is nevertheless essential for the public to have opportunities of participation to ensure a transparent and "fair" development process. With the increasing importance of social licence, public participation has become more than having meetings and commenting on documents. This can be seen with tools such as voluntary compensation agreements with reindeer herders becoming the norm in Finland. Thus, in a country in which social licence is a strong determinant of a company's success, voluntary measures can have strong influence on public opinion even if they do not ultimately decide whether the public lends its support to a project or not.

## NORWAY

Unlike any other country in the Barents Region, Norway has three completely separate EIA systems: the "national" EIA system, which applies to large-scale onshore

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<sup>3</sup> Phone interview with an executive of a water utility company operating in Lapland. (2013)



projects and is the subject of this article; EIA legislation for offshore projects; and a completely separate EIA system that applies only to Svalbard. With respect to onshore projects, while there are sectoral legislative requirements, the focus here is on the requirements contained in the Appendix to the *Planning and Building Act*, the most widely applied legislation. Laid down by Royal Decree on 1 April 2005, Environmental Impact Assessment is incorporated into Norway's legal system through the *Regulations on Environmental Impact Assessment* (amendment no. 72 to the Planning and Building Act of 24 September 2004), which was subsequently updated in 2009 (*Regulation on Environmental Impact Assessment* effective 1 July 2009). Although Norway is not a member of the European Union, it is part of the European Free Trade Association (EFTA) and therefore party to the European Economic Area (EEA) agreement, which binds it to the European Union EIA Directive (Lesser and Koivurova, 2013). Like in Finland, then, the EU EIA Directive forms the basis of Norway's system, and the processes are quite similar.

Public participation occurs early and often in the Norwegian system and it is clearly an important component of the process. The Norwegian Ministry of Environment's summary of the purpose of EIA states that "Norwegian provisions emphasize public participation and participation of relevant authorities in the early stages of an EIA" (Norwegian Ministry of the Environment, 2003). The first opportunity for public participation occurs during the scoping stage, which like in Finland, requires the developer to prepare an Assessment Programme (AP). This needs to be approved by the competent authorities and serves as the basis of the EIA Report. In the 2009 update of the *Regulation on Environmental Impact Assessment*, Chapter III, Section 7 discusses the public consultation portion of the AP, which must be a minimum of six weeks. Public consultation at this stage is well defined and essentially as broad as the public consultation for the review of the draft EIA Report. The AP is circulated to the relevant authorities and special interest organisations for comments, in particular in relation to issues and options that should be addressed in the EIA Report, and needs to be formally approved by the competent authorities and made available for public inspection. There are two comment rounds for the Assessment Programme, and the two drafts go to both the public and the government at the same time. The developer must then revise the draft and address all of the comments. On the basis of the proposal and comments, the Competent Authority prescribes a programme for the assessment work, which usually occurs no later than 10 weeks after the deadline for public comments. A copy of the prescribed programme is sent to those who have submitted comments.

The AP actually functions more like a mini-EIA Report than a scoping document given the requisite two rounds of public comments. Interviews with EIA consultants<sup>4</sup> showed that once an AP is approved, a project is very rarely denied. This is a sign of trust: what is put forth in the Assessment Programme will be carried through in the EIA and the project itself. Unlike most other EIA systems based on the EU EIA Directive, Norway has the majority of its public consultation at an early stage of the process, i.e. when the Assessment Programme is being prepared. Most effectiveness studies (Sadler, 1996) that look at EIA systems in general indicate it is preferable to have more public consultation at the beginning of the process than at the end largely because it affords the public an opportunity to influence actual project design and potential mitigation measures at a very early stage. Although no explicit reasons were cited during interviews, it was clear from the responses that most people feel Norway's EIA system is fair and provides plenty of opportunity for public consultation.

Chapter III, Section 10 addresses the public's review of both the EIA Report and the project application. Applications and the EIA jointly are to be circulated to authorities and special interest organisations for comments (minimum of six weeks) and made available for public inspection. A public meeting, the main focus of which is whether or not the impacts of the project have been satisfactorily assessed, must be held with both the developer and responsible authority present.

In the benchmarking interviews conducted in Tromsø in September 2013 to determine best company practices in EIA, the interviewees<sup>5</sup> provided some examples as to how public participation worked well in Norway, but many also said that the success of public participation is more of a perception than reality, as the public is rarely engaged in an EIA process. Even so, developers themselves insist on the need to hold very early and frequent public consultation meetings, emphasising that they always attend these meetings and welcome the opportunity to discuss projects, answer questions and to talk about potential mitigation measures.

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4 Interviews in Tromsø were conducted in September 2013 as part of the Tekes project on EIA best practices (Testing Improvement Processes of Finnish Environmental Impact Assessments and the Modes for Application in Arctic Regions of Finland and Russia).

5 Interviewees in Norway: one company, two government officials, two university professors, four research institutes/EIA consultants and three engineering firms/EIA consultants.

It should be noted that the discussion on legal tools of public participation in Norway has not directly addressed the participation of indigenous peoples, because the legal framework in Finnmark County differs somewhat from that in the rest of Norway. Finnmark is home to the main Norwegian population of Sami, and with the adoption of the Finnmark Act of 2005, the Sami gained more rights and decision-making power over uncultivated land.<sup>6</sup> This in turn affects the manner in which EIA functions if not the actual process itself, i.e. the Sami Parliament has to be heard when their area of influence is impacted. While some interviewees (especially the EIA consultants) said that they believed that Sami conflicts tended to be resolved in a good way, evidence also points to the Sami becoming better organised and more astute negotiators. A recent example is the Sydvaranger mine agreement with the Sami Parliament (Skogvang, 2013). Although this focused on reindeer grazing lands, it is clear that a written, legally enforceable agreement entails taking public participation to another level with respect to the Sami people.

The three opportunities for public consultation in the Norwegian EIA system – two during the Assessment Programme and one when the draft EIA Report is released – appear to be adequate to ensure the general populace feels they have a say in large-scale development projects which could potentially adversely affect them. Most Norwegians interviewed felt the government had their best interests at heart and that there was adequate opportunity for public comment and input – and most importantly that this translated to changes. There is very little momentum to change the EIA process in Norway, and unlike in Finland, the necessity for companies to obtain social licence is not nearly as strong. Interestingly, social licence appears to have the strongest impetus in Finnmark County, where the companies have to negotiate with the Sami people. For the most part, it is the legal tools of public participation that dominate the EIA system in Norway and these are also seen by most people as being acceptable.

## SWEDEN

Environmental Impact Assessment was introduced gradually in Sweden and has resulted in provisions for EIA to be included in more than 20 different acts. The overall Swedish objective is to increase the consideration of environmental and management issues in decision-making (National Board of Housing, Building, and Physical Planning

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<sup>6</sup> See more in Ravna, 2014.

et al., 1997). In 1981, a limited form of the EIA was introduced in the *Environmental Protection Act*. This legislation was noted as being more concerned about the individual details of each impact, such as emissions, rather than impacts on the environment as a whole. This initial Act also did not include demands on alternatives to be developed. In 1987, EIA regulations were incorporated into the *Swedish Road Act* (Swedish Code of Statutes 1987c). In the early 1990s, EIA regulations were enacted on a larger scale. For example, in 1991 provisions for EIA were incorporated into the *Natural Resources Act* (Swedish Code of Statutes 1987b), and more detailed provisions regarding the implementation of the EIA were issued in the EIA decree (Swedish Code of Statutes 1991b). In 1992 complementary regulations were added to the initial legislation (Swedish Code of Statutes 1992a). As a result of the EEA treaty, Sweden incorporated new provisions in the *Planning and Building Act*, enacted in 1994 and extended in 1996. This more sectorial division had an effect on the public involvement as well. Since every act has its own provisions for publicity, demands and regulations for public consultation differed between acts (Hilden et. al., 1998). The current *Environmental Code* (*Miljöbalk*) is based on the EC Directive 85/337/EEC (97/11/EC). In 2004, Sweden implemented the *SEA directive* 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment.

The systematic process of conducting environmental impact assessments involves a number of steps as stated in Chapter 6 of the EC. These include project screening, scoping, consideration of alternatives, description of environmental baselines, identification, prediction and evaluation of impacts, public consultation, mitigating and monitoring of impacts, presentation and documentation, and review and decision making (Hedlund and Kjellander, 2007). EIAs are divided into small and large EIAs. Small EIAs go through the County Administrative Board (CAB), while the larger ones are initiated there, but must then go through the Environmental Court for approval. In focusing on public involvement, the EIA regulations are integrated in the formal licensing procedure for projects; that is, EIAs are not separated from other foundations of decision making. It is the developer who must consult with the CAB regarding the planned project, followed by a consultation with additional stakeholders at the project's screening stage. Another consultation is conducted after the planning proposal, or draft EIA stage. It should be noted that the Environmental Code states which categories (for example of organisations and communities) should be consulted during the consultation process, but the developer must still make their own interpretation of the requirements. During the initial meetings with the CAB, the CAB must ensure the focus and the scope needed for the EIA is in line with the state requirements. For example, based on

the projected impacts the number of stakeholders to be consulted will increase, as the projected impacts to the environment and human health increase. This initial consultation process aims to minimise the risks of delays or ineffective solutions in carrying out the EIA process. The methods used to communicate with the public and stakeholders are written communications and public hearings. Public consultation is perceived as the most important tool in Sweden to ensure quality of the EIA but there are no regulations as to how the consultation should be carried out (Hedlund and Kjellander, 2007).

The Swedish consultation process aims to achieve better quality throughout. The scope and effectiveness can be hedged, and the process provides for a more democratic planning process (Hedlund and Kjellander, 2007). The form of the consultation for a project is decided by the nature, type and scope of the project, and who the target audience for this consultation is. Hedlund and Kjellander (2007) also write that consultation can be useful in the preparation of background data, delineation of the EIA, identifying alternatives, prediction and assessment of environmental impacts, and in identifying preventative measures. The consultations with the stakeholders must be included in the EIA, which should indicate where and when the consultations took place, what information was discussed and the opinions brought forth. For certain environmentally hazardous activities, Chapter 22 of the Environmental Code states additional requirements for consultations.

An interesting case study assessed the process and quality of public participation during the environmental impact assessment of the Örebro-Bofors Airport in Sweden, noting that a traditional perspective on planning and participation was too narrow and that there was a need for larger participation and communication between the general public and decision-makers beyond the EIA consultations (Soneryd, 2002). It is suggested that improved and collaborative planning during the public participation processes, as was done in the Örebro-Bofors Airport case, would potentially lead to improved SLO and quality of decisions, as open communication and collaboration between stakeholders would increase the interest and buy-in of the stakeholders.

During benchmarking interviews to determine best company practices in EIA, conducted in Luleå in September 2013, many interviewees<sup>7</sup> provided examples as to how public participation worked in Sweden. Many felt that it worked well. On average

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<sup>7</sup> Interviewees in Sweden: one company, two government officials, three university professors and three engineering firms/EIA consultants.

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everyone felt that they had a say in the process and project in question. Everyone's voice is heard. The EIA process is developer-initiated by a meeting with the CAB where the details of the plans for the consultations are determined. An example comes from the wind power industry, where the public was routinely being informed prior to the project's application. This is not required by law but is voluntary practice among many wind farm developers and mining companies. It emerged in the interviews that public hearings were on average well attended, especially for mining, forestry, hydro and wind energy development projects. Most companies always hold extra meetings as well or take the initiative to show stakeholders the site or the company land/processes, some even beyond the approval of the EIA. An example was given regarding the LKAB and the Kiruna community where the company routinely communicates with the local community members and stakeholders and has thus made itself an active member within the community. Interviews with EIA consultants and government officials pointed out that it was on average seen as a positive practice of public participation in Sweden that anyone can have a say during the EIA process public consultation period, but this also means that anyone can protest against a project and potentially delay its realisation. Another point that was noted in several interviews in Luleå was the issue of meeting fatigue in certain areas. These issues have now forced companies to rethink strategies of public consultation methods in order to attain efficient and effective results from the consultations.

## **NORTHWEST RUSSIA**

In Russia, the right of citizens to a favourable environment and first-hand information on its state is set out in the Constitution of the Russian Federation (The Constitution of the RF 1993). Companies planning to realise projects which can have negative impacts on the environment must conduct an environmental impact assessment (On Environmental Protection, 2002). The companies should act with the consent of local people, whose interests might be infringed during the project realisation. In effect, local people have the power of veto on project realisation. Interviews were conducted in five different sites in Northwest Russia as shown in the map below (Figure 1).

On the legal level, the main requirements of an organisation on public participation in the EIA are described in the *Regulation on the Assessment of Environmental Impact* approved by Order of the State Ecology Committee of the Russian Federation of 16 May 2000 No.372 (from now on Russian Regulation on EIA 2000). Today the requirements of the Russian Regulation on EIA do not cover all the projects that



*Figure 1. Map of the five regions in Northwest Russia where interviews were conducted.*

*Source: [www.arcticcentre.org/RussianEIA](http://www.arcticcentre.org/RussianEIA).*

can have negative impacts on the environment. In 2006, some changes were made in the Town-Planning Code of the Russian Federation (Town-Planning Code 2004) and the Federal law “On Ecological Expertise” (On Ecological Expertise 1995). After these changes took effect, the conducting was repealed of public hearings for construction-related projects except for those connected with construction on the continental shelf, in the exclusive economic zone, territorial sea and contiguous zone of the Russian Federation, and in natural protection areas.

According to the Russian Regulation on EIA, companies are responsible for providing public participation in the preparation and discussion of EIA materials (Russian Regulation on EIA 2000, item 2.5.). Companies should give timely and full informa-

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tion on the planned project, conduct the preliminary consultations with stakeholders and together with local authorities provide free access to EIA materials.

The companies should provide the opportunity for public participation at each stage of the EIA process (Russian Regulation on EIA 2000, items 2.5., 4.1.). In the first stage, the responsiveness is addressed by collecting, analysing and summarising public opinions, comments and suggestions. Anyone can come to the local administration and study the notifications, declarations of intentions and terms of reference and submit comments, suggestions or proposals in writing. In the second stage of the EIA process, the main tool for public participation is public hearings. This involves the compulsory organisation and conduct of the hearings. The results of public hearings are issued as a protocol of public hearings, which is included in the EIA materials. The local authorities compile the questions received from the public, collate the official representatives' answers and list the topics which have raised controversies in the discussions between the public and the developer (Russian Regulation on EIA 2000, item 4.9). Without a protocol of public hearings the project documentation cannot be submitted to the State Ecological Expertise, which is a mandatory part of the permit process.

In practice, local people and public organisations (NGOs, public associations and other forms of public organisation) very seldom take part in the project discussions at the notification stage and when terms of reference are drawn. This is because companies do not actively communicate their planned activities. As a rule, they confine themselves to publishing brief announcements in official newspapers, thereby formally fulfilling the legal requirements. Nor do companies typically conduct preliminary consultations with local people whose interests may be affected by the project. As a result, serious conflicts between local people and company representatives are far from rare in the public hearings of EIA materials. For example, in the Republic of Komi an uneasy relationship has emerged between inhabitants of Izhemskiy and Usink districts and Lukoil Company. According to the information received during the interview with the chairman of the NGO on interregional public movement Komi-Izhma "Ishiwata", Nikolay Rochev argued that Lukoil Company grossly violated the requirements laid out in environmental legislation as to the planning and realisation of projects connected with oil extraction. Lukoil Company has been notorious for not conducting public hearings and preliminary discussions with the local people. The violation of the ecological standards and rules has resulted in frequent oil spills, the presence of oil in water wells and water pollution (Polyakov, 2014) and growth incidence (including cancer) among the local people (Increased incidence of cancer in Usinsk, 2014).



The relationship between local people and the oil company has now produced direct confrontation. People call for discontinuation of Lukoil activities in the Republic of Komi. The official representatives of Lukoil Company claim that the main reason for the current situation is the lack of public information about the company's activity (Usov, 2014). Not so, say the locals. Nikolay Rochev maintains that the locals are open to dialogue with Lukoil Company if only the company would plan and realise its projects by taking into account the interests and needs of the local people, phase down/stop the consumer attitude to the environment and start to follow the requirements of environmental legislation.

The situation in Arkhangelsk region is somewhat better. Public organisations there take an active part in informing the public about planned economic activities. According to the head of the Arkhangelsk branch of the All-Russian Society of Nature Protection (VOOP) Valentina Tsvil, it is in many cases impossible to stop the operation of large companies. Therefore, it is vital already at the stage of project discussion to establish dialogue between companies and local people, so that they can together come to a decision that would satisfy all stakeholders. In her opinion, public organisations can and should provide this support. Practice shows that companies in Arkhangelsk and Murmansk regions often appeal to public organisations for support in informing people about the planned project and public hearings. This collaboration is very effective and gives positive results.

In accordance with Russian legislation, public organisations may initiate and conduct the public ecological expertise (PEE) of the EIA materials. This right is set out in the Federal Law "On Ecological Expertise" (On Ecological Expertise 1995, articles No. 20–25). To do this, the organisations should apply to the local authorities and inform the public about the public ecological expertise (On Ecological Expertise 1995, article No. 23). Some of the local administrations have specific regulations on organising and conducting the PEE.

The result of the PEE is the conclusion that should be sent to the authorities conducting the state ecological expertise as well as to the developer who makes a decision on project realisation (On Ecological Expertise 1995, article No. 25). While public ecological expertise is an effective tool of public participation, in reality it does not work in Russia. First, unlike state ecological expertise of EIA materials, the process of public ecological expertise is voluntary (Brinchuk, 2005). Companies are not required to get a positive conclusion of the public ecological expertise to be granted

permission for project implementation. Second, “the conclusion of the PEE gets legal force after its approval by the state authorities only” (Bogolubov, 2006; Brinchuk, 2005). The state authorities therefore decide whether the results of the public ecological expertise will be considered or not. As Professor Bogolubov says, if public ecological expertise were mandatory for companies, it would create a barrier for project realisation, because the conclusion or decision of public ecological expertise is often made by people who do not possess the appropriate qualifications for conducting such expertise. Their conclusion may thus contradict the findings issued by state ecological expertise (Bogolubov, 2006). Third, the public organisations do not have funds to organise and conduct public ecological expertise. According to Sergey I. Gabov, chairman of the NGO “Interregional public movement Komi Voityr” ([www.komivoityr.com](http://www.komivoityr.com)), this is because the Russian state does not support the conducting of public ecological expertise and the public organisations do not have the funds to hire qualified experts.

The brief analysis of the tools of public participation in the EIA shows that the Russian legislation contains the main principles of the international documents on public participation in environmental decision-making. At the same time, in practice, public participation often amounts to a formal execution by the companies of the requirements of Russian legislation. Companies do not aim at an active dialogue with the local people, nor do they inform people enough about the planned activities or their consequences for the environment and human health. As a result, in some Russian regions the people and public organisations are practically/actually deprived of the possibility of influencing environmental decision-making.

## CONCLUSIONS

While the Russian EIA system is based on more generalised international standards and the Nordic countries are guided by the EU EIA Directive, the actual mechanisms and even the rationale for public participation are essentially the same. In all four systems, there are two points during the EIA process for the public to receive information about the project and try to influence its design via submitting written comments and/or attending hearings. In terms of the rationale, by providing a forum for all affected stakeholders to both listen and be heard, ideally the potential adverse social and environmental impacts of large-scale activities can be minimised to the greatest extent possible.

The Russian and Nordic EIA systems differ in implementation and practice. In Russia, although it is the responsibility of the companies to inform affected stakeholders about projects, this rarely happens in reality. The companies tend to view transparency as detrimental to their business interests. Without governmental pressure to ensure a more genuine form of public engagement, the companies have little incentive to expose themselves and potentially put their project at risk. There are, however, examples of business conduct that show the concept of social licence beginning to take root. Companies in the Arkhangelsk and Murmansk regions appeal more and more frequently to public organisations, which act as intermediaries between the companies and the public, for outreach support in communicating to stakeholders the details of the project and in organising the requisite public hearings.

As to the practice of public participation in the EIA systems of Finland, Sweden and Norway, it is clear that all the actors within the Nordic systems (government, companies, public) value active engagement. For the tools of public participation to function well, the government and companies must value public input, and the public must value inclusion in the process. There are numerous examples in Finland, for instance, of companies voluntarily holding additional public consultation meetings and even one example of a company giving the public (during a hearing) an opportunity to choose from two alternatives their preferred design solution for a facility upgrade.<sup>8</sup> So, although the legal tools of public participation in Russia and the Nordic countries are conceptually the same, in practice they manifest themselves very differently. Differences arise from both the legal framework and the stakeholders' expectations as well as from the cultural background of the people involved.

Because the EU EIA Directive serves as the basic framework for the EIA systems in Finland, Sweden and Norway, the requirements for public participation are quite similar. In Finland, the public can comment once at the scoping stage and again once the draft EIA Report is released. In Sweden, the first public consultation occurs at the screening stage and the next one at the draft EIA stage. Norway has two public comment rounds, one during scoping and the other for the draft EIA. Of the three systems, Sweden's is the most different, as much is left to the developer's discretion and governmental interpretation. This does not, however, necessarily translate to better public

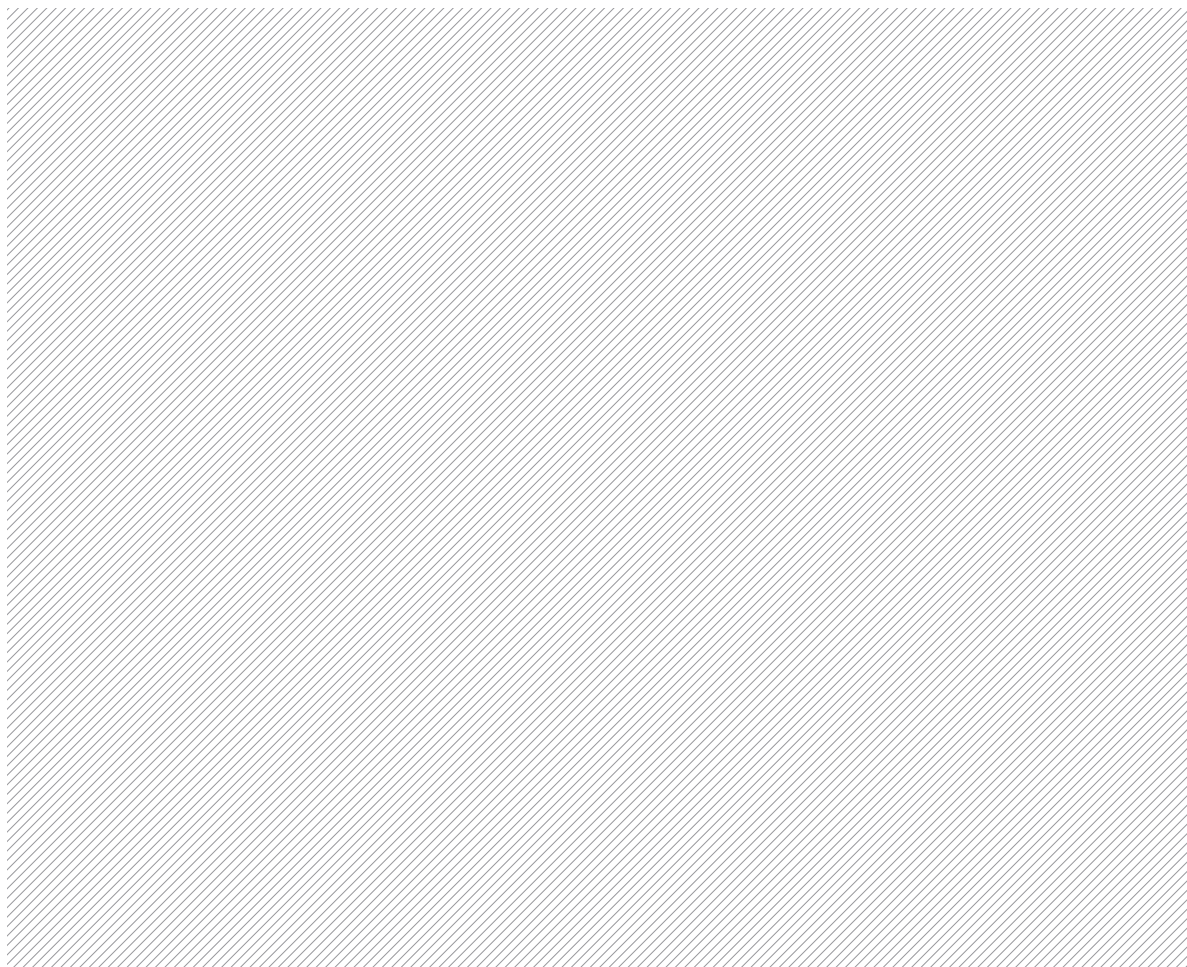
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<sup>8</sup> Kemijoki Oy presented two equally viable plans for a facility upgrade for the Valajaskoski power plant to the public and allowed them to choose. The local residents chose the main river option, which was executed in the year 2003.

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participation. Based on the interviews conducted in these countries in 2013, Finland and Norway both have an increasingly active public that correlates with companies pursuing their approval.

Thus, while mechanisms that allow public participation in EIA are necessary, they are not sufficient to guarantee that the public truly is engaged in the process. Whether we compare Russia and the Nordic systems or limit ourselves to the Nordic countries only, public engagement comes in different forms that are themselves constantly in flux. The overall trend is nevertheless clear: in all of these countries, public participation is on the rise and there are existing tools within all of these EIA systems to ensure this trend continues.



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