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# 1 Indigenous rights and governance theory

## An introduction

*Hans-Kristian Hernes, Else Grete Broderstad and Monica Tennberg*

### Introduction

Indigenous peoples worldwide experience great tensions with extractive industries over resources and territories. Such tensions over large industrial projects are not new. Modern history is filled with stories of intrusion, dispossessed lands and destroyed possibilities for pursuing traditional economies and cultures. The current argument is that the pressure is increasing, conflicts are becoming more intense and extending to new and promising areas (such as the Arctic) and including new industries (such as renewable energy and aquaculture).

If not entirely disputed, this view is at least modified by those arguing that Indigenous peoples have got better rights and have become more equal partners through participation and sharing resources. The new instruments developed internationally by market actors or government bodies make it possible to deal with the often stalemate relationship between Indigenous groups and industries (Owen and Kemp, 2017). The gradual recognition of Indigenous peoples' rights includes participation in decision-making by states, direct negotiations with companies and possible economic benefits for Indigenous groups (O'Faircheallaigh, 2013, 2016).

Indigenous groups used to manage the pressure on land and other resources by appealing to state authorities with the expectation that the government would have resources to challenge industrial projects and companies and adopt necessary legal regulations to protect traditional Indigenous livelihoods. As the main actors in the international arenas, governments are also responsible for implementing international law in domestic settings. However, states—like big companies—have a dubious reputation among Indigenous peoples and are not always seen as the best protector of their rights and heritage.

Indigenous peoples take different roles in the life course of industrial projects. In their cooperation with the state and big companies, they are likely to face conflict and heated discussions over resources and the right to participate. What are the roles, then, that Indigenous peoples can assume, and are they co-opted victims rather than real participants? New regulations, whether created by the market or international law, leave room for Indigenous agency, but what kind of agency is it? As large projects will remain on the agenda and conflicts are bound to emerge, how can Indigenous peoples deal with the situation?

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Awareness of these issues was on the rise at the Centre for Sami Studies at UiT The Arctic University of Norway some ten years ago. The attention was formalized in the Focal Point North project funded by the Ministry of Foreign Affairs. The project introduced students to increasing conflicts over natural resources in the Circumpolar North. It also enabled networking among researchers and made it clear that resource extraction was a main driver impacting Indigenous rights to land and resources. Several adjunct professor positions were affiliated to FPN, including research professor Monica Tennberg, one of the editors of this book. An outcome of these networks and discussions was the project *Arctic governance triangle: government, Indigenous peoples and industry in change* (TriArc) which was funded by the Research Council of Norway.

The goal behind the TriArc project was to examine challenges between large industrial development projects and traditional uses of land and other natural resources, and to study the governance arrangements which were to regulate the relationship. Among the starting points was an observation of conflicts and challenges of legitimacy, but also cases where industries and Indigenous peoples had managed to find platforms for reciprocal cooperation. A question was how the development of new regulations and mechanisms worked, and if Indigenous peoples were included in the processes. The project members also wanted to analyze the ways in which Indigenous involvement in processes of natural resource development was guided by international and national political and legal realities, the behavior of various corporate actors and Indigenous peoples' own institutions. To what extent could we identify forms of governance that promoted Indigenous engagement with natural resource development and management?

The intent then was to study institutional solutions at the local level, to clarify whether decisions were decentralized and had an element of inclusion and participation, and if—and how—frameworks at different levels (national or international) mapped out the development of the different institutions. In addition to studying the linkage between different levels, we aimed at a comparison between countries to grasp how different settings affected projects involving industry and Indigenous peoples.

The theoretical framework came from governance theory and the idea that governance processes involving actors in government (state), market and civil society could be illustrated in a (governance) triangle. We recognized that Indigenous peoples' governance was undergoing major changes: many premises were emerging from international processes and arenas, governments were increasingly including Indigenous institutions and organizations in decision-making, and there might be a move from governance by state (hierarchy and coordination) to other types of governance by market and civil society. The project defined civil society as local communities in general and Indigenous peoples as rights holders in particular. The use of several terms for market actors—business, company, business organizations, industries—reflects the variety of actors and also the multidisciplinary approaches in the project.

The rest of this chapter is organized into three main parts. The first, on Indigenous governance, covers some of the main elements in the development of

Indigenous rights during the last decades. The second part discusses Professor of Public Organization and Management Jan Kooiman's governance theory, and the third section introduces the different case studies presented in this book.

## Indigenous governance

### *A turn from definitive rights*

According to legal scholar James Anaya (2004), Indigenous peoples' rights are part of the development of human rights after World War II, with a shift from individuals to rights for groups. While former colonies became new independent nation states, it was the framework of established nation states in which most Indigenous peoples had to secure their rights as peoples. Early attempts at recognition of Indigenous rights were characterized by one-way processes in the sense that rights were "given" from the top, by state authorities. Another element was that the rights were considered as final and represented a definitive solution settling the relationship between the majority and minority groups.

Political theorist James Tully (2004), however, postulates that there has since been a change, a turnaround where rights develop in stages—and that they are fluid and changing in the midst of societal processes. When a group receives recognition, others will mobilize to oppose this or to achieve rights themselves. This can lead to a decline, but also to a gradual and continuous development and extension of rights. Furthermore, the processes are characterized by interaction: rights are not granted from above, but are developed in various forms of dialogue between actors so that those who fight for recognition are also involved (Tully, 2004). Such an understanding implies that other types of processes are required to ensure legitimacy, that the legitimacy of rights can be challenged, and that rights and institutions will undergo changes so that, for example, the content of self-determination will change.

Tully's point can be perceived to apply within a nation state through, for instance, political decision-making and court decisions. At the same time, increased activity in international arenas and the development of rights by international organizations is also a dynamic feature. In the United Nations, Indigenous peoples' rights are interpreted and reinterpreted by committees, which have created new premises in the domestic discussions of rights.

### *Turning to multilevel governance*

For decades, Indigenous peoples from different parts of the world have worked to develop alliances, with researchers as key players, to gain recognition. Central issues were related to self-determination, protection of culture and to securing the basis for traditional industries. The most prominent of these processes led to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007. While the declaration is not binding on individual states, it is nevertheless important given the strong support by the UN and is valued as an important symbol of the recognition of Indigenous peoples' position.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was in 2007 seen as a landmark in the work to strengthen the role of Indigenous people's vis-à-vis the government and to define important means for self-determination. The Indigenous and Tribal Peoples Convention (ILO Convention No. 169) and the International Covenant on Civil and Political Rights (ICCPR), in particular Article 27, also have a significant bearing on the premises for Indigenous peoples' rights. These conventions and declarations illustrate the efforts made by Indigenous peoples to "seek justice in international law" (Barelli, 2016).

International law can be loosely linked to nation states and the policies they choose to pursue. A distinctive feature of the Indigenous sphere is a clearer institutionalization of governance that binds different institutional levels and institutions together. One is a political dimension, with an emphasis on participation and involvement. The UN is a central arena where Indigenous peoples can meet: not only are they members of nations' delegations, but they also meet as independent (Indigenous) peoples, as is the case in the UN Permanent Forum on Indigenous Issues (Dahl, 2012). A parallel development has led to the establishment of other forums that strengthen the legal aspects through monitoring and development of guidelines for international conventions and declarations. This gives Indigenous peoples a stronger position than if the implementation were left to nation states alone.

Clarifications and interpretations are not without significance. It is through international work that Indigenous peoples—and nation states—have agreed on key mechanisms for their involvement. Based on the premise that Indigenous peoples are equal "peoples," the point of consultations and schemes such as "free, prior and informed consent" (FPIC) is to ensure that Indigenous peoples have the opportunity to exert real influence. Consultations signify a breach of traditional hierarchical management and entail that the authorities give Indigenous peoples a genuine opportunity to participate in decisions that affect them. Also, consultations "shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures" (ILO C169, Article 6.2). Consultations take place between two peoples: Indigenous peoples and the majority peoples represented by the state.

Consultations are an important tool in the UN Declaration on the Rights of Indigenous Peoples too, and although the declaration is non-binding, the geographical scope is larger than ILO-C 169 (1989), which has been ratified by relatively few countries. The description of consultations primarily points to the responsibility of states to facilitate and implement, and the implications are not necessarily easy to detect. The principle of FPIC is more visible, more easily understood, and has to a greater extent than consultations emerged as a visible signal of the necessary premises for the involvement of Indigenous peoples in decision-making. So, in addition to governmental processes, FPIC has gained access to business organizations and, for example, environmental groups.

### *Implementation gap and local variations*

The clear focus on international processes and arenas suggests standardization and equality between Indigenous peoples in different parts of the world, but the actual

situation is different. While it is true that several states have implemented consultation schemes, Indigenous peoples' opportunities to participate and influence differ a great deal (Pirsoul, 2019). The UN Declaration on the Rights of Indigenous Peoples is admittedly highlighted as a central premise and requires domestic implementation, but real changes are easily counted, and efforts for implementation have been met with critique and opposition. Moreover, even if Indigenous peoples' rights are linked to developments in human rights—themselves widely supported—there is a considerable gap between any awareness and real support. The status of Indigenous peoples' rights in Sweden, for example, has been described as "organized hypocrisy" (Mörkenstam, 2019), nor have the Nordic countries been able to agree on a joint Sámi convention.

An important point in all of this is that the implementation of Indigenous peoples' rights that does take place varies significantly, and a range of actors have assumed leading roles in such implementation. Such variation stems from the different institutional features of the nation states, where there may be clear differences between unitary states such as Norway, Sweden and Finland and federal states such as Australia and Canada. In federal states, courts have played an important role in promoting implementation of Indigenous peoples' rights, while political processes have so far been the central path in the Nordic countries. Perhaps this is about to change through new court processes and decisions, as recent rulings in Sweden have demonstrated. At the same time, there are also differences in the legal and institutional position of Indigenous peoples. In contrast to the Nordic countries, for example, Canadian Indigenous peoples have had better control over territories through agreements with the authorities and security from the courts. In combination with the federal structure, this has facilitated land claim agreements unlike unitary states without local resource control.

### *Business and human rights*

The business community is increasingly being challenged to respect human rights, and this is important in the context of Indigenous peoples too. The use of FPIC in business guidelines is an example (Wilson, 2016), but similarly relevant are corporate social responsibility (CSR) and social license to operate (SLO). Corporate social responsibility refers to companies' own ethical guidelines and principles to which adherence is expected, while SLO has a dynamic element in that businesses establish a relationship with local communities in order to gain acceptance for their operations. The degree of acceptance can vary, and there are also cases of overwhelming local support where the companies and local communities have overlapping interests. As a concept, however, SLO is not clearly defined, and its use probably depends on the geographical context. For example, it is so far rather irrelevant in northern Europe (Koivurova et al., 2015). Impact benefit agreements (IBAs) are—in some settings—used as the main tool to mitigate impacts and divide benefits from project development. They may be part of an SLO process and can be an effective way to provide payment to local communities. There is, however, a comprehensive debate over challenges related to objectives, social justice issues,

state-Indigenous relationships and best practices for IBAs (e.g. Bradshaw et al., 2019; Cascadden et al., 2021), and to tie benefit sharing to parts of international law (biodiversity, human rights) (Morgera, 2016).

## Governance

The development of governance theory as related to Indigenous peoples' rights to resources—which was the basis of the TriArc project—is part of a comprehensive change in perspectives on societal governance. Since the 1980s, there have been major changes in corporate governance and in perceptions of what constitutes good governance (Bevir, 2012). The postulate, or slogan, of "governance without government" illustrates a turn in which governance is no longer perceived as the domain of the state and where hierarchy is supplemented with other facets of governing. This does not necessarily mean that the state is completely absent. In many process and decisions, governments will remain a strong player, albeit with a different role, and other players in the market and civil society have become more prominent, setting the agenda and developing institutional solutions (Kooiman, 2003, p. 3).

The Forest Stewardship Council (FSC) labeling scheme, for example, was created in a collaboration between environmental organizations and industry because states had failed to agree on schemes to ensure sustainable forest management. Such "private" solutions are nevertheless not the dominant element in today's governance. We may be able to identify entirely public solutions but these do not necessarily follow formal lines. The concept of multilevel governance had an important foundation in studies of developments in the EU with interaction across different governmental levels in the public sector (Piattoni, 2009). Political scientist James Rosenau (1997) discusses the ways in which globalization has challenged the boundaries between local, national and international politics and created new meeting places outside established formal arenas. Such changes have challenged the nation state's dominant role in governance, but the authorities are still among the key players.

Corporate social responsibility and social license to operate schemes thus illustrate attempts to establish management on the basis of a direct relationship between companies and civil society actors. What still remain as a state responsibility are consultations, which differ from previous management praxis in that hierarchy is to be replaced by interaction grounded in an equal partnership between Indigenous peoples and the authorities.

We can approach governance (without government) in different ways, as is illustrated by a rich body of research literature. The development reflects a need in society to govern in new ways and make room for increased flexibility, involvement of various actors and fewer elements of hierarchy. Such governance has, for example, been argued to be more efficient and increase legitimacy to a greater extent than traditional government-defined governance (Dryzek, 1999; Young, 1999). Various governance schemes have also created fertile ground to develop arenas for co-production and co-creation as measures for innovation and change in the public sector (Torfing et al., 2019).

The approach in this book is guided by an understanding of governance as developed by Kooiman (2003), which has been helpful in studies of marine resource management (Kooiman and Bavinck, 2013; Jentoft and Chuenpagdee, 2015; Kooiman et al., 2005). The approach is especially useful compared to other research on interactive governance where the purpose is primarily on the study of changes in administrative and political structures (Torfing et al., 2019). The work by Kooiman and his colleagues also makes a distinction between different levels of governance and specifically analyzes the governance triangle. In the following, our focus is therefore on interactive governance, the triangle and governance at different levels.

A starting point for Kooiman is the emphasis on the great variation in how governance takes place with actors from different parts of society who develop new institutions, arenas for interaction and collective problem solving. From this perspective, governance will be many and different institutions, and vary from one context to another. Some institutions are characterized by great complexity in terms of the participants and the problems to be solved, while others are seemingly simple, but can be challenged by the complexity of the challenge they face. The research question is to develop an analytical framework that accounts for the complexity and also enables comparison of institutions and their function.

The analytical starting point in this perspective on governance is a distinction between three societal spheres: state, market and civil society. These have ideally been analyzed as separate parts of modern societies and have had different tasks according to different principles. Kooiman's governance approach breaks with this: although governance takes place within the spheres, the governance approach implies that new arenas are developed when actors connect across the spheres.

This can be illustrated in a triangle, here the *Interactive Governance Triangle* (Figure 1.1) developed from the work by political scientists Maria Carmen Lemos and Arun Agrawal (2006) and found in various literature (Abbott and Snidal, 2010). Traditionally, governance has been linked to the upper part of the triangle with the state as coordinator and core center of power in society. The new

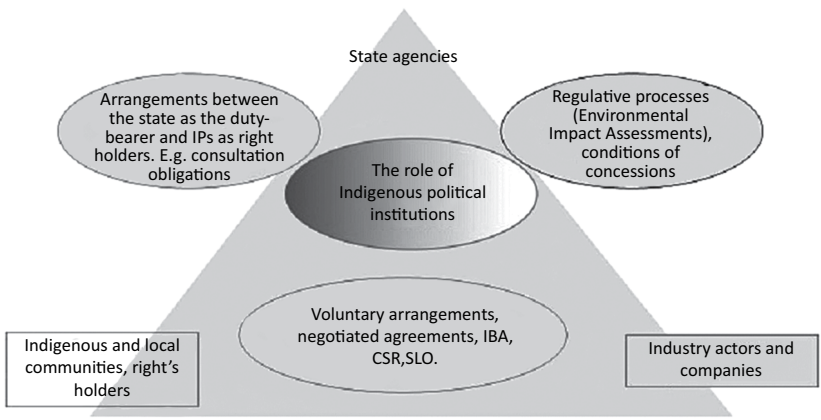


*Figure 1.1* The interactive governance triangle.

concept of governance implies a change with development of new institutions further down the triangle. Attention has been given to new arenas involving actors from the market and civil society. The state might still participate, but also be absent. In a study of development in international regulation, Kenneth W. Abbott and Duncan Snidal (2010), with a background in international law and political science, have documented a phased development, first from the state to the market, and then also the establishment of institutions that are closer to the bottom of the triangle with direct relations between players in the market and civil society. Abbott and Snidal (2010) cite the Forest Stewardship Council as an example of the last phase they study and as illustrating an institution which involves actors in the lower part of the triangle. Social license to operate, where the idea is for companies to work with local communities, can also be placed in this lower part with an axis between the market and civil society.

In an Indigenous context, it is also reasonable to assume that some processes point in the direction of establishing arenas down the triangle, that is, where we identify interactions between Indigenous peoples and market actors. This is partly explained by the opportunities for direct contact between companies and civil society through, for example, social license to operate and corporate social responsibility. This leads to an activated axis toward the market. But crucial changes in the field of Indigenous peoples—new frameworks in international law through UNDRIP and ILO C169—indicate a strengthened emphasis on state-Indigenous interactions and thus a downward movement on the left side of the triangle. Central elements of international law must be understood in such a way that decisions should not be the domain of the state alone and characterized by a hierarchy of direction and management. This has been the old (governmental) notion of governance impacting Indigenous people, with institutions at the top of the triangle. Self-determination implies an expectation that decisions are moved from the state to the left corner, sometimes by establishing intermediate institutions, such as the Norwegian Sámi Parliament having governmental functions. Similarly, the requirement for consultations must be understood as a shift from hierarchy to Indigenous peoples being involved in arenas where they are regarded equal to the state.

At the same time, there is reason to maintain that the upper part of the triangle is still important for Indigenous issues. After all, the states do have a significant responsibility for human rights, and thus also for implementing the rights of Indigenous peoples. These rights can also be linked to nature and the environment, where Indigenous peoples' traditional use honors sustainable environmental management (Barelli, 2016, p. 132). Despite being viewed as an ally of big industry, the state has been an important actor in protecting nature and the environment, and this too underlines the importance of various state institutions for safeguarding Indigenous peoples' rights and inclusion.

### *Interactive governance*

The location within the triangle clarifies the origins of participants in governance institutions; who is involved and where they come from. This has been a

key aspect of some governance research. The approach by Kooiman (2003) goes a step further by placing emphasis on the actors' interaction, that is, what characterizes the interaction between them. It is the interaction of different actors that contributes to solving management challenges in a specific area, such as small-scale fisheries (Jentoft and Chuenpagdee, 2015) or industrial projects in Indigenous areas.

It may be an idealized view that the state is a hierarchical institution where decisions are issued from above, that the market is characterized by strategic behavior to maximize utility, as in negotiations, and that civil society embraces close relationships where norms govern actions and where there is equality between actors in discussions to reach agreement. Based on this approach, and considering the location in the triangle, it might be possible to identify the characteristics of interaction and decisions.

However, such an approach is problematic. It obscures, for example, that hierarchy can characterize companies and larger voluntary organizations, and that normative perceptions have a place in state institutions and company conduct. As an approach, governance is also based on a perception that it has changed and is changing, and it becomes important to examine what happens in the new arenas. Additionally, Kooiman's approach distinguishes between three main modes of governing (Jentoft and Bavinck, 2014; Kooiman and Bavinck, 2013, p. 21ff).

- Hierarchy is the form we know from the organization of states: authorities interact with individuals and groups, and develop "policy" or use management techniques to push for certain actions.
- Self-governing is linked to the ability of a collective—as a local community, an interest organization and as social movements—to govern itself without interference by other actors.
- Co-governance is characterized by equal actors who coordinate their actions sideways through coordination and cooperation. Network development is another example of co-management schemes involving stakeholders.

### *Levels*

An important element of governance is to establish or develop institutional arrangements that provide an opportunity to solve challenges over time. These are often daily challenges and questions of a technical nature. Kooiman's approach, also enshrined in the definition of interactive governance, emphasizes that interactions may be related to questions of principles or norms that provide guidelines for daily activity and are important for the maintenance of the relevant institutions. Governance arrangements cannot just satisfy technical goals. In order to function they must have a normative basis or else they will be ineffective and lack legitimacy (Kooiman and Bavinck, 2013, p. 11).

The approach also visualizes three orders of governance. The division is a part of the conceptual framework, and is intended to capture activity related to different levels or rings of activity (Kooiman and Jentoft, 2009).

- First-order governing is related to the daily activity where the main challenge is to identify and clarify challenges as they are experienced by the actors, and in the next round look for a solution to the identified problems. For governance to work, the processes must not be purely technical: governance requires that the actors' perceived challenges emerge and that a broad search is made for possible measures.
- Second-order governing is linked to the institutional framework as formal aspects (rules, agreements and legislation) but also to the institution's norms and roles. Institutions form a core element in the context of governance, a meeting place between those who govern and those who are governed and must reflect the complexity of society and governance challenges.
- Third-order governing or meta-governance is about the overriding principles and values for governance in an area. They can be hidden and little known but can also be problematized and made the subject of problematization and change.

### *Discussion*

The focus of this book is how actors handle challenges at a local level, the ways in which Indigenous peoples deal with major industrial projects and what opportunities they have to act and to design institutions locally. Here, the first two governance levels are central. This is where we can expect examples of Indigenous agency—what room Indigenous peoples have and how they use it to safeguard their interests.

Also, expectations at the meta-level are a key premise for examining the position of Indigenous peoples. The development in international law that Anaya (2004) describes is based on central moral premises about recognition, equal treatment and the right for a group to decide its own destiny. These are conditions that Jan Kooiman and sociologist Svein Jentoft (2009) emphasize as a part of the third level, and which in the next round need specifying. The principles must be weighed against each other and formalized through various instruments.

Seen in the context of the triangle, the state and its various institutions become the key player in balancing considerations and in linking the many levels that make up a system of Indigenous peoples' governance. It is not a given that the state acts as a coordinator and implementer. The implementation gap (Mörkenstam, 2019) indicates this. Drawing on a summary from Australia, Canada, New Zealand and the United States (CANZUS), sociologist Stephen Cornell (2019) points out that absent states lead Indigenous peoples to bypass and develop governance from below because it is most effective and provides the best opportunity to develop governance in accordance with the group's own principles. The sum is institutional diversity. The development is not coordinated, but a long-term effect can be that by taking control, Indigenous groups develop a stronger position that makes it more difficult for the state to ignore their demands in the future (Cornell, 2019, p. 27ff).

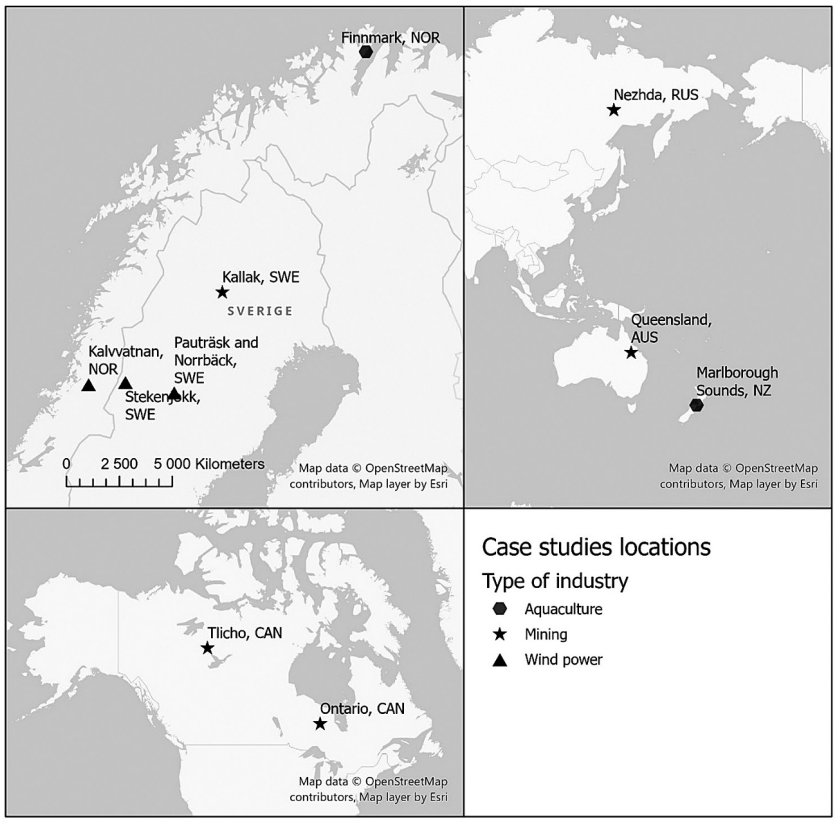


*Figure 1.2* Overview of the cases and their location. Map produced by Camilla Brattland.

## Case studies

The cases discussed in this book come from various geographical locations and they illuminate challenges from different industries in wind energy production, aquaculture and mining. As indicated by the map (Figure 1.2), the political and societal contexts are highly diverse. The diversity does, however, show how Indigenous peoples are affected by governmental structures and efforts to improve living conditions. When readers have reached the final chapter, we hope the cases will have broadened the understanding of Indigenous governance.

After several efforts to stimulate new projects, and genuinely supported by the public as a turn toward more renewable energy, *wind power* has become a controversial topic in Nordic countries. Some of the largest projects, with the best conditions for production of green electricity, have been located in areas of importance for reindeer herding in Norway and Sweden. The disputes over licenses have been taken to court and been debated by administrative and political bodies alike. Else

Grete Broderstad analyzes how wind power has been developed in Kalvvatnan, Norway, where the Ministry of Petroleum and Energy withdrew the permit, thus overruling the decision of the Norwegian Water Resources and Energy Directorate. Broderstad studies the argumentation of the ministry and shows how the interpretation based on Article 27 of the International Covenant on Civil and Political Rights led to the conclusion to reject the permit. Recent interpretations of Article 27 have discussed the responsibility of state authorities to secure traditional Indigenous ways of living and to avoid creating obstacles which destroy future possibilities of living in a traditional way. In Norway, the core issue is often reindeer herding. In the case of Kalvvatnan, the ministry entered the discussion and concluded that the reindeer herding community had suffered from former projects. It also paid particular attention to the development of a hydroelectric project that limited the use of traditional grazing land. The case is interesting not only in light of the renewed interest in the ICCPR but also because the Ministry of Petroleum and Energy and the Norwegian Water Resources and Energy Directorate seldom come to similar conclusions based on Article 27.

Dorothée Cambou, Per Sandström, Anna Skarin and Emma Borg examine court decisions related to the Norrbäck and Pauträsk wind energy projects in Sweden. The conflicts between wind energy developers and Sámi reindeer herding communities (*samebyar*) were handled at different court levels, and after rejection in the lower courts, the decision by the Land and Environmental Court of Appeal in 2019 authorized that the wind projects could proceed. The authors examine the argumentation by the courts, particularly related to how wind power turbines may affect reindeer husbandry. Leaning on this evaluation, the authors conclude that the courts neither serve a function as a mediator, nor solve conflicts and do not sufficiently protect the right to conduct reindeer husbandry. An important aspect to be learned from the study is that the courts have difficulty in judging the impact of the wind energy projects on reindeer herding, as there is no consensus on how to interpret the knowledge provided by the industry and the knowledge holders. A second aspect relates to the concept of sustainable development, where the courts try to meet the demands for sustainability at a meta-level but pay less attention to the fact that their interpretation undermines sustainable development of Sámi reindeer husbandry at the local level.

Aquaculture as a rising industry is new, compared to mining, but the increased investment and global growth in production has already come at a price, also for Indigenous peoples. Growth implies areal pressures, particularly on sea or water areas traditionally used for other purposes such as traditional fishing. Moreover, aquaculture may change the local economy in terms of jobs, investments and social equity. Camilla Brattland, Else Grete Broderstad and Catherine Howlett compare coastal regions in Norway and New Zealand and pay particular attention to the possibilities for Indigenous agency. The discussion and recommendations for increased agency depart from a division between structural and discursive influences. Not only are Indigenous agencies constrained rather than enabled, but the authors also argue that Indigenous rights should be strengthened, that states and private actors should be more proactive toward Indigenous peoples and that they should support capacity for participation by Indigenous organizations and coastal communities in marine development.

An example of how grassroots Indigenous peoples' organizations (*obschiny*) work directly with companies is the study by Marina Peeters Goloviznina from Russia. The study of a family-based *obschina* in the Sakha Republic illustrates how the *obschina*, assisted by the Ombudsman for Indigenous peoples' rights, managed to overcome the asymmetrical power relations with a gold mining company. The study is also instructive—even outside the Russian context—on how FPIC can be used (and misused) by companies. As the state does not define the content of FPIC, there is a risk that companies may misuse the fundamental legal meaning of the concept and deprive it of its normative value.

Another example of direct relations between Indigenous peoples and the extraction industry is the research by Horatio Sam-Aggrey in the Northwest Territories, Canada, on the relationship between the Tlicho people and the diamond mining industry. The case study illustrates how the Tlicho Agreement, an example of a comprehensive land agreement, establishes a robust legal framework that makes it possible for Indigenous peoples to take part in the management of resources on their traditional lands. This type of agreement provides clarity that benefits the industry and strengthens the role of communities in resource management and negotiations on impact benefit agreements (IBAs). In this case the Tlicho are active participants in the regulation of mining and in securing environmental initiatives that also include use of traditional knowledge. In addition to the implications for its relationship to the mining industry, the management of the comprehensive land agreement has strengthened the group's interaction with government agencies.

The case from Ontario discussed by Gabrielle A. Slowey is an example from an area with old treaties in Canada, and an illustration of how Indigenous rights are set aside. Mining has in general been important for economic development in Canada and Slowey argues that the protection of Indigenous rights is lost when the state continues to pursue mining to improve economic development (growth). This lopsided development has increased due to the ongoing economic crisis and illustrates the fragility of Indigenous rights. First Nations must carry the costs when government makes things easier for industry. Development of modern treaties is highly unlikely, so First Nations stand in a weak position as they lack resources to challenge the development by industry and government, and the pandemic has restricted the ability to meet and organize collectively in a meaningful way.

Catherine Howlett and Rebecca Lawrence undertake a critical analysis of Indigenous Land Use Agreements (ILUAs), the dominant agreement-making tool in Australia. They interpret agreement-making as underpinned by neoliberal logic, and although there might be positive elements for Indigenous peoples, the negative impacts outweigh the benefits. Indigenous peoples have room for agency, but it is severely limited by structural, institutional and historical realities. Agreements are not based on a real consent, but rather forced upon Indigenous peoples, and the instruments used by government and industry dispossess Indigenous peoples of resources, thus weakening their position and possibility for securing traditional culture and livelihood. The conclusion, then, is a warning for Indigenous peoples in other countries that there is "no such thing as a fair and just negotiated agreement."

In her study, Kaja Nan Gjelde-Bennett follows some of the same paths in a study of the situation in Scandinavia. The controversy over the Gállok mine in northern Sweden is the main case, analyzed from the perspective of an Indigenous paradigm versus the (dominant) neoliberal paradigm. Indigenous peoples must utilize neoliberal tools that uphold the dominant authority of the state. A solution would be to find common ground between the two paradigms where new institutions realize international Indigenous rights domestically. Gjelde-Bennett points at the proposed Nordic Sámi Convention as a possible way, as the aim is to guarantee the same rights for Sámi people living in Norway, Sweden and Finland.

One of the aims of the final chapter by Monica Tennberg, Else Grete Broderstad and Hans-Kristian Hernes, is to summarize core findings from the different cases reported in the respective chapters. The important task is to discuss findings from the governance perspective. The emphasis is on meta-governance (Kooiman and Jentoft, 2009), which focuses on normative consensus-building and clarity between different modes of governance. In contrast to recent ideas of governance, a major finding is that—despite different contexts and various arenas—the state is the most prominent actor and thus extremely important for Indigenous governance.

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