

Participatory models to ensure the full protection of indigenous peoples' fundamental rights in the Arctic

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The survival of indigenous peoples in the Arctic region depends on hunting for mammals, herding reindeer, fishing and gathering, not only for food to support their local economy, but also as the foundation for their identity. Serious challenges are posed to human health and food security by the drastic change in species and traditional food habits due to environmental threats.

The adoption of community-based approaches where the land and coastal activities are harmoniously preserved and managed by governmental agencies, local communities and indigenous groups, works as a precondition to the enjoyment of internationally-protected fundamental

rights, such as the right to health, to food, to culture and to a safe environment.

A study conducted by the International Union on the Conservation of Nature (IUCN)¹ on the connection of protected areas and indigenous peoples identifies two main tools that can be used in this regard: the concept of co-managed protect area and the community-conserved area². According to this study, a co-managed protected area is a government-established sphere where decision-making power, responsibility and accountability are shared between governmental agencies and other stakeholders, in particular the indigenous peoples and local and mobile communities that depend on that area culturally and/or for their livelihoods. The concept of community conserved area includes the protection of significant biodiversity, ecological services and cultural values, voluntarily conserved by indigenous peoples and local and mobile communities through customary laws or other effective means. The process of establishing co-managed protected or community conserved areas is quite complex and it engages all levels

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¹ See the official website <https://www.iucn.org/>, visited in November 2017.

² Grazia Borrini-Feyerabend, Ashish Kothari and Gonzalo Oviedo with inputs from Marco Bassi, Peter Bille Larsen, Maurizio Farhan Ferrari, Diane Pansky and Neema Pathak Adrian Phillips, Series Editor, Indigenous and Local Communities and Protected Areas Towards Equity and Enhanced Conservation Guidance on policy and practice for Co-managed Protected Areas and Community Conserved Areas, Cardiff University, Best Practice Protected Area Guidelines Series No. 11 IUCN – The World Conservation Union 2004.

of decision-makers, from governmental to local agencies and communities, and it includes all the relevant stakeholders. To understand the key-role played by them, and their effective impact on the final decision, it is noteworthy saying that the process is grounded on an agreement, which includes a management plan and its complementary initiatives, by-laws, incentives and compensations. The central aspect in this regard is that all the relevant stakeholders are to be engaged in the pre-agreement phase.

The IUCN guidelines identify a set of criteria that help distinguish among primary and other stakeholders, and namely: 1. On an existing legal or customary right that gives legitimization to the participation; 2. On a continuous relationship with the land and the resources; 3. On a direct dependency on the resources for subsistence and survival; 4. On cultural and historical relations with the land; 5. on traditional ecological knowledge on that land; 6. On potential losses and damages in the management process; 7. On a compatibility of interests between the stakeholders' and the international and national conventions'³. Many are the examples listed in the study that show how the concept of "land" does not exclude the possibility of establishing co-managed protected areas that cover both

the territory and the coastal waters, to the extent of including co-management also for marine protected areas.

Probably the most vivid example of co-managed area that was actually initiated by an aboriginal community is the case of the Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site (Queen Charlotte Islands off the coast of British Columbia), established in 1986 under an agreement between Parks Canada and the Council of the Haida Nation. The initiative of creating such an area came from the Haida Nation itself and it resulted in a successful co-management plan where both the Haida representatives and the Canada Park representatives had worked by consensus in protecting the natural resources and their traditional use. The case of the Haida is of particular interest for the purpose of this article, because of the Haida's deep connection and dependence on the territorial and marine resources: the Haida nation is used to practice fishing, hunting and trapping, depending on the seasonal availability it also depends on nature for medicine purposes and for the expressing its cultural identity.

In the process of establishing the protected area, the parties had been consulted and their opinions had been

³ Ibidem, p. 33.

considered for five years before the agreement's conclusion. The result was extremely positive, with a remarkable shift in the local economy and an increase in the tourism sector, as well as in the labor market (more than 50% of the park staff belongs to the Haida nations). The study identifies the remaining challenge in the acknowledgement of the participatory rights of the Haida in the management of the boundary waters of the Gwaii Haanas, on the ground of their belief that land and sea are not separated and therefore the fishing rights on that area shall not be restricted by some federal legislation claiming that there are different levels of protection of the area and that the activities on the land and on the sea shall be therefore regulated in a separate way.

Such final statement can be extremely instructive when considering to use the best practice as a model for the coastal Sámi of Norway, as well. Two short comments on the need to comprise the protection of the indigenous tradition within a holistic approach, including all the natural resources that are source of sustenance for the Sámi.

First, the combination of different activities to grant a way of living

sustainable and resilient to changes, has been encouraged since the approval of the Land Acquisition Decree in 1775, where the indigenous population of Finnmark were suggested to unite farming and fishing, as much as the land will allow it⁴. Second, it has been shown in several studies that originally there was no distinction between land and sea-related activities and the Sámi groups dedicated their time and energy to both, depending on the availability of the resources. In particular, Angelika Lätsch recalls that "the coastal Sámi in lived mostly in the inner parts of the fjords while the outer areas were later settled by Norwegians" and "they traditionally earned their livings from a mixed subsistence economy based primarily on fishing, hunting and animal husbandry which is generally described as fiskarbonden" (fishermen-farmer)⁵.

Certainly, the establishment of a co-managed protected area where the land and coastal activities could be indifferently protected and preserved both by governmental agencies, local communities and indigenous groups could be of great benefit for the protection of the coastal Sámi.

The urge to act is not only dictated by a general preoccupation to comply with international legal provisions, but it

⁴ See Steinar Pedersen, cit., p. 70-71.

⁵ Angelika Lätsch, Coastal Sámi revitalization and rights claims in Finnmark (North Norway) – two aspects of one issue? Preliminary observations from the field, Senter for Sámske studier, Skriftserie nr. 18, 2012.

deeply depends also on the intimate bond that the local peoples have with the land and coasts they inhabit and by the threats that climate change posed to their survival, both from the food security and the environmental protection perspective.

The need to adopt a comprehensive approach in regulating protected areas becomes extremely topical in Northern Norway, where indigenous groups are devoted to different activities, such as hunting, farming and fishing and because of such connection with the land they live in, their right to participate to decisions is to be granted to its full extent, with no geographical limitations or sectoral distinctions.

The Finnmark Act marked a major milestone in engaging the Sámi peoples in the decisions regarding the county of Finnmark.

Despite such a remarkable example, the effective progress to the acknowledgment of their participation in co-managing marine protected areas is still in the making and there seems to be some reluctances to fully recognize the coastal Sámi fishing rights.

The last Report on Coastal Sámi's rights on sea fishing (Sjøsamenes rett til sjøfiske) released by the Norges nasjonale institusjon for menneskerettigheter (Norwegian National Human Rights Institution, NHRI) in 2016⁶ concludes in the same way, by reporting the voice of the Sámi, lamenting the scarce attention given to their voice in the decisions that involve the natural resources they deeply rely upon.

In particular, it recalls the wording of the Sámi Committee II NOU 2007: 13: "[...] the use of the marine areas must be seen in context. Activities that may affect fishing in sea-Sámi fjords and coastal waters, such as aquaculture, and entry and operation of fixed installations such as sea powerplants, shipment terminals and landfills, are to be planned and operated in such a way that they do not threaten fish stocks or biodiversity. In order to realize this, it will be important for both the Sámi Parliament and others Sámi and local fishing interests are given a role in the current decision-making processes"⁷. A prerequisite for meaningful consultations may consist in regulating the investigations prior to the interventions on the interested area. Additionally and fundamentally, the coastal Sámi shall be granted an effective

⁶ Temarapport 2016, Sjøsamenes rett til sjøfiske, Norges nasjonale institusjon for menneskerettigheter, available at <http://www.nhri.no/getfile.php/131698/nim/Nyhet/Temarapport%202016%20-%20Sj%C3%B8samenes%20rett%20til%20sj%C3%B8fiske%281%29.pdf>, visited in August 2017.

⁷ NOU 2007:13 B Den nye sameretten; Utredning fra Samerettsutvalget Del III – kapittel 16-24 punkt 22.5.5.2. Translation of the author.

right to participate to the decisions that regard them and their cultural identity. The vulnerability of all the actions undertaken so far lies in the scarce level of participation of the local peoples as well as by the lack of a political will to effectively decentralise the decisions that are connected to the management of marine protected areas. Potentially fruitful research lines will have to focus on a systematic mapping of the virtuous co-management regimes⁸, where the participation of all the stakeholders is effective and the dialogue with the indigenous peoples and their local knowledge is lively and open. Such an approach will be likely to lead to a meaningful use of comparative data that could offer effective implementing solutions to the co-managed model of marine protected areas.



⁸ On this line, see the example of the marine spatial planning in Scotland as illustrated by Glen Smith and Svein Jentoft, *Marine spatial planning in Scotland. Levelling the playing field?*, in *Marine Policy*, 84, 2017, 33-41.