Frameworks for regulating local natural resource use in northern Sweden and northern Norway – A legislative review.

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Abstract

Northern Europe is often seen as having a specific relation to nature. In this manuscript, the policy and regulatory frameworks in Norway and Sweden are compared when it comes to the scope for local use that is provided by the regulatory frameworks relating to natural resources. The paper analyzes the legal framework for the use of nature and its resources, including hunting, fishing, and reindeer husbandry, with a focus on the Swedish natural resource legislation in relation to the (corresponding) Norwegian Finnmark Act . The study thereby compares the Finnmark Act and the protection it affords local resource users with that in northern Sweden under general Swedish and municipal regulatory systems.

Key words: Local communities, resource use, regulatory frameworks, Finnmark Act.

Introduction

The population in rural areas in northern Europe is often regarded as having a specific relation to nature (e.g., Cruickshank 2009). Rights issues and protection to local resource users in northern Fennoscandia is an issue largely entangled in conceptions that are based on clear distinctions between groups and that have developed to describe firstly situations in areas marked by modern European colonialization.[1] The situation with regards to rights issues and protection to local resource users in northern Fennoscandia is, however, rather marked by a focus on maintaining local rights in relation to the state, and by discussions on locality based on traditional resource uses in regional and local cases (Cruickshank 2009). A prominent expression of this type of rights discussion is the development of the Norwegian Finnmark Act, which transferred 95 percent of the northernmost county land areas to local inhabitants. While the act is founded on the recognition of the Sami as indigenous peoples of Norway, its legislation is ethnically neutral and can be seen as supporting land use for all inhabitants in the area. No similar transfer has been made in neighbouring country Sweden, but in the same way as in Norway, the land is used for various purposes by a range of inhabitants in the Swedish case. Even without such a transfer of rights as the Finnmark Act entails, in Sweden there are a number of rights that are established in various laws concerning, for example, land use, ownership and the right to hunt and fish. For this reason, it is relevant to contrast the rights to natural resources relevant to the population in northern Sweden with the situation created by the Norwegian Finnmark Act.

Considering the long range of historical land use - spread amongst multiple populations - in this area, the aim of the study is to investigate what protection is given to local resource users in northern Sweden under general Swedish regulatory systems compared to the corresponding rights provided to local resource users in northern Norway through the Finnmark Act. Do local inhabitants, of multiple descent, receive protection of their land use rights under legislation in both countries? The focus in the Swedish case is based on northern Sweden (thus including for instance reindeer husbandry rights), although regulation is national, with the aim of clarifying the way in which resource rights are protected “on either side of the border”.

[1] Notably for instance the United States and Australia. See for example, Howe, 2012.

For this purpose, the paper a) analyses the regulatory frameworks in Sweden and Norway regarding the use of nature and its resources, including berry and mushroom picking, hunting, fishing, and reindeer husbandry, with a focus on the Swedish natural resource legislation in relation to the Norwegian Finnmark Act; and b) contrasts the national regulatory frameworks regarding the provided scope for local resource use. Methodologically, the analysis is based on a qualitative legal review of the regulations. This entails studies of relevant sources of law in order to present 'the legal situation' (*de lege lata*) in both countries. The selection of legal material is based on the theory of the sources of law, and includes legal text, case law, and, where applicable, legal preparatory works and legal literature (e.g., Rentto 1996). For the Norwegian case, the focus is on the Finnmark Act, while for Sweden, the selection of sources has been based on identifying the legal sources that target areas comparative to the Finnmark Act; in many cases this has resulted in a focus on national legislation, which is thereby assessed in terms of how well it protects interests in the area in comparison with the protection provided by the Finnmark Act. The study therefore largely involves describing the specific legislation applicable to natural (mainly renewable) resources and comparing the two country's protection of local resource use in their northern regions. In this regard, the work is based on a functional method of comparative law, in this case focusing on the scope for local resource users provided by the different legal systems Michaels 2006:342 and Bogdan 2003:57-63).

Background: Similarities and differences in Swedish and Norwegian resource-use regulatory systems

The neighbouring countries of Norway and Sweden are commonly considered to be rather similar in terms of institutional structures and political and administrative systems based on close cooperation between central and local governing authorities (Fauchald et al. 2014). Important differences are however also present, relating, amongst others, to the countries' time of state establishment. Sweden is among the oldest states in Europe, and since the early 16th century the country has been characterized by a strong central administration (Rokkan, 1987:242). Norway, on the other hand, only gained sovereignty in 1905, representing a history of a relatively weak central power and greater strength allocated to districts and regions (ibid.). These historical conditions are still found to characterize the countries' administrative systems. At the regional level, this is expressed by the state's regional

administration being an integrated part of the Swedish nation-state, while state tasks are more integrated in the regional democracy at the county and municipal level within the Norwegian model of administration (Otterlei and Sande 2010; Rokkan 1987). In terms of natural resource management, Sweden tends to give priority to wilderness conservation, while Norway more clearly aims at combining nature protection with sustainable use by delegating decision-making authority (Fauchald et al. 2014; Falleth and Hovik 2009). Since the 1970s, the aim of Norwegian authorities has been to maintain a dispersed population in northern parts of the country (Stein 2019). Norway also has a regional policy orientation supporting regional development, where employment market policies sustain continued economic development to limit migration from more sparsely populated regions (for example through a system of differentiated employer taxation). In Sweden, the regional focus has been more limited, and migration to the large employment regions in southern Sweden has even been supported (Forsberg and Berger 2015). Sweden joining as an EU member, with Norway remaining outside the EU system as an associated state, seems to contribute to the two countries' different regional strategies.

Another important legal difference between the countries concerns the status of the Sami population, where Norway, in contrast to Sweden, has ratified the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (C169). This type of development can be seen as that which most directly supported the development of the Finnmark Act. The Alta hydropower plant conflict in northern Norway during the 1970s and early 1980s was one of the determining factors in a shift towards investigating Sami legal status in Norway, and a first step towards the Finnmark Act (Ravna 2016). The ILO 169 ratification served to further support the development of the Act, transferring the ownership of previously state-owned land to the areas' inhabitants. The implementation of the Act has, however, been based on the challenge to protect Sami rights within the ethnically mixed local communities of the region, amongst others due to the state's long-term colonization in drawing the northern Norwegian borders (Josefsen et al. 2016). The Finnmark Act rights are thus attributed according to residency and long-term regional inhabitance rather than indigeneity (Ween and Lien 2012).

In both countries, the history of local and regional resource use is significant and have to a large extent developed organically even before the formal development of the states. The first settlements along the coast of Finnmark date back more than 10.000 years, followed by

continuous human presence thanks to various resources in the coastal waters and the abundance of wild reindeer on land (Kleppe 2014). Sami ethnicity became an identity marker approximately 200 years BC (Hansen and Olsen 2004; Ween 2012). Combining fishing, hunting and gathering formed basis for coastal Sami livelihoods up until the 1400s when also small-scale reindeer herding and farming entered the combination of livelihood activities (Nilsen 2009). The Norwegian colonisation of the Finnmark coast started at the end of the 1200s, with a northward expansion in fisheries activities, and from the middle of the 1800s, the Norwegian government set an objective to increase the Norwegian population of Finnmark through agricultural expansion (Pedersen 1994; Lien 2020). Still, making use of the landscape's possibilities, like picking berries, hunting, and fishing, was carried out by both Sami and Norwegians (Lien 2020).

In northern Sweden, settlement has existed since at least Viking times (Ågren 2001; Tegengren 2015), and many of the land uses we now see as indigenous Sami uses have formed over this time. For instance, large scale reindeer husbandry, which is today a pronounced Sami occupation, became a major livelihood for non-settled Sami groups from about the 1600s, at a time when many in these groups turned to fishing or settlement as a result of changes in taxes and trade (Lundmark, undated). Land use covering larger areas than only private property has also been practiced by the population at large, in particular in northern areas. This system supported the use of areas outside the own property (Swe/Nor. "utmark") for instance for hunting, fishing and foraging, as well as for grazing (e.g., Bladh 2008; Tuovinen 2011; Vepsäläinen and Pitkänen 2010). Thus, shielings (Swe. "fäbodar") were used up until the 1920s in Sweden for grazing purposes at utmark areas (Tuovinen 2011). In Norway, subsidies are provided for keeping animals on pasture, to utilize the grazing resources of the utmark and preserve the cultural landscape. In Finnmark, however, only a small part of the land has been, and still is, privately owned. Here, the utmark term, with its agrarian origin, is less representative for the common land of the region, not to mention the term's lack of resonance within Sami ways of relating to the land (Joks et al. 2020).

As illustrated above, Sweden and Norway exhibit notably different population development patterns, state roles and mixed ethnicity than do, for instance, states settled as a part of large-

scale territorial expansion in the age of imperialism.[2] These types of states (notably Canada) have held leading roles in general Arctic development and are states that the EU have now been looking towards in its development of an Arctic policy. This policy is to cover also northern parts of the internal member states Sweden and Finland, as well as neighbouring country Norway. However, observers have here typically commented that Sweden cannot be understood in the same way as frontier-developed settler states such as the US or Canada where a relatively clear delineation is made between a majority and an indigenous population (Keskitalo 2004; 2014). Domestic legislation in, for instance, Sweden and Norway, evidence this, and the Finnmark Act could be seen as a case in point. As a result, it may also in an international context be relevant to review the ways in which land use amongst the population is regulated in northern Norway and Sweden, providing an understanding of comparative land use rights more broadly, as well as an understanding of the complex situations by which land use is impacted in both countries – and the way in which regulation responds to resource user rights amongst the population.

The legal scope for local resource use in Sweden

The Nordic countries have a common legal tradition with legislation and legal systems that are structured in similar ways in the different countries. On a general level, the legal systems in Norway and Sweden are thus similar. In Sweden, however, there is no equivalent to the Finnmark Act, and the starting point for the use of natural resources is the right to property. The property right basically includes three categories of rights: the right to use the property, i.e., to decide how it should be used or not used; the right to exclude others from using the property; and the right to dispose of the property, for example, by selling it or renting it out. 'Property rights' can thus be defined as a general right of disposal which in principle leaves an unlimited number of possibilities of action open to the owner. While the property rights, as negatively determined, in theory includes all conceivable powers in relation to the property, it can be restricted through for example 'positive' legislation. As property rights are constitutionally protected, the purposes for which it is legitimate to limit them must be carefully specified: "The property of every individual shall be so guaranteed that no one may be compelled by expropriation or other such disposition to surrender property to the public

[2] Notably, frontier developed settler states such as the US, Canada or Australia, cf. Howe, 2012.

institutions or to a private subject, or tolerate restriction by the public institutions of the use of land or buildings, other than where necessary to satisfy pressing public interests." (Ch. 2, s. 15, para. 1, Instrument of Government). Such pressing public interests can refer to society's need for land for, for example, nature conservation and environmental interests. Positive restrictions to property rights include legal restrictions arising from environmental legislation, such as area protection and permit requirements for certain activities, and customary law in the form of the right of public access. In addition, property rights are also positively limited by other rights, for example right of use, which include reindeer husbandry as well as hunting and fishing rights.

While the property rights thus give the owner a basic right to the resources that come with the property, other citizens of society are also assured access to and use of the country's natural resources via the possibility to positively restrict the rights. A fundamental feature in the Swedish land-use regime in this regard is the Right to Public Access – also noted in the Norwegian Outdoor Recreation Act. It entails that any individual has the right to, for instance pick berries and mushrooms, or camp shorter times also on private property. In Sweden, the right of public access is set out in the constitution: regardless of what is prescribed about property rights "Everyone must have access to nature in accordance with the right of public access" (Ch. 2, s. 4, Instrument of Government). The rights that follow from the right of public access does thus not need to be granted by any previous holder, but is held latently by the individual, pending use. Legally, the right of public access is therefore usually characterized as a right of use based in customary law (Bengtsson 1985:428). While the right of public access makes it possible for everyone to use nature and (some of) its resources freely, albeit within certain limits.[3] it also entails obligations, for example, a requirement to respect the home peace zone, the extent of which - in addition to, for example, plot boundaries - is also governed by local traditions.[4]

Another significant user right is the Reindeer husbandry. The right follows from the Reindeer Husbandry Act that states that people of Sami descent may use land and water for

[3] According to Ch. 7, s. 1, Environmental Code "Everyone who exercises the right of public access or otherwise stays in nature must show consideration and caution in their dealings with it."
[4] However, as there is no comprehensive legislation governing this right, its content is instead apparent from custom and, e contrarío, via criminal law regulation. See Bäckström, 2015:117; and Bengtsson, 2004.

maintenance for themselves and their reindeer. The right belongs to the Sami population and is based on of the age-old doctrine of immemorial prescription (s. 1, Reindeer Husbandry Act). However, a significant limitation to the right is that it may only be exercised by a person who is a member of a reindeer husbandry organisational unit.[5] While the structure of the rights is basically the same in Norway, with defined reindeer herding areas and limitations as to who can exercise this right, scholars argue that the rights-situation despite this is different as a result of legal development in Norway. Allard, for example, mean that reindeer husbandry organisational units in Norway may "enjoy property legal protection against trespass," (Allard 2015:160) and that the reindeer herding rights in Norway has been strengthened by court practice (Allard 2015). Other people, Sami or non-Sami, cannot hold this specific right in Sweden.[6] This is with the exception of traditional resource use in the "concession" areas of the Torne River Valley, where also non-Saami are allowed to herd reindeer. This is different for instance from Finland, where reindeer husbandry is a right of all population in the area (Baer 2010). Relevant to the cases is thus also that there is no given spatial segregation between groups, but rather that groups are spatially intermingled without clear ethnic boundaries to settlements (related to the historical developments of these areas as described earlier, thus also resulting in that there are no reserves or the like).

In relation to property rights, the Reindeer husbandry rights thus constitute an overlapping rights system; the rights provided to the members of the reindeer husbandry organisational unit largely overlap the landowners' (generally forest property owners) property rights. Accordingly, the Forest Conservation Act restricts forestry with consideration to reindeer husbandry, and sets out that consultation must be offered to concerned reindeer husbandry organisational units before felling in areas where the reindeer husbandry is carried out around the year (s. 20, Forest Conservation Act). Felling can moreover be prevented if it entails a significant loss of pastureland, i.e., so that it affects the ability to hold the number of reindeer allowed, or makes it impossible to collect and move reindeer herds in a customary manner (s. 13 b, Forest Conservation Act). Additional "rights" for the reindeer husbandry organisational

[5] Swe. "sameby", for which the English language term reindeer husbandry organisational unit is used here to highlight that these are usually not a separated settlement as the Swedish term implies, and also not only a community but a regulative structure with specific rights, focused on reindeer husbandry but also including other rights specifically allowed to members.
[6] Out of a total of approximately 20 000 Sami in Sweden, only 2 000 are members of a reindeer husbandry organisational unit (www.samer.se).

unit are hence conferred by the Forest Conservation Act, thus creating a special position for this particular right of use in the forest context.

Another important right of use is the right to hunt and fish. According to the Swedish Hunting Association, there are about 300 000 hunters in Sweden (Swedish Hunting Association). For reindeer-owning Sami, hunting and fishing, together with reindeer husbandry, are part of the traditional use of the land, but hunting is an important and integrated part of the lifestyle also for other inhabitants, especially in the northern parts of the country. Besides this, hunting and fishing are also important for the tourism industry.

Hunting and hunting rights are regulated in the Hunting Act (1987:259). The prerequisites for hunting are stated here, both with regard to who has the right to hunt in various areas and how and when the hunt may be conducted, as well as when the right to hunt can and may be transferred. There are mainly two groups that have a statutory right to hunt. These are partly property owners who, according to Section 10 of the Hunting Act, have the right to hunt on the land belonging to the property, partly Sami who are members of a Reindeer husbandry organizational unit where the right to hunt is included in the reindeer husbandry right (s. 25, Reindeer Husbandry Act). The reindeer husbandry organisational unit's hunting right can be exercised on both private and public land. However, following Section 31 of the Reindeer Husbandry Act, the hunting rights included in the reindeer herding right may not be granted by the reindeer husbandry organisational unit – this right is reserved for the property owner as holder of the hunting right. Other Sami have no specifically regulated hunting rights. The property owner’s right to hunt is also extended to public water bordering the property’s shore, within one hundred meters of the shoreline. Otherwise, it is also specified that, if there is an agricultural lease, the lessee has the right to hunt on leased land. The state also has certain statutory hunting rights, for example on certain crown properties in the southern parts of the country (s. 10 a, Hunting Act) in order to give the head of state (the King or Queen) hunting rights in the specified areas.

The possibility for other inhabitants to engage in hunting is dependent on the transfer of the hunting rights. For the granting of the right to hunt, the general provisions on the transfer of the right of use in the Land Code as well as sections 14-16 in the Hunting Act apply. It follows from Section 3 of the Land Code that the transfer of the right to hunt is to be

considered a specific right of use that is not combined with any other right to use the property. A transfer of the hunting right means that the original usufructuary puts someone else in his or her place (Wichmann 2023). The right to hunt can be granted for a longer or shorter period of time. On public land, hunting rights can be offered to individuals through a system that enables the purchase of period hunting licenses. The hunting license shows that you have paid the wildlife conservation fee and are entitled to hunt in Sweden.

Just like hunting, fishing is an activity that engages many people in Sweden and the right to fish is an important part of Swedish culture. Fishing rights refer to the right to fish for fish, aquatic molluscs and crustaceans (s. 4, Fishing Act). Fishing rights can be public or private. Private fishing rights belong to the landowner and refer to the fish in waters belonging to the property (s. 9, Fishing Act). However, in public waters, i.e., along the coasts and in the five large lakes,[7] everyone is allowed to fish for private use, using hand gear (s. 7 and 8, Fishing Act). For fishing in other waters and for commercial fishing, a fishing license or other permit is required. Fishing rights are also limited by special rules that apply to certain types of fishing.

Both hunting and fishing licenses are typically issued by the state, through the County Administrative Board, also in areas where reindeer herding is carried out. However, in 2009 Girjas reindeer husbandry organisational unit filed a lawsuit against the state to obtain exclusive right to dispose of small game hunting and fishing within the reindeer herding area. Girjas claimed that the reindeer husbandry organisational unit has the exclusive right to small game hunting and fishing in the area, and that the state therefore has no right to grant hunting and fishing rights in the area, but that this right accrues the reindeer husbandry organisational unit. The case was decided by Gällivare district court in February 2016 (first instance) in favor of Girjas (Gällivare tingsrätt 2016). The state appealed the verdict to the Court of Appeal, Hovrätten för övre Norrland,which in January 2018 determined that the reindeer husbandry organisational unit has a better right than the state to small game hunting and fishing in the area, and "since the state has no right to hunt or fish within the area, the state, in its capacity as property owner, may not grant the right to hunt for small game or the right to fish within the area." (Hovrätten för övre Norrland 2018). However, Girja's third request for

[7] See Act (1950:595) on boundary to public water area. The large lakes are: Vänern, Vättern, Mälaren, Hjälmaren and Storsjön.

the right to grant the right to hunt small game within the area without the state's consent was rejected by the court, and the judgment was therefore only partially upheld (ibid.). The verdict was appealed to the Supreme Court.

In the Supreme Court, Girjas highlighted in its claim that the reindeer herding that has been carried out in the area, of which the right to hunt and fish is a part, has resulted in an exclusive right to hunt and fish in the area based on custom or immemorial prescription. The state argued, for its part, that as the owner of the property in question, it holds the right to hunt and fish and thus also the right to grant this right to others. The Supreme Court however upheld Girja's suit and ruled that the reindeer husbandry organisational unit has the right to grant the right to hunt and fish for small game without the state's consent and concluded that: "From what has been said, it follows that the reindeer husbandry organisational unit may grant the right to hunt and fish in the area without the state's consent and that the state may not make such transfers." (Supreme Court of Sweden 2020:226). In its conclusions, the Court notes that Girjas has claimed in the case that the reindeer husbandry organisational unit has a right to allow hunting and fishing in the area and that this right constitutes an exclusive right in relation to the state, and "that the Supreme Court has found that the Reindeer Husbandry Act does not give the reindeer husbandry organisational unit such right, but that a corresponding right – regarding the area in question – has been established through the rights that individual Sami have acquired in the past through claims of immemorial prescription" (Supreme Court of Sweden 2020:227).

The decision, which is a clear success for the Sami, means that the right to small game hunting and fishing within the area in question belongs exclusively to the reindeer husbandry organisational unit, which, however, also has the right to grant hunting and fishing rights to others. The administrative right to allocate certain resources that previously was the responsibility of the County Administrative Board thus now belongs to the reindeer husbandry organisational unit. Several Sami scholars have commented on the ruling in various respects, specifically regarding the issue of land rights, where Allard and Brännström, for example, mean that the decision is important not least because of the precedential value in terms of how other Sami rights claims should be assessed (Allard and Brännström 2020). The Sami Parliament, which is an advisory body to the state, emphasizes that the ruling means an

adjustment of the burden of proof regarding Sami land use – it will be somewhat easier to prove Sami land use in the future (https://www.sametinget.se/143548).

A consequence of the Girjas judgement is that the 50-year-old Reindeer Management Act is under scrutiny. A parliamentary committee that is tasked with submitting a proposal for a new legislation to replace the 1971 reindeer husbandry act was established in 2021. The committee is set to, among other things:

- Assess within which parts of state-owned land reindeer husbandry organisational units, through immemorial prescription, has the exclusive right to allow small game hunting and fishing.
- Decide whether the exclusive right to grant hunting rights only applies to small game hunting or whether it applies to all game.
- Analyse whether a right to hunting and fishing also accrues to the Sami who are not members of reindeer husbandry organisational units, and if necessary, propose regulation or other measures to ensure that right (Dir. 2021:35).

In June 2022, the government, prompted by a statement from the Parliament (Riksdag), gave an additional directive to the investigation which means that, in addition to what follows from the previous directives, the committee must also take into account the culture, traditions, interests and needs of the local population, including the national minority Torne Valley Finns (Swe. "Tornedalingar"),[8] and other residents when it comes to opportunities for hunting and fishing, as well as to other economic activities such as forestry and tourism (N 2021:02). The reason for the Parliament's statement was that the original directives can be assumed to increase, rather than reduce the existing tensions between different interest groups (ibid.).

Thus, while the Girjas case can be seen as developed as a parallel to the cases under the Finnmark Act in Norway, population other than the reindeer-herding Sami are in this case not able to argue rights, despite that similar long term uses as in the Norwegian case exist. The supplementary directives to the investigation also show that in relation to the Girjas case,

[8] One of Sweden's national minorities that includes all speakers of the Meänkieli language in what was previously called Norrbotten's Finnbygd. It is an essentially original minority that arose through the drawing of the border between Russia and Sweden in 1809. Nationalencyklopedins webbplats: https://www.ne.se/uppslagsverk/encyklopedi/l%C3%A5ng/tornedalingar.

there is significant concern regarding that the result of the case by extension may lead to limit access rights to, for instance, hunting and fishing for other local population.

Resource-use regulation in Norway and the Finnmark Act

Norwegian local resource regulations resemble the Swedish legislation, with parallel property rights and user rights covered by acts similar to the Swedish ones, like the Outdoor Recreation Act, the Reindeer Herding Act, the Act on Wild Game and the Act on Salmon and Inland Fisheries. Additionally, however, in the northernmost part of Norway, the Finnmark Act was adopted in 2005 to "facilitate the management of land and natural resources in Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of Finnmark and particularly as a basis for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life" (Ch. 1, s. 1, Finnmark Act). The Act applies to all residents of the county and notes the aims of sustainable management to benefit the residents of Finnmark, but also that management should protect Sami culture as natural resources constitute the material basis for this. The Act furthermore recognizes collective and individual rights of the Sami through long established use of land and water, but also that other inhabitants in Finnmark may have developed such rights. To these ends, the Act transferred the ownership of formerly state appropriated commons of Finnmark, amounting to 95 percent of the county's area, to the Finnmark Estate who administers the land and natural resources on behalf of the inhabitants. The management bord is appointed by the Finnmark County Council (three seats) and the Sami Parliament (three seats), making sure that both Sami and non-Sami inhabitants are equally represented (Broderstad et al. 2020). There also exists a Finnmark Commission to investigate rights to land and water based on e.g., prescription or immemorial usage, and a Land Tribunal for Finnmark for any dispute settlements (ibid.).

Among the Act's main purposes is the aim of providing the population of Finnmark a greater influence on the management of previously state-owned land, where the local population is considered the strongest right holder group regarding natural resource use. Different levels of rights are therefore established in relation to how closely one is associated with the various resources.

At the most comprehensive level of rights, all residents of a municipality have the right to use certain natural resources within the municipality's borders, including egg and down collection,

and to carry out limited logging. An agricultural holding has the right for grazing on the Finnmark Estate land with as many animals as the winter grazing ground of the property can hold (Bull 2008). All local groups are assessed to have rights in use of Estate land, in relation to the use established by their local associations (bygdelag), fishing associations and reindeer husbandry organisational units (siida) (Ravna 2008). At the next level, all residents of Finnmark have the right to hunt, fish, take out wood for local use, and pick cloudberries.[9] Other berries, as well as mushrooms and herbs are regulated by the national Outdoor Recreation Act and are free for all, if the gathering is carried out considerate and thoughtful. At the most general level of rights, the public – including those who do not live in Finnmark – have access to hunting and catching small game and fishing with rod and line, and to pick cloudberries for their own household (Ministry of Justice and the Police 2005). However, these types of rights cannot be exercised at the limitation of the rights of those living in Finnmark and use external to Finnmark residents may for this reason be delimited (Bull 2008).

Simultaneously, national regulation still applies on the Finnmark Estate land, like the Right to roam under the Outdoor Recreation Act and the municipalities' spatial planning authority under the 2008 Planning and Building Act. This Act is the municipality's most important tool for managing land use within its borders, containing rules on spatial planning and construction proceedings. Furthermore, the Norwegian government can adopt regulatory plans if necessary for carrying out measures of great social importance.

Several court cases have followed the Finnmark Commission's investigations of usage and ownership rights of the local population, Sami as well as non-Sami, in relation to the ownership by the state that predated the development of the Finnmark Act (Ravna 2015).

Amongst cases so far heard by the Land Tribunal for Finnmark the Unjárga-Nesseby case is notable. In this, the Unjárga-Nesseby village board claimed rights not only to *use* but also to *manage* the renewable resources in a local valley (instead of the Finnmark Estate doing this). This was denied in the Finnmark Commission, who argued that the management should

[9] Historically, the picking of cloudberries (*Rubus chamaemorus*) for sale and subsistence has been of great importance to Sámi livelihoods. Even today cloudberries are commonly considered the best of berries among Finnmark inhabitants, Sami and non-Sámi alike.

remain in the hands of The Finnmark Estate as the rightful landowner despite the population's extensive and intensive immemorable use of the area. The Tribunal justified its support in favour of the village board on the grounds that people of Unjárga-Nesseby had acquired the right to control the resources within this area before it became subject to Norwegian state property. The Finnmark Estate appealed to the Supreme court, which supported that land rights were to lie with the Finnmark Estate, which however had to consider local rights of use (Supreme Court of Norway 2018; Broderestad et al. 2020). The Court did not consider the villagers' use of the area exclusive since people of neighbouring communities also could refer to comprehensive and prolongated use, and emphasised that the state's control of the land had been transferred to the Finnmark Estate, and that there was no historical evidence of landowner-independent management of the area. In conclusion, the basis for granting the village board management rights was considered insufficient (Supreme Court of Norway 2018).

The Finnmark Commission's recent investigation report on rights to land and water in the Kárašjoga-Karasjok municipality draws a different conclusion than those found in the previous reports from Unjárga-Nesseby and the other investigated areas this far (Ravna 2021). In the Kárašjoga-Karasjok case, the majority of the Commission's members reason that the residents' use of the area, through hundreds of years, corresponds to not only holding user rights but also collective property rights (Finnmark Commission 2019; Ravna 2021). As a basis for this conclusion, the Commission highlights how the residents have exercised a significant degree of governance and management of the land, despite similar nature practices being identified in previous investigated areas without the same emphasis (Ravna 2021). Furthermore, the considerable extent to which residents of the area have been Sami-speaking is given weight in the Kárašjoga-Karasjok case, but not in the Unjárga-Nesseby case (ibid.). Ravna reasons that the challenges associated with the Commission's Kárašjoga-Karasjok conclusion will be of political and administrative importance:

> *Although the Government and the Parliament have assumed that all former state property in Finnmark will not necessarily be owned by the Finnmark Estate after the legal mapping has been completed, they have not proposed or adopted arrangements for managing common land that is not owned by the Finnmark Estate. This will require a steady hand for landowners who get their right*

recognized, for the Finnmark Estate, and probably also for local and regional politicians as well as legislative authorities (Ravna 2021, authors' translation).

The Finnmark estate did not approve of local, collective ownership of the Kárašjoga-Karasjok area, and two lawsuits were brought before the Land Tribunal whose verdict, determined by three against two members, stated that Kárašjoga-Karasjok residents hold collective property rights to the municipality's land. The Finnmark Estate has decided to appeal the Land Tribunal's verdict to the Supreme court, due to the outcome's great significance also for other Finnmark municipalities. Meanwhile, the Finnmark Estate and the Unjárga-Nesseby village board collaborate to develop a shared process for a local participation and co-management of the Finnmark Estate land, involving all inhabitants of the municipality, regardless of ethnicity.

Discussion and conclusion

In this paper, the Finnmark Act and comparable relevant Swedish legislation has been examined to discuss the rights to natural resources that each system provides to the inhabitants of the areas covered by legislation. The study has highlighted the question of what protection is afforded local resource users in Sweden under the more general Swedish regulatory systems compared to the more specific Norwegian Finnmark Act.

As has also been noted in literature and in the inception of the Finnmark Act, the legislation does relate specifically to the rights of the Sami, although at the same time acknowledging – and providing a basis for claims – for all inhabitants. In the Swedish regulatory framework, the scope for local resource use can on the one hand be seen as quite extensive: the availability of natural resources, and the possibilities to restrict private property rights in favor of various public and private interests means that the individual has extensive access to, and relatively large freedom "to use" nature and its resources. The right of public access, which is also highly relevant in the Norwegian context, provides – from an international perspective – rather unique opportunities for people to engage with nature; local resource use in terms of berry- and mushroom picking, hiking, camping etc. can freely be undertaken. Also other, more organized resource use, such as hunting and fishing, are institutionally established, with systems for period rights purchase. On the other hand, the Swedish institutional system for land- and resource use, with large parts of private ownership, can also offer significant

resistance in certain respects; both previous and more recent literature on northern Norway and northern Sweden exemplifies how (national) development plans may have negative implications for reindeer husbandry and disturbing effects on local livelihoods, natural resource use and degree of flexibility in local living (Brox 1966; 2006; Rybråten et al. 2018; Normann 2020; Cambou 2020; Bjärstig et al. 2022; Riseth and Johansen 2022).

The type of processes that in Norway resulted in the legal framework of the Finnmark Act, can be seen as clarifying that the whole population living in an area has a right to the land's resources as a result of historically established entities, for instance through peoples' use of the land. The result does here both support indigenous rights but also general rights, in a way that is not evident in broader global or northern (or "Arctic development") context, where rights are often in relation to international development categorized into indigenous claims only.

While unresolved matters still remain, the Norwegian Finnmark Act can thus be seen to allow for multiple claims to be heard whilst also acknowledging indigenous peoples' rights to a greater and more immediate degree. In this, a significant difference between the Swedish and the Norwegian case is the right claims that the Finnmark Act process opens for, enabling inhabitants of different descent to bring forward their relations to nature and its resources. As more cases like Girjas are expected to be forwarded within the Swedish rights context, the Norwegian example could be looked to for the way it is suggesting a means for managing potential conflicts between groups regarding the possibilities to forward claims of historically established use.

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