

5.2 The right to traditional resources and development programs

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DOI: <http://dx.doi.org/10.7557/5.3213>

Introduction and some reflections on exploitation of resources in the North

In this chapter, I intend to say a few words about development programs, the vital importance of securing traditional natural resources for those who always have used them, and addressing an example from Norway – concerning fisheries – which is not in accordance with that principle. But first, a few words about the general policy towards northern, Arctic, and Indigenous societies, the way resources have been exploited here, and how our regions have been looked upon in the different Arctic states. It is no secret to any of us that the northern parts of the Arctic countries today often are characterized as regions in need of subsidies from the south. On the other hand, it is not taken into account that people living in the north and their local communities, are facing a situation where their traditional resource base to a large extent is getting out of their own control. That is true concerning both maritime and terrestrial resources.

It does not count that Indigenous peoples of the North have been living on the shores, along the ice edge, along fjords and river valleys, in the mountains, and in the forests of the Arctic and subarctic area for more than ten thousand years. And why have they been able to stay and survive for such a long time? It was because they did not exceed the limits of nature's sustainability. Their management of the renewable resources was normally adapted to the carrying capacity of nature.

The competition for traditional resources is not a new phenomenon. People in the North faced that situation already for hundreds of years, when people from outside started exploiting both the renewable and non-renewable resources in the North. Those who came had one single ideology: to maximize economic profit for themselves. Different species of mammals and fish were almost entirely eradicated in some ocean waters. But those responsible for these acts



could move away from what they called a frontier area, and leave the negative consequences to the peoples who had been living there from time immemorial – and who still wanted to do so

In that respect - let me remind you about the firm connection between Indigenous peoples and their home communities – an observation from Western Finnmark, made by an outstanding eighteenth century author, Knuud Leem. He simply stated that: “A Sámi is as little willing to leave his domicile, as a person sentenced to death is to go to the scaffold”.

In many Indigenous areas, it has been made more and more difficult to stay in the local communities where people were born. One of the reasons is that people are getting less access to make a living off the traditional resources. An example is the coastal Sámi of Norway. The marine resources have been the most important basis of existence along the coast and fjords of northern Norway for more than 10-12,000 years. In fact, Sámi fishermen and hunters are the first people ever described in a written source, on the coast of northernmost Norway, at the end of the 9th century.

During those 10-12,000 years of settlement, and until the last few decades, people living along the northern coast of Norway had an unconditional *right* to fish in their local and regional waters. During the 18th and 19th Century, there also existed several formal regulations which ensured that the inhabitants of the county had the prerogative to fish in the nearby waters. What in fact has happened within the management of fisheries is that a large part of the coastal Sámi population, along with other small scale fishermen in the same region, gradually have lost the *right* to make their living off the traditional local and regional fish resources. They have always pursued a sustainable fishery, but this ideology of sustainability gave no reward when a new fishery regime was introduced. In 1989, those who had acted according to the principle of not overexploiting the cod stock were excluded from getting their fair share when the so-called vessel quotas were introduced. They had not fished enough!

Since then the quotas have been made tradable, privatized, and thereby increasingly become a private profit making commodity. According to the Sami Parliament of Norway, established in 1989, those regulations have disregarded both customary and Indigenous Sami rights to



traditional fisheries in the local waters. This development poses qualitatively new challenges to the coast Sámi and other small-scale fishermen with regard to maintaining culture and settlement structures in the coast and fjord areas in Norway, north of the Arctic Circle.

Another distinguishing feature of the fishing history of Finnmark, and other North Norwegian sea districts for more than one hundred years, is the intense struggle of the fjord populations to secure local fishery resources against overexploitation from outsiders using big vessels and ships. In this struggle, they usually had to fight both government fishery agencies as well as those who had economic interests in maintaining this kind of non-sustainable fishery.

Until recent years, the big vessels and the purse seine ships had unrestricted access to the fjords to catch herring and capelin. It is easy to understand that when the capelin and herring were swept away – species which are the food basis of the important cod – that stock would leave the fjords, too. The outcome was that the fjord fishers with smaller boats were left empty-handed. Likewise there has also been a very strong local resistance among the public and local authorities, against the big purse seiners catching coal fish in the innermost parts of some fjords in Finnmark. The resistance against the use of Danish seine, and automatic long lines in the fjords, has also been strong.

This kind of exploitation of fjords and local waters for generation after generation has had grave consequences for local fishermen with smaller boats, many of them being Indigenous Sámi or belonging to the *kven* national minority. It is a fair guess that this fishery policy is the reason why many coastal Sámi communities have been deserted, and large fjord areas in the north are left with no inhabitants. However, during the last ten years things have been improving and the fish stocks in the fjords have got better protection from being depleted by the fishing ships with an enormous catching capacity.

Over the last few decades, Norway has adopted a new and supportive policy towards Sami culture, and has also in a proper way promoted Indigenous rights and issues internationally. Therefore, it is likely that this new attitude from the authorities, combined with the vigorous work of the Sámi Parliament, has resulted in a better understanding of not overexploiting the fjords. Anyway, there still are big unsolved questions: the basic fundamental *right* to fish.



People without rights

The fishing rights questions for Finnmark were in 2008 clarified by the Coastal Fishing Committee for Finnmark (*Kystfiskeutvalget*), with the honourable professor Carsten Smith as the chairperson. (Norwegian Official Reports 2008:5, *The Right to fish in the Sea along the Coast of Finnmark*). The committee proposed enacting an Indigenous and regional *right* to small-scale fisheries in the county of Finnmark:

- Everybody along the coast and fjords in Finnmark, should have a *right* to fish adequately to make a decent living for a household, without having to buy a quota.
- The quota should be personal and non-tradable.
- The basis of this *right* was historical utilization and international and Indigenous law.
- The *right* should be independent of fishery regulations, but sustainable use had to be taken into account.
- This *right* should be formalized in a separate act.
- Furthermore, if it was necessary to limit the fishery, coastal Sámi fishing-activity should have the prerogative.
- People along a fjord should also have a stronger fishing-right *there*, than others in this regard. Outside the fjords, also fishermen from other regions should have access.

However, the resentment to changing the pattern of tradable quotas established over the recent decades, and returning some of the fishing *rights* back to the coastal Sámi and the local communities, was strong. The consultation round after the report from the Coastal Fishing Committee showed that many agencies and organizations wanted the prevailing system to continue. The refrain was that neither Indigenous rights nor use based on time-immemorial prescription, had created any fundamental fishing-right for the Sámi or other inhabitants of Finnmark. Some government bodies and influential organizations made strong efforts to cement the current situation, claiming that there are no other fishing rights than such which could be bought by those who could raise the necessary capital. The Attorney General was among the government bodies being extremely negative to the Committee's conclusion that people in Finnmark possess a *right* to fish.

On the other hand, the main principle stated by the Committee, that people in Finnmark have a legal *right* to fish in the fjords and along the coast of the county was supported by most



municipalities in Finnmark, the county council of Finnmark, the Sámi Parliament of Norway, and other institutions.

Updating

At Gargia conference in 2010, I was still optimistic and expressed that *it will be no more than a scandal if the proposals from the Committee are rejected. The legal basis of formalizing the rights should be very safe.* Those were *use from time immemorial* together with *Indigenous and minority rights*. In that respect, I pointed at a few older law measures, too. Among those was an Act from 1775, still being Norwegian law, where the people living in Finnmark were given the priority to fish in the waters around the county. Another important document I pointed at was the UN declaration on Indigenous rights from 2007.

I must admit that my optimism was weakly founded, taking into account what happened soon after the general election in September 2009. Then the Government decided not to follow up the main proposals from the Coastal Fishing Committee. The conclusion of the Government was that people in Finnmark have no basic legal rights to sea fisheries – quite in accordance with advice from the Attorney General. Anyway, it was announced there would be a continued process on the proposals from *Kystfiskeutvalget* (The Coastal Fisheries Committee for Finnmark).

On that ground, there were established consultations between the Ministry of Fisheries and Coastal Affairs and the council of the Sámi Parliament. Those consultations went on until May 2011. Some limited results were agreed on, but the Government maintained that the population along the fjords and coast along the northernmost Norway had no rights to sea fisheries – be it on the ground of immemorial usage or Indigenous rights.

The plenary meeting of the Sámi parliament dealt with the consultation results June 9, 2011 – The Right to Fishery in coastal Sámi areas. The majority could join the concrete elements which were agreed on, but could in no way accept the Government's rejection of the basic rights. The claim was that these had to be dealt with in the announced Bill about Sámi fisheries. The plenary majority especially mentioned the Lap Codicil of 1751, and the abovementioned internal Act from 1775 which granted people in Finnmark a prerogative to fish in the local



waters, the decision of the International Court of Justice (1951) in the fishing limit case between Norway and Great Britain, and the UN declaration on the rights of Indigenous peoples (2007). On the other hand, a substantial minority could not support the result at all, and claimed that the Sámi Parliament should involve international human rights fora.

The concrete results of the consultations between the Sámi Parliament and the Ministry of Fisheries, which the Sámi Parliament had dealt with, were presented to the Norwegian Parliament in Bill 70 L (2011-2012) March 16, 2012. There it was – in favour of small-scale fishers – proposed to make minor amendments in three specific acts, although it was maintained that the practice of Norwegian fishery administration was fully in accordance with international law. Concerning the legal basis of fisheries, the Government still denied that people in Finnmark or others in the north had any right to fisheries on the ground of ancient historical use. Neither was such a right created by international Indigenous law or a combination with that and historic usage. In the Bill, the Government neither did explicitly comment on any of the specific acts, decisions or declarations, which the plenary of the Sámi Parliament had mentioned as being of special importance.

One of the arguments for not accepting that the coastal Sámi population had any protection from international human rights instruments concerning minorities, was that their way of fishing was defined as not differing from other groups. The Bill pointed at Article 27 (protection of the culture of minorities) in the UN convention on civil and political rights (1966), and stated that there was no legal source basis for interpreting that article as a protection for industries which could not be regarded as traditional or culturally specific. It was in fact the same as the Attorney General had come up with during the hearings, namely that it is doubtful whether the obligations of the state goes any further than protecting the practice which is specific for the culture.

The Bill 70 L (2011/2012) from the Government was debated in the Norwegian Parliament – Stortinget - on June 4, 2012: Recommendation 336 L (2011-2012) from the Standing Committee on Business and Industry. The principle laid down by the Government that there are no basic, customary or Indigenous rights to fisheries in the north, was unanimously approved by the Parliament. The minority parties even expressed their thankfulness to the Government for having cleared the stage for unsolved questions, and that the Bill gave good clarification for the



fishing fleet (Read: Thanks to the Government for stating that people in the north have no basic rights to fisheries).

The majority of the Parliament – the Government parties - adopted the proposals from the Government about amendments in a few acts, meanwhile the minority parties, only with minor exceptions, rejected the proposed concrete amendments.

One of the elements adopted was that the act about participation in fisheries should be practiced according to international law concerning Indigenous peoples and minorities. Another amendment was that persons living in Finnmark, and in certain municipalities with Sámi settlements, in the counties of Troms and Nordland, should have the right to fish cod, haddock, and coalfish with conventional fishing gear. But to obtain such a right you should own an officially registered fishing vessel under 11 metres, and be registered as fisher in the so-called fishery census (a formalizing of prevailing practice). Furthermore, in the act concerning management of wild living marine resources, it was opened up for establishing an advisory fjord fisheries committee for the three northernmost counties – Nordland, Troms, and Finnmark. Another amendment in the mentioned act was that Sámi interests should be duly taken into account when allotting quotas and other ways of managing the wild living marine resources.

In the Finnmark Act from 2005, it was laid down that a commission should be established, to clarify whether people had existing rights to land and water, on the ground which the Finnmark estate then took over from the state. When the Parliament dealt with the Sámi fishing issues in 2012, the mentioned Commission was given an additional mandate, namely to clarify claims of collective or individual rights to fishing grounds in sea and fjord areas in Finnmark – If anybody with legal interests came up with claims like that. During the amendments in 2012, the Finnmark Commission was given a clear mandate in that matter.

As a part of the law package it also was decided that fjord lines should be established, where fishing vessels over 15 metres should have no access – but, with the possibility to make exceptions. And that 3,000 tons of cod should be transferred to the so-called open group, consisting of fishing vessels with no quota of their own, in Finnmark and other Sámi areas in Northern Norway.



These measures look positive, but the reality is that there are no guarantees for their permanence as long as the principle of basic rights built on immemorial usage (10-12,000 years) is totally rejected, and the coastal Sámi are defined as having no protection of their Indigenous rights under international law. It means that the law paragraphs amended in 2012, can be changed overnight if a new political majority finds it appropriate.

Community development

We all know that the state puts in a lot of money to the north, under the umbrella regional development policy, and many of the local community development programs are financed by money from that umbrella. The aim of many of these programs is often to “learn” people how to make new jobs. Of course, there is a need for new jobs when the traditional basis of living is undermined, e.g. when people no longer have their inherent access to make an adequate income from the fish resources along the coast and fjords where they live. And I am quite sure you will find many similar examples in other northern areas.

What new and innovative options could be developed in a fishing village on the coast or in a small fjord community, which has been almost totally dependent on the fisheries in nearby waters? Maybe some of the answer is to be found in the strong decrease of population in many fishing communities. Not only have they experienced loss of quotas among many individuals living there, but some of them have also lost the so-called trawler quotas. Those quotas were originally given to specific trawler companies under the condition that the quotas, the catch, should be landed and processed in certain communities, thereby maintaining and creating jobs on land. Experience has shown that those arrangements have been very weak. We also have experienced that some municipalities have taken the companies which have not fulfilled their deliverance obligations to the court, with no result, and with heavy expenditures for the municipal budget as the final outcome.

Those communities have – for hundreds and thousands of years had the sea, the fish, and other marine species as the main basis of their living and well-being. Now, during a period of a few decades, that has changed entirely, facilitated by official regulations and measurements. In settings like that it is appropriate to ask one question concerning community development: Are



job-making programs in communities which have been negatively exposed to the effects of the new fishery policy some kind of agent activity – relieving the bad consciousness of the authorities (at least it should be bad) for a policy which has put those communities in a need of “artificial” help to safeguard their existence.

From Greenland, I have heard an interesting name about outsiders working within community development programs. They are simply called file animals – a concept denoting persons coming from Denmark, making some notes, leaving, and filing the report. I don't claim that being the general picture, but anyway I am quite convinced that many of us have met representatives resembling the file animals from Greenland.

If the ancient northern right to fish is not secured, and the deliverance obligations of the trawlers are not fulfilled, more and more of the local communities which have been depending on fisheries, will be in need of assistance from outside to create new jobs. And again we will hear the outworn refrain about the northern region as a consumer of subsidies. Is that fair, when the working places in the fishing boats and thereby in the processing industry, are removed because of official regulations?

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