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# Mineral Activities on Sámi Reindeer Grazing Land in Sweden

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## Abstract

Securing seasonal-based land areas is a key issue for Sámi reindeer herders. Loss of lands, to for example mineral activities, is probably the single greatest threat to reindeer herding in *Sápmi* today. In Sweden this development can be seen in light of the Government's Mineral Strategy from 2013 where the Government declares its interest to strengthen Sweden's position as a leading mining nation in the EU. This article highlights some lacks in the Swedish Minerals Act in question of protection for Sámi reindeer herders' property rights and questions the value of the protection for land areas of national interest for reindeer-herding according to the Swedish Environmental Code.

## 1. Introduction

The area in which the Sámi have herded reindeer in Sweden since time immemorial is called the *reindeer herding area*.<sup>1</sup> It is enormous, covering approximately a third of Sweden's total area from the high north to the southern mountain range.<sup>2</sup> The area, accommodating reindeers needs and different herding activities, is highly extensively used but of essential importance for the survival of Sámi reindeer herding.<sup>3</sup>

The bedrock in the area has significant geological potential consisting of concentrations of economically valuable minerals.<sup>4</sup> Statistics show that 183 new exploration permissions and 6 exploitation concessions were granted in 2012, the vast majority of which were located within the reindeer herding area.<sup>5</sup> In addition, the number of iron ore mines in Sweden can increase from 16 today to 30 within 6 years.<sup>6</sup> Sweden is internationally seen as an attractive country for investment in mining activities. Such a projected increase is not surprising, because, as compared to other countries, Sweden has a good investment climate with low taxes on minerals and good institutional conditions for mining activities. This was expressed in the Swedish Mineral Strategy in 2013, in which the Government also declared its interest in strengthening its position as a leading mining nation in the EU.<sup>7</sup>

This article aims to highlight some practical and legal challenges associated with the establishment of mineral activities in the Swedish reindeer herding area. I will not do any deeper legal analyze, but point at some incompatibili-

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<sup>1</sup> Reindeer Herding Act (1971:437), Section 3.

<sup>2</sup> The reindeer herding area in Sweden is part of *Sápmi*, the territory in which the Sámi people traditionally live and which also covers parts of Norway, Finland and Russia.

<sup>3</sup> Ealát, Reindeer Herders Voice, (2009), 27-31.

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<sup>4</sup> Statistics from <http://www.bergstatsen.se/lagar/bakgrund.htm> (last visited February 3<sup>rd</sup> 2014) and Sveriges Mineralstrategi, 2013, 9-11.

<sup>5</sup> Bergverksstatistik 2012, Swedish Geological Survey, 38-39.

<sup>6</sup> Sveriges mineralstrategi, 2013, 11.

<sup>7</sup> Ibid, 3, 11-12 and 14. See more about Sweden's competitiveness in an international perspective in also *Utvinning för allmän vinning – en ESO-rapport om svenska mineralinkomster*, Rapport till Expertgruppen för studier i offentlig ekonomi, 2013:9.

ties between Sámi reindeer herders property and cultural rights, on the one hand, and the Swedish Minerals Act (1991:45) and the Swedish Environmental Code (1998:808), on the other, where the latter constitute the national legal framework in questions of concessions and permits for mineral activities in Sweden.

## 2. Sámi reindeer herding – in practice

Reindeer herding is a traditional Sámi livelihood and a vital part of the Sámi culture.<sup>8</sup> In Sweden, reindeer herding is organized into 51 different Sámi communities, a type of local organizations based on an existing Swedish association model.<sup>9</sup> Each community has outer geographical boundaries and varying numbers of reindeer and reindeer herding family groups, *siidas*.<sup>10</sup>

Reindeer herding is characterized by a close contact with nature; it represents a complex coupled system of interchange between animals and humans. In many of the Sámi communities the reindeer migrate from the western parts, close to the Norwegian national border, to the eastern coastal regions, and back again throughout the year.<sup>11</sup> Every land area has its own suitability for reindeer based on their natural and biological needs.

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<sup>8</sup> See English summary on pages 33–51 in SOU 2006:14 where the historical background and legal basis for Sámi reindeer herding in Sweden is described.

<sup>9</sup> Prop. 1971:51, 41.

<sup>10</sup> *Siida* is a Sámi word for a traditional nomadic community. See a more detailed description of the traditional reindeer herding *siida* in article Land Usage and Siida Autonomy by M. N. Sara in *Arctic Review on Law and Politics*, vol. 3, 2/2011.

<sup>11</sup> See more about the system of interchange between reindeer and humans in M.N. Sara, *Reinen-et gode fra vinden*, (2001), 15-80. In some Sámi communities, reindeer herders since time immemorial have crossed the Swedish Norwegian border with their reindeer. The border-crossing reindeer herding customs were first codified in the Lap Codicil from 1751, see *Första Bihang eller Codecill till Gränse Tractaten emellan Konunga Rikerne Sverige och Norge. Lappmännen beträffande*, section 10.

By and large, the herders follow the reindeer, and the grazing areas within a community can thus be divided into many small land areas that accommodate the different needs of the reindeer and the different herding activities. For example, there are specific areas for calving with female reindeer migrating to the same place every year in order to calve. There are also specific areas for summer grazing and calf marking. Beneficial late spring and summer grazing conditions are very important for reindeer, especially if the winter and spring grazing conditions have been difficult.<sup>12</sup> Herders express that winters have become increasingly problematic because of climate changes; rainfall during wintertime creates a hard ice layer on the ground through which reindeer cannot dig to get food.<sup>13</sup>

There are also areas for autumn grazing, slaughtering activities and rutting. In the early autumn, many Sámi slaughter reindeer while the reindeer are in very good condition, before the rut period starts.<sup>14</sup> When snow comes, the herders divide the reindeer into smaller herds, usually into *siida* herds, that are spread out in the inland, and for many, in the denser coastal region in the east. Hence, there are also specific areas for grazing winter time.<sup>15</sup>

All different seasonally based areas comprised of grazing lands, old migration routes and areas for calving, marking, rutting etc. are needed to conduct Sámi reindeer herding and require vast areas to sustain the herds.

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<sup>12</sup> N. Kuhmunen, *Rensköteln i Sverige förr och nu*, (2000), 15 and 88.

<sup>13</sup> See for example [http://samer.se/GetDoc?meta\\_id=4369](http://samer.se/GetDoc?meta_id=4369) (last visited February 4<sup>th</sup> 2014).

<sup>14</sup> N. Kuhmunen, *Rensköteln i Sverige förr och nu*, (2000), 37-38

<sup>15</sup> *Ibid.* 53–54. See more about Sámi reindeer herding rights in the coastal region in the Swedish Nordmaling case, *NJA* 2011, s. 109.

### 3. Mineral activities

For a long time, the Swedish mining industry has been entirely dominated by state ownership.<sup>16</sup> *Luossavaara Kiirunavaara Aktiebolag (LKAB)*, which is a huge state-owned underground mining company, was founded in 1890 and is one of Sweden's oldest industrial companies. It is a world-leading producer of processed iron ore products for steelmaking with customers all over the world. *LKAB* is very important to Sweden as a source of income for the state and as a creator of employment opportunities in the northernmost region.<sup>17</sup> It is located in the city of *Kiruna*, within *Laevas* and *Gabna* Sámi communities.<sup>18</sup>

As profitability in mining has increased, more and more private companies have become interested in mining.<sup>19</sup> In the summer of 2013, a UK-based mining company started a drilling program in *Gállok*, a traditional reindeer herding area within *Jáhkkågaskka* and *Sirges*, two Sámi communities in *Jokkmokk* municipality. The drilling activities met opposition in form of demonstrations by local reindeer herders, the local people, environmental activists and others.<sup>20</sup> During the autumn of 2013, the intense debate

about *Gállok* escalated; the critique was no longer only about mineral activities in that specific area, but on consequences for Sweden as a whole, economically and environmentally.<sup>21</sup> On one hand some contend that large international mining companies are exploiting the country, making huge profits and leaving devastated nature behind.<sup>22</sup> On the other hand, supporters argue that the mining industry creates jobs in rural areas and contributes to important technological developments.<sup>23</sup>

Besides the Mineral Strategy also the Minerals Act has been a core subject in the debate. Opponents assert that the act is far too liberal, because, for example, an exploitation concession *must* be granted if a deposit has been found which can potentially be utilized on an economic basis, and the location and nature of the deposit do not make it inappropriate to grant the applicant the concession.<sup>24</sup> Sámi reindeer herders express the act does not seem to comply with

<sup>16</sup> Utvinning för allmän vinning – en ESO-rapport om svenska mineralinkomster, Rapport till Expertgruppen för studier i offentlig ekonomi 2013:9, 3–4.

<sup>17</sup> <http://www.lkab.com/en/About-us/Short-Facts/> (last visited February 3<sup>rd</sup> 2014).

<sup>18</sup> See examples of how planned mining activities in the area affect reindeer herding in Environmental Impact Assessment (EIA) Kirunaprojektet, Hur påverkas rennäringen av förändringar i Kiruna, BRNT 2006:12. An EIA is required for projects that may have significant environmental effects, see the Swedish Environmental Code (1998:808), Chapter 6, section 1.

<sup>19</sup> Utvinning för allmän vinning – en ESO-rapport om svenska mineralinkomster, Rapport till Expertgruppen för studier i offentlig ekonomi 2013:9, 3–4.

<sup>20</sup> See for example <http://sverigesradio.se/sida/avsnitt/285501?programid=1300>, <http://www.nrk.no/sapmi/tilspisset-situasjon-i-kallak-1.11177269> (last visited February 18<sup>th</sup> 2014) and <http://www.dn.se/debatt/sverige-skanker-bort-tillgangar-i-sameland/> (last visited February 18<sup>th</sup> 2014).

<sup>21</sup> See for example the SVT documentary *Kampen om gruvan* about some of the debate from 2013 on mining in Sweden here <http://www.svt.se/nyheter/amne/?tag=tag:story@svt.se,2011:UG-Kampen-om-gruvan> (last visited February 28<sup>th</sup> 2014). See also an example of a debate article on this issue here; <http://www.dagensarena.se/opinion/skandalos-behandling-av-norrland/> (last visited April 8<sup>th</sup> 2014).

<sup>22</sup> Utvinning för allmän vinning – en ESO-rapport om svenska mineralinkomster, Rapport till Expertgruppen för studier i offentlig ekonomi 2013:9 and <http://www.svd.se/opinion/brannpunkt/satt-granser-for-exploatering-8997570.svd> (last visited February 18<sup>th</sup> 2014).

<sup>23</sup> The report Utvinning för allmän vinning – en ESO-rapport om svenska mineralinkomster, Rapport till Expertgruppen för studier i offentlig ekonomi 2013:9, 3. See also a debate article by the Swedish Minister for Enterprise on the advantages of mineral activities here <http://www.dn.se/debatt/hoga-miljokrav-pa-gruvor-motiverar-lag-mineralavgift/> (last visited April 7<sup>th</sup> 2014).

<sup>24</sup> See Minerals Act (1991:45), Chapter 4, Section 2 where it is stated that a concession shall be granted if a deposit has been found which can probably be utilized on an economic basis and the location and the nature of the deposit do not make it inappropriate to grant the applicant the concession applied for.

the international standards in the case of mining activities on indigenous peoples' land areas when for example the principle on required free, prior and informed consent from reindeer herders affected by planned mineral projects is not implemented.<sup>25</sup> The principle provides that extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent.<sup>26</sup> The principle is stated in article 10 in the United Nations Declaration on the Rights of Indigenous Peoples, UNDRIP, an international instrument that Sweden has voted in favour.<sup>27</sup> Although it has a non-binding nature, it has been considered to have the potential effectively to promote and protect the rights of the world's indigenous peoples.<sup>28</sup> Reindeer herders' property rights are also protected by the Swedish Constitution and the Swedish Reindeer Herding Act.<sup>29</sup> But when decisions on expropriation for mineral activities are made firstly out from the Minerals Act, the protection in for example the Reindeer Herding Act seems to have a minor practical significance.<sup>30</sup>

#### 4. The Rönnbäcken Case

The Rönnbäcken case illustrates some practical and legal challenges associated with the establishment of mineral activities in the Swedish reindeer herding area. The case started when the

Chief Mining Inspector in Sweden in June 2010 and October 2012 granted exploitation concessions to a private mining company in the area of *Rönnbäcken*, a traditional reindeer herding area within *Vapsten*, a Sámi Community (hereafter *Vapsten*). The concessions were granted according to the Minerals Act, Chapter 8, Section 1. *Vapsten* appealed the decisions to the Government and requested for an oral hearing and for the Government to obtain a statement from the Sámi Parliament. The Government, which handled the appeals jointly according to the request from *Vapsten*, decided in August 2013 to reject the appeals and instead to give the concessions to the private mining company to establish three open pit mines in the area of *Rönnbäcken*.<sup>31</sup>

The land area in the case is legally of national interest for both reindeer herding and mining activities according to the Swedish Environmental Code.<sup>32</sup> The two interests, therefore, had to be balanced by the Government in considering the applications for the granting of the concessions according to the Minerals Act.<sup>33</sup> According to the preparatory work short-term economic motives shall not override essential values of public interest which depend on the land area of national interest.<sup>34</sup> The Government found in its balancing that the mining activities have an interest that prevails over reindeer herding. It also found that,

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<sup>25</sup> See a press release on this at [http://sapmi.se/press-meddelande\\_FN-kritik.pdf](http://sapmi.se/press-meddelande_FN-kritik.pdf) (last visited April 8<sup>th</sup> 2014).

<sup>26</sup> See more about the international standards in the report Extractive Industries and Indigenous Peoples, A/HRC/24/41, by the Special Rapporteur on the rights of indigenous peoples, J. Anaya from July 1<sup>st</sup> 2013.

<sup>27</sup> See <http://www.un.org/News/Press/docs//2007/ga10612.doc.htm> (last visited February 19<sup>th</sup> 2014).

<sup>28</sup> M. Barelli, *The Role of Soft Law in the International Legal System*, (2011), 957-983.

<sup>29</sup> See the Swedish Constitution, (*Regeringsformen*), Chapter 2, Section 15, paragraph, 1 and the Reindeer Herding Act (1971:437), section 26. See also B. Bengtsson, *Samerätt, en översikt*, (2004), 91.

<sup>30</sup> E. Torp, *Det rättsliga skyddet av samisk renskötsel*, (2014), 129-130.

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<sup>31</sup> This represents only a brief summary of the case; the appeals and the decision-making process around the current concessions. The concessions were also appealed by others but not re-examined by the Government. See the Government's decision from August 22<sup>nd</sup> 2013 with the reference numbers N2012/1637/FIN, N2012/2776/FIN and N2012/5726/FIN.

<sup>32</sup> The classification of an area of national interest for reindeer herding means it is of importance for reindeer herding, while classification of an area of national interest for mining means it contain valuable substances or materials, see G. Michanek and C. Zetterberg, *Den svenska miljörätten*, (2012), 140-141.

<sup>33</sup> Environmental Code (1998:808), Chapter 3, Sections 5, 7 and 10.

<sup>34</sup> Prop. 1997/98:45, s. 238.

even if reindeer herding is not possible in the areas in question if priority is given to the mining activities, it does not necessarily mean that the Sámi community's possibilities to pursue reindeer herding elsewhere are impeded.<sup>35</sup> The decision cannot be appealed and is thus final.

In September 2013, the Government's decision was individually communicated and submitted by *Vapsten* to The United Nations Committee on the Elimination of Racial Discrimination. As an interim measure of protection, *Vapsten* asked that the Committee urgently call on the State party immediately to halt the mining activities in *Rönnbäcken* until the Committee could consider whether the requested measures of protection should be retained or lifted. *Vapsten* argues that the mining activities consumes and destroys a large part of pasture areas that are indispensable for their reindeer herding and to which *Vapsten* has established property rights. *Vapsten* also argues that the issue is a result of Sweden's failure to address Sámi land and resource rights properly, despite repeated UN criticism calling on Sweden to do so.<sup>36</sup> In October 2013, the Committee requested the State party to suspend all mining activities in the area while the Committee considers the petitioner's case.<sup>37</sup>

<sup>35</sup> Government decision; Appeal against the decision of the Chief Mining Inspector on exploitation concessions for the areas Rönnbäcken K no 1, Rönnbäcken K no 2 and Rönnbäcken K no 3 in Storuman Municipality, Västerbotten County, 10, dated 3013-08-22.

<sup>36</sup> *Vapsten* Sámi village's Individual communication to the United Nations Committee on the Elimination of Racial Discrimination, submitted in September 2013. See the criticism in the Concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden, adopted by the Committee at its eighty-third session, CERD/C/SWE/CO/19-21, August 2013. See also the Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/SWE/CO/18, August 2008.

<sup>37</sup> The reference number of the Individual Communication is G/SO 237/211 SWE (4), CE/HY/jt 54/2013.

In December 2013 and January 2014, the Swedish Government submitted observations to the Committee. The Government argued, *inter alia*, that it is not yet possible to conclude that mining activities will be commenced in the areas concerned, because an environmental permit according to the Swedish Environmental code is required, and that it is therefore too soon to assess the extent to which it will be possible to carry out reindeer herding in the area in the future. It also argued that the granting of an exploitation permit does not, in itself, have any consequences in this regard.<sup>38</sup>

At the time of the writing of this article, the Committee has not forwarded its suggestions and recommendations in the case to the State party and the petitioners. Although circumstances may vary in different cases, the suggestions and recommendations from the Committee will likely influence consideration of other permits and concessions affecting reindeer herding on other land areas.

## 5. Closing remarks

Securing seasonal-based land areas is a key issue for Sámi reindeer herders. A progressive and effectively irreversible loss of lands is probably the single greatest threat to reindeer herding in *Sápmi* today. Over time, reindeer herding has had to adapt to new and increased human activities and developments. On many of the areas where reindeer herding traditionally has been performed now exist many human activities, such as towns, industries, and different kinds of infrastructural developments. In addition many of the planned activities, such as mineral activi-

<sup>38</sup> See more of the observations from the Ministry of Foreign Affairs in Sweden on 16 pages in Communication Nr. 54/2013 dated 2013-12-05 and 2014-01-22. The mining company is according to the Environmental Code, chapter 9, section 6, obliged to apply for a permit for environmentally hazardous activities.

ties, have long-term and even permanently negative impacts on reindeer grazing lands.<sup>39</sup>

Given the Minerals Act, the Mineral Strategy and Sweden's reputation as a prominent and long-standing mining nation, the protection of Sámi reindeer herders cultural and property rights is challenging and urgent. Reindeer herding is a crucial part of the Sámi people's culture which itself is protected by the Swedish constitution.<sup>40</sup> One can question the lack of protection for Sámi reindeer herders' property rights in the Minerals Act. One can also question the value of protection for land areas of national interest for reindeer herding according to the Environmental Code, when the Government in its balancing of competing interests in the *Rönnbäcken* case finds that mining have an interest that prevails over reindeer herding, even though priority shall be given to the purpose that most likely promotes sustainable management of land, water and the physical environment in general.<sup>41</sup>

As a result of the on-going mining plans and activities throughout *Sápmi*, such as the activities in *Gállok* and in *Rönnbäcken*, the Swedish Sámi Parliament in August 2013 made a unanimous statement, in which it demanded that the Swedish State stop all present prospecting, all new exploration permits, work plans and concession applications until Sweden lives up to its commitments regarding the rights of indigenous

peoples.<sup>42</sup> In September 2013 the Government in a press release announced that, as part of its Mineral Strategy, it would like to increase opportunities for dialogue between the mining companies and reindeer herders. At the same time the County Administrative Board of *Norrbotten* was instructed to lead a work in developing guidance for consultations between the two parties.<sup>43</sup> In a press release from October 2013 the Association of Sámi reindeer herders in Sweden (SSR) expresses that the Government cannot deny their responsibility for the Minerals Act and instead blame the problems on a lack of communication between the mining companies and reindeer herders.<sup>44</sup>

Deficiencies in Swedish national legislation has been raised by both the Special Rapporteur on the Rights of Indigenous Peoples and the United Nations Committee on the Elimination of Racial Discrimination, which recommends that Sweden ensures respect for the right of Sámi communities to offer free, prior and informed consent whenever their rights may be affected by projects, including the extraction of natural resources, carried out in their traditional territories.<sup>45</sup>

<sup>39</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/18/35/Add.2, June 2011, 13. See also the report Reindeer Husbandry and Barents 2030 from International Centre for Reindeer Husbandry which shows studies on loss of pastures over time in *Sápmi*.

<sup>40</sup> See the Swedish Constitution (Regeringsformen), Chapter 1, Section 2, paragraph 6 where it is stated that "The opportunities of the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted."

<sup>41</sup> See the Swedish Environmental Code, Chapter 3, Section 10.

<sup>42</sup> Statement from the Swedish Sámi Parliament, The Sámi Parliament cannot accept continued exploitation of *Sápmi*, made 2013-08-28. See also a statement made by Swedish Sámi Reindeer Herders (SSR), Sámi Council and United Nations Association of Sweden in September 24<sup>th</sup> 2013 here; <http://www.fn.se/press/nyheter/sverige-ignorerar-fn-kritik-om-samers-rattigheter/> (last visited February 19<sup>th</sup> 2014).

<sup>43</sup> See the press release here; <http://www.regeringen.se/sb/d/17742/a/222919> (last visited February 19<sup>th</sup> 2014).

<sup>44</sup> See the press release here; [http://sapmi.se/pressmeddelande\\_gruvdebatt.pdf](http://sapmi.se/pressmeddelande_gruvdebatt.pdf) (last visited April 8<sup>th</sup> 2014).

<sup>45</sup> See Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/18/35/Add.2, June 2011 and recommendations in the Concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden, adopted by the Committee at its eighty-third session, CERD/C/SWE/CO/19-21, August 2013, 6.