

Peer Reviewed Articles

Land Usage and Siida Autonomy

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Abstract: The 2007 Reindeer Husbandry Act acknowledged in principle the traditional Sámi siida as a rights holder and basic unit of the working partnership. The Act provides a definition of the siida and certain provisions concerning its institutional aspects. The siida system had lost prominence under the Reindeer Herding District regime. Two basic issues must now be determined to restore siida autonomy – animal numbers, and siida rules of land usage. The article discusses these issues in relation to traditional reindeer herding customs.

Key words: Sámi, siida, reindeer husbandry, land, scientific and juridical approach, herding concepts.

1. Introduction

A law committee had been appointed in 1998 to prepare legislative amendments on internal matters concerning the reindeer herding industry in Norway. Their report and draft proposal were published in 2001.¹ The committee unanimously concluded that the siida should be acknowledged as a rights holder and the basic unit of a working partnership. The legal acknowledgement of the siida² was finally

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1. NOU 2001:35 Forslag til endringer i reindriftsloven.
 2. The Reindeer Husbandry Act provides the following definition of a siida (author's translation): "a group of reindeer owners that practice reindeer husbandry jointly in certain areas." This is an abridged definition of a long-standing Sámi institution, but still suggests an outline. The siida actually constitutes a nomadic community (see Nergård 2006 pp. 68–72). Various aspects

confirmed by the Norwegian Parliament in 2007 when it passed the new Reindeer Husbandry Act.

However, clarification of specific siida issues still remains to be determined. A number of internal matters in dispute were allowed to materialize and escalate under the influence of the abortive Reindeer Herding District regime. Now the first steps need to be taken towards restoration of the siida system. The reindeer herding district boards were given the task of preparing proposals for prescriptive rules of usage,³ but this required clarification of some basic issues concerning land rights and the number of reindeer. These unresolved issues are difficult to handle for the parties involved, and a key question is how to approach them to maximize the outcome.

The current issues concerning the preparation of prescriptive rules of usage originated in developments that occurred over 10–12 years, following the adoption of the Reindeer Husbandry Act of 1978. These concerns are that: (1) the number of reindeer increased significantly in key geographic areas of reindeer husbandry, or more precisely in Finnmark; (2) the newly established management system and a growing administrative apparatus simultaneously practice a form of co-management that include only legally-recognized units, for example the boards of reindeer herding districts; (3) the siida system is about to break down as a result of large herds exceeding traditional boundaries, and management does not focus on siida rights and interests as a basis for regulatory reform.

The Reindeer Husbandry Act of 2007 represents a return to the siida system. It is worth noting that the new Act refers to both indigenous rights in accordance with international law, and a need to establish maximum allowable numbers of reindeer. How should we approach the problem at hand in order to further both interests? The challenge is to identify aspects of the siida system that are of vital importance to both the continuation of autonomous siida practices, and achieve a long-term balance between reindeer herds and their habitats.

of the traditional reindeer herding siidas appear in social anthropological and ethnographic studies (see e.g. Whitaker 1955, Vorren 1962, Pehrson 1964, Paine 1994).

3. A district should preferably include all seasonal areas of the siidas belonging to the district (see article 8–1 in Lov 15. juni 2007 nr. 40). This is a complex system that also includes overlapping migratory routes and short-term stays on other siidas' seasonal pastures. In future the District Boards will have the role of safeguarding pasture resources within the district, in accordance with *bruksregler*, i.e. the rules of usage. The whole set of rules, including number of reindeer, could be designated as prescriptive rules for the management and use of district resources, while the rules concerning migratory routes and seasonal pastures could be designated as land usage rules (article 59).

The purpose of the paper is to heighten awareness of reindeer herders' traditional knowledge. The language itself has developed around the ideals and beliefs of the community, and so represents a powerful tool to contribute to the process of restoring the *siida* system. Traditional Sámi reindeer herding terms and concepts which embody this knowledge can be employed in the context of *siidasáogat*, i.e. *siida* talks.⁴ The traditional method of acquiring Sámi reindeer herding knowledge is analogous to learning to read and understand the landscape. The student hears about features of the terrain and its designations from an elder in the community. These designations have both a specific and a generic element. The student receives no other instruction, but is left to experience the terrain alone. However, attention to specific conditions may be recommended. New designations, additional and repeated experiences, and subsequent discussion provide a basis to distinguish between categories of terrain, and the ability to discriminate between various features within the categories. Knowledge about other aspects of *siida* management, like herd behavior, is acquired in a similar way. Through this method the author learned Sámi reindeer herding terms and concepts. Furthermore, it formed a basis for establishing rapport with elders and experienced herders.

Elders' stories and elaborations of traditional knowledge could provide an additional dimension to regulatory talks, beyond situational deliberation and evaluation of herding issues. Such traditional concepts could be incorporated into formal processes that support continuation of the *siida* system. The author will use examples of traditional knowledge and relate them to actual administrative initiatives to design programs for clarification of key issues in the context of legal developments. These examples will serve both as a critique of these initiatives, and as a suggestion as to how traditional knowledge can play a more crucial role than it has so far.

2. Administrative guidelines for the preparation of prescriptive rules of usage

2.1 Maximum number of reindeer versus *siida* land rights

Statutory provisions concerning prescriptive rules of usage, i.e. their content, preparation and endorsement, appear in articles 57–61 of the Reindeer Husbandry Act. Based on the officially presented arrangements, and also discussions among

4. Many of these words may be found in Konrad Nielsen's dictionary, first edition 1932–1962. His systematic collection of words occurred mainly from 1906 to 1911. However, the dictionary does not constitute a complete collection of reindeer herding terms and provides only brief explanations.

reindeer herders about these formal processes, particularly in Finnmark, the author would argue that there are two main tracks to choose between in working out the rules:

- a. A scientific approach, focused on processes to set the maximum number of reindeer permitted within each reindeer herding district (article 60).
- b. A juridical approach, focused on clarification of siida land rights (article 59).

These tracks pursued separately might result in (a) prolonged state management, or (b) reinforced siida autonomy, respectively. However, both themes are assumed to be included in the prescriptive rules of usage. Under the prevailing conditions where there are many unresolved issues, herders wonder: Where should we start? The alternatives presented imply an underlying question of priority. Is the implementation of a system of a fixed maximum number of reindeer for each summer siida⁵ (which are now, in fact, tantamount to reindeer herding summer districts for lack of clarification of siida land rights) a prerequisite for reaching an agreement on the so-called use of pasture lands (the Norwegian legal term *beitebruk*)? Or is clarification and charting of siida land rights a prerequisite for year-round management of siida herds, and thereby a prerequisite for the determination of maximum numbers of reindeer? According to the intent of the Reindeer Husbandry Act, both these approaches must address Sámi reindeer herding communities' rights to autonomy in internal affairs. The next question then is: How and to what degree can we incorporate autonomy into the two different tracks to rehabilitate the siida system? Autonomy within the siida system means self-governance based upon practises, knowledge systems, and a world view maintained and developed within the scope of traditional siidas. Accordingly, these premises are crucial to the formation of prescriptive rules for the restored siida system.

Today the regime of reindeer herding districts is only partially successful. Repeated efforts to fulfil the goals and regulations of the reindeer herding district system have been frustrated. Regulation of district herd sizes, or numbers of reindeer, has been at issue for decades, and no solution reached.⁶ The formation and subsequent failure of reindeer herding districts has gradually led to the disintegration of traditional concepts of legitimate siida, increased internal conflict, and has interfered with the pursuit of siida rights.⁷ Merely changing the name from

5. "Summer siidas" have traditionally been formed as an adaptation to herding on the coastal mountains during the summer months. These siidas often regroup before moving to winter pastures inland, the "winter siidas."

6. Joks et al. 2006 pp. 102–111.

7. Ravna, Päiviö and Røstad Fløtten 2002 pp. 4–5, 68–70; Ravna 2008 pp. 535–538; Riseth 2009 pp. 176–177.

a “reindeer herding district” system to a “siida” system will accomplish nothing. The issue needs to be taken seriously and properly administered.

Let us return to the question of what should be handled first: the maximum number of reindeer or siida rights. The Norwegian Ministry of Agriculture and Food ⁸ has set the following approach as a template for preparation of the rules, published in an informational booklet:

- Only specification of each siida’s core winter area is required;
- On the other hand, schedules or time limits for use of different seasonal pastures must be set up, and an exact maximum number of reindeer on summer pastures must be determined. The correct herd size should be ascertained by formally-determined criteria.

This approach gives priority to inflexible rules based on absolute dates and numbers, rather than to siida rights and traditions based on continuous monitoring of the herd.

One aim of natural sciences is to produce generalized theoretical and specific knowledge, in order to understand the regulatory mechanisms of ecosystems. And biological and economic concepts, background material and methods were incorporated into regulations of the official Reindeer Herding Board and its administrative agency, to deal with specific issues like reindeer numbers.⁹ However, administrative districts and regions contrived to regulate reindeer and pasture land may actually work against natural ecosystems. Political strategies based on scientific theories of ecological and economic sustainability cannot begin to appreciate the subtleties of age-old herding traditions, tailored over centuries to the topography of the land and specific needs of particular herds throughout the seasons. The official administration has imported entirely foreign concepts to Sámi reindeer herding and husbandry,¹⁰ where both problems and solutions in the form of regulations and economic schemes, are handled through administrative decree. Sámi herdsmen must now regulate their livelihood by use of borrowed terms and foreign concepts, poor substitutes for their own rich and complex understanding of their lands and herds.

8. The Norwegian Ministry of Agriculture and Food 2007 p. 17.

9. Ims and Kosmo 2001, Økonomisk utvalg for reindriftnæringen 1980–2009 (yearly publications).

10. Heikkilä 2006 p. 80; Paine 1994 p. 19–20.

2.2 Indicators of ecologically sustainable numbers of reindeer

In 2008 a working group was appointed by the Ministry of Agriculture and Food with reference to the statutory provisions about prescriptive rules. Its aim was to “develop objective/scientific criteria of ecologically sustainable numbers of reindeer.”¹¹ The group consisted of biologists, bureaucrats and reindeer herders.

Their report is mainly devoted to biological models of meat production and the effects of grazing on vegetation, according to carcass weight and number of square kilometres. The report also contains a short passage referring to factors reindeer herders themselves use to evaluate the condition of the animals: the shape, thickness and colour of antlers, shedding of námmi,¹² fur coat and time of shedding, physiology of the animal itself, and how these vary from year to year. Thus two fundamentally different ways of assessing the health of the animal are presented in the report – that of the biologist and that of the reindeer herder – which appear to be incompatible. The herders’ indicators are subjective and not easily objectively measurable.¹³ In concluding the report, registered average carcass weight became the main objective indicator of the sustainable number of reindeer. Traditional indicators used by herders were relegated to subjective additional indicators. Thus the biological model took precedence over the siida model, which had grown over generations out of the close interactions among herders, animals and their surroundings.¹⁴ An illustrative scheme for the calculation of the maximum number of reindeer has been worked out accordingly, and presented by authorities to herders as input for completion of the prescriptive rules. This approach relies on predetermined numbers adapted to facilitate management at a distance, diametrically opposed to the immediate continuous siida management model.

The report and subsequent administrative approval of its conclusions clearly show that the siida approach was dismissed. But what if indicators used by the herders had been accepted as primary determinants, and registered carcass weights used as supplementary indicators? First and foremost, this perspective would impact issues of herd management, and siida land rights in particular. If reindeer condition were to be assessed according to siida standards, this would necessitate certain decisive management rights and responsibilities be turned over to the

11. The Norwegian Ministry of Agriculture and Food, 2008 p. 2 – author’s translation of *utvikle objektive/vitenskapelige kriterier på økologisk bærekraftig reintall*. The working group consists of six reindeer herders, two biologists and two bureaucrats.

12. The furry outer skin of a reindeer antler which is rubbed off in late August and September.

13. The Norwegian Ministry of Agriculture and Food, 2008 p. 9.

14. Reindeer herder Johan Anders Eira points out that issuance of detailed directives by the authorities is inconsistent with the adopted principles of increased autonomy for the reindeer herding siidas.

siida. It is entirely possible that observation and language-based data captured in the context of continuous siida management may more accurately represent the condition of the herd. Average carcass weights can only be collected retrospectively from animals slaughtered the preceding year, and currently reindeer are herded in artificial districts within a system of unresolved siida rights. The herders' own evaluations have the advantage of being immediate, continuous, and capable of responding to changing or adverse conditions. At the same time they meet statutory prerequisites for autonomy in internal siida affairs. Carcass weights could still be documented for each siida's on-going internal evaluations, as well as for research purposes, but not serve as the primary management tool and scientific standard of herd health.

In the working group report, the herders' language-based method of data-capturing and monitoring of animal health is briefly referred to, then marginalized to second-line importance, and finally stripped of its former influential position. This rejection of traditional Sámi practices is in line with established patterns of co-management which directly affect the long-term balance between herd size and pasture resources. The Reindeer Husbandry Board and its administrative agency have been criticized for relying too heavily on biological expert analyses in the processes of co-management,¹⁵ and decreasing the legitimate power of local herders to influence decisions.

Now the process of developing prescriptive rules of usage has already begun, but without any preliminary effort to address the crucial need for legal clarification of siida land rights. Nevertheless, these legalities will likely be raised at some point in the process of preparing and approving prescriptive rules. The question remains whether the legislators are capable of adopting a more inclusive approach to invaluable herding traditions, and respecting the legitimate rights of the siida, or will they follow the narrow, biased and controlling approach of the working group.

3. Use of traditional reindeer herding knowledge in the processes of clarifying siida rights

3.1 Identification of siida land rights

Through discussions and conversations with reindeer herders themselves, and studies of herding practices over many years in various contexts, the author has become convinced that siida powerlessness is related to the indeterminate status of siida rights, and not insufficient knowledge about balancing herd size and land resources. The introduction of the siida as a legal concept follows from a mi-

15. Joks et al. 2006 p. 110.

nor legislative amendment in 1996 of the Reindeer Husbandry Act of 1978. Since 1996 herders and other siida members have pressed for immediate clarification of siida rights. The Reindeer Herding Rights Commission for Western Finnmark proposed in 2002 that the disputed markings of grazing rights boundaries be resolved either through the Land Consolidation Court or a special commission.¹⁶ Moreover, the preparatory works for the new Reindeer Husbandry Act show that both the law committee and the Ministry of Agriculture and Food have proposed use of the Land Consolidation Court to settle internal siida border disputes, and to strengthen its knowledge about Sámi reindeer herding.¹⁷ Few concrete changes in that direction have been produced, although much work continues in the pipeline, such as the new Reindeer Husbandry Act, the Finnmark Act and designation of the Finnmark Commission.¹⁸

Reindeer herding Sámi have been hesitant and uncertain about what they can or should do in the current situation. Meanwhile conflicting herding strategies have been allowed to develop, and disagreements between siidas have remained unresolved or even escalated in some cases. In 2009 the situation reverted back to the 1990s starting point; a special commission aimed to identify traditional siida lands and settle legal disputes within the siida system has once more gained relevance. Both the official Reindeer Husbandry Board (Case 21/2009) and the Association of Sámi Reindeer Herders in Norway (list of requirements ahead of the annual negotiations with the Ministry of Agriculture and Food) have advanced a demand for the establishment of a special commission to clarify the traditional siida division of land. In 2009 the Ministry of Agriculture and Food also presented a proposal for a new law on land consolidation. The proposal implied that the Land Consolidation Court did not have the authority to settle cases concerning those who practice reindeer herding, but the same court did have authority in cases concerning agricultural land – and even in cases regulating conditions between farmers and reindeer herders.¹⁹ Several consultative bodies have found this to violate current provisions concerning access to the court in international

16. Ravna, Päiviö and Røstad Fløtten 2002 p. 8.

17. NOU 2001:35 p. 177, Ot.prp. nr. 25 (2006–2007) p. 48.

18. The Commission will have to settle internal issues, e.g. border disputes between siidas, if reindeer herders submit claims for siida rights clarification (see regulations: Forskrift 16.03.2007 nr. 277 om Finnmarkskommisjonen og Utmarksdomstolen for Finnmark). Another possibility for the siida is to raise a claim of private ownership of land and have it settled by the Commission or by court decision.

19. This provision was adopted as an amendment to the Land Consolidation Act of 21. December 1979 article 2c no. 3 and is now being forwarded to the new draft act without any changes. See also Ravna, 2008.

law.²⁰ Lack of competent judicial authority in support of the siida system has long been an obstacle to rehabilitation of its legal status, and also during the process of preparation of land usage rules. Reindeer herders, especially in Finnmark over the last decade, have often expressed their expectation for the establishment of legal arrangements to clarify customary rights of the siidas.

3.2 A knowledge-inclusive judicial approach

Is the legal track a more navigable route to siida autonomy – based on reindeer herding Sámi institutions, practices, concepts and knowledge in their entirety – than co-management directed by generalized distance models focusing on a small number of indicators?²¹ In his critique of the politicization of the sciences through epistemology, Latour does not mention the law, other than in a footnote. He is, nevertheless, worth quoting:

Indeed, law has always had the good manners to accept its relativism and its constructivism without making a big fuss. It is capable of recognizing that others have a legal system that is simply different; it agrees to bring together reality and fiction in a positive way. It is less implicated, so to speak, in the question of nature than Science, politics, or morality. The same thing holds true for art (...): no one has ever said, even in the Western tradition, that the relation between art and nature was indisputable.²²

Reindeer herders who prefer the legal track do so because they are focused on the clarification of issues they themselves consider to be crucial to autonomous siidas, and because they have expectations about processes in which they can make themselves heard. They have hope, perhaps even a legitimate expectation, that their knowledge and concepts not be relegated to a marginal supplementary position at best, but that agreement can allow tradition to serve as a mutually-respected starting point.

David Sellar, a legal assessor in the Scottish Land Court for two years in the 1960s, provides an example of what could be called a knowledge-inclusive approach:

In one unreported case determining the boundary between two holdings, the best evidence available was provided by sheep: although there were no maps or obvious topographical features to mark the boundary, there was agreement as to where the sheep were *heft*, that is, as to the ground which the sheep considered themselves

20. The Norwegian Ministry of Agriculture and Food, 2010.

21. See also Berkes & Berkes 2009: 10.

22. Latour 2004 p. 273.

attached and actually grazed! This use of evidence leaves lawyers speechless, but farmers accept it as quite natural.²³

This example may seem strange,²⁴ but it reminds me of Erik Solem – a former district court judge (or President of the District Court) in Finnmark – and his studies of customary Sámi law. He had been told something similar about reindeer and their attachment to familiar territory, and has included it in his explanation of the grounds for the formation of siidas. So he maintains both siida leaders and reindeer are attached to their lands in a deep and fundamental way, and he reasons on the same grounds for the maintenance of and respect for traditional siida land:

The reindeer is a creature of habit. In autumn it will return to the pasture area to which it is accustomed. Because the same siida uses the same areas year after year, its *ised* (leader) will make sure that they make the best possible use of the pasture. He knows how to economize with it, and because of his intimate knowledge of the various localities he understands what places are most suitable for grazing at different times in the winter ... The same is true for summer grounds as for winter grounds.²⁵

In order to avoid any misunderstanding, the author would like to emphasize that he is not advocating for a practice of allowing reindeer alone to set siida boundaries. Many characteristics of reindeer would not support such a position, like their continuous urge to keep moving most of the year. The author uses these quotations only to illustrate how other concepts and knowledge may be applied to various socio-ecological remedies, and as examples of willingness by others to incorporate this information. Recognition of herding concepts is an important first step towards formation of land usage rules, and would also presage a more reasonable and acceptable final outcome.

3.3 Some examples of the siida world view

The above-mentioned account illustrates a fundamental truth to Sámi reindeer herders: the reindeer are recognized within the siida as beings or members capa-

23. Sellar 2004 p. 100.

24. On the contrary, rights clarification in the Norwegian high mountains and outfields in large part is based upon knowledge about where livestock actually have grazed. See Ravna, 2008 p. 352–353.

25. Solem 1970 (1933) p. 190–191. Author's translation of: *Renen er et vanedyr; den vil om høsten helst vende tilbake til de beitestrakter som den er vant til. Ved at samme siida år etter år bruker de samme trakter, vil dens ised passe på at beitet blir best mulig utnyttet; han kan økonomisere med det, og på grunn av sitt inngående kjennskap til de forskjellige lokaliteter forstår han hvilke steder egner seg best til beiting på de forskjellige tider om vinteren ... På samme måten som det er med vinterplassene, forholder det sig med sommerbeitene.*

ble of learning and forming their own “opinion.”²⁶ They are not only living beings, but beings with lives and minds of their own. Thus the relationship between herders and reindeer is referred to by herders as a “compromise” between two parties, with opinions that differ to some extent, but through which both parties ultimately benefit.

It is important to note here that Sámi herders refer to several categories of reindeer, but which physiologically-speaking are considered to be one and the same animal:²⁷

- goddi
- beavrris (goddiluvvan boazu)
- boazu
- gesát.

Goddi are what in English would be referred to as wild reindeer. *Gesát* is the only type of reindeer that is domesticated in the full sense of the word. *Boazu* is a reindeer-in-its-own-environment which has reached a compromise with Sámi reindeer herders. Here the word “reindeer” is used to designate *boazu*. *Beavrris* (or *goddiluvvan boazu*) is a wild reindeer that originates from *boazu*. These categories are based upon differences in the relationships between reindeer, and humans as hunters, (nomadic) herders, or livestock keepers.

In footnote 26, the author uses the English term “opinion” for the Sámi reindeer herders’ concept of reindeer *oaivil* as well as herder *oaivil*. This usage is in accordance with conventional translation under the influence of Nordic languages, where “opinion” or “view” means the same as *oaivil*. However, the Sámi word *oaivil* is a derivation of the word *oaivi* (= head). The verb derivation is *oaivvildit*, usually translated as to “have an opinion.” There is also a related verb derivation, *oaivádit*, translated as “to propose.” These translations do not recognize the derivation of *oaivil*, or that it above all is perceived by watching the head, which has the largest collection of various sensory organs. Herders can predict the next move of the reindeer by watching what they are focused on and what they seem to sense. So by asking someone’s *oaivil* one would thus express it literally, not as *what do you mean*, but rather *where is your attention?* So *oaivil* in the context of reindeer herding means the beginning of a movement, intention, or proposed direction, and not, as in translation, to a permanent position or opinion one has formed.

What Solem (footnote 26) calls “the habit,” in the *siida* context is known as learned behaviour through compromise between herders and reindeer. However,

26. Commonly expressed by Sámi herders as “*bohccot ieža oaivvildit*,” i.e. the reindeer themselves are of this or that opinion.

27. There are local differences as to how commonly-known these denominations are.

the “compromise” must be renegotiated and adapted continuously, as the desires of the herd can exceed their acceptable distribution and range. So compromise must continuously be forged between self-willed reindeer and their devoted herders, some of whom are still in the learning phase. Both parties are active participants in siida life and progress.

3.4 Concepts of reindeer and their environment

We return briefly to terms and concepts introduced by biological sciences, and then introduce alternative Sámi reindeer herding approaches. One introduced biological category refers to degradation of pasture land (overgrazing), proverbial in public debate on reindeer herding. Lydia Heikkilä, who has studied indigenous and scientific perceptions of reindeer herding and environmental management in northern parts of Finland and Norway, puts it this way:

In this connection, a category called overgrazing has been introduced (...) In the analytical terms of discourse, it has been a major metaphor or key interpretative resource in the current management problem in the boreal, subarctic, and tundra ecosystem.²⁸

Reindeer are defined as grazing animals²⁹ in this type of discourse. The problem is that neither “overgrazing”³⁰ nor “grazing animals” are concepts familiar to herders. These terms cannot be translated into Sámi and be clearly understandable. It is not because Sámi reindeer herders either fail to see or disregard matters to which the above-mentioned terms refer, but because they are much too generalized, and cannot be related to a knowledge base focused on conditions, actors, and responsibilities in specific herding situations. Although grazing activity is important, it is nonetheless only one aspect of the life and needs of the herd. From the perspective of a reindeer herding practitioner, use of the term “grazing animal” as a general characterization of reindeer, is both reductionist and distance-dominated. Admittedly, reindeer herders also use reductionist ways to describe reindeer, but then only to focus on one aspect and ignore the others for a short while. For example, reindeer are sometimes referred to as “ears,”³¹ because patterns of notches

28. Heikkilä 2006 p. 81.

29. In Norwegian: *beitedyr*, i.e. an animal that grazes in order to stay alive and grow. A literal translation of *beitedyr* into Sámi would be the absurd *guohtunealli* (= an animal which is grazed). A literal translation of the English term “grazing animal” is the Sámi term *guohttu ealli* (= an animal which is currently grazing or demonstrates a willingness to graze at present).

30. In Norwegian: *overbeite*. A literal translation of *overbeite* to Sámi yields the expression *bad-jelmeari guohtun* (= too much grazing activity, or abundance of access to pasture).

31. Examples: *geažotbeallji* = whole ear (unmarked reindeer), *geaiggobeallji* = long ear (reindeer

or cuts are made in the ear to signify ownership. For those involved in herding, this reference to “ears” focuses attention on ownership of specific reindeer in the here and now.

In addition, Sámi herders do not always refer to their animals as *boazu* (=reindeer living in compromise with herders). They use other general and all-embracing terms for them – reindeer are called and perceived of as “lives.” To be more specific, there are several words in Sámi meaning “life.” Thus individual reindeer are often called *heagga*, which means “body life.” The herd is called *eallu*,³² which is antonymous to *jápmu* (= big mortality). This term is derived from the word *eal- lin*, “life course” or “life as it is lived.” A related and frequently used term is *ealát*, which can be translated as the reindeer’s basis of existence (including sufficient pasture). This implies that we are no longer just talking about grazing, but about animals living lives in their own context. This aspect forms a crucial starting point for understanding herders’ concepts of reindeer themselves, their relationship to other reindeer, life in various surroundings, and the compromise between reindeer and herders. The next section presents a few examples that refer to herding of the reindeer, the terrain, and the herders.

3.5 Sámi reindeer herding concepts

Herding involves imposing orderly management upon the instincts and drives of the animals, achieved through compromise and resistance. The intricacies of herding cannot be fully appreciated out of context. Specific phenomena also embody responsibilities and rights.³³ In this regard, some practices form the basis of customary rights, others do not.

Siida herding concepts have developed organically over time, melding together the essence of the reindeer, the landscape, and their human guardians. These essences are combined into the terms themselves, which often share the same root origin.

Example 1: The state of *vistta*

Reindeer contribution: *vistit* (verb), *vistin* (noun)

Landscape contribution (tracks in some cases): *visttáhat* (noun)

Herder contribution: *visttihit* (verb) *visttiheapmi* (noun)

having ears that are marked with small notches and no big cuts).

32. Herders normally use terms like: *Logenare heakka sierrane ealus*, which means “approximately ten reindeer left the herd.” However, literal translation provides the following expression: “Ten body lives left the viability” (unit of liveable conditions).

33. Strøm Bull, Oskal and Sara 2001 p. 281–282.

The state of *vistta* occurs irregularly from August to February, and occasionally in late April. The scent of mushrooms and sometimes of lemmings causes reindeer to stray or stampede in different directions. It is extremely challenging and laborious for herders in the polar night to restrain the herd, and may necessitate temporarily letting the herd to expand their range. *Vistta* is a state of irregularity and disorder. Although controlling the herd may require challenging or exceeding herd boundaries for a time, there is general agreement among herders that it should not give grounds for siida land claims.

Example 2: The state of *guottet*

Reindeer contribution: *guoddit* (verb) *guoddin* (noun)

Landscape contribution (tracks in some cases): *guottetbáiki* (noun)

Herder contribution: *guottehit* (verb), *guotteheapmi* (noun)

The state of *guottet* occurs every spring when female reindeer return to the same calving-ground to give birth. A change of calving ground represents considerable disruption for both reindeer and herders, and is contested especially by fully-grown females. *Guottet* traditions grow out of respect for the desire of the animals for safe and secure familiar calving-grounds, and thus represent strong support for siida land claims.

Example 3: The state of *ovttat guohtumat*

Reindeer contribution: *guođustit* (verb), *guođusteapmi* (noun)

Landscape contribution (tracks in some cases): *guđohagat* (noun)

Herder contribution: *guđoldahttit* (verb), *guđoldahttin* (noun)

The state of *ovttat guohtumat* entails “one-time” grazing, and is part of the right to pass through another siida’s land. Herders agree that it does not give grounds for siida land claims. It is short-term grazing connected to the right of passage, in contrast to grazing within *orohat*. The term *orohat* derives from the verb *orru* (stand for a longer period). The most important aspect of the term is that it encompasses various types of topographical features as well as a particular season of the year. *Orohat* must therefore consist of various types of land and topographical diversity, that combined can support longer seasonal stays.

Example 4 – The state of *bálggádat*

Reindeer contribution: *bálgat* (verb), *bálgan* (noun)

Landscape contribution (tracks in some cases): *bálggosbáiki* (noun)

Herder contribution: *bálggahit* (verb), *bálggaheapmi* (noun)

The state of *bálggádat* occurs at least at *geassebálggádat* (in the summer), caused either by swarms of insects and/or weather. Reindeer avoid insects and summer heat by seeking out places with some protection from the nuisance. Various types

of weather, like cold summer rain or winter storms, also cause reindeer to seek the protection of particular landscapes or locations. Reindeer have a tendency to return to familiar shelter. Herders agree that traditional protective landscapes should form a basis for customary rights.

Once again we return to the issue at hand: Since reindeer movements alone are not sufficient to define *siida* boundaries, could these movements at least be considered as one determining factor among others? The answer should be “yes,” because this is how boundaries are set in real life. Other factors might be the opinions of the herders, the composition of the terrain, time of year, and climatic conditions. The reindeer are most often represented by the margins of the herd.³⁴ Adjacent areas preferred by the reindeer at various times of the year can have boundaries set on this basis. Stray reindeer may start to cross adjacent non-preferred or inappropriate areas, but herders can intervene to keep the herd together. Topographical features may stop, constrain³⁵ or facilitate³⁶ reindeer movement, and thus constitute boundaries between *siidas*. Knowledge of the reindeer, terrain, climatic conditions, annual cycles, and in particular the relationship among them, has formed the essential basis of the traditional boundaries between the *siidas*.

3.6 Approximation versus absolute numbers

With regard to the issue of “overgrazing,” some Sámi concepts do suggest the term. Let us take the concept of *siiddalmasvuohta* (=high density of *siidas*)³⁷ as an example. In contrast to “overgrazing” by the animals, the concept of *siiddalmasvuohta* encompasses certain responsibilities and rights of the *siidas*. To be more explicit, *siidas* consist of the totality of land, people, animals, infrastructure and operating equipment, as realized through the day-to-day running of the *siida* (the Sámi terms are *siiddastallat* =to run a *siida*; *siiddastallan* =running of a *siida*). *Siiddalmasvuohta* will be noticed immediately on the level of *siiddastallan*; i.e. a high density of *siidas* will affect the day-to-day running. The work of identifying problems and solutions related to *siiddalmasvuohta* raises responsibilities, rights and practices in the relationship among *siidas*. If one *siida* lacks enough manpower to manage a large herd or has reached the level of *boazonákkis* (= high density of reindeer according to all aspects of the reindeer’s life), according to the ideal of

34. In Sámi: *ealloravda*.

35. In Sámi: *oahci*.

36. In Sámi: *oainnus* or *čuovggus eana*.

37. The term is commonly used in situations where several *siidas* lie close together, which may lead to herd mingling and disorder. This can occur even though the *siidas* remain on their usual migration routes or seasonal pastures.

čorga siiddastallan (=orderly running of a siida), the animals still must be kept inside the outer limits of the siida herd's range. In cases where individual herds become mixed, the parties focus on the course of events related to siida rights and responsibilities.³⁸ These are some of the different realities involved between "overgrazing," and the concepts of *siiddalmasvuohta* and *boazonákkis*. "Overgrazing" itself cannot be related to the siida system. From a siida perspective, there is no practical need or use for this term, denoting a type of retrospective wide-ranging study of pastures in reindeer herding districts. The siida position does not oppose scientific study of pastures in principle, but it does require that such studies be designed inside the framework of a rehabilitated siida system.

Then what about the number of reindeer? The Reindeer Husbandry Act actually contains a provision stipulating the number of reindeer. In contrast, reindeer herding Sámi have never cared about the precise number of reindeer in herds. They have traditionally concentrated on herd size, based upon continuous assessment of the ability of the land to support its animals. For example, snow can reduce the area and amount of vegetation available for grazing compared to previous years. Certain areas of land may go untouched or minimally grazed some years, perhaps more frequently than other areas, but may become fully accessible and abundant in other years. Constant and sometimes large year-to-year variations of weather in all seasons can mean fluctuating levels of grazing and adverse conditions for the reindeer. Fortunately, a sort of instinctive flexibility is built into the reindeer or, rather, the herd; the reindeer adapt by modifying physiological reserves and annual growth. The condition of the reindeer herd is qualitatively judged on an ongoing basis, and collated with weather conditions and herding operational limits in previous seasons. So the state of the herd primarily depend upon climatic variation, but may also reflect poor herding decisions, and/or group benefits and disadvantages of the prevailing herding management system (which today is still the Reindeer Herding District system).

When siida become sure of the boundaries of their territory, they can devise a framework to support the best living conditions to maximize the size of the herd. The herd to some extent will reflect the owners' decisions concerning individual reindeer. But herd size, herd structure (percentage of reindeer of different sex, age and appearance) and the general condition of the reindeer are considerably influenced by climatic factors as well. The climate in Northern Scandinavia is highly variable and unpredictable. Data from weather stations in Finnmark show there are no "normal" years.³⁹ These variations are reflected in the herd, depending how

38. Strøm Bull, Oskal & Sara 2001.

39. Tyler et al. 2007 p. 196.

and to what degree the diversity of each siida territory can modulate the effects of climate conditions throughout the year. The siida have learned to maximize the remarkable fragility, complexity and variability of this system of yearly cycles.

To allocate a fixed and precise number of reindeer to any area, on the basis of quantitative data with a few objective variables,⁴⁰ is to deny the ethos and ideals of generations of herders. To compound the problem, the sectorial ministry has recommended determining precise numbers of reindeer according to data obtained through a management system that today is considered a failure and being dismantled. Their conclusion is that the siidas can set an exact number of reindeer, but it cannot be expected to constitute an absolute binding determination. Herein lies the essential tension between number of reindeer on the land and viable herd size.

4. Conclusion

We have briefly touched upon some key aspects of the work to draw up rules of land usage for rehabilitation of the siida system. The examples taken from traditional herding practices could perhaps have been more detailed, and there are other important aspects of the siida not mentioned here; these are issues like internal clarification of different families' rightful share of the siida, based on cases of conflict arising from the partially random assignment of licenses by the authorities (called *driftsenhet*), pursuant to the Reindeer Husbandry Act of 1978.

The examples are meant to illustrate the profound interrelationship between the siida way of life and reindeer herding. Siida autonomy cannot be realized unless this ethos forms the basis of further legislation. A very poor alternative would be the continuation of a pseudo autonomy through the Reindeer Herding District regime, which does not even begin to address the complexities of a true siida system. In the final analysis the siidas will herd the animals and adapt to the rules of land usage. Any framework should reflect the knowledge, customs and practices that form the basis of the operation of the siida. The Reindeer Herding District regime, based on the belief that Sámi reindeer herding rights are of a collective character amenable to extensive governmental and administrative legislation,⁴¹ has created herding regulations which violate the very foundations of the siida system. These developments have resulted in conflict concerning use of land and herd mixing which would not otherwise have arisen.

Prioritization of the provision to set a maximum number of reindeer within each reindeer herding district may actually derail efforts to develop prescriptive

40. See also Berkes & Berkes 2009 p. 10–11.

41. Ravna 2008 p. 320–371.

rules, herein the land usage rules. Or it could delay or detour efforts entirely, thus continuing disputes and disagreements about maximum numbers of reindeer stemming from the failed attempt to implement the reindeer herding district system in accordance with provisions in the Act of 1978.⁴² Many reindeer herders have put their faith in resolution via the legal track, because it deals directly with issues they consider to be both central and in urgent need of clarification, to restore peace in their communities. The work of the Reindeer Herding Rights Commission for Western Finnmark has made a promising start and provided hope for formal acknowledgement in subsequent legal processes of the crucial role of herders. The siida is now also acknowledged in principle by national law, and is strongly supported by international indigenous people's rights law.⁴³

The situation in the main reindeer herding regions of Norway can be characterized as permeated by considerable internal disagreement, particularly with regard to areas of siida rights established on separate, independent legal grounds (article 59 of the Reindeer Husbandry Act). Fundamental to any lasting understanding is agreement on how to begin work on the issues. However, a district board, even though it be comprised of herders, may not be sufficiently competent to handle various issues requiring legal clarification, in order to draft an agreement recognised by the parties involved. Until the legal status of land usage is clarified, uncertainty remains inherent in the present system, and forms a bottleneck in the process toward rehabilitation of the siida system. The number of cases awaiting settlement, and the need for expertise in the unique field of reindeer-herding siidas, are the main necessity for a revived proposal to establish a special commission to settle siida territories.

The new Reindeer Husbandry Act contains a provision for land usage rules⁴⁴ (article 59) to be brought to the Land Consolidation Court, which may then set these rules aside, for instance, in cases of reindeer herders with conflicting claims on the traditional use of specific pastures or migration routes. Siida members at present are uncertain about what this involves, in turn contributing to overall confusion about the situation, which means the siidas continue to wait. Some siidas or herders have gradually begun to report their legal claims to the Finnmark Commission, which, however, is in its initial phases and not estimated to complete its work until 2025.⁴⁵

42. Joks et al. 2006.

43. NOU 2001:35 Forslag til endringer i reindriftsloven p 38–42 and 96–97, NOU 2007: 13 Bind A Den nye sameretten p 171–246, Ravna 2008 p.371–389.

44. In Norwegian: *reglene om beitebruk*.

45. Information provided by the leader of the Commission, Jon Gauslaa, via Ságat no. 129 Date, 2010.

The matter of paramount importance and interest today is the need for judicial authority to be both competent and knowledgeable about siida practices and concepts. The need to have customary land rights formally confirmed gained new relevance in the 1990s through developments in international law, and growing support to recognize the siida system in law. Claims to have traditional land rights formally confirmed, however, are much older. Peter Schnitler was given the task of examining conditions in the borderless north in preparation for the Danish government's negotiations with Sweden on the determination of national borders between northern parts of Norway and Sweden. He proposed a formal division of mountain land between specific reindeer herding Sámi families who traditionally had possessed them, and to permit these families the opportunity to leasehold these areas as a guarantee against foreign intrusion. The proposal was largely in line with requests from reindeer herding Sámi, among them requests expressed at the Examination Court session in Návuoŋna (Kvenangen) on 11 November 1743:⁴⁶

The present mountain Sámi wanted the mountain regions in the Norwegian mountains to be distributed, (...), so that everyone has his/her space, which they have possessed from time immemorial, properly separated.

Both these requests and Schnitler's proposal came to nothing. Nor do they seem to have influenced efforts made to implement the provisions of the Lapp Codicil⁴⁷ (articles 15, 16, 22, 25) to establish a Sámi court to decide internal disputes on the basis of Sámi customary law. In Finnmark, on the contrary, the long tradition of court sessions held in Guovdageaidnu and Ávjovárri ended in 1764, and subsequent court sessions in Alta no longer seem to have tried issues that the Sámi themselves brought to court, and that concerned their own rights (Jebens 1999: 324–327). One hundred years later the processes of shaping the reindeer herding districts began. Now attention is again directed at identification of siida land rights, but it remains to be seen whether such matters will be prioritized, or downgraded in favour of other forms of regulatory mechanisms.

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Права пользования и автономия сиид

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Аннотация

С принятием нового закона об оленеводстве в 2007 году, традиционные саамские сииды были в принципе признаны в качестве правообладателя и основной ячейки в рабочем сотрудничестве. В Законе предусматривается определение «Сииды» и некоторые положения, касающиеся институциональных аспектов. Система сиид пришла в упадок при режиме действия т.н. оленеводческих районов. Теперь надлежит предпринять шаги в направлении восстановления системы сиид в плане подготовки правил их использования. При этом однозначно требуется разъяснение некоторых основных вопросов в отношении количества поголовья оленей и других прав сиид на землю, а так же вопроса о защите автономии сиид. В статье обсуждаются эти вопросы в связи с традиционными знаниями, накопленными в оленеводстве.

Ключевые слова: саами, оленеводство, стадо, земля, научный и юридический подход, понятие выпаса.