

The Sami People's Right to Culture in the Context of the Tana Fishery Agreement (2017)

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Introduction

The Tana River is one of the world's largest river systems for Atlantic salmon, with the highest annual catch in the area.¹ In 2017 the Norwegian Parliament adopted the so-called Tana Agreement, which was also accepted by the Finnish Parliament. The Tana Agreement regulates fishery rights, fishing quotas and fishing techniques in the Tana River so as to protect and preserve salmon stocks in the river. However, the Sami people, who have inhabited the North Fennoscandia since time immemorial, argue that this agreement violates their fishing rights, and as a result, their right to culture. In this paper, I will present new fishing regulations and address the

issue of violation of the right to culture of the Sami people in relation to the Tana Agreement. In the end, I will emphasise social reaction towards this conflict.

The Tana Agreement

Since 1873 Tana's legal status has been regulated jointly by Norway and Finland. However, the agreement has not been updated since 1990², until the Tana Agreement was adopted in 2017. Besides that, since the year 2000, the European Commission's Water Framework Directive (WFD)³ has been in force. The directive (article 3, point 3) states that any river basin covering the territory of more than one Member State is assigned to an international river basin district. According to this rule, Norway and Finland signed a joint agreement concerning the Tana River, acknowledging that all actions regarding the Tana River's management and planning should be undertaken jointly by Finnish and Norwegian authorities.⁴ However, there is also a

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¹ Teno Info. Information about Teno for Fishing Enthusiasts, 2018, p. 2, <https://www.ely-keskus.fi/documents/10191/23117928/Teno+info+English.pdf/1a185302-fa5d-4ba6-bd90-17183fefdf21>.

² Overenskomst mellom kongeriket Norge og republikken Finland om felles forskrifter om fisket i Tanaelvas fiskeområde. (Kgl. res. av 24. februar 1989. Trådte i kraft den 1. januar 1990.), <http://tanafisk.no/wp-content/uploads/2011/08/overenskomst-mellom-Norge-og-Finland-om-felles-forskrifter-om-fisket-i-Tanaelvas-fiskeomrade.pdf>.

³ European Commission. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

⁴ Finnmark Fylkeskommune and Elinkeinoelämän keskusliitto (no date). *Joint water management of the Finnish-. Norwegian river basin district (2016-2021). Tana, Neiden and Pasvik catchment areas in Finland and Norway*,

Norwegian act which was adopted in 1888 (Right to Fishery in Tana River)⁵ and renewed in 2014.⁶ According to that document, the right of local people to fish salmon in the Tana River is based on law, the principle of continuous use over a long period of historical time (immemorially, coming from customary law and court practice) and local customs.⁷

Rivers are part of states' territories. In the case of Tana River the situation is more complex, since the river is also a national border, a border of the European Union and a part of Sápmi, the traditional Sami territories. For those reasons, Norwegian law applies with the constraints imposed by ILO Convention 169 and must be applied in accordance with international law on indigenous peoples and minorities and provisions included in agreements with Finland concerning fishing in the Tana.⁸

The Sami people's right to culture

The Tana River is profoundly connected to the Sami people's culture, their way of life and identity. Traditional techniques

of fishing have been passed down as traditional knowledge from one generation to the next for centuries. Furthermore, salmon constitute one of the main sources of subsistence in the Deatnu region. They provide basic survival, income and well-being for all local inhabitants, including indigenous people.

Recently, Finnish and Norwegian authorities have stated that the Tana River is overfished and salmon stocks are being slowly depleted. One of the causes of this situation is the use of net-types gear, which directs fishes into the trap.⁹ Currently, four different gear types are permitted: drift nets, seines, weirs and gillnets.¹⁰ The Tana is one of the few rivers in Europe, where such equipment can be used. Those techniques are also traditional Sami ways of fishing.

The fishing agreement from 2017 reduces the number of devices (drift nets or heat-set yarns) used at the same time when fishing (Tana Agreement 2017, paragraph 15). Therefore, the traditional catch techniques used by the Sami

http://ec.europa.eu/environment/water/pdf/Finnish_Norwegian_international_river_basin_district.pdf

⁵ Lov 23. juni 1888 om Retten til Fiskeri i Tanavasdraget i Finmarkens Amt.

⁶ Lov 20. juni 2014 nr. 51 om fiskeretten i Tanavassdraget (Tanaloven) § 6 første og annet ledd, lov 15. mai 1992 nr. 47 om laksefisk og innlandsfisk mv. (lakse- og innlandsfiskloven).

⁷ Lov om fiskeretten i Tanavassdraget (Tanaloven), article 1, <https://lovdata.no/dokument/NL/lov/2014-06-20-51/§6#§6>.

⁸ Lov om fiskeretten i Tanavassdraget (Tanaloven), article 3, <https://lovdata.no/dokument/NL/lov/2014-06-20-51/§6#§6>.

⁹ Teno Info. Information about Teno for Fishing Enthusiasts, 2018, p. 2.

¹⁰ Anon. 2016. Status of the River Tana salmon populations 2016. Report of the Working Group on Salmon Monitoring and Research in the Tana River System.

fishermen are regulated to a degree, whereas non-Sami fishermen who do not use those methods are not covered by regulations. In this way, Sami fishermen claim they face discrimination as their fishing practices are limited unfairly in comparison with those of non-Sami fishermen.

According to article 15.1 of ILO Convention 169, indigenous peoples have special rights to natural resources located on their land, including fisheries. The term "land" is understood as the "total environment" which indigenous peoples inhabit since time immemorial; therefore, rivers are included.¹¹ For indigenous peoples "land" is not only a geographical territory. They have a spiritual relationship with it, which builds up their identity, and gives a sense of belonging to a given community and the whole culture of a group. For that reason, indigenous peoples have the right to participate in the use, management and conservation of resources located on their lands. Article 15 (2) of ILO Convention 169 gives only a general framework of participation procedure. Specific conditions are included in article 6 of the Convention. According to those rules, participation should be provided by consulting

indigenous peoples concerning all actions that may affect them directly. Consultations are to be held between groups' representatives and a state's legal bodies before the decision is undertaken, as consultation should, first of all, lead to obtaining the free, prior and informed consent of indigenous people, which is understood as their right to self-determination.¹² The consultations must be conducted in good faith and should aim to "really influence the decision making process".¹³

Additionally, according to the Tana Agreement the salmon fishing season starts 1st June and lasts until 20th August for local fishermen and from 10th June to 10th August for visiting fishermen (Tana Agreement 2017, paragraph 7). However, in different tributaries, the agreement reduces the number of fishing days differently (Tana Agreement 2017, paragraph 33). Moreover, previously some tributaries were reserved only for the local people, including the Sami. New regulations opened some of those tributaries also to visiting fishermen, including tourists, under the condition that they buy a fishing permit. The local Sami people argue that they do not have any control

¹¹ International Labour Organization 2003. ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual, p. 30, http://pro169.org/res/materials/en/general_resources/Manual%20on%20ILO%20Convention%20No.%20169.pdf.

¹² Human Rights Council. Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries, 30 April 2012. A/HRC/EMRIP/2012/2, p. 13.

¹³ Henriksen. 2008. Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169. Case Study: 7 Key Principles in Implementing ILO Convention No. 169, p. 30.

over how many permits have been issued.¹⁴ For that reason, a bigger share of fish may be caught by tourists, and not local inhabitants.¹⁵ However, it is not only the Sami people who have disagreed with new regulations. Non-Sami inhabitants of the Deantu Valley claim that they bought properties in the region together with fishing rights, which now cannot be used as extensively as previously.

Furthermore, any boat with which a person wants to fish must be registered. Local people can register up to three boats, whereas if they are running a tourist business, they can register up to 15. In this case, the Sami people who do not live in the Tana valley permanently, and are not registered as local inhabitants, are considered visiting fishermen, who need to rent a boat from locals.

In this context, as a response to the provisions included in the Tana Agreement, the Sami people claim that their survival is threatened. Furthermore, they argue that their human rights as guaranteed in the

International Covenant on Civil and Political Rights (1966) article 27 are being violated. The legal norm deriving from this article protects the right of people belonging to ethnic, religious and linguistic minorities to enjoy their own culture in community with others. In response to the violation of this norm, the Sami activist group "Ellos Deatnu" has been calling for civil disobedience.¹⁶ In June 2017 the group proclaimed a "moratorium" on Tiirasaari Island (Čearretsuolu in Northern Sami language), on the Finnish side of the river.¹⁷ The group does not recognise the new fishing agreement as binding on the territory of the island.¹⁸

However, the legal platform created by ILO Convention 169 has been undermined, as it has been ratified only by Norway and not by Finland. Nevertheless, both countries, Norway and Finland, have ratified the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The challenging legal aspect that arises here is that UNDRIP is a declaration and is not legally binding. Consequently, UNDRIP cannot constitute the sole legal

¹⁴ Eye on the Arctic. Sami group occupies island in northern Finland to protest fishing rules. 13 July 2017, <http://www.rcinet.ca/eye-on-the-arctic/2017/07/13/sami-group-occupies-island-to-protest-fishing-rules-in-northern-finland-river/>.

¹⁵ The Barents Observer. 13 July 2017. "We also get to eat salmon" – New fishing restrictions supported by people upstream the River Teno, <https://thebarentsobserver.com/en/borders/2017/07/we-also-get-eat-salmon-new-fishing-restrictions-supported-people-upstream-river-teno>.

¹⁶ The Local. 21 July 2017. Northern Norwegian islands in moratorium over fishing. Rights, <https://www.thelocal.no/20170721/northern-norwegian-islands-in-moratorium-over-fishing-rights>.

¹⁷ Ibidem.

¹⁸ The Barents Observer. 21 July 2017. The village of Utsjoki is empty: Tourists have disappeared – "If this was France, we could already have quite an uprising here", <https://thebarentsobserver.com/en/life-and-public/2017/07/village-utsjoki-empty-tourists-have-disappeared-if-was-france-we-could>.

basis of an international complaint. However, the provisions included in the Declaration can serve as a form of customary law. Over time, the consistent, continued use and practice of UNDRIP can lead to the emergence of *opinio juris*, which is already binding law.¹⁹ In this context, article 26 of UNDRIP may be valid. The norm deriving from this article, in a similar way as ILO Convention 169, protects the rights to lands and resources which indigenous people have inhabited. Additionally, the provision guard the rights to use, own, develop, and control over these territories.

Conclusion

In the context of indigenous peoples, it is impossible to separate one right from the others. They are all overlapping and influencing each other. It seems that the common stem lays in the right to culture. Culture builds foundations for every community, not only indigenous communities. Indigenous culture gathers different factors like land, traditions and local knowledge and offers indigenous peoples sense of belonging. For that reason, when talking about fishery rights, one cannot exclude land rights and cultural rights. In the case of the Tana River, the Sami people are afraid that together with fishing capabilities, they will lose their identity,

which is shaped at least in part by the above-mentioned factors. Besides being indigenous, they are at the same time human beings and members of a minority, and for that reason, they demand protection.

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¹⁹ Maguire. 2014. The UN Declaration on the Rights of Indigenous Peoples and Self-Determination in Australia: Using a Human Rights Approach to Promote Accountability, *New Zealand Yearbook of International Law*, Vol. 12. p. 111.

http://ec.europa.eu/environment/water/pdf/Finnish_Norwegian_international_river_basin_district.pdf (Viewed 7.11.2018).

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