The Consequences of Swedish National Law on Sámi Self-Constitution—The Shift from a Relational Understanding of Who Is Sámi Toward a Rights-Based Understanding

Ragnhild Nilsson

To cite this article: Ragnhild Nilsson (2020) The Consequences of Swedish National Law on Sámi Self-Constitution—The Shift from a Relational Understanding of Who Is Sámi Toward a Rights-Based Understanding, Ethnopolitics, 19:3, 292-310, DOI: 10.1080/17449057.2019.1644779

To link to this article: https://doi.org/10.1080/17449057.2019.1644779
The Consequences of Swedish National Law on Sámi Self-Constiution—The Shift from a Relational Understanding of Who Is Sámi Toward a Rights-Based Understanding

RAGNHILD NILSSON

Department of Political Science, Stockholm University, Sweden

ABSTRACT According to the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to determine their own identity or membership in accordance with their own collective customs and traditions. However, what is left of indigenous customary ways of applying membership rules after decades of state intervention? In this article, I show that Swedish national legislation has moved Sámi society away from a relational and responsibility-based understanding of who is Sámi toward a rights-based understanding. I argue that we need to see how national legislation has affected the way in which indigenous nations themselves apply their customary membership governance.

Introduction

In February 2019 the Human Rights Committee (HRC) hands down two decisions on the Sámediggi in Finland (Sámi Parliament in North Sámi language) and their electoral roll eligibility criteria: Sanila-Aikio v Finland and Näkkäläjärvi v Finland (CCPR/C/124/D/2668/2015; CCPR/C/124/D/2950/2017). The HRC found that the decision from the Supreme Administrative Court of Finland to include persons into the Sámediggi election roll against the will of the Sámediggi violated the claimants rights under articles 1, 25, 26 and 27 of the UN Covenant on Civil and Political Rights (CCPR). The HRC stated that:

The rights to political participation of an indigenous community in the context of internal self-determination under article 27 read in light of article 1 of the Covenant, and in pursuance of the preservation of the rights of members of the community to enjoy their own culture or to use their own language in community with the other members of their group, are not enjoyed merely individually. Consequently, when
considering the individual harm in the context of this communication, the Committee must take into account the collective dimension of such harm. With respect to dilution of the vote of an indigenous community in the context of internal self-determination, harm directly imposed upon the collective may injure each and every individual member of the community. (CCPR/C/124/D/2950/2017 para. 9.9)

According to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), indigenous peoples have the right to determine their own identity or membership in accordance with their own collective customs and traditions. They also have a right to select the membership of their institutions in accordance with their own procedures (Art 33). Moreover, they have a right not to be subjected to forced assimilation or destruction of their culture (Art 8). The decisions of the HRC make it clear that the right for indigenous peoples to determine their own membership is part of the right to internal self-determination for the Sámi. The individual right to belong to an indigenous community, or in this case to register into the electoral roll, can’t be imposed without taking into account the possible harm such action might do to the collective. The decisions also show that there still exist a tension between self-identification, the criteria used by states to identify Indigenous peoples, and the criteria used by Indigenous peoples to self-constitute in harmony with their own culture.

Historically the need for defining indigenous groups stems from the colonial imagination of localizing ‘the other’ and the possibility of exercising power over these groups (Alfred, 2009; Paradies, 2016; Smith, 2013; Walter & Anderson, 2013). Regardless of whether it has been a case of external or internal colonization, states have all over the world used different strategies to deny indigenous peoples a status as peoples with rights as such (see e.g. Anaya, 2004; Tully, 2000). Strategies being used have, for example, been to force indigenous peoples from their territories, to remove indigenous children from reserved lands or to assimilate indigenous peoples into the majority population (Tully, 2000, p. 41). In Sweden, there was a dual state Sámi policy of both segregation and assimilation. The segregation policy was directed toward the reindeer herding Sámi with the explicit objective of restraining them from getting close to Swedish society and civilization by forbidding them to live in houses and to establish special nomadic schools. Sámi in other livelihoods, not being reindeer herders, were to be assimilated as quickly as possible in the majority society (Lantto & Mörkenstam, 2016).

Today there is, on the one hand, a nation-state need for definitions for statistical purposes, as well as demands from indigenous communities for visibility in national censuses in order to provide a reliable basis for proper arrangements concerning education, health and other policies (Axelsson, 2010; Madden et al., 2016; Pettersen, 2017). On the other hand, state-constructed definitions have been, and still are, used to limit indigenous groups with the purpose of restricting and controlling the rights these indigenous groups possess (Coulthard, 2014; Simpson, 2016; Tallbear, 2013).

However, both the UNDRIP and the decisions by the HRC concerning the right to register into the Sámediggi electoral roll, make it clear that indigenous people have the right to self-constitute in accordance with their own customary ways as a part of their self-determination. But with the history of colonization, assimilation and segregation, what is actually left of customary Sámi ways of determining membership after decades of state control and regulations?
In this article, I show that Swedish national legislation has contributed to move Sámi society away from a relational and responsibility-based understanding of who is Sámi toward a rights-based understanding. I argue that we need to see how national legislation has affected the way in which indigenous nations themselves apply their customary membership governance. I examine the effects of national legislations on Sámi self-constitution in Sweden and show how state control has undermined the possibility for the Sámi society to constitute itself according to its own norms. This shift not only hampers Sámi self-constitution but also generates a conflict within Sámi society over the allocation of individual rights, which then negatively effects Sámi self-determination.

I base my arguments on the South Sámi concepts of laahkoe and maadtoe, which locate individuals in the landscape of social relations and physical places that together form the Sámi society. I do this by analyzing Sámi ideas, thoughts and arguments formulated in the Sámi monthly magazine presently called Samefolket (first called Lapparnas Egen Tidning (LET) and then Samefolkets egen tidning (SET) prior to 1950) from the period 1919–1993. This magazine is an important source of contemporary Sámi history, as it has for a long time been the main written source of and channel for disseminating important information within the Sámi society (Ruong & Ruong, 1985). To be able to identify, interpret, describe and analyze how the Sámi society has formulated the idea of how Sáminess is constituted and the arguments that have been used to support this, I have used idea analysis and structured the material in relation to three themes (Beckman, 2005; Lindberg, 2017).

The first theme is related to human relationships, kinship and descent. The second theme involves relationships to land, water and landscape as well as spiritual dimensions. The third theme involves exclusionary and repressive measures, rights and obligations. However, since my analysis also includes a diachronic perspective, i.e. how ideas have changed over time (Beckman, 2005, pp. 48–54; Lindberg, 2017, p. 95), it is also important to be able to see, for example, when questions about being Sámi, previously tied to relationships with other people, begin to be linked to other values and descriptions, such as hunting, fishing and the use of natural resources. In addition to describing the content of the ideas, I thus situate them in their political context in order to be able to analyze how the policy of the Swedish state toward the Sámi society influenced these ideas.

This article is structured in the following way. This introduction is followed by a short review of the theoretical discussion on indigenous peoples’ self-constitution. After that, the concepts of laahkoeh and maadtoe are thoroughly explained and discussed. I then move on to how the Swedish state has historically defined who is Sámi before analyzing my material. The article ends with a discussion of what consequences state intervention has had on Sámi self-constitution and some final conclusions.

Self-Constiution and Indigenous Peoples

The right to self-constitute on a collective level—Indigenous peoples’ right to define and decide on the criteria of who belongs to the indigenous group or not on their own—is an essential part of indigenous self-determination. State-constructed definitions and its implications for indigenous peoples is the subject of an ongoing academic debate throughout the indigenous world. Membership criteria or definitions of indigeneity can generate a conflict between the state and indigenous communities when definitions in national law clashes with the customary law being implemented within the indigenous communities (see e.g. Doerfler, 2015; Gaudry & Leroux, 2017; Palmater, 2011; Simpson, 2017;
Tallbear, 2013). However, it can also generate a conflict between the interests of indigenous individuals in self-identification and claims for membership to an indigenous group and the interests of indigenous groups to self-constitute in the way they want on a collective level (see e.g. Gover, 2010a, 2015; Lightfoot, 2016; Åhrén, 2016).

For indigenous peoples that throughout history have faced colonization, assimilation or other harsh politics from the nation states, the possibility to self-constitute based on their own customary traditions is thus a matter of survival as a people, releasing themselves from restrictions placed upon them by the states. This is also one of the reasons why the right to determine membership rules is included in the UNDRIP (see e.g. Imai & Gunn, 2018).

The use of blood quantum to determine the percentage of their ancestors that are from a specific tribe and the measurement of Indian ancestry, parentage and tribal ancestry are essential parts of the membership governance of tribes in the United States and in some places in Canada (Gover, 2010b; Vowel, 2016). In the United States one of the tribes’ most basic powers is the authority to determine questions of its own membership (Cohen, 1982, chapter 3, paragraph 3). Gover (2014, p. 207) argues that the constitutive principle of descent and its implementation and argumentation, should be left to tribal communities to effect as a matter of tribal self-constitution. This should be done even if it can be considered discriminatory, since the ‘application of unmodified non-discrimination law to Indigenous communities could progressively divest them of their means of self-constitution’. Palmater (2011), on the other hand, argues that the use of blood quantum or degree of descendancy from a status Indian as a means of excluding indigenous peoples from registration as Indians must be seen as racial discrimination and a colonial legacy, no matter if it is a part of nations own self-government citizenship codes or implemented by the governments. Furthermore, she means that the use of blood quantum and descent perpetuates racist stereotypes about indigenous peoples. The consequence of the constitutional support of using blood quantum as a membership criteria and the increasing tribal practice of DNA testing risks re-racializing Native Americans by promoting the idea that the tribe is a genetic population. Instead, the ancestry of indigenous peoples is not simply genetic ancestry evidenced in ‘populations’ but can, according to Tallbear (2013), be seen as ‘biological, cultural, and political groupings constituted in dynamic, long-standing relationships with each other and with living landscapes that define their people-specific identities and, more broadly, their indigeneity’ (Tallbear, 2013, p. 2).

These systems of inclusion and exclusion based on ancestry through which some persons are included and others excluded, raises the question of how individual rights relate to collective rights, and to what extent previous state definitions have affected the tribes own membership governance. Self-constitution entails both the extent to which indigenous peoples should adapt to international conventions as well as to national legislation and to what consequences an adaptation of that kind can have for the social structures of indigenous peoples. There is always a risk that the rights discourses of states undermine the self-determination of indigenous peoples by separating questions of governance and well-being from the relation to indigenous lands. ‘[Finally] by embedding themselves within the state-centric rights discourse, indigenous peoples risk mimicking state functions rather than honoring their own sustainable, spiritual relationships with their homelands’ (Corntassel & Bryce, 2012, pp. 152–153).

In the context of the Sámi, it is clear that the global discourse of indigeneity has affected the local indigenous political arena and created conflicts within Sámi societies.
While there has only been some discussions within Sámi society in Sweden and Norway about definitions connected to who is able to vote according to the Sámidiggi/Sámi Parliament Act, the debate in Finland has been intense and contentious (see Aikio & Åhrén, 2014; Joona, 2013, 2015; Junka-Aikio, 2016; Nyssönen, 2015; Pettersen, 2017; Sarivaara, Uusiautti, & Määtäa, 2013; Valkonen, Valkonen, & Koivurova, 2017). This debate, which have focused on the individual right to belong to an indigenous community vs the collective right of indigenous peoples to decide their own membership criteria, is reflected in the HRC’s decisions toward Finland (CCPR/C/124/D/2668/2015; CCPR/C/124/D/2950/2017).

To conclude, this brief review shows that indigenous peoples’ possibility to self-consti-tute not only raises questions about individual vs collective rights, but also on what to toler-ate from a non-discriminatory view. In addition, it shows how difficult it is for indigenous peoples to see the consequences of states’ previous or existing membership legislation on their own societies and social structures. In the next two sections, I will contrast the Swedish state-based juridical order of definitions with the South Sámi concepts of laahkoeh and maadtoe, starting with the latter.

Laahkoeh and Maadtoe—Your Relation to Family and Place

Laahkoeh still has a central place in the South Sámi society and is a concept, which symbolizes human relationships, that bind people together horizontally (Kappfjell, 2003). The relationship between humans, animals, land and spirits is woven together through maadtoe. Maadtoe is an expression for both kinship and a belonging to a certain area that provides continuity in the relationship with the surrounding landscape. While maadtoe describes the entire network of mutual rights and responsibilities that an individual possesses through biological and social relations with both living and dead, laahkoeh is the verbal tool used to describe these relationships with different names that are designated to each person (Ween, 2005, p. 19). Kappfjell (2003) writes that to be able to survive, individuals needed to collaborate, and the instruments that were available were sijte and laahkoeh. Si-je is how reindeer herding in a specific area is organized and includes several members, some of whom are close relatives and others who are not. The system of organizing in sijtes existed before the Swedish state regulated reindeer herding in the administrative ċearru that exist today. A ċearru is the word used for a reindeer herding community in the North Sámi language—sameby in Swedish, and contains both a certain territory and a way to organize the people and the reindeer herding.

The network that is represented by laahkoeh provides the individual with access to the use of resources in a given area and, through that, the opportunity to stay in sijten. A person’s social safety net was totally dependent on laahkoeh, where each person had specific designated areas of responsibility and obligations (Ween, 2005). With this relational network followed rights, but also sanctions. A person that did not fulfill his or her obligations could not count on, for example, having the same access to fishing lakes. A loss of laahkoeh in a situation in which a person was dependent on the patronage of her/his family usually did not end well (Kappfjell, 2003, pp. 216–217). Helander (1981, p. 33) describes the former, small Sámi societies as having a great influence over the individual, where the society was good for the individual, and the individual was loyal to society. There was not much room for self-interest; the ideal was to be hardworking, reliable and calm.
Your ability to survive was not only dependent on the number of reindeer you had but also how well you were able to get along with the other reindeer herders and people in your surroundings in order to maintain relationships (Oskal, 1995). It was important to know people, not only as individuals but also in terms of their positions in the network of laahkoeh, in order to be able to interpret situations quickly and to cooperate with everyone. However, as Oskal (1995) writes, it was not enough to be honest, righteous and able to get along with other people. You also had to be able to agree with the grazing areas, the migration routes, the calving areas and all of the places that were considered a home to the reindeer. These places have guardian spirits with whom you, in one way or another, must be in agreement with (also see Balto & Kuhmunen, 2014). It is an ontologically informed world in which places have agency, intentionality and subjectivity that people have to relate to in a correct way (Burman, 2017). One way of doing so is through understanding, generosity and the desire to reach agreement, not only with other people but also with the world (Oskal, 1995). These relational values are evident in early discussions within Sámi society regarding how to manage natural resources. Access to common resources is dependent on fulfilling your obligations to your closest relations. Since laahkoeh is considered to be your social insurance, the natural resources should not be misused and the obligations to the persons in your laahkoeh should be of primary interest (see e.g. Kappfjell, 2003).

No, within a čearru there should be amity and unity and everyone should live up to their obligations and ability so that no unnecessary disagreements occur. Some Sámi, during the fall, take non-Sámi with them up to the mountain lakes to go fishing. Is this fair, when there are a lot of poor Sámi that are dependent on the fish in these mountain lakes? (SET, 1919, p. 29)

In a čearru, where you are dependent on getting along with those who live closest around you, it is central to both honor the environment by, for example, not take out more fish than you need, and to respect those who are in more need of the resources than you are. What is given from the nature is nothing that you can give away or hand over casually (see e.g. Helander, 2001). The central values of being a good person and getting along with your surroundings point to the obligations of the individual to gain as much knowledge about the world, both visible and spiritual, as possible so that one can contribute to the position that is allocated to you by your laahkoeh. ‘He is no better than a non-Sámi, when it comes to defrauding his closest Swedish neighbours’ (SET, 1919, p. 27). The obligations toward your closest relations are of great importance, both toward those within your laahkoek and to others (see e.g. Kappfjell, 2003; Nordin, 2002). Relations between humans, reindeer and landscape span over generations—through laahkoeh and stjte to specific lands. A multidimensional spiritual world also means that relations are maintained by seeing previous generations as existing in the landscape. Within such a complex system, rights and obligations are dependent on choices on the part of yourself and others, but also on understanding (Ween, 2005).

In my childhood, before I started school and some years after that, it wasn’t difficult for me to distinguish the Sámi world. I had it all around me and it was a world. It wasn’t limited to my home. It was wide because it consisted of mountains, lakes, rivers, creeks, valleys, paths and much more. It contained life, and I was part of this life. (Åhrén, 1987)
A legal practice is not only based on written law, but also on practice—human activity that structures the way we interact with each other. By seeing laahkoeh as a complex, multidimensional system for inclusion and exclusion, it also constitutes South Sámi customary law. Sámi customary law or traditional legal practices within Sámi society cannot be seen as something that can be described by a general definition. Depending on the depth of the analysis, it can vary from very local practices and understandings that cannot be abstracted from specific contexts to broader philosophical views and social orders that establish the framework for legal understanding (Svensson, 2001, p. 28). It is also important to keep in mind that customary practice can occur without consideration of national laws or even an understanding of national laws, but may instead be based on a common local understanding of certain rights and responsibilities (Ström-Bull, 2001, p. 88). Even though Helander (1981, p. 29) claims that Sámi societies and customary legal understandings have been fundamentally the same throughout the entire traditional Sámi area², Sámi customary law should be understood as something that need to be contextualized from region to region, depending on the environment and differences in occupation (Åhrén, 2004).

There is little written about laahkoeh and maadtoe, and even if Ween (2005) describes them in exemplifying legal practises, the concepts have never been used in theorizing about a Sámi understanding of self-constitution. Whether the customary practices of indigenous peoples can be seen as indigenous law, or whether they can be used for theorizing, is a subject of debate (Borrows, 2019; Porsanger, 2011). However, Sámi concepts should be used to theorize as long as ‘care is taken not to prioritize, universalize or essentialize its definition and application’ (Borrows, 2019, p. 18). Borrows argues that the legal practices of indigenous peoples, when labeled as traditional, can be seen as closed, static and frozen in time and as something only authentic and essentialized persons can understand (see also Kuokkanen, 2009; Porsanger, 2011). These limitations can easily become internalized and vocalized by indigenous peoples themselves. Essentialized ideas are easy to hold on to but should never be used as an argument for allowing discrimination in any form, no matter where the ideas stem from (Borrows, 2016).

The concepts of laahkoeh and maadtoe shows that Sámi customary legal orders exist, where relations and obligations to both humans and places shape the Sámi understanding of belonging. This legal orders stands in sharp contrast to the often one-dimensional membership definitions created by states.

Who Is Considered to Be Sámi in a Historical State-Centred Perspective?

Historically, the Swedish state has defined and institutionalized Sáminess through legislation. This legislation has successively intensified the link between the definitions of Sáminess to the practice of reindeer herding. With the right to herd reindeer, other rights follows as well, such as hunting and fishing. Since Sámi rights were considered by the state to be privileges, it also became important to limit the group of people having these privileges. In the Reindeer Grazing Act from 1898, who were considered to be Sámi was defined for the first time. Only those persons who—on the basis of language (any of the Sámi languages), ancestry and commonly taken to be Sámi—were to be accepted as such (SOU 1927:25, p. 44). In an amendment in 1917, ancestry was complemented with attachment to reindeer herding, if a person’s ‘father or his father have been practicing reindeer herding as their main occupation […]’ (SOU 1927:25, p. 44).
In 1923, a new legislative bill proposed that reindeer herding should continue to be the basis for the definition of being Sámi. Women who were not considered Sámi before marriage were automatically registered as Sámi in the church books after marrying a Sámi. However, a Sámi woman who married a non-Sámi was no longer considered to be Sámi, if there were no mitigating circumstances for doing so (SOU 1923:51, art. 2, pp. 2, 3; see also Amft, 2000). The Committee that formulated the new legislative bill argued that ancestry and use of Sámi language within the family were very important criteria. Furthermore the Committee argued that since the Sámi had mixed with other races over centuries and thus changed their language to Finnish or Swedish, neither ancestry nor language could be the only criterion for determining who could be registered as Sámi. Therefore, they meant that the practice of reindeer herding should be seen as the crucial criterion (SOU 1923:51, p. 74). This definition was later institutionalized in the Reindeer Grazing Act in 1928.

For the Sámi in Sweden, the Act of 1928 divided Sámi society into reindeer herders and non-reindeer herders, and only the reindeer herders were considered to be ‘true Sámi’. The legislation granted the right to reindeer herding, hunting, fishing and forestry on Crown land to the already existing reindeer herders (Lantto & Mörkenstam, 2016). Only reindeer herding was defined as a traditional Sámi occupation, and only Sámi rights attached to reindeer herding were recognized in legislation. To be able to exercise the right to herd reindeer, one had to be a member of a reindeer herding community, a čearru. Sámi engaged in other occupations, such as hunting or fishing and other practices, were in this way excluded from this restricted system of Sámi rights (see e.g. Mörkenstam, Josefsen & Nilsson, 2016; Lantto & Mörkenstam, 2016). Sámi rights thus became directly tied to one’s membership in a čearru, seen by the authorities as dependent on your ancestral connection to reindeer herding.

The reindeer herding legislation was developed side by side with the national censuses that were undertaken between 1920–1945. In these censuses the classification of Sámi into reindeer herders and non-reindeer herders, combined with race ideologies concerned with determining who were and were not racially ‘pure’ Sámi, led to a narrow and discriminatory notion of who constituted the group of Sámi in Sweden. The purpose was to limit the group as much as possible, to reduce the number of persons having Sámi rights. In the 1920 census, the word ‘race’ was used. In addition, the Bureau of Statistics no longer considered language to be a sufficient measure of Sáminess, and the measurements of full-Sámi and half-Sámi were introduced. In the 1947 census, the experience of WWII led to the abandonment of race as a category, and language criteria were once again revived in categorizing a person as being Sámi, together with those who were entitled to herd reindeer (Axelsson, 2010, 2016; Mörkenstam, 1999). Both the language criteria used before 1928 and in the 1947 census, and the practise of reindeer herding in the 1928 Reindeer Grazing Act, should be seen as an euphemism for ‘race’ and as a way of identifying ‘difference’. Since 1947, no national censuses have been carried out.

The current Reindeer Herding Act of 1971 states that people of Sámi ancestry can be members of a Sámi reindeer herding community and, as such, also have the right to herd reindeer and other customary rights, such as fishing, hunting, etc. (SFS 1971:481). However, in 1993 the question of who should be able to vote in elections to the newly established Sámidiggi created the need for some kind of new ethnic demarcation. Ancestry alone was not felt to be sufficient, and, therefore, a two-generation Sámi language criterion was opted for, the same criterion that already existed in Norway (Mörkenstam, Josefsen, & Nilsson, 2016). First, there is a criterion of self-declared identity: in order to register,
persons must declare that they regard themselves as Sámi. Second, there is an objective language-based criterion: persons, or one of their parents or grandparents, must have used Sámi as a home language. Alternatively, one of the parents must be (or have been) registered on the electoral roll (SFS 1992:1433, art 2). A consequence is that there are now two different legislative acts in Sweden—the Reindeer Herding Act and the Sámediggi Act—with two different purposes and two different definitions of who counts as Sámi (see also Beach, 2007, 2013).

In the preparatory work of the 1971 Reindeer Herding Act the Sámi organizations had little influence over the content in the new legislation, even if it was discussed, especially within the Swedish Sámi Association (SSR) who organizes the čearrus and Sámi associations in Sweden (Åhrén, 1986). The Sámediggi Act on the other hand was the result from several official reports of the Swedish Government, in which the Sámi were represented (Mörkenstam, 1999). The Reindeer Herding Act, that regulates the use of land and water, thus seems to be far more controversial from the Swedish Government’s perspective, than the Sámediggi Act that regulates a Swedish government agency with responsibility over Sámi culture and language (see Lawrence & Mörkenstam, 2016). Thus, it is easier to let the Sámi society have more influence over a legislation through which the power balance between the Swedish Government and the Sámi society remains intact.

The Shift from Norms and Values Toward Rights

During the 1960s, the policy of the Swedish state toward the Sámi was focused on integrating everyone into the Swedish welfare system by restructuring the traditional occupation in order to create a more rational and modern reindeer herding structure. This was to be achieved by drastically decreasing the number of reindeer herders (Lantto & Mörkenstam, 2016). For Sámi society, the immediate consequence was that many small-scale reindeer owners had to give up their reindeer herding life and move to different parts of Sweden in order to find new ways of supporting their families (Lantto, 2000). This social change within Sámi society was manifested by an increasing need to find new ways of transferring knowledge and values to those Sámi who had left traditional occupations (Samefolket, 1967a, nr 3, 4, pp. 63–64; Samefolket, 1969c, nr 10–12).

What ties the Sámi people together is partly inherited patterns that have to do with surviving in the wilderness, the fight for food and the fight against the cold. This struggle has become the patterns of life that have characterized Sámi society. Young people are now breaking loose from this society, and they are instead included in the majority society as professional workers. Affinity with Sámi society is more or less severed. (Samefolket, 1967b, nr 6, 7, p. 102)

There was also a fear that Sámi society was about to fall apart. ‘In the old čearrus, the safety of the family was the priority. In these old Sámi societies, the feeling of belonging was very strong. It had a strength that we nowadays really can’t imagine’ (Samefolket, 1968, nr 9, p. 154). At a time when laahkoeh functioned as social insurance that could be counted on during difficult periods and when everyone contributed to helping out, it was natural for Sámi to be concerned when their family members moved and the social relations that were previously seen as a precondition for survival were severed.
At the end of the 1960s, a new reindeer herding legislation was proposed by a governmental commission (SOU, 1968:16). In relation to the question of membership in the \( \text{čearru} \), the Samefolket discussed the issue from two perspectives. One perspective involved the need on the part of individual family members for safety and affiliation with their cultural unit. The other perspective involved the survival of the Sámi as a people when central values were being abandoned (Samefolket, 1968, nr 9). At the individual level, it was affirmed that the feeling of belonging to the reindeer herding community and to one’s own family was of decisive importance for the future of reindeer herding. However, what would happen with the Sámi as a people when some Sámi were found in urban areas without any contact with their traditional occupations and thereby with no possibility of maintaining their relations with relatives or of acquiring knowledge of values, such as reciprocity and cohesiveness, and traditional knowledge about natural recourses? (Samefolket, 1968, nr 9; Samefolket, 1969a, 1969b, nr 8, 9; Samefolket, 1969c, nr 10–12, p. 158; Samefolket, 1973a, nr 3, 4, p. 60; Åhrén, 1986).

The legislation has divided the Sámi people into two distinct groups: reindeer herders and non-reindeer herders. Another wound is that some Sámi feel ashamed of their origins and want to hide that they are Sámi. They forget that no one chooses their parents. Many Sámi can in that way become strangers from life and from the values that life has to offer. That might have been caused by pressure from the majority society and the idea that it is only the Swedish way of life that is the real one. (Samefolket, 1967b, nr 6–7, p. 102)

The split between those Sámi who had the right to belong to a \( \text{čearru} \) and those who did not, all as a result of Swedish legislation, was discussed as a problem for the entire Sámi society. This was a result of urbanization and out-migration of women and youth, because of its impact on traditional knowledge, Sámi values and norms, loss of an emotional sense of belonging to land and loss of a common feeling of responsibility and belonging to your family and friends. What Sámi society felt to be the best way of counteracting this development—the loss of knowledge and sense of belonging—was to develop new organizations, Sámi associations, and to give all Sámi the right to small game hunting and fishing in the form of associated membership within the \( \text{čearrus} \) (Samefolket, 1970, nr 5–7, p. 70). When the Sámi associations were seen as new arenas for disseminating knowledge and forming affinities, at a time when the network of laah-koeke was fading away, the distribution of small game hunting and fishing rights to all Sámi was seen as a way of maintaining contact with the traditional lands. ‘No Sámi should lack a local arena for Sámi fellowship and Sámi issues’ (Åhrén, 1986, p. 52).

At the international level the Human Rights framework was developing during this period with the adoption of the Covenant of Civil and Political Rights and the Covenant of Economic, Social and Cultural Rights. The conventions supported the individual, liberal tradition and emphasized that human rights can only apply to individuals. Individual members of a minority group cannot be denied the right to their culture together with other members of the same group (Åhrén, 2016). This international recognition of individual rights together with the evolving notion of the collective rights of indigenous peoples also influenced discussions and arguments within Sámi society. In particular, those persons who considered themselves to have been left outside of the \( \text{čearrus} \), and denied the rights that followed from such membership, now felt that they had individual rights to their culture in accordance with these conventions.
During the 1970s, the focus of the arguments in the debate within Samefolket gradually shifted from maintaining relations toward judicial claims to land, greater equality and safeguarding the common rights of the Sámi as an indigenous people. The relational values and the more rights-based arguments did not initially compete with each other but existed as parallel discussions for a time. It was not until criticism of the notion that not all Sámi can be members of a čearru became more visible, that the relational arguments became less prevalent. Groups outside of the čearrus began using concepts like ‘differentiated/alienated Sámi’ to describe their position living outside the traditional Sámi area, and/or having no rights to, for example, hunt and fish:

It’s not really surprising that non-reindeer-herding Sámi, in particular those that more or less purposefully call themselves alienated Sámi, feel disadvantaged and disadvantaged [...] An enhanced solidarity between the Sámi reindeer herders and differentiated Sámi needs to arise and grow strong. [...] If the fragmentation continues, it will become increasingly easy to deprive the Sámi of the right to their land. (Samefolket, 1973b, nr 5, pp. 66–67)

To be a member of a čearru is now seen more as a matter of fairness: ‘However, the possibility (to hunt and fish) will be experienced as recognition that they really are Sámi’ (Samefolket, 1973c, nr 12, p. 262). And as a matter of legal rights: ‘The Sámi in core areas that are not members of a čearru have demands for a more secure legal status’ (Samefolket, 1974a, nr 3, p. 42). However, it is also seen as a matter of individual rights: ‘The Sámi people should have the same rights as everyone else’, and we ‘require only that human rights also apply to us’ (Samefolket, 1975, nr 6, p. 176). What is clear, then, is that when the relational arguments faded away in favor of more rights-based arguments, women and children also disappeared from the discussion. When the issue of organizing the čearrus increasingly focused on the distribution of hunting and fishing rights, there was little importance in preserving the relation to all that is living or to maintain knowledge—laahkoeh—in which women and children had an important role.

From the late 1960s on, the Swedish Sámi Association (SSR) initiated what it called ‘a fight for rights’ through the initiative of the Taxed Mountain Case, in which they claimed ownership to land and waters for čearrus and individual Sámi in parts of Jämtland (Åhrén, 1986). In a parallel development, the conflict in Norway over the construction of a dam in Alta-Kautokeino during the 1970s and early 1980s became a political struggle for the Sámi in Norway and put issues of Sámi rights on the national political agenda. The Sámi in Sweden lost the Taxed Mountain Case in 1981, but the juridical arguments that followed with the verdict, together with the experiences from the Alta-conflict in Norway, had a great impact on the discussion within Sámi society in Sweden (Josefsen, Mörkenstam, & Saglie, 2015; Åhrén, 1986). There was some self-reflection.

It is of course easy to be wise after the event, but was it really wise to claim ownership in accordance with the legal position of the state? In other contexts we claim, like the Indians, that you can’t own land. The conclusion is that land ownership is a construction from the outside, built on land capitalism. (Ruong, in Åhrén, 1986, p. 71)

The focus on legal rights within these two struggles reinforced the rights-based arguments put forward by SSR and the overall discussion within Samefolket. In 1980, SSR put
forward a proposal on how to organize the čearrus, after having discussed the issue for the previous ten years. The Sámi rights to land and water should be recognized in legislation and should be tied to the Sámi, collectively, in the čearrus.

The čearru and the Sámi associations should be the basis for Sámi fellowship. The čearru should be the local community for the Sámi, which should affiliate all Sámi living within or outside of the čearru area as members. Sámi not affiliated with a čearru should have the Sámi associations as their local community. The members of the čearrus and the Sámi associations constitute the Sámi population. (Samefolket, 1980, nr 4, p. 13)

The suggestion from SSR thus connected what it saw as the entire Sámi population to either a čearru or a Sámi association. This suggestion was the response to the ongoing debate of the injustices in the Reindeer Herding Act, where only members in a čearru could hunt and fish on the traditional lands. What is shown in the empirical material is that when the connection to specific lands previously was articulated as something dependant on your social relations, your obligations and your knowledge, i.e. your laahkoeh and maadtoe, something had changed. With the development of the international Human Rights discourse and the juridical Sámi rights discourse, together with more outspoken individual Sámi rights claims, the relational values connected to land and natural resources almost disappear from the public debate.

On a Nordic level, there was during the late 1970s also an ongoing discussion between Sámi organizations in Sweden, Norway and Finland about the need for a common Nordic Sámi Parliament (Samefolket, 1978, nr 9, p. 13). This made the question of who should be considered Sámi more visible on the agenda, while arguments of a judicial character become more common. ‘There is a need for a Sámi law defining who is Sámi and what rights we have’ (Åhrén I. in Samefolket, 1974b, nr 6, p. 125). At the Nordic Sámi conference held in 1978, a draft for a common Sámi political program was presented. The program included a proposal for a common definition of Sámi.

Sámi is one who is born of Sámi ancestry and does not deny it, or one who has Sámi as one’s native language, or one who through kinship is assimilated into a Sámi family so that the Sámi family accepts him/her as Sámi. While a Sámi should adhere to the laws of the countries, a Sámi should also adhere to the legal traditions of the Sámi people, as long as he/she has not denied Sámi ancestry. Even though one is a Sámi, one can abandon one’s Sámi identity and one then also abandons one’s Sámi rights and obligations. (Samefolket, 1978, nr 9, p. 13)

This proposed definition retains some of the same core values as the system of laahkoeh and maadtoe represents by its relational connection to inclusion, exclusion and rights intertwined with obligations. The proposal for a common Sámi political program also included an idea for a common Nordic Sámi Parliament that would function as a common advisory board for the different organizations. However, the entire program was rejected by the organizations that were present, as it was seen as too far-reaching, and the SSR in particular was afraid that a common organization would interfere with internal, Swedish affairs (Samefolket, 1978, nr 9).

A revised definition of who was to be considered as Sámi, which was adopted at the Nordic Sámi conference in 1986, focused instead on the Sámi language. The definition entailed that a person that has the Sámi language as one’s first language or that has a
father, mother or grandparents that have the Sámi language as their first language is also considered to be Sámi (Samefolket, 1986, nr 9, p. 13). It was, in part, this definition that was later institutionalized through the Sámediggi in the three Nordic countries and regulated in the Sámediggi Act in Sweden. Although back in 1989 one Sámi organization in Sweden, Landsförbundet Svenska Samer/The Swedish Sámi National Union, criticized the legislative proposal from the Sámi Rights Commission as too narrow. The organization wanted to add a criterion—that their origin is Sámi—due to the fact that the Swedish assimilation policy at the end of the nineteenth century had bereft many Sámi of their language and thus the language related three-generation criterion was not sufficient (Fjellström et al., 2016; Lantto & Mörkenstam, 2016). Some voices stressing the importance of relational values for Sámi society were still heard in the public debate:

For me, my family, relatives, friends and the Sámi people are all important keystones that gives me a sense of purpose and provides me with social security. […] If you destroy the Sámi family affiliation you also destroy Sámi society and culture. Affinity within the family, among relatives and among the entire Sámi people are, therefore, essential. (Persson in Samefolket, 1988, nr 8, p. 27)

Sámi Self-Constitution or State Intervention?

There is no doubt that the issue of being Sámi in terms of legislation and in the public Sámi arena for a very long time has been intertwined with the issue of rights. The Swedish state has, at least over the past two-hundred years, taken actions to categorize, racialize, quantify and constrain the Sámi. Whether it has been in the name of the Institute of Race Biology, the Swedish Bureau of Statistics or within the framework of contemporary legislative proposals, the main arguments for finding objective criteria for who is Sámi are the same (see e.g. Wahlund & Lundborg, 1932). The policy of the Swedish state toward the Sámi has been aimed at deliberately trying to limit the number of Sámi that are able to exercise their customary rights within the traditional Sámi area through the Reindeer Herding Act. According to the Act only those who work with reindeer herding have the right to use the traditional Sámi lands for grazing, hunting and fishing. The Sámi response to this policy has largely been to try to find new ways of organizing Sámi society in order to meet this loss of rights. However, while earlier arguments for establishing new Sámi associations and for including more Sámi in the čearrus, were related to attempts at creating feelings of belonging to relatives and to a certain area of land or disseminating knowledge, norms and values, the arguments gradually changed by becoming more rights-based.

Indigenous customary law defines rights and responsibilities in key aspects, such as access to and use of natural resources as well as the conduct of spiritual life. Maintaining customary laws can be crucial for the maintenance of the knowledge systems of indigenous peoples (Heinämäki & Xanthaki, 2017). The use of a state defined criterion of descent, for example, is part of an ongoing colonial process that pulls indigenous peoples away from cultural practices and communal aspects of being indigenous and toward a political-legal construction of being indigenous (Corntassel, 2003). The use of positive, objective measures of descent to recognize indigenous individuals, independently of their affiliations to indigenous communities, runs the risk of being overly inclusive of persons wanting to be indigenous for strategic reasons (Gover, 2015, p. 205).
The flexible system of *laahkoeh* is perhaps not applicable to the whole of Sápmi, or to all of Sámi society within the borders of Sweden. I have used it, though, as my theoretical and analytical starting point to understand the shift from a relational and obligatory understanding of who is Sámi toward the more rights-based understanding we see today. *Laahkoeh* is central as a system for inclusion and exclusion, and it is also central to understand that the system is based not only on kinship but also on social relations without biological connections like relations to friends and people being married into your family. Persons who are as important as your biological kinship. The system and naming of *laahkoeh* stems from *maadtoe*, which is the entire network of mutual rights and responsibilities that an individual possess through both biological and social relations, with both the living and the dead. Kwaymullina and Kwaymullina (2010) state from their Aboriginal perspective, that relationships are of primary importance in determining legal roles with individual and collective rights and responsibilities ordered through a complex kinship system. Therefore, in a world composed of relationships, the ultimate value of a law must be determined by how well it sustains, maintains and renews the connections between all life. This is very similar with the values and norms that are being transferred through *laahkoeh*/*maadtoe*, where relationships define rights and responsibilities:

The Aboriginal kinship system recognizes the connections, not just between humans, but between humans and all other life. Everyone has a place in this system, and by knowing this place, people know their rights and responsibilities - to provide another with food, to care for a specific story or site, to punish a wrongdoer. And the rights and responsibilities that one person has with regard to another depend on their respective places in the system. It is not the right or responsibility that defines the relationship, it is the relationship that defines the right or responsibility. (Kwaymullina & Kwaymullina, 2010, p. 203)

However, as Borrows (2016) claims, it is hard to see that there can be a single custom or idea that is categorically fundamental to being indigenous. In his view, it is misleading to claim that indigenous societies possess an unalterable central essence or core. Doing so involves labeling false traditions. Instead, ‘Indigenous peoples renew, retain, and transform their traditions as they move through time’ (Borrows, 2016, p. 22). So, to the extent that one can agree that state policy affects the present capacity for indigenous communities to self-govern their membership, one must also take into account the effects of state policy on notions and claims of what is customary today on the part of the indigenous communities themselves and how these have changed over time.

**Conclusions**

The UNDRIP is clear: indigenous peoples have the right to determine their own identity or membership in accordance with their own collective customs and traditions and to select the membership of their institutions in accordance with their own procedures. It should thus be the Sámi themselves that decide who can vote in elections to the *Sámediggi* or to be a member of a *čearru*. Throughout history the Swedish state has clearly, through politics and legislation, not only emphasized biological ancestry but also shown that the amount of blood matters for who constitute the group that can call themselves Sámi. The problem is, therefore, not the same as the one Gover (2010b) raises, i.e. that the state has
not taken the ancestry of the indigenous peoples and blood based membership into account enough. Instead, the strong intervention on the part of the state has resulted in a change from a relational and obligational understanding of who is Sámi in favor of a more rights-based understanding that is bound up with special rights. Several reasons for this can be traced in my empirical material.

One is that the introduction of an international Human Rights discourse in Sweden and at the Sámi organizational level pushed the Sámi arguments in the direction of rights themselves and an understanding of collective Sámi rights as something that a person as an individual Sámi has a right to. For Sámi who were not members of a čearru, these new arguments were seen as supporting what they considered to be an injustice to their individual rights.

Another is the national legislation, that together with the focus on juridical Sámi rights initiated by the Sámi organizations themselves, narrowed the discussion and led to a rights discourse where Sámi customary law, norms and values where left out. The adaption to a state-centric rights discourse can of course be the result of a strategic decision to get the State to understand the rights claims being made. But it is at the same time almost impossible to uphold the norms and values that constitutes Sámi customary law. The question of which discriminatory membership criteria that can be accepted from a normative perspective becomes therefore a non-question in the current situation, since the state has eliminated the preconditions for Sámi self-constitution. For this reason, this shift in the balance between individual rights and collective rights has become much more complex within Sámi society and within the current debate. The conclusions from the HRC decisions on the Sámi Parliament in Finland and their electoral roll eligibility criteria—that the individual right to belong to an indigenous community, or in this case to register into the electoral roll, can’t be imposed without taking into account the possible harm of the collective—is one example of that complexity.

The shift from a relational and obligational understanding of who is Sámi toward a rights-based understanding can also be seen as a shift from Sámi self-constitution toward a state construction that has made it more difficult to uphold the values and the legal practices of laahkoeh/maadtoe. This leads to several implications for contemporary Sámi society. One is, of course, that it effects the ability for Sámi society to constitute itself, but it also affects the possibility for Sámi society to develop according to its own visions. State law can never reconnect to landscape, ancestors, relations, reindeer herding, land, water and spirituality in the way that Sámi customary law can. Instead, state policy has contributed to a rights-essentialist understanding of Sáminess within Sámi society, which also creates an internal conflict over rights as such.

With the establishment of the Sámediggi in Sweden, the conflict between individual and collective rights in the form of who is able to hunt and fish became accentuated and institutionalized within the political party system (Nilsson, Dahlberg, & Mörkenstam, 2016). The new definition of who is able to vote and who is eligible to run in Sámediggi elections, when combined with other purposes (the right to herd reindeer and access to other natural resources), has moved Sámi society even further away from relational values (Nilsson, forthcoming). Sámi self-constitution has thereby shifted in the direction of becoming more of an internal power struggle. The consequences of a strict state policy toward the Sámi, with a resulting loss of rights and disjointed social structure, has now become an
internal matter of redistribution of rights, which can be solved ‘organizationally’. *Laahkoeh* and *maadtoe* means that your belonging to Sámi society is dependent on how well you can maintain your relations with both persons and landscapes, in what way you do that, and how well you gain and contribute to the knowledge that these relations require. Rights, such as hunting and fishing, are neither static nor something that is granted to everyone, since they are dependent on the system of relations, knowledge and obligations that *maadtoe* constitutes.

New boundaries and definitions always create new conflicts and new groupings. They require new ways of thinking and different discussions of which discriminatory factors that can be accepted and allowed. The question is what kind of normative positions one is prepared to defend over time.

**Acknowledgements**

The author would especially like to thank Melbourne Law School and Professor Kirsty Gover for hosting her and giving her inspiration and helpful comments along the way. Also thanks to Ulf Mörkenstam and two anonymous referees for helpful comments on earlier versions of this text.

**Notes**

1. These concepts are thoroughly explained in a later section.
2. The geographical area which is often called Sápmi stretches from Idre in the middle of Sweden, to the Arctic Sea in northern Norway, and the Cola peninsula in Russia. This area was the traditional dwelling place of the Sami people ([http://samer.se/4527](http://samer.se/4527), accessed 30 April 2019).

**ORCID**

Ragnhild Nilsson [http://orcid.org/0000-0001-5841-1388](http://orcid.org/0000-0001-5841-1388)

**References**


Samefolket. (1967b). Nr 6, 7, Juli.

Samefolket. (1968). Nr 9, September.


Samefolket. (1973c). Nr 12, December.


Samefolket. (1975). Nr 6, Juni.


Samefolket. (1986). Nr 9, September.


Samefolkets egen tidning. (1919), nr 2, February.


**Public documents**

SFS 1971:481 Rennäringslag.


SOU 1927:25 De svenska lapparnas rätt till renbete i Sverige m.m.

SOU 1923:51 Förslag angående lapparnas renskötsel m. m

SOU 1968:16 Rennäringen i Sverige.