

Position Document – Indigenous People and Mineral Extraction

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Starting points

A large proportion of Sweden's known as well as potential mineral deposits are located within the area where reindeer herding may be conducted under the Reindeer Husbandry Act. The extraction of minerals is a necessary part of civilised human existence and can only be undertaken where such deposits are found. Reindeer husbandry is a civil right and a culture which is promoted under the constitution and which constitutes an essential or even crucial activity for the Sámi and their rights as an indigenous people. The practice of both reindeer husbandry and mineral extraction are documented dating back to prehistoric times. Access to land is of crucial importance to both mining and reindeer husbandry.

Direct land claims in the case of mining are very specific and delimited. Reindeer husbandry requires large swathes of land that are connected. However, such functionality can be impacted by an aggregated pressure stemming from various forms of land use. Functional access to the land required is what constitutes the primary conflict of interest which exists between mining and reindeer husbandry. Something which both activities have in common is that they are not constantly undertaken in the same place over time, even though their needs are (obviously) very different. In order to find ways for the mining industry and reindeer husbandry to co-exist in the long run, the mining industry is keen to pursue knowledge development and dialogue to provide the right framework and conditions for such co-existence. The possibilities for the remediation of former mining areas so that they may once more serve as functional reindeer husbandry areas is also a crucial matter within this context.

Mutual knowledge and understanding of both mining and reindeer husbandry will be necessary in order for a fair, positive and respectful dialogue to be possible. Greater knowledge building and a better understanding of both mining and reindeer husbandry are required within other sectors of society such as the media, politics and the general public. In the interests of ensuring a better understanding of both mining and reindeer husbandry, we strongly believe in the need for a change to materialize away from the often conflict-ridden situation of the present debate towards a position which is more defined by trust and understanding and which focuses on solutions and improved relations.

Svemin's position

The Sámi's rights to land

All mining companies that are active in Sweden must naturally follow and comply with all applicable legislation. This means that a Sámi village affected by the operations of mining companies are stakeholders who are entitled to consultation and consideration in accordance with current acts and regulations; which in this context are primarily the Swedish Minerals Act and the Environmental Code.

The Swedish Reindeer Husbandry Act regulates the rights of the Sámi to use land and water

to sustain themselves and their reindeer and also covers, inter alia, the right to reindeer grazing, hunting and fishing as well as the right to erect certain cabins and buildings, and the right to collect timber for fuel, the construction of houses and the production of handicrafts. Svemin respects these rights.

The current debate often considers the position of the Sámi in respect to international indigenous rights and how this does affect or should affect their rights to land use. The acts concerned are ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples of 2007. Sweden has not ratified ILO 169. In Svemin's view, the reason for this appears to be question marks regarding the conventions' requirements concerning land rights in relation to Swedish legislation. Both documents lay forth a principle referred to in shorthand as FPIC (Free, Prior and Informed Consent).

Within this context, the FPIC principle concerns projects which affect land and the resources covered by the Reindeer Husbandry Act (see in particular Article 32 of the Declaration on the Rights of Indigenous Peoples and Article 10 onwards in ILO 169).

Svemin's view on Sámi rights

The above-mentioned international instruments concern the relationship between states and indigenous people and do not directly address individual companies. Within the mining industry today, there are many companies that endeavour to comply voluntarily with international law on indigenous rights to the extent applicable to each company. Svemin is working to see this approach adopted within the Swedish mining industry on a more general level. When it comes to expressing these rights issues in practice, it is clear that there are a number of question marks regarding interpretation and application which need to be developed and clarified. A mutual and overarching collaboration between mining operators and the reindeer husbandry community is therefore desirable in this respect. At the same time, there is a need for sufficient scope for individual reindeer herding groups and mining companies to create the conditions that are best suited to their own needs.

Sámi rights in practical application - new operations

The rights of land use which are provided for by the Reindeer Husbandry Act give concerned Sámi villages a stakeholder position which makes the difference compared to other land use rights marginal in most contexts. In the case of mining operators, the conditions laid down by the Minerals Act enables such companies to undertake extraction regardless of who owns the land or has rights of land use.

The rights of the Sámi in relation to what may be interpreted from ILO 169 are ultimately a matter for the state and not a question which the mining industry is required to decide upon. Nevertheless, it is the view of Svemin that any ratification of ILO 169 would be inauspicious. The reason for this is that it would result in yet further uncertainties in an area which is already subject to a wide degree of interpretation, and because there are doubts as to whether ILO 169 in its current form can be implemented within the Swedish context. In cases where regulatory adjustments are necessary in order to fulfil the rights of indigenous people, this should be undertaken at a national level.

The FPIC principle can be implemented in a number of different ways. No clear legal definition exists and the interpretations used across different sectors and in different parts of the world vary. Even within Sweden and the mining industry, there is a need for different companies and Sámi villages to find ways to work towards compliance with this principle. Beyond those definitions which are most widely accepted internationally (not reproduced here), Svemin also makes the following fundamental interpretations:

- 🟡 The subject which requires consultation is a land project or a project which may have an impact on reindeer husbandry which is more than just temporary (extent and time).

- ◆ When needed, consultations can be more extensive and exhaustive than what is expected from Chapter 6 of the Environmental Code. It is important to listen to traditional Sámi knowledge.
- ◆ The term free means that the consultation must not entail any financial or resource burden for the Sámi villages concerned. Compensation should be paid out in order to recompense for participation in the consultation. Additional compensation, however, must not be paid.
- ◆ Consultation should occur at as early a stage as possible, although not so early that they relate only to early ideas which may not be further developed. Contact with the Sámi village concerned should ordinarily be made before consultation documents are sent out; cf. Chapter 6 of the Environmental Code.
- ◆ Investigations in the project should, insofar as possible and to the extent required, highlight which aspects are relevant to the Sámi village concerned. Representatives of the Sameby can, to this effect, be engaged as needed in projects so as to undertake such investigations.
- ◆ Throughout the entire planning process, assessments should be made continuously regarding the project's anticipated impact on reindeer husbandry by the Sámi village in relation to the significance of the project to the company and wider society.
- ◆ An agreement must be sought with the Sámi village concerned regarding the actual consequences, potential measures to minimize the impact and relevant compensation so that such an agreement may then, in turn, be used as a basis for consent.
- ◆ In the case that no joint conclusion can be reached as to whether or not a project can go ahead, the matter should be adjudicated in the order prescribed for regular approval processes.

The Minerals Act also allows for activities undertaken for the purpose of identifying the existence of extractable mineral deposits (exploration) regardless of other rights to the land in question. This is necessary in order to ensure that effective and meaningful exploration work can be undertaken. Exploration work is in most cases short-term and does not normally entail the utilisation of land which is of significance for reindeer husbandry. Therefore, the FPIC principle does not normally apply to such activities. The provisions set out in the Minerals Act regarding consideration, communication and compensation in the event of damage are extensive and, in Svemin's view, sufficient and purposeful with regards to exploration operations.

A difficult question (from a general point of view) relating to exploration activities is the alarm that tends to arise regarding the potential consequences in the event that a viable mineral deposit is discovered. Going forward, a very important issue will thus be to reduce the procedural burden that this concern entails for the prospecting company, the Sámi village and for others. Svemin believes that factual information and collaboration are key in this regard but does not exclude the possibility that there may be a need for regulatory changes which delimit the prospecting process to an even greater extent than what is the case today.

Sámi rights in practical application - ongoing operations

Ongoing operations are subject to the requirement set out in the Environmental Code which stipulate that mining companies must examine the consequences of their operations and continuously adopt limitations and precautions within those areas that are not regulated by applicable permits. Many mining concessions under the Minerals Act also contain important conditions for continuous consultation with the Sámi village concerned. Whether this be the case or not, it is good practice to establish clear channels and fora for dialogue with a view to identifying and remedying issues as needed. Forms of collaboration should be a matter for all concerned but are also an area where Svemin believes that the Sámi villages should be compensated for their participation.



In the case that no joint conclusion can be reached as to whether or not a project can go ahead, the matter should be adjudicated in the order prescribed for regular approval processes.



In Svemin's view, there is a range of areas where there is scope for further work at a sectoral level, both within the mining industry and between mining and reindeer husbandry.

Commitments of member companies

Svemin member companies undertake to carry out their work in accordance with the recommendations set out in this document.

Svemin's recommendations for member companies

- ◆ Strive towards compliance with the FPIC principle as per Svemin's interpretation.
- ◆ Respect Sámi culture and the special rights of the Sámi people to land and water.
- ◆ Contribute to knowledge building in relation to the impact that mining has on reindeer husbandry and potential measures to counteract negative consequences.
- ◆ Develop and improve impact assessments for reindeer husbandry in projects where such assessments are required.
- ◆ Contribute to knowledge building within wider society regarding reindeer husbandry and mining.
- ◆ Contribute towards the development of the procedure for consultation processes.

Svemin's continued work

In Svemin's view, there is a range of areas where there is scope for further work at a sectoral level, both within the mining industry and between mining and reindeer husbandry, with a view to reaching a situation where the two activities can operate side by side with less conflict, more dialogue and a more forward-looking approach. At present we consider the following to be potential and desirable activities:

- ◆ Active dialogue with Sámi interest organisations for both reindeer husbandry and other cultural forms as well as authorities and government agencies that are active within the field.
- ◆ Mutual training and education activities (regarding both mining and reindeer husbandry).
- ◆ Work towards a better compliance with indigenous rights, particularly the consultation procedure, within the prospecting processes for mining operations that are regulated in Swedish legislation.
- ◆ Work to support investigation of the matter of principle regarding who is entitled to mineral compensation.
- ◆ Develop mutual principles for calculating compensation for infringement upon reindeer herding rights in cooperation with representatives for Sámi interests.
- ◆ Work in collaboration with Sámi representatives to investigate any possible adjustments that may be appropriate.
- ◆ Work to improve the methodology and approaches used in impact assessments (e.g. LKAB's methodology for cumulative effects, consultation processes, collaboration agreements, research into disturbance zones, etc.).
- ◆ Support member companies through guidance regarding, for example, the consultation procedure and impact assessments.



SveMin

Svemin is the Swedish Association of Mines, Mineral and Metal Producers. Svemin represents around 40 companies with approximately 13,000 employees in production, exploration and technology.