

COMPREHENDING MANDATE AND INTERACTIONS OF THE LAND TENURE REFORM IN FINNMARK, NORWAY

Else Grete Broderstad and Eva Josefsen***

Abstract

The land management arrangement – the Finnmark Estate (FeFo) established in Finnmark County - the northernmost county of Norway, is built on indigenous right claims, which implies that particular values, norms and principles are constitutive for and underpin FeFo as an institution. Still, the involved actors - FeFo and the two appointing bodies of the FeFo board - the Sami Parliament and the Finnmark County Council - have not developed a joint understanding of how to address these principles in order to strengthen the focus of FeFo governance. Based on earlier data compiled from investigations about FeFo and the two appointing bodies of the FeFo board, we focus on the relationship between the three institutions in order to explain challenges of cooperation between the three parties concerning the management of land and recourses by FeFo, and how they seek to minimize conflict and contribute to governability. Drawing on the concept of interactive governance, we analyse this governing system in terms of orders of governance by looking into whether the parties have deliberated and developed a set of meta-governance principles that can help in making hard substantive governance choices easier. We will discuss the challenges that may arise between two political bodies, one with a territorial defined mandate and the other with a mandate to secure Sami rights, and a governance and management body with a mandate to cooperate in a situation of high-level conflict.

Keywords Finnmark Estate (FeFo), Finnmark County Council, Sami Parliament, interactive governance, orders of governance, governability

Introduction

When the Norwegian national parliament – the Storting – adopted the Finnmark Act in May/June 2005, a long-lasting period of controversies on land and resource management in Finnmark came to a temporary closure. The Storting adopted the Finnmark Act as a response to an enduring political process where the Sami, both individuals and organizations over several decades had challenged the government's claimed ownership of the land. Pursuant to the 2006 Finnmark Act, the ownership of land and resources was transferred from the government (95% of the land area in Finnmark) to the population in Finnmark. Based on indigenous land claims, a management agency was established, the *Finnmark Estate* (FeFo), which on the operational level provides Sami and non-Sami users the same services. FeFo is a construction framed by a unitary state. The colonial history is different from that of settler states and indigenous Sami and non-Sami peoples have shared land for centuries. Over several decades Sami political empowerment, institutionalization and political integration have taken place, countering impacts of assimilation. Thus, while FeFo as other land and resource management arrangements in the Circumpolar North is a result of indigenous land claims, the above-mentioned contextual aspects also make FeFo unique, in terms of implementation of indigenous rights.

* Else Grete Broderstad, Professor, UiT The Arctic University of Norway, email: else.g.broderstad@uit.no

** Eva Josefsen, Associate Professor, UiT The Arctic University of Norway, email: eva.josefsen@uit.no

After the adoption of the Finnmark Act in 2005 new challenges soon revealed themselves. One was the role of the executive body – FeFo, responsible for the management of land and resources in Finnmark, the northernmost county of Norway.¹ The board of FeFo consists of 6 members, three appointed by the Finnmark County Council² and the Sami Parliament³ respectively.⁴ The board leader alternates every year between the two groups of appointed members. This construction of the land tenure system can be seen as a way of reconciling the threefold concerns incorporated in the mandate of the Finnmark Act, namely the role of FeFo as a caretaker of a balanced and ecologically sustainable management, for the benefit of the residents of the county and a caretaker particularly as a basis for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. We pay attention to the concerns of all inhabitants and the protection of Sami land and resource rights, with a particular focus on the last one.

According to the Finnmark Act, FeFo is a property owner and an independent legal entity, not a public body.⁵ Thus, FeFo is not in formal terms subject to the appointing bodies' steering instructions. According to the Finnmark Act the board members are personally responsible for decisions by the board and shall manage the estate according to the Act and its preamble. The only way the appointing bodies according to the Act can influence their appointed board members if unsatisfied, is by replacing the board member(s).

However, Finnmark County Council in the first years after the establishment conceived themselves as an 'owner' of FeFo (Nygaard and Josefsen 2010). Adding to this, the background of FeFo, with the long-lasting struggle for Sami rights, did not ease the puzzle of the different roles embedded in the mandate (ibid., Broderstad et al. 2015; 2020). The establishment of FeFo implied potentially large changes in the governance of land areas in Finnmark, i.a. regarding identification and operationalizing of Sami land rights. Such possible changes with large symbolic value, could create uncertainty, resistance and conflicts (cf. Jacobsen and Thorsvik 1997).

Broderstad et al. (2015; 2020) found that there was a general low support to the estate amongst inhabitants in Finnmark County and explained it by resistance against Sami rights and indigenous political initiatives. They concluded that unhandled conflicts could diminish the overall public support of FeFo which again could result in a failure of the land tenure system to reconcile indigenous and non-indigenous lands rights. Thus, the purpose here is to illuminate cooperative challenges that may arise when two political bodies - one with a territorial defined mandate, the other with a mandate to secure Sami rights - are to cooperate with a governance and management body with a multiple mandate.

Drawing on the concept of interactive governance (Kooiman et al. 2008; Kooiman and Jentoft 2009; Kooiman and Bavinck 2013) we analyse the governing system in terms of orders of governance by looking into whether the parties have deliberated and developed a set of meta-governance principles that can help making hard substantive governance choices easier. Kooiman and Jentoft (2009, 818) argue that such choices always are complicated because the value positions and normative notions contained in them often are in conflict. Our case is framed by the mandate's territorial defined concern versus the concern of securing Sami rights, and on the other hand, FeFo's governing of these considerations. *What are the features of cooperation between the three parties, and how do they seek to minimize the conflict level and contribute to governability?* Kooiman and Jentoft (2009, 819) argue that the choices are made less hard when values, norms and principles are made coherent and explicit. In 2010 Nygaard

and Josefsen concluded that FeFo had not sufficiently implemented the Finnmark Act's principle of "management as a basis for Sami culture," because of the strong opposition to Sami rights, as revealed in a survey on the support to FeFo (Broderstad et al. 2015; 2020). This point of departure leads us to focus on the coherence and explicitness of these norms of Sami rights, in the case of FeFo's land governance.

In the next section, we introduce aspects of the conceptual framework of interactive governance, and more precisely the enabling and restricting conditions of the concept of orders of governance, that is how frameworks (e.g. culture and law) limit or widen the action potential. Thereafter, in the main part, we empirically account for core elements of how cooperative the stakeholders of FeFo are by addressing the mandate and features of interaction in light of the concepts of meta, second and first order governance, wherein we also include a discussion on limitations and possibilities to strengthen governability, before we conclude.

Comprehending interactive governance

While the aim of FeFo is to manage land and resources in accordance with the Finnmark Act, it becomes too simplistic to comprehend FeFo as a purely management body with a set of tools applied to solve concrete tasks. While attention in management is concentrated on goals and means, in governance, efforts are spent on reflecting and deliberating basic values, concerns and principles, implying a process of inclusion, communication and cooperation (Kooiman and Jentoft 2009, 831-832). The estate deals with management of renewable and non-renewable resources, and property and businesses. While resource management of fish, wildlife and recreation is specifically defined in the Finnmark Act and a primary task of FeFo, the tasks of managing other resources, issues and land are less regulated, and create room for interpreting how and what the responsibility of FeFo should be.

The work of FeFo is underpinned by the Finnmark Act and its strategic plans (2007, 2011, 2015), and is formally attached to the Finnmark County Council and the Sami Parliament. It is thus about deliberation on goals, including values, norms and principles underpinning them (cf. Jentoft and Chuenpagdee 2009, 555). Hence, an interactive system of governance has elements of deliberative democracy where a basic requirement is reason giving (Gutman and Thompson 2004: 3). Governance is beyond government (Kooiman and Bavinck 2013, 10), and is a complex undertaking, including a range of societal actors, with governments, in mutual interactions (Bavinck et al. 2015). By applying the conceptual framework of interactive governance,⁶ we empirically investigate how interactive the system of FeFo is, and we underline normatively the significance of interactive governance, by focusing on the enabling and restricting conditions of interactivity. Interactive governance theory divides societal systems into three parts: a system-to-be governed, a governing system, and the interactions that take place within and between them (Jentoft and Bavinck 2014). The governability of FeFo is then made up of these components: Governors, the governed, and their interactions contributing to the governability (Kooiman and Bavinck 2013, 12). In this contribution, our concerns are the governing interactions at the structural level, understood as "exchanges between actors that contribute to the tackling of social problems and opportunities" (ibid., 11). How has the governability of FeFo developed in response to external conditions? By applying the conceptual framework of interactive governance, we acknowledge the complexity and the dilemmas of the governing interactions and the wickedness⁷ of the problems. These dilemmas and wicked problems are no less problematic in indigenous contexts. Interactive governance suggests that values, principles and goals are not stable and fixed, but negotiated and vary according to the relative strength of the participants that come and go (ibid., 12). How do the deliberating actors

influence each other's interpretations of the mandate's territorial defined concern versus the concern of securing Sami rights?

In order to capture core connection between the elements of the mandate of FeFo, we have chosen as part of the conceptual framework of interactive governance, to make use of the component 'orders of governance' that can be set apart into first-order, second-order and meta-governance, which allow us to elucidate the question of enabling and restricting conditions of governability in the case of FeFo.

Institutions provide the framework for first-order governance and constitute the meeting ground of those governed and those governing. This is where problem solving and opportunity creating activities are embedded (Kooiman and Bravick 2013, 19). First order governing is about day-to-day affairs, practices and governing tools, i.e. concrete management and administrative tasks regarding hunting and fishing, business tasks like sale of gravel, leasing house lots, and concrete management of cooperation and disagreements. The operational level is also the level of management, where the distinction between management and governance maintains itself.

The second orders of governance focus on the institutional arrangements within which first order governing takes place (Jentoft and Bavinck 2014, 74). It is about systems of agreements; rules; rights; laws; norms; roles and procedures, i.e. the Finnmark Act's regulations and guidelines of e.g. the Sami Parliament's guidelines for changed use of land, and regulations of co-operation with the Sami Parliament and Finnmark County Council.

Meta governance includes the values, norms and principles that underline governance, and pertain to how ethical principles and other normative notions play a role in actual governance practice. They are ethical in their nature, exist within a particular social field and are about what is perceived as right or wrong (Jentoft and Bavinck 2014). The principles enshrined in international law, like ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) belong to meta governance. For the assessment of governability, orders have special importance. Furthermore, are they complementary to one another, or at odds (Kooiman et al. 2008, 8)? Have the parties deliberated and developed a set of meta-governance principles that can help making hard substantive governance choices easier?

The analytical framework we draw upon is summarized in the table below. Concerns of the mandate of FeFo and features of interaction are investigated through the lenses of meta, second and first orders of governance. What are the understanding of the mandate, the function of established rules and regulations and concrete outcomes? What are the principles, the function and operation of interactions?

FIGURE 1

FeFo as an interactive institution

Background

The history of FeFo is neatly connected with civil disobedience actions against the damming of the Alta-Kautokeino River in Alta, Norway in the late 1970s, where Sami land rights were brought to the national public and political agenda turning into state-Sami interaction from the early 80s onwards by a separate commission that investigated these rights. This assessment of Sami land rights in Finnmark resulted in an Official Norwegian Report in 1997 and the passing of the Finnmark Act by the Norwegian Parliament in 2005.

FeFo works within a diversity of institutional stakeholders, and is as a governing actor, constrained and enabled by its surroundings, most importantly by the Sami Parliament and the Finnmark County Council. The Sami Parliament and the County Council have different roles and tasks. Both are politically elected bodies, but with different constituencies (the Sami of Norway and the people of Finnmark) and with different and even conflicting political aims, while FeFo manages natural resources according to the Finnmark Act. The municipalities constitute another significant political structure within which FeFo operates, as they decide land use planning. In size the municipalities are highly variable, from small with a decreasing and aging population, to a few larger municipalities with growth and expansion in both private and public sector. Another significant premise provider for FeFo is the state, regulating e.g. the limits for resource extraction through legislation, what should be protected areas and licensing resource exploitation in the county, for example wind turbines. Also local and regional organizations, be it Sami or Norwegians, concerned with natural resources and land use (e.g. hunting, fishing, outdoor life and recreation), interact with FeFo, as do traditional and new industries and companies. We will focus on the core governance “triangle” – FeFo, the Finnmark County Council and the Sami Parliament, but mention other interactions when relevant, i.a. interactions with resource users (cf. part ‘Operation of interaction – first order governance’). In the next subsections we will first address the mandate of the Finnmark Act and then the interaction of the stakeholders in light of the three orders of governance in table 1.

The mandate of FeFo

As mentioned, the preamble of the Finnmark Act points out three main purposes for the management of land and natural resources in the county of Finnmark. The preamble describes the legislator’s purpose with the Finnmark Act and each part of the preamble is equally important for the management of the Act. In this subsection, we discuss the mandate according to how FeFo and the appointing bodies’ emphasise and interpret the mandate. A guiding question is whether there is a joint understanding of the mandate, and how the institutionalized mandate is reflected in FeFo decisions.

Understanding FeFo’s mandate – meta level governance

The policy documents of the appointing bodies reveal opposite approaches of how to understand the preamble and the foundation of indigenous rights of the Finnmark Act. Sami politicians fighting to secure Sami land rights as a new and decisive element in decision making processes, do not necessarily unite with the view of the representatives of the County Council who see natural resources as a mean for economic growth (Nygaard and Josefsen 2010). After the passing of the Act in 2005, Finnmark County Council quickly drew up a ‘policy document’ (2005) referring to themselves as a co-owner of FeFo, as reflected in guidelines for how the

County Council's appointed members should function. This document has been replaced several times; by a steering document for the appointed members (2008); owner strategies and surplus use (2012), document on owner strategies (2014); and document on strategies for FeFo (2018). The Sami Parliament on the other hand had a low profile in the first years regarding the appointed board members and their function. It was not until 2010 that the Sami Parliament's plenary for the first time commented on FeFo's strategy plan. In 2012 the plenary addressed questions of "Owner strategies and surplus use," in 2014 they gave a general review of the Finnmark Act, and in 2018 they commented on co-governance regarding FeFo. We argue that this handling by the appointing bodies impact the board members' emphasis and understanding of the preamble, which will reflect on how they interpret and implement the act.

Putting on the lenses of meta order governance, we find that the appointing bodies have very different views on international law, which include that the Finnmark Act shall apply with the limitations that follow from ILO 169 and be applied in compliance with the provisions of international law concerning indigenous peoples and minorities. Even if the administration of the County Council already in 2005 recommended the need to ensure international law in order for the FeFo board to succeed transferring authority from the state to the region, the County Council's documents on strategies of FeFo did not refer to Sami or international law as important frameworks until its strategy document in 2018 (Finnmark County Council 2018). The earlier documents described tasks, challenges and expectation, and presented guidelines to the board members appointed by the County Council, but the documents lacked a definition of the content of the Sami part in the preamble. Explicitly mentioning the concern for Sami culture could have been anticipated given the absence of Sami culture in the earlier land management regime. In 2008, the County Council Steering document for the board members, the two first parts of the preamble were referred to under the headline "Finnmark County Council's aims for FeFo," leaving out part three on Sami culture.

The County Council is however not alone in having been selective towards the content of the preamble. In the 2014 overall review of the Finnmark Act by the Sami Parliament, the Parliament states that the "main objective of the Finnmark Act is about securing the natural basis for Sami culture," referring solely to the third section of the preamble (Sami Parliament 2014). Different from the County Council, this was the first document where the Sami Parliament addressed the appointed board members. Plenary decisions relating to FeFo prior to this were responses to FeFo's strategic plans and to questions of distribution of surplus from FeFo. While not necessarily surprising that the two appointing bodies prioritize different concerns of the FeFo mandate – it still remains unclear how the core components of the mandate should be secured jointly by the three institutions. Therefore, in search of an overall operationalization of the mandate, we turn our focus to rules and regulations.

Operationalization of the mandate – second order governance

In this part we examine how the mandate and specifically section three on Sami culture of the Finnmark Act, have been operationalized. Concerns for Sami culture were not included in the former management arrangement in Finnmark, thus parts of the public, some political parties and local, regional and national politicians strongly protested the new act (Olsen 2010; 2011; Eira 2013). At the operational level the Finnmark Act (§ 4) anchors the guidelines of the Sami Parliament regarding changes in the use of uncultivated land. In matters concerning changes in use of uncultivated land, FeFo, state, county and municipal authorities shall assess the significance such changes on Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. According to the Finnmark Act, the guidelines shall be

applied both in public planning of land use and in single issues regarding uncultivated land, and the Sami Parliament regard them as decisive in securing section three in the mandate (Sami Parliament 2006, 2007a). When assessing what is “changed use” the guidelines refers to customary use of land and to whether this use will be able to continue despite the change. Rights holders, users and affected Sami interests shall also be consulted. By assessing the strategic documents of Finnmark County Council and FeFo in search of whether these documents reflect the guidelines, we can establish to what extent these two parties institutionalize this concern.

According to FeFo’s 2007-2010 Strategic Plan, FeFo shall execute property management in line with the guidelines regarding Sami interests (FeFo 2007). The Strategic Plan states that these guidelines are the main motivation for FeFo basing their disposal of land on approved municipal plans, because they suppose that municipality planning comply with the guidelines (Nygaard and Josefsen 2010). Nevertheless, a topical issue in the interaction between FeFo and the municipalities has been sale of property, which implies changed use of land and can be contrary to intentions of the guidelines. While some municipalities want to buy land below market price, FeFo is restrictive to this approach. While justified differently, the Finnmark County Council and the Sami Parliament seem to indicate a similar scepticism (Sami Parliament 2006; Finnmark County Council 2018). The Sami Parliament oppose sale of land on principal terms, while the County Council view sale of land below market price contrary to EEA regulations. The price has to be market oriented, but not price driven. Despite different justifications, a common understanding of the challenges of land sale appear to be shared by the institutions.

In 2014, the Sami Parliament underlined the importance of an active use of the guidelines, and demanded FeFo to draw up instructions how to use the guidelines and by this change procedural rules in order to make a concrete and documented assessment in each decision on changed use of land (Sami Parliament 2014). The 2015 Strategic Plan of FeFo (2015), stated that FeFo will take an active position on all measures that lead to changed use of outlying field, probably as a response to the Sami Parliament’s demand.

The County Council on the other hand, does not discuss the guidelines in its “steering documents” in regard to new and non-reversible industry (Finnmark County Council 2008, 2012, 2014, 2018). The County Council’s steering documents do however specify industry strategies (2014) and existing plans and strategies (2018) as guiding rules for the board representatives (Finnmark County Council 2014, 2018).

We find no indication in FeFo’s strategic plans that the content of “Sami culture” in the preamble have been concretized. According to Nygaard and Josefsen (2010, 28-29) FeFo in 2010 emphasized the second section of the preamble on the interests of all Finnmark inhabitants, while Sami culture considerations were toned down. This may have been a response to the public resistance towards Sami rights that characterised the origin of FeFo. We lack data on whether or not this has changed after 2010. FeFo’ strategic plan (2007-2010), points out that FeFo is responsible to inform and use Sami language, assess traditional Sami knowledge and establish competence on Sami culture when developing new guidelines for outdoor activities (FeFo 2007). Except from language competence, it remains unclear how competence building on Sami cultural aspects at FeFo’s administration is institutionalized.

Concrete outcomes – first level governance

The policy documents of the County Council and the Sami Parliament reflect opposite approaches towards the preamble and the foundation of indigenous rights of the Finnmark Act, a point appearing in documents addressing the board members. How the three elements of the preamble is emphasized by the board, reflects the interpretation, the follow up and implementation of the Act. In addition, it reflects how the board member of the two institutions speak about and emphasize the different elements of the Act. Sami politicians' emphasis on developing and securing Sami land rights as a new and decisive part in decision making processes, does not necessarily unite with the County Council who see natural resources as a mean for economic growth (Nygaard and Josefsen 2010).

We can also identify a change in how the appointing bodies regard FeFo's leeway. FeFo did start out with a defined aim to be an active landowner. In 2009, 7 local energy companies and FeFo joined forces and established Finnmark Kraft AS (FK) AS, as a regionally and locally owned power company in Finnmark. A main push factor for establishing FK was to secure Finnmark a regional share in the value creation of the exploitation of energy resources. In 2005, the County Council Policy Document stated: «Finnmark has good conditions for wind and hydropower (small power plants). The interest in development is high. As a landowner FeFo can provide a predictable policy and be a facilitator where this is relevant. This can be done by contributing to inter-municipal solutions for wind turbines or the like» (Finnmark County Council 2005, p.6). In 2008, the County Council emphasized the importance of local anchoring of important companies established on the basis of resources in Finnmark (Finnmark County Council 2008). In 2012 this view had changed. FeFo was solely to engage in companies with a clear foothold in the company's core activity and FeFo should be cautious engaging in derivative business⁸ (Finnmark County Council 2012). The decision does not define the term "core activity," but probably refer to resources specifically mentioned in the Finnmark Act, and management tasks taken over from the previous land management regime regarding i.a. hunting, fishing, property leasing contracts and management of gravel and crushed stones. In 2014 this turn was clarified, FeFo should act "neatly as facilitator for the development of renewable energy, regardless of who is the project owner" (Finnmark County Council 2014, 3).

A similar development can be traced in the Sami Parliament' documents. In an administrative statement in 2007 the Sami Parliament referred to windmills and recommended FeFo to invoke the value and exploitation potential of an area for electrical production and demand a fair share of this value creation (Sami Parliament 2007b). In 2010 the Sami Parliament referred to the Act preamble and FeFos obligation to do its own assessment based on the Guidelines for changes use of uncultivated land. Further, the Sami Parliament stated that FeFo had to take into account that the role as an active owner may come into conflict with existing land rights (Sami Parliament 2010). In 2012, the Sami Parliament recommended FeFo as a landowner to engage in new activity based on natural resources, amongst other to "secure local ownership" and "secure the community a greater share of the values created from FeFo's resources" (Sami Parliament 2012). In 2014, the Sami Parliament stated that FeFo should only participate in business activities when it, among other, "does not entail changed use of land and the use of property." Further, the Sami Parliament asked FeFo to assess other alternatives for its ownership in Finnmark Kraft (Sami Parliament 2014). The FeFo board decided in 2019 to terminate its ownership in Finnmark Kraft by selling its stocks in the company (FeFo 2019). By this, Fefo adopted to the policy of the appointing bodies.

As illuminated here, board members receive different political signals and expectations from their two appointing institutions, while they are legally obliged to manage all three elements of the preamble. Given the differences of the two appointing institutions in terms of function,

different views by these institutions of what FeFo should emphasize, does not come as a surprise. The critical question is whether contradicting signals from the County Council and the Sami Parliament and lack of coordination hamper governability, and affect the operationalization and implementation of Sami land rights by FeFo itself. The lack of translation of the Act's preamble on Sami rights into concrete management rules suggest this, but the question has not yet been researched.

Beside the guidelines, there are few traces of established rules and regulations concerning the Sami section of the preamble, and the concern is rarely reflected in concrete outcomes. One of the few examples where FeFo is referring to the preamble, is the board majority submission/statement on the application from the company Nussir for a license to establish a copper mine. The statement emphasize that the mining project will provide a basis for positive social development which in turn is said to provide a basis for safeguarding Sami interests through increased settlement in a marginalized coastal Sami area (FeFo 2017). The board members of the Sami Parliament voted against this statement. The Sami Parliament found the statement not to be in line with the Finnmark Act's sections regarding changes in the use of uncultivated land (Sami Parliament 2018). If the appointing institutions fail to unite on core elements of the mandate, at least common ground should be required in terms of well-functioning dialogues (see section 'Features of interaction' below).

Summing up points on the mandate

There is a lack of common understanding among the stakeholder on what kind of body FeFo is. The board nor the appointing bodies have focused on overall questions of the mandate. Given the complexity and dilemmas of governing interactions in a multicultural context like the Sami – Norwegian one, we could have expected that the appointing bodies and FeFo had put a more thorough principal emphasis on these questions. As the documents' studies reveal, the appointing bodies emphasize the mandate differently, which in itself can be explained by their respective roles. We turn to the interactions themselves, looking into whether the established arenas of interaction, rules and regulations sustain FeFo governance.

Features of interaction

In this subsection we look into features of interaction, namely principles linked to the board members' role as appointees and the annual contact meetings between FeFo and the appointing bodies, which we regard as important aspects of interactions at the structural level. The flow of information, assumption, values, prejudice, communication arenas and channels – amongst other the media, different political policies, creates dynamics as “potentials for change, but can also be disruptive” Kooiman et al. (2008, 5), as we will see in relation to the contact meetings. We therefore look into how these aspects of interaction contribute to the management and governance of FeFo by looking into how questions of Sami land rights have been handled. In 2005 the administration of County Council pointed out the need to ensure cooperation and in 2008 they established a chief county executive working group to monitor FeFo. What are the principles of interaction and how do established interaction work? To what degree are the intentions on cooperation reinforced?

Principles of interaction – meta order governance

Principles of interaction are formally enshrined as well as evolve through practice. Below we will take a closer look into how these principles is manifested in appointing bodies' strategic

documents. There are few mentions of the working relationship between the Finnmark County Council and the appointed members. The County' strategy documents (2008, 2012, 2014, 2018) state that the board members are to ensure the County Council' interests according to these documents. In 2012, the County Council stated that the appointed board members have to safeguard the interests of County authority in line with the adopted ownership strategy document (Finnmark County Council 2012, 2014). Thus, a hierarchic approach to the relationship county-board members seems to apply.⁹ The County Council emphasis on the role as owner, add weight to this assumption.

In contrast to the County Council, which since 2005 has maintained principles for their board members, the Sami Parliament only addressed for the first time its board members in a plenary document in 2014. Here they took a "comprehensive review and expresses overall priorities for the further follow-up of Finnmark Act, as well as providing a clear basis for follow-up and support for the work of appointed members in bodies established after" (Sami Parliament 2014). The decision in 2014 was amongst other addressed to the appointed board members, but did not give any direction towards principles for co-operation. In 2018, the Plenary followed up under the heading Co-Governance (Sami Parliament 2018). They addressed a need for regulating contact with the Sami Parliament' appointed board members, and decided to facilitate, strengthen and develop the contact with FeFo and the County Council. The use of the term co-governance (samstyring) in the title may be read within an interactive approach. However, the decision contains hierarchical features. The Sami Parliament directs their appointed board members i.a. the first elected member is candidate to chair the board; appointed members and deputy members are to be summoned to a seminar once every election period and to other meeting when needed; at the beginning of every period the plenary is to adopt a steering document containing priorities and perceptions on how to fulfil the Act preamble; and every year the plenary should receive an orientation of FeFo's activities in light of the Sami Parliament's steering document for FeFo.

The appointing bodies' wish to steer "their" board members, could potentially collide with the intention of board members' personal responsibility of operation (cf. § 17 of the Finnmark Act), and is a question about how far the appointing bodies draw their instructive capacity. Thus, while the Finnmark County Council took on the role as owner right from the beginning, the Sami Parliament changed its perception of FeFo from more of an autonomous body to an institution with appointed board members committed by a steering document. This could imply a move towards an understanding of board members with a limited mandate, acting as representatives of the appointing bodies more than appointees obliged to work as a collegium to fulfil the Finnmark Act's preamble. Below we will take a closer look into one concrete aspect of interaction, namely the yearly contact meetings in search of enabling conditions of interactivity.

Function of interaction – second order governance

The formal contact meetings are concrete arenas for interaction between the parties. These meeting came into being in 2008. The initial plan was to arrange them twice a year. From 2012, one meeting at the political level has annually been arranged, except for 2017 when the only meeting was arranged at the administrative level. The contact meetings address topics like minerals, windmills and the company Finnmark Kraft, FeFo surplus, ground rent, selling of land and setting of prices, FeFo' strategic plans and the mapping of rights of the Finnmark commission. The contact meetings' duration is between 4 and 6 hours.

We have found indications that the contact meetings are not always prioritized by all partners: “When initiative is taken by the Sami Parliament, FeFo or the County Council to hold a meeting at the political/administrative level and/or administrative level to discuss concrete and demanding matters, it is assumed that the meetings are actually met by all parties” (Sami Parliament SP 037/18). The topic of co-operation and the question of improving the dialogue between the appointing bodies and the FeFo have over the years been on the agenda. At the contact meeting in 2009, communication challenges - both outreach and communication between the partners and FeFo’s reputation were discussed. At the meeting in 2014 the need to improve communication was again raised. The minutes do not however, describe this topic in detail. Another problem regarding insight is that not all meetings are recorded. We have also been informed that there are no minutes from the 2018 meeting, and that the practice of minutes has ended (Sami Parliament 2019). This practice indicate that contact meetings were used mostly for information exchange. Closed meetings and lack of recording can allow for a more open exchange of positions and standpoints, and contribute to trust building. However, minutes contribute to collective memory, while the lack thereof may force the actors to revisit themes.

Operation of interaction – first order governance

The political processes prior to the establishment of FeFo heightened the attention towards land and resource management, not seen during the over hundred yearlong state management regime. Due to the central position of Sami rights in these processes, the estate became highly politicized and faced strong public resistance (Broderstad et al. 2015; 2020). On the other hand, strong support to the specific and concrete management of land and resources, was identified (ibid.). As these concrete management tasks are about day to day affairs and conflict resolution, they can be read as first order governing, managed according to the Finnmark Act. FeFo directs their concerns towards the different user groups, municipalities and organisations. According to an interview investigation (ibid.) of resource users that actively use nature and local leaders that have experiences with FeFo, small and big-game hunters were satisfied with FeFo’s wildlife management. Those actively using the land, such as recreationists and subsistence harvesters, expressed a relatively high degree of trust towards FeFo. This is the level of management where FeFo provide the same services to Sami and non-Sami users, where the interactions to the appointing bodies are more distant, but where state legislation and regulations, and FeFos internal guidelines frame the day to day management. We cannot assume whether the appointing bodies through i.a. their steering documents want to have more of a say on FeFo’s first order governance. But we will warn against a development where FeFo has to balance different and contradictory management principles of the appointing bodies.

Summing up points on interaction

As noted, enabling and restricting conditions impact the interactivity of the institutions. While principles of interaction should enable the governability of FeFo, these principles differ and can restrict governability. Evident is the function of contact meetings as an established arena of interaction. A cause of concern is that these meetings do not seem to be prioritized by the appointing institutions. In a situation of institutionalised environments infused with different and even contradicting values and norms regarding the foundation for resource and land management, trust building and dialogue between stakeholders are significant to the quality and efficiency of FeFo’s management structures, regulations and concrete management decisions. While first order governance – daily management is regulated and thus “manageable,” discussions on norms and principles – on meta governance – which could have “eased” difficult decision-making are lacking. According to Edelenbos (2005, 129) “An ill-considered

introduction and incorporation of new (interactive) processes and institutions into existing institutional environments may result in quite a few disappointments for a lot of stakeholders in the process.” The two contradicting positions towards FeFo by the appointing bodies in the first years coincided with a period of high negative media and public attention towards FeFo (Eira 2013). Simultaneously, regular contact meetings were not in place from the start. In this situation, with a partly hostile public wanting to uphold status quo, a partly expectant public demanding significant changes, and one active and one more passive appointing institution, FeFo may have tried to reduce conflicts by adapting to the demands of the majority. A weak operationalization of section three on Sami culture of the preamble may thus have functioned as a restricting condition of governability. After some years, the plenary of Sami Parliament increased its attention towards FeFo, by regulating relations to “their” board members and to FeFo as an institution. Whether this changed approach will reinforce partnership or hierarchy relationship between the parties, and whether interactions of the board itself will be characterised by hierarchically governing of the appointing bodies or by the appointees work as a collegium, remains to be seen. This last question raises the dilemma between each board member being personally and financially responsible for decisions versus a possible development where the appointing bodies act as "owners" instructing “their” board members.

Conclusion

In order to answer the main question of what features of cooperation exist between FeFo and its board composed of member of the Sami Parliament and the Finnmark County Council, and how they seek to minimize conflict and contribute to governability, we have applied the conceptual framework of interactive governance. On the basis of our analytical framework, concerns of the mandate of FeFo and features of interaction have been investigated through the lenses of meta, second and first orders of governance. We have empirically accounted for core elements of how interactive the partners are by addressing different understandings of, operationalisation and concrete outcomes of the mandate, and features of interactions comprehended as principles, function and operations of interactions.

In practice we have found that FeFo are subject to different and opposite values of the appointing bodies. This is about hard choices like when conservation and cultural values are up against development and economic values. While so-called meta governance principles clearly are present, the involved actors have not developed a joint understanding of how to address these principles in order to strengthen the focus of FeFo governance. As appears from our discussion, first- and second order governance (concrete management and established procedures) contribute to the governability, but the parties have not deliberated and developed a set of meta-governance principles that can help in making hard substantive governance choices easier. Additionally, interaction between parties of conflicting political agendas and implementation expectations need to be organized into formal structures and routines that can facilitate trust building and reduce tension between interactive processes and the different institutional decision-making structures (Edelenbos 2005, 130). A prioritisation of the regular meetings between the appointing institutions and FeFo are thus expected to strengthen the governability of FeFo, a need which will be emphasised by the new merger between what today are the counties of Finnmark and Troms. Still, FeFo has to balance its multiple mandate, and the level of conflict can either be hampered or expanded, dependent on the appointing bodies “steering” policies towards the FeFo board as either hierarchical or co-governing.

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¹ The Storting has however decided a new structure of the regional county level in Norway, merging the counties of Finnmark and Troms from January 2020.

² The county councils are political institutions, elected by the population in each county every fourth year simultaneously with the municipal elections.

³ The Sami Parliament is a popularly elected body, with representatives elected by and amongst Sami in Norway. The parliament was established according to the Sami Act, and officially opened in 1989. Sami Parliaments are also established in Finland and Sweden (Mörkenstam et al. 2016).

⁴ In a bill to the Storting (Prop. 134L (2018-2019)) the government presents changes to the Finnmark Act as a result of the merger between the counties of Finnmark and Troms, and proposes i.a. that the new merged county council appoint members to the FeFo board.

⁵ According to the Proposition to the Norwegian Parliament (Innst. O. nr. 80 (2004-2005)), the Finnmark Act gives FeFo status as a regular owner. The law makes certain limitations on the body's ownership interest (distribution of profit, relation to future legislation, others' right to hunt and fish on its grounds etc.), without changing the legal nature of the Finnmark property.

⁶ As defined by Kooiman et al. (2008, 2), “The interactive governance approach differs from others by focusing on its applicability and occurrence at different societal scales, from the local to the global and with overlapping, cross-cutting authorities and responsibilities. In addition to horizontal networks, all kinds of vertical governing arrangements between public and private entities are also seen as governance.”

⁷ Problems are wicked in the sense that there are limits to how systematic, effective and rational a governing system can be in solving them (Jentoft and Chuenpagdee 2009, 553).

⁸ FeFo skal utelukkende engasjere seg i selskaper som har et klart utspring i selskapets kjernevirksomhet. FeFo bør derfor være forsiktig med å engasjere seg i avledende virksomhet», Finnmark County Council, issue 18/12, point 4.

⁹ In 2008 an administrative working group was established whose task i.a. was to focus on the relationship between the County Council’ political leadership and the appointed board members (Finnmark County Council, note dated 30 December 2008).