

# **NORWEGIAN COMMONS**

**A brief account of history, status and challenges**

By

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**‘The commons shall remain as they have been of old, both the upper and the outer’**  
**’Saa skal Alminding være, saasom den haver været af Gammel Tid, baade det øverste og yderste’**

**From the Norwegian Law of 1687, section 3-12-1.**

## **1. INTRODUCTION**

The Norwegian commons, as discussed in this paper, comprise a diverse group of property units and corresponding property rights arrangements, under – alternatively - state, parish and ‘farm’ ownership, in forested and mountainous areas of Norway. Three groups of commons are discussed: State Commons, Parish Commons and Farm Commons. During the centuries they have changed and evolved; some have been privatized, some have been dissolved, and some have been created or recreated. The State Commons are of very ancient origin, they date back to the Middle Ages, while many - maybe the majority - of the Farm Commons have come into being more recently, i.e. during the course of the seventeenth and eighteenth centuries as a result of successive incomplete physical subdivision of farms.

The term ‘commons’ in a Norwegian setting is not an easy one to conceptualise, nor is it in English. The term ‘commons’ is normally translated into Norwegian by the term ‘*allmenning*’, and two of the three types of commons discussed here are termed ‘*allmenning*’ in Norwegian. However, we have included in the concept of ‘commons’ a third group one that in Norwegian is not termed *allmenning* but ‘*realsameier*’. The justification for including this group is that they in several ways are similar to *allmenninger*; they are by and large found on the same type of land – forests and mountains - and they are historically and legally connected to farms and rural communities, and ownership and rights are held jointly.

Another aspect is that we restrict our discussion to commons that constitute physical land entities, i.e. polygons - but not necessarily proper property units in a cadastral sense - circumscribed by true property boundaries. This view conforms to the ordinary Norwegian conceptualisation in this field, but is not obvious and represents both a simplification and a limitation in scope. Certain resources and/or activities could be termed ‘common resources’, for example ‘pasture’, ‘hunting’ and ‘fishing’, and certain legal property right arrangements could be characterized by the term ‘common’. These and related questions are discussed at length by Korsvolla, Steinsholt and Sevatdal 2004, and Stenseth 2005.

The three types of commons discussed in this paper are of different age and different origins. They are held under different ownership (state, parish and farm), and the legal arrangements of rights, ownership and management differ. What they have in common is the traditional and legal relationships to local communities as such, or to specific farms within the communities, and the fact that they have largely persisted since they were first recognized in the written laws from the Middle Ages.

This paper will look into the Norwegian commons with the following focus:

- A brief outline of the historical development
- The interests of the different stakeholders and some of the ensuing conflict areas
- The institutions managing the commons and their adjustments to changes in society, i.e. the changes of rural Norway from being dominated by agriculture, forestry and fisheries, via an industrial, to a post-industrial and ‘quasi-urbanised’ society.

By looking into the various historical developments the commons have undergone, it is possible to see if and how the commons and the institutions managing them, have been able to cope with changing economic, political, demographic and legal environments. It is also possible to illustrate the various tensions and conflict dimensions that at times have existed *between* different local communities, *within* local communities, and between central authorities and local communities, particularly concerning the State commons. The paper will also highlight areas and situations where introduction of external rules and regulations, as well as improved internal management, have been deemed necessary. Provisions for external bodies to handle conflicts between stakeholders, especially in the Farm commons, are important elements in the regulations.

But maybe the most important aspect of the paper is to show that the commons have persisted in some form or another for nearly a thousand years, and that the commons may exist side by side with ‘ordinary’ individual, private and public ownership to land. It can also adapt and modernise and thus become an important voice of the local community in local and central politics. It has therefore been a goal of our research to provide documentation of one example of the thriving existence of common property in modern countries, showing that this ownership form is not an “archaic” or obsolete form that only exists in developing countries. Even if the paper deals exclusively with Norway, it should be stressed that commons of

various types are found in almost all European countries comprising forests and mountainous land, see for example Brown 2006 and Sevatdal 2006.

## **2. BACKGROUND**

### **2.1 THE NORWEGIAN SETTING**

In order to understand the prevalence of commons in Norway it is vital to have some knowledge of the geography of the country. The territory of mainland Norway is 324,000 km<sup>2</sup>, of this only 3% is arable land and 25% is productive forest under the timberline. Less than 1% is urban land, and the remaining approx. 70% are mountains, bogs and lakes. (Sevatdal 2000). Compared to most other European countries, Norway has always had a small population compared to the total land area.

In 2002 the population was 4, 52 million (SSB 2002). Around 75% live in urban or semi-urban communities, while 25% live in rural communities. While there has been a steady increase in the population, the proportion of persons that derive their income from agriculture has declined drastically, and in 1990 only 1,5% of the population derived their main income from agriculture. The predominant rural settlement pattern was - and still is - single farms, or small groups of farmsteads. Especially in the western and northern parts of Norway a kind of small, dense village type of settlements dominated prior to land consolidations that took place from 1860 to 1930. However, the number of active farms has decreased rapidly from around 200,000 farm units in 1945 to around 50,000 in 2002 (Randen 2002).

Year	Arable land (ha)	Population	Persons with main income from agriculture	Export of timber (m3)	Number of cattle
1800	n.a.	883,500	710,252	1,164,000	644,000 (1835)
1900	980,000	2,217,970	991,177 (1910)	2,000,000	950,000
1990	1,040,000	4,393,833	66,264	1,187,000	965,000

**Table 1. Trends in population, arable land, persons with main income from agriculture, timber export and number of cattle the last 200 years in Norway. (SSB 2000a, SSB 2000b, SSB 2000c, SSB 2000d, SSB 2000e)**

Even if farming in Norway may seem precarious (rough terrain, harsh climate, poor soils and so on), the rural societies were not poor, as most farmers would have to find substantial other ways of feeding the family and making a living. This could take the form of both subsistent and commercial activities – quite often in combination. They would harvest from the mountains, forests and sea, be engaged in timber logging, transportation and sawmill work (from the sixteenth century onwards), producing tar, fuel-wood and charcoal for mining and metal industry.

In many coastal areas commercial fishing has been a very important right from the late Middle Ages. Further, the harsh winter climate obliged the farmer to utilise the non-cultivated areas for grazing while growing and gathering fodder in the mountains for the animals to survive during winter. In short, the so-called “farmer” in Norway has been anything but a farmer in a strict agricultural sense; he has always been a “jack-of-all-trades”, as opportunities arose. However, it should be kept in mind that ecological conditions like climate, soils, terrain, natural resources, but also transportation facilities and market opportunities vary enormously in Norway; from south to north, from east to west, from coastal to inland, and from the lowlands to the high alpine mountains.

In Norway we assume that the predominant settlement pattern was composed of single farmsteads. Each farm could be very large in land area, most of which was not cultivated, so that the cultural landscape would consist of a dichotomy between the cultivated in-fields, and the non-cultivated out-fields:

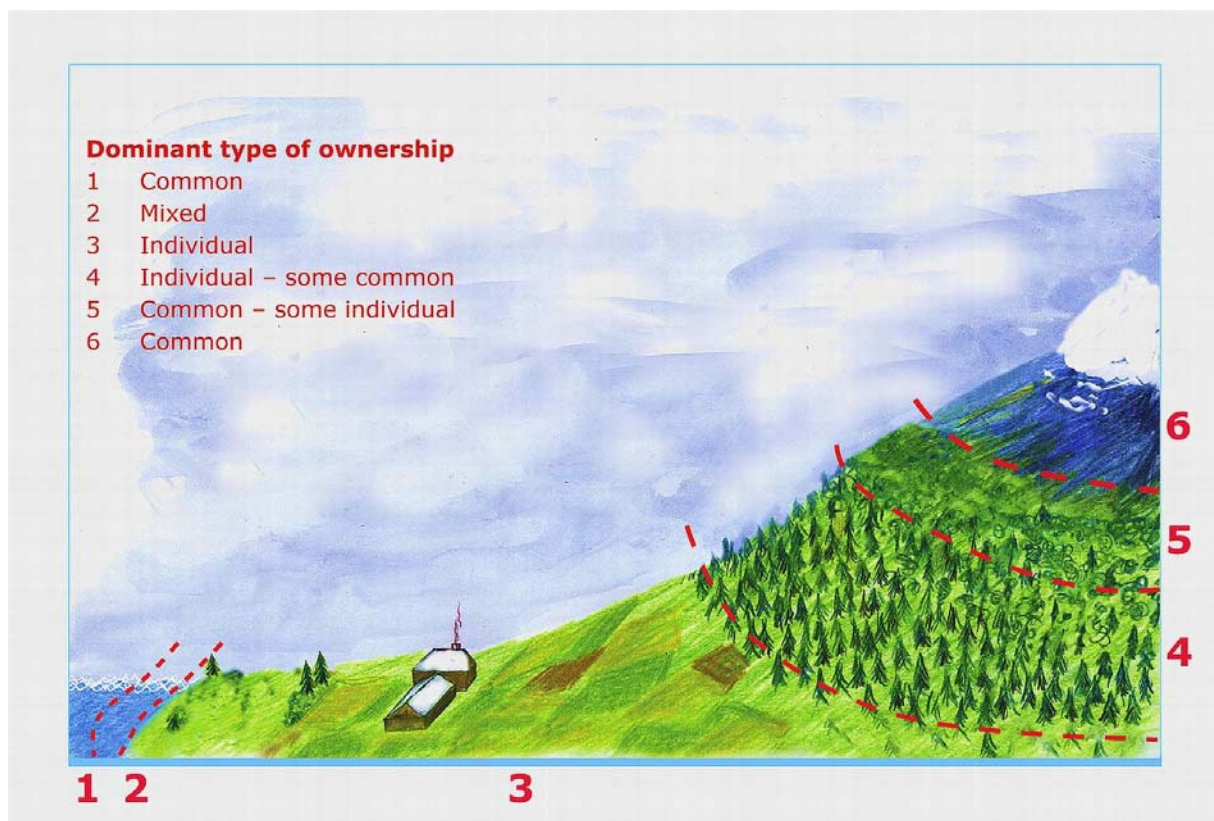
- the in-fields, arable and semi-arable land for annual and intensive cultivation of crops and fodder;
- two categories of out-fields, the nearest more productive areas which would comprise productive forest and the best grazing and fodder harvesting areas;
- the mountainous/alpine outfields (above the timber line) which would be suitable for summer grazing, hunting and fishing and other collecting/gathering of wild foods.

The ownership and user rights of these three categories of land varies from an individual property right of the infield to a varying degree of collective property rights of the outfields, often described as a bundle of rights. The degree of collectiveness tends to increase along a gradient from infields to the remote areas in the high mountains (Sevatdal 2006). Figure 1



presents a sketched model for understanding the property rights arrangements along a gradient from the sea (alternatively a freshwater body or bottom of a valley), through hills and mountain slopes up to high mountains (alpine areas) in rural Norway. The model could be applied to the area of a single farm, to the area of a farmstead ('village'), as well as to property rights arrangements in the Norwegian landscape in general.

Ownership and user rights to land can be described as increasingly more 'common' the further away from the farmstead, and less cultivated the land is. In general, the in-fields are private land for private use only. Whereas the further away from the in-fields of the farm, the more collective ownership forms one may find.



**Figure 1. Forms of ownership of land surrounding a farm (Drawing by Nicola Xavier, Head Jam 2003).**

1. **The shoreline** - adjacent shallow waters included - with its potential for use of marine resources, would often be a combination of private and common property, while by law all the open (salt) waters are free for everybody - an open access area as far as property rights are concerned. This applies to marine waters only, for freshwater bodies like rivers and lakes property rights apply as for land. Rights and duties based upon - and deriving from - the regime of public regulation exist in open access areas as everywhere else. What is special for areas of open access is that public regulations are the only rights. Throughout the entire paper it is important to keep in mind that in all modern societies there are two different groups of rules applied to land and its resources: property rights on the one hand, and public regulations on the other.
2. **The beaches** very often show a mixture of individual property rights, usufruct rights (servitudes) and farm commons.
3. **The infields**, which are arable and semi-arable land for annual cultivation, would normally be held as private, individual property.
4. **The outfields** most adjacent to the infields and farmsteads comprise productive forest, but also grazing, and (former) fodder harvesting areas. These areas are dominated by private, individual ownership. Quite often the forest properties are fragmented into narrow parcels, and pasture might be held in common, or in any case used in common for all practical purposes.
5. **Outfields further away from the settlements** are the most typical areas for location of summer settlements, i.e. a kind of secondary 'farm', in Norwegian called '*seter*', basically for the utilisation of the rich pastures during summer. These areas are often dominated by common legal arrangements of various sorts, most typically Farm Commons. Summer farms are also to be found below and above this area.
6. **The high mountains are alpine outfields above the forested area.** The lower reaches are also used for summer grazing, and for the whole area hunting and fishing in lakes and rivers for recreational purposes is important. Hydroelectric energy is a very valuable resource. They are often State Commons, but Farm Commons are also pretty frequently found here.

The notion of a village and/or local community, which in most countries can easily be defined both through actual settlement patterns and history, is difficult to define in the Norwegian countryside. Instead we should imagine a combined ‘agro-forest’ landscape with small clusters of farmhouses. Small local urban centres have emerged all over the countryside in the last century but we do not call them “villages,” mainly out of tradition, but also because they do not as a rule, contain agricultural activities. They are instead called *tettsted*, literally “densely built places” implying a small conglomeration of habitation.

As stressed in the introduction, the concept of ‘commons’ is a difficult one to catch in a short and precise legal definition. By and large a commons is an area wherein landholders (some or all) of a locality, or the local residents as such, have rights to activities such as grazing stock, cultivation, building of summer farms, extracting forest products like timber, fuel-wood, etc. But there may also be specific rights and specific resources belonging to (or utilized by) all members of a local community, regardless of their relationship to landholding and farms. Hunting and fishing rights are typical in this respect. Historically the commons probably did not represent much of a form of ownership, but were more like a pattern of legally guaranteed use; the members of a local society were free to use a certain tract of land simultaneously or collectively. The user rights connected to an agricultural farming unit, be it a freehold, a tenant or a crofter farm, were and still are connected to the farming unit as such, not to the actual person holding the unit. The basic elements in the concept of Norwegian ‘commons’ are on the one hand a defined land area comprising different resources, on the other a defined local community. The phrasing is often that ‘the commons so-and-so belongs to local community so-and-so’.

The three types of commons that will be explored in this paper are (respectively) State, Parish and Farm commons; the names indicate who exercises ownership to the ‘land’, actually to the ‘ground’ itself. Other areas and other resources could be termed ‘commons’ or ‘common resources’ in a more general sense. For example, the coastal waters and fisheries, certain large inland lakes, certain types of pasture practices etc. There is also a widespread practice of pooled resources, such as the pasture in areas where the plots are individually owned.

Resources with access for everybody are not common property - they are common, but not property – and should therefore be defined as ‘open access resources’. The commons are not subject to open access but are more open than individualised property, and more open than

land owned jointly by some individuals (Rygg and Sevatdal 1994). Roaming the outfields is one such open access resource, which means that walking on foot and skiing, picking wild berries and mushrooms, as well as camping for a limited period and taking dead firewood, is free for everybody. The free access to roaming applies to infields also during winter when the land is frozen and covered by snow.

## 2.2 THE COMMONS TODAY

The State and Parish commons today comprise altogether approximately 10% of the total area of Norway. There are no comparable statistics available for Farm commons, but a qualified guess is that they certainly cover at least as much land as the two other commons combined, and it is estimated that it involves more than one-quarter of all the farm property units.

Variables	State common land	Parish common land
Area	26,622 km <sup>2</sup>	5,500 km <sup>2</sup>
Percentage of total land area in Norway	8%	1.5%
Number of commons	195	51
Number of farms holding rights in the commons	Approx. 20,000	Approx. 17,000
Land Owner (title holder)	The State	Local community

**Table 2. Area under State and Parish common property ownership in Norway (2000) Source: Sevatdal 2000.**

There are 195 State commons, totaling an area of 26,600 km<sup>2</sup>, out of which 2,000 km<sup>2</sup> (7%) are productive forests. The number of farms with right of use is approximately 20,000. Equivalent figures for Parish commons are 51, in addition come 7 State commons managed as Parish commons, totaling 5,500 km<sup>2</sup>, out of which 1,700 km<sup>2</sup> or 31% are productive forests. The number of farms with right of use is approximately 17,000. No such figures are available for Farm commons, but both area and number of shareholders would certainly be larger than the other types combined.

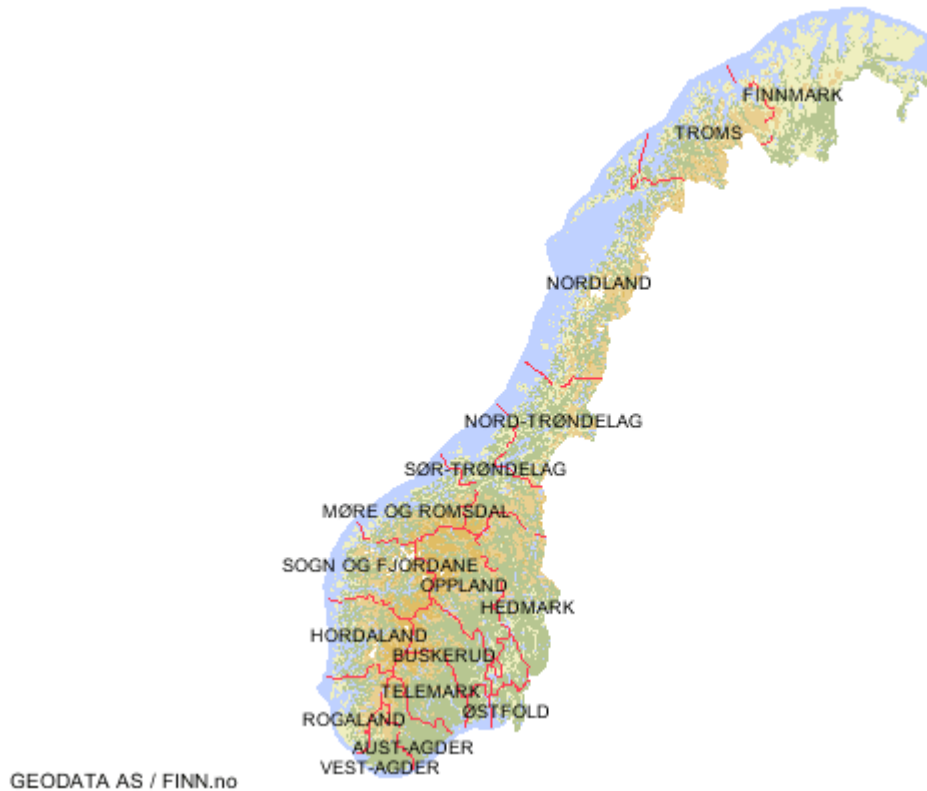
All these State and Parish commons are located in the south and central counties of Norway, i.e. to the south of the county of Nordland.

In the three northern counties of Norway, Nordland, Troms and Finnmark, the situation is somewhat different. Huge outfield areas, mountains as well as lowlands, in these counties are State land of some sort we must add. In Nordland and Troms this amounts to approximately 20,000 km<sup>2</sup>, and 38,000 km<sup>2</sup> in Finnmark.

For the Nordland and Troms counties a special commission, the Outfield Commission (*Utmarkskommisjonen*), has been at work for several decades to decide on both boundaries as well as the legal nature of the State lands in these two counties. The rulings concerning the latter by and large have been that the State land is some sort of State commons, but the user rights of the local communities are not true rights of commons. At present there is a conflict between local communities, represented by farmers associations who want institutionalised local management, and the government. The final outcome of this process is not clear.

The situation in Finnmark is special for historical, demographic, ethnic and other reasons. Practically all outfields are State land, but under special legislation and special management. The Sámi people, an indigenous minority people in Norway, have through their political bodies been a dominant party in the discussion over who should decide over the vast area of outfields in Finnmark. This situation was partly clarified with the enactment on 17 June 2005 of the Finnmark Act, where a separate legal entity was formed: The Finnmark Estate, with 3 board members elected from the Finnmark County Council and 3 from the Sámi Parliament. This entity will take over the ownership and management of the State lands in Finnmark. In addition, a similar Outfield-Commission will be established to determine property and user rights for the outfields in Finnmark. (Ministry of Justice and Police 2005)

The total sum of these figures, pure and simple State and Parish commons, and the 'sort of commons' in the three northern counties, adds up to 100,000 km<sup>2</sup> which is close to one-third of the total area of mainland Norway. In addition come the Farm commons, for which there are no figures available.



**Figure 2. Map of Norway with county names and boundaries.**

### **2.3 IMPORTANCE OF THE COMMONS**

The State commons have less productive forest than the Parish commons. Partly because they lie above the tree line, meaning that large areas are bare mountains and glaciers. Approximately 15% of the State commons are glaciers. Most of the national parks, nature reserves and other protected areas lie in the State commons or other state lands. As such they are of major importance for nature conservation and maintaining public use, such as freshwater fishing and hunting. By enactment all Norwegian citizens have equal rights to fishing and hunting on State owned land, be it State commons or another type of land held by the State.

Of the Parish commons a considerable part can be defined as highly productive forest with income-earning potential. In many of the Parish commons, joint sawmills have been established, running on a commercial basis and providing the local community both with

products and employment. The farmers' user rights in the forest are given as a reduced price (cost-price) for timber bought from the sawmill.

The Farm commons are found mostly in mountain areas at and above the timberline; they were mainly used for grazing, but lately also for developing areas for leisure such as cabins/mountain tourism, hunting and fishing.

Joint ownership of rural land in Norway has historically been of some importance to strengthen the bonds between the rural (and often scattered) population of farmers. The early formalization of user rights in the commons meant that the local population had a notion of a bundle of rights to different resources (firewood, timber, berries, pasture, fodder, mushrooms, fishing, hunting) that could not be taken away from them. During the historical processes of organization and politicization in the rural areas, this might possibly have influenced other social and political movements such as trade unions for forest workers, small farmers' unions and also the successful establishment of Parish commons sawmills. The latter have had a social agenda for the local community reinvesting their profit in development of rural electrification, building of community houses etc. It should, however, also be kept in mind that the various types of 'jointness' in ownership and user rights arrangements, the commons included, have been a source of numerous conflicts and court cases within the local communities.

Figures in monetary terms for the current economic value of the commons are impossible to establish. Major rural income earners such as logging, tourism and recreation (which has increased by 10% annually over the last 10 years), and also hunting and fishing (which are well organized and regulated) benefit the local community through sale of permits. In some Parish and Farm commons the sale of the hydropower rights to the State has given substantial income. It is clear that tourism and outdoor recreation can potentially become major rural income earners in the future. These offer both employment opportunity and income, together with environmentally sustainable use of the vast nature areas of Norway.

### 3. EMERGENCE AND DEVELOPMENT OF THE COMMONS

#### 3.1. STATE AND PARISH COMMONS

The concept of the commons and user rights might have emerged from a basic user right for everybody ('*allemannsretten*', literally 'all men's right') in the non-cultivated outfields. The Norwegian name for commons is also derived from this, as it is called '*allmenning*' or "all men's". This gave each individual the user right to the resources he/she might choose: cut trees, livestock grazing, hunt and fish etc. The use of the area was dominated by the people in the adjacent parish, and gradually the notion developed that the resources somehow belonged, with exclusive *user right*, to the local people (Rygg and Sevattal 1994).

A few factors have had major importance on the emergence and development of the commons:

- The sparse population in Norway, and thus the availability of outfield areas and resources.
- The early formalisation of the commons and particularly the user rights in the commons. Until well into the 11<sup>th</sup> century, the current area of Norway was under the rule of several different kingships and assemblies called '*ting*' at local and regional levels. The oldest laws in Norway emerged from the combined activities and interactions of the kings and these assemblies. The regional laws (*landsdelslovene*) from the 12<sup>th</sup> and 13<sup>th</sup> centuries clearly state the user rights for all adjacent farmers in the commons.
- There has been an extraordinary degree of continuity in the habitation of rural Norway. It is not unusual that farms remained in the possession of the same family for hundreds of years, held either in tenancy or in ownership. User rights in the commons were and are open to all farmers in the local community, whether they were freehold, leasehold (tenants) or crofting farmers. In modern times this means that also part-time farmers maintain their user right in the commons.
- User rights in the commons were to some degree maintained throughout changing ownership. Land could thus be under State, Church, Parish, Farm and even private ownership and still be a commons, where the local community had formalised and legitimate user rights.



- User rights were also maintained through the process of successive subdivisions of farms, most often due to increased population; new farm units would thus normally obtain user rights in the commons.

In the following the history of the changing ownership and user rights in State and Parish commons is summarised. Emphasis has been given to examine the main laws, economic development factors and major historical events that made an impact on ownership and user rights of the commons.

As mentioned above, the first formalised description of the commons and the user rights were made in regional laws. Norway was gradually united under one King during the 11<sup>th</sup> and 12<sup>th</sup> centuries, and in 1274 the first Norwegian national enactment and/or compilation of laws (law book) was made and enforced, in which the commons and the user rights of the local community were acknowledged. The King was entitled to allow persons, even from outside the local community, to establish new settlements in the commons by reclamation, in which case the ‘new’ farmer became tenant under the Crown. The basic principles laid down in this legislation in the late 13<sup>th</sup> century concerning the commons still apply.

In 1380 Norway entered into a union with Denmark that lasted until 1814. Danish gradually became the administrative language of Norway and the land administration, at least at the top level, was to some extent influenced by Danish officials, but not much by Danish land law. From the 13<sup>th</sup> century, maybe earlier, most farmers were tenant farmers, either under various church institutions (the archbishop, bishops, monasteries, local churches, priests etc.) or nobility and local farmer aristocracy, and, to a lesser degree, the King. In the late Middle Ages the church properties may have totalled up 50% of the land value in Norway. In 1537, the Reformation of the Church to Protestantism resulted in the King taking over much of the church property, especially the land belonging to the archbishop and monasteries, as these institutions were abandoned. This event made the King/State the totally dominant landowner.

From 1500 onwards there was a great increase in demand for timber for export, and charcoal, as well as other forest products nationally. This was due to shipbuilding and a general construction boom in importing countries like Holland and England, and mining and smelting of iron domestically. This made the forested commons a significant economic asset. The development of water-driven sawmills for transport of floating timber made the waterways

even more important than before, and especially the waterfalls became valuable assets for those who controlled the rights to utilise them for sawmills. In short, timber became a highly valuable market commodity, and the accessible forests close to waterways were mercilessly exploited.

During most of the 17<sup>th</sup>, and also in the early 18<sup>th</sup>, century Denmark-Norway was involved in a series of Continental and Nordic wars, burdening the State budgets and taxpayers. After 1660, the King solved some of the acute cash-problems by selling away the valuable forested commons - as well as huge tracts of other land belonging to the Crown - to private owners or local communities that could raise enough money to pay jointly. In some areas the commons were split into two parts, one became an individual private property, the other could become a Parish commons, or a sort of Farm commons.

The Norwegian Law book of 1687 went so far as to give the King the right to the valuable assets in the commons. It stated that the local community could only pursue their user rights in the commons *for their own needs*, i.e. timber for construction of houses and fences on their farms, firewood and pasture/fodder for their own animals. The King would thus benefit from all sale of timber from the commons. This rule exists today in the State commons. The Norwegian Law of 1687 also included a clause that the King could not sell the commons as such; however, sales of commons continued until 1857.

In the 18<sup>th</sup> and 19<sup>th</sup> centuries there was a steep population increase in rural Norway that also led to the establishment of new farms through subdivision and reclamation, and a huge increase in cattle numbers. As most of the yield was produced during summer, there was an increased use of and demand for pastures, which led to the commons in the mountains becoming valuable assets for summer grazing. The practice of establishing summer farms in the mountains, sometimes far away from the settlements where the animals would graze most of the summer season and the milk processed to butter and cheese, was greatly intensified. This production required fuel wood, especially the production of the so-called 'brown cheese' required huge amounts of firewood, which made competition in the outfields even fiercer. This competition for outfield resources such as timber and pasture within and among local farmer communities in 18<sup>th</sup> and 19<sup>th</sup> century rural Norway, is probably the most important background for the development of legal arrangements in the outfields, the commons included.

In 1857 the first separate law on the forested commons was passed. It prohibited the sale of the commons and demanded that professional forest management should be undertaken using forestry expertise from the forest authorities. This legislation represents a major attempt to restore or manage a resource that had been depleted in the previous centuries. (See Table 3).

**Table 3. A history of forest management in Langmorkje State Commons, Northern Gudbrandsdal – Central Norway (Fritsvold 1999)**

<b>Period</b>	<b>Event and justification</b>	<b>Result</b>
1700-1800	Logging rights in Langmorkje Kings/State commons sold to private persons	Rapid logging and degradation of the forest
1821	Act prohibits sale of State commons. Justification was that the State is better suited to take care of the forests than private persons or the community	State maintains ownership over the commons as such – but it is still a common
1854	The State wants to sell the commons to farmers/communities, advised by local authorities. Justified by the forest being in such poor condition that it would not even serve the needs of the local population.	The price is decided and negotiated with an elected community delegation.
1859	The State reconsiders its offer, instead puts the commons under State administration. The reason being that the forest inspector does not believe that communal ownership will improve the condition of the forest.	State keeps ownership and enforces State management of the forest in the commons. It maps the valuable areas of the forest.
1912	The Municipality (Vågå kommune) submits a request to buy and take over Langmorkje State commons.	This is rejected by the State, as it does not want to cause a precedent of local governments taking over State/Public grounds. It is also sceptical of benefits only reaching one municipality, and maybe only a few people within the municipality.
1948	The State wants to enforce modern forestry practices in the commons, such as more cooperative logging practices. It also wants to get out of the administration of the commons, which only gave “problems and arguments”. It uses the Forest Act from 1863. The commons Board fights to get the full ownership of the commons ground, but the State rejects.	State orders Langmorkje Commons to be managed as a Parish commons while maintaining ownership of the ground. (It is thus a State commons managed as a Parish commons). The farmers with user rights in the commons are requested to elect a Board, and pay for the administration and professional forest management of the commons.
1948-present	Langmorkje Commons Board has since been running the commons as a Parish commons. It manages the commons in such a way that the State feels no need to take over the forest resources again. (i.e. not more profit than to supply the local community with their needs - tax and work) and within environmental standards for alpine logging practices.	A sawmill has been built in 2000, returning 1.3 million in local taxes and 3.2 million NOK in State taxes. Provides work for 20 local people. 30% of the commons has become national park.

In 1863 an enactment states that all private commons, i.e. former State commons where the King had sold his 'share' to a private person, should be subdivided between the new owner and the local community. Ordinary private property for the individual was created at the same time as a Parish commons for the local community with user rights. Those with user rights should have enough forest area for their future needs. This type of subdivision, i.e. a kind of total or part transformation of a relative share in a common area into physical plots, is called '*utskifting*' in Norwegian. This has been a very extensive process especially for Farm commons; huge areas of forested Farm commons have been subdivided by such procedures by the Land Consolidation Courts (see Table 4).

The Mountain Act of 1920 protected the mountainous State commons from overgrazing, and required a locally elected Mountain Board to enforce rules and regulations with regard to resource management in the mountains. This was the first law that gave the local community majority power in the management of the commons. The Mountain Board would decide on matters such as grazing, forestry, firewood harvesting, establishing of summer farms, hunting and fishing. The Mountain Board's decisions on these matters were partly guided by special laws governing the use of each resource, such as the hunting and fishing acts.

In the 19<sup>th</sup> and 20<sup>th</sup> centuries the government made several efforts to clarify the rights and boundaries of the State versus the local community's lands and user rights in the commons. The most important effort was the 'Mountain Commission', i.e. a legal commission (special court) which started in 1909 and ended its work in 1954. It made judicial decisions on boundaries of the State commons, as well as user rights of the local communities in the southern and central counties of Norway, i.e. south of the county of Nordland, see map on page 10.

It took many years before similar initiatives were taken for the vast mountain and other outfield areas in the three northern-most counties, Nordland, Troms and Finnmark. Undoubtedly these areas were in a way 'State land' with common rights for local communities and special groups such as the reindeer herders, a minority group within the Sámi people. But there was also a somewhat unclear situation concerning the nature of ownership, the user rights and how to organize the management of the lands. At present these questions are in a mixed legal and political process of change, and the outcome of this process is not yet clear.

To discuss these questions we must distinguish between the counties of Nordland and Troms on the one hand, and Finnmark on the other. The latter has a different history than the rest of Norway as far as property rights to land are concerned, while the former by and large conform to the rest of Norway, except for the commons.

In Nordland and Troms the Archbishop of Trondheim was the totally dominant landowner in the Middle Ages. The institution of 'archbishopry' was abolished during the Reformation in 1576 and its landed property confiscated by the King, making the State the dominant landowner. This placed the State in a somewhat dualistic position; on the one hand as owner of most of the farms, on the other the 'old' owner to the State commons. The farmers were tenant farmers under the Crown, as well as holders of user rights in the State commons in the capacity of farming members of local societies.

**Table 4: A history of ownership and user rights in Gran Parish Commons\***  
 (\* Gran commons was until 1906 a part of the larger Hadeland Commons). Narvestad 2000, Sevatald 1985.

Period	Event	Formal owner	User rights
Middle Ages		No formal owner?	Everybody in adjacent communities?
1274	First general Norwegian Law acknowledges the commons and the user rights of the local community Most farmers are tenant farmers, however, this does not limit their user rights in the commons	King?	Freehold farmers and tenants
1537	Reformation (Norway from Catholic to Lutheran). The State/King becomes the great landowner, also of the Hadeland Commons	The King/State	Freehold farmers and tenants
1600 - 1800	Increased demand for timber and charcoal nationally and for timber export makes the forested commons valuable and the King's and the local community's biggest income-earner	The King/State	Freehold farmers and tenants
1668	King sells Hadeland Commons to private person, with clause that he may buy it back at any time and at the same price	Mr. Jacob Didrichson	Freehold farmers and tenants
1683	King buys the Hadeland Commons back	King /State	Freehold farmers and tenants
1683-1750	King sells Hadeland Commons to a series of private persons.	Private Owners	Freehold farmers and tenants
1687	King Kristian V's Norwegian Law states that the local community may only use their rights to resources (timber) in the commons for their own needs (not for sale)	Private owners Owner can sell timber for income.	Freehold farmers and tenants can only extract what they need for maintenance houses etc. pasture and fodder for animals.
1700-1800	From tenancy to farmer freehold ownership, subdivision of farms and emergence of crofters, Norwegian " <i>husmenn</i> ", a type of small holding, dependants "tenants" under a farmer.		
1758	Hadeland Commons sold from private person(s) to local farmers (following a rumour that the King would soon buy the Commons back)	Freehold farmers	Freehold farmers, tenants and crofters
1759-1775	King uses his right to buy back the commons, the legal process takes 16 years, and was formalised by the Supreme Court in 1775	The King/State	Freehold farmers, tenants and crofters
1782	Hadeland Commons was split up and sold to different persons, mostly rich persons from Kristiania (now Oslo)	King/Private owners build sawmills	Freehold farmers, tenants and crofters

1863	The Forest Act (1863) makes it illegal to sell common land, it also states that those with user rights should have enough forest area for their future needs.	King/private	Freehold farmers, tenants and crofters
1865 - 1875	Royal Decree Commission decides to divide Hadeland Commons. Ruling made final in 1875 by the Supreme Court after private owners had appealed the Commission's conclusions. The Commission concluded that the future needs would be 90,000 m <sup>3</sup> forests. The freehold farmers and crofters got 46,000 ha of woodland of which 37,000 ha was productive forest. The private owners got 35% or 37,000 ha of forest.	Private owners' part becomes private property. Freehold farmers' part becomes a Parish common.	1143 freeholds farms, 1,555 crofters and 554 summer farms inside the commons. Owners are freehold farmers, but crofters have equal user rights.
1875-1906	Conflict between user rights and sale of timber splits the Hadeland Commons in 6 smaller commons. Six Parish commons established of which Gran Commons was 30% of the total area.	Freehold farmers	Freehold farmers, crofters and tenants
1913	Conflicts about who should have user rights. Supreme Court decides that only units that have needs for agricultural purposes may perform their user rights in the commons. User rights were recognised all the way down to lots of only 500m <sup>2</sup> of agricultural area.	Freehold farmers	Freehold farmers, crofters, and residents on former farms with plots over 500m <sup>2</sup> . The crofter group disappears and becomes small freeholders.
1923	User rights were suggested to be limited to lots of more than 4,000m <sup>2</sup> of agricultural land. Not implemented.	Freehold farmers	Freehold farmers and residents on former farms.
1990-2001	Urbanisation and reduced agricultural activity among units with user rights. The Commons Board decides that 62 small properties with land size less than 3000m <sup>2</sup> should lose their user rights. The Commons Board won the case by ruling in the Supreme Court in 2001, Rt. 2001 p. 213	Freehold farmers	Freehold farmers and residents on former farms



During the great sales of Crown lands from 1665 onwards, 'all' the King's possessions in Nordland and Troms were conveyed to one and the same person, the greatest creditor of the King, Joachim Irgens. In the late 17<sup>th</sup> century the question arose if the State commons also had been included in the sales to Irgens; the State maintained they were not, something which Irgen's successors counter argued. A long, complicated process of court proceedings, court rulings and transactions (buying/selling) followed, the outcome being that the State won; the huge outfield areas in these counties remained in the possession of the State. During the latter half of the 19<sup>th</sup> century the farmers became freeholders by buying their farms from Irgens's various successors in various districts, much later than in the rest of Norway.

During these processes, as well as other actions on the part of the State in the 18<sup>th</sup> and 19<sup>th</sup> centuries, especially measures to protect the forests, the State developed - or maybe maintained - a notion that the outfield areas in question never had or had lost their status as commons, and that they were State land. User rights that farmers and others have in the areas were not rights of commons. These views have been opposed at a varying degree by local communities, municipalities and - most vigorously - by the farmers' association.

In the second half of the 20<sup>th</sup> century, and especially from approx. 1970 and onwards, there was a growing activity among Sámi ethnic groups to promote interests based on ethnicity regarding issues such as culture, language, economic interest, and management and ownership rights to land. In 1987, the Sámi Parliament was established as an advisory council to the Norwegian Parliament on issues regarding the Sámi people. In 1990, the Norwegian Government ratified the UN ILO Convention of Indigenous and Tribal People, giving the Sámi status of Indigenous People.

This is the background for establishing a special Outfield Commission (*Utmarkskommisjonen*) in 1985 with the mandate to settle ownership and management mode issues, and disputes concerning the boundaries between public and private land, in the two counties of Nordland and Troms. Two important court cases were settled in 1991, stating that large areas are State common lands, though not necessarily with corresponding rights of commons for the locals. Following up these court rulings, the local rural communities want the government to take steps to make what they see as former State lands to become proper State commons. A most important issue is the enforcement of the Mountain Act in these counties, and especially to

establish local Boards to govern the commons locally in the same way as in the rest of Norway.

Due to resistance from the Sámi reindeer-herders, and also from some urban groups interested in recreational hunting and fishing, this has so far not been done. The reindeer-herders as well as these urban groups prefer State rather than institutionalised local (municipal) influence and control with the use of lands and resources. Another commission is at work with Sámi land rights issues in these areas. This commission is of the same type as the one mentioned below for Finnmark.

The history of property rights in the county of Finnmark differs from the rest of the country. Approximately 95% of the county, i.e. 38.000 km<sup>2</sup>, is State land. Even if this land is not defined as a State commons today, historically it was some sort of commons (Tønnesson 1979), and has retained much of its 'commonness' in its legal arrangements. Probably the most important basis for the development in the last 200 years is the legislation in the latter half of the 18<sup>th</sup> century resulting in the Land Law for Finnmark of 1775. This legislation had essentially three aspects: 1) to formalise and individualise plots and parcels for permanent settlement; 2) to protect the scarce forest resources; and 3) to confirm and protect the traditional common rights for local communities and the public in the county. Section 6 of this Act deserves to be cited, as it grasps the very essence of 'commonness', and still applies to 95% of the land.

*'The resources which up to now have been common for local communities, or for the general public, be it fishing in the ocean and the large rivers, places for boatlandings and the like, should remain in such common use.'* (Norwegian: *De herligheder, som hidetil have været tilfælles for hele bygder eller almuen i Almindelighed, være sig Fiskeri i Havet og de store Elve, samt Landings-Steder og deslige, forblive fremdeles til saadan almindelig Brug.*)

This section applies to resources in general, and its qualification to fishing and the sea should be interpreted as examples. It is very typical for the traditional legal attitude towards the commons: the user rights shall remain as they have been of old. But it also leaves a black box: what about new resources and uses that might occur?

It is outside the scope of this work to outline the reasons why the history of property rights in this county are so special, but some points have to be made. The natural environment is dominated by its northern and eastern location, which make farming and subsequent development of related property right and tenure systems both rare and late. There are three ethnic groups with partly different settlement patterns, economy and traditions concerning usage of resources: the Sámi, the Norwegians and the Finns. Finally, the fact is that historically there has been competition, sometimes conflicts, between three different state formations in the area: Norway/Denmark, Sweden/Finland and Russia. This has influenced the politics on the part of the central governments, in fact since the Middle Ages. The international boundaries for the county as they are today were settled as late as 1752 towards Finland, and 1826 towards Russia. The continuation of the boundary between Norway and Russia out into the Barents Sea is not yet settled.

The total number of Sámis is between 30-50,000, living in Norway, Sweden, Finland and Russia respectively. The largest number of Sámi lives in Norway, most of which live in Finnmark county. However, even in Finnmark they comprise a small minority of the overall population of approximately 75,000. Some of the Sámis had and still have a semi-nomadic livelihood in the form of large-scale reindeer herding, but the majority of the Sámi lived in fjord and coastal areas, earning their living from fishing/hunting and small-scale farming as well as handicrafts. Today their occupation and settlement patterns hardly differ from the rest of the population in the respective districts.

The traditional Norwegian settlements were predominantly in the outer coastal areas and were based on commercial cod fisheries, i.e. stockfish production for the European market, dating back into the Middle Ages.

The Finns migrated into the county in the course of the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> centuries. They did not settle any specific area, although there are settlements in the eastern parts dominated by Finns. It is, however, to some extent justified to say that they brought agriculture in the form of farm-based husbandry to the area. This of course had an effect on the development and need for private individual ownership to land.

In 2001, the Commission on Sámi Rights finalised its proposal on the management of the State Land in Finnmark. Based on this and other works, the Government in 2003 proposed the

establishment of an independent legal entity called *Finnmarkseiendommen* ('the Finnmark Estate') which would administer the land and natural resources in the State Land of Finnmark. On 17 June 2005, the Finnmark Act was passed in Parliament where it was decided that the Finnmark Estate would be governed by a Board consisting of six persons, of which the Finnmark County Council will elect three and the Sámi Parliament will elect three. A Control Committee will oversee the activities of the Finnmark Estate Board. Among the members elected by the Sami Parliament at least one shall represent reindeer husbandry. The Act shall apply within the limitations that follow from the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Act of 17 June 2005, No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark).

The establishment of the Finnmark Estate will provide the local population with a bigger say in the use of land at its disposal, because firstly, the Finnmark Estate will be authorised to make decisions that were previously made elsewhere, and it will retain any profits resulting from its activities. Secondly, the Finnmark Estate will have a bigger say in the management of hunting and fishing. While public authorities will still decide such issues as what can be hunted and when, the Finnmark Estate will decide who is allowed to hunt, on what conditions and what price they will have to pay. Thirdly, the Finnmark Estate will have greater freedom to engage in economic development on its own land in Finnmark. The Act states that over time groups of inhabitants may have acquired a special right to use or to own a particular area.

### **3.2. FARM COMMONS**

As stated above, most farmers were tenants from the Middle Ages onwards. From the late 17<sup>th</sup> century onwards, ownership slowly passed from tenancy to farmer freehold, as farmers bought their farms from the landowners. By the end of the 19<sup>th</sup> century practically 100% were freehold farmers. Following the increase in population in these centuries, there was also a process of subdivision of farms and the emergence of crofters, the Norwegian '*husmenn*', a type of small holding, dependent tenants under another farmer. Especially the process of subdivision leads to the emergence and development of *Farm commons*, because the outfields were largely left in common, while the infields were physically subdivided into plots. It should be noted however, that such subdivisions resulting in Farm commons have to some

extent taken place much earlier. Farm commons may also have developed otherwise, most notably if a group of farms somehow obtains ownership to an outfield area jointly, by purchase, by prescription from a State common, or otherwise.

As the farming units eventually became freehold farms, mostly through crofters and tenants buying their farms during the 18<sup>th</sup> and first half of the 19<sup>th</sup> centuries, and agriculture and forestry became more cost-intensive and market oriented, the Farm commons in the infields and productive forests under the timberline were individualised. They were usually dissolved through land consolidation. Joint use of grazing and fishing/hunting rights in the forests prevailed, and Farm commons in the mountains were seldom dissolved – these lands were maintained as Farm commons (Mykland 1998).

Farm commons have thus been established by two different processes: 1) by subsequent subdivisions of a large farm area comprising cultivated land, forests, mountains and so on into smaller farmsteads but without physical division of the outfields like mountains and forests; 2) through a process of joint acquisition of ownership to land in such a way that the acquired land became the property, not of the actual physical persons, but by the farmsteads these persons possessed. This type of origin and subsequent subdivisions often resulted in large farm commons and a large number of shareholders.

The Farm commons have thus existed for many centuries in the rural areas, but since they are not proper property units, they have not been recorded as cadastral entities. Consequently there are few figures and statistics as to their number and how much land they comprise. There have been laws regulating Farm commons far back in history, but these laws have always been, and still are, based on the principle of freedom of contract, which means that the legislation is applied only if the parties do not agree to arrange the usage, conflict solutions, organization etc, otherwise, i.e. by contract or by tradition. New legislation on land registration, passed in the Parliament in 2005 and expected to be enforced in 2008, opens up for registration of the Farm commons, not as property units but as a special type of cadastral unit. The Land Consolidation Courts have, since they were established in 1859, been the principal external institution for handling legal problems and disputes, and also dissolving and - rearrangements of use in the Farm commons.

## 4. CURRENT LEGAL FRAMEWORK AND MANAGEMENT

### 4.1. LEGAL FRAMEWORK

A most important legal principle governing the Norwegian commons is the freedom of contract amongst the parties within a broad framework of mandatory laws and regulations. These laws and regulations fall into two different groups. On the one hand there are those that restrict transactions of property rights, tenure arrangements and freedom of contract directly. On the other hand, there are laws and regulations on land use, planning, environmental issues, nature and culture conservation, hunting and fishing etc, which may restrict the freedom of contract more indirectly out of (assumed) public interest. There are a multitude of public agencies of various kinds to enforce these laws, constituting the 'Public Regulation Regime'. However, as long as the parties adhere to these external laws, they may organise and rule their commons as they wish as long as they agree amongst themselves.

Before entering into more detail on legislation and rights, the so-called '*allemandsrett*' in the outfields should again be mentioned. These rights are for *everybody*, regardless of residence, citizenship etc, and comprise rights to roam on foot, camp, making fire of dry wood, pick wild berries and mushrooms etc, regardless of ownership and property rights of any sort. These rights apply to commons as well as to private or public lands.

The laws directly governing the commons thus largely suggest ways to organise the management and distribution of property rights and will only enter into force when and if the parties cannot agree on a practical arrangement amongst themselves. These laws are therefore generally applied in cases of disagreements and disputes between the parties and if parties do not make other arrangements. The legislation provides models for organisation, administration and procedural rules for making decisions, with special regard to efficiency and balance of power between various groups of rights-holders, i.e. majority and minority groups, owners versus holders of user rights etc.

In case of conflict, the legislation provides for external independent bodies and authorities to be called upon from one or several parties. Typically such bodies/authorities would be special courts like the Land Consolidation Court, and institutionalised legal commissions at local

level, in Norwegian called '*skjønn*'. Decisions in such bodies would be enforceable like ordinary court decisions.

The general principles concerning the relationship between the parties in a commons can be summarized as follows:

- Each shareholder has a right to use the commons according to his/her share, or alternatively, to his/her need, but at the same time paying due respect to the fact that the others have an equal right.
- In Farm commons the right of each shareholder is determined by actual ownership of a relative share of the total; for example a percentage in modern terms, in Parish and State commons, the shares are determined by (traditional) assessed need.
- In cases of scarcity, all parties are obliged to reduce (adjust) their extraction proportionally to their owned share or to their need.
- In cases of surplus it is generally accepted – in practice - that some parties may increase their extraction of resources above their relative share. It might also be that one of the parties, for example the owner(s), is entitled to such surplus.
- The actual use may be performed on an individual or on a cooperative basis, according to what is considered practical, or according to tradition, personal relationships and so on. In any case this is left to the parties, or group of parties, to decide amongst themselves. Some of the users may form separate cooperative groups.
- Activities like hunting, fishing and grazing may, for practical reasons, be organised on a cooperative basis, even on land where the resources are individually owned.

There are two different groups of laws and rules/enactments that regulate the commons in Norway. On the one side specific laws that regulate the management, administration and user rights in the three types of commons, and on the other side laws that regulate the use of particular resources which would normally be available in the commons as well as on private or publicly owned land in a similar environmental setting. The two important groups of legislation and underlying enactments are:

**Specific laws regulating the different types of commons:**

- State Commons: The Act on mountain commons (*Fjellova*) from 1975, the Act on Forest Commons (*Lov om drift av skogallmenningar*) from 1992

- Parish Commons: The Act on Parish Commons from 1992
- Farm Commons: Law on joint property right (*Sameigelova*) from 1965 and Law on Land Consolidation (*Jordskiftelova*) from 1978
- State Common Land in Finnmark: The Finnmark Law (*Finnmarkslova*) from 2005
- Law on Usufruct Rights (*Servituttlova*) from 1968

**Specific laws regulating the use of a particular resource in general, applicable within the commons, also pasture, forestry, fishing and hunting etc.**

- Law on forestry - last revised in 2005.
- Law on reindeer herding - 1978
- Law on wildlife (and hunting) - 1981
- Law on fishing in lakes and rivers - 1992
- Law on pastures - 1961
- Law on waterway development (*Vassdragsloven*). Revised last 2000.
- Law on planning and building (*Plan og Bygningsloven*). Revised last 2004.
- Law on outdoor recreation (*Friluftsløva*). Revised last 1996.

At present both the State commons and the Parish commons are registered as property units in the Land Register, but the cadastre and the legal register, and the Boards of these commons, are obliged by law to keep updated records (registers) of the properties (farms) that have user rights. This seems to function quite well. The Farm commons are not - as yet - registered (recorded) as special entities in the Land Register. This is simply because our land registration system is based upon *property units* as the basic entities. The Farm commons, however, are not proper property units; it is the farm *plus* the share in the commons that constitute the property unit due to registration, and this unit is (at least in principle) registered. This creates a land information problem both in private and public sectors, especially in the mountain municipalities where a huge proportion of the total area might be made up by Farm commons, because data specific to the land unit made up by the commons are not easily recorded.

A new law on land registration was passed in 2005 and is now under implementation. This enactment provides for registration of the Farm commons, at least in the cadaster part of the system. According to Mykland (1998) some farmers were more negative than positive towards the proposals in this law, as they feared that it would lead to more bureaucracy and



rigidity in their actions. They did however see that in certain instances it would be beneficial that the actual agreements and division of shares were registered and formalised in order to settle and/or prevent disputes.

## **4.2. MANAGEMENT AND ADMINISTRATION**

### **4.2.1 State commons**

The State commons (as public property) has to be managed and administered in order to accommodate a range of interests and parties:

- the local community to which the commons “belong”
- defined farms or groups of farms within the local community
- the State
- the public (the population of Norway)

Below is a table summarizing the different natural resources that are used in the commons, which user-groups have access to the different resources, what type of management structure regulates the use of each resource.

<b>Resources</b>	<b>User group that benefits</b>	<b>Management structure</b>
Commercial logging	The State through the management of Statskog SF (A state company managing all state forests, both public and commons).	Statskog SF, under the supervision of the Ministry of Agriculture
Logging for farm use (firewood and construction)	Local farming community with user rights – but only according to their need	Locally elected Commons Board
Mountain pasture/grazing	Local farming community with user rights – according to needs	Locally elected Mountain Board
Hunting and fishing	Local community/public - fishing/hunting permits sold by Mountain Board	Locally elected Mountain Board
Hydropower	The State	Statskog SF, and other State institutions
Commercial tourism development	The State, but will share according to agreement with local community	Statskog SF with relevant Ministries
Any new resources (i.e. minerals, any other commercial use of area/resources)	The State	Statskog SF with relevant Ministries

The rights to traditional utilization of resources in an area belong to a specific local community. For an individual to have user rights in State commons the person has to possess residency in the local community and/or ownership or leasehold of an active farm in the local community to which the commons “belong”. Each right-holder cannot use more than according to the households needs, i.e. nobody can sell resources harvested in the State commons. The exception is game and fish harvested from the area (although not the rights to fishing and hunting), and also the selling of milk and meat from animals that have grazed in the area (although not the right to sell grazing rights to non-right-holders).

What remains of resources when the local needs are satisfied belongs to the State; the State owns the land and the residuals. The implication of this principle is that any new exploitation of the land belongs to the person who owns the ground, even if this principle is not necessarily followed too strictly in practice. But it is applied in the case of hydroelectric power, and to the same extent for the long-term leasing of property for recreational cabins. For these activities the State has the right to develop and receive income; however this is usually split 50/50 with the *kommune* (municipality) where the commons is located.

The user rights to activities connected to farming are reserved for the farming population, while everyone living in the municipality has equal rights to defined hunting and fishing activities. The public, i.e. everyone living in Norway, also has access to certain limited types of fishing and hunting.

The management of the State commons is organized within three bodies:

1. Statskog SF, is legally organized as a state-owned ‘company’, (the minister of agriculture in person makes up the general assembly) and takes care of the ownership interests of the state. For all practical purposes this is to manage all forestry and logging, cultivation, roadwork, gravel/stone-mining, water-management (also for hydropower use), development and rental/lease of properties for leisure cabins/tourism. Statskog SF also supervises most other activities in the State commons. In 1981, the Parliament issued a White Paper 57 (1980-81) that emphasizes that the State should be a provider and manager of public goods. This management should include strong environmental considerations as well as developing outdoor leisure activities in the areas. The economic outcome should be satisfactory, but not to the detriment of the above two considerations and in addition it should be in agreement with the local community.

2. In commons that predominantly are situated above the tree-line (with no or little productive forests) a **Mountain Board** (*Fjellstyre*) - one for each municipality - manages all issues concerning other uses of the State commons, such as hunting, fishing, grazing and other natural resource use issues. The Mountain Board is elected by the municipal council. According to law the majority of the Board should be persons living in the local community. Each Mountain Board has to employ a mountain ranger responsible for management and control of fishing and hunting rights, environmental monitoring and management, information towards the public, maintenance and accommodating for public use of the State commons.
3. In commons comprising productive (commercial) forests, a separate **Commons Board** (*allmenningsstyre*) is elected by those who have the rights to wood/timber (according to need). This Board makes all decisions concerning the collective use of the timber resources.

The Mountain Boards have joined in an umbrella organization called the Norwegian Mountain Board Association (*Norges Fjellstyresamband*). This association has undergone a modernization process and has become a stronger and more united organization. Together with other community and/or landowner organizations it has managed to get the views and interests of local communities forward in political processes and thereby become a strong force in national politics, particularly when it comes to environmental concerns versus local community interests.

Seven State commons are managed as Parish commons. The reason is that the level of logging in these commons does not exceed the needs and uses by the local community, therefore they are called “deficit-commons”. There is no excess timber for the State to exploit after the local community has taken what is rightfully theirs. They have, according to the law, been given the right to manage themselves as a Parish commons.

#### **4.2.2 Parish commons**

The Parish commons are not public/state property, but are owned by active farms that of old have had user rights in the commons. It follows that if a farm stops functioning as a farm, it loses the user right in the commons, and probably also its part in the co-ownership of the commons, even if the law is not quite clear on the last point. This is the practice followed by

the majority of the Parish commons, according to Runningen (2005). On the other hand these rights, and even the co-ownership, may be reactivated when taking up farming again.

Below is a table summarizing the different natural resources that are used in the commons, which user-groups have access to the different resources, and the type of management structure regulating the use of each resource.

<b>Resources</b>	<b>User group that benefits</b>	<b>Management structure</b>
Commercial logging	Local farming population with user rights	Parish Commons Boards
Logging for farm use (firewood and construction)	Local farming community with user rights – but only according to their need	Parish Commons Board
Mountain pasture/grazing	Local farming community with user rights – according to needs	Parish Commons Board
Hunting and fishing	Local community/public - fishing/hunting permits sold by Parish Commons Board	Parish Commons Board
Hydropower	Local farming population with user rights	Parish Commons Board – or the rights might sold to the State
Commercial tourism development	Local farming population with user rights	Parish Commons Board
Any new resources (i.e. minerals, any other commercial use of area/resources)	Local farming population with user rights	Parish Commons Board

The Parish commons were previously regulated in a number of different laws. A new comprehensive ‘Parish Commons Act’ was passed by Parliament on 19 June 1992 and entered into force in 1993. Based on earlier court rulings, several rules of principle were established:

- The concept of a farm and its importance for the eligibility to user rights in the commons, – according to the Act a property unit in the parish that features and actually uses the property in an agricultural way has the right of common. It is not a condition that the holding is large enough to sustain the livelihood of a family.
- The concept of the parish or community is now stated as the boundaries for the parish based upon available information on usage of sufficient old age. Administrative boundaries, past or present, are in principle of no relevance, although they often follow these boundaries.

- The right of common cannot be disclaimed from a farm; even the owner has no right to disclaim the right from his/her own farm.
- The principle that the right of common is linked to the farm and not to the person/farmer is important as this regulates the extent and quantity of resources that the farm can actually extract from the commons. The quantities are restricted to the actual 'standard' need of the farm, not the desire of the farmer. Increase in the farm's production will thus increase the need for resources in the commons.
- A farmer may claim that all the needs on the farm should be met by resources from the commons, independently of what other resources the farm/farmer has elsewhere (Rygg 1993, Rygg and Sevatdal 1994).

Other changes that were introduced in the Act were that each farm should have two votes; one for husband and one for wife, the procedures for election were simplified, and the employees of the largest Parish commons were given the right to have one representative on the Board. (Rygg 1993). This Act clarified the management structure of the commons, as this had been highly variable from one commons to the other. The Act regulates the election of the Parish Commons Boards and the Boards' duties, accounting and auditing procedures, the election procedure and the agenda for the General Assembly.

It also requires a qualified forest manager to be recruited and responsible for the management of the forest resources. A forestry plan must be developed which includes regulation of the use and management of the commons in areas such as fishing, hunting, grazing, logging and detailed accounts of how the forest resources are divided among the owners/users as well as the use of profit from forestry activities.

The management of the Parish commons is supervised by Statskog SF and must comply with the Forest and Environmental Laws. Most of the larger Parish commons run their own community sawmill. The user rights to the forest resources in these commons will take the form of reduced price on timber purchased from the commons' sawmill. Profits from commercial logging activities may not be divided as dividends to each farmer before other investments needs for development and maintenance of the commons have been covered. Many Parish commons run commercial saw mills, timber manufacturing and/or peat extraction businesses. Some also own and run timberware shops, mills and input-supply organizations. Through these and related activities, considerable resources are channeled from

the income of the commons back into the local economy. The commons have provided employment and business promotion/support in the local communities as well as taken on community welfare activities, such as the building of community assembly halls, providing electricity to the community and other activities beneficial beyond the user/owners of the commons. The structure and continuity provided by the board of the commons, leads to a greater focus on long-term use of and investment in the commons (Norsk Allmenningsforbund 1996, Finsveen 1998, Haug 1998).

The Parish commons have established an umbrella organization, the Norwegian Commons Association, which comprises 35 Parish commons as well as 5 State commons that are managed as Parish commons. The objective of the organization is to secure and protect the interests of the users and owners of the commons, as well as to promote collaboration between commons and strengthen their professional management.

The association has provided support to regional cooperation and the emergence of a common forestry industry in some areas. It also collaborates with other organizations and most of the Parish commons are members of the Norwegian forest cooperative association.

#### **4.2.3 Farm commons**

Farm commons are currently mostly found in high lying (mountainous) out-fields, from near or in the tree line of the conifer trees (*barskoggrensa*) and into the alpine mountain areas, i.e. mainly the traditional summer-grazing and summer-farming areas. In these areas the current economic interests are pasture (mostly sheep grazing), a wide variety of recreational activities; roaming, skiing, hunting, fishing, and development (cabins, hotels etc.) based on such and related activities: (Sevatdal 1989, Mykland 1998, Korsvolla et. al. 2004), but also in a variety of other resources specific to the area, like hydroelectric developments of waterfalls.

In principle, all resources in the Farm commons are accessible and governed by the farms that share the ownership; they own the commons. In practice, quite often there are others that have limited user rights besides the owners, but it is important to maintain that the shareholders exercise the ownership rights.

The Act on Joint Ownership from 1965 comprises general legislation on joint ownership as such, but also includes specific regulations on Farm commons. In Section 1 it is stated

explicitly that the regulations in the law are applied only if other regulations do not follow from contracts or other legal arrangements made by the amongst the shareholders themselves. In Farm commons, user rights are directly linked to ownership (or leasehold) of a property unit, normally and traditionally a farm, or a property unit that once constituted a farm – which ‘owns’ a share in the commons. This right will prevail wherever an owner lives or whatever an owner does (farming or not); it is a genuine ownership right that goes with ownership of the property unit, and is not linked with either residency or with farming activities. Farm common land cannot be split from the farm it belongs to. However, a share in the Farm commons may be subdivided if the farm that has a share is subdivided. Decisions concerning management etc. should be made by majority vote, but the law provides for protection of the minority. A majority can also decide to establish a Board to manage the commons. If parties in a Farm common cannot agree on how to organize themselves, the Land Consolidation Court may be called upon by one, or a number of parties to lay down rules and regulations for the commons. The Act is non-mandatory, indicating that any agreements made between the parties will, as long as they are not illegal, overrule the Act’s descriptions. This is why there is a wide variety of practices and organizational models, according to the type of resources that are predominant, local traditions and social and community relations.

In a study of 18 Farm commons by Siri Mykland (Mykland 1998) in Setesdal (a valley in southern Norway), she found that none followed the organisational set-up described in the Act from 1965, and all of them were different from each other. This finding shows the importance of the principle of freedom of contract. Another general conclusion from her work was - not surprisingly - that in the case of bountiful resources in the farm commons, the level of conflict is low. If the resources are limited/scarce or one or several of the parties exploit one resource to the detriment of others, and the level of competition increases, the level of semi-open conflict increases. Interestingly, there does not seem to be any similar increase in conflict with an increasing number of parties in the Farm commons. This is also the case when a new income-earning activity is introduced such as sales/renting out of sites for recreational cabins. In these instances the conflict solving can either be done formally through the court system by a special type of procedure in the Land Consolidation Court. Or, as is often the case, the shareholders in the Farm commons eventually settle the dispute themselves, which often leads to very complicated ownership and use-right conditions.

Mykland found that it was the level of prospective income from a resource in the farm commons that determined the degree of formal structures to manage the resource. Furthermore, other laws than the Act on joint ownership would enter into force and regulate the management of the resource, such as the Act on Hunting from 1981 and the Act on Fishing in Lakes and Rivers of 1992. These Acts have both led to the Farm commons being forced to better organize themselves in order to vocalize and maintain their hunting and fishing rights in their area. Since the most valuable resources in the commons therefore have fairly well organized management bodies, the parties did not see the benefit of organizing a separate commons board to govern the remaining resources in the Farm commons. Most decisions were made informally and little was written down, and most of the parties in the Farm commons stated that they wanted to maintain the flexibility that the current legislation allows, as this makes management less formal and less time-consuming.

The internal social dynamics and the lack of formalized organization and rules in the Farm commons may also make them vulnerable to others gaining rights in their territory through so-called prescriptive acquisition (*hevd*). For example, the parties in the Farm commons let other non-parties have unlimited access to grazing inside their territory, explaining that it would not be acceptable behavior ('stingy') if they started formalizing and asking payment for this activity.

As rural Norway is changing, with substantial migration from rural to urban areas, leaving farms uninhabited and used as leisure houses by inheritors who live in the city, the conflict between permanent and visiting residents in the local community might increase. In Mykland's work, she showed that several permanent residents questioned the recreational residents' rights in the commons, and also pointed out that they were not willing to undertake duties, such as becoming Board member, or share in costs necessary to improve the commons for farming purposes. Another conflict was a generational conflict, where the older generation would look back at the good old times and not enter into new ventures, while the younger generation looked ahead and wanted to invest and initiate new income-earning activities. At the same time there was an overall understanding that the older generation had valuable knowledge about how agreements and rights concerning use of the commons had developed.



## **5. FUTURE OPPORTUNITIES AND CHALLENGES**

### **5.1. FUNCTIONAL COMMONS AND POOLING OF RESOURCES**

When discussing future opportunities it is important to look at the concept of what comprises a commons and also to look at the meaning of ownership of the commons. Both when dealing with what in Norwegian is termed “*allmenninger*” and “*realsameier*” these are understood as physical objects, i.e. land as entities that can be envisaged as (large) “plots” in the field, and polygons limited by boundaries on a map. In the same way local communities have been conceptualised as right-holding subjects in themselves, or comprising groups of right-holders in or to this land entity. There is also a distinction between those who have a “right of commons” and the “owner”. In Farm commons these are the same juridical or physical entities (farms), while in State commons they are not. Parish commons may fall somewhere in between. So in principle the previous chapters have been dealing with three different entities, the commons as a territory, the local community and the owners.

The rights of the users are limited in a “positive” way; a right to pasture is a right to pasture, nothing else, a right to timber is a right to timber only. It follows logically from this way of delimitating the rights in commons, that all residuals, i.e. what remains when the “positive” claims are satisfied, are the property of the owner. This is in some sense how ownership in the commons is defined, i.e. as the right to the “remainder”, both old and new. This way of conceptualising property rights arrangements in the commons might be in line with historical development and also with current legal terminology; at the core of the concept of ownership to land is the right to the residuals when all the positively stated rights are deduced.

There are, however, other ways of conceptualising commons that might imply new forms of organising commons in the future. Here two different concepts will be discussed, the functional commons and the commons created by pooling of resources or land.

The term *functional commons* refers to a situation when *particular resources* are being held legally in common. One may say that the different resources on the same piece of land constitute an ownership object of each, and this resource is held in common, or constitutes a commons, such as a pasture commons, a forest commons, a fishing commons, a hunting commons and so on. In a legal sense it means that the ownership of the resource in question is

jointly held. This is in fact the traditional way of thinking about property rights in the outfields in Norway; that each resource constitutes an object of ownership in itself. This notion prevailed until the end of the nineteenth century and even longer in many rural areas, and has greatly influenced the development of the commons. In this conceptualisation there is no room for ownership of the ground in itself; the ground as such has no value, and is not a special object of ownership; it is the resources that have value and are object of ownership. To put it another way, the forest producing capacity of the land is one object of ownership, the pasture producing capacity is a second, the hunting capacity a third, and so on.

The transition from this traditional view to the current 'modern' view gradually came to dominate under influence of principles derived from Roman law and legal theory during the nineteenth century. There are at present different types of functional commons found throughout Norway, most typically concerning pasture, '*sambeite*' and '*hopmark*' are two terms for this. There are no explicit written or legal institutional arrangements for these functional commons at present, except that establishing some such arrangements anew is to some extent forbidden, for example to separate ground and trees in permanent different property entities.

Another area of concern in the commons and in the functional commons is the current legal view that the owner of the ground is the legal owner of the *residuals*, both old and new. This is a constant tension in the State commons; who owns 'new' resources? In the future new ways of defining user rights in the commons for both current resources and residuals should be explored. Perhaps a new concept could be to establish layers of functional commons for each resource, thus making the question of ownership of the ground less important.

Besides such cases of functional commons we also have many commons that may be termed '*de facto* commons, *de facto* in the sense that individually owned resources are used jointly. These arrangements may be termed '*pooling*'. The legal base is normally some sort of contractual arrangement. These 'contracts', however, might be very informal - often almost an underlying consent, an old tradition or a purely practical arrangement without any written documents. On the other hand, there are many cases of formal, written contracts in this field. The typical examples of pooling would be pasture and hunting, where the actual legal rights to these resources are subdivided into small, but dysfunctional plots and where the resources can only be managed functionally within a larger context. Even if all other resources were legally

subdivided in the same way, it might well have been an underlying understanding that the actual use of the hunting or pasture should remain in common.

Pooling of resources is a very important way of creating functional commons, especially when the resources might be legally individualised in small, presumably dysfunctional plots. But there are transaction costs, negotiations and contractual arrangements involved. Exploring possibilities for how arrangements along these lines could be institutionalised could provide models for pooling of many types of resources.

## **5.2. UNDERSTANDING THE CONFLICTS**

The concept of ‘conflict’ is used in a broad sense, signifying some sort of specified interest, which might be opposed to each other. Conflicts in this sense are a normal and continuing state of affairs in commons, and there is no such thing as a final solution; conflict is inherent at the very core of common property. Let us summarise the most prominent conflict lines, past and present, related to the Norwegian commons:

- Between local users of the same resource, conflicts may typically accrue in cases of scarcity of the resource in question. Historically this has been the case for grazing and for forest products. Today, conflicts over such resources are generally of no great importance, except amongst the Sámi reindeer grazing (herding) in Finnmark, and some cases of fencing. The decline in resource conflicts is simply due to the general decline in agricultural activity in the outfields. However, there are conflicts between those who want to use a resource themselves (for instance hunting rights), and those who want to sell and/or utilize their rights commercially.
- Between the owner and the local society. This is the almost classical conflict between the State and locals about different issues, but especially the ownership to residuals - old and new - in the State commons. This conflict is brought to a (temporary) conclusion in the State commons in the south of Norway. In the two counties of Nordland and Troms in the north of Norway the conflict between State and locals has been about the very existence of State commons. That conflict was ‘won’ by the locals, but is followed by the struggle of the locals to have a Mountain Board representing

local interests - not as much for protection of traditional user rights like pasture, but simply to represent local interests in general. This case is not yet settled.

- Between the owner and special interest groups, and between groups locally. This type of conflict has been most profound in Finnmark, between the State as owner, and some groups of the Sámi. The overall conflict picture has been very complex, as ethnic groups, local societies and a powerful interest group - the Sámi reindeer herders - do not coincide. The added dimension at a macro-political level of correcting historical injustice may make it more difficult to solve the land issues locally. *The real issue therefore is not traditional user rights, but ownership and future control of land and residual resources.* Conflicts over traditional uses in itself could probably have been solved relatively easy in many places. The Finnmark Act from June 2005 has however established local ownership and management (with 3 members from Sámi Parliament and the Finnmark County Council sitting on the Board) of the Finnmark Estate, and it may become difficult to solve these issues in practice.
- Between locals and the general public. If and where the general public becomes a greater user of the commons for leisure and outdoor activities, there is a need to find other ways of deriving income from these activities and making them attractive. The tasks of the commons Board and the managers will change from logging and grazing management to tourism management. The degree to which the local communities manage to take part and reap the benefits of this change depends on their ability to see and act on these new trends in society. Further, the local population's needs and wants might be in conflict with what the "city-tourists" want and seek. The latter might prefer what they deem 'untouched' nature and the former want to use the area for farming purposes. To strike a balance between these two will probably be the most important for the survival of vibrant commons in the local community. There have been several instances where national laws and policy concerning environmental protection have reduced the user rights in a State commons without the local community receiving any compensation or benefits. Further, many national parks are located in the State commons, and new ones are being proposed. These will lay restrictions on the local communities' user rights in these areas, while leaving it more difficult for them to develop income-earning activities in the area. In other cases the laws governing local

and regional planning of development initiatives will also reduce the local communities' influence on their own situation.

- Who belongs to the local community? As the agricultural sector is rapidly changing, with the number of persons involved in farming rapidly decreasing, there will be a continual discussion on who should maintain their user rights in the commons. This would be most problematic in areas close to larger cities where there would be a process of small farms being sold or inherited as residential or holiday houses while the farmland would be leased to a fulltime neighbouring farmer – if there is any left. Should the hobby farmer maintain the user rights in the commons? So far the rulings in the High Court have said that they should, as long as they live permanently on a farmstead with a certain volume of agricultural activity. If inheritance practices change in such a way that it becomes more common that farms are sold on the free market, which many have promoted to counter the depopulation of the rural areas, there will be a change in the local communities. There might be an influx of non-locals to the societies which may create tension as they do not know the history and unwritten rules of the local communities. The commons institution's ability to welcome and integrate the newcomers will be determining for thriving local communities.

The underlying issue in some of these conflicts lies in the fact that the value of traditional usage is decreasing, while the value of the remainder - which now rests with the central government in *State land* and *State commons* - is potentially or actually increasing. The locals see that the value of their share of the commons deteriorate, while the value of the share of State and general public increases, and they feel frustrated. A sense of losing control with their 'own' land resources in the outfields is rather profound in many rural areas. The developments in *Farm commons* and *private land* add to the frustration; land is increasingly owned by absentee owners as people leave the countryside but retain ownership.

### **5.3. CHALLENGES AHEAD**

Challenges for future developments depend on the perspective of the various stakeholders and actors; it will of course always be a challenge for any stakeholder to promote his own interests. But the commons are not dominated by conflict and competition only, there are

shared interests and opportunities as well. It is not the aim here to explore challenges for the different actors, but rather to point to some more general issues.

The commons are a very important type of ownership in Norway; if they did not exist they would have to be invented! Not only from the perspective of efficient land use and resource utilisation considerations, but also for fair distribution of ownership; in many cases subdivisions in small inappropriate and inefficient holdings would be the alternative for maintaining a fair and even distribution.

The overall challenges for the **local societies** - if they want the commons to remain viable arrangements for ownership and user rights etc. - seem to depend on some important issues:

- First, their ability to adapt the commons to changing demographic, social and economic conditions and realities in the local society, especially to include most of its members in utilisation, benefits, management and responsibility.
- Second, to keep the 'natural' conflicts at levels where they can be handled locally, and above all to maintain, develop and redevelop conflict solving mechanisms at lowest possible costs, both in monetary terms and socially.
- Third, and from a more 'selfish' perspective, it is an obvious challenge for the local community to have a larger share in future benefits accruing from new types of land use, uses and benefits not presently comprised by traditional uses.

Interesting research issues could be developed related to these challenges. A key issue would be the study of institutional frameworks, especially with the aim of finding institutional frameworks designed to promote (enhance) solutions by *negotiation*, and their ability to reduce transaction costs.

For the **central government**, its administrative bodies and the Parliament, the challenges seem to accrue partly from its different roles, three of which have become visible throughout our discussion: The role of 1) landowner, of 2) law maker and 3) promoter and caretaker of the interests of the general public and of special interest groups at different levels *outside the local community*. The objective of these roles might often be conflicting.

The developments in the counties of Nordland and Troms provide a good example of the difficulties of harmonising these roles and the resulting frustration and conflicts. A very

interesting research question would be to compare the performance of central authorities as a provider of institutions related to Farm commons and Parish commons, where the State has no ownership interests, with its performance in State commons.

Little is known about the actual informal institutions managing the Farm commons. More research should be done in this area, both to examine the efficiency of the institutions and also to examine whether there are legal or other ways that can aid the efficiency of these types of commons (Sevatdal 1999).

In a broader picture the institutional perspective should be expanded in two areas: 1) how to promote and develop the potentials for economic rationality inherent to the commons, both to so called 'functional' commons and to pooling of resources; 2) conflict solving issues in commons in general. How do institutional frameworks – formal as well as informal – really function both to generate and to solve conflicts?

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