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## Conseil des droits de l'homme

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**Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement**

## **Rapport du Rapporteur spécial sur les droits des peuples autochtones, M. James Anaya**

### Additif

### **La situation du peuple sami dans la région Sápmi de la Norvège, de la Suède et de la Finlande\***

#### *Résumé*

Le présent rapport, qui, initialement, a été rendu public le 12 janvier 2011 dans une version préliminaire non éditée, porte sur la situation des droits de l'homme du peuple sami de Norvège, de Suède et de Finlande. Il est fondé en grande partie sur des informations présentées au Rapporteur spécial au cours d'une conférence organisée par le Conseil parlementaire sami et qui s'est déroulée du 14 au 16 avril 2010 à Rovaniemi (Finlande). Cette conférence a réuni des représentants des Parlements samis norvégien, suédois et finlandais, des responsables gouvernementaux de chacun de ces pays et des représentants d'ONG samies.

Le Rapporteur spécial se félicite de ce que, d'une manière générale, la Norvège, la Suède et la Finlande, en comparaison avec d'autres pays, accordent toutes une grande attention aux questions relatives aux autochtones. À de nombreux égards, les initiatives relatives au peuple sami menées dans les pays nordiques constituent des exemples importants en matière de garantie des droits des peuples autochtones.

Au nombre de ces initiatives figurent l'action transfrontière menée pour élaborer une convention nordique samie. Le Rapporteur spécial prend note des travaux importants déjà menés à cette fin et se félicite de l'engagement pris par les États nordiques et les parlements samis de reprendre des négociations en 2011 en vue d'adopter cette convention. Cependant, des efforts doivent encore être entrepris pour que les Samis puissent avancer sur la voie de

\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

l'autodétermination et fixer leurs objectifs communs en tant que peuple présent dans plus d'un État.

En outre, les États nordiques devraient poursuivre les efforts qu'ils déploient pour renforcer les droits des Samis dans chaque État dans lequel ils vivent. Dans le présent rapport, le Rapporteur spécial accorde une attention particulière à la question de l'autodétermination des Samis au niveau national, en particulier telle que celle-ci est exercée par l'intermédiaire des parlements samis; à la question du droit des Samis à leurs terres, à leurs territoires et à leurs ressources; aux efforts visant à revivifier les langues samies et à fournir aux enfants et aux jeunes Samis un enseignement qui soit culturellement adapté.

Dans son rapport, le Rapporteur spécial, à la lumière des normes internationales pertinentes, formule une série de recommandations tendant à renforcer les efforts déployés pour promouvoir la protection et l'exercice des droits du peuple sami.

## Annexe

### Report of the Special Rapporteur on the rights of indigenous peoples on the situation of the Sami people in the Sápmi region of Norway, Sweden and Finland

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## I. Introduction

1. The present report examines the human rights situation of the Sami (also spelled Saami and Sámi) people of Norway, Sweden and Finland, and includes a series of recommendations in light of international standards. It is based in large part on information presented to the Special Rapporteur during a conference in Rovaniemi, Finland, from 14 to 16 April 2010, organized by the Sami Parliamentary Council, as well as on written submissions provided to the Special Rapporteur and independent research. The conference gathered representatives of the Sami parliaments of Norway, Sweden and Finland, Government officials from each of these countries, and representatives from Sami non-governmental organizations from the Nordic countries and the Russian Federation. Although Sami from the Russian Federation participated as observers in the April 2010 conference, the present report will focus only on the principal issues and concerns regarding the situation of the Sami people in Norway, Sweden, and Finland.

2. The Special Rapporteur would like to thank Sami representatives and the Governments of Norway, Sweden and Finland for their openness to holding such a unique dialogue and for their invaluable assistance in the organization of the conference. The participation of representatives of the Nordic States and Sami people in the April 2010 conference represents an example of good practice for examining the situation of indigenous people divided by international borders. In this regard, the Special Rapporteur highlights article 36 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that “indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes.”

## II. The Sami people

3. The Sami people traditionally inhabit a territory known as Sápmi, which spans the northern parts of Norway, Sweden and Finland, and the Russian Kola Peninsula. Although the Sami are divided by the formal boundaries of these four States, they continue to exist as one people, united by cultural and linguistic bonds and a common identity. The Sami have the oldest languages and cultures of these countries, long pre-dating the present-day States, and today there are nine language groups divided across the national borders of the Nordic and Russian States.

4. The Sami population is estimated to be between 70,000 and 100,000, with about 40,000-60,000 in Norway, about 15,000-20,000 in Sweden, about 9,000 in Finland and about 2,000 in Russia. Sami people constitute a numerical minority in most of the Sápmi region, except in the interior of Finnmark County in Norway and in the Utsjoki municipality in Finland.

5. The Sami people have traditionally relied on hunting, fishing, gathering and trapping and have a deep knowledge of the far north region that has been handed down for many generations. Reindeer herding, in particular, is of central importance to the Sami people. Many Sami communities historically practised a semi-nomadic lifestyle, moving reindeer between the mountain areas and coastal areas according to the season. Other groups practised reindeer herding in forested areas, particularly within certain parts of the Västerbotten and Norrbotten counties in Sweden and in northern and central Finland. Some Sami communities, referred to as the “Sea Sami” or “Coastal Sami”, settled in the coastal areas, especially within what is now Norway. It was also not uncommon to combine reindeer herding with hunting, fishing and farming.

6. The traditional form of organization of Sami people is structured around the *siida*, a local organization that plays an important role in the distribution of lands, water and natural resources. Within the *siida*, members had individual rights to resources but helped each other with the management of reindeer herds, hunting and fishing. On the basis of these structures, the Sami developed sophisticated systems for land distribution, inheritance and dispute resolution among *siida*. Although historical developments have weakened the Sami people's traditional patterns of association, the *siida* system continues to be an important part of Sami society.

7. The State borders that today divide Sápmi were established over a 100-year period, roughly from the middle of the eighteenth to the middle of the nineteenth centuries. Over time, the influx of new settlers within the Nordic region changed the composition of the population in the northern areas and reduced the Sami to a numerical minority in their homeland. The borders between States cut through linguistic and cultural communities and constrained reindeer-herding activities. During the 1800s and until about the time of the Second World War, Nordic Governments primarily followed policies with respect to the Sami people that were aimed at assimilating them into the majority societies.

8. Today, Sami people in the Nordic countries do not have to deal with many of the socio-economic concerns that commonly face indigenous peoples throughout the world, such as serious health concerns, extreme poverty or hunger. Norway, Sweden and Finland are among the wealthiest and most developed countries in the world and consistently rank toward the top of human development indicators.<sup>1</sup> Nordic countries are thus well-positioned to tackle outstanding concerns related to the Sami people and to set examples for the advancement of the rights of indigenous peoples.

### III. The general legal and policy framework

#### A. Cross-border Sami institutions and initiatives

9. The first pan-Sami institution, the Sami Council, was established in 1956 as a coalition of Sami national organizations in the various countries. Prior to the establishment of the Sami parliaments within the Nordic countries, the Sami Council represented the principal representative body for the Sami people across State borders. Today, the Sami Council is a non-governmental organization that promotes the human rights of Sami people across borders, in cooperation with the Sami parliaments and the Sami Parliamentary Council.

10. Formed in 2000, the Sami Parliamentary Council is composed of the Sami parliaments of Norway, Sweden and Finland, which will be discussed in subsequent sections, and includes the permanent participation of Sami from Russia. The Council is mandated to deal with cross-border issues affecting the Sami people – focusing on Sami language, education, research and economic development – and to coordinate the Sami voice at the international level, including at the United Nations.

11. The most significant recent cross-border initiative of the Sami people has been the effort to develop a Sami Convention in conjunction with the Nordic Governments. This is the first attempt anywhere to create a regional treaty specifically concerning indigenous peoples. Following several years of discussion that started in 1986, in 2001 the Sami parliaments and Governments of Norway, Sweden and Finland established an expert group

<sup>1</sup> In 2010, Norway ranked first, Sweden ninth and Finland sixteenth in the United Nations Development Programme human development index.

to draft a Nordic Sami Convention, made up of six members, with one appointed by each Nordic Government and Sami parliament.

12. In 2005, the expert group unanimously agreed on a draft text for the Convention, which was presented to the Sami parliaments and Nordic Governments that same year. The draft Convention has 51 articles divided into seven chapters, and includes provisions related to self-determination, non-discrimination, Sami governance – including the Sami parliaments and their relationship to the State, Sami language and culture, Sami education, Sami rights to land and water, and Sami livelihoods. The draft Convention also contains several provisions related to its implementation.

13. The Special Rapporteur commends the Sami people and the Governments of Norway, Sweden and Finland for the significant work achieved to date to develop this important instrument. He looks forward to monitoring negotiations aimed at adopting the Sami Convention, which are to resume in 2011 with the aim of reaching agreement within five years, as discussed further in section IV(A)(1) of this report.

## **B. Norway**

14. The principal foundation for Sami policy in Norway is article 110a of the Constitution and the Act concerning the Sami Parliament (the Sámediggi) and other legal matters pertaining to the Sami (“the Sami Act”). The amendment of 1988 to the Norwegian Constitution explicitly calls upon authorities to protect the Sami and their culture and traditional livelihoods, stating that “it is the responsibility of the authorities of the State to create conditions enabling the Sámi people to preserve and develop its language, culture and way of life.”<sup>2</sup> Furthermore, the Government has recognized the discrimination and imposed assimilation the Sami people have suffered, and has apologized for the poor treatment of Sami people in the past.

15. The Sami Act, the first key contemporary legislation addressing Sami issues in Norway, was established to enable the Sami people in Norway to safeguard and develop their language, culture and way of life. The act establishes the Norway Sami Parliament, or Sámediggi, with the dual function of serving as an elected political body for the Sami and carrying out administrative duties delegated by law or according to agreements with relevant national authorities, within various areas affecting Sami people. It has 39 representatives elected from seven Sami constituencies.

16. In 2005, the Sámediggi and the Government entered into an agreement concerning consultation procedures which, according to the agreement, “apply in matters that may directly affect Sami interests”<sup>3</sup> and require that State authorities “provide full information concerning relevant matters that may directly affect the Sami, and concerning relevant concerns at all stages of dealing with such matters.”<sup>4</sup> The agreement outlines consultation requirements, which are generally in line with the consultation provisions of International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169),<sup>5</sup> and advises that consultations shall not be discontinued as long as the Sami Parliament and State authorities consider that it is possible to achieve an agreement.

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<sup>2</sup> Article 110(a).

<sup>3</sup> Procedures for Consultations between the State Authorities and The Sami Parliament [Norway], signed 11 May 2005, section 2.

<sup>4</sup> *Ibid.*, section 3.

<sup>5</sup> Although specific Sami communities’ right to consultation in matters that directly affect them are not covered in the consultation agreement.

17. The Special Rapporteur considers this agreement to represent good practice with respect to implementation of the duty of States to consult with indigenous peoples, which provides an important example for the other Nordic countries as well as for countries in other regions of the world. A few specific concerns related to this mechanism and consultation in general are addressed in section IV(A)(2) below.

18. Until recently, the central Government was responsible for the management of lands and resources in Norway, in cooperation with the municipalities, and Norwegian law did not recognize special Sami rights, including collective rights, to land and resources. In 2005, Norway passed the Finnmark Act,<sup>6</sup> which was a response to many years of struggle by the Sami and, in part, to the conflict surrounding the development of the Alta-Kautokeino watercourse in the 1970s. Importantly, the Finnmark Act was developed in close cooperation between the Norwegian and Sami parliaments. However, the Finnmark Act remains in certain respects controversial among the Sami, as discussed in section IV(A)(3) below.

19. The Reindeer Husbandry Act of 1978, as amended in 2007, recognizes that Sami have an exclusive right to herd reindeer within pasture areas, but in order to benefit from the right Sami individuals must meet the required familial linkage to a reindeer-herding family. The right to reindeer husbandry is a usufruct right that applies over certain land areas regardless of the ownership of those lands. Importantly, the 2007 amendments sought to re-establish the *siida* as an important management tool for reindeer husbandry, thereby bringing Norwegian law into closer conformity with traditional Sami land management. The Sami reindeer grazing area covers approximately 40 per cent of Norway and provides pasture for more than 200,000 reindeer, and about 2,800 Sami take part in reindeer husbandry in Norway.

20. In addition to being the first country to ratify ILO Convention No. 169 and voting in favour of adoption of the Declaration on the Rights of Indigenous Peoples in 2007, Norway has incorporated the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights into its domestic law.<sup>7</sup> In the event of any conflict between these instruments and other Norwegian legislation, the provisions of the Covenants shall take precedence.<sup>8</sup> Finally, Norway is also party to the Council of Europe's Framework Convention for the Protection of National Minorities (1995) and its Charter for Regional and Minority Languages (1992).

### C. Sweden

21. Following a recent amendment, as of 1 January 2011, the Swedish Constitution explicitly recognizes the Sami as a people, distinguishing the Sami as such from minority groups in Sweden. Constitutional recognition as a people, rather than a minority, had been a request of the Sami for many years.

22. In recent years, the Government of Sweden has made efforts to develop a bill to address issues related to the Sami people.<sup>9</sup> However, the draft bill was criticized for not tackling the most pressing issues for the Sami, in particular those related to land and resource rights, and for the failure to consult the Sami people on it. Consequently, the Swedish Sami Parliament and Sami representatives rejected the bill. During the April 2010

<sup>6</sup> Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act).

<sup>7</sup> Human Rights Act, section 2 (1999).

<sup>8</sup> *Ibid.*, section 3.

<sup>9</sup> Ds 2009:40.

conference with the Special Rapporteur, representatives from the Government of Sweden informed the Special Rapporteur that, due to the position of the Sami Parliament and others, it has decided not to move forward with the bill until it has established a dialogue with Sami people regarding the bill's content.

23. The Sami Parliament Act<sup>10</sup> of 1993 established the Swedish Sami Parliament with the principal function of "monitoring issues concerning the Sami culture in Sweden."<sup>11</sup> The Swedish Sami Parliament is both a Government agency and a popularly elected body. Problems concerning the basic character of the Swedish Sami Parliament in relation to the advancement of Sami self-determination are discussed in section (IV)(A)(2) below. The Sami Parliament Plenary Assembly has 31 members,<sup>12</sup> who are elected every four years.<sup>13</sup>

24. The specific tasks of the Swedish Sami Parliament include allocating State funds for Sami organizations, cultural programmes and other matters; appointing the board of directors for a Sami school; managing work to promote the Sami language; participating in community development, including in relation to reindeer herding and use of land and water; and providing information about Sami conditions.<sup>14</sup> In 2007, many responsibilities related to reindeer husbandry were transferred from the Swedish Board of Agriculture to the Sami Parliament. However, despite this important development, there is ongoing concern, as expressed by the Human Rights Committee, about the "limited extent to which the Sami Parliament may participate in the decision-making process on issues affecting land and traditional activities of the Sami people."<sup>15</sup>

25. The 1971 Reindeer Grazing Act recognizes the Sami's right to use land and water for themselves and for their reindeer, within certain geographic areas defined by the law.<sup>16</sup> Reindeer herding rights in Sweden are exclusive to Sami and are limited to those Sami who live within designated communities, called *sambys*, and practise reindeer herding as their principal livelihood. About 3,000 Sami in Sweden practise reindeer herding as their traditional livelihood, herding approximately 250,000 reindeer across about 40 per cent of the Swedish territory, though reportedly not all of this is usable pasture land.

26. Sweden is party to the major United Nations human rights instruments and voted in favour of the Declaration on the Rights of Indigenous Peoples in 2007. It has also ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. However, Sweden has not ratified ILO Convention No. 169.

## D. Finland

27. The Constitution of Finland recognizes the Sami as an indigenous people<sup>17</sup> and recognizes their right to cultural autonomy within their homeland, noting that "in their native region, the Sami have linguistic and cultural self-government."<sup>18</sup> The Sami Parliament Act of 1995 defines the Sami homeland as "the areas of the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the reindeer owners' association of

<sup>10</sup> The Sami Parliament Act (1992:1433).

<sup>11</sup> *Ibid.*, chap. 1, section 1.

<sup>12</sup> *Ibid.*, chap. 2, section 2.

<sup>13</sup> *Ibid.*, chap. 3, section 1.

<sup>14</sup> *Ibid.*, chap. 2, section 1.

<sup>15</sup> CCPR/C/SWE/CO/6, para. 20.

<sup>16</sup> Rennäringslag (1971:437).

<sup>17</sup> Constitution of Finland, section. 17.

<sup>18</sup> Art. 121.



Lapland in Sodankylä.”<sup>19</sup> The Sami Parliament Act establishes the Finnish Sami Parliament, replacing the previous Sami Parliament that had operated from 1972-1995, which was the first elected Sami body within any of the Nordic countries. The 21 members and four vice-members of the Sami Parliament are chosen by the Sami through elections every four years.<sup>20</sup>

28. The Finnish Sami Parliament Act states that “the Sami as an indigenous people shall ... be ensured cultural autonomy within their homeland in matters concerning their language and culture.” Under the Act, the task of the Sami Parliament is “to look after the Sámi language and culture, as well as to take care of matters relating to their status as an indigenous people.” Within the Sami homeland, the parliament may make proposals and issue statements to State authorities. Furthermore, the act affirms that authorities shall negotiate with the Sami Parliament regarding “all far-reaching and important measures that directly or indirectly may affect the Sami’s status as an indigenous people,” including matters relating to the management, use, leasing and assignment of State lands, conservation areas and wilderness areas, among other issues. Despite the strong statutory affirmations of the Sami Parliament Act, as a practical matter the Finnish Sami Parliament has limited decision-making power, as discussed in section IV(A)(2) below.

29. Current Finnish legislation does not acknowledge or grant any special land rights to the Sami people or acknowledge any exclusive rights for the Sami people to pursue their traditional livelihoods, within or outside of the homeland areas. Furthermore, unlike in Norway and Sweden, in Finland reindeer husbandry is not reserved for Sami people in particular but rather is open to any citizen of the European Union. According to the Government of Finland, it has made many efforts to resolve Sami land rights issues through legislation, but has faced difficulties balancing the interests of Sami and other people living in the same areas and sharing the same livelihoods.<sup>21</sup>

30. However, the Reindeer Husbandry Act of 1990 requires that State authorities consult with representatives of the reindeer herding cooperatives when planning measures on State land that will have a substantial effect on reindeer herding. Also, recent Government proposals for amendments to the Mining Act and the Waters Act would provide some protection of Sami culture, including requirements that effects on Sami culture be taken into account in assessing impacts prior to issuance of permits.

31. Like Norway and Sweden, Finland has ratified all major United Nations human rights treaties, as well as the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Finland also voted in favour of adoption of the Declaration on the Rights of Indigenous Peoples, but has not ratified ILO Convention No. 169, although this has been recommended by United Nations treaty bodies and within the framework of the Universal Periodic Review.<sup>22</sup>

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<sup>19</sup> Act on the Sámi Parliament (No. 974/1995), chap. 1, section 4.

<sup>20</sup> Ibid., chap. 3, section 10.

<sup>21</sup> CERD/C/FIN/19, Government Periodic Report to the Committee on the Elimination of Racial Discrimination.

<sup>22</sup> See, e.g., CERD/C/FIN/CO/19, para. 14; A/HRC/8/24.

## IV. Areas of concern

### A. Self-determination

32. While the laws and policies of Nordic countries with respect to the Sami people are relatively advanced, there are still ongoing barriers to the full realization of the right of Sami people to self-determination, both at the cross-border and national levels. In this regard, the United Nations Declaration affirms, in its article 3, that “indigenous peoples have the right to self-determination. By virtue of that right they freely determine their own political status and freely pursue their own economic, social and cultural development.” This provision of the Declaration mirrors the common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to which all three Nordic countries are parties.

#### 1. Cross-border Sami self-determination

33. It should be stated at the outset that Sami representatives have made clear that their goal of securing relations among their people across borders and of advancing the self-determination of the Sami people as a whole is not based on a desire to form a separate Sami State. This stance on the exercise of self-determination is consistent with the United Nations Declaration on the Rights of Indigenous Peoples, which makes clear through its overall structure and specifically in its article 46, that self-determination for indigenous peoples is ordinarily to be exercised within the framework of the unity and territorial integrity of the State.

34. Throughout the world few examples exist to date of specific, formal arrangements to advance the self-determination of one indigenous people across the borders of several States. However, the move toward such arrangements is part of developments over the last several decades that challenge the assumption that national borders are the sole markers of political organization and authority. As noted, the Sami people have made significant efforts to advance their collective self-determination through the development of cross-border institutions and initiatives, and have taken noteworthy steps in this regard; but ongoing barriers persist.

35. As understood by the Special Rapporteur, the draft Nordic Sami Convention provides the principal framework for defining the common objectives of the Sami people and is an important component of the effort to advance Sami self-determination as one people (its clear shortcoming in this regard being that it does not apply to the Sami people residing in the Russian Federation). The Special Rapporteur understands the complexities involved in developing such a novel document, which some have described as a kind of “modern treaty” between Nordic States and the Sami people (even though the Sami are not anticipated to be a formal party to the Convention along with the Nordic States). Nonetheless, he echoes the concern expressed by several United Nations treaty bodies regarding the delayed progress towards adoption of the Nordic Sami Convention.<sup>23</sup>

36. After years of debate, in November 2010 representatives of the Governments of Norway, Finland and Sweden and the presidents of the three Sami parliaments agreed on a model for negotiations on the Nordic Sami Convention. Under the agreed model, the negotiations will be carried out between three delegations, each with a maximum of six persons, which must include representatives both of the respective Governments and of the

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<sup>23</sup> See e.g., E/C.12/SWE/CO/5, para. 15; CERD/C/SWE/CO/18, para. 21.

Sami parliaments. Negotiations are to begin in 2011, with the aim that they are to be completed within five years.

## 2. Sami self-determination at the national level: the Sami parliaments

37. The Sami parliaments are the principal vehicles for Sami self-determination in Norway, Sweden and Finland, and they represent an important model for indigenous self-governance and participation in decision-making that could inspire the development of similar institutions elsewhere in the world. Despite this, there is an ongoing need to increase the Sami parliaments' autonomy and self-governance authority, as well as to strengthen their ability to participate in and genuinely influence decision-making in matters that affect Sami people within the Nordic countries.

38. The Sami parliaments expressed concern to the Special Rapporteur about the degree to which the parliaments can genuinely participate in and influence decisions that affect the Sami people, noting that they are generally regarded as bodies through which the Sami can express their voice to Government authorities, without any guaranteed genuine influence or decision-making power. In Finland, in particular, the statutory mandate of the Sami Parliament is limited to matters concerning Sami languages, culture and indigenous status. Even within these areas, the Sami Parliament's input is restricted; for example, language planning is carried out by a Finnish Government research institute, and there are plans to transfer these duties to universities.<sup>24</sup> Also, as a general matter, with a few exceptions,<sup>25</sup> Sami parliaments lack specific decision-making powers in matters pertaining to the use of lands, waters and natural resources.

39. Certainly, to some extent, the Sami parliaments' participation in decision-making affecting the Sami people is facilitated by the establishment of clear consultation procedures. As noted in paragraph 16 above, Norway has signed a consultation agreement with the Norwegian Sami Parliament. However, the Sami Parliament has stated that while "the procedures for consultations gave Sámediggi a better influence on the Government's policies in Sámi issues[,] experiences with the consultation agreement [have been] mixed. There [are] still challenges regarding traditional Sámi ways of living and industrial developments."<sup>26</sup> Also, representatives of the Norwegian Sami Parliament expressed concern that the Government has at times entered into consultations having already decided on outcomes. However, the Special Rapporteur observes that, if correctly applied, the consultation procedure provides an important tool for the advancement of Sami rights and the improvement of relations between the Sami people and the Norwegian State.

40. Unlike Norway, Sweden and Finland do not have an agreement with the respective Sami parliaments that establishes how and under what circumstances consultations should be carried out. In Finland, under the relevant legislation, the Finnish Parliament is required to consult with the Finnish Sami Parliament in matters that affect Sami concerns, although representatives of the Finnish Sami Parliament reported to the Special Rapporteur that most of their proposals and comments to the State, even on matters within the Parliament's recognized sphere of competency, remain unanswered by the Finnish Government. In Sweden, a consultation procedure was to be included in the proposed bill on Sami people referenced in paragraph 22 above in order to strengthen the Sami Parliament's influence in law-making processes and other areas, although, as noted, this bill is still being negotiated.

<sup>24</sup> Act on the Research Institute for the Languages of Finland (48/1976, 591/1996).

<sup>25</sup> For example in Norway, under the Planning and Building Act of 2008, the Sámediggi may raise formal objections in planning matters of importance to Sami culture and economic life.

<sup>26</sup> Report of the Working Group on the Universal Periodic Review, Norway, A/HRC/13/5, para. 24 (2010).

Such mutually agreed-upon frameworks would be important, and would alleviate some Sami concerns about a lack of participation in decision-making.

41. Along with effective means of consultation, an essential element of indigenous peoples' self-determination is their ability to exercise autonomy or self-government over their internal and local affairs, as affirmed by the Declaration on the Rights of Indigenous Peoples (art. 4). A common concern communicated to the Special Rapporteur was the limited ability of the Sami parliaments to act independently and to make autonomous decisions over matters that concern Sami people due to the statutory parameters of their powers and functions. The Special Rapporteur understands that increasing the Sami parliaments' autonomous decision-making power may require some significant legal and policy changes at the national level. However, the Nordic States, in consultation and agreement with Sami parliaments, should consider delimiting spheres of responsibility in which the Sami parliaments could have increased or sole independent decision-making authority, especially in matters of major importance to the Sami. This should be done along with strengthening recognition of the traditional decision-making authority of local Sami institutions, like the *siidas*.

42. The structure put in place for the Swedish Sami Parliament under the Swedish Sami Parliament Act is of particular concern. In initially establishing the Sami Parliament, the Government took the position that it was not intended to be a body for Sami self-government, stating in the 1992 bill proposing establishment of the Sami Parliament that "despite the designation 'ting' (meaning 'Parliament' in the word Sameting), there is no question of it being a body for self-determination that shall act instead [of] the Riksdag or the municipal council, or in competition with these bodies."<sup>27</sup> While the Swedish Government has since acknowledged that the Sami Parliament constitutes a body through which the Sami people can exercise its right to self-government, it still functions as both a popularly elected body and a State administrative agency. Representatives of the Swedish Sami Parliament expressed concern that, in its capacity as a State administrative agency, it must carry out the policies and decisions made by the Swedish Parliament and Government institutions, decisions that are sometimes at odds with the policy preferences of the Sami people as expressed through the elected Sami Parliament members.

43. Finally, budgetary constraints were identified as restricting the ability of the Sami parliaments to effectively deal with Sami issues and act as conduits of Sami self-determination. In particular, the Special Rapporteur heard from all Sami parliaments that they have too few resources that are available to be used for projects and initiatives that they wholly determine and develop. In Sweden, the Sami Parliament receives funding principally to carry out its obligations as a Government agency, but has minimal funding for its work as an independent publicly elected body. Representatives of the Norwegian Sami Parliament, or Sámediggi, have stated that their decision-making has at times been constrained by earmarks established by the central Government in the allocation of financial resources. The Government of Norway, however, takes a different perspective, stating that new projects and initiatives for funding have often come from the Sámediggi itself and that it has been granted considerable freedom in re-prioritizing the use of funds. Also, the Sámediggi has noted with concern that the consultation procedure discussed in paragraphs 16 and 39 above does not cover budget-setting.

### **3. The Finnmark Act in Norway**

44. The Finnmark Act of 2005 in Norway offers important protections for the advancement of Sami rights to self-determination and control over natural resources at the

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<sup>27</sup> Bill 1992/93:32.

local level, setting a significant example for the other Nordic countries. The act recognizes that Sami people and others, through long use of land and water, have acquired rights to land and natural resources in Finnmark. Under the act, 95 per cent of the landmass of Finnmark (an area approximately the size of Denmark) was transferred from State to local ownership, and the Finnmarkseiendommen, or the Finnmark Estate, was established as the landowner. While the Finnmark Act is an important step towards advancing Sami self-determination and control over lands and resources, some Sami representatives have characterized the law as not being fully protective of Sami self-determination and land and resource rights, principally for reasons to do with the make-up of the board of the Finnmark Estate, whose members are appointed both by the Finnmark County Council and the Norwegian Sami Parliament. It should be noted, however, that the Finnmark Act is a compromise text that was crafted to accommodate a diversity of Sami and non-Sami interests in the County, and that it was endorsed by the Sami Parliament. The extent to which it genuinely advances Sami self-determination and resource rights will be determined by its implementation over time.

45. The Special Rapporteur also notes that concern has been repeatedly expressed that the Finnmark Act does not adequately address the particularly vulnerable situation of the East Sami people, a Sami sub-group that is small in number and whose distinct language and cultural characteristics are threatened. In this connection, the Committee on the Elimination of Racial Discrimination recommended that Norway take further steps to adopt special and concrete measures to ensure the adequate development and protection of certain highly vulnerable indigenous groups, namely the East Sami people.<sup>28</sup> The Special Rapporteur notes that Norway has indicated that “measures will be considered in close consultation with the Sámi Parliament and representatives from the East Sámi”<sup>29</sup> and that the mandate of the Finnmark Commission includes investigating the rights of all inhabitants of Finnmark to lands and natural resources, including those of the East Sami.

## **B. Rights to lands, waters and natural resources**

### **1. Recognition of land and resource rights**

46. The history of Sami people in the Nordic region is marked by the progressive loss of their lands and natural resources, especially lands that are essential to reindeer herding. In the past, Nordic States operated under the assumption that Sami people’s nomadic land use, which covers large areas and may vary from year to year depending on climate and ecological factors, has not given rise to legal rights over lands and resources.

47. The Nordic States have gradually developed some protections for Sami lands and reindeer herding activities, and today significant tracts of land are continuously used for reindeer herding. Under each of the Nordic countries’ reindeer herding legislation, Sami people have rights to use lands and resources for reindeer herding activities, although as noted above, in Finland reindeer husbandry is not specifically reserved for Sami. Also, although Sami usufruct rights to land are legally recognized, in practice, these rights often yield to competing interests. Finally, while Norwegian, Swedish and Finnish law recognize in principle that Sami land use can result in ownership rights to land, it has been difficult for the Sami people to realize such rights in practice.

48. In Norway, the Finnmark Act provides a potential foundation and mechanism for the identification and effective protection of Sami land and resource rights in Finnmark

<sup>28</sup> CERD/C/NOR/CO/18, para. 17.

<sup>29</sup> CERD/C/NOR/CO/18/Add.1, para. 5.

County. The act establishes the Finnmark Commission, which has a mandate to identify rights to lands and water that have not yet been recognized.<sup>30</sup> After its investigation, the Commission is to issue a report containing information concerning: “(a) who, in the view of the Commission, are owners of the land; (b) what rights of use exist in the Commission’s view; and (c) the circumstances on which the Commission bases its conclusions.”<sup>31</sup> The act also establishes the Uncultivated Land Tribunal for Finnmark, which is a special land rights court mandated to consider disputes about land rights related to the conclusions of the Finnmark Commission.<sup>32</sup>

49. Given that the process for identifying rights to land under the Finnmark Act is currently under way, the adequacy of the established procedure is not yet known. Nonetheless, the Finnmark Act is undeniably an important development and is potentially a good practice for securing indigenous land rights. However, while rights to ownership and rights to use for Sami individuals and groups on occasion have been identified and recognized in the regular court system in Norway, there are currently no specialized mechanisms in place to identify Sami land and resource rights outside Finnmark County, which remains an outstanding concern.

50. The Special Rapporteur heard particular concerns about the land rights situation in Sweden. The Swedish Supreme Court has recognized in principle that Sami traditional land use and occupation can give rise to property rights.<sup>33</sup> However specific reindeer grazing areas have not been officially demarcated in Sweden. Importantly, the Government created a Boundary Commission to identify lands traditionally used by the Sami people, which issued its report in 2006, although the Government has not yet moved forward to implement the findings of the Commission.<sup>34</sup> In this connection, the Committee on the Elimination of Racial Discrimination expressed “concern about the limited progress achieved in resolving Sami rights issues” and recommended that Sweden “take effective measures to ensure that studies conducted in the area of Sami rights result in concrete action, including the adoption of new legislation.”<sup>35</sup>

51. Compounding the difficulty faced by Sami in securing rights over lands and resources is the fact that Swedish courts place the burden of proof on Sami claimants to demonstrate land ownership. In order to prove rights based on traditional use and occupation through judicial procedures, Sami must document a minimum of 90 consecutive years of use of the area claimed. This requirement is especially difficult to fulfil given that Sami tradition is to leave no physical marks on the land that is used for grazing and other purposes. The Human Rights Committee has recommended that Sweden “introduce legislation providing for a flexible burden of proof in cases regarding Sami land and grazing rights, especially where other parties possess relevant information.”<sup>36</sup> The high burden of proof requirements result in costly court processes, and Sami people in Sweden often lack the financial resources necessary to pursue land claims. The legal aid system in Sweden does not provide financial support for Sami people towards this end, a concern also previously raised by United Nations treaty bodies.<sup>37</sup>

<sup>30</sup> Finnmark Act, sections 5, 29.

<sup>31</sup> *Ibid.*, section 33.

<sup>32</sup> *Ibid.*, section 36.

<sup>33</sup> Taxed Lapp Mountain Case (1981).

<sup>34</sup> Boundary Delimitation Committee Report SOU: 2006:14.

<sup>35</sup> CERD/C/SWE/CO/18, para. 19; see also CCPR/C/SWE/CO/6, para. 20.

<sup>36</sup> CCPR/C/SWE/CO/6, para. 21.

<sup>37</sup> *Idem.*; CERD/C/SWE/CO/18, para. 20.

52. In Finland, 90 per cent of the land within the area that is designated as Sami homeland is legally State land. To assist in the process of clarifying Sami rights to land, between 2003 and 2006 the Finnish Government conducted a study on land use within the Upper Lapland region. In this connection, the Committee on the Elimination of Racial Discrimination recommended to Finland that it “take effective measures to ensure that the so-called study on land rights in Upper Lapland result in concrete action, including the adoption of new legislation, in consultation with the communities affected.”<sup>38</sup> There have been negotiations between the Government and the Finnish Sami Parliament to find common ground on the land rights issue. However, at this point the legal status of the lands that Sami people have traditionally used and occupied in Finland remains unresolved.

## 2. Rights to marine resources

53. The issue of Sami rights to fish in coastal waters is principally a matter for concern in Norway. According to reports, in recent years Sami fishing off the northern coast of Norway has been impeded greatly due to mismanagement of fisheries by non-Sami actors and environmental factors. Furthermore, the increased industrialization of fishing in Norway over the last two decades has led to a deterioration of local control over and use of marine resources. An additional concern is that fishing regulations are determined at the national level, without local participation, and without taking into consideration customary decision-making regarding marine resources or the local knowledge regarding the management of these resources.

54. The Finnmark Act in Norway does not include provisions related to marine resources. However, comments on the Finnmark Act by the Standing Committee on Justice of the Norwegian Parliament recognize that fishing is an important aspect of Sami culture, and the Norwegian Parliament issued a resolution instructing the Government to clarify rights along the coast of Finnmark. In response, and following consultation with the Sami Parliament, the Coastal Fishing Committee was formed. The Committee recommended that “it will be established as a principle that people living along the fjords and coast of Finnmark have the right to fish in the ocean off Finnmark based on historical use and the rules of international law regarding indigenous peoples and minorities.”<sup>39</sup> Possible follow-up to the report of the Coastal Fishing Committee is currently the subject of consultations between the Ministry of Fisheries and Coastal Affairs and the Sámediggi. Local Sami fishing groups have also emphasized the need for a law to secure local participation in fisheries and the administration of marine resources.

## 3. Continued threats to Sami lands and livelihoods

55. The Sami way of life, especially in relation to reindeer husbandry, is threatened significantly by competing usage of land, often promoted by the Governments themselves through natural resource extraction or other development projects. In all three Nordic countries, various natural resource extraction and development projects threaten to diminish areas available for grazing. Already, the construction of buildings and roads, as well as hydroelectric dams, mining, forestry projects and tourism activities have resulted in loss and fragmentation of pasture lands, with detrimental effects on reindeer movement and, consequently, on their reproductive levels and survival.

56. Some laws related to natural resource extraction in the Nordic States include provisions requiring, to varying degrees, special consideration of Sami people, their

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<sup>38</sup> CERD/C/FIN/CO/19, para. 14.

<sup>39</sup> NOU 2008:5 (18 February 2008).

livelihoods or their lands.<sup>40</sup> However, in general, laws and policies in the Nordic States with respect to natural resource extraction and development do not provide sufficient protections for Sami rights and livelihoods, and do not involve Sami people and the Sami parliaments sufficiently in the development processes. There is often no compensation for loss of pasture areas from natural resource extraction or other development projects, although in Norway the Reindeer Husbandry Act does require that compensation be given to reindeer herders for expropriation of the right to use lands for reindeer husbandry. Additionally, benefit sharing opportunities are rare, especially with respect to mining and oil and gas development.

57. In Norway, reindeer husbandry is potentially threatened by oil and gas development in the far north. The Norway Mineral Act of 2009 requires that Sami cultural life be safeguarded under the act and also requires, in Finnmark County, that the Sami Parliament and the landowner have the opportunity to comment during the process of authorizing a permit. Nevertheless, the Norwegian Sami Parliament has expressed concern that the act does not provide an adequate level of consultation with the Sami Parliament on applications for permits within Finnmark County, or any consultation for applications affecting traditional lands outside that county.

58. In Sweden, the Sami have faced increasing pressures on their traditional lands from mining and wind-power development projects. The current Mining Act does not contain any provisions to accommodate for any special rights relevant to Sami people, and existing mining policies do not appear to be sufficient to protect Sami interests and rights over lands affected by mining. The Special Rapporteur has been monitoring in particular the situation of Kiruna Town. Luossavaara-Kiirunavaara AB, a mining company in which the Government has substantial ownership, has plans to relocate about half of the town to accommodate the expansion of an existing iron ore mine. The planned mining is squarely within an area of the reindeer herding grazing lands of Sami communities and vital reindeer migration paths. The Special Rapporteur has received complaints that the Sami have not been sufficiently consulted to ensure that impacts are minimized. Sweden has responded noting that the two Sami communities in the immediate vicinity of Kiruna town – Gabna and Laevas – have participated in the process of developing plans, including during a study on how reindeer herding will be affected by the changes and during an analysis of the cumulative effects on reindeer herding. Sweden stated that it has thereby fulfilled its obligations under both Swedish law and the Declaration on the Rights of Indigenous Peoples.<sup>41</sup>

59. In Finland, for decades Sami have expressed concern over the effects of logging on reindeer herding activities. According to Metsähallitus, Finland's governmental forestry enterprise, the logging volume within the reindeer herding area has decreased significantly following agreements with reindeer herders. Also, in 2010, Metsähallitus and reindeer herding cooperatives concluded agreements concerning the use of forests. However, ongoing logging continues to pose a threat in areas that are vital to Sami reindeer herding,

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<sup>40</sup> For example, in Norway, the Forestry Act stipulates that the act may “not be applied in contravention of the rights of Sami reindeer herders to timber and fuel.” (Chap. 1, section 2). In Sweden, the Forestry Act requires that “when planning and implementing forest management measures, it is desirable that the Sami village concerned be given annual access to both a sufficiently large and cohesive grazing area, and an ample amount of vegetation in those areas used for reindeer corralling, migration and resting.” (Section 31). In Finland, the Forestry Act stipulates that the Government shall consult with the Sami Parliament when issuing regulations concerning forest management. (Section 12(1)).

<sup>41</sup> A/HRC/15/37/Add.1, para. 384.



especially considering the lack of legal protection of Sami lands and resource use in Finland.

60. Additionally, climate change, though clearly a global problem, has particular adverse effects on people such as the Sami who depend upon the arctic climate for their livelihoods. As winter temperatures rise due to global warming, snow thaws and melts into the lichen that reindeer eat, and when temperatures then drop below freezing, the lichen is encased in ice making it very difficult for the reindeer to eat and digest. Also, summer pastures may change from open to shrub vegetation land and herders are finding it necessary to move their herds to drier ground. Thus, considerable efforts need to be directed towards reducing the vulnerability of reindeer husbandry to the effects of climate change, and research should be carried out towards this end.

61. At the same time, responses to the global climate change problem should not themselves pose threats to Sami livelihoods. For example, demand for sustainable energy has resulted in a potential windmill construction boom on the coast of Troms and Finnmark in Norway, severely affecting reindeer calving grounds. In Sweden, 35 per cent of areas identified as locations for wind power are within core reindeer herding areas, and there are plans for more than 2,000 windmills to be established within reindeer grazing lands. The Swedish Government granted permission for what would be the world's largest land-based wind power park in the municipality of Piteå, where the Sami community of Östra Kikkejaur has its winter reindeer herding pastures.

62. In many parts of the reindeer herding areas, predator animals, mainly wolf, wolverine, lynx, brown bear and eagle, are causing as great or even greater a threat to reindeer husbandry as extractive industries. The Swedish Agriculture University has calculated that in Sweden, at least 60,000 reindeer, out of a total number of about 260,000, fall prey to predators every year. The number of reindeer killed by predators in certain areas has reached such levels that there is an imminent risk that herds can no longer sufficiently reproduce themselves, which can result in a "collapse" of the herd in only a few years. Government regulation severely restricts the reindeer herders' right to protect their herds from predators, and Government compensation has only partly covered the damages caused to the reindeer herders by the predators. According to the Government of Finland, however, its new Game Damages Act establishes improved compensation for damages to herds caused by carnivores.

### **C. Maintaining languages**

63. The Sami languages are vital to the Sami people across the Nordic countries as they are central to Sami identity and essential to their survival as a people. However, the great variety of Sami languages is decreasing. The Special Rapporteur heard reports of the devastating effects of the Second World War on Sami education and language, which resulted in Sami people without schooling in any language for several years, with negative effects on literacy and on the capacity to pass on language abilities to future generations. Present-day factors also contribute to the loss of Sami languages, including the lack of Sami spoken outside of the home in most areas and the fact that those who speak the Sami language are spread out over large areas. In particular, the Ánar and Skolt Sami spoken in Finland, and the Southern Sami and Lule Sami spoken in Sweden and Norway, are on the verge of extinction, while the Northern Sami spoken in Finland is in a vulnerable position.

64. In Norway, the right of Sami people to preserve and develop their languages in various contexts is recognized in the Constitution and in numerous laws, including the Sami Act of 1987. Further, work is being carried out in Norway, including through the Sami Parliament, to revitalize the Sami languages within the Sápmi region, and the Government is developing an extensive "Action Plan to Strengthen Sami Languages" towards this end.

Encouragingly, the Sami Parliament has stated that it has observed an increased interest in participating in language revitalization programmes, but notes that funds are too limited to accommodate all those wishing to participate. Despite these efforts, further efforts to facilitate and promote the use of the Sami language are needed in order to overcome the lingering effects of the history of harsh assimilation policies in Norway, which banned the use of the Sami language and yoiking, a traditional Sami form of song, for decades.

65. Unlike in Norway and Finland, there is no legislation in Sweden that specifically protects the Sami language. But under the recent Act on National Minorities and National Minority Languages, the Sami language, along with other classified minority languages (such as Finnish) are granted special protections within certain designated “administrative areas.” Under the Act on National Minorities and National Minority Languages, within the 17 municipalities that make up the Sami administrative area, individuals have the right to use Sami in their dealings with State authorities as well as the right to preschool and elderly care either partly or completely in the Sami language. Nevertheless, municipalities have difficulties in complying with their obligations due to a lack of Sami-speaking staff and a reported public negative attitude towards the Sami culture. Outside these municipalities, the ability of Sami people to use their language is guaranteed only in dealings with a few major State institutions, but otherwise depends on the availability of Sami-speaking personnel.

66. The Constitution of Finland guarantees the right of the Sami people to maintain and develop their own language and culture and the Sami Language Act of 2003 affirms that Sami people have the right to use the Sami language before certain State authorities and in relation to certain administrative and legal procedures, especially within the Enontekiö, Inari, Sodankylä and Utsjoki municipalities, the core Sami area.<sup>42</sup> However, as a practical matter, these legal protections are not implemented, due in large part to the lack of knowledge of municipal and national State authorities in Sami languages. Even within the core Sami area, access to social and health care services in the Sami language is described as a matter of chance. There have been some language revitalization efforts, the most successful being the language “nest” programmes in Inari, which offer language and cultural immersion at the preschool level and for which the Ministry of Education and Culture has committed renewed funding in 2011. Importantly, according to the Government’s Report to Parliament on the Human Rights Policy of Finland 2009, the Government will prepare a comprehensive programme to revive the Sami language, with focuses on early childhood education, teaching, social welfare and health care, culture, the media and economic policy.

#### **D. Culturally appropriate education**

67. Education is essential to maintaining and revitalizing Sami history, culture, knowledge and, of course, language. One common feature in all Nordic countries is that Sami students may study in the Sami language within the designated Sami areas, which are defined by law. However, some 50 per cent of Sami people, and 70 per cent of children under 10, live outside of the designated areas.

68. Of the three countries, Norway has made the most advancement in developing a comprehensive Sami educational policy. The Education Act guarantees that all Sami pupils, regardless of where they live, have the right to be taught their native language as part of their compulsory schooling. Outside the Sami area, students have the right to study Sami if at least ten pupils in the municipality request such instruction and the opportunity for distance learning in the absence of a Sami speaking teacher. Despite the increasing number

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<sup>42</sup> Sámi Language Act (1086/2003), chapter 2.

of schools providing Sami education, continued shortcomings include the lack of Sami teachers, although the Norway Sami Parliament noted that it has achieved positive results in increasing the number of Sami teachers through its “dream job” project, which provides scholarships to students in order to become teachers in Sami languages. Other problems include a lack of language teaching materials and Sami teaching aids, in particular in Lule Sami and South Sami, and insufficient financial resources granted to the Norwegian Sami parliament to carry out its educational tasks.

69. In Sweden, education in the Sami language is mainly guaranteed in the Swedish Sami schools created in the 1990s, which are administered by a Sami school board appointed by the Swedish Sami Parliament and located in the traditional Sami reindeer herding areas. Outside the Sami schools, students may be taught in their mother tongue, but only if a suitable teacher is available, and since there is a major shortage of teachers, this programme only reaches approximately 200 pupils yearly. Also, a municipality can choose to offer “Integrated Sami education” within its school system if it makes the proper arrangements with the Sami school board. Under this programme, instruction about Sami culture is offered as part of compulsory school curricula. However, according to reports, the Sami school board reportedly does not have sufficient funding to offer this programme for all of the students requesting it. Also, taken together, these three programmes still only reach about 10-20 per cent of compulsory school-age Sami children.

70. In Finland, education in the Sami language is guaranteed by law within the Sami homeland and under the Act on the Financing of Education and Culture, municipalities receive increased subsidies for teaching in the Sami language within the homeland area. However, there is no legislation or policy that guarantees education in the Sami language outside the core Sami area, where the majority of Sami students live, even though for years the Sami Parliament has proposed to extend the provisions of the Act on the Financing of Education and Culture throughout the whole country. The fragmentation of Sami settlements and shortage of Sami teachers presents a problem for education in Sami language and culture, and there is also a shortage of education material, especially in the Skolt and Inari Sami languages. Some measures have been taken to facilitate long-distance learning, but these programmes have experienced problems primarily due to a lack of funding.

71. Also important to reviving Sami language and culture is increasing the public awareness about Sami people. According to reports, the current primary school curriculum fails to adequately reflect the diversity of the Nordic countries’ populations, and textbooks for compulsory schooling have used stereotypes to describe the Sami culture. Similarly, the Special Rapporteur was informed that the university curricula for teachers do not include sufficient guidance on the Sami history and culture. The Special Rapporteur also heard many accounts of media giving a highly stereotypical image of the Sami, which contributes to the deterioration of the public image of the Sami people and also leads to a general lack of interest in the Sami by the society at large.

## **V. Conclusions and recommendations**

### **A. General legal and policy framework**

72. **Overall, Norway, Sweden and Finland each pay a relatively high level of attention to indigenous issues, in comparison to other countries. In many respects, the plans and programmes related to the Sami people in the Nordic countries set important examples for securing the rights of indigenous peoples. However, more remains to be done to ensure that the Sami people can pursue their self-determination**

and develop their common goals as a people living across more than one State, as well as enjoy within each of the States in which they live the full range of rights that are guaranteed for indigenous peoples in contemporary international instruments.

73. The Special Rapporteur commends Norway for being the first State to ratify International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. He urges Finland to complete steps to ratify that instrument and urges Sweden to consider ratification, in consultation with Sami people.

## **B. Self-determination**

74. Despite having endured a history that divided their territory and people among four States, the Sami people have made remarkable efforts to maintain and strengthen bonds across the national boundaries and to advance their interests as one people. Several cross-border institutions have been formed to represent the interests of Sami people throughout the Sápmi region and play an important role in developing a Sami policy that applies beyond the State framework. The Special Rapporteur notes with satisfaction that the Nordic Governments, for the most part, have not hindered cross-border Sami relations and at times have facilitated it.

75. The Special Rapporteur notes the important work that has already been done toward the adoption of a Nordic Sami Convention. He welcomes the commitment on the part of the Nordic States and the Sami parliaments to recommence negotiations in 2011 toward adoption of the Convention. The Special Rapporteur calls upon the States to ensure that the framework for these negotiations allows the Sami parliaments to participate as equal parties.

76. The Special Rapporteur recommends that the Nordic States continue and enhance their efforts to implement the right of the Sami people to self-determination and to more genuinely influence decision-making in areas of concern to them. This end may to some extent be achieved through more effective consultation arrangements that seek to ensure that decisions directly affecting the Sami are not taken without their free, prior and informed consent. Additionally, in consultation with the Sami parliaments, the States should consider delimiting certain areas within which the Sami parliaments can act as primary or sole decision-makers, particularly in relation to concerns that affect Sami people in particular, including issues related to Sami lands, languages, traditional livelihoods and cultures.

77. The Special Rapporteur recommends that the Nordic States, and in particular Sweden, introduce reforms as necessary to ensure that the Sami parliaments – as the highest representative bodies of the Sami people – have greater independence from State institutions and authorities. In particular, Sweden should review the statutory status and functions of the Swedish Sami Parliament in relation to Swedish Government authority structures, with the goal of increasing its independent decision-making powers.

78. The Nordic States should provide the Sami parliaments with funding sufficient for them to be able to effectively exercise their self-governance functions. In particular, greater funding should be available for projects and initiatives that the Sami parliaments themselves identify, develop and implement. The States should develop appropriate procedures for consulting with the Sami parliaments towards this end.

### **C. Rights to lands, waters and natural resources**

79. For the Sami people, as with other indigenous peoples throughout the world, securing rights over land and natural resources is fundamental to their self-determination, and is considered a prerequisite for the Sami people to be able to continue to exist as a distinct people.

80. The Special Rapporteur recognizes the efforts of the Nordic Governments in recent decades to advance the rights of Sami people to their lands, territories and resources. These efforts should be redoubled in order to guarantee the Sami people a sustainable basis for their economic, social and cultural development.

81. The Special Rapporteur recommends that Norway finalize the process of clarifying and securing Sami land and resource rights both within and outside of Finnmark County. He further recommends that Norway give close consideration to the findings of the Coastal Fishing Committee and take effective measures to secure fishing rights for the Sami coastal population.

82. The Special Rapporteur recommends that Sweden increase its efforts to demarcate the traditional territory of the Sami people. He further calls on Sweden to adopt legislation to revise the high burden of proof required to establish traditional Sami rights to land in court proceedings and to provide Sami parties with legal aid in such proceedings.

83. In consultation with the Swedish Sami Parliament and the Sami people, Sweden should increase its efforts to develop legislation to address issues related to the Sami people, including the issue of land and resource rights.

84. Finland should step up its effort to clarify and legally protect Sami rights to land and resources. In particular, Finland should ensure special protections for Sami reindeer husbandry, given the centrality of this means of livelihood to the culture and heritage of the Sami people.

85. Legislative and administrative mechanisms that allow for the extraction of natural resources from Sami territories should conform to relevant international standards, including those requiring adequate consultations with the affected indigenous communities and their free, prior and informed consent, mitigation measures, compensation and benefit sharing.

86. The Nordic States, in consultation with the Sami parliaments, should consolidate measures to address the adverse effects of climate change on the Sami people. At the same time, they should ensure that measures to promote renewable energy sources, such as wind farms, do not themselves adversely affect Sami livelihoods.

87. The Nordic States should endeavour to maintain the predator populations in the reindeer herding areas at levels that reindeer herding communities can withstand, and they should fully compensate the reindeer herders for damages caused to them by predators.

### **D. Language and education**

88. The Special Rapporteur recommends that the Nordic States and the Sami parliaments cooperate to redouble efforts to revitalize Sami languages and strengthen programmes for education in Sami languages and culture. The States should provide immediate and adequate funding to the Sami parliaments to assist in the

implementation of concerted measures toward these ends. Among other measures, the States should increase the capacity and number of teachers proficient in the Sami languages. Additionally, the States should take efforts to strengthen Sami language use before courts and other public authorities, and continue to improve access to public services in Sami languages.

89. The States and the Sami parliaments should cooperate to develop and implement measures to increase awareness about the Sami people within the media and the public at large. Such awareness should be promoted, inter alia, through primary, secondary and university school curricula.

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