



**SÁMIRÁÐÐI**  
SAMERÁDET  
SAAMELAISNEUVOSTO  
THE SAAMI COUNCIL  
COIØ3 CAAMOB

19.3.2010 Utsjoki, Finland  
Dnr.  
Ark.

**6 November 2009**

## **TO THE UN HUMAN RIGHTS COUNCIL – UPR WORKING GROUP (3-14 May, 2010)**

**Input provided by the Saami Council - an NGO with consultative status with the ECOSOC representing the indigenous Saami people - with regard to Sweden for the inclusion in the Summary of Stakeholders' information<sup>1</sup>**

**- Item 9: Indigenous peoples -**

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<sup>1</sup> The Saami Council has endorsed the joint report submitted by the United Nations Association of Sweden (UNA). Of the information provided in the UNA report, the following issues are most pressing for the Saami people, and should hence be the focus of the UPR Working Group when considering Item 9: Indigenous Peoples' Issues.

## 1. Summary and proposed recommendations – Item 9: indigenous peoples' issues

1.1 It is undisputed that the indigenous Saami people were the first inhabitants of its traditional territories. Still, Saami reindeer herding communities are currently losing area after area of its traditional reindeer grazing land. The reasons are essentially three. a) Sweden has failed to demarcate the Saami reindeer herding communities' winter-grazing land. b) Swedish law places the entire burden of proof in Saami land rights cases on the Saami parties. c) Sweden offers no financial aid to reindeer herding communities in such disputes. As a consequence, Swedish titleholders sue Saami reindeer herding communities submitting that the Saami have no right to graze their reindeer on lands to which the Swedish hold title under Swedish law, but that the Saami maintain they have also used since time immemorial. Due to the reasons just mentioned, the Saami have little chance of winning these cases, wherefore the Swedish take the Saami land bit by bit. Further, Swedish law provides inadequate protection for the Saami reindeer herders against competing industrial activities, allowing the Swedish industry to move into the Saami traditional territories almost at will. Swedish governmental authorities have explicitly declared that if Swedish wind-mills cannot coexist with Saami reindeer herding, Swedish interests take precedent, even if the Saami are forced away from their traditional territories and livelihoods. As mentioned, Sweden has in reality barred the Saami from addressing the mentioned concerns through court proceedings. Sweden could, however easily solve the problem politically, if it wanted to. An official Swedish governmental commission, the Boundary Delimitation Committee (BDC), has to a large degree identified the Saami winter grazing lands. The Swedish government has, however, ignored its own report. The UN Human Rights Committee and the CERD Committee have e.g. called on Sweden to a) complete the work of the BDC and to act on its findings, b) reverse the burden of proof in cases pertaining to Saami land rights, and c) provide Saami communities with legal aid in such cases. Sweden has, however, ignored all recommendation by all UN treaty body on Saami land rights.

1.2 In hearings before the Human Rights Committee and CERD, Sweden has acknowledged that there are unresolved issues with regard to Saami land rights. At the same time, Sweden has repeatedly promised that the Saami land rights issues were to be addressed by a governmental committee preparing a bill on Saami issues. The Bill has now been presented.<sup>2</sup> It contains nothing on Saami land rights. In connection with the publication of the Bill, it has been revealed that the Swedish government, at the same time as it informed the UN that it was working on the Saami land rights issues, had instructed its own Committee dealing with Saami issues that it under no circumstances was to present proposals that strengthened or acknowledged Saami land rights. The Bill was further crafted without any consultations with Saami representatives.

1.3 The outlined problems are to a large extent a result of Sweden failing to adhere to international legal standards on indigenous peoples' rights. Sweden has not ratified the ILO Convention No. 169 on Tribal and Indigenous Peoples in Independent Countries (ILO 169). Sweden voted in favor of the UN Declaration on the Rights of Indigenous Peoples but has taken no steps to implement its provisions. In 2005, a group of experts presented a draft Nordic Saami Convention, outlining the Saami people's rights as an indigenous people. No measures have been taken to date to act on the draft.

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<sup>2</sup> Ds 2009:40

## 2. Proposed recommendations for the UPR Working Group to Consider

**2.1 Sweden should allow the Boundary Delimitation Committee to complete its work with demarcating the Saami people's traditional land and transform the findings into Swedish law, in cooperation with the Saami people. Sweden should reverse the burden of proof in Saami land rights cases and provide Saami parties with legal aid in such cases. Sweden should introduce legislation that effectively protect the Saami people's possibility to continuously preserve its traditional livelihoods and cultural identity in competition with industrial activities on Saami traditional land. Sweden should implement the concluding observations on UN treaty bodies pertaining to the Saami people's right to land.**

**2.2 Sweden should ratify the ILO Convention No. 169 and the Nordic Saami Convention without further delay. Sweden should establish mechanisms for implementing the UN Declaration on the Rights of Indigenous Peoples, in full cooperation with the Saami people.**

## 3. Briefly about the Saami people and the Saami Council

3.1 The Saami people has inhabited its traditional territory - covering what today constitute the northern parts of Finland, Norway and Sweden and the Kola Peninsula in the Russian Federation – since well before the present day states drew their borders across the Saami territory. The Saami have their own culture, livelihoods and language, distinct from the cultures of the non-Saami population. The Saami people is hence indigenous to Sweden, which Sweden also recognizes.

3.2 The Saami Council, established in 1953, is a non-governmental organization with consultative status with the ECOSOC and the ILO. It is also a Permanent Participant to the Arctic Council. The Saami Council is an umbrella organization, with the major national Saami organizations in Finland, Norway, Russia and Sweden as members.

## 4. Background information with regard to the proposed recommendations – including suggested questions to pose to Sweden

4.1 Reindeer husbandry is the principal traditional livelihood of the Saami population in Sweden. Semi-nomadic Saami reindeer herding communities have migrated with their reindeer on their traditional land since time immemorial. To be able to continuously pursue reindeer husbandry constitutes a pre-requisite, should the Saami people continue to exist as a distinct people, society and culture. Loss of land inevitably will lead to the destruction of the Saami culture, and eventually to assimilation.

**Suggested question to pose to Sweden: Is it correct that reindeer husbandry is integral to the Saami culture? Does it constitute a human right for Saami reindeer herders to continuously pursue reindeer husbandry?**

4.2 The Saami's continued existence as a distinct culture and ethnic group is presently at great risk. In a series of court proceedings, Swedish title-holders are depriving Saami reindeer herding communities of their traditional winter-grazing areas. One case concerns all Saami communities in the entire *Härjedalen* County. Even though it is not disputed that the Saami have pursued reindeer husbandry in *Härjedalen* since time immemorial, the reindeer herders were not in a position to produce evidence that they had grazed the specific land-patches under dispute. The communities lost in the Court of Appeals, and the Supreme Court decided not to try the case. One of the communities did not defend itself at all, due to lack of resources. In another case, a neighboring Saami community (*Tåssåsen*) has lost in the Court of First Instance. The case is pending before the Court of Appeals. In yet another case, the Saami communities (*Gällivare Skogssameby and Udtja*

*sameby*) could not defend itself at all, since it had no resources. The unreasonableness of the trend in these cases follows from pure logic. The reindeer must have found pasture somewhere, also during the winter. In the *Härjedalen Case*, the Swedish courts acknowledged that a direct consequence of the outcome of their ruling would be that many reindeer herders would no longer be able to pursue traditional Saami reindeer husbandry. In one case (*Nordmaling*), the Saami communities won in the Court of Appeals. However, here the Swedish Supreme Court has decided to try the case, even though it refused to do so in the parallel *Härjedalen Case*.

4.3 The reason why Swedish title-holders can bit for bit deprive Saami reindeer herding communities of their traditional land is that Sweden is effectively denying the Saami communities a fair trial. The Saami undeniably were the first inhabitants of their traditional territory. Further, Swedish law *formally* acknowledges that the Saami have ownership and usufruct rights to lands traditionally used, wherefore *in principle*, the Saami should be in a good position to realize property rights to land in court proceedings. In *reality*, however, such is not the case, due to Sweden having placed the entire burden of proof in Saami land rights cases on the Saami parties. That is so, even though it is the cultural practice of the Saami not to leave traces on land, and even though the indigenous Saami culture is oral, with no documentation of land use. In addition, as mentioned, the Saami communities lack the means necessary to defend themselves in court. And Sweden has designed its legal aid system so that it does not apply to Saami communities and has also otherwise refused to provide the Saami with resources awarding them a fair trial. In addition, all Swedish insurance companies refuse to sell legal protection insurances to Saami communities. As a result, even though the Saami are entitled to own and use their land *in principle*, Sweden *effectively* denies the Saami a fair chance to defend these rights in courts of law.

**Q: In cases where Swedish title holders claim that Saami reindeer herding communities have no grazing rights, does Sweden place the entire burden of proof on the Saami parties? Does Sweden provide any legal aid to Saami reindeer herding communities in land rights cases?**

4.4 In comparison, Norway has recognized that applying regular rules of evidence in Saami land rights cases has unreasonable consequences. Norway has therefore introduced a rule of evidence specific to Saami land right cases, so that when the Saami parties have made it likely that a certain land area has been traditionally used, the burden of proof shifts to the Norwegian party. In addition, Norway provides Saami parties with legal aid in land rights cases, awarding them a fair trial.

4.5 Industrial activities have lately increased dramatically in the Saami traditional areas, consuming the Saami home-land bit for bit. Swedish laws and policies regulating industrial activities do not adequately take the Saami culture into account. Reindeer husbandry is not mentioned in the Swedish Mining Act. Hence, mining companies essentially disregard Saami interest in their activities. The same is true for wind-mills. Under the Swedish Forestry Act, if no agreement is reached between a forestry company and the reindeer herding community on a proposed logging, Swedish authorities determine if the logging is allowed or not. And as even the government's own commission has concluded Swedish authorities has not one single time stopped any loggings, regardless of how detrimental the effects are on the reindeer husbandry in the area.<sup>3</sup>

4.6 Sweden has hence introduced a system where it in practice is impossible for reindeer herding communities to defend their land in legal processes. As a result, Sweden forces Saami reindeer herders out of the traditional livelihood their forefathers have pursued since time

<sup>3</sup> Governmental Commission SOU 2001:101

immemorial, and which they want to pass on to their children. These reindeer herders lose the most important part of their cultural identity. For instance, in a letter sent by the Swedish government to the reindeer herding communities affected by the *Härjedalen Case* referred to above, of 17 September 2009, the Swedish government declares that they will soon have to forcefully slaughter a substantial part of the communities' reindeer. The action, if carried through, will result in some reindeer herding families being thrown out of their traditional livelihood. The government's opinion is that the communities should pay the title-holders for winter-pasture. But the communities do not have resources to do so. Similarly, Sweden is planning to establish a wind-mill park that would consume 26 % of *Östra Kikkejaure* Saami community's winter grazing land. In this process, Swedish authorities have stated that if the wind-mill park and reindeer husbandry in the area are mutually exclusive, Sweden's interest in energy takes precedent, even if this results in reindeer herders being forced out of their traditional livelihood.

**Q: Has the Swedish government in a letter dated 17 September 2007 stated that it presumes that its local authority (*Länsstyrelsen Jämtland*) will decide that the herds of the reindeer herding communities affected by the ruling in the *Härjedalen Case* shall be reduced if the communities do not pay the title-holders for winter pasture? Did the Swedish government's regional authority (*Länsstyrelsen Norbotten*) in a statement of 3 April 2009 (551-7954-08, see in particular p. 16) declare that if the Saami community's reindeer husbandry could not co-exist with Markbygden wind-mill park, the Saami community should be forced away from 26 % of its winter grazing land?**

4.7 Sweden has repeatedly told e.g. UN treaty bodies that it is actively working with the Saami land rights issues and that these would be addressed in a forthcoming governmental Bill.<sup>4</sup> However, when the Saami Bill (Ds 2009:40) was recently presented, it included nothing on Saami land rights. Moreover, recently disclosed documentation shows that at the same time as the Swedish government informed the UN that it was working to solve the Saami land rights issue, the Swedish governmental committee working with the Saami Bill was under instruction that the Bill must not strengthen or acknowledge Saami land rights.

**Q: Is it correct that Sweden has informed the Human Rights Committee and the CERD that it would address Saami land rights issues in a Bill to be presented in 2009/2010? Was the Committee appointed to craft the Saami Bill (2009:40) instructed not to table any proposals implying recognition of Saami land rights?**

4.8 One way in which Sweden could take political action on Saami land rights would be for Sweden to address the report of its own Boundary Delimitation Committee<sup>5</sup>, the BDC. In large parts of the Saami areas, the BDC has done a good job. Particularly in the southern parts of the Saami traditional area, however, the BDC's work was limited by it being bound by Sweden's position that the entire burden of proof for documenting traditional use of land vest with the Saami. As Norway before it, the BDC explicitly stated that it found these demands unreasonable.<sup>6</sup> In addition, Sweden failed to provide the BDC with adequate resources. The BDC itself concluded that a natural consequence of the lack of resources was that it had not been able to consider certain

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<sup>4</sup> See e.g. CCPR/C/SWE/CO/6, where the Human Rights Committee states "... while noting the State party's intention to address recommendations concerning Sami land and resource rights through a bill to be submitted to the parliament in March 2010..."

<sup>5</sup> The Boundary Delimitation Committee's report SOU:2006:14

<sup>6</sup> The Boundary Delimitation Committee's report (SOU 2006:14), p. 22 and 24-27

sources that could further evidence Saami traditional use of particular land areas.<sup>7</sup> Despite the described shortcomings, one could have expected the Swedish government to at least acknowledge the findings of its own committee in a Bill it claimed would address Saami land rights. However, Ds 2009:40 does not even refer to the BDC.

4.9 As stated above, Sweden has not ratified the ILO 169, even though already in 1999, another Swedish governmental committee recommended Sweden to do so.<sup>8</sup> Sweden has repeatedly stated that the ILO 169 would be addressed by the newly presented Saami Bill. But Ds 2009:40 does not touch upon ILO 169. Similarly, Ds 2009:40 does not even refer to the UN Declaration on the Rights of Indigenous Peoples (UNDECRIps), even though Sweden voted in favor of its adoption.

**Q: When will Sweden ratify the ILO 169 and the Saami Convention? What measures has Sweden taken to implement the UNDECRIps?**

4.10 In conclusion, Sweden is effectively preventing Saami communities to defend their rights to land through *legal means*. Simultaneously, the Swedish governmental committee appointed to outline Swedish *politics* on Saami issues was under instruction not to strengthen or acknowledge Saami land rights, even though Sweden has been providing the opposite information to the UN. Consequently, Saami reindeer herding communities are losing their traditional land, bit by bit. This implies that the Saami are forced out of the traditional livelihood their forefathers have pursued since time immemorial. Sweden is hence depriving many Saami of the most essential part of their cultural identity.

## 5. Criticism by UN treaty bodies

5.1 The Saami Council is aware that we are not supposed to repeat findings of UN treaty bodies in these inputs. Still, we find it pertinent to draw to the UPR Working Group's attention to that almost all points raised above have been subject to repeated criticism by UN treaty bodies. These bodies have for instance called on Sweden to provide Saami reindeer herding communities with funding in cases pertaining to Saami rights to land and to reverse the burden of proof in such cases. Treaty bodies have also called on Sweden to allow the BDC to conclude its work, and to implement the findings of the BDC into Swedish law.<sup>9</sup> Sweden has ignored all these recommendations. When touching upon them, Sweden has constantly stated that the UN recommendations would be addressed in the newly presented Bill SOU 2009:40. But when presented, Ds 2009:40 does not even mention the UN criticism directed at Sweden for violating the Saami people's land rights.

**Q: What measures are Sweden planning to take to implement the Human Rights Committee's and CERD's recommendation that Sweden reverse the burden of proof in Saami land rights cases and provide Saami communities with legal aid in such cases?**

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<sup>7</sup> The Boundary Delimitation Committee's report (SOU 2006:14), p. 16

<sup>8</sup> Governmental Committee SOU 1999:25

<sup>9</sup> CERD/C/SWE/CO/18, in particular paras. 19-20, and CCPR/C/SWE/CO/6, in particular paras. 20 and 21