



SÁMIRÁÐÐI
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SAAMELAISNEUVOSTO
THE SAAMI COUNCIL
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**TO THE UN HUMAN RIGHTS COUNCIL –
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Input provided by the Saami Council - an NGO with consultative status with the ECOSOC representing the indigenous Saami people - with regard to Norway for the inclusion in the Summary of Stakeholders' information

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1. Briefly about the Saami people and the Saami Council

1.1 The Sami 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 Sami have their own culture, livelihoods and language, distinct from the cultures of the non-Sami population. The Sami people is hence indigenous to northern Norway, something Norway also recognizes.

1.2 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 Sami organizations in Finland, Norway, Russia and Sweden as members.

2. Issues

Sami land rights and competing industrial activities

2.1 Until relatively recently, Norway's official position was that the Sami traditional livelihoods', such as reindeer herding, use of land did not result in property rights thereto. The last decade or so, however, Norwegian courts have followed the international trend and have ruled that Sami communities traditional use of land and natural resources result in property rights thereto. The question is hence not formal recognition of Sami land and resource rights. whether the Sami hold rights to land in its homeland territory, but respect for and implementation of such in competition with other interests, in particular industrial such.

2.2 Although reindeer herding and other traditional Sami livelihoods undoubtedly formally result in property rights to land, this right is completely ignored in laws regulating industrial activities in the Sami traditional territories, such as in the Norwegian Mining Act. The right to property awards the holder of the property right the right to withhold or offer her or his consent before anyone accesses the property in question. There is no reason why the same should not apply to Sami reindeer herding and other communities. That would be discriminatory. In this context, it is worth noting that the UN Committee on the Elimination of Racial Discrimination has called on both Finland and Sweden to revise their respective mining acts, to embrace the right of Sami reindeer herding communities to withhold or offer their consent mining activities in their respective territories.¹ Norway's Mining Act is no better than its Finnish and Swedish counterparts, in this regard. Norway's Mining Act only prescribes that Sami "interests" be considered in decisions on mining permits, but omits the fact that Sami reindeer herding and other communities hold rights to their respective traditional territories.

2.3 At this stage, it is worth recalling the most recent report to the Human Rights Council by Special Rapporteur Professor James Anaya. In this report, the Special Rapporteur notes that indigenous peoples' property rights over lands and natural resources can be expropriated, e.g. limited, only when there is a valid public purpose, and when the limitation is proportionate. He further underlines that "such a valid purpose is not found in mere commercial interests or revenue-raising objectives, and certainly not when benefits from the extractive activities are primarily for

¹ CERD/C/FIN/CO/20-22, para. 13 and CERD/C/SWE/CO/19-21, para. 17

private gain”.² Norway can hence not expropriate reindeer herding land or other traditional territories of Sami communities, since all prospecting for mineral resources in Norway is carried out by private corporations for private gain.

2.4 In 2013, Norway adopted a new mineral policy. The mineral policy almost exclusively focuses on facilitating mining corporations’ access to the Sami traditional territories. The mineral policy completely ignores that Sami reindeer herding and other communities have established property rights to their traditional territories through traditional use. The mineral policy only talks about “Sami interests” in land, but deliberately omits to mention that the Sami communities actually hold property rights to their respective traditional territories.³ The mineral policy contains a number of concrete proposals for how Norway will promote mining corporations’ expansion into the Sami traditional territories. At the same time, the mineral policy contains no concrete proposal as to the Sami traditional livelihoods should survive in a mining environment. In sum, if the Norwegian mineral policy is realized, mining corporations will expand heavily into the Sami territories, at the same time Sami rights to lands and natural resources are overseen and overrun.

2.5 The impact on the Sami society and culture will be catastrophic. Reindeer herding is the principal traditional livelihood of the Sami people. Continued possibility to pursue reindeer herding is a pre-requisite, should the Sami survive as a distinct people, society and culture. Loss of land inevitably leads to the destruction of the Sami culture. The mining boom in the Sami areas has already started. For instance, in Fiettar reindeer herding community’ traditional calving-land, Nussir AS is planning a mine that will destroy the community, forcing its members out the livelihood their forefathers have pursued since time immemorial. Similarly, in Kautokeino municipality, Arctic Gold is ready to start up a mine that would have devastating effects on Abborassa reindeer herding community, again forcing Sami out of their traditional livelihoods which constitute the backbone of their cultural identity. In sum, the mining boom in the Sami areas that has just started constitutes an imminent threat to the Sami culture, way of life and society.

2.6 There is no logical reason why Norway should be so eager to mine all the natural resources in the Sami areas at once. Norway is one of the richest countries in the world, and still holds enormous oil and gas reserves. It therefore make more sense to halt mineral extractions in the Sami territories until a legal framework is in place that ensures respect for Sami rights over lands and natural resources, and that safeguards against mining activities having detrimental impacts on the Sami livelihoods, culture and society, as well as on the environment.

2.7 The above has focused on mining due to the burgeoning mining boom in Norway and because of the detrimental effects a mine normally has on reindeer herding and other Sami traditional livelihoods in the area. The Sami livelihoods are, however, under pressure from a large number of other competing activities as well, such as wind-mills, infrastructure, hydroelectric dams, power-grids, forestry and tourism. The cumulative effects of all these activities implies that most Sami reindeer herding communities cannot afford to lose much more lands, should they be able to continuously pursue Sami reindeer herding. For instance, in the Fosen area in the southern part of the traditional territory, Norway plans to build a gigantic wind-mill park which would essentially wipe out the reindeer herding in the area.

² Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Extractive industries and indigenous peoples (A/HRC/24/41), para. 35

³ See e.g. the Norwegian Mineral Policy 2013, pp. 55-56 and 68.

Sea Sami issues

2.8 In Norway, another segment of the Sami population is the so called Sea Sami population. It lives along the fjords in northern Norway. The Sea Sami population's main traditional livelihood is salt water fishing, although agriculture also plays an important role in these Sami areas. The Sea Sami population was badly hurt by a Norwegian assimilation policy through around hundred years. Many Sea Sami still carry scars from the assimilation period, although it was officially abolished some decades ago. Among the Sea Sami, there continues to be, generally speaking, a decline in population, in fishing activities, in use of Sami language etc. It is therefore an urgent matter to strengthen the Sea Sami culture for which, as mentioned, salt water fishing constitutes a backbone. Fishing is the basis for settlement as it is a basis for the culture. The continued existence of Sea Sami local communities is decisive should the Sea Sami be able to continuously enjoy their culture. In sum, securing the right of the Sea Sami to fish is necessary for the survival of the Sea Sami culture.

2.9 Against this backdrop, it was an enormous disappointment when the Norwegian parliament adopted a policy for salt water fishing in the Sea Sami territories that completely denied the fact that Sea Sami local communities hold rights to their traditional territories, including to water areas, as well as to natural resources in such, including marine resources. In blunt violation of international law, Norway wishes to treat the questions as to what extent the Sea Sami has a right to fish as a purely political issue.

Sami self-determination

2.10 Norway has established the Sami parliament, which is the primary body through which the Sami people exercises its right to self-determination in Norway. So far, however, Norway has severely restricted the Sami parliament's mandate. It is essentially an advisory body. On hardly any issues is the Sami parliament genuinely self-determining.

International instruments

2.11 Norway played a leading role on the state-side when the UN Declaration on the Rights of Indigenous peoples was adopted, and of course also voted in favour of the adoption of the Declaration. Norway has, however, taken limited initiatives to implement the rights enshrined in the Declaration, in particular with regard to lands and natural resources, as elaborated above. In a commendable commitment, Norway has pledged to report annually on what the country has done to implement the recommendations made by UN Special Rapporteur James Anaya in the report he presented on the situation of the Sami people in 2011.⁴ Given the relative lack of implantation of the UN Declaration on the Rights of Indigenous Peoples, it would be pertinent that Norway make a similar pledge with regard to the Declaration. In this context, one can note that in its most recent report, the Expert Mechanism on the Rights of Indigenous Peoples recommended that states report annually on what measures they have taken to implement the recommendation.

2.12 In 2005, an Expert Group consisting of experts appointed by the governments in Finland, Norway and Sweden, as well as by the Sami parliaments in the three countries, presented a unanimous proposal for Nordic Sami Convention. Since then, progress on the Convention has been extremely slow. Now, however, political negotiations are on their way. The intention is to have a Nordic Sami Convention ready for adoption by 2016.

⁴ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, A/HRC/18/35/Add. 2

3. Recommendations

The Saami Council thinks that it would be appropriate for the UPR WG to recommend Norway:

1. To revise its mining act, so that the mining act is reflective of Sami reindeer herding and other communities hold property rights over their traditional lands and natural resources, and thus provides that such communities have the right to offer or withhold their consent to mining activities in their traditional territories.⁵
2. To adopt a new mining policy that not only promotes the interest of the mining industry, but that also calls for respect for Sami reindeer herding and other communities' rights over their lands and natural resources, and contains concrete measures for how such rights should be acknowledged and implemented.
3. To amend legislation pertaining to wind-mills, so that such legislation recognizes and reflects Sami reindeer herding and other communities' right to offer or withhold their consent before wind-mills are constructed in their respective traditional territories.
4. To adopt a policy for the expansion of wind-mill parks in the Sami areas that duly takes Sami reindeer herding and other communities rights and interests into account.
5. To commit to not expropriate Sami reindeer herding and other traditional territories for commercial purposes such as mining and wind-mills.⁶
6. To call for a moratorium for the establishment of new mines in the Sami traditional territories until a legal framework is put in place that ensures respect for Sami reindeer herding and other communities' property rights over lands and natural resources.
7. To provide the means, or ensure that the private sector provides the means, so that Sami reindeer herding and other communities can be adequately represented and assisted in all their relationships with corporations seeking to accessing the communities' traditional territories.
8. To report annually on what measures Norway has taken to implement the rights enshrined in the UN Declaration on the Rights of Indigenous Peoples. To introduce legislation that requires the extractive industry to obtain the free, prior and informed consent of concerned Saami reindeer herding communities before pursuing industrial activities in their areas.
9. To adopt the Nordic Sami Convention by the year 2016, at the latest.
10. To reform legislation in order to formally recognize Sea Sami local communities' rights over their traditional territories and natural resources in such, including over water areas and marine natural resources.
11. To initiate a process that surveys what rights the Sami have to marine resources in all territorial waters of Norway, including to living marine resources, including to invasive species, oil and gas, power plants, tourism activities etc.
12. To ensure that Sami children in Norway can receive education in and on the Sami language, with a particular focus on the Lule- and South Sami areas.

⁵ See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 85

⁶ See conclusions by the Special Rapporteur in the Saami Report, A/HRC/18/35/Add. 2, para. 85

13. To decrease the number of predator animals in the Sami reindeer herding area to a level that the reindeer herding communities can handle, with a particular focus on the South Sami areas, and to provide full compensation to the reindeer herding communities for damages caused by predators.

14. To establish a commission consisting of state and Sami representatives where the Sami and the Norwegian government can reach an agreement on the scope and content of the Sami people's right to self-determination in Norway.