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Sametinget

2014-12-11

## Universal Periodic Review

### Report from Sami Parliament in Sweden

#### UPR-rekommendation

**95.1.** Complete the work on clarifying the legal consequences of the ratification of ILO Convention No. 169 as a matter of priority (**Norway**);

**95.2.** Consider ratifying ILO Convention No. 169 as a matter of priority (**Norway**);

**95.3.** Amend the Swedish Constitution so as to give explicit recognition to the Sami people (**Greece**);

**95.68.** Continue to develop and institute effective mechanisms for improved dialogue and consultation with the Sami people in all areas of government policy that affect them and in the development of legislation (**Canada**);

**95.69.** Implement effectively the United Nations Declaration on the Rights of Indigenous Peoples, and establish mechanisms for its full implementation in full cooperation with the Sami people (**Islamic Republic of Iran**);

**95.71.** Initiate further studies on methods by which Sami land and resource rights could be established, taking into account the culture of the Sami community (**Austria**);

*Sami Parliament considers that there are deficiencies in the Swedish government commitments to respect human rights.*

Sami Parliaments in the Nordic countries discussed the work of the Nordic Sami Convention at parliamentarians conference in Umeå in February 2014. Amongst other things Sami Parliaments concerned that negotiations are moving so slowly and that all articles appear to be subject to complex discussions. Sami Parliaments also requires more resources to be able to participate in and coordinate their work and believe that Nordic Sami Convention is important for the Sami rights to be strengthened, accepted and exploited and to promote Sami cooperation across borders. Sami Parliaments require that negotiations be finalized later in 2016 and will not accept further delay.

Sami Parliament recommends the Swedish government to prioritize the immediate ratification of ILO 169 and urgently finalize and ratify Nordic Sami Convention.

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Sami Parliament urges the Government to:

Until the ILO 169 and Nordic Sami Convention is ratified and implemented in Sweden, further mineral exploitation and exploration of Sápmi, the reindeer herding area, not will be made.

Sami Parliament will have the right to veto, the Sami should have the right to veto, the Sami communities should have the right to veto. For a yes to an exploitation all must agree, there must be consensus for exploitation to occur.

The Swedish government would have to stop all ongoing exploration, permit all new exploration, plans and concession applications pending that Sweden lives up to the international indigenous peoples law, particularly the principles of Free, Prior and Informed Consent must be implemented in all matters relating to the indigenous Sami people. The Sami Parliament would be given the right to control it Saami lands.

The legislation would be amended so that the Saami people need functional land and water should outweigh foreign Venture Capitalists profit.

National interests are revalued so that the long-term interests are valued higher than short-term profit thinking.

A sustainable living through a priority, with a focus on current and future generations to their own culture, physical and mental health and to exercise and develop sustainable Sami industries.

The Sami industry's needs, such as herding, hunting, fishing, Sami handicraft, tourism, etc., of the functional areas must never be threatened by short-term exploitation. The constitutionally protected reindeer law must be respected.

The cultural and psycho-social impacts must be considered in all urban planning in Sápmi.

Annual consultations with the government on overall community planning issues and follow-up of the Sami Parliament reporting on the state's effectiveness regarding the international and national commitments to the Sami as an indigenous people in Sweden.

Mineral Regulation (SFS1992: 282) has changed in that Sami Parliament get referrals to an end to applications for exploration permits on minerals and may submit its opinion. Sami Parliament believes that the government needs to provide resources to the Sami Parliament will be able to handle the increasing amount of matter in answering referrals in a constructive way. Sami Parliament considers that it still requires changes in Mineral Regulation to the Sami culture and Sami rights to resources can be met. Sami Parliament considers that the Swedish government must work for a change of reference of the Sami Parliament so that the Sami Parliament that authorities will have a clear responsibility to

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participate in environmental assessments that involve fundamental questions, or have significant impact on Saami interests.

### UPR recommendation

#### **95.72. Developmental Measures in order to ENSURE That Affected Sami community can take part and Participate Actively in consultations held between the federal government and municipalities on issues related to land rights, water and resources (Austria);**

The principle of free, prior and informed consent is based in that indigenous peoples have the right to say yes or no to activities affecting their traditional lands, before the operation begins. It is a fundamental principle of self-determination.

*Swedish law does not meet the Swedish human rights commitments when it comes to Sami, indigenous peoples, rights to land and water. There are deficiencies in the application and interpretation of the Environmental (SFS1998: 808) rules on permit applications under the Planning and Building Act (SFS 2010:900).*

On 1 July 2008, the Sami Parliament the authority to designate areas of national interest for the reindeer industry. Sami Parliament considers that the application and interpretation of the Environmental Code by state trial violates the Sami's right to natural resources and pasture for reindeer, especially for the reindeer who is supporting for the maintain and development of the Sami culture. Areas of national interest for reindeer are not respected by the state trials when the trial comes to balance two national interests.

Sami Parliament considers that the government permit overrides legislature for the protection of the Sami culture and the right to natural resources for reindeer herding. The government has in its permissibility started giving the admissibility of actions that make areas for reindeer unusable for long time forward, by arguing that aid can compensate the unworkable ground. Some cases are entitled tried by the Supreme Administrative Court, which in some cases meant that there is some latitude in the rules. Sami Parliament considers that there is nothing in the legislative history for household provisions evidencing current application.

The Sami have protection under international law to natural resources to maintain the Sami culture and reindeer pastures. The Proposition 1985/86: 3 Swedish Parliament has adopted a position that there must be safe access to areas of critical importance for reindeer herding to be conducted in both the year-round land and winter pastures. Reindeer herding is considered as very important for the Sami culture and the Swedish Parliament has on several occasions stated that the Sami culture's survival must be ensured.

Environmental Code (SFS 1998:808) housekeeping rules are contained in Chapter 3 and 4. Purpose is to promote the ecological, social and economic perspective wise management of land, water and the physical environment in general. In Chapter 3 is down rules may provide protection against actions that can make it harder to exploit certain natural resources, and protect against actions that might complicate the exploitation of natural

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resources. The rules are designed based on an overriding socioeconomically perspective. Conditions shall apply to the planning, decisions under the Planning and Building Act and matters concerning various environmental permits. The rules focus on both geographic areas and parts operations including the Sami reindeer. The legislature's intent was to give the reindeer protection against the actions and the states in Chapter 3 § 5. The idea of protection in subsection one piece is not an unconditional protection. The protection of the second paragraph is drafted under the legislature's position that certain areas "shall" be protected. The bill states that "protection must concentrate on areas such as taking into account the different part of the reindeer industry performers in different Sami communities are particularly keen to protect." The conditions in the physical terrain is crucial if an area be designated as national interest area for reindeer. Legal rule designed to provide protection for the reindeer industry on measures of social structure and business that involves irreversible interventions in land areas. "Actions that would significantly complicate the pursuit of livelihood shall not be permitted in these areas" (Prop. 1985/86 p 161). The provision that is considered unconditional under such conditions, raises the question of the limits of what is considered to significantly impede the reindeer industry. The Supreme Administrative Court has considered decision under 3, Chapter 5, § 2 paragraph, under the Act on Judicial Review. In addition to interpretation of the law, questions about the evidence and factual assessment, and if the decision is contrary to the requirement of impartiality, objectivity and equality before the law. Although procedural errors that could affect the outcome of the case be tried. If there is some latitude in decision making so examined the question whether the decision falls within the freedom of action. Crucially, the significance of the term significantly hamper reindeer stands for. According to the legislative history refers to such actions can have a lasting negative impact on the current interest (Prop. 1985/86: 3 p.155). "Ex mining facility in the form of open-pit mines can not be assessed in any other way than that it will have a lasting negative impact on reindeer herding because it becomes impossible for reindeer to be in the area. Under such conditions, the measure must not be allowed "(Prop. 1985/86: 3, p. 111). In the preliminary work is not discussed at all the possibility of using special support measures to compensate for the action that would otherwise be unlawful. The purpose of the rule would never be achieved if the legislature had considered compensatory measures have been possible.

#### UPR recommendation

#### **95.6. Incorporate into its domestic law norms Protecting All Children; including indigenous children, in line with the Convention on the Rights of the Child (Plurinational State of Bolivia);**

*The Act (the Act (2009:724) on National Minorities and Minority attributed continue as a minority language law, states that the general has a special responsibility to promote children's development of a cultural identity and the use of the children's minority.*

The Sami Parliament has repeatedly called attention to §§ 17och 18 of the Minority Act with current writing "all or part of" especially with administration local authorities' interpretation of the wording does not provide Sami children (or independent senior citizens) any natural

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right to their own language in municipal activities. Minority law's writing "§ 17, all or part of the business" and "§ 18, all or part of the services and care" is vague and provides administrative municipalities prevail. Management Municipalities can decide whether to offer Sami preschool (for the elderly) based on entirely different reasons than the child (and the elderly) need their own language. Management Municipalities can of organizational, financial, emotional or other reasons to deny the child preschool (the care of dependent elderly care) in Sami. For administrative municipalities to realize the privileges associated with the concepts need this clarified through review of sections.

The child and his guardians (as well as the care of dependent elderly person) Nor has the opportunity to appeal the municipal administration's decision not to provide Sami activities / care of this access to justice is lacking in current minority law. By the legislation also strengthen the ability of individuals to claim their rights would individuals have a greater opportunity to act when they do not get access to their rights.

The statute comment for Minority Act § 18 provides that the municipality will ensure that Sami staff's operations and it is also not its more regulated, but it will be up to local management to act. Thus, there is no compelling for the management of municipalities to work because there are Sami staff that ensures that a Sámi activities can be provided for those individuals that request it under the rights individuals have under the Minority Act. We need a sharpening or clarification on this part of the legislation, for the benefit of the individual's right to their own language, so may not reasons to curtail this right about other than the individual's needs. Council of Europe's aim with the Framework Convention on the Protection of National Minorities and the European Charter for Regional or Minority Languages, the so-called minority conventions, is to maintain and improve human rights.

### UPR recommendation

**95.8. Conduct a breakfast inventory of laws and in Regulations to bring to light Those That are not in accordance with the right to equality and / or CRPD (United Kingdom);**  
**95.9. Ensure That All laws, regulations, policies and practices are consistent with the Convention on the Rights of Persons with Disabilities and with rights to equality generally, as part of, or in addition to, the multitrack strategy Referred to in its report (New Zealand) ;**

*Lack of current legislation, the Act (2009:724) on National Minorities and Minority terms of disability rights*

The Sami Parliament has lifted the Minister of the law on national minorities and minority languages should clarify the rights of the group of individuals covered by the Act (1993:387) concerning Support and Service for Persons with Certain Functional Impairments (LSS), by a minority legislation and maybe in other legislation expressly provide in their own section that the individual has the right to request of the principal performing LSS. There is currently a shortage situation that is not covered by today's minority legislation, disabled people have as much need of their own language and their own culture with others. The disabled are beyond today's minority legislation confirms that the implementation of

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minority policy goals need to have a clearer impact in all policies affecting the Sami situation with regard to the promotion and preservation of the Sami language and culture. Such areas include public health, the elderly, school and youth policy. In all these decisions will be made that affect the above subdivisions. It is important that Sweden, together with Sami representatives work for a deliberate approach that promotes the Saami people's needs in municipal and government sectors.

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