

A briefing paper delivered to Mrs Vicky Tauli-Corpus, the UN Special Rapporteur on the right of indigenous peoples, during her visit to in Hemavan Sápmi Sweden, 25-27 August 2015

Introduction and background

1. The Special Rapporteur on the right of indigenous peoples, James Anaya published 2011 a report about situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. This is so far the most comprehensive and up to date report concerning the situation Sámi peoples in Sweden.

2. In the report Mr Anaya specially underlined the fact that for the Sami people, as with other indigenous peoples throughout the world, securing rights to 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.

3. Sweden has over the years been criticized by different UN treaty bodies and other international treaty bodies for its shortcomings and direct violation of the human rights and freedoms of the Sámi people. This has also been reflected in the earlier UPR reporting concerning Sweden. The last decades several Government inquiries have been concluded on issues relating to the Sami, e.g. the reports of the Boundary Inquiry, the Inquiry of Sami Parliament as part of the rule of peoples, the Inquiry of Sami Hunting and Fishing Rights, the Reindeer Breeding Inquiry and the Inquiry on Swedish ratification of ILO Convention no 169. Based on these inquiries the Swedish government made a proposal in 2009 concerning certain Sami political issues (Ds 2009:40).¹

4. The Bill was scheduled to be handed over to the Swedish parliament, the Riksdag, in the spring of 2010, but after the Sami Parliament among others rejected the whole proposed bill. The process then stalled and the Swedish government announced that it was up to the Sámi Parliament to come up with an initiative. In the reporting to UN treaty bodies, the European Council and other relevant bodies Sweden has communicated that they are awaiting the response from the Sámi Parliament. The “status quo” ended in August 2013 when the government took a initiative to re-open up the dialog with the Sámi Parliament, but due to demand from the government to base the discussion on proposal from year 2009 concerning certain Sami political issues (Ds 2009:40) the process stalled again. After the election 2014 Sweden has now a new minority

¹ <http://www.regeringen.se/sb/d/108/a/131643>

government headed by the Social democratic and the Green parties. The new government have so far announced that they are in a stage of preparing new sámi political initiatives.

5. The Special Rapporteur on the rights of indigenous peoples, James Anaya visit in Sápmi he 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 based prescription from time immemorial. 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. 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.”

6. 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. 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.” 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.

7. 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.

8. The Special Rapporteur also noted that 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.

9. Among these initiatives is the cross-border effort to develop a Nordic Sami Convention. The Special Rapporteur notes the important work already achieved toward this end, and 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. 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.

Recent developments

10. Since the Special Rapporteur on the rights of indigenous peoples, James Anaya published the report in 2011 about situation of the Sami people in the Sápmi region of Norway, Sweden and Finland there have been some positive developments in Sweden concerning the status of the Sámi peoples and matter related to rights to land and usufruct rights.

This is outlined in article 11 – 26.

The right of self-determination

11. In Sweden's national mid-term UPR report from 2012² the revisions of the Swedish constitution is outlined. Instrument of Government, entered into force, January 1, 2011. The Instrument of Government now stipulates that the Government shall encourage opportunities for the Sami people and for Sweden's other ethnic, linguistic and religious minorities to preserve and develop their own culture and community life.

12. The change in the constitution clearly states that the Sami people in Sweden are recognised as "peoples". This is a logical development taking in consideration that Sweden have in the reporting to UN treaty bodies in 2007 recognised both that Sámi are peoples and therefor have the right to self-determination. More over Sweden voted in favour of the UN Declaration on the Rights of Indigenous Peoples with an explanation of vote only concerning land rights. The Swedish Sami policy is in line with the spirit of the Declaration. Among other things, Sweden is working actively, alongside Norway and Finland, to negotiate a Nordic Sami Convention. This constitutional recognition of the Sámi as peoples with a right to self-determination have since 2011 created a both new political discourse and new momentum, but this has not been reflected fully or utilised by Swedish government and in the public debate in Sweden this is so far a non-question.

13. The constitutional recognition of Sámi as peoples with rights to self-determination has not so far been addressed by the Swedish government. The Sámi Parliament established in 1993 is from a constitutional point of view a governmental body under the instruction of the Swedish government. During the revision of the Swedish constitution the Sámi Parliament demanded the Sámi Parliament should be upgraded to be a part "rule of the peoples" as it stands in the constitution.

Land

14. In 2012 the Swedish Supreme Court delivered it's ruling in the Nordmaling Case,³ is a true landmark case on Sámi land rights. Breaking with Swedish law's conventional position, the Supreme Court accustomed the test on whether Sámi reindeer herding communities had established grazing right to land to the Sámi culture. The Supreme Court based its ruling on what constitute customary

² <http://www.regeringen.se/content/1/c6/19/99/21/1c1b0a55.pdf>

³ <http://www.hogstodomstolen.se/Domstolar/hogstodomstolen/Avgoranden/2011/2011-04-27%20T%204028-07%20Dom.pdf>

practices in reindeer husbandry, rather than on Swedish real-estate law and the prescription from time immemorial. With this new approach, the Court found that the communities had established property rights to an extensive land-area. The ruling sets a fundamental precedent, as it indicates that Sámi reindeer herding communities hold property rights to all the Sámi traditional territory in Sweden. Later a pending court case in the same matter in the county of Jämtland was closed down by parties concerned.

15. But a number of Sámi reindeer herding communities, in particular in Härjedalen County, had lost pasturelands in court proceedings in lower courts prior to the recent Supreme Court rulings. The Supreme Court has now confirmed that the previous rulings were culturally based and race-discriminatory. The Sámi parties, including the Sámi Parliament has called on the Swedish government to rectify these past injustices and expropriate the greasing rights areas in the dispute areas, rather than to push the communities to sign tenancy fee agreements that jeopardize continued reindeer husbandry in the area.

16. In May 2009 the Girgas Sámi Villages filed a lawsuit against the Swedish government in the Gällivare District Court claiming that the state is violating the hunting and fishing rights in their traditional lands in Girjas Sámi community. They are searching to resolve a dispute over hunting and fishing rights in Sámi territory, which was caused by a legal uncertainty. The Act of Reindeer Husbandry has stated that hunting rights in Sámi territory belong to the Sami, but since 1988 the Swedish state have started to claim to the they also have hunting rights as landowner. The situation was further complicated after it was decided in the year 2007, that all EU citizens have the right to freely hunt and fish in the high mountains. The Sami are very much concerned about the negative impact of free hunting. The hunting also disturbs wildlife and the reindeer herding. The court proceedings at Gällivare District Court took place in June 2015. The court ruling will be public in November 25, 2015. The case will probably end up in the Supreme Court.

17. The court proceedings at Gällivare District Court created a lot of public attention in Sweden, mainly because of the way Swedish state defended there position and the use of a certain type “language”. Before the case was admissible the Swedish state argued that Girjas Sámi Community could not represent the claims, because they were not the right holders. The court ignored these views. In court proceedings the State question if the Sámi were the indigenous peoples in the disputed area. In the proceeding the State use the term “lapp/lappar”, when the talked about the Sámi peoples. This term “lapp/lappar” has a colonial and racial connotation’s and were used without any elaboration. The State also argued the the Sámi claims were political and not judicial,

because the concept of Sáminess and following rights is a illusion or a misconception.

18. During the court proceedings at Gällivare District Court the State underline several times the contemporary research on Sami conditions is too pro-indigenous in Sweden. This provoked the Swedish research community to respond in statement published in the main newspaper Dagens Nyheter sign by 59 researches. In the statement they express that the Swedish State exhibits a problematic approach to contemporary research on Sami conditions, questioning the Sami indigenous status and use language with elements taken from time when culture hierarchical views was ruling. State's handling of research in the lawsuit with Girjas Sami village is a threat to Sweden as state respeting a rule law and knowledge nation. Years of Swedish and international research fails and using a language that could be downloaded from times racebiology was common. Now the state must take responsibility and start acting like a democratic state and obey rule of law, writes this 59 researchers.

19. Sámi reindeer herding in present Sweden, Norway and Finland has historically been and is in many ways still affected by the creation of national borders. Borders became barriers to reindeer herding which had, since time immemorial been a livelihoos that migrated between different areas. The first boundary, which affected the Sámi reindeer herding, was drawn between Norway/Denmark and Sweden/Finland in 1751. To this border agreement was made a substantial allowance of 30 paragraphs on the rights of the nomadic Sámi – later often called the Lapp Codicil (Lappekodicillen) or the Magna Charta of the Sámi.

The aim with the Codicil was to secure the future reindeer herding for the Sámi people affected by the border. The states agreed that regardless of state borders, the reindeer herding Sámi should be able to continue to migrate with their reindeer to the other kingdom in the same way as they had done before the border demarcation. The migrations have since 1919 been regulated between Norway and Sweden in different so-called reindeer grazing conventions (renbeteskonventioner) which are based on the Codicil. The last convention was negotiated 1972 and was in force until 2005. Sweden and Norway are negotiating on a new convention.

Efforts to renew grazing convention began back in 1998. The Swedish and Norwegian Sami Parliaments and Governments wanted the new Convention would be completed in 2002, when at the last Convention, which was ratified in 1972 went out. A working group was established which had the task to start with this work, but the new draft convention was not finished until 2002. Swedish and Norwegian governments therefore extended the 1972 Convention three

years, until 2005.

The work continued after 2005, and a draft convention was completed in 2012. However, various organizations such as SSR, Reindeer Owners Association and the Sami Parliament did not approve it. Swedish and Norwegian government had by this time tired of the long process and signed the new reindeer grazing convention despite protests from various Sami direction. Sweden and Norway, however, decided to give a last chance to Sami organisations and Sámi Parliaments to improve articles in the convention. Sami organisations and Sámi Parliaments agreed on some improvements of text in the convention and delivered it to the government's in the spring 2014.

The governments have since then meet several times, without agreeing how to continue the process towards a ratification on the Swedish- Norwegian reindeer herding convention.

20. Demand for sustainable energy has resulted in planning of largescaled windmill constructions in Sámi traditional territory. In Sweden 35 percent of areas identified as location for wind power are located in the core of reindeer herding areas. The Swedish government has granted permission for world largest landbased windpower park with 1 101 windmills in the Sami community of Östra Kikkejaur. Östra Kikkjejaurs saami willage will loss 25 % of their winter reindeer pasture land. The saami way of life, especially reindeer husbandry, is threathened by competing use of land, often promoted by Sweden government which results in loss and fragmentation of pasture land. This effects in a negative way reindeer movements, reproductive levels and survival.

Natural Recourse's

21. Great stretches of Sámi traditional territory often call the Europe's last wildernesses risk being damaged and polluted as the international mining industry gears up to develop northern Finland, Sweden, and Norway in search of uranium, iron ore, nickel, phosphorus, and valuable rare earth minerals. On the energy sector the governamet is giving priority to expande to building large scale windmills parks in the Sámi traditional territory. Even if the Arctic mining boom just now has a dip, which mirrors the oil industry's search for oil and gas, is heating up as climate change makes new areas and sea routes accessible and world prices of iron ore continue to soar. The former Norwegian Minister of Trade and Industry Trond Giske stated 2012 that Norway have a "treasure chest" containing minerals worth millions of dollars in the traditional Sámi Territory. At the same year the Swedish Prime Minister Reinfeldt stated that the rich

mineral deposits in the Sámi territory have the same importances for Sweden economy as the oil for Norway.

22. The mining industry is one of several modern threats to the unique way of life of the Sami, the only indigenous people in the EU, and one small, tightly knit community has decided to fight back. The roughly 100 residents of the Jåhkagasska villages near the subarctic town of Jokkmokk are deeply worried what will happen if the proposed Kallak iron mine, an open pit project mostly located inside the district, is allowed to go ahead. Behind the plan is the British Beowulf's subsidiary Jokkmokk Iron Mines, Jimab.⁴

23. After that the Swedish government in August 2014 dismissed the appeals from Vapsten Sami Village and Others Nickel respect Mountains three mining concessions Rönnbäcken K No. 1-3, has Vapsten Sami village filed a complaint to the CERD. Vapsten sameby stated that Sweden violated the prohibition of discrimination in the Convention on the Elimination of All Forms of Racial Discrimination. CERD has an advisory role and make decisions in the form of recommendations to state governments.

Nickel Mountain has received information that the CERD well have asked for the Government's comments on the complaint, and has urged the government to stop, inhibit, all mining operations within Vapsten traditional territory while the matter be examined. Also emphasized, however, that this request does not imply that CERD has taken a position on the substance and that the need for inhibition could be re-evaluated after the government has spoken out on the matter.⁵

Summary

24. The global mega trends as climate changes and largescaled extractation of natural resourses, already today impact on every day life of the indigenous peoples in the Arctic region and will in the near future have a major influence on shaping of a new political, economical and social order in the whole Arctic. We also face a great risk of evolving conflicts, mainly between states, but also between states and indigenous peoples, between ethnic groups in the countries concerned and between other stakeholders in this bonanza of oil, natural gas, minerals an the plentiful waters in the Arctic. In this context we have to bear in mind that geopolitics in the Artic has shifted from bipolarity to multipolarity, but the military presence is not less. The recent events in Ukraine, the Russia's unlawful annexation of Krim and the on-going military armed conflict between Ukraine and pro-Russian rebels will certainly also create chock waves in the

⁴ <http://www.theguardian.com/world/2014/jan/02/reindeer-herds-in-danger-mining-sweden>

⁵ https://www.google.se/search?client=safari&rls=en&q=CERD+och+Vapsten&ie=UTF-8&oe=UTF-8&gfe_rd=cr&ei=fIIsVI-EOLSr8wfiuYB4#q=CERD+och+Vapsten&rls=en&start=10

Arctic. The indigenous peoples in the Arctic have to find the equilibrium in this economical boom created by exploration on natural resources and in this new geopolitical state of affairs and tackle these challenges, hopefully in co-operation with the concerned national states, regional and international bodies, like EU, but not least with the scientific and business communities.

25. The present situation of the Sámi peoples in Sweden can be characterized as some kind of twilight zone where rule of law is not always guaranteed.⁶ This creates a lot of uncertainty and frustration. The political status they have topped that soon prevailed a whole decade. This twilight zone put both Sámi communities and individuals in a situation of uncertainty.

26. A pre-condition to create this equilibrium is a full recognition of the rights of self-determination and rights to land and resources. This of course includes that the Swedish government commits itself to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them in accordance with the applicable principles of human rights law and legal practice.

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⁶ A Grahl-Madsen, *The People of the Twilight zone – Towards self-government; a sovereign Sapmi; an autonomous Samienan*, 1988,73