

TO THE HUMAN RIGHTS COMMITTEE

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Observations by the Sámi Parliament with regard to Sweden's Sixth Periodic Report to the Human Rights Committee, provided under Article 40 of the Covenant.

A. Introductory remark

1. The Sámi parliament will first of all refer to the written observation made by the Sámi Council with regard to Sweden's Sixth Periodic Report to the Human Rights Committee, provided under Article 40 of the Covenant.
2. The statements and conclusions made by the Saami Council in the refereed observations are in line with the views of the Sámi Parliament. The Sámi Parliament also fully support the recommendations offered by the Saami Council to the Human Rights Committee.

B. Briefly about the Sámi Parliament and the contemporary Swedish policy in Relation to the Sámi people

3. The Sámi Parliament/Assembly was established in 1993 and the role and capacity of the Parliament was very limited. It was merely an advisory governmental body to the Swedish Government. In the bill 1992/93:32 adopted by the Swedish Parliament it was clearly stated that the Sámi Parliament was not a self-governing body that should function instead of the Swedish Parliament or municipalities or compete with these organs. The Sámi Parliament has now been functioning for over one and a half decade. On 20 October 2000 the Swedish government appointed a Sámi Parliamentary Commission to analyze and propose necessary reforms. The Commission delivered the report to the Swedish government on 26 September 2002.

The report gives clear evidence that there have been developments concerning the view of self-determination in an indigenous people's context, both in Nordic states and internationally.

An interesting part of the report is the comparison with the situation on the Norwegian and Finnish side of *Sápmi*. In the report the Commission concludes and suggests:

- *that since the establishment of the Sámi Parliament in 1993 there have been dynamic developments concerning the status of the Sámi people in the framework of international law,*
that it is obvious today that the Sámi have a right to cultural autonomy, which demands a certain level of self-government. This should also be addressed by the constitution,
- *that a new Commission should be appointed, with a mandate to create new provisions concerning Sámi self-government, to be added to the Swedish Constitution,*
- *that in the meantime several changes and improvements should be implemented concerning the functions and mandate of the Sámi Parliament.*

4. The Swedish Government passed a bill in 2005, based on some of the suggestions made in the Sámi Parliament Commission report. The question of the Sámi people's right to self-determination and the suggestion to create new provisions concerning Sámi self-government, to be added to the Swedish Constitution, are still unsolved. However, as a governmental authority the Sámi Parliament has been given a broader mandate since 1 January 2007. The bill was passed by the Swedish Parliament in 2006¹.

The Swedish government's official position vis-à-vis the Sámi people is pronounced as follows²:

- *The Sámi people are recognized as an indigenous people by the Swedish Parliament,*

¹ See for instance Sweden's fifth periodic report to the Committee on Economic, Social and Cultural Rights, (E/C.12/SWE/5, of 6 September 2006), paras. 7-16, where Sweden e.g. acknowledges that the right to self-determination under Article 1 of the Covenant applies to the Sámi people.

² Statement made by Sweden at the UN General Assembly during the adoption of UN declaration of the Right of Indigenous peoples September 13th 2007.

- *The Swedish Government bases its relations with the Sámi people on dialogue, partnership and self-determination, with respect and responsibility for cultural identity,*
 - *The Sámi and other indigenous peoples must have the right to influence the use of land and natural resources that are important for their survival.*
 - *The political discussion on self-determination cannot be separated from the question of land rights,*
 - *The Sámi relationship to the land is at the heart of the matter.*
 - *Government of Sweden must maintain a balance between the competing interests of different groups living in the same areas in northern Sweden.*
5. The Sámi people were already recognized as an indigenous people by the Swedish Parliament in 1977. Sweden today acknowledges that the Swedish state is founded on the territory of two distinct peoples; the Swedish and the Sámi people.³ This new standpoint has however so far not been implemented and the Sámi Parliament is still an advisory governmental body to the Swedish Government, even though it's an elected body.

C. Sámi people's right to their traditional lands

6. International law firmly establishes that as an indigenous people, such as the Sámi have particular rights to their traditional territories. Sweden has completely failed to take action recognizing the Sámi people's right to their traditional lands. Sweden is hence in violation of Article 2 (1) (c) of the Convention on the Elimination of all Forms of Racial Discrimination, pursuant to which each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. Sweden is also in violation of Article 2 (2) of the Convention through its failure to take effective special measures "to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms". Finally, Sweden violates Article 5 of the Convention, by its failure "to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the

³ See for instance Sweden's fifth periodic report to the Committee on Economic, Social and Cultural Rights, (E/C.12/SWE/5, of 6 September 2006), paras. 7-16, where Sweden e.g. acknowledges that the right to self-determination under Article 1 of the Covenant applies to the Sámi people.

law", notably in the enjoyment of the right to property, alone as well as in association with others.

7. Relevant UN treaty bodies including CERD have repeatedly expressed concern over the race based discrimination and the violation of human rights Sweden continuously subject the Sámi people to.⁴ Sweden has not acted on any of these recommendations. Rather, Sweden has always merely referred to further deliberations and investigations to be carried out, as it does also in this Periodic Report ..
8. Sweden does not officially any more question the fact that the Sámi people inhabited and used their traditional territories for e.g. reindeer husbandry, hunting and fishing when the Swedish colonization of these areas started, even though it's a grooving group of Swedish landowners that's claims that reindeer herding Sámi have not rights at all private own lands. And since the ruling by the Swedish Supreme Court in the so called *Taxed Lapp Mountain Case*⁵ (1981), Swedish law formally recognizes - in principle - that also Sámi land use can give rise to both ownership and usufruct rights. The Swedish Suprem Court decision have however been neglected and overruled both by the courts in generally and in the decisions process made by the Swedish Parliament and government.
9. Sweden's policy towards neglected legal rights to Sámi traditional land, waters and natural resources remains essentially the same as during the era when

⁴ See e.g. the Human Rights Committee's Concluding Observations on Sweden (CCPR/CO/74/SWE), the Committee on Economic, Social and Cultural Rights' Concluding Observations on Sweden (E/C.12/1/Add. 70) and the Committee's Concluding Observations on Sweden (CERD/C/64/CO/8 and CERD/C/304/Add. 103).

⁵ See NJA 1981 s 1. *Taxed Lapp Mountain Case*, Supreme Court Case NJA 1981 s. Sámi traditional land use can give rise to legal title thereto was confirmed by the Swedish Supreme Court in *Taxed Lapp Mountain Case*, Sámi Villages (*Samebyar*) in the southern part of the Swedish side of *Sápmi* claimed e.g. ownership right to its traditional land. Even though the Supreme Court found in favour of the Swedish government, it made some important remarks in support of the Sámi cause. First, the Supreme Court stated that the Sámi people's right to pursue reindeer husbandry on its traditional land is a usufruct right not depending on legislation, which the government claimed. Secondly, the Supreme Court noted that it was likely that the Sámi people has ownership right to other parts of its traditional land, in particular further north in *Sápmi*. As one example of Sweden's way of thinking of Sámi land rights (or rather that there exists no such) can be mentioned the Swedish public power plant company *Vattenfall's* application to be registered as the owner of three separate land-areas within the traditional Sámi territory. In all three cases, the Sámi parties concerned challenged the application, arguing that *Vattenfall* cannot be registered as owner since it has not been sufficiently demonstrated that the land belonged to the state in the first place. In June 2000, a Swedish Court of Appeals held that *Vattenfall* could be registered as owner, more or less indirectly arguing that it would not be reasonable that Sweden's largest water power plant is situated on Sámi traditional land. A comparison can be made with a recent ruling in the part of *Sápmi* that is today Norway. In the so called "*Svartskog Case*", the Norwegian Supreme Court tried who were the rightful owner of the *Mannndalen* valley in *Nord-Troms* County - the local Sámi community or the state. The Supreme Court found in favour of the Sámi parties, holding that the Sámi community had acquired ownership to the land through collective utilization since time immemorial.

Sweden viewed the Sámi culture as inferior compared to the Swedish culture. Even though the Sámi people were the first settlers in the traditional territories, and even though non-Sámi law recognizes occupation etc. as a means to acquire legal title to land, when tried in court proceedings, non-Sámi courts have over and over again found in favour of the non-Sámi parties. The reason being that even though no authority today would claim that the Sámi culture is inferior to the non-Sámi cultures, Swedish authorities' assumption is continuously that the Sámi people has no legal right to its traditional land. Moreover, *Sápmi* is extremely rich in natural resources, continuously of great importance to Sweden's economy. Non-Sámi politicians, particularly those living in *Sápmi*, often claim that it would not be "fair" if the Sámi people should have particular rights to these resources.⁶ Needless to say, Sweden allows the Sámi people no influence whatsoever over non-Sámi resources such as mining or water power plants, as at least Norway attempts to do, however in a clearly insufficient manner.

10. In short, these policies held it self-evident that the inferior nomadic indigenous Sámi population could not hold rights to any land. Rather, the Swedish state declared itself the owner of the Sámi people's traditional territory. Certain land patches were given away to Swedish settlers (while no Sámi individuals were offered any land) while the larger part of northern Sweden remained without registered titled holder, but with the Crown as self-proclaimed owner. This is the situation still today.
11. Sweden's denial of the legal rights to its traditional land in effect deprives the Sámi people of the foundation for its culture – its land, waters and natural resources. Sweden claims to be in the process of ratifying ILO Convention no. 169 on Indigenous and Tribal Peoples in Independent Countries (ILO 169), but is far away from implementing e.g. ILO 169 Article 14, guaranteeing all indigenous peoples' ownership and position over the lands which they traditionally occupy, and Article 15.1 clarifying that indigenous peoples' rights to natural resources on those lands should be safeguarded. In 1999, a commission appointed by the government to evaluate whether Sweden should ratify ILO 169, recommended Sweden to do so. The recommendation was reiterated in August 2008 by the CERD Committee, in the Concluding Observations on Sweden. The present Swedish government seems even more reluctant to ratify ILO convention No 169 than former Swedish government.

12. In other words, even though Swedish courts in principle have declared that the Sámi people hold property rights to lands traditionally used, all Sweden's laws, regulations, policies and practices continue to rest on the presumption that the Sámi have no rights to its traditional lands. In lieu of relevant legislation, the Sámi people's property rights could of course - *in principle* - be realized through court proceedings. *In practice*, however, Sweden is effectively denying the Sámi the possibility to realize their rights, also in courts of law.
13. Moreover, Sweden has placed the burden of proof in cases regarding Sámi rights to land solely on the Sámi parties. That is so, even though it is the cultural practice of the Sámi not to leave any traces in nature, and even though the Sámi culture is oral in nature – which means that the Sámi have no or little documentation of their land use. The Sámi communities deprived of most of its resources around the turn of the last century as explained above, lack the means necessary to take these cases to the court. Further, Sweden has designed its legal aid system so that it does not apply to the Sámi communities, which Swedish law prescribes are the relevant parties in these kinds of law suits. Sweden has also otherwise refused to provide the Sámi with resources enabling them to realize their rights to land in a court of law.

D. Generally on the Sámi people's right to self-determination

14. The Government of Sweden has very clearly expressed that indigenous peoples have the right to self-determination in so far as they constitute peoples within the meaning of common Article 1 of the 1966 International Covenant on Civil and Political Rights and 1966 International Covenant on Economic, Social and Cultural Rights. This was done in report from Sweden on the Implementation of the International Covenant on Economic, Social and Cultural Rights in 2006.
15. The Sámi are recognised as an indigenous people and constitute a recognised national minority in Sweden.
16. In above mention report concerning the Implementation of the International Covenant on Economic, Social and Cultural Rights in 2006 the government of Sweden underline that like others in society, it is important that the Sámi population in Sweden feel empowered and have the opportunity to influence their own culture and the development of society as a whole.

17. The Sámi parliament would like to greatly commend Sweden for the principal position taken in the Periodic Report on the right to self-determination, as it applies to indigenous peoples. We agree with Sweden that Sámi indigenous peoples constitute “peoples”; they are entitled to the right to self-determination under the common Article 1 of the 1966 Covenants (paragraph 5).
18. The Swedish position in this matter confirms present interpretation of International law concerning the right to self-determination as proclaimed in Article 1 of the 1966 Covenants applies also to indigenous peoples (provided that they constitute peoples).
19. Even if Sweden has recognised the right to self-determination applies also to indigenous peoples, Sweden has been slow to implement this into practice. Against this background, the Sámi Parliament hopes that the Committee will give Sweden’s reporting under Article 1 considerable room in its Concluding Observation. This would greatly enhance and accelerate the implementation of indigenous peoples’ human rights globally.
20. The Sámi Parliament supports the Saami Council (p 6 in their observation) offering of language to the Committee for its consideration to be included in the Concluding Observations. “The Committee greatly commends the State party for formally recognizing that indigenous peoples, insofar as they constitute peoples, are entitled to the right to self-determination enshrined in CCPR Article 1, including the right to freely determine their political status and freely pursue their economic, social and cultural development. The Committee further congratulates the State party for its extensive elaboration on the content and implementation of that right, as it applies to the indigenous Sámi people. The Committee urges the State party to continue and accelerate its commendable work with implementing the right to self-determination of the Sámi people through enhancing the Sámi people’s right to self-governance and autonomy, in close cooperation with the Sámi parliament and other representative Sámi institutions.”

E. Sámi people’s right to self-determination in practise in Sweden

21. The Sámi Parliament agrees in principle what Sweden outline in its reports under paragraphs 6-7 on the Sámi Parliament (*Sametinget*). In the bill 1992/93:32 adopted by the Swedish Parliament it was clearly stated that the Sámi Parliament was not a self-governing body that should function instead of the Swedish Parliament or municipalities or compete with these organs. The Sámi Parliament is merely an advisory governmental body to the Swedish Government and this means that Sámi people influence in decision making

continues to be limited. That is particularly so with regard to matters pertaining to utilization of lands, waters and natural resources, where the Sámi parliament has little decision making power. The same is true for the traditional Sámi communities, *samebyar*, who are the custodians and right-holders of most of the Sámi people's traditional livelihoods and cultural practices, including reindeer husbandry. Continued access to and control over traditional territories and natural resources is a pre-requisite for the Sámi people being able to continuously exist as a distinct people, society and culture. Loss of land inevitably leads to assimilation and a wiping out of the Sámi culture. Here, Sweden still has a long way to go.

22. In paragraph 8 of the Periodic Report, as well as in its reply to the Committee's list of issues paragraph 34, that the Sámi parliament has recently assumed certain tasks from the County Administrative Board and the Swedish Board of Agriculture on issues concerning the Sámi people. This transfer of responsibilities has been limited to issues internal to the Sámi people. The answer is that the Sámi parliament continues to have no influence over reindeer husbandry in external affairs, e.g. in matters that includes not only reindeer husbandry as such, but also its relation to competing Swedish interests. This means that the Sámi Parliament has no competence with regard to such sectors such as mining, tourism, forestry etc. The many acts that regulate the various forms of industrial activities in the Sámi people's traditional areas hardly mention the Sámi people's interests and fail to empower the Sámi Parliament and the affected Sámi communities in the decision-making process in any relevant manner. This is a serious problem for the Sámi, since industrial activities have increased dramatically in the Sámi traditional areas since the Committee's latest Concluding Observations, consuming the Sámi home-land bit for bit. Since Swedish laws and policies regulating industrial activities do not take Sámi rights into account, the industry is not obliged to consider reindeer husbandry and other Sámi cultural based activities even when operating in the Sámi areas.
23. The Sámi Parliament supports the Saami Council (p 10 in their observation) offering of language to the Committee for its consideration to be included in the Concluding Observations. "In the State party's work with implementing the right to self-determination of the Sámi people through enlarging the Sámi people's right to self-governance, the Committee urges the State party to pay particular attention to matters pertaining to lands, waters and natural resources, ensuring that the Sámi people's right to self-governance encompasses also such affairs, also when Sámi traditional land use competes with Swedish interests.
24. The list of Issues, Question 27, brings up the Boundary Delimitation Committee (BDC). The BDC had the potential to - by identifying what land areas the Sámi hold rights to - mitigate or even rectify some of the most fundamental forms

of discrimination the Sámi are subject to. With regard to usufruct rights, the BDC work was severely limited by being bound by Swedish domestic law when determining to what areas the Sámi hold usufruct rights. Even though explicitly stating that it found these demands unreasonable, the BDC had to take for granted that the entire burden of proof for documenting traditional use during 90 consecutive years vest with the Sámi. In other words, the BDC was not tasked with demarcating what land areas the Sámi have *traditionally used*, but what land the Sámi *can prove rights to under Swedish domestic law*. These are two very different things, if the law itself is inherently discriminatory. In addition, the BDC was not provided with sufficient resources to locate, analyze and draw conclusions from all relevant documents and other sources. Since the BDC had to presume that if there was not enough evidence to the contrary, a land patch does not constitute traditional Sámi territory, the lack of resources in all instances discriminated against the Sámi people. As a result, with regard to substantial areas, the BDC found that it had not been proven that these constituted traditional Sámi land, even though presumably a more thorough investigation would reveal that these are indeed encompassed in the Sámi traditional territory.

25. As to potential Sámi ownership rights to land, the Boundary Commission made hardly any investigations at all, perhaps due to a lack of resources. Without justification, the Boundary Commission simply concluded that Sámi reindeer herders do not utilize land areas with enough *intensity* to establish ownership rights. A non-discriminatory understanding of the right to property must reasonably entail precisely that also indigenous peoples' culture **bead** land activities result in ownership rights, as long as these are sufficiently *exclusive*. It is clearly discriminatory to design a domestic legal system so that stationary land use common to the non-indigenous population result in ownership rights, whereas more fluctuating use of land characterizing many indigenous cultures do not result in such rights.
26. The same legal problem have occurred in Norway, but Norway has modified its rules of evidence so that when the Sámi parties have made it likely that a certain land area constitutes traditional grazing land, the burden of proof shifts to the Norwegian party. In addition, Norway provides Sámi parties with legal aid, providing them with the opportunity to defend their right to their traditional territories before courts of law.
27. The BDC's work was limited by being bound by Swedish domestic law and the mandate provided by the government. In addition, Sweden failed to provide the BDC with adequate resources, something the BDC itself underlined when presenting its findings. The shortcomings of the BDC are particularly negative to the South Sámi

areas. If implemented in its current form, the BDC report would deprive the reindeer herding communities in the South Sámi area of substantial parts of their winter pasture land. Several – probably a majority of the - reindeer herders would then no longer be able to pursue traditional Sámi reindeer husbandry. This in turn places the entire South Sámi culture at risk. In addition, the fact that Sweden places the entire burden of proof on the reindeer herding communities and does not provide them with legal aid makes it extremely difficult for the Sámi to defend their right to land in courts of law. The result is that Sámi reindeer herders can no longer pursue the livelihood that their forefathers have done since time immemorial.

28. In its recent Concluding Observations on Sweden, the UN Committee on the Elimination of Racial Discrimination (CERD) invited Sweden to further study sources evidencing that the Sámi have traditionally used a land area.⁸ CERD further recommended Sweden to grant Sámi parties legal aid in proceedings concerning rights to land and invited Sweden to introduce legislation providing for a shared burden of proof in such proceedings.⁹ Sweden has so far ignored also CERD's recommendations. Given the huge importance of these issues to the Sámi, it is pertinent that the Human Rights Committee reminds Sweden of its obligations in this regard.

29. Finally, the Sámi Parliament fully support the Saami Council earlier observation with regard to the Boundary Delimitation Committee, it would be relevant for the Human Rights Committee to call on Sweden to provide funding to the Boundary Delimitation Committee so that it can adequately conclude its work. The Human Rights Committee could further urge Sweden to thereafter introduce adequate legislation, in cooperation with the Sámi people, regarding the findings of the Boundary Delimitation Committee, in order to remove the legal uncertainties relating to Sámi land rights. The Human Rights Committee could call on Sweden to provide legal aid to Sámi parties in proceedings concerning rights to land, as well as to introduce legislation providing for a shared burden of proof in such proceedings.

JOKKMOKK, March 13th 2009

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⁶ CERD/C/SWE/C=/18, para. 19

⁷ CERD/C/SWE/C=/18, para. 20

