

# Tjála • Notat

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## Report of the Sámediggi/Sámi Parliament of Norway to the Human Rights Committee - Supplementing and commenting on Norway's seventh periodic reports of States parties due in 2017 (CCPR/C/NOR/7) - International Covenant on Civil and Political Rights

HRCtte 122<sup>nd</sup> session (12 March – 6 April 2018) Geneva

### Introduction

1. Explanatory notes: This report follows Norway's replay to "List of issues prior to submission of the seventh Periodic Report of Norway" (CCPR/C/NOR/QPR/7)
2. The Sámediggi - The Sámi Parliament of Norway has participated in an open meeting about the reporting process in Norway. We have submitted inputs to the draft report of Ministry of Justice and Public Security. Norway's seventh periodic reports does not reflect our input in a satisfactory manner. This report covers the Sámediggi views on areas of relevance to the UN Convention and Civil and Political Rights.

### Sámediggi - The Sámi Parliament of Norway – General information

3. Sámediggi - The Sámi Parliament of Norway is elected by and among the sámi people. Established in 1989, the Sámediggi is the elected national assembly for the Sámi in Norway. Thirty-nine representatives are elected by seven constituencies every fourth year.
4. Anyone who perceives themselves as Sámi and who either has Sámi as their home language, or who has a parent, grandparent or great-grandparent with Sámi as their home language, can register on the Sámediggi electoral roll.
5. The Sámi people are a nation, and the Sámediggi is their national parliament in Norway. The Sámediggi deals with any matters considered to involve the Sámi people.
6. Since 1989, the Sámediggi has been granted decision-making authority in several areas. These include the compilation of Sámi teaching plans, questions linked to the Sámi language, the administration of cultural artefacts and a number of schemes linked to the funding of Sámi institutions and subsidy schemes. Please note that there are several variants of the Sámi language, e.g. North Sámi, South Sámi, Lule Sámi, Skolt Sámi and others. This is why there are references in this document to "Sámi languages".
7. The Sámediggi also has the authority to file objections related to land planning issues when these run counter to Sámi interests.

8. The Sámediggi is also the supreme electoral authority for elections to the Sámi parliament, and for the Sámediggi's electoral roll.

#### **Replies to the questions in paragraph 4**

9. On 26 March 2015, the Storting's presidency submitted Recommendation No. 216 L (2014-2015) for an Act relating to a National Institution for Human Rights in Norway and Recommendation 217 S (2014-2015) regarding Instructions for Norway's National Institution for Human Rights.
10. The Sámediggi has given its consent (2015) to the Storting decision about establish a new national institution for human rights in Norway. It was decided that the Gáldu Resource Centre for the Rights of Indigenous Peoples would be integrated with the new national institution from 1 January 2017.
11. The Sámediggi overall assessment is that the Act and the Instructions, along with the comments from the presidency, will collectively pave the way for a national institution to be associated with the Sámediggi and that it could be an important central institution in the Sámi community and in respect of the Sámediggi in the efforts related to Sámi rights. Further, that in its comments, the presidency states that the administration of the national institution must facilitate a good process with the ministry, the Sámediggi and Gáldu regarding constructive forms of cooperation with the experts at Gáldu, where the establishment of a local office, which could also call in smaller groups of consultants, would be a relevant policy instrument. The presidency also requires that the national institution be evaluated after four years of operation. The Sámediggi considers it natural that such an evaluation must also take into account the institution's ties with the Sámediggi and its legitimacy in the Sámi community.
12. The Sámediggi emphasizes that the national institution must ensure full competence and capacity about the human rights situation of the Sámi people. It is important to be present in Sámi areas and to be able to have Sámi languages as a daily working language.
13. The national institution must have a legal connection with the Sámediggi for ensuring legitimacy in the Sámi community and safeguarding the freedom and independence of the national institution. The new law has not established such a formal attachment, but the § 3 (tasks), § 5 (composition and appointment of the board), §8 (staff), and § 9 (advisory committee) , together with the presidency's remarks to these provisions establishes an actual connection of a national institution to the Sámediggi.

#### **Replies to the questions in paragraph 5**

14. The visibility of Sámi languages and Sámi institutions is important to confirm and support the Sámi identity and presence. Despite its historic presence, the Sámi population is being rendered invisible, due not least to an aversion towards rendering Sámi place names visible (Report Sámi Figures Relate No. 6 2013.)

#### **Replies to the questions in paragraph 6**

15. The report entitled *Discrimination against the Indigenous Sami Population, National Minorities and Immigrants: A Research Review* (Midtbøen and Lidén (2015:01 Institute for Social Research)) shows that every fourth Sámi-speaking man and every third Sámi-speaking woman has experienced ethnic discrimination.

## Replies to the questions in paragraph 8

16. The Sámediggi wishes to draw attention to Sámi children in child welfare care. Sámi children under public care are not registered by ethnicity, language or culture. This means that we do not have knowledge of the children's life situation, whether they are safeguarding their rights in relation to culture and language, or how public care has affected their health and living conditions.
17. Research on children in child welfare institutions reports high numbers of mental disorders. There is reason to believe that this also includes Sámi children. The Sámediggi is concerned about the children's right to a help offering the children's linguistic and cultural background. The Sámediggi therefore believes it is necessary to develop systems across Sámi children under child welfare, so that their rights as indigenous children can be sought and followed up.
18. The basic principles underlying the Sámediggi work to promote good health is that Sámi users of services are entitled to equal health and social services, that is, to services on a par with those provided to the general public, and that the national authorities bear the ultimate responsibility for ensuring equal health services to the Sámi people.
19. The Sámediggi has repeatedly experienced that assessments of Sámi patients' needs are overlooked when various services are being planned and implemented in Norway. State authorities has the responsibility to ensure that services adapted to Sámi patients are included in central health and social policy initiatives, and that strategies should be drawn up for further organisation, control and programmes to offer to Sámi patients. The Sámediggi experiences that the central authorities' initiatives only marginally touch on the challenges that Sámi patients face in their encounters with the health service.

## Replies to the questions in paragraph 9

20. The Sámediggi welcomes reports on domestic violence against women, in particular sexual violence, and sexual abuse in Sámi communities and the allocation of financial resources for prevention measures in the Sámi communities, including with a view to overcoming cultural and linguistic barriers, based on further research into the root causes.
21. Published research on violence in close relationships in the Sámi population indicate that the Sámi population reports a higher incidence of violence in close relationships than is the case among the Norwegian population. The Sámi population has reported a higher incidence of violence and abuse compared with the non-Sámi population (45% compared with 29.6%). Sámi women report a higher incidence of all types of violence than non-Sámi women (49.1% compared with 34.7%), and also compared with men (Sámi men 39.7%, non-Sámi men 23.2%). As in other surveys, women are generally more susceptible to sexual violence than men (16.8% compared with 4.2%). 16.8% of Sámi women reported childhood sexual violence, compared with 11.5% of the non-Sámi female population in the same areas. The corresponding figure for men, regardless of ethnicity, is 3.9%. In most cases, the assailant is someone known to the victim. In collaboration with the Government, the Sámediggi has initiated a research project entitled: Violence in close relationships in Sámi territories. The project will examine what expertise the support system has for dealing with Sámi who are subjected to violence and whether there are intrinsic and extrinsic factors in the Sámi community that impact the incidence of violence.

## Replies to the questions in paragraph 11

22. The Arctic University of Norway, UiT, The Faculty of Health Sciences conducted in 2017 a study of living conditions for people with disabilities in Sámi municipalities, as well as some

other municipalities in northern Norway. The survey has been carried out on behalf of the Children, Youth and Family Directorate and the Nordic Welfare Centre. The survey shows the same trends as previous living conditions studies. Persons with mental retardation in Sámi areas, like people with disabilities, generally have poorer living conditions than the population otherwise in areas such as housing, education, work, health, social networking and leisure. In addition, they are more vulnerable to bullying and violence than others. In some areas, there are also major differences between living conditions for people with mental disabilities with and without Sámi background, not least in terms of mental health and bullying. They also find gender differences in bullying, where women are more vulnerable than men.

23. Based on the findings in the study, they suggested some recommendations. Increased focus on bullying, threats and violence against people with developmental disabilities in general, and against those with Sámi background in particular, both in everyday life in different life arenas, and legally within the judiciary. Increased focus on prevention and treatment of mental health problems in people with mental retardation in general, and those with Sámi background in particular. Increased focus on organization of housing and other services for people with disabilities, to reduce standardization of living, and to increase opportunity to participate in society in line with the population otherwise.

### **Replies to the questions in paragraph 13**

24. The Ministry of Justice and Public Security decided to terminate the grant to the Legal Assistance Office of Inner Finnmark (Rettskjøpskontoret i Indre-Finnmark) with effect from the 1st of July 2015. The Ministry said that the legal aid scheme office does not meet the criteria for receiving grants.
25. Provided that the law firm's day-to-day activities are maintained, the Ministry considered that the Sámi population in Finnmark County will not get inferior access to legal aid or pay more for the legal aid they currently receive. The Sámediggi believes the closure affects Sámi legal aid challenges that fall under the International Covenant on Civil and Political Rights.

### **Replies to the questions in paragraph 19**

26. The Sámediggi points out that the Storting has assumed that the main purpose of the Finnmark Act is to protect the natural resources that form the basis for Sámi culture. It is emphasised that the objects clause of the Act states that land and natural resources in Finnmark County shall be managed particularly as a basis for Sámi culture, reindeer husbandry, use of non-cultivated areas, commercial activities and social life. The Sámediggi is remindful that this main purpose shall be rendered visible and actively be taken into account in following up the individual provisions of the Act.
27. The Sámediggi holds that §5 of the Finnmark Act entails a legal obligation to recognise collective and individual rights that the Sámi have acquired through immemorial usage of land and water in Finnmark County.
28. The Finnmark Commission was appointed by the King in Council on 14 March 2008. The Commission's mandate is to survey existing rights of usage and ownership that people in Finnmark County have acquired on the basis of immemorial usage. The Finnmark Commission has made studies and submitted its report in the following fields: Stjernøya/Seiland (2012), Nesseby (2013), Sørøya (2013), the Varanger Peninsula East (2014), and the Varanger Peninsula West (2015).

29. The Sámediggi points out that in the fields the Finnmark Commission has studied, it has concluded that the local population's rights date much further back than the State's claim to ownership of the land in Finnmark County. All the same, in the fields that have been studied, the Finnmark Commission has concluded almost exclusively that the Finnmark Estate owns all the land and that there are no grounds either for recognising individual or collective rights of usage of a nature different from those already recognised pursuant to §§22 and 23 of the Finnmark Act. The Finnmark Commission justifies its conclusions by saying that the State has made such active and extensive dispositions that this precludes property rights and the right of use for the local population. The Sámediggi is critical of the failure to find individual and collective rights. In this context, the Sámediggi considers it necessary to point out that the State's earlier dispositions as the claimant of proprietary rights in Finnmark County have largely taken place in contravention of local opinions, and been used as a policy instrument for a State policy aimed at the Norwegianisation of Sámi culture. In retrospect, the State authorities themselves have also recognised that this was derogatory and discriminating in respect of the Sámi. Such a policy and dispositions cannot be considered to create law in order to support the State's desire to own land in Finnmark County. In actual practice, this would mean that the Sámi bear the burden of proof for their rights. In recent decades, Norway has undertaken commitments under international law that are intended to protect the Sámi as a people and an indigenous people against abuse on the part of the authorities. The Sámediggi would therefore call attention to the fact that the State's dispositions of earlier years must be interpreted in the light of the protection against abuse and discrimination under international law when the subordinate rights are surveyed and recognised. The Sámediggi emphasises that these factors must be part of the statutory assessment made pursuant to §5 of the Finnmark Act and in the work of the Finnmark Commission.
30. The Sámediggi points out that in Recommendation No. 80 (2004-2005) to the Odelsting 'the Finnmark Act', the Storting's Standing Committee on Justice has stated that the ownership by the Finnmark Estate was partially intended to be of a temporary nature, cf. the Standing Committee on Justice's comments on §29 stating that: "*land which the Finnmark Estate is listed as owning, (can) in reality, be owned by others*". This approach is in keeping with the Sámediggi's position in the consultations about the Finnmark Act.
31. The Sámediggi points out that Storting has assumed that Sámi and local Sámi communities have collective proprietary rights to areas in Finnmark County, and certainly in the inner reaches of Finnmark County (cf., §§5, 9 and 10 of the Finnmark Act and the Storting's Standing Committee on Justice's memorandum of 21 March 2005). The Sámediggi maintains that this understanding is corroborated by the development of law both through Supreme Court practice and the development of understanding of Norway's obligations under international law in respect of the Sámi as a people and an indigenous people. The Sámediggi recognises that this must be given weight in the Finnmark Commission's assessment of the work to identify rights in Finnmark County. In the view of the Sámediggi, this has not been done by the Finnmark Commission thus far.
32. The Sámediggi confirms with great concern that the clarification of rights in Finnmark County under the auspices of the Finnmark Commission and the Tribunal for Finnmark County has been hard hit by the lack of funding from the State.
33. The Tribunal for Finnmark County has been in operation since 1 September 2014. The Tribunal handles disputes regarding rights that arise after the Finnmark Commission has studied a field.
34. The failure of the State to follow up the allocations for survey and recognition work is impeding the progress of the Finnmark Commission's work. This means that cases involving disputes being brought before the Tribunal for Finnmark County by issuing a writ of

summons must be postponed for a very long time. The Sámediggi has requested that the Government budget set aside funding for this as a separate line item so that the Finnmark Commission and the Tribunal for Finnmark County can carry out their work in keeping with the intention of the Finnmark Act.

35. The Sámediggi points out that more than ten years have passed since the Sámi Rights Council submitted its recommendation on land and resource rights outside Finnmark County (2007), without significant progress being made in the consultations on the legislative follow-up work. The Sámediggi expresses its concern about the lack of progress and considers it unfortunate that the recognition of the Sámi's collective and individual rights to land and resources outside Finnmark County still remain unclarified, at the same time as there is growing pressure on space and the resource base for Sámi culture, commercial activities and social life.
36. The Sámediggi emphasises that the adoption of the Finnmark Act established important legal and political principles for recognising, securing, managing and surveying the collective and individual rights to land and resources held by Sámi and others. The establishment of the consultation procedures between State authorities and the Sámediggi by Royal Decree in 2005 entailed a corresponding clarification of principle. The Sámediggi underscores that these established principles, along with experience of the Finnmark Act, mean that the Government sets the pace for the work to follow up the Sámi Rights Council's report from 2007.
37. The Sámediggi and the Government has been in of consultations since 2011 on legislation related to consultation and administrative procedures As for the remaining aspects, the status is that the Sámediggi is still waiting for the Ministry of Justice and Public Security's draft of the grounds for consultation on the proposal for an Act relating to the survey and recognition of rights to land and natural resources in traditional Sámi areas from Troms County and to the south. The same applies to the management scheme for State lands in Nordland County and Troms County. In addition, there are proposals pending for amendments to the Act relating to the exploitation of rights and entitlements in the state commons, the Reindeer Husbandry Act, the Minerals Act and the Planning and Building Act.
38. Reindeer husbandry is an exclusively and culture-specific Sámi industry. The Sámediggi is deeply concerned by the fact that the Government is not ensuring the implementation of its consultative obligations when decisions are taken in this area that is of such great importance to the Sámi. Reindeer husbandry is enshrined in a separate act of legislation, and reindeer husbandry's right to land is based on custom and immemorial usage. Land is a requirement for maintaining reindeer husbandry as we know it today. The greatest threats facing reindeer husbandry are growing pressure on land due to development projects and more traffic in reindeer grazing areas.
39. The Sámediggi and the Sámi Reindeer Herders' Association of Norway (NRL) was consulted on the White Paper/Meld. St. 32 (2016–2017) "Reindeer husbandry - Long tradition - unique opportunities". The Sámediggi means that reindeer husbandry forms one of the most important material grounds for Sámi culture and society, and that it should imply that the attachment of the representative organizations of the Sámi should be given a decisive emphasis on the implementation of legislative changes and measures of major importance to reindeer husbandry communities. In the consultation process, no agreement was reached on the legislative changes and measures that the Government wishes to implement. This means that the measures in the White Paper do not have legitimacy in Sámi communities.
40. The Sámediggi is concerned about the direction of state reindeer husbandry policy over time, where action is taken without anchoring in the Sami community. Land consumption and less

Sámi land-use is the main threat to a future viable reindeer husbandry, and the Sámediggi believes there is a need for a stronger focus on protecting the areas of land for reindeer husbandry.

41. Amendments in fisheries legislation (the Marine Resources Act, the Fisheries Participation Act and the Finnmark Act) regarding the rights of Sámi and others to fish in the ocean off the coast of Finnmark County were adopted in 2012. The legislative amendments entail provisions relating to the right to fish from smaller boats in traditional Sámi areas, emphasis on Sámi fishing and its importance for local communities, the identification of fishing grounds by the Finnmark Commission when claims are filed for same, and that a Fjord Fishing Board be established and that 50 per cent of its members be appointed by the Sámediggi and be charged with improving fishing along the coast and in the fjords. Moreover, regulations were stipulated to govern a ban on fishing from vessels of more than 15 metres in length on the fjords to ensure that the smaller fjord fleet is not outcompeted and forced away from its traditional fishing grounds.
42. The Sámediggi endorsed the amendments to the fisheries legislation, at the same time as it pointed out clearly that the Sámi have established rights to fisheries and other renewable marine resources in the Sámi coastal areas. These rights are based on the Sámi's presence as well as on the historic usage of their traditional territories and rules of international law regarding indigenous peoples and minorities, (cf. ILO C169, Articles 15 and 13, cf. ICCPR, Article 27, and the Lapp Codicil of 1751, as well as the Land Acquisition Decree of 1775). This was not fully recognised in the Act. Accordingly, the Sámediggi's endorsement of the amendments to the fisheries legislation does not encompass the Norwegian Government's interpretation of the legal grounds for the rights of the Sámi and others to fish in Sea Sámi areas. This is a very serious matter indeed, since in actual practice, it does not recognise the Sea Sámi's right to their culture's material subsistence, which is at variance with ILO C169 and the Declaration on the Rights of Indigenous Peoples. The fact that local rules of customary law and proven historical use of fjord and coastal areas establish rights in coastal waters and at sea was further confirmed by the Norwegian authorities' victory against Great Britain in the International Court of Justice in The Hague, where this was decisive for Norway's assertion of sovereignty.
43. The Sámediggi refers to its decision on Item SP 19/12 on Prop 70 L (2011-2012) the Coastal Fishing Committee, which ascertains that the Sámi have established rights to fishing and other the marine resources along the coast off Sámi areas. The Sámediggi maintains that Sámi and others living along the coast are entitled to fish based on immemorial usage and local customs. The rules of international law in respect of indigenous peoples and minorities also grant the right to fish on an independent basis. It is underlined that the legislative amendments ensuing from Prop 70 L (2011-2012) cannot be understood as being contradictory to established fishing rights. The Sámediggi will strive to ensure full statutory recognition of fishing rights for coastal and fjord residents in Sámi areas.
44. The Sámediggi strongly underscores the urgent need to implement special measures for sea salmon fishing. Sea salmon fishing is a Sámi industry, and it is an important bearer of language and culture. The Sámediggi has noted the formidable decline in traditional sea salmon fishing, in terms of both the number of fishing grounds and the number of fishermen.
45. The Sámediggi finds today's salmon regulations to be so restrictive that they threaten the very existence of sea salmon fishing. This has been the situation since 2008. The Sámediggi has withheld its endorsement from the current fishing regulations. Sámediggi insist that the Ministry of the Environment ensures that the rights holders are involved along with the Sámediggi in the work to regulate salmon fishing in Nord-Troms County and Finnmark

County.

46. When permits are considered for the establishment of new fish farms, the rights to traditional sea salmon fishing in the areas must be considered, especially if the fishing grounds can be affected. The Sámediggi and the Government do not have real consultations on the number of new fish farms in Sámi fjords.
47. In the Deatnu river, one of the main rivers in Sápmi, the local fishing is reduced for the benefit of tourists. The reduction was set due to a new agreement between Norway and Finland, without a consent from the Sámediggi and the Sámi Parliament of Finland and the local Sámi community.
48. The Sámediggi refers to the fact that in 2009, the Storting adopted a new Minerals Act without the Sámediggi's endorsement, making it extremely challenging for the Sámediggi to carve out a clear role relative to the activities governed by the Minerals Act and the appurtenant regulations. The Sámediggi recognised at the time and is still of the opinion that the Minerals Act does not meet the State's obligations under international law in respect of the Sámi. This is related to its failure to protect the natural basis for Sámi culture, its failure to protect the Sámi rights holders involved, the Sámediggi's legitimate participation in decision-making processes, and the lack of necessary protection of benefits for the local population of the fruits of exploitation as mineral activities commence. The Sámi Parliament sees that current legislation does not ensure predictability for all parties and allow co-existence between traditional and new industries.
49. To ensure compliance with commitments under international law, the Sámediggi initiated the establishment of a committee to evaluate current schemes, measures and regulations related to the Sámi languages. On 19 September 2014, in collaboration with the Sámediggi, the Government established the Sámi Language Committee.
50. The Committee presented its final report "Public Report 2016: 18 – the Language of the Heart" on 10 October 2016. The report is 340 pages long including attachments, and contains proposals for legislation, measures and schemes for the official Sámi languages (North, Lule and South Sámi), which are appropriate for improving the situation for Sámi, especially in kindergarten, the school system and the health care sector. The Committee has attached importance to the Sámi languages being under threat. More language users are needed to ensure that the languages continue to be viable. The report indicates that children's language learning is the key to revitalising Sámi languages. More use and a strengthening of the Sámi languages in kindergartens and schools will be among the most important initiatives. The Committee has considered how modern technology can be used to raise the status of the languages and make it easier to offer a good range of services to Sámi speakers. The report indicates that there is a need for more personnel with Sámi language competence in the provision of public services, in health systems, school systems etc., and suggests measures to improve recruitment. In the meantime, more additional services must be facilitated, e.g. distance learning at school, distance consultations in the health and care sector, interpretation and translation. The Committee's main objective is to ensure that proposed legislative amendments and measures will help promote more Sámi language users and that the Sámi languages will be assured a future as viable languages. The Committee's recommendation is unanimous.
51. During the reports hearing process, 132 submissions were delivered and there has been arranged seven hearing seminars throughout Norway. The Sámediggi and the Ministry of Local Government and Modernisation are working together to review all hearing submissions. The follow-up regarding this report from national authorities after the hearing process has just started. The report shows that Sámi languages are in a vulnerable state, and

positive measures need to be provided as soon as possible.

52. In his report on the situation of the Sámi, dated 6 June 2011, former UN Special Rapporteur for Indigenous Rights James Anaya stated in his recommendations that:  
“The Special Rapporteur recommends that the Nordic States and the Sami parliaments cooperate to redouble efforts to revitalize Sami languages and strengthen programmes for education in Sami languages and culture. The States should provide immediate and adequate funding to the Sami parliaments to assist in the implementation of concerted measures towards these ends. Among other measures, the States should increase the capacity and number of teachers proficient in the Sámi languages.”
53. The Sámediggi recommends the HRC to question the State party on how they will review the proposals in this report.
54. The Sámediggi maintains that there should be more oversight of Sámi training, and not least of the quality of Sámi training programmes. Oversight over the training programmes in Norway is the responsibility of the county governors' offices. The Sámediggi plays no part in these processes. Oversight is carried out in accordance with the legislation that covers schools. The Sámediggi wants to play a part in the oversight of Sámi training in relation to the intensity (frequency) and the scope of oversight. The Sámediggi aspires to help determine where and how oversight is carried out.
55. The Education Act and the Free School Act do not adequately guarantee Sámi educational programmes. The right to a Sámi school is not an individual right for the pupils, but is limited, based on geography and the number of pupils who want such an offer. Only pupils who reside in a Sámi district have an individual right to instruction in Sámi and through the medium of Sámi. Pupils who reside outside a Sámi district have an individual right to instruction in Sámi as a subject, while the right to be educated through the medium of Sámi in all subjects depends on whether there are 10 or more pupils in the municipality who request such training. The Sámi Language Committees final report "Public Report 2016: 18 – the Language of the Heart" recommends that this number is reduced to three. Pupils who reside outside a Sámi district do not automatically have the right to instruction in Sámi and through the medium of Sámi, and in many cases, parents/guardians must work hard to request and argue in favour of instruction in Sámi in order for the children to have this right satisfied. This limitation cannot be perceived as anything but discriminatory relative to Sámi pupils' opportunities to choose which school to attend. This situation was also addressed in the UN Human Rights Council's report dated 31 August 2009, which states: "Arbitrary administrative or legislative requirements, for example requiring a minimum number of indigenous students in schools outside indigenous communities before such services are provided, are not sufficient basis for determining whether it is possible to provide education in indigenous cultures and languages for indigenous children living outside their communities. In order for a State to be able to attribute its failure to provide such education services to children living outside their communities, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, this obligation."
56. Many Sámi communities are small local communities. This implies that large parts of the population that grow up in Sámi areas, where language and culture stand strong and where the children are entitled to instruction in Sámi and through the medium of Sámi, are forced to move to get an education and/or to find jobs to earn a living. The Sámi population of Norway must follow societal trends to keep up with the majority population. This implies a migratory pattern where a large number of Sámi children live outside the Sámi territories, and their needs and rights must be protected on a par with needs and the rights of the Sámi children who grow up in Sámi areas.

57. The Sámi Language Committees final report "Public Report 2016: 18 – the Language of the Heart" recommends that municipalities and other school owners shall be committed through the Education Act to inform parents about the right to a Sámi school. The Sámediggi recommends the HRC to question the State party on how they will ensure that Sámi children and young people are given an individual right to instruction in Sámi and through the medium of Sámi, regardless of where they reside and how many others want similar instruction.
58. The Sámi school system does not have Sámi teaching materials in all subjects, despite the fact that Sámi children are entitled to instruction in Sámi and through the medium of Sámi. The Sámediggi would like Sámi teaching materials in all subjects, in South Sámi, Lule Sámi and North Sámi, that have a scope as broad as that of teaching materials in Norwegian. The teaching materials should be of high quality. With the current state allocations for the development of Sámi teaching materials and continuous updating of curricula, it is not possible to develop a satisfactory offer of Sámi teaching materials. The scope of digital Sámi teaching materials is severely limited. Society's demand for digitised teaching materials also means that the production of teaching materials is becoming more expensive than it used to be. This means the State's allocations must be increased correspondingly.
59. The evaluation of Knowledge Promotion – Sámi (NR Report no. 1/2012 Knowledge Promotion 2006 Sámi – towards a school based on equality?), shows that teachers perceive the shortage of Sámi teaching materials as very demanding because the teachers have to make some teaching materials themselves, and this adds to their workload. The Sámediggi is concerned about the teaching material situation and is of the opinion that the shortage of Sámi teaching materials makes pupils see Sámi as having lower status, jeopardising Sámi children's right to good quality schools.
60. Sámi teaching materials are also not always possible to share with others because of differences in curriculums between countries and legal framework regarding copyright. The Sámi Language Committees final report "Public Report 2016: 18 – the Language of the Heart" recommends that a Nordic cooperation for development of teaching materials should be established, as well as adjusting copyright laws to make sharing easier.
61. The Sámediggi recommends the HRC to question the State party on how they will assure access to Sámi teaching materials under the Education Act and the Free School Act, just as access to teaching materials in both variants of Norwegian is assured today. The Government needs to increase allocations for the development of teaching materials since Sámi teaching materials cannot be produced without support from the State.
62. There is a serious lack of Sámi-speaking teachers, specialists in special education, among other fields, and other personnel to work in the Sámi school system. This is a serious problem for access to and the quality of Sámi schools. The Government recently raised the requirements for admission to teachers' training programmes. This means that many applicants to teachers' training programmes did not qualify because their marks in mathematics were not good enough. The low marks among Sámi applicants may be due to poor basic education due to a shortage of Sámi teaching materials and a shortage of qualified teachers, as well as to the fact that those who applied had not got the instruction to which they were entitled. The Sámi University College could not launch the only Sámi teachers' training programme in the country in autumn 2016 because there were not enough qualified applicants. The Sámi community needs every single potential resource person, because the Sámi population accounts for such a modest percentage of the total population of Norway.

63. The Sámediggi recommends the HRC to question the State party on how they will implement initiatives to promote the recruitment of individuals with competence in Sámi language and culture to academic programmes for teachers, special education and other personnel in the Sámi school.
64. Sámi pupils with special needs are a vulnerable group in the educational system. These pupils depend on getting an offer of instruction based on their language, their cultural values, and where the offer of educational programmes is also adapted to them. The parents/guardians of children with special needs frequently report that school owners face challenges with arranging a special education adapted to their educational programmes, which are also in Sámi and based on Sámi culture. In addition to this, some parents are recommended their children should not receive training in Sámi at all.
65. The Sámediggi recommends the HRC to question the State party on how they will strive to protect the overall offers available to Sámi pupils with special needs/disabilities.
66. The child will have the right to instruction in the subject Sámi wherever he or she lives in Norway, but only if the parents so request. For a child who has been moved away from a Sámi municipality, the right and the opportunity for instruction through the medium of Sámi in all subjects, in accordance with the Sámi curriculum “Knowledge Promotion – Sámi”, and on the basis of Sámi language, culture and society, depend on how many other child in their new municipality request instruction in Sámi and through the medium of Sámi. The Sámi child will therefore lose his or her individual right to instruction in Sámi and through the medium of Sámi in all subjects, depending on decisions made by the child welfare authorities as to whether the child will be moved from a Sámi municipality to a municipality outside Sámi territory.
67. The Sámediggi recommends the HRC to question the State party on how they will ensure that the necessary legislative amendments are put in place so that Sámi children do not lose their rights to instruction in Sámi and through the medium of Sámi when the child welfare services take custody of children.
68. Free-standing schools are, under the Free School Act, not obligated to provide courses in Sámi and through the medium of Sámi. In reality, this implies curtailing choices for Sámi pupils who would like instruction in Sámi and through the medium of Sámi. Today, many Sámi pupils experience that they do not get instruction in Sámi when they attend free-standing upper secondary schools. A free-standing school can offer courses in Sámi if they have applied for it and been licensed for this by the Directorate for Primary and Secondary Education. However, the school is not obligated to apply for such an authorisation.
69. The Sámi Language Committees final report "Public Report 2016: 18 – the Language of the Heart" recommends that free-standing schools should be obligated to offer courses in Sámi under the Free School Act. It should also be a possibility under the Free School Act that the authorities can demand as a term for approval that the school has to offer an education through the medium of Sámi.
70. The Sámediggi recommends the HRC to question the State party on how they will amend legislation and regulations so that Sámi pupils' right to instruction in Sámi is protected. The Free School Act is to provide as least the same rights to Sámi pupils as the Education Act does.
71. Sámi schools and youth centres are under continuous threat of being closed down. These schools are often located in sparsely populated areas and have relatively few pupils, entailing

that municipalities and the national authorities give little priority to the Sámi schools when making budgetary allocations.

72. Examples from the past year are Hattfjelldal School and Sirma School in Tana. Both these schools have Sámi pupils exclusively and the teaching is based on the Sámi language and culture. Continued operation of these two schools has been secured for the time being. There are several examples of closures of district schools in which the majority of the pupils were Sámi. It is not right to use the Sámi settlement structure, i.e. where it is natural to be spread far and wide, and the resultant small numbers of students, as an argument for reducing the number of district schools with Sámi options. Schools for Sámi pupils must take into account the traditional Sámi social structure, settlement structures located near traditional industries such as reindeer husbandry, farming, duodji, hunting and fishing.
73. The closure of Sámi schools in rural districts entails a systematic reduction in educational programmes for Sámi children. The Sámediggi recommends the HRC to question the State party on how they will ensure sufficient budgetary allocations to school owners so that Sámi schools can be maintained.
74. Among Sámi boys and young men, a high proportion do not start or complete upper secondary educations. It is conceivable that this is because the school system has not adapted to the needs of this group.
75. The Sámediggi recommends the HRC to question the State party on how they will ensure that the national programme for better implementation of upper secondary education includes initiatives that take account of culture and the cultural differences' potential influence on young men's choice not to take upper secondary education.
76. The Norwegian authorities regularly establish national committees to evaluate current schemes, measures and regulations, and propose new appropriate legislation and other measures. As a result of Norway's ratification and incorporation of international legislation stating indigenous rights, and Norway's own Constitution, these committees should have Sámi representation whenever the subject for evaluation is relevant for the Sámi people, and not only when the subject is specific for the Sámi. However, history has shown that coincidences decide whether or not Sámi representation is obtained.
77. One recent example from 2017 is the establishment of a Committee to evaluate the existing Education Act and propose new legislation. In spite of the fact that Sámi pupils and their parents and teachers daily experience challenges regarding Sámi education, and national authorities are well known with these challenges, no Sámi representatives were invited to participate in the Committee. The Sámediggi has been invited to name one or two referents to provide the Committee with information.
78. Another recent example is the process around the National Strategy on Competence Politics (2017-2021). The strategy aims to contribute to provide individuals and businesses with a competence that will give Norway an efficient use of its human resources. The Norwegian labor market is continuously developing, providing both challenges and opportunities. A Committee was established to analyse what kind of competence the Norwegian society needs. The Sámi society is part of the Norwegian society, and although this has been recognized in the strategy, there is no Sámi representation in the Committee that can provide information about the existing competence in the Sámi society, and what competence Sámi society will need in the future.
79. One aspect of this, that has been given attention in Norwegian politics, is the Arctic Strategy, for development of the Arctic region. As a consequence of the fact that the Sámi inhabit

most of Norway's Arctic region, the Sámi should be highly involved in all aspects regarding development of the Arctic region as well as development of competence in the region.

80. The Eastern Sámi (also referred to as Skolt Sámi) are in a highly vulnerable situation that is critical to their culture. Measures to ensure the Eastern Sámi's material cultural platform, as proposed by the Sámi Rights Council and the Sámediggi, have not yet been followed up by the Norwegian Government.
81. The Sámediggi points out that in its resolution to endorse the Finnmark Act in Item 19/05, it established that the protection of Sámi rights in East Sámi areas was one of the steps that had to be taken in the further efforts to protect rights in Finnmark County. The Finnmark Act establishes that the local population along the Neiden watercourse holds special rights to fishing on the basis of immemorial usage and local customs, and that more detailed regulations shall prescribe further rules concerning the management and exercise of the fishing. The Sámediggi emphasises how important it is for this work to be followed up, and that it be done in a manner that ensures East Sámi culture, commercial activities and social life in particular.
82. The Sámediggi refers to the fact that in 2009, the Storting adopted a new Minerals Act without the Sámediggi's endorsement, making it extremely challenging for the Sámediggi to carve out a clear role relative to the activities governed by the Minerals Act and the appurtenant regulations. The Sámediggi recognised at the time and is still of the opinion that the Minerals Act does not meet the State's obligations under international law in respect of the Sámi. This is related to its failure to protect the natural basis for Sámi culture, its failure to protect the Sámi rights holders involved, the Sámediggi's legitimate participation in decision-making processes, and the lack of necessary protection of benefits for the local population of the fruits of exploitation as mineral activities commence. The Sámi Parliament sees that current legislation does not ensure predictability for all parties and allow co-existence between traditional and new industries.
83. The company Nussir ASA is planning a copper mine in Kvalsund Municipality in Finnmark County. On 13 September 2011, the Sámediggi submitted an opposition pursuant to the Planning and Building Act to the zoning plan for Nussir and Gumpenjunni (Ulveryggen/The Wolfridge) in Kvalsund Municipality. The Sámediggi had consultations (2014-2017) with the Norwegian Environment Agency and the the Ministry of Climate and Environment on the treatment of the application submitted by Nussir ASA for permits for sea waste disposal, etc. pursuant to the Pollution Control Act. The Sámediggi has not given their consent to the proposed mine in Kvalsund. The same is the case with plans for a new quartz quarry in Nasafjell in Rana Municipality in Nordland County.

## **Replies to the questions in paragraph 20**

84. The Sámi, as an indigenous people, have the right to participate in important political issues through consultations (negotiations). This principle is reflected in international law as well as in the consultation agreement between the Sámediggi and the Government of Norway (2005).
85. In Norway, consultations are to take place between the Sámediggi and the Norwegian authorities. The goal is for the parties to reach agreement. This means that the Sámediggi is to have full insight into the authorities' assessments and proposals before consultations commence.

86. The consultation agreement (2005) does not cover financial initiatives or budgetary measures. It is the Sámediggi's opinion that financial parameters and initiatives are of crucial importance and have a direct impact on the Sámi community. This is important, not least in the areas of Sámi art and culture, and Sámi language. This includes, for example, cultural centres and cultural institutions, museums, theatres, festivals and language centres, where initiatives are generally linked to financial instruments. The Government and the Sámediggi are currently in consultations to frame such budgetary procedures.
87. The Sámediggi refers to the Human Rights Committees Concluding observations to Norway in 2006 (ref. CCPR/NOR/CO/5) where paragraph 5 mentions that: "The Committee welcomes the Agreement entered into by the State party and the Sameting on 11 May 2005 setting out procedures for consultation between central government authorities and the Sameting, as well as the adoption of the Finnmark act, which is in furtherance of articles 1 and 27 of the Covenant".
88. The Ministry of Municipalities and Modernization and the Sámediggi have ongoing consultations on the legalization of consultation rules in the Sam act. This work is still not finalized, partly because the Ministry and the Sami Parliament have different understandings of how effective participation under Article 27 should be interpreted in the light of Article 1 (Ref. *Apirana Mahuika et al. Vs. New Zealand*, Communication No. CCPR / C / 70 / D / 547/1993, paragraph 9.2).
89. The Sámediggi means that effective participation in accordance with Article 27 of the CCPR, interpreted in the light of Article 1, may mean that process and content must be fully viewed in context and that in cases that are highly interfering in internal Sámi relations or in the resource base of Sámi culture in an area, consent must be obtained (ref. *Angela Poma Poma vs. Peru*, Communication No. CCPR / C / 95 / D / 1457/2006, para 7.6). Without such an understanding, it becomes very difficult in practice to achieve effective participation in the form of consultations that are essential to the content of the decisions. The Sámediggi refers the concept "Consultation to Obtain Free Prior and Informed Consent" from UNDRIP Articles 19 and 32, and others has also been followed by HRC in its statements.
90. In November and December 2017, the Norwegian Supreme Court issued two judgments in which decisions of the state and regional authorities about internal Sámi relations and about the intervention of individuals belonging to the Sámi people. These two cases are the implementation of a road project to the Reinøya - Langsund connection (HR.2017-2247-A) and orders for reduction of reindeer population to a reindeer owner, and thus a question of internal burden sharing between Sámi reindeer owners by reduction of a reindeer population due to the pasture (HR-2017-2428-A - *Jovsset Ánte Sara*). In both cases, consultations with affected Sámi or the Sámediggi were not conducted, which preserved the requirement for effective participation with the possibility of consent. The Supreme Court has chosen not to consider or emphasize that consultations have been conducted to achieve effective participation. The Sámediggi finds that these judgments seriously deprive or undermine Sámi and the Sámi people's right and opportunity to by themselves protect and develop their culture with languages, industries and social life.
91. In the Reinøya-Langsund connection case (HR.2017-2247-A), the Supreme Court assumes that it is sufficient that the Sámi parties (Reindeer grazing district) have "made their views known" in the decision-making process through written statements and inspections of the

plan area. This, in the view of the Sámediggi, is clearly contrary to the CCPR art. 27 and art. 1.

92. In the reindeer population reduction case, *Jovsset Ánte Sara*, (HR-2017-2428-A), the Supreme Court majority assumes that the decision-making process for a new reindeer husbandry act, with the authority of the state to reduce the reindeer population proportional between the reindeer owners, regardless of whether this may lead to the denial of certain reindeer owners their livelihood, provided adequate participation by the Sámediggi and the Sámi Reindeer Herders' Association of Norway (NRL), because seven consultation meetings were held in the preparation of the reindeer husbandry Act that provides the basis for such government decisions. The majority of the Supreme Court attaches unilaterally weight to the number of consultation meetings without considering the content of these meeting and the importance of the question being considered affecting pure internal Sámi relations.
93. In the reindeer population reduction judgement, it appears that the Supreme Court is aware that the Sámediggi and the the Sámi Reindeer Herders' Association of Norway (NRL) were not presented to written law preparations and notices of statutory provisions, and therefore did not have full information about the proposal and its consequences. Furthermore, the Supreme Court shows that they are aware that the Sámediggi and the NRL did not give consent to the bill. In spite of this, the Supreme Court states that the process has been in accordance with CCPR Article 27 as regards the requirement for effective participation in the decision-making process. In the view of the Sámediggi, this is a conclusion by the Supreme Court, which in no way entails an effective participation process with Consultation to Obtain Free Prior and Informed Consent. The Supreme Court thus gives the State the right, under the Reindeer Act, to make decisions about matters that concern only internal Sámi questions and to do this against the will of the Sámediggi. In addition, the Supreme Court states that such denial of a reindeer owner's culture and livelihood is justified in the interests of the Sámi people themselves. The Sámediggi finds that this judgment is contrary to what follows from HRC's statement in *Lovelace vs. Canada* (Ref. Communication No. 24/1977) and *Kitok v. Sweden* (Communication No. 197/1985) that the refusal of reindeer owners to exercise their culture must be "reasonable and objective justification" as the Supreme Court's minority emphasizes. However, the Supreme Court judgment gives the state the right to exercise direct paternalism over the Sámi people, which clearly contradicts the very purpose of effective participation in the form of Consultations to Obtain Free Prior and Informed Consent by CCPR art. 27 and art. 1.
94. The Sámediggi is of the opinion that HRC must urge Norway to establish, in conjunction with the Sámediggi, a law for Consultations to Obtain Free Prior and Informed Consent, so that the right to effective participation is ensured in accordance with the CCPR art. 27 and 1, and not reduced to a question whether a Sámi party has "made its views known" or a question about what the states think best serves the Sámi people.
95. The Norwegian Water Resources and Energy Directorate (NVE) has not paved the way for consultations by providing full disclosure in connection with energy development projects in Sámi territories. The Sámediggi has not been given access to the Directorate's proposals for resolutions and assessments, not least with a view to how the right to natural resources is to be safeguarded under ILO C169, Article 15, cf. Article 27 of the UN's International Covenant on Civil and Political Rights (ICCPR). In most energy development matters, it has not actually been possible to reach agreement or give consent because the Sámediggi has not known what the Directorate has intended to adopt.

96. As regards energy-related items in which the Ministry of Petroleum and Energy has had decision-making authority or where they have dealt with appeals of NVE decisions, the Ministry has demonstrated a greater willingness and ability to share assessments and proposals through genuine consultations. The Ministry of Petroleum and Energy is willing to consider the legal obligations related to (1) the extent of cumulative effects of earlier and planned interventions, (2) the extent of genuine and mitigating measures, and (3) the necessity of the measure for public purposes that are proportional to the cultural and rights-constraining effects of the measure, (4) as well as the degree of adaptation required for consultations to obtain consent. Such assessments with emphasis on consideration for Sámi culture have been constructive in respect of consultations as they increase the chances of reaching agreement.
97. The Sámediggi did not give their consent to the Ministry of Petroleum and Energy decisions to give permit to wind power projects named Fosenuitbyggingen and Stokkfjellet. The Sámediggi argued and agreed on the Ministry decisions of not to allow Kalvvatnan and Fálesrášša wind power plans.