



To: UN Committee on the Elimination of Racial Discrimination

Attn: Secretariat of the Committee on the Elimination of Racial Discrimination

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**Observations by Sámi bivdo – ja meahcástan searvi (Sámi Association for Hunting and Fishing, and Other Traditional Utilization of Sámi Lands and Resources) with regard to Norway's 21<sup>st</sup> and 22<sup>nd</sup> Periodic Reports to the UN Committee on the Elimination of All Forms of Racial Discrimination**

**NORWAY: LEGAL BAN ON SÁMI CULTURAL PRACTICES AND CUSTOMARY USE OF BIO-DIVERSITY: TRADITIONAL SÁMI SPRING DUCK HUNTING**

*Sámi bivdo – ja meahcástan searvi* - the Sámi Association for Hunting and Fishing, and Other Traditional Utilization of Sámi Lands and Resources – a Sámi non-governmental organization - respectfully brings the following long lasting discriminatory legal ban on traditional Sámi hunting practices in Norway to the attention of the UN Committee on the Elimination of Racial Discrimination.

### **Introduction**

The Sámi are the indigenous people of Finland, Norway, Sweden and the Kola Peninsula in the north-western part of Russia. The Sami is one people residing across the national borders of four countries, with their own distinct identity, language, culture and cultural expressions, social structures, traditions, livelihoods and history. In Norway, the Sámi settlement area stretches from Finnmark County in the north to Hedmark County in the south.

In Guovdageaidnu/Kautokeino municipality in Norway, duck hunting during the spring season is a deep-rooted Sámi customary cultural practice. Spring duck hunting in Guovdageaidnu/Kautokeino usually takes place during a period of approximately two weeks in May - June; the exact period is determined by the weather, ice and temperature conditions. A legal ban on this Sámi customary cultural practice has been in place since the 1950's.

The municipality of Guovdageaidnu/Kautokeino is located north of the Arctic Circle, in the Arctic highlands of Northern Norway, with a total population of approximately 3 000 inhabitants. A significant part of the Finnmark plateau (Finnmarksvidda) is located within the boundaries of the municipality. At 9,704 square kilometers, it is the largest municipality in Norway, and a total of approximately 10,000 lakes cover 640 square kilometers. The Guovdageaidnu/Kautokeino River runs north from a lake at the Finnish border, through the villages of Guovdageaidnu and Maze before it leaves into Alta municipality and changes name to the Alta River. The temperate Arctic climate conditions and the large number of lakes and rivers in Guovdageaidnu/Kautokeino make it an ideal

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habitat for breeding migratory ducks. The spring duck hunting takes place along the many lakes and waterways in the municipality.

The Sámi hunters have developed an exceptional knowledge-base and skills through generations. Hunters are able to accurately identify duck species, including the gender of individual birds, from a long distance, including birds that are in flight. This is a prerequisite for being able to carry out the hunt in accordance with the traditional way of hunting, as only selected species are targeted; some duck species are not included in the hunt, and usually female ducks are not killed due to their reproductive role. The traditional knowledge of Sámi hunters also includes in-depth knowledge about the nature and behavior of the various duck species, which enables them to carry out a safer and more efficient hunt and thereby minimizing the risk of wounding ducks. The hunters' close relationship to and knowledge of the local environment also makes them extremely valuable observers and caretakers of the local habitat: For instance, together with the Sámi reindeer herders, the Sámi duck hunters were among the first to identify signs of climate change in their respective environment.

Originally spring duck hunting was a pure necessity for the permanent dwelling Sámi people as there were few other sources of fresh meat or other sources of protein during the spring; reindeers are not slaughtered in the spring as it is the calving season, and the ice on lakes and rivers is too thin and unsafe for ice fishing. Over time the spring duck hunting has become an integral part of the locale Sámi culture in Guovdageaidnu/Kautokeino; it has become an important inter-generational local cultural institution. For instance, hunters usually provide the local nursing home for elderly people with spring ducks, so that elderly people can be served traditional seasonal food. Children and youth, in particular boys, join their older relatives for hunting trips at an early age. In this way, the traditional knowledge associated with this kind of hunting is transferred to new generations.

Traditional spring duck hunting has been in practice for a very long period of time in Guovdageaidnu/Kautokeino municipality. Since the 1950's hunting during the spring season is not permitted under Norwegian legislation. The municipality of Guovdageaidnu/Kautokeino has, since the 1950's, actively been advocating in favor of legalizing tradition Sámi spring duck hunting; the Sámi constitute the majority in Guovdageaidnu/Kautokeino municipality. Spring duck hunting is a traditional practice of the permanent dwelling Sámi population in Guovdageaidnu/Kautokeino; the semi-nomadic Sámi reindeer herding population do not hunt ducks. Hence, only a part of the population in Guovdageaidnu/Kautokeino municipality is engaged in the traditional spring duck hunting.

In accordance to the traditional guiding principles, the hunters will usually only shoot that which is required for family meals, and hence not shoot indiscriminately - as often is the case when non-Sámi recreational hunters are hunting ducks during legalized autumn duck hunt. The Sámi in Guovdageaidnu/Kautokeino do not hunt ducks during the legalized autumn hunting period, due to various reasons. During the autumn, the Sámi usually carry out other forms of hunting, including moose-hunting. The legalized duck hunting is carried out in August - September; the hunting times are largely determined by climate conditions in the southern parts of the country. In the municipality of Guovdageaidnu/Kautokeino - which is situated above the Arctic Circle - ducklings are often not yet able to fly when the legalized autumn hunt starts; Sámi hunters are reluctant to participate in the autumn hunt, including because they view autumn hunting as unsustainable and merciless slaughter because the offspring/ducklings are unable to fly when the autumn hunt starts.

Studies demonstrate that spring duck hunting in Guovdageaidnu/Kautokeino does not have any adverse impact on the duck population; the total amount of ducks taken down during the spring duck

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hunting season is lower than what is the case during the autumn hunt. Hence, if the Sámi were to start to hunt during the autumn season, the significantly higher ducks would have been killed.

We don't see any convincing environmental or biological reasons or arguments in favor of the legal prohibition of this Sámi customary cultural practice. The legal ban was introduced at the time when very severe discriminatory policies towards the indigenous Sámi people were carried out in Norway. Historically, the aim of Norway's discriminatory policies towards the indigenous Sámi people was to annihilate the Sami culture and language, and assimilate the indigenous Sámi people into Norwegian society. This policy was practiced since the second half of the 19th century and is often referred to as the Norwegianisation' policy. This also resulted in a discriminatory application of legal standards and principles. Sámi rights to lands and resources was regarded as irrelevant in legal terms, as our immemorial occupation and use of land and resources did not establish any right under the Norwegian system. The State held title to 96 per cent of the land in Finnmark County - covering an area the size of Denmark.

The Norwegianisation policy came to a head in connection with the Alta-Kautokeino conflict around 1980. This arose from the construction of a dam that had adverse impact on traditional livelihoods. The conflict culminated with six hundred police officers clearing a Sámi encampment and forcibly removing hundreds of demonstrators on 15 January 1981. The dispute about the hydroelectric development of the Alta-Kautokeino watercourse highlighted the need to clarify the State's relationship to Sámi culture and the legal position of the Sámi people. For the Norwegian authorities, this conflict demonstrated that there was a need to accommodate Sami rights and to engage in dialogue with the Sámi people.

In 1988, a specific section on Sámi rights was included in the Constitution of Norway, establishing constitutional guarantees for Sámi language, culture and society. The Constitution states that it is the obligation of the State to create the conditions necessary for the Sámi to protect and develop their language, their culture and their society. The establishment of the Sámi Parliament in 1989 is regarded as an important part of the implementation of the Constitution.

The legal prohibition of traditional Sámi spring hunting was introduced during the time of the State's Norwegianisation policy towards the Sámi people. It has been maintained despite of many positive political and legal developments related to the situation of the Sámi people. Hence, the matter should be reviewed in light of international human rights standards, in particular standards related to racial discrimination and indigenous peoples' rights.

#### **National Legislation and Temporary Measures**

Since the 1950's duck hunting in the spring is not permitted under the Norwegian Wildlife Act. Traditionally, only the Sámi have been hunting ducks during the spring; hence, the legal ban has only affected the Sámi. The Act states that that hunting permissions should not be given during the breeding season [the spring]: This constitutes the main legal obstacle for the traditional Sámi spring duck hunting in the municipality of Guovdageaidnu/Kautokeino. However, the Wildlife Act authorizes the Directorate for Nature Management to determine specific hunting times for the various species and the areas where hunting can take place. Different hunting times can be determined for various parts of the country. Hunting times can apply to a specific time of day or week, and it can be set differently for male and female, and for older and younger individuals of that species. The Directorate is also authorized to determine specific hunting quotas for the various species.

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Throughout the last 60 years the municipality of Guovdageaidnu/Kautokeino and its inhabitants have actively advocated in favor of legalizing traditional Sámi spring duck hunting within the municipality. These efforts have not yet achieved the desired results for the Sámi, although a temporary scheme has been introduced allowing limited spring duck hunting within the municipality of Guovdageaidnu/Kautokeino. The temporary scheme was established through a specific regulation, issued by the Directorate for Nature Management, under the provisions of the Wildlife Act. The application of the regulation is limited to the municipality of Guovdageaidnu/Kautokeino. Although, a temporary scheme is in place, the Government expressed aim is to introduce a total and absolute prohibition of such traditional hunting. The temporary license or permit has been in force since 1994. This is a temporary measure, permitting spring duck hunting along specific lakes and waterways within the municipality, during a period of 2-3 weeks in May and June. The temporary measures are illusory and discriminatory. In total, Sámi hunters in Guovdageaidnu/Kautokeino are permitted to shoot maximum 150 ducks during the spring season. In contrast, during the regular Norwegian hunting season, which is the autumn, Norwegian duck hunting is virtually unrestricted.

### **Human Rights of Indigenous Peoples**

Spring duck hunting is an integral part of the local Sámi culture in Guovdageaidnu/Kautokeino. Contemporary international human rights law establishes a broad interpretation of cultural rights in the context of indigenous peoples, understanding the norm to encompass all aspects of indigenous culture, including rights to lands, resources, traditional livelihoods, hunting, fishing and other traditional practices.

With regard to the exercise of the cultural rights protected under article 27 of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee has recognized, in its General Comment No. 23, that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. The Committee clarifies that the right to culture may include such traditional activities as fishing or hunting. The Human Rights Committee also underlines that the enjoyment of indigenous peoples of their rights may require positive legal measures of protection and measures to ensure the effective enjoyment of such rights.

In our view, Article 27 of the ICCPR requires that traditional Sámi spring duck hunting is legalized. Continued legal ban would violate the cultural rights of the Sámi population in Guovdageaidnu/Kautokeino, as spring hunting is an integral part of the local Sámi culture in the municipality of Guovdageaidnu/Kautokeino.

The Sámi in Norway are recognized as an indigenous people. On the basis of this recognition, Norway ratified the ILO Convention No. 169 concerning Indigenous and Tribal People in 1990 (ILO Convention). The ILO Convention recognizes the important role indigenous peoples' customs should have in the application of national legislation. Article 8 (1) of the ILO Convention establishes that states shall pay due regard to indigenous peoples' customs in the implementation of national laws and regulations. This is a core criterion for effective implementation of many fundamental indigenous peoples' rights under international human rights law, including land and resource rights, and cultural, social and economic rights. States' obligation to respect the special importance for the culture of indigenous people of their relationship with their land and resources is a fundamental and underlying principle underpinning the entire Convention.

Article 23 (1) of the ILO Convention emphasizes that subsistence economy and traditional activities of indigenous peoples, such as hunting, fishing, trapping and gathering, shall be recognized as important

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factors in the maintenance of their culture and in their economic self-reliance and development. Governments are under the obligation to ensure that such activities are strengthened and promoted, with the participation of indigenous peoples.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) reaffirms these principles; article 11 of the UNDRIP affirms that indigenous peoples have the right to practice and revitalize their cultural traditions and customs. Moreover, the UNDRIP acknowledges that indigenous peoples have the right to maintain and develop their own cultural and social institutions, to be secure in the enjoyment of their own means of subsistence and development, and to freely engage in their traditional activities (Article 20). Article 4 of the UNDRIP acknowledges that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs. The management and utilization of natural resources is a matter which falls within indigenous peoples' right to autonomy.

The UNDRIP may not be binding in the same manner as a ratified convention. Nevertheless it reflects the existing international consensus regarding individual and collective rights of indigenous peoples in a way that is coherent with, and expands upon, international human rights standards, including the interpretation of human rights instruments by international bodies and mechanisms. As the most authoritative expression of this consensus, the UNDRIP provides a framework of action aiming for the full protection and implementation of these rights, including indigenous peoples' right to use their resources in accordance with their cultural practices. The UNDRIP reaffirms and applies already existing human rights standards to the specific historical, cultural, economic and social circumstances of indigenous peoples.

Any attempt to identify the scope and content of indigenous peoples' rights under domestic law, without taking into account their traditional practices and customs would be incompatible with the underlying principles for the contemporary international provisions on the rights of indigenous peoples.

According to article 1 (1) of the UN Convention on the Elimination of All Forms Racial Discrimination, the principle of non-discrimination, protects the enjoyment on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

We are of the view that the legal prohibition of sustainable traditional Sámi hunting practices, introduced in the 1950's - at the height of the era of tough discriminatory policies towards the Sámi people in Norway – is in violation of the principles of non-discrimination and equality. National legislation preventing the Sámi from being able to carry out this cultural practice in a meaningful way precludes them from an equal and *de facto* enjoyment of their cultural rights, compared with the majority population in the country.

In its General recommendation XXIII (1997) on the rights of indigenous peoples, the Committee on the Elimination of Racial Discrimination, urges State parties to recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation, and to ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity. The Committee encourages State parties to provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural

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characteristics, and to ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs.

### **Recommendations**

The legal prohibition of traditional Sámi hunting practices in Guovdageaidnu/Kautokeino violates fundamental international human rights standards, including the right to culture and the principles of non/discrimination and equality. Furthermore, it violates internationally recognized standards concerning indigenous peoples' rights, including their right to be secure in the enjoyment of their own means of subsistence and development, and to freely engage in their traditional activities.

Hence, we strongly recommend that the UN Committee on the Elimination of Racial Discrimination urges the Government of Norway, in cooperation with the municipality of Guovdageaidnu/Kautokeino and the Sámi Parliament, to take necessary legal, regulatory or administrative measures, to find a lasting and meaningful way of solving the six decade long legal and political impasse, and in order to bring the situation in line with internationally recognized human rights standards.

In doing so, the Government of Norway should be encouraged to consult and cooperate, in good faith, the Sámi in Guovdageaidnu/Kautokeino and the Sámi Parliament, in order to obtain their free, prior and informed consent before adopting and implementing such legislative, regulatory or administrative measures, in accordance with Article 19 of the UN Declaration on the Rights of Indigenous Peoples (A/61/L.67 and Add. 1), and Operative Paragraph 3 of the Outcome Document of the World Conference on Indigenous Peoples (A/RES/69/2).

Yours sincerely,



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