



Sámediggi
Sámedigge
Saemiedigkie
Sametinget

**Comments of the Swedish Sami
Parliament regarding Sweden's
22nd and 23rd Periodic report to
the Committee on the
Elimination of Racial
Discrimination**

14.November.2017

Introduction

1. The Sami Parliament in Sweden is both a popularly-elected parliament and an administrative authority under the Swedish government. The Sami Parliament is the highest representative organ of the Sami people in Sweden and functions as such as an advisory board and expert on Sami issues. The overall task is to monitor matters related to the Sami people and to promote a vibrant Sami culture. The activities carried out by the Sami Parliament cover a wide range of different areas such as Sami trades, reindeer husbandry, community planning, promoting Sami cultural expression and traditional knowledge and strengthening the Sami languages.
2. The Sami Parliament would like to provide the following observations and comments with regard to the state report of the Swedish Government. The document mainly addresses matters with reference to paragraph 17 -19 of the Committee's previous recommendations (CERD/C/SWE/CO/19-21).

Nordic Sami convention

(art. 5 (e) (vi))

3. The Governments involved in drafting and adopting a Nordic Sami convention aimed for its completion by March 2016. In February 2017 a meeting was held to consolidate the content of the Convention. The Sami Parliament regrets to inform the Committee that the Convention still has not been signed and expects it will not enter into force until late 2018 at the earliest. Furthermore there are continuous concerns about the low ambitions regarding land rights set forth in the Convention. The Sami representatives participating in negotiating the content have raised this issue on numerous occasions.

Self-determination and consultation

(arts.2 para 1 (c); 5 and 7)

4. The work of the Sami Parliament is dependent on the funding provided by the Government. In order to carry out its tasks and safeguard Sami interests on all levels in decision making processes, sufficient funding is required. New responsibilities (of mainly administrative character) have been transferred to the Sami Parliament from other Government agencies in recent years, raising the need for more adequate resources. The Government has promised the Sami Parliament an increased budget as of next year (2018). The Sami Parliament welcomes this initiative and expects it will develop the Sami Parliament further and expand its influence in matters concerning the Sami People.
5. The Sami Parliament Act does not entitle the Sami Parliament to any decision-making power (other than allocation of its own funding), but solely a role to support and monitor Sami culture and to ensure that Sami interests are considered in activities regarding

societal planning. As long as legislative changes are not enacted the self-determination and effective participation remains highly limited even with increased funding.

6. To improve the possibilities of the Sami people to participate and genuinely influence decision-making processes, a dialogue on creating a consultation agreement (similar to the Norwegian order) has been initiated between the Government and the Sami Parliament. In September 2017 the Government presented its first outcome of the suggested Law on Consultation in Matters Concerning the Sami People. The proposed legislation that is suggested to entry into force on 1st July 2018 is now being submitted for comments from the Sami Parliament and other consultation bodies. While the legislation is under formation, The Sami Parliament meets with the Government regularly to address issues of concern.

Land rights lack of free prior informed consent

(arts. 2 para 1 (a) and (c) ; 4 (c); 5 (d) (v); 6 and 7)

7. Without access to traditional land and waters, the Sami people are not able to pursue their culture and traditional occupations such as hunting, fishing, reindeer herding and crafts. The Sami Parliament is concerned by the increased extraction of natural resources within Sápmi. Besides mining and other extractive industries, the land rights are threatened by other forms of exploitation deriving from infrastructure, wind farms, forestry tourism etc. More than 20 percent of current wind turbines are located within reindeer grazing lands. The situation is especially burdensome for the so called forest Sami districts¹ as these districts enjoy a weaker protection of their lands than the so called mountain Sami districts. This as a result of a strong forestry industry and fewer protected areas.
8. The representation and participation of Sami people in decision-making processes regarding exploitation matters are still not ensured by the Government or in legislation. There is no requirement of FPIC from the Sami to be obtained before activities are carried out within their traditional land areas. And the cumulative effects on reindeer herding deriving from the combination of exploitation activities are not considered when government authorities grant permits to establish wind farms etc.
9. Despite repeated promises made by Government representatives, a review of the Minerals Act still has not been initiated. Neither has measures been initiated to address insufficient legislation in other regards, such as the Environmental code (regulating i.a. permits for wind farms), Hunting Ordinance and the National Park Ordinance.
10. According to the Minerals Act exploration permits can be granted by the Mining Inspectorate solely based on the application from the prospector (without asking other

¹ A Sami district is an economic association created to organize reindeer herding within a certain geographic area within Sápmi.

land users or Sami communities for their view). Furthermore The Sami Parliament has no right to initiate that the Chief Mining Inspector examines the work plan. Even though the Act contains rules on compulsory consultation with the Sami Parliament or other affected Sami communities this merely results in a formal process where the opinions of the Sami are not considered in the decision-making process. Today 46 out of 113 approved permits for extracting minerals are situated within lands of most importance to reindeer herding. About 200 exploration permits are granted each year.

11. The Environmental Code lists so called national interests (riksintressen) that are to be shown special consideration when activities that might impact these interests are carried out. Both mineral extraction, wind energy production and reindeer herding are included among these riksintressen. When activities are to be carried out in an area assigned to several interests the Code regulates that a balance of interests should be made to decide which interest should be given precedence. So far the interest of mineral extraction has overruled the interest of reindeer herding every time they have been conflicting. Currently there are 21 mining permits and 103 wind farms established in areas appointed solely as riksintresse for reindeer herding.
12. The Government (and the following Supreme Administrative Court) decisions on the Rönneback mine is an evident example of the imbalance between the interests of mineral extraction and reindeer herding. The decision to give precedence to mining activities instead of reindeer herding was stated by the Government to not “necessarily spoil the possibilities to conduct reindeer herding” and the court stated that the Government decision was “in line with Sweden’s international obligations”. According to the Sami Parliament this is a clear example of how national legislation fails to correspond with CERD.
13. The Governments decisions on several applications for mining concessions are currently underway. The cases were recently remitted to the Mining Inspectorate for further investigation as a result of a court ruling in 2016. The court ruling states that a thorough impact assessment, also including areas outside the concession must be conducted before a concession permit can be approved. The Sami Parliament welcomes the court ruling and the Governments application of it and regards it as a step towards recognition of the Sami people’s livelihoods. However the lengthy processes and uncertainty is causing difficulties for the Sami populations to maintain their customs and pass on traditional knowledge – essential components of Sami culture. Traditional reindeer herding and crafting is also threatened as younger generations take to other conventional and more secure occupations instead of continuing the heritage of their ancestors.
14. The Sami Parliament would also like to bring to the attention of the Committee that although the rights recognized in international law as belonging to all indigenous people, the Reindeer Herding Act sets out different rights for Sami people being members of Sami

districts and those who are not. According to the Act, only members of the Sami districts are allowed to exercise the right to reindeer herding, which includes the right to hunt and fish, within their traditional lands. This also means that only Sami with district membership are entitled to appeal decisions on exploration or mining permits.

15. In court cases concerning land rights and land disputes due to intrusions caused by extractive industries the burden of proof is so high that the Sami seldom stands a chance to win. This results in high trial expenses that leave the Sami districts in debt. When they win a case the compensation is oftentimes lower than that received by other landowners.
16. The Local Civil Court of Gällivare declared in its ruling 3 February 2016² that Girjas Sami district, and not the Government has the sole right to the hunting and fishing within their territories. The court also stated that the Government has no right to administer and approve hunting- and fishing licenses without the consent of the Sami district. The Government was furthermore obliged by the ruling to cover the Sami district's trial costs. The case (commonly referred to as the Girjas-case) was initiated already in 2009 and is an alarming example of how the Sami people need to go to court and go through lengthy processes to make sure their right to their traditional lands and related rights are acknowledged. This, although their claims of continuous use of their lands by hunting and fishing are equally valid as the claims stemming from reindeer herders. Unfortunately, the Government did not accept the court ruling, but appealed, which means further legal procedures will follow for several years ahead.
17. What is especially remarkable about the Girjas case, is not only the Governments questioning of Sami rights and their entitlement to their traditional lands, but also the rhetoric applied by the Government's legal representatives during the court proceedings. During the trial they used the derogative word *lapp* instead of the commonly accepted, and by Sami preferred, word *sami* to address the Sami people. This despite the fact that the word *lapp* was the accepted term used when race biology research was conducted in the past. The word is still perceived as racist and derogative. Even when confronted by media, the Government did not apologize for the use of the negative word. The Government was also criticized for its use of research and evidence material in the court proceedings. This as the Government used research findings taken out of its context and by portraying research on indigenous rights as biased (to the advantage of the Sami people) making their own material being perceived as objective and neutral. The Sami Parliament is highly concerned by the Governments public questioning of Sami rights and what message its actions conveyed to the general public. The offending, disrespectful and partly racist rhetoric and methods used by the Governments representatives in addition to the line of argumentation pursued during the procedures in the Girjas case ought to be addressed by the Committee and other monitoring mechanisms.

² Case number T 323-09

Predator policy and compensation

(arts. 5 (d) (v) and 6)

18. In its report (para. 108) the Government refers to its predator policy and tolerance level where harm to reindeer caused by predators must not exceed 10 per cent. The Sami Parliament regrets to inform that this has not yet been implemented. Several Sami Communities report damages way exceeding the level of 10 per cent and the management tool is not yet fully accepted by all Governments Authorities involved. A major reason behind this is that Sami traditional knowledge (as mentioned in article 8j of the UN Convention on Biological Diversity) is not considered reliable or equal to conventional research methods and data. The Sami Parliament continues to work with the implementation of the management tool.
19. Until the management tool is fully implemented and the actual damage of reindeer is below 10 per cent the reindeer herders have to be compensated adequately by the Government. The Government has allocated funds to encourage reindeer herding. The Sami Parliament has repeatedly pointed out to the government that the compensation received due to killings of reindeer by the predators insufficiently covers the actual financial losses and that the compensatory system in general is unjust.

Discrimination, racism and hate crimes

(arts. 1 para 1 and 4; 2; 4; 6 and 7)

20. Sweden has adopted a discrimination legislation aiming at being comprehensive and cover as many areas and grounds as possible. Despite this ambition to extend the protection of vulnerable groups the Sami do not have the same possibilities to use their languages in society, in contact with authorities, health care and education in comparison to people with Swedish as mother tongue. Despite this and previous criticism from international mechanisms discrimination based on language is not included in the Discrimination Act. Language as ground for discrimination is also not mentioned in the definition of what is considered discrimination on grounds of ethnicity.
21. It is also problematic that the Discrimination Act does not allow positive discrimination (other than under certain circumstances in the labor market to promote equality between men and women). To give people belonging to a certain religion or ethnicity priority in certain areas such as labor market and education is an efficient way of evening out inequalities faced by people belonging to an underrepresented or disadvantaged group. As positive discrimination is not allowed spots in university programs etc. cannot be reserved for students belonging to a certain minority/ethnicity although they might be underrepresented. In Norway there are quotas allocated for Sami within certain education programs where the Sami society has a need for work force i.a. teachers, doctors and lawyers

22. The term discrimination was earlier understood that similar situations should be treated similarly. In international context the term has also been given the meaning that different situations should be treated differently. This means meeting special needs of the Sami people based on their cultural characteristics and traditions should not be considered discrimination. That they are given compensation or other benefits is simply a result of recognizing their status as an indigenous people and the rights that hence follows. Throughout history the Sami People has been disadvantaged in financial, social, political and cultural spheres. As a result of this they seldom have the same possibilities to participate in society on equal conditions as the majority population today. As such there is a great need in legalizing positive discrimination measures as a way of increasing Sami representation in societal institutions.
23. A lot of the problems related to discrimination, hate crimes and racism against Sami stem from the widespread ignorance, prejudices and disinformation about Sami livelihood, indigenous rights and the historical colonial treatment of the Sami. The lack of knowledge is in turn a result of the limited education that students receive in school about Sami and Sami-related topics, something that needs to be addressed by the Government.
24. Since Sweden does not compile statistic based on ethnicity it is difficult to estimate the extent of discrimination that the Sami are facing. This, in combination with a deeply rooted disbelief in authorities, due to historical reasons, deters Sami from reporting crimes and injustices. Due to this information from the Police, Equality Ombudsman and other authorities regarding hate crimes etc. is lacking or inadequate.
25. The Government has adopted a National plan to combat racism, similar forms of hostility and hate crime. As a part of this project the Sami Parliament has been given the assignment to map racism against Sami. The assignment is to be presented to the Government in October 2018.
26. It is important to understand that hate crimes are shown in different ways and that the term is applied with an extensive meaning. Hate crime against Sami is often committed against their property i.e. reindeer killings. Something that the Police and other judicial institutions (prosecutor offices etc.) seldom characterize as hate crimes. In the past year media reported on the crimes which in recent years have increased. There are reports showing that half of the 50 existing Sami communities in Sweden have experienced their reindeers being killed, tortured or poached. As a result of media addressing the crimes and criticizing the lack of action from the Police the Government has promised to revise and sharpen current legislation and to equate these crimes with other hunting crimes. As yet, the Sami Parliament is not aware of further action taken by the Government to fulfill its statement. The Sami Parliament is also disappointed that these crimes committed against the Sami are still regarded as "hunting crimes" rather than hate crimes.

Language, education and health services

(art. 5 (e))

27. The Sami languages are currently highly endangered and the Sami Parliament is lacking a clear statement from the Government outlining the ambitions and goals concerning the future of the Sami languages.

28. Sweden has adopted the National Minorities and Minority Languages Act to ensure the protection and promotion of minority languages. The Act also should also make sure that the national minorities are able to maintain, pursue and develop their culture. According to the Act all administrative Government agencies mentioned in the Act are obliged to provide information on the rights of minorities and give them the possibility to influence matters of their concern. The Sami languages enjoy an enhanced protection according to the Act, meaning that the Sami people within certain municipalities has the right to communicate with authorities in Sami language and is entitled to elderly care and preschool in their own language. Although the Act has been successful in ensuring a greater use of Sami languages, it has several flaws. One of the main difficulties guaranteeing the protection of the Sami languages is that the designated administrative areas assigned in the Act do not correspond with the region of Swedish Sápmi. In fact the administrative areas cover a much smaller region. This means that not all Sami within Sápmi are ensured the same right to use Sami languages in dealings with Government agencies. The Act also limits the way and the extent to what service must be provided in Sami languages.

29. One of the main reasons why Sami children are not offered the education in Sami they are entitled to according to the legislation, apart from inefficient legislation and policies, is the lack of Sami teachers. The lack of teachers speaking Sami prevents bilingual and mother tongue teaching. Sami-speaking personnel is also lacking within the health care sector. When it comes to care for elderly the need is especially evident.

30. If the Sami people do not have the same possibility to use the Sami languages in education, health services or in contacts with authorities this means that they also risk being prevented from fully enjoying their economic, social and cultural rights.

This document has been decided by the board of the Sami Parliament

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