



To the Secretariat of the Committee on the Elimination of Racial  
Discrimination

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## **TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**

### **Observations submitted by the Saami Council with regard to combined twenty-third and twenty-fourth periodic reports submitted by Norway under article 9 of the Convention, due in 2017 to the Committee for the Elimination of Racial Discrimination (the Committee)**

#### **A. Briefly about the Sami people and the Saami Council**

1. Traditionally, the Sami people enjoyed a nomadic lifestyle, with hunting, fishing, and gathering as main livelihoods. Later, many Sami communities took up semi-nomadic reindeer herding, while other complimented their traditional livelihoods with farming. Yet others maintained and developed fjord and coastal fishing as well as freshwater fishing as their main livelihood or in combination with small farming. A large part of the Sami people lives and exercises their culture in the fjords and coasts of what is today Norway.
2. Reindeer herding is considered the most distinctive and characteristic among the Sami traditional livelihoods, and the most cardinal among the Sami cultural denominators. However, fjord and coastal fishing and salmon fishing in the rivers, often in combination with small farms, are equally important livelihoods for the Sami people in Norway.
3. The Sami people has inhabited its traditional territory – covering what today constitutes the northern areas of Finland, Norway, Sweden, as well as the Kola

Peninsula in the Russian Federation – since time immemorial.

4. The Sami have established their society in these areas well before present day nation states drew their borders across the Sami territory. The Sami maintain their own society and culture, including language, traditions and livelihoods, distinct from those of the Fenno-Scandinavian and Russian peoples. The Sami people are hence indigenous to its traditional territory.
5. The Saami Council, established in 1953, is a non-governmental organization with consultative status with the Economic and Social Council (ECOSOC) and the International Labour Organization (ILO). It is also a Permanent Participant to the Arctic Council (AC).

## **B. Introduction**

6. In the outset, the Saami Council feels obliged to draw the attention to the fact, that the section on Sami issues in the State party's 23<sup>rd</sup> and 24<sup>th</sup> Periodic Report to the Committee reveals a lack of progress in several principally important matters that affect the human rights situation of the Sami. The Committee expressed its concern for lack of progress already in 2015 and recommended a number of measures to improve the situation (CERD/C/NOR/CO/21-22, paragraphs 30 (a) – (f)).
7. A follow-up to the Committee's recommendations would, in our opinion, be instrumental in ensuring that the Sami people's human rights are respected, promoted and protected in a better way than is the case today. The Saami Council regrets however to report that no progress has been made regarding the follow-up of the Committee's recommendations. No clarification of Sami rights to land and resources outside Finnmark has been made after the Sami Rights Committee has presented its recommendations and no investigation has been initiated of amendments to the Finnmark Act, the Mineral Act, and the Reindeer Husbandry Act, with a view to ensuring the Sami people's right to free, prior and informed consent, mitigation, compensation and benefit sharing.
8. The Saami Council regrets to inform the Committee that there is not only a lack of progress but in our view also a lack of will to amend legislation and alter policies to improve the human rights situation of the Sami people. On the contrary, the Government is intent to interpreting and implementing provisions on the rights of indigenous peoples to participation in decision-making processes, which affects them in particular in a way that goes below minimum standards that are set by international law. This applies in particular to lack of will to recognize the Sami as a

people with the right to self-determination and full and effective participation in decision-making in issues that apply to the Sami in particular.

9. In our alternative report, the Saami Council will focus on several issues that we call upon the Committee to take into account during the review of Norway. In our comments below, the Saami Council will largely follow the structure of the Periodic Report, as it pertains to discrimination of the Indigenous Sami people and its members (paras. 28 - 30). This leads our observations to focus on five main subject areas. Firstly, we address to structural discrimination of the Sami built into the State party's legislation and policy on the status of the Sami as a distinct people. Secondly, we focus on the State party's practice of consultations and interpretation of the Sami people's right to self-determination. Thirdly, we comment on the State party's closure of the rights of the coastal Sami to sea fishing. Fourthly, we shed light on the bilateral Tana Agreement, which in our view is discriminatory and in breach with the human rights of the Sami people. Finally, we reiterate the need of implementation of the right to full and effective participation in decision-making on reindeer husbandry for the Sami people and reindeer herders.

### **C. The State party's legislation and policy on the status of the Sami people**

10. The Norwegian Constitution section 108 on Minority Rights of the Sami states that "it is the responsibility of the authorities of the State to create conditions enabling the Sami people [den samiske folkegruppe, i.e. the Sami folk group or population] to preserve and develop its language, culture and way of life". Comparing the norms pertaining to the Sami in Nordic states and development of human rights law, this article does not recognize Sami as a people nor an indigenous people, just a mere Sami population or folk group. According to Sweden's government constitution, the Sami in Sweden are recognized as a people, whereas in Finland they are recognized as an indigenous people according to the Finnish Sami Act. In other words, Norway is neither in line with its neighbouring states nor international law regarding the formal status of the Sami people.
11. In the Norwegian Constitution on 13 May 2014 a series of articles on human rights were enshrined, but the status of the Sami people was not improved. The Saami Council considers this as a serious retrogressive trend in Norwegian human rights' policy.
12. When the Norwegian Parliament (Storting) discussed amendments to the Constitution in 2014, a majority of parliamentarians supported the proposal to recognize the Sami as an indigenous people. There was also a proposal to



acknowledge the Sami as a people.

13. During the vote, however, the change was blocked by the two then government parties. One of the arguments against recognition of the Sami as an indigenous people was that *Sami and Norwegians have a long-shared history, which makes it unfair to give the Sami a special treatment in relation to other Norwegian citizens.* Such a justification can be understood as meaning that the Sami as a result of a 'successful' assimilation policy can no longer be regarded as a distinct people but must be defined as a subgroup of the Norwegians. In the opinion of the Saami Council, this contributes to creating uncertainty as to what the ruling parties' attitude is to the now abandoned assimilation policy, whose purpose was to wipe out the culture, language and ethnic identity of the Sami and other minorities and transform all to Norwegians.
14. The ruling parties' rejection of the proposal to recognize the Sami as the indigenous people of Norway occurred despite the fact that His Majesty King Harald V, on behalf of the Norwegian authorities, declared in 1997 that "the state of Norway is established in the territory of two peoples, Norwegians and Sami." The King also regretted the harsh assimilation policy imposed by the State against the Sami people.
15. The Saami Council considers it necessary for the Norwegian Parliament to amend section 108 of the Constitution so that the Sami is formally recognized as a people. It is also important that the Constitution be adopted with official Sami language versions as a recognition that the assimilation policy has been terminated and that the Sami people and their languages are formally respected, promoted and protected in line with the Norwegian languages.

*Proposed draft recommendations for the Committee's consideration*

- a. The Committee recommends that the State party takes steps to amend section 108 of the Constitution of Norway so that the Sami is recognized as a people and indigenous people in line with international law.
- b. The Committee recommends that the State party takes steps to adopt the Constitution of Norway with official Sami language versions.

**D. The State party's practice of consultations and interpretation of the Sami people's right to self-determination**

16. In 2005, the right of indigenous peoples to participate in decision-making processes was entered into force nationally by an agreement on procedures for



consultations between Norwegian state authorities (The Norwegian Government) and the Sami Parliament. It is meant to apply to matters that may directly affect Sami interests, in particular to matters that directly affect Sami land use such as reindeer husbandry. However, the consultation procedures have not always been followed, inter alia concerning Sami coastal fishing rights.

17. In the debate after the adoption of the UNDRIP in September 2007 in the General Assembly several states submitted interpretative declarations on various issues, mostly on the indigenous peoples' right to self-determination. In connection to the voting, Norway submitted an interpretive declaration on the right of indigenous peoples to self-determination, stating that this right shall be exercised within the framework of the State's territorial integrity, and that, in Norway; it is deemed to be safeguarded through current arrangements and rights pursuant to Norwegian law.
18. According to the State Party's report, the Sami peoples' right to self-determination has been safeguarded through the implementation of consultation requirements specified in the ILO Convention no. 169 and the agreement on consultation procedures between the Government and the Sami Parliament, as well as the Sami Parliament's "decision-making and consultative functions within the framework of the applicable legislation".
19. The State Party reports under the Committee's recommendations in paragraphs 30 (c) and (d) on several issues that however reveal that the Government's consultations with the Sami Parliament in the Saami Council's view cannot be considered to guarantee self-determination for the Sami people. The Government's own report refers to several consultations, including the Sami Parliament's budgetary process and the coastal communities' fisheries rights, where no agreement has been reached.
20. Also, the State Party has through several UPR processes reported to several of the UN Treaty Bodies that the Norwegian state authorities have conducted around 40 consultations with the Sami Parliament, of which agreement has been reached in most. What the State Party fails to mention, is that the consultations where agreement has not been achieved, has been about important fundamental issues for the Sami. Following such consultations where the parties have not reached agreement, the Government has practiced a principle that does not entail a duty to obtain such agreement with or consent from the Sami Parliament. The Government has one-sidedly made the decisions, despite the principle that the consultations are to be carried out in good faith and seek to reach an agreement, as stipulated in the agreement on consultation procedures, ILO Convention no. 169 and UNDRIP.

21. The State Party reports that “Norwegian authorities are intent on distinguishing between the right to consultation and free, prior and informed consent” (para. 182). Furthermore, the State claims that “article 6 does not entail a duty to obtain such agreement or consent (para. 183) and that “[a] general requirement to obtain a free, prior and informed consent (right to ‘veto’) cannot be derived from the ICCPR article 27 (para. 187) and from “the International Convention on the Elimination of All Forms of Racial Discrimination” (para. 188).
22. Saami Council is of the opinion that the Norwegian Government, when implementing international law provisions on indigenous peoples' right to self-determination nationally, interpret and reduce the self-determination of the Sami people mainly to consultations in which the state party unilaterally makes decisions and the Sami people's representative body is more or less without decision-making authority. This practice goes below the minimum standards set in international law pertaining the rights of indigenous peoples to full and effective participation in decision-making particularly affecting them. Furthermore, the State party's practice is in violation of the right to self-determination of the indigenous Sami people.
23. Saami Council refers to the report issued by the UN Special Rapporteur for Indigenous Peoples Rights in 2016, recommending that Norway enhance efforts to implement the right of the Sami people to self-determination and to more genuinely influence decision-making in areas of concern to them. According to the Special-Rapporteur, that may to some extent be achieved through a more effective consultation arrangement, which should be extended to clearly cover budgetary decisions. (A/HRC/33/43/Add.3, para. 76).
24. The Special Rapporteur recommends that more attention be paid to the details of the consultation procedures, in particular consultations in good time and in good faith. Also, it is essential to enact legislation on consultation procedures with the affected Sami party directly, i.e. decisions are not taken without the free, prior and informed consent of the Sami holding the rights. The legislation should contain provisions on appealing if there are procedural violations.
25. In the view of Saami Council, it is crucial that the Norwegian Government, in close consultation and cooperation with the Sami Parliament, initiates an investigation aimed at strengthening the Sami Parliament's status and functions, as well as ways and means for financing their autonomous functions, as the Sami people's self-determination body, including as a body for the exercise of autonomy or self-government.



*Proposed draft recommendations for the Committee's consideration*

- c. The Committee recommends that the State party takes concrete steps, in close consultation and cooperation with the Sami Parliament, to initiate a process of amendment of the Sami Act aimed at strengthening the status and functions, as well as the means of financing, of the Sami Parliament (Sámediggi) as the body of self-determination of the Sami people, including as the body of exercise of autonomy or self-government.
- d. The Committee recommends the State party to enact legislation on the right to free, prior and informed consent to any exploitation of natural resources in traditional Sami territory, and amend the Sami Act, the Mineral Act and the Reindeer Husbandry Act to ensure the full and effective participation of the Sami people in decisions-making that affects the Sami in particular.

**E. The State party's closure of fishing rights of the coastal Sami people**

- 26. In response to the Committee's recommendation in paragraph 30 (f), the State party concludes that the case of right of the coastal Sami people to fishing is closed by Norwegian authorities. A revision of the fisheries legislation was a follow-up to the Coastal Fisheries Committee's recommendation in Official Norwegian Report NOU 2008: 5 on the right to fish off the coast of Finnmark (*Retten til fiske i havet utenfor Finnmark*) and was concluded with the Storting's adoption of the legislative amendments of 21 September 2012. The amendments entered into force on 1 January 2013.
- 27. However, the Sami Parliament and the Government did not reach an agreement on the interpretation of international law. The disagreement rose on interpretation of the International Covenant on Civil and Political Rights and ILO Convention No. 169. The Sami Parliament maintained that the coastal Sami people have the right to fish in the sea based on their historical use and international law.
- 28. The Government however rejected this view. During the consultations, the parties reached agreement only on the legislative amendments themselves, but not on the principle issue historical fishing rights of the Sami people. It is on this basis that Norwegian authorities consider the matter closed and have no further information to provide to the Committee.
- 29. Saami Council is deeply concerned that the Government has closed the issue of rights to fishing in the sea of the coastal Sami communities. The requirement of the coastal Sami people to establish their historical rights to sea fishing through national legislation that is in line with international law, has been high on the agenda of Sami



organizations for many decades. It is also an issue raised repeatedly by the Sami Parliament since its entry into operation in 1989. The right of the coastal Sami people to fishing in the sea, based on their historical rights and international law, is vitally important for the survival of coastal Sami culture in Norway.

30. In a thorough report presented in 2016, Norway's National Institution for Human Rights (NHRI) recommends that the rights of the coastal Sami people to fishing, as a part of their cultural practice and based on their historical fishing, should be statutory. The same applies to the right to a positive differential treatment in the allocation of quotas and the equivalent, if this is necessary for the protection of the coastal Sami people's material cultural foundation.
31. NHRI also recommended that the right of the coastal Sami people to participate in the use and management of their material cultural foundation must be better guaranteed in the legislation, than is the case today for Norway, to fulfil its international obligations. Legislation must ensure that interventions that may affect the material cultural background of the coastal Sami are adequately investigated.
32. The State party's closure of the case of rights of the coastal Sami people also raises concern in view of the Norwegian National Parliament's (Storting) unanimous decision that required the Government to review the recommendations made by the NHRI and report to the Parliament appropriately the follow-up of the recommendations. The report on the rights of the coastal Sami people to sea fishing is reflected in the Annual Report 2016 of NHRI and was considered by the Standing Committee of Justice (Dokument 6 (2016-2017), Inst. 435 S (2016-2017), Melding for året 2016 fra Norges nasjonale institusjon for menneskerettigheter). In its resolution, the Parliament calls on the Government to review the recommendations in the 2016 annual report of the NHRI and return appropriately to the Parliament with the follow-up of the recommendations (Vedtak 882).

*Proposed draft recommendation for the Committee's consideration*

- e. The Committee reiterates that the State party review the fisheries legislation, and ensures that it fully recognizes the Sami fishing rights based on immemorial usage and local customs.

**F. The Tana Agreement and violation of the human rights of the river Sami people**

33. Deatnu (Tana River) today constitutes a state border between Norway and Finland, and the river, along with its many tributaries, has sustained a significant Sami



settlement in the Deatnu Valley and has provided livelihood for the local population since time immemorial. The salmon in the Deatnu River is equally important for the Sami river population, their culture and identity as the reindeer are for Sami reindeer herders. Salmon fishing is considered as the lifeblood of Sami culture in the area.

34. The historical and current importance of salmon fishing is reflected in the Act on Fishing Rights in Tana Watercourse (Tana Act). The Tana Act was adopted by the Norwegian National Parliament (Storting) in 2014. Section 1 stipulates that the purpose of the Act is to ensure the special rights that the locals have to fish in the Deatnu/Tana Watercourse on the basis of law, use since time immemorial and local customs. In section 3 on protection of international law, it is established that the Act applies with the restrictions imposed by ILO Convention no. 169 on Indigenous Peoples and Tribal People in Independent States.
35. The salmon fishing in Deatnu has been regulated through bilateral agreements since 1873. In 2016, the governments of Norway and Finland signed a new bilateral agreement on fishing in the Deatnu (Tana) Watercourse. Sami and other stakeholders have strongly criticized the dealings for procedural and material deficiencies. However, in 2017 the Norwegian Parliament (Storting) and the Finnish Parliament (Eduskunta) ratified the agreement on fishing in the Deatnu Watercourse and associated regulations with a barely majority of parliamentary votes. The Tana agreement was passed through against unanimous protests from the Sami Parliaments in both states, the Tana Watercourse Fisheries Administration, all the affected municipalities, and all rights organizations.
36. Stakeholders have claimed that the agreement was made extremely confusing, because the Sami representatives in the negotiating delegation were not informed but were completely ignored during the final rounds of negotiations, which made very important decisions for the management of salmonids in the Deatnu Watercourse. Some of the decisions have a character of confiscation of a portion of the Sami river valley population's fishery in the river and its tributaries. This applies not least to the fact that southern Finland cabin owners with land at the waterway, by Norwegian authorities were granted free of charge on the Norwegian side - up to 1800 fishing days per season. That is, the Norwegian state decided that Sami rights holders should give a portion of their income base without compensation for the benefit of foreign nationals.
37. Prior to the new agreement, people who had inherited their properties with fishing rights - who primarily were Sami - could practice traditional net fishing methods even if they did not live in the river valley. With the new agreement non-resident Sami rights holders lost this right and currently have no legal means of taking part



into the practice of traditional Sami net fishing. Through the new Tana Agreement, a new group of rights holders in the Deatnu Watercourse was established, namely southern Finnish holiday homeowners who were granted new rights at the expense of the Sami rights holders. This was done despite that the European Court of Human Rights has, in the *Taivalo v. Finland* case in 2006, concluded that Finnish cabin owners do not have fishing rights in line with the local population.

38. According to the wording of the Tana Act, the law is to be applied in accordance with international law on indigenous peoples. Norway's obligation under Section 6 of the Act is that the state should consult the Sami people in good faith and forms that are adapted to the conditions for the purpose of reaching agreement or consent. This is also stated in the agreement on consultation procedures between the Government and the Sami Parliament in 2005.
39. The Saami Council believes that it is vitally important for the survival of the river Sami culture that the Tana Agreement is renegotiated. The Agreement must safeguard the rights of the local population in the river basin, so that the agreement is perceived as legitimate and fair by the traditional rights holders (ILO Convention no. 169, articles 14 and 15 (1) cf. Articles 6, 23 and 35).

*Proposed draft recommendation for the Committee's consideration*

- f. The Committee recommends that the State party take swift steps to renegotiate the Tana Agreement with Finland with the aim at safeguarding the rights of the local population in the river basin, so that the Agreement is perceived as legitimate and fair by the traditional rights holders.

**G. The State party's legislation and policy on the rights of the Sami to full and effective participation in the management of reindeer husbandry**

40. In Norway, approximately 240 000 semi-domesticated reindeer are currently herded. Only people of Sami ethnicity may own reindeer in Norway, with the exception of a few concession areas in southern parts of the country. There are a total of 997 siida units, where 725 of these are in Finnmark in the northernmost county of Norway.
41. As Saami Council has previously reported to the Committee, the main challenges in relation to reindeer herders in Norway is incomplete implementation and respect for indigenous peoples' land and resource rights, infringement of the herders' fundamental civil rights due to private property and unwillingness to recognize

reindeer husbandry as a legitimate part of the society of today.

42. Reindeer herders all over Norway face increasing pressure from infrastructure development on grazing land. They spend a considerable amount of time reviewing and commenting on planned infrastructure development, affecting their pastures. Many have hired professional lawyers to assist them in the struggle for protecting their traditional grazing lands from encroachment from mining, power lines, windmill parks, roads, hydro power plants and leisure cabins. There is deep concern among reindeer herders with the consistent pop up of new and existing plans.
43. While reindeer herders emphasize land encroachment by competing land-use interests such as industrial activities as the largest threat to pastures and a sustainable development of reindeer husbandry, authorities stress the need for reducing the number of the reindeer as the most important measure to conserve the reindeer pastures.
44. It is a paradox that the State authorities claim the number of reindeer in Finnmark must be reduced in order to preserve the pastures, while at the same time the authorities are encouraging mineral industry, wind power plants and others commence with activities in the very same grazing land. Whilst the State is in a process of enforcing reindeer reductions to conserve the pastures of Finnmark, it promotes the same lands as a potential industry treasury with plenty of natural resources as oil, gas, wind and minerals.
45. The Saami Council believes that it is necessary to investigate changes to the Reindeer Husbandry Act and the management of reindeer husbandry, as well as other measures to ensure processes that have legitimacy in the reindeer husbandry industry and which strengthen the protection of the areas of the reindeer husbandry. It is imperative to cater for the needs and entitlement of the Sami and the reindeer herders to a full and effective participation in decision-making on issues that affect their own livelihood.
46. The Saami Council supports the Sami Parliament's demand for evaluation of the process of adjusting the number of the reindeer on the basis of international law. It is required that the Norwegian authorities conduct consultations with the Sami Parliament and the Norwegian Reindeer Herders' Association (NBR) on the entire reindeer husbandry and future reindeer husbandry management (ILO No. 169, Art. 15 (1) cf. Art. 6 and 7).

*Proposed draft recommendation for the Committee's consideration*

- g. The Committee repeats that the State party guarantee that all



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administrative and legislative mechanisms that allow for extractive activities in Sami lands, in particular those under the Finnmark Act, the Mineral Act and the Reindeer Husbandry Act, be reviewed in order to guarantee adequate consultation with the affected Sami communities, in particular the right to free, prior and informed consent, mitigation measures, compensation and benefit sharing.

Yours Sincerely,

Åsa Larsson-Blind  
President of the Saami Council