

THE RISE OF INDIGENOUS RIGHTS:  
A CRITICAL RE-EXAMINATION OF VARIOUS POLICIES  
AND THEIR IMPLICATIONS FOR THE SWEDISH SÁMI

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**Abstract.** The aim of this article is to re-examine critically the development of various indigenous rights and evaluate their relevance and implications for the Sámi people of present-day Sweden. Four main documents will be analytically discussed in this paper: the UN Declaration of the Rights of Indigenous People, the ILO Convention No. 169, the Finnmark Act in Norway and the draft of the Nordic Sámi Convention. Each set of rights will be analysed in terms of the way the policies are worded and structured around the various significant issues that define indigenous people, such as land rights, culture, self-determination and general articles. After examining the broad-ranging indigenous rights, the article will go on to take a closer look at policies directly targeted at the Sámi. This will be done by analysing the relevance of these policies in their attempts to provide justice to the Sámi as indigenous representatives. The Finnmark Act, even though not specifically known as an indigenous rights act, plays a key role in the way the Norwegian Sámi exercise their rights. The draft of the Nordic Sámi Convention is a perfect example of how people are working to further Sámi rights over and above global indigenous policies. This draft represents the advances being made to produce a convention of rights for all Sámi in Norway, Sweden and Finland. The article then leads to an analytical discussion of how the rise of indigenous rights has affected the Swedish Sámi. Overall, this study re-examines the rise of indigenous rights and assesses the relevance of this progress on the Swedish Sámi by demonstrating that there has been some amelioration of their ability to exercise their rights, though much work is still needed to cement their integrity as an indigenous people.

### **Introduction**

In recent decades there has been a switch in anthropological research from discussing ethnicity to examining the idea of indigeneity. This has been partially due to the increased work done with and for indigenous people. There have been many theoretical contributions to the field of ethnicity from the 1960s up to the present day. Writers such as Fredrik Barth, Max Gluckman, Clyde Mitchell and Abner Cohen all contributed to the development of theories of ethnicity, but the concept itself gradually began to decline in use due to increased doubts over its relevance. More recently the focus has tended to shift from a concentration on ethnicity to a newer concept of indigeneity. Since the 1970s, there has been an increased interest and involvement in the protection of indigenous people and their rights. The academic conceptualisation of indigeneity is closely connected to the progress achieved throughout the legislative sphere. As indigenous rights have started to be drafted, accepted and legalised, the anthropological development of the notion of indigeneity has diligently followed the legislative direction. Before the 1970s, not much attention was paid to the

difficulties, deprivations and needs of indigenous people. They were not actively on the agenda of human rights organisations. Nevertheless, soon after the first suggestion that issues concerning indigenous people should be studied in the 1970s, there began to be a focus on indigenous rights. With this started the anthropological interest in the issue of indigeneity. This paper will examine the development of indigenous rights, reflect on the meaning behind the policies and analyse the way the Sámi people have been affected. I will begin with a discussion of international progress in establishing indigenous rights, then look at Norwegian indigenous developments before finally addressing the Swedish Sámi case.

### **The UN Declaration on the Rights of Indigenous People**

The United Nations Declaration on the Rights of Indigenous Peoples is one of the most historically significant developments in the acknowledgment and protection of the rights of indigenous peoples. The whole issue about the lack of any comprehensive consideration of the problem of discrimination against indigenous people was initially raised for discussion by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in the early 1970s (Daes 2008). In 1984, the adoption of the Declaration of Principles was the very first step in what would later, after more than twenty years, become the officially recognised UN Declaration (Daes 2011). There are a few principles from the 1984 Declaration that stand out in terms of their initial drafting and their eventual editing in order to make it into the UN Declaration. Principle 9 from 1984 states that:

Indigenous peoples shall have exclusive rights to their traditional lands and its resources, where the lands and resources of the indigenous peoples have been taken away without their free and informed consent such lands and resources should be returned. (Daes 2011: 13)

In the current highly ambiguous situation in which the majority of indigenous peoples find themselves and in most cases in relation to the highly contested lands they occupy, if this principle had been adopted as stated in 1984, in some ways it would have been immensely advantageous for indigenous people in terms land ownership but would have created many disputes with the states in which they live. As will be discussed later, the articles in the UN Declaration concerning land rights have been significantly edited compared to Principle 9 from 1984 in order to avoid potentially serious disputes erupting and leading to violence between indigenous people and the predominant state population. This change has turned Principle 9 into parts of Articles 26 and 28, which do not include the firm words ‘exclusive’ and ‘returned’. The editing has also resulted from the fact that if Principle 9 had stayed the same, states would have been reluctant to ratify the Declaration. Another two principles from the 1984 Declaration have also seen dramatic changes. Principles 10 and 11 are

closely related to Principle 9 and have also composed the other parts of Articles 26 and 28 in the UN Declaration. Principles 10 and 11 note that:

Principle 10: The land rights of an indigenous people include surface and subsurface rights, full rights to interior and coastal waters and rights to adequate and exclusive coastal economic zones within the limits of international law.

Principle 11: All indigenous peoples may, for their own needs, freely use their natural wealth and resources in accordance with Principle 9 and 10. (Daes 2011: 13)

As already noted and as discussed later, in terms of the current wording of the UN Declaration concerning articles connected to land issues, Principles 10 and 11 have been drastically edited in order to avoid undesirable conflict and the possible unwillingness of countries to ratify these rights. When further investigating UN Articles 26 and 28, the issue of whether or not these principles were edited for the good of indigenous people or for the benefit of the states that accommodate them will be considered.

To continue with the progressive development of what one day would be known as the UN Declaration, in 1985 another draft of principles was put forward by the Working Group on Indigenous Populations (WGIP). The concern that the draft lacked a definition of 'indigenous peoples' was discussed by the WGIP (Daes 2011). The conclusion reached was that the WGIP mission is to consider not how to define indigenous people but how to create a fair draft for the rights of indigenous people which conforms to international law (*ibid.*). The concept they had in mind was that, despite the lack of a definition of indigenous people, there should be a clear distinction from minorities in the very colonial fact that indigenous people have a specific claim to settlement in relation to their historical association with their territories. Nevertheless, the WGIP decided not to include a concrete definition in order to avoid friction with the various definitions different states use in their own recognition of who is or is not indigenous. There is no single way of correctly defining indigenous peoples, and it has proved to be a great challenge to agree uniformly on those aspects that define them.

From 1987 to 1993 the drafting of the Principles, which turned into Articles, continued to be based on the discussion, negotiation and debate between indigenous people from various nations, official representatives and the WGIP (Daes 2011). Many drafts submitted to the Sub-Commission eventually made their way to the UN General Assembly (GA). The draft, officially called the 'United Nations Declaration on the Rights of Indigenous People', was in fact mainly finalised by 1993, but it took more than ten years for it to be adopted by the Human Rights Council in 2006 and then eventually adopted by the UN General Assembly on 13 September 2007. After more than two

decades since the initial crafting of principles and after multiple drafts and edits, the world was presented with its first declaration on indigenous rights, which was adopted by most countries: eleven abstained and four were against. Ironically, the four (USA, Canada, Australia and New Zealand) that were against the adoption of the UN Declaration are countries that greatly contributed to its drafting and also countries which have experienced great struggles when it comes to their own indigenous peoples.

Now that the background to the creation of the United Nations Declaration on the Rights of Indigenous People (from now on referred as the 'Declaration') has been discussed, a closer look at the actual Declaration will explore the different articles in relation to the issues of self-determination, land issues, education, employment and general policies. To begin with, the Declaration starts with a few paragraphs in the form of a preamble setting the tone and weight of the document. These preambular paragraphs establish some of the general policies of the Declaration. Paragraph 2 calls for equality and the recognition of rights:

Affirming that indigenous people are equal to all other peoples, while recognising the right of all peoples to be different, to consider themselves different, and to be respected as such. (UN Declaration 2007: 1)

This paragraph sets out a very basic affirmation that indigenous people, in terms of rights, are no different from any other human being and should as such be considered equal to all. Nevertheless, due to their uniqueness in terms of cultural heritage, indigenous people have the respected right to consider themselves different. This difference should not spark any discrimination, as stated in paragraph 5 of the preamble: 'Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind (UN Declaration 2007: 2).' It is important to pay attention to the way these preambular paragraphs are worded and the language used in them. As discussed previously, it is exactly this wording that has kept the Declaration from being released officially for more than twenty years. The Declaration's intention is to be able to fit in with different countries' legislations in order to set some ground rules, but still not to sound too controversial or prescriptive. Preambular paragraphs 17 and 18 are an excellent example of the very careful wording of the document:

Bearing in mind that nothing in this Declaration may be used to deny any peoples their rights to self-determination, exercised in conformity with international law.

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith. (UN Declaration 2007: 3)

Self-determination is allowed to anyone as long as it is exercised under international law, which means that there are some restrictions on its application. The words ‘harmonious’ and ‘cooperative’ subtly set the tone for the expected outcome of the implementation of the Declaration with regard to the relationship between indigenous peoples and states. This would all still be done under other presumed principles, two of which include justice and good faith. These two principles are open to wide interpretation depending on different countries. It is easily observed that, even from the preambular paragraphs, this Declaration is extremely careful in terms of its wording and the tone of the Articles. The Declaration is not supposed to sound too comprehensive and prescriptive, but still needs to sound authoritative.

Even after decades of editing, the Declaration still does not provide a definition of who should be considered indigenous. This is quite striking but understandable due to the fact that, if any such definition had been presented, it would have created much controversy. States around the world have their own understandings of who is categorised as indigenous, and if the Declaration had only one definition of indigenous peoples this would have alienated many countries. This again proves that the Declaration is highly open to interpretation in terms of its lack of a definition of indigenous peoples and the careful wording of its text.

The Declaration consists of 46 Articles, some of which have more than one paragraph, and it covers the issues of self-determination, land issues, education, employment and general policies. Articles 3 and 4 address the right to self-determination, another notion which is open to wide interpretation. Article 3 outlines some of its functions:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (UN Declaration 2007: 4)

The idea behind self-determination is that it allows indigenous people to pursue their own ways in terms of their development as a stronger cultural unit that is able to evolve in the modern world, thus preserving their indigenous practice. Self-determination is seen as enabling them to live in the current economic and technological world, but with the option to preserve and expand their heritage. It is a method for adaptation to the contemporary environment by preserving and translating the traditional so that it can still work under changed circumstances. Nevertheless, many governments have disagreed with Article 3 and the way it is worded due to the fact that it could spark protests. This issue is later discussed in relation to Article 46. Article 4 takes even further the possibilities given to indigenous peoples through self-determination:

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, as well as ways and means for financing their autonomous functions. (UN Declaration 2007: 4)

The notion of self-determination permits people to be internally autonomous, thus discouraging protests endangering the state but still giving some power to indigenous people. Nevertheless, the issue of whether or not these autonomous functions could be overwritten by the state is not addressed and, as discussed later in the specific case of the Swedish Sámi, the danger of ‘autonomy from above’ exists.

Indigenous land issues are a prime reason why the Declaration was initially discussed. One of the main aspects of indigenous peoples’ heritage is the land they have historically occupied. This land is most of the time highly contested in terms of the present-day countries it is situated in. The most common story amongst indigenous populations is how their rightful lands have been stolen from them, have been exploited for industrial use from which they do not derive any benefit, or else they have been displaced from their territories. The proof that a group of people has occupied a specific piece of land well before any sort of colonisation began is considered to be one of the definitions of who is indigenous. To deprive such people of their land and then to claim that these lands never belonged to them but belong to the state is seen as a terrible abuse of power. The Declaration therefore has a few articles that address land, territory and resource issues, namely Article 8(2b), Article 10, Article 26, Article 28 and Article 32. The two main ones are Article 26, which has three paragraphs, and Article 28, which has two paragraphs. Article 26(1) addresses the right of indigenous people ‘to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’ (UN Declaration 2007: 10). The second paragraph clarifies their right to ‘own, use, develop and control’ (ibid.) these areas. The third paragraph of Article 26 explains that ‘states shall give legal recognition and protection’ (ibid.) to these areas with respect to indigenous forms of land control. Article 28 recognises the right of indigenous people to ‘redress’ issues connected to ‘land, territories or resources...which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent’ (ibid.). The second paragraph clarifies modes of compensation, which do not always include the return of the specified areas, for the redress can apply to other areas ‘equal in quality, size and legal status or...monetary compensation or other appropriate redress’ (ibid.: 11). Articles 26 and 28 have taken matters a long way since the very first draft of the land rights principle, Principle 9 from 1984. As previously discussed, very specific words such as ‘exclusive’ and ‘returned’ are nowhere visible. These final articles have been refined in order to avoid the inclusive statement that traditional lands must be returned to the indigenous people, making them open to wide interpretation, which does not have to include the return of any such areas, though mention of compensation rights means that indigenous people can be bought off and silenced.

The main point here is that the idea of exclusive rights to these areas is non-existent and the way of proving 'traditional ownership' quite problematic. This means that first there is the loophole of shared rights to land, and secondly, it is difficult to prove who owned the land traditionally. Most indigenous people do not have the legal documents to prove the land is theirs, and the only traceable evidence of land ownership is often whatever the state has drawn up to claim these lands. Article 26(3) mentions 'due respect to the customs, traditions and land tenure system of the indigenous peoples concerned' (ibid.: 10), but often these lands are highly contested between various members of the indigenous community itself, which makes it difficult for the state to address these issues and may lead to court battles which could last for decades with no solution. Monetary compensation does sound quite lucrative in the short run, but as some indigenous people actually claim rights to naturally very rich lands, the exact estimate of such compensation would be hard to compute. Then comes disagreement over whether these lands should be exploited in such a way and, if they are to be shared, how much remuneration should the indigenous people receive from the total revenue accumulated. Later, the Swedish Sámi case will be discussed in terms of these issues.

Another matter of great concern within indigenous societies is education. In order to preserve, revitalise and continue a specific culture, the argument is that knowledge of it must be passed from generation to generation. Many indigenous peoples have historically been culturally repressed, and this has had an effect on the transfer of traditional knowledge, language and crafts. Article 14 of the Declaration is concerned with the issue of education. It has three paragraphs, the first of which states:

Indigenous peoples have the right to establish and control their education system and institutions providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. (UN Declaration 2007: 7)

Indigenous people have the right to control an education system fit for their specific purposes, which means that they do not have to follow the national curriculum. Nevertheless, indigenous children are also subject to the rights of the state, which means that they 'have the right to all levels and forms of education of the state without discrimination' (ibid.: 7). In some Arctic areas, due to the great distances involved, it is often hard to accommodate children's educational needs, but under Paragraph 3 of Article 14, the state must 'take effective measures' to provide access to 'education in their own culture and provided in their own language' (ibid.). Article 14 covers all the multiple sides of the educational issue for indigenous peoples, first, the establishment of appropriate institutions, second, the need for children to receive state education as well, and third, cooperation from the state in facilitating the first and second. Even before the right to education is addressed, the

very first Article of the Declaration discusses the question of employment. Article 1 is concerned with equal, fair and ‘full employment’, not only under this Declaration but also under the ‘Universal Declaration of Human Rights and international human rights law’ (ibid.: 4).

Many articles address the issue of culture. Article 8, Article 11, Article 13 and Article 31 amongst others are those that are greatly concerned with indigenous culture. Article 8(1) is very explicit about ‘the right not to be subjected to forced assimilation or destruction of [indigenous] culture’ (ibid.: 5). Article 11(1) further states that indigenous peoples have ‘the right to practise and revitalise their cultural tradition and customs’ (ibid.: 6) through appropriate methods, and as Article 13(1) continues, they can ‘use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures’ (ibid.: 6). Article 31(1) lays down ‘the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions’, which also allows indigenous people to have control over their intellectual property and other historical, social and cultural artefacts (ibid.: 11). These four articles are very inclusive of all possible cultural issues, and the way they are worded seems much stricter in terms of their protection of indigenous culture. If juxtaposed to the wording of articles about land rights, the articles on culture are much more advantageously worded for the indigenous peoples, but this should come as no surprise, as most states will regard indigenous heritage and culture as less contentious than indigenous lands and resources when it comes to the financial and economic implications of the latter’s exploitation.

There are a few important general policy articles that give the Declaration a more complete and authoritative stamp. Articles 2, 5, 6, 33, 43, 44, 45 and 46 all address various general policies, and the last few clarify issues which might have been misunderstood throughout the Declaration. Equality and freedom from discrimination, the right to nationality and the right to ‘political, legal, economic, social and cultural institutions’ (UN Declaration 2007: 5) are all noted in Articles 2, 6 and 5. Article 33(1) discusses the right to an identity, which could be of its own kind in terms of the specific culture and traditions. Nevertheless, this identity does not undermine indigenous peoples’ right to the state’s nationality and to be officially recognised as part of the state. The last four articles of the Declaration address human rights more generally, which must be applied no differently to indigenous peoples than to majority populations. Article 45 is especially powerful in terms of its inclusivity: ‘Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous people have now or may acquire in the future’ (ibid.: 14). Further to the discussion of Article 3 about self-determination, Article 46(1) is quite clear about any confusions and misinterpretations the Declaration might have created:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any contrary to the Charter of the United Nations or construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States (ibid.: 14).

Paragraphs 2 and 3 of Article 46 elaborate more on the ‘human rights and fundamental freedoms’ that all human beings are entitled to according to international law and state that the whole Declaration must be interpreted in terms of the ‘principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith’ (ibid.: 14-15). This means that human rights laws are superior to state laws and that, as this Declaration is essentially a human rights declaration, it should be treated as such within the limitations outlined in Article 46.

Overall, the UN Declaration on the Rights of Indigenous Peoples is a ground-breaking Declaration, which to date is the most comprehensive, extensive, detailed and all-embracing document relating to indigenous rights. It took many years for the Declaration to be created, and the day it was adopted will forever remain a historic date; but now it is finally in force, the question is whether or not the countries that have ratified it have made enough effort to create and allow changes for improvements in respect of their indigenous populations. Later, this issue will be discussed in relation to the Swedish Sámi.

### **ILO Convention No. 169**

Before the UN adopted the Declaration on the Rights of Indigenous Peoples, the main international document concerned with indigenous rights was the International Labour Organisation Indigenous and Tribal Peoples Convention No. 169. This Convention is still valid, and since its adoption in 1989 more and more countries have ratified it. It should be noted that as Sámi representative nations neither Sweden nor Finland has ratified it, although Norway was one of the first countries to do so. The ILO Convention 169 (from now on referred to as the Convention) consists of 44 Articles divided into ten parts, including general policy, land, employment and education. Unlike the UN Declaration, the Convention addresses not only indigenous people but so-called tribal peoples as well. This ensures that people who might not fall under certain forms of state legislation are accounted for in this Convention. In addition, unlike the UN Declaration, the Convention not only defines tribal people (Article 1(1)) but also indigenous people (Article 1(2)) as:

peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all their own social, economic, cultural and political institutions (ILO 169, 1989).

The Convention has decided to specify clearly to whom it applies by using territorial occupation as a key factor. The issue is not whether or not this land occupation could be proved by legal documents, but is more a matter of historically based proof. Before discussing some of the main points of the Convention, it should be clarified that the Convention is not in any way trying to limit indigenous people to living in a fixed traditional way. On the contrary, the Convention is there to give indigenous and tribal peoples a choice. The Convention does not specifically address issues of cultural development, intellectual property or technological progress, but other than that most points discussed in the UN Declaration are present, if worded slightly differently and coming across as less developed in the Convention, this being perfectly understandable, given that the Convention only dates from 1989.

Part two discusses land issues, which are comparable to those in the UN Declaration, with a few noticeable differences. Article 14 speaks of land ownership and possession rights based on traditional occupancy and access for subsistence or traditional activities. Article 15(2) mentions the option of states to retain ownership of traditional lands but with the possibility of involvement by the indigenous or tribal people, which sounds colonial and backward-looking when compared to what the Convention stands for. The issue of relocation is addressed in Article 16 in an extensive five paragraphs. Compared to the UN Declaration, one land aspect which is not discussed is that of redress: there does not seem to be the option to amend a decision made by the state about land issues. Overall, part two of the Convention addresses some of the main land matters, but the wording seems to be open to a few debates concerned with how much the Convention has tried to put power authoritatively and decisively in the hands of indigenous people so that they can resist what are perceived to be unfair state legislation and practices.

Parts three, four and six discuss respectively employment, handicrafts and education. The employment articles seek to abolish discrimination and to establish the principles of equal pay and equal opportunities for indigenous and tribal people. Article 23 addresses the rights to handicrafts and traditional activities for the maintenance of culture. This is one of the very few places in the Convention where an article mentions the preservation of culture, unlike the UN Declaration, which has several. As previously discussed, the issue of culture plays a major role in the UN Declaration. In the Convention, there is no specific part dedicated to culture. In Article 26, education is explored in terms of equal educational opportunities according to the standards of the state. Article 27 uses the very derogatory phrase 'special needs' when it discusses the educational programmes that should be developed in terms of indigenous traditional knowledge and history. Indigenous language learning is addressed in Article 28, encouraging children to learn indigenous languages and all others concerned to practise it.

Overall, the ILO Indigenous and Tribal Peoples Convention No. 169 is an excellent example of what was available as an official document for the protection of these people before the historic adoption of the UN Declaration. It is obvious that the Convention is not as definitive as a rights document in the way the articles are worded, but that does not make it any less important. For many years the Convention was the only document to protect indigenous rights, at least in those countries that had officially ratified it. Norway was one of the first countries to adopt this Convention with its quest to protect Sámi rights. The Norwegian Sámi benefited greatly not only from the Convention but also from the willingness of the Norwegian state to cooperate with them.

### **The Norwegian Sámi case**

Norway has a long history of struggling to address issues connected to its indigenous population, the Sámi. Despite the fact that many internal implementations have been adopted and that Norway has been an active participant in the establishment of the international drafting of indigenous rights, in the 1980s and 1990s there were outbreaks of disagreement and clashes between the state and the Sámi. Nowadays, some issues still persist at a much lower level. Due to the willingness of the Norwegian government to work with and for the Sámi, many changes have been made to facilitate a better relationship not only between the state and the Sámi but also among the Sámi themselves. In 1975 the Sami Development Fund (SDF) was established to distribute grants for various activities connected to Sámi development (Tomei and Swepston 1995). In Norway during the late 1980s other Sámi organisations were also established, namely the Sámi Assembly, the Sámi Trade Council and most importantly, in 1987, the Sámi Parliament or Sameting (ibid.). The Sameting was established by the Norwegian government as a direct representative of the Sámi, consisting of 39 elected representatives (ibid.). All Sámi who consider themselves Sámi, have at least one parent or grandparent who uses Sámi as a household language and who are registered in the electoral register can take part in the Sameting elections. The Sameting deals with various Sámi-related issues such as reindeer-herding, fishing, hunting, some regional matters and cultural development. The Sameting is not under the control of the Norwegian government, nor is it a totally independent body. Nevertheless, compared to the Swedish and Finnish Sámi parliaments it is the most independent with the greatest amount of self-governing power. One of the biggest achievements in terms of Sámi land government in Norway was the passing in 2005 of the Finnmark Act.

The Finnmark Act controls rights to land and related resources in the Finnmark county in Norway, which is the northernmost part of Norway and accommodates the largest number of Sámi. This Act represents considerable progress in terms of land issues because the Sámi have had extensive problems when it comes to land rights. The Finnmark Act consists of six chapters of altogether fifty sections that address various matters connected to land and resource management in the county (Finnmark Act 2005). The Finnmark Act is founded on the primary principle that 95% of the land in Finnmark is under the control of the Finnmark Estate. This has been a great change because previously the land was under the administration of the state. The Finnmark Estate controls not only the land but also both above-ground and underground resources. The Finnmark Estate theoretically acts as a private landowner, completely detached from state ownership. The Finnmark Estate is an autonomous legal entity in Finnmark, which under the sections of the Finnmark Act manages the land and its resources. It deals not only with Sámi but also Norwegians' land issues in Finnmark. The Estate is govern by six residential members, three of whom are elected by the

Finmark County Council and three by the Sámi Parliament, with at least one member representing the reindeer husbandry society (*ibid.*). This means that technically only three of the six members could be Sámi and only one will be authoritative enough to speak on behalf of the herders. That is, despite the fact that most areas in Finnmark have a majority Sámi population living from reindeer husbandry, in the Finnmark Estate the Sámi only constitute half of the voting rights, and only one sixth is herding-oriented.

This seems to be one of the first unfair aspects of the Finnmark Act. Another aspect of the Act is the establishment of the Finnmark Commission, which regulates and investigates the land that is governed by the Estate (*ibid.*). The Commission is formally appointed by the king and consists of a chairman and four other members, none of whom is officially supposed to be Sámi. The chairman is appointed under the requirements of the Supreme Court judges, two members being chosen on the basis of the demands of district judges, while the other two must be county residents or strongly affiliated with Finnmark (*ibid.*). The Finnmark Commission has the power to deal with any disagreements over land ownership and to start an investigation to challenge decisions. In simple terms, the Finnmark Act is an official piece of legislation which is supposed to protect Sámi land rights. Under the Act, the Finnmark Estate is the body which has taken over the land and resource ownership from the state, and the Finnmark Commission has the difficult task of distributing rights to the land and its resources. The Finnmark Act is thus a ground-breaking document in terms of being able to secure the land out of the state's hands and place it into those of the county, with a reasonable level of Sámi involvement, though there are still a few issues with the Act itself.

Despite the unprecedented value of the Finnmark Act, its remaining problems must be addressed in terms of its connectedness to the Sámi. The Act is not officially recognised as indigenous-related, but its purpose is to deal with land issues for the benefit of every resident of Finnmark. Nevertheless, it should be mentioned that most Norwegian Sámi live in Finnmark, with some areas primarily populated by the Sámi, and that their main livelihood is reindeer herding. It is quite conspicuous that only half of the Finnmark Estate's members are Sámi and that technically only one of them has to be herding-related. This means that, when it comes to making decisions about land, the Sámi do not have any privileges as under the UN Declaration, specifically Article 26, nor under the ILO Convention 169, Article 14. As a whole, the Act is quite vague on land issues, because even though it is clear that the Finnmark Estate now owns the land, it is not explicitly stated how the Act will comply with the principle of indigenous rights to land. Another issue that stands out is the fact that any resident of Finnmark can exploit the natural resources on land belonging to the Estate, with the appropriate permits for hunting, fishing and trapping. Again,

there is no recognition of the fact that the Sámi consider these activities to be part of their traditional livelihood and that no advantageous treatment is recognised for them. As a whole, the Finnmark Act is ethnically neutral, which goes against the UN Declaration and the ILO Convention 169. No Sámi rights are guaranteed in the Act, and despite the fact that the land in Finnmark is owned locally by the Estate, no major recognition is given to indigenous rights. It is usually a common practice for the Swedish Sámi to complain that the Norwegian Sámi have more privileges than them, but it is clear that, even though the Finnmark Act sounds like a ground-breaking document for land ownership issues, there are major limitations on the Act's ability to protect the best interests of the Sámi.

### **The draft of the Nordic Sámi Convention**

A significant document for all the Sámi in the Nordic region is the 2005 Draft Sámi Convention. Despite the fact that it has still not been officially adopted or ratified by the three countries involved, the draft has been signed by the three governments, and intensive work is continuing in order to secure a final convention by the end of 2016 (Fitzmaurice 2011). An important issue is the fact that the Convention only addresses the Nordic Sámi countries, that is, Norway, Sweden and Finland, which means that the Kola Peninsula Sámi in Russia have been excluded from the document. The reason behind this decision is the fact that it would have been very difficult to negotiate these rights with Russia. Nevertheless, Russian Sámi who live in any of the Nordic countries can exercise the rights covered by the Convention. The Sámi Convention shares many common features with the UN Declaration, but it is also much more specific, as it only addresses issues connected to the Sámi. The draft Sámi Convention consists of preambular paragraphs with sub-points followed by seven chapters with 51 articles. Like the ILO Convention 169, the chapters divide the articles into topical sections. Some of the chapters address issues about Sámi language and culture, Sámi land and water rights, Sámi livelihoods and general Sámi rights.

To start with, the Sámi Convention's first article discusses the objectives of the document:

The objective of this Convention is to affirm and strengthen such rights of the Saami people that are necessary to secure and develop its language, its culture, its livelihoods and society, with the smallest possible interference of the national borders (Nordic Saami Convention 2005).

It is clear from the very beginning that the Sámi Convention has as its goal the amelioration of Sámi conditions by strengthening their rights over some of the most important aspects of their lives. Unlike the UN Declaration but similar to the ILO Convention 169, in its Article 4 the Sámi Convention outlines to whom the document applies, but uses the accepted legal definition of who is officially Sámi based on language and electoral rights. A significant part of Article 4 is the fact that

it also includes as a criterion the right to pursue reindeer husbandry, which is not part of the Swedish official definition of being Sámi. Article 4(2) states that a Sámi is a person who has ‘a right to pursue Saami reindeer husbandry in Norway or Sweden’ (Nordic Saami Convention, 2005). This seems a bit odd, as, in order for people to herd reindeer in Norway or Sweden, they first have to prove that they are Sámi under the legal definition established on language, so to include the right to reindeer husbandry as part of the definition of who the Sámi Convention applies to is not very effective. An issue which has not been addressed by either the UN Declaration or the ILO Convention 169 is the use of symbols representing indigenous people. Article 13 of the Sámi Convention discusses the right to and respect for the free use of the Sámi flag for the purpose of signifying status as a Sámi.

When it comes to land issues, Chapter 4 of the Sámi Convention extensively discusses matters related to land and water. Article 34 specifically addresses the matter of Sámi land occupancy:

If the Saami, without being deemed to be the owners, occupy and have traditionally used certain land or water areas for reindeer husbandry, hunting, fishing or in other ways, they shall have the right to continue to occupy and use these areas to the same extent as before. (Nordic Saami Convention 2005)

This land article particularly notes that, even without being legally the owners of a territory, as long as the Sámi can prove that they have traditionally occupied it to pursue their customary way of life, they should be allowed to retain the right to be there. Article 34 sounds very controversial in its wording, and it is highly unlikely that it will stay this way in the final version of the Sámi Convention. Nevertheless, it tries to address an extremely common issue amongst the Sámi, namely how to prove that the land they occupy is theirs. The last official land ownership papers to be distributed to the Sámi date from the 1700s, and after that the three states just assumed rule over these territories without acknowledging the Sámi documents. All land became state property, and the three countries have dealt quite unfairly with land claims all the way up to the 2000s and the beginning of this decade. Later the case of the Swedish Sámi will be discussed in terms of their claims for land.

Another issue addressed under the land chapter in the Sámi Convention is the utilisation of resources in Article 36:

The rights of the Saami to natural resources within such land or water areas that fall within the scope of Article 34 shall be afforded particular protection. ...

Before public authorities, based on law, grant a permit for prospecting or extraction of minerals or other sub-surface resources...negotiations shall be held with the affected Saami as well as with the Saami parliament, when the matter is such that it falls within Article 16.

Permit for the prospecting or extraction of natural resources shall not be granted if the activity would make it impossible or substantially more difficult for the Saami to continue to utilise the areas concerned, and this utilisation is essential to the Saami culture, unless so consented by the Saami parliament and the affected Saami. (ibid.)

As Sápmi, the area where the Sámi reside, is immensely rich in natural resources such as iron ore, wood, wind and water, it is particularly important that the Sámi are fairly involved in the state's decision of who is allowed to utilise these resources. Based on the UN Declaration, Sámi should have the right to lands, territories and resources. The ILO Convention 169 mentions the right to land and the right to participate in the use of resources. According to the Finnmark Act, all residents of Finnmark have the same rights to land, water and resources. As under the draft Sámi Convention, the Sámi have a right to land and water and should be consulted, compensated or included in any profits if the extraction is made in a land deemed as theirs. The Sámi Convention does not seem to grant the Sámi the right to natural resources the way it grants them land and water. Later the Swedish Sámi case will be addressed in terms of their ongoing battle with iron ore mining.

As a whole, the draft Sámi Convention closely follows the standards of the UN Declaration and the ILO Convention 169, but has been entirely designed for the sole purpose of the Sámi case. The Sámi Convention is still a draft and there is still much work to be done on it, but it shows that, given the necessary political will, the UN Declaration can be localised and customised in order to address important issues for specific indigenous people. It has proved to be a significant step forward for Sámi rights, and even though some of the articles in it are worded more as wishes than intentions and will probably never make it into the official document expected in 2016 in their current form, there is at least a sign that people are working hard towards achieving what in the 1970s and 1980s was unthinkable.

### **The Swedish Sámi case and conclusion**

The majority of academic work on Sámi ethnicity is highly outdated because it deals with the period when the Sámi were greatly stigmatised and discriminated against. No extensive work on Sámi ethnicity or indigeneity has been carried out since their ‘cultural revolution’ began in the early 1990s. This is why the current project presents an excellent opportunity to explore unique issues which have not been examined in the current context of Sámi identity. It is also true that most of the Sámi ethnographies and investigations have been conducted amongst the Norwegian Sámi, despite the fact that the Swedish Sámi have been experiencing almost the same identity crisis as their Scandinavian neighbours.

Having conducted a pilot study amongst the Swedish Sámi in 2012, and currently undertaking long-term doctoral fieldwork in Sápmi, I have gained a basic insight into the present situation concerning Sámi rights and identity. Despite all the hardships the Sámi have been through in the past, in the last couple of decades they have been better able to protect their rights and revive their identity as a matter of cultural pride. The former tendency to abandon their Sámi roots and values has been declining, and more and more people have chosen to remain in Sápmi and follow what are considered to be traditional life-style choices. An increasing number of people now identify themselves openly and proudly as Sámi. The young are showing significant interest in their Sámi traditions and identity, embracing their roots by participating actively in the Sámi reality. Many young people in Sápmi are deciding to wear their *gákti* (traditional Sámi clothing) at celebratory events and gatherings, thus publicly expressing their identity, even though the *gákti* (usually quite an expensive garment made out of thick, heavy wool) is not one of the most comfortable pieces of clothing to be in during a party. People have even specially designed *gákti* made of lighter materials, so that the clothing will be more comfortable to wear at dances and other gatherings. A great proportion of Sámi young people now indicate a desire to be involved in what they see as their traditional way of life, supporting their community by participating in events and attempting to preserve traditional knowledge by learning it at Sámi education centres. The simple gesture of wearing your *gákti* is all that it takes to start showing that you care about your traditions. Obviously, not all young Sámi choose to be open about their background, but there is certainly a much larger proportion now prepared to represent their heritage compared to previous decades.

Nevertheless, I noticed that this ethnic pride might only be represented when the Sámi are with each other in Sápmi. The Sámi organise many events in order to bring people together from around Sápmi. Due to the long distances involved in northern Scandinavia, people do not often go out of their way to meet with relatives and friends who live far away, so these events give them a reason to gather. This acts to reunite individuals from distant areas and to introduce the younger

generations to Sámi culture, but all this is usually done within a highly protective insider environment. The Sámi openly express their ethnicity in the presence of other Sámi representatives, but this is still highly internalised. There are never very many outsiders present at these Sámi events, and this creates a very protective insider atmosphere where the Sámi can be Sámi with other Sámi. This only proves that their ethnic pride has a highly restricted existence. After I was able to visit a few of their gatherings, I soon realised that for the older generation these were great events to catch up with friends and relatives. For the younger generation it was more of a glorified Sámi dating scene, but there was no doubt that for everyone it was a time to be proud of who they are, even if it was only in front of their own people. Being so protective of one's own social environment could be a form of self-preservation created by the decades of ethnic suppression. The question is whether there is still a need to employ such preservation tactics nowadays.

From the works of Webster (1993), Sinclair (1996), Pullar (1992) and Tonkinson (1996) involving indigenous people around the Pacific Ocean and in North America, it is evident that this sort of internalised pride is commonly found in indigenous societies, which may also help externalize their identities at some point in the future. Is it possible for the Sámi to completely detach themselves from any stigma connected to their ethnicity? Are Sámi parents encouraging their children to pursue their ethnicity and show pride in it? How is learning the Sámi language and traditions affecting the mentality of young Sámi? Is there a strong feeling of togetherness among Sámi representatives within communities? What does it really mean to be Sámi nowadays? I also noticed that, even though Swedes are now much more open towards Sámi ethnicity and culture, some discriminatory processes still go on behind the scenes. Will Swedes ever accept the Sámi as equals and treat them without any prejudice? What has to change in order for this to happen?

I now turn to recent changes to Sámi matters in the way I understand them from my already established involvement with the Swedish Sámi community. It remains to be seen to what extent these changes reflect awareness of the UN Declaration and the other official documents concerning indigenous rights. One question I can reflect on from my involvement with the Sámi so far is how the various documents discussed previously in this chapter have had an effect on Sámi life in Sweden. Of the three applicable documents, the UN Declaration has been officially adopted by the Kingdom, the ILO Convention 169 has not been ratified by Sweden, and the draft of the Nordic Sámi Convention has been signed by Swedish officials. As for the land articles in the UN Declaration, these provide that indigenous peoples like the Sámi should be allowed the right to their own traditionally occupied lands and resources. The reality in northern Sweden is that land is still highly contested because it is the most naturally rich area in Sweden, with iron ore, wood, water and wind, all of which contribute greatly to the Swedish economy. The Sámi have a very hard time

claiming any lands as theirs by right of being indigenous. The Sámi can own land as Swedish citizens in the form of private property, but they have no preferential indigenous rights of the sort laid down in the UN Declaration, despite it having been ratified by Sweden. Some of the Sámi I encountered spoke of the very valuable documents issued in the 1700s, which are technically the last official papers given to Sámi residents as evidence of land ownership. After that the land was taken over by the Swedish state, and since then most of northern Sweden has been claimed by the state and also distributed as private property. The very few Sámi who still have the documents from a few centuries back say that this is the most important item that they possess. These documents form part of their cultural pride, but the reality is that they know that most probably the state will find another way not to give them their lands. So far Sweden has resisted ratifying ILO 169 and is clearly not following the UN Declaration. The Sámi Parliament has been working hard to change the status quo, but in reality power is in the hands of the Swedish government.

When it comes to claims over resources, the Sámi are again on the losing side in the battle. According to Swedish legislation, the Sámi are not entitled to any monetary compensation from the profits of the mining taking place on their lands. The Sámi have endured many problems related to the destruction of nature due to mining activities, the damming of rivers and the sourcing of wood. There is almost no control over the environment in northern Sweden. Due to the very liberal rule of the Swedish government and its capitalist orientation, nature has been destroyed, reindeer husbandry has been affected and the Sámi seem to be affected the worst. There is an overall feeling that, even though the Sámi are allowed to have a Parliament and representatives and to discuss issues related to their rights, at the end of the day none of these get them anywhere. One major factor here is that the Swedish Sámi Parliament is regarded as a government administrative body, which means that the national Swedish Parliament can easily disregard and turn down any suggestions from the Sámi Parliament. Many Sámi told me how the Sámi Parliament is just a puppet in the hands of the state and how the Sámi have lost hope in their own Parliament. This is when the Swedish Sámi would usually tell me how much better the Norwegian Sámi have it. It is true that the Norwegian Sámi Parliament has a more autonomous relationship to the Norwegian Parliament (as it is not under the control of the government), but it should be noted that, despite the general misconception, the Norwegian Sámi Parliament is not, in fact, an independent body either. Also, as discussed previously, the Finnmark Act might seem like a big improvement in terms of land rights, but in fact it still does not solve the main land issues advantageously for the Sámi. All Sámi in Sápmi have to deal with many problems, and their struggle for rights to land and resource does not seem to have changed much in the past few years since the adoption of the UN Declaration. It is true that there has been a huge development compared to the tragic events of the

late 1980s connected to the Alta dam in Norway, but as a whole, since the establishment of the Swedish Sámi Parliament in 1993, the burning issue of land and resources has still not been resolved effectively.

On the bright side, since the adoption of the UN Declaration and the drafting of the Nordic Sámi Convention, there has been a great improvement in the cultural side of Sámi development. On top of the pride in their identity discussed above, the Sámi have enjoyed increasing opportunities to return to their roots through handicrafts and Sámi education. Younger generations are freely able to practice their language outside their household without feeling they are being judged. Getting involved in the production of handicrafts, Sámi music, art and literature has become an honourable livelihood, and more and more younger Sámi are striving to represent their own culture with pride. Thanks to the awareness that the UN Declaration has created, more and more Swedes are being introduced to Sámi culture and traditions. It is quite unbelievable how much the majority of Swedes who do not live in northern Sweden are ignorant of and unfamiliar with their country's indigenous people. The Sámi have been able to establish their own media, which is not that widely spread, but at least it exists. The Swedish media also air documentaries about the Sámi from time to time which are supposed to enrich Swedish knowledge about Sámi and to refute stereotypical perceptions of them. On the whole, there is clear progress in terms of Sámi rights, and despite the ongoing battle over land, Sámi culture, heritage and traditions have benefited greatly from the recent advances in indigenous rights.

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