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Master thesis

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**The Right to Self-determination -  
a Case Study of the Saami in  
Sweden.**

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# Summary

This thesis concerns the conditions of the Saami people of Sweden with respect to their self-determination and self-government. The first part of this study is comprised of theories relating to inherent human rights and the right of peoples to self-determination/self-government. Thereafter, an account is made of the treaties and mechanisms on the rights of indigenous peoples, with a particular focus on the right to self-determination or self-government. Moreover, a brief account is made for the historical development of the conditions of the Saami people, before continuing on to studying the Saami parliament, and Swedish legislation and policy relating to the same.

The thesis concludes that the Swedish Saami Parliament does not meet the requirements under international law, ratified by Sweden, on a governing body for an indigenous people. The people in question have a right to truly take part in decision-making on matters concerning their fields of interest. The Swedish Saami parliament does not live up to these demands, which is partly due to its “double character”, being both an elected body as well as a state agency, and partly due to the limited mandate it has been given by the Swedish government. Therefore, the parliament functions neither as decision-making body nor as a channel for the voice of the Saami people.

# Abbreviations

<b>ECOSOC</b>	<b>Economic and Social Council</b>
<b>HR</b>	<b>Human Rights</b>
<b>ICCPR</b>	<b>International Covenant on Civil and Political Rights</b>
<b>ICESCR</b>	<b>International Covenant on Economic, Social and Cultural Rights</b>
<b>ILO</b>	<b>International Labour Organisation</b>
<b>IP</b>	<b>Indigenous Peoples</b>
<b>PFII</b>	<b>Permanent Forum for Indigenous Issues</b>
<b>RF</b>	<b>Regeringsformen (the Swedish Constitution)</b>
<b>RGA</b>	<b>Reindeer Grazing Act (<i>Rennäringslagen</i>)</b>
<b>SCHR</b>	<b>Sub-Commission on Human Rights</b>
<b>SPA</b>	<b>Saami Parliamentary Act (<i>Sametingslagen</i>)</b>
<b>SSR</b>	<b>Svenska Samernas Riksförbund (National Association of the Swedish Saami)</b>
<b>UDHR</b>	<b>Universal Declaration on Human Rights</b>
<b>UNHCHR</b>	<b>United Nations Office of the High Commissioner for Human Rights</b>
<b>WCIP</b>	<b>World Council of Indigenous Peoples</b>
<b>WGIP</b>	<b>Working Group on Indigenous Peoples</b>

# 1 Introduction

## 1.1 Background and choice of subject

Indigenous peoples (IP:s) and minorities have made their voices heard only during the past couple of decades. For a long period of time, they had neither a voice nor representation on the national level, where the majority population decided on the “best interest of the people”. This concept supposedly covered all peoples living within a nation-state. Indigenous peoples all over the world have experienced the same types of marginalisation by the majority population. This can vary from outright oppression to the discrimination originating from pure ignorance. In order to strengthen their position towards their “own” nation State, IP:s tried to organise, both on national and global levels, with the purpose of achieving certain common goals and of making their demands heard on national and global arenas.<sup>1</sup> Through the increasing dissemination of information as well as lobbying, the interest and awareness of their situation has increased. The demands of indigenous peoples are taken seriously in a majority of the world’s States today, and are in most cases regarded as legitimate. They get more attention in the media as well as on the political arena.

The concept of human rights (HR) introduces the framework that it is not only in the interest of a nation state to meet citizens’ claims for inherent rights, but that the implementation of such rights are actually an absolute obligation of the state *vis-à-vis* its citizens.

Only a small number of the States in the world of today are ethnically homogenous. Since ethnicity is a major cause of conflict, the questions surrounding indigenous peoples are interesting from a security point of view as well, a fact that was observed a.o. in the “Agenda for Peace” by Mr. Boutros Boutros Ghali. Albeit interesting, the security aspect of assuring the rights of indigenous peoples will not be discussed further in this thesis, except when raised by international organisations in the human rights context.

Sweden has up until now to a large extent adhered to an obsolete view on the indigenous people living within its borders – the Saami. The governmental view prevalent over the last decades can be traced back to the first Reindeer Grazing Act from 1886. Through the “modern” ideas on race relations developed at the end of the 19<sup>th</sup> Century, the earlier, tolerant, view on the Saami changed. They were hence regarded as a people that had immigrated to Sweden and, in addition, with all probability intellectually inferior to the “Swedish race”.<sup>2</sup> These thoughts were enhanced by

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<sup>1</sup> Hannum, Hurst, 1996. *Autonomy, Sovereignty and Self-Determination*, p 75

<sup>2</sup> SOU 1999:25. *Samerna – ett ursprungsfolk i Sverige*, p 55 f

nationalistic currents sweeping over Europe in the early nineteenth century. The heritage and “soul” of the nation state were emphasised with the intention of creating a national identity, which presupposed creating a myth of homogeneity within the country’s borders. In Sweden, such a development is exemplified by the creation of the outdoor-museum of Skansen in Stockholm, still open today. The museum is a miniature Sweden, put together from various examples of buildings from the different regions as well as game and predators living in Swedish forests. The region of Norrland, however, at the opening of the museum, was represented by a live Saami family, complete with reindeers and “*kåta*” (typical Saami tent).<sup>3</sup>

My point of departure is that the Swedish state over the years has pushed the Saami away from the territories they originally inhabited, and marginalised the people in decision-making processes. The different rights enjoyed by the Saami over the years, have been given as limited privileges. The Saami have also been called the “investigated people”. Large numbers of governmental commissions have been appointed to clarify the status of the Saami in different regards. The situation of the Saami is today given attention and being discussed, last through the state information campaign and sponsoring of Saami cultural projects during 2001-2002. However, my question is whether the Swedish state fulfils its duties towards the Saami under international instruments and legal principles. A second point permeating the thesis is the question how, and why, states implement international human rights principles and treaties. The pre-conceived understanding of this question is that all actors involved in the implementation process, such as States, local and international NGO:s, regional and global institutions and supervisory mechanisms, interact and influence one another. Their reciprocal relations of power and influence change over time, for example as a result of change in structures (regional and global HR regimes), or as new actors enter the arenas.

## 1.2 Purpose, questions and limitations

I am interested in looking into how and to what extent Sweden fulfils its duties under international human rights law concerning the indigenous people living within its borders - the Saami. This study is limited to the right to self-determination or political representation/participation, as these are expressed in HR instruments. Firstly, those instruments are studied which express a general right in the above-mentioned fields. Secondly, the instruments addressing the rights of indigenous peoples in particular are looked into. In the light of the aforementioned, an analysis is made of the functioning of the Saami parliament. Furthermore, the possible future development is discussed, notably the importance for the Saami of the newly established UN Permanent Forum on Indigenous Issues, as well as the

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<sup>3</sup> Skansen, [www.skansen.se](http://www.skansen.se) (01.10.01)

possible impact of a future UN Declaration on the rights of indigenous peoples. The questions asked are as follows:

- What regional and international instruments and other mechanisms are binding for Sweden, relevant for the rights to self-determination of indigenous peoples?
- Is the Swedish Saami parliament of today a sufficient guarantor for the realisation of the above mentioned rights?
- How will the on-going and future development on the rights of indigenous peoples affect the Swedish state and the Saami?

The first question leads to an assessment of a more descriptive character. The second question is answered using the instruments singled out previously, along with Swedish legal acts concerning the Saami. The third question implies a discussion in the light of the aforementioned international instruments and Swedish legislation.

Instruments on both global and regional levels are discussed. The most important regional organ for the daily work of the Swedish government is the EU. It can be discussed whether the EU is important to the Saami and their demands, too. The Saami parliament mentions the European co-operation on language matters as important in the EU-context.<sup>4</sup> However, this thesis does not deal with the complex workings and possible effects of various EU procedures, since only special documents are analysed. It can be noted that the EC-court has expressed through its practice, that the Council of Europe's Framework Convention on human rights expresses the basic principles applicable within the EU-context too. Therefore, the framework Convention shall guide the work of the EC-court and, ultimately, the work of the EU as well.<sup>5</sup> Consequently, what is said in the section on the ECHR to a large extent applies to the EU.

In the international HR-discussion concerning IP:s, great emphasis was recently given to the "s-debate", that is the question whether indigenous peoples should indeed be referred to as "peoples" or "people". States preferred the latter as the term was considered as more generalised. It could then not be interpreted as a term putting indigenous peoples at par with the "recognised" peoples of nation-states, thus creating new rights for indigenous peoples.<sup>6</sup> Today, however, the term "indigenous peoples" has been widely recognised and adopted in the international community. Nonetheless, there still are states that do not accept more than one people within their borders.

The term "Saami" (Sw.:*same*, Saami: *sápmi*) is an ancient Saami word, used to designate man, human or the territory inhabited by the Saami. It is today

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<sup>4</sup> Conversation with Átsi, the Secretariat of the Saami Parliament, 10.07.02

<sup>5</sup> Danelius, Hans, 1997. *Mänskliga rättigheter i europeisk praxis*, p 22

<sup>6</sup> For further discussion, see Lâm, Maivân Clech, 2000. *At the Edge of the State: Indigenous People and Self-Determination*, p 67



also the official Swedish denomination for the Saami people, and has replaced the word “lapp” in all official documents.<sup>7</sup>

### 1.3 Method and material

The bases for the thesis, the ontology, is the framework of international public law, in particular the current international human rights regime, stating that all human beings are born with a certain set of inherent rights. The epistemology is of a post-positivist nature. A positivist believes that there is an objective reality out there, to be observed, assessed and evaluated. A post-positivist complements this thought with an awareness of the political nature of research, along with the transient nature of knowledge.<sup>8</sup>

A so-called single-case study has been considered a good method to use when a researcher wants to explain how and why a certain phenomenon or development has taken place. It is also suitable for studying contemporary phenomena, in particular for understanding complex social phenomena.<sup>9</sup> A single-case study can also include certain comparative elements, and can therefore be of importance in a discussion on similar cases with more or less the same background. A single-case study can be considered as comparative if it either uses concepts applicable to other cases or develops such concepts, or if it tries to draw broader conclusions.<sup>10</sup> In the present case, this could imply indigenous peoples in other western countries, in North America and notably other Nordic countries.

A variety of material and sources have been used for this thesis. For the section on the historic overview of the Saami in Sweden, different sources have been used to attempt to make a fair description. State commissions on the Saami have been used along with legal documents. The Saami point of view is represented in the magazine “*Samefolket*”, in the National Association of the Swedish Saami, and the first book on Saami history by P G Kvenangen. Certain other articles have been used from magazines specialising in indigenous peoples, and also articles from Swedish newspapers. For the section on the Saami Parliament and current work of governmental Commissions and preparations for drafts on Saami matters, interviews have been undertaken with officials from the Swedish Government Secretariat as well as representatives of the Saami Parliament. As for legal documents, Swedish legislation has already been mentioned, but sources also include international treaties and documents, issued by the UN as well as regional organisations. The Internet is a very rich source of information, but selection of web-sites and different data must be made with

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<sup>7</sup> Henriksen, John B., 1999. *Saami Parliamentary Cooperation*, p 24

<sup>8</sup> Robert K Yin, quote in Söderholm, Peter, 1997. *Global governance of AIDS: partnerships with society*, p 50

<sup>9</sup> Landman, Todd, 2000. *Issues and Methods in Comparative Politics*, p 44

<sup>10</sup> Landman, 2000, p 32

caution. The internet-sites used in this thesis have been chosen from more or less official sites, often linked to the above mentioned sources.

When it comes to the state of the research in the field, it has gone through a considerable change during the past years. The situation of indigenous peoples in general has been researched during the past decades. However, it is only recently that Swedish scholars discovered the topic. A recent change of trend has resulted in numerous new academic theses on Master's levels as well as doctorates. One interesting example is Mr. Ulf Mörkenstam's "On the privileges of the Lapps: perceptions on the Saami in Swedish Saami-politics from 1883 to 1997". However, I have not found any study on the particular topic chosen for the present thesis.

## **1.4 Thesis structure**

Chapter Two of this thesis provides a short account for the basics of human rights that I have chosen for the further discussion in the thesis, in particular the rights of indigenous peoples. This chapter also lays out a few different researchers' theories on the right to self-determination or representation. The following chapter is of a more technical character, as it assesses the different legal instruments and mechanisms of relevance; on regional and global level, but with an emphasis on the UN system. Chapter Four consists of a brief overview of the history of the Saami. The following chapter accounts for the different fora where the Saami can discuss and claim IP rights. Each of the above chapters is concluded by a "Comment", reiterating the main points made in the chapter, in order to facilitate reading. Chapter Six ties the previous chapters together and attempts to answer the questions asked initially.

## 2 Framework: Human Rights in General

The concept of human rights is today normally understood as a set of rights, inherent in every person from birth. The origins of these thoughts are often attributed to the European enlightenment philosophers of the 17<sup>th</sup> and 18<sup>th</sup> centuries, although various scholars have tried tracing more or less the same thoughts in moral and religious systems throughout the world. It was not until 1948 that a common document, expressing the human rights of peoples of the world, was created – the Universal Declaration of Human Rights (UDHR). Of course, this document has during the last decades been complemented by a plethora of different instruments, binding and non-binding documents, some of which are accounted for below. Both the UN and different regional organisations have taken part in the further development of human rights regimes. The thought of the universality of human rights was expressed in the important document of the World Conference of Human Rights in 1993, the Vienna Declaration: article 5 states that “human rights are universal, indivisible and interdependent and interrelated (...)”.<sup>11</sup> The Vienna Declaration has been signed and ratified by the majority of the member states of the UN. Its principles should therefore be universally accepted.

The implementation of the international HR treaties is dependent on the “good will” of states. Albeit bound by general legal principles such as “*pacta sunt servanda*” and the Vienna Convention on the Law of Treaties, when it comes to realising human rights, states also make political and economical considerations. Even if there does exist a will to implement HR on a national level, states might be restricted by factors beyond their own control, such as globalisation or different structural factors.<sup>12</sup> So, treaties should establish duties of states to uphold the rights expressed. HR treaties do not normally accord individual rights which may be claimed in national courts by persons. The difference between national law has been described in the following way:

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<sup>11</sup> Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993. See UNHCHR, [www.unhchr.ch](http://www.unhchr.ch) (30.06.02)

<sup>12</sup> Tony Evans, 1998. “Power, hegemony and human rights”, p 17 in Evans, Tony (ed.) *Human Rights Fifty Years On. A Reappraisal*.

”Legal rights ground legal claims on the political system to protect already established legal entitlements. Human rights ground moral claims on the political system to strengthen or add to existing legal entitlements.”<sup>13</sup>

Contracting states may also make reservations in relation to certain articles in a treaty. This possibility is normally regulated in the treaty in question. A reservation may not be of such a character as to undermine the purpose of the treaty. A state cannot reserve itself against the majority of the articles of the treaty.

A discussion of interest for the human rights discipline has been that of “universalism” versus “cultural relativism”. As noted above, the origins of human rights are normally attributed to enlightenment philosophers, white European men, which is a reason for criticism. It has been claimed by cultural relativists that HR cannot be universally valid but that any idea of rights inherent in a person must depend on the geographical and cultural context.<sup>14</sup> However, it can also be noted that such arguments have primarily been used on an international level by political *élites*, in order to justify the non-realisation of HR, which would have been politically or economically too costly.<sup>15</sup> The answer for defending the universality of HR may be that “human nature in itself is culturally relative”.<sup>16</sup> Naturally, HR are most important to claim for those who do not have them.

When applying the above thoughts to the Swedish context, it can be noted that the universality of human rights is the point of departure for Swedish internal and external policies. The Saami people seem to share this point of view. The framework of this thesis is the global human rights regime of today, with a focus on instruments concerning indigenous peoples but also to some extent minorities.

## 2.1 The State and Human rights

The principle of the sovereignty of the State has for a long time been prevailing in the world system. It does indeed exist since a long time, but not since time immemorial. It should be kept in mind that the concept “nation-state” was created a few centuries back – possibly as a result of the Westphalian State system (following the Westphalian peace agreement of 1648 that established clear border lines dividing territories into defined states).

The principle of State sovereignty partly included the right of the ruler to freely govern his defined territory and partly meant the right to decide over the citizens living on that territory. Territorial sovereignty implies a duty not

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<sup>13</sup> Donnelly, Jack, 1989. *Universal Human Rights in Theory and Practice*, p 12

<sup>14</sup> Donnelly, 1989, s 109

<sup>15</sup> Donnelly, 1989, p 109 f, 119

<sup>16</sup> Donnelly, 1989, p 111

to interfere on the territory of other States and a right not to be infringed upon one's own territory. The principle of sovereignty has thus expressed a principle of equality of States.<sup>17</sup> State sovereignty is however subjected to restrictions, *de facto*. While many of these are a result of actions beyond the control of a single State, many are effects of actions taken by the state itself, such as membership in organisations or adherence to international treaties.<sup>18</sup>

This principle of sovereignty has been questioned in later years, notably as influential actors other than states gain access to and power on the global political arena. These are entirely different entities or groups, such as international organisations (such as the UN), regional organisations (such as the OSCE), multinational corporations, various NGOs and more loosely clustered groups such as those protesting not too long ago in Seattle, Genoa and Gothenburg against the world economic order.

Only few States can today claim to be homogenous, regardless of which criteria are used for a definition of homogeneity, and the only states that could do so are probably island States. Hence, it is increasingly difficult to uphold the myth of a strong nation-state, with one unified people. Any attempts to do so often leads to the suppression by states of the very ideals that were singled out as guiding principles for democracies of our century, such as plurality, tolerance and human rights.<sup>19</sup>

## **2.2 Group rights, collective rights and individual rights**

With a view of codifying the principles expressed in UDHR, soon after its creation work was commenced to formulate a text that would become a binding instrument. Partly as a result of the Cold War, the rights contained in the UDHR were divided into two groups; civil and political rights on the one hand and economic, social and cultural rights on the other. The West supported the first group (also known as “first generation rights”), considered to be rights that could be implemented without any costs for the state. The states of the former Eastern bloc were unwilling to formulate rights regarding political predispositions such as freedom of opinion, speech, etc. and instead emphasised the economic, social and cultural rights (also called “second generation rights”). This partition resulted in what critics claim was an ostensible dichotomy, between human rights which supposedly are of equal value. The view of different generations of rights is not compatible with the principle of human rights as interrelated, interdependent and indivisible.<sup>20</sup>

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<sup>17</sup> Hannum, 1996, p 4

<sup>18</sup> Hannum, 1996, p 21

<sup>19</sup> cf. Hannum, 1996, p 26

<sup>20</sup> see article 5, Vienna Declaration, and discussion in Donnelly, 1989, p 144 f

Nonetheless, over the past years it has also been discussed whether so-called group rights (also called “third generation rights”) exist. As opposed to the long prevailing definition of human rights as inherent in the individual, this discussion took its point of departure in the thought that the group as such could enjoy rights, in being a collective. Along with individual rights of each member for the group, the collective could also enjoy certain particular rights.

The Human Rights Committee (the treaty monitoring body for the ICCPR) has through its judging activities ruled that individual rights prevail over collective rights. This principle has for example been expressed in the case *Sandra Lovelace v. Canada*. A woman named Lovelace, of Indian origin, had married a man of non-Indian origin. When she later on divorced him she wanted to move back to the reservation where she had grown up. She was not allowed to come back, as this was against the rules of the best interest of the tribe, set by the collective. According to the Human Rights Committee, this was incompatible with assuring the human rights of Mrs. Lovelace, and the right of the group to determine their standards had to give way for individual rights.<sup>21</sup>

Minority groups have, as pointed out earlier, gained increased attention and response on an international level. The role of the nation state has been weakened in the “post-Westphalian” system, a fact that could have both positive and negative effects on the situation of indigenous peoples, and their possibilities to claim collective – or group rights.

## **2.3 Self-determination, self-government and autonomy**

So, the principle of sovereignty of the State over a certain territory or people has been prevalent in the international system, and considered as standing above other basic principles. When discussions started on the rights of peoples within the framework of a State, questions arose concerning the actual scope of a potential right to self-determination, and whether or not the principle of state sovereignty would have to give way. There are questions about territory, as well as the participation in national politics. Since indigenous peoples are normally the peoples that inhabited certain lands before the ruling elites took power, discussions often focus on those lands to which IP:s have a particularly strong connection. The right to self-determination is widely claimed today, although its precise scope is still vague.

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<sup>21</sup> Chinkin Christine, 1998. ”Human Rights and International Law” in Tony Evans, 1998, p 108. Also see the case *Sandra Lovelace vs. Canada*, CCPR/C/D24/1977, available at [www.unhchr.ch](http://www.unhchr.ch)

A principle of self-determination was claimed already in the 18<sup>th</sup> and 19<sup>th</sup> centuries, and was at this time formulated by proponents of the growing nationalism. The principle was then used as a right of the people (majority population) to freely choose their own government, hence, an argument against the ruler which was not considered to represent the views of the people.<sup>22</sup> The principle of self-determination was continuously discussed in this context. Not until the creation of the League of Nations the question was raised whether or not to codify the principle. U.S. President Woodrow Wilson suggested that a certain right to self-determination be taken into the Statute of the League of Nations, but this proposal gained no success.<sup>23</sup>

Neither is there any clear reference to the right to self-determination in the Charter of the United Nations. Something of the sort is mentioned twice in the Statute – firstly the furthering of “friendly relations between states” (Article 1.2) and, secondly the “equality of all peoples” (Article 55). Notwithstanding the fact that the principle of self-determination was under discussion at the end of WWII, it was not considered sufficiently established to express it as a “right”. The principle is furthermore not found in the UDHR of 1948.<sup>24</sup>

The former European colonies, notably in Africa, raised demands for independence in the 1950s. In this debate, the “right to self-determination for colonised peoples” was formulated. The debate culminated in the adoption by the UN General Assembly in 1960 of the “Declaration on the Granting of Independence to Colonial Countries”.<sup>25</sup> The second paragraph of its preamble states that “all 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”. This declaration was followed a decade later by the “Declaration on Principles of International Law concerning the Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”.<sup>26</sup> In this declaration, the term “peoples” was considered as including the peoples of the former colonies only. The decisive factor for determining self-determination of a people was that it was living within a certain territory. It did not define “people” as based on any thoughts of community, i.e. departing from “national”, ethnic, cultural, or other, criteria; despite the fact that borders had been drawn by colonisers and often had little to do with the actual connection of peoples to certain territories.

“The right to self-determination” had during this time been used with the then colonies in mind. These managed to claim the right successfully.<sup>27</sup> The

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<sup>22</sup> Hannum, Hurst, 1996, p 27

<sup>23</sup> Hannum, 1996, p 32

<sup>24</sup> Hannum, 1996, p33

<sup>25</sup> UNHCHR, GA Resolution no. 1514

<sup>26</sup> GA Resolution no. 2625

<sup>27</sup> Chinkin, 1998. “Human Rights and International Law”, p 108-109 in Tony Evans (ed.), *Human Rights Fifty Years On – A Reappraisal*.

right is founded on the formulations in the two Covenants of 1966 (ICCPR; ICESCR art 1)<sup>28</sup>. These express the right of all “peoples” to freely determine their political status and to strive for development in the economic, social and cultural fields. When indigenous peoples tried to claim the same right, they met a solid resistance of States. In this context, the formulation in the 1966 Covenants gave rise to several questions, such as what constitutes a people, what the scope is of “self-determination”. The rights of the common Article 1 of the Covenants was originally not intended to include groups of people within a State. This formulation is almost an exact replica of that of the Colonial Countries Declaration of 1960.

“The right to self-determination” is today a vague term of which the content may vary depending upon the person interpreting the named right (see 2.5). Within the discussion, two major views can be distinguished; the so-called rights to internal and to external self-determination. Internal self-determination would include the right of each people to rule and decide on its own future, within the framework of the existing nation state. It is still not clear how far-reaching this type of decision-making would stretch, and if it would include all fields on which a central government normally has the right to decide. The external right to self-determination, or secession, has not as yet been accepted by any government. Hence, an indigenous people could not claim any “right” to secede from an existing state today. In this respect, the world community has considered the need for world-wide peace and stability as overriding the rights of peoples to decide upon their future. Then again, excluding possibilities for secession might very well create instability and conflict.

Many States have earlier feared that self-determination over a lesser field would lead to a “decision-making spiral”, extending decision-making more than originally intended. Experiences of past years have shown that this fear was unfounded. Instead, it has been claimed that “internal self-determination” is indeed the right method of a State to live up to its obligations towards indigenous peoples, concerning the right to self-determination. In this way, the State gives other peoples than the majority population a possibility to work on the same level.<sup>29</sup> In the light of recent development of discussions, it has been claimed that the Friendly Relations Declaration and other universally applicable instruments show that the right to self-determination is indeed a right to be claimed by all peoples.<sup>30</sup>

It can be supposed that States built on a federal structure would handle and incorporate questions of indigenous peoples and their participation in decision-making more easily than States with a different organisation. For

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<sup>28</sup> “All 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.”

<sup>29</sup> See a.o. the discussion by Jane Wright in “Minority Groups, Autonomy, and Self-Determination”, 1999, p 605-607

<sup>30</sup> Wright, 1999, p 615



example, Canada is a country where self-determination of indigenous people, such as the Inuit, has come a long way. Far-reaching powers of self-determination, bordering autonomy, could of course give rise to questions of responsibility for applying HR instruments by the group in question. Such questions must however be further looked into in a context other than the present.

In order to ensure the true enjoyment of a people of its rights, there is need for more than a regular change of national standards, granting rights. The state might be required to also introduce “special measures” for the people. In accordance with the European Framework Convention, such special measures should be of a temporary character.<sup>31</sup> Questions have in this context been raised whether temporary measures could truly address problems of a structural and durable character. In practice, temporary measures could be expected to last a certain period of time. The balance with the principle of equal treatment must of course be considered as well. This concerns the majority population towards a minority people, but also between different minority groups.<sup>32</sup> Striving for a separate identity and recognition of the rights of the group might lead to clashes with the principle of equality but is not bound to do so. Access to work, land and property may be dependent upon special treatment. The question is whether minorities can both demand special treatment and receive equal access to those areas not covered by special measures.<sup>33</sup>

By tradition, rights have been enjoyed by the citizens of a State. In recent years, demands have been made that also minority groups that are not citizens of the country, within which it lives, should be granted the same rights as citizens of that country. This could notably be of importance to nomadic peoples.<sup>34</sup>

As a concluding remark, it should be pointed out that this area is dynamic and undergoing constant change. Up until now, the term “self-determination” has been defined by nation states or the international community. This is a truth that might be modified as indigenous peoples themselves gain access to the international arena through new fora.

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<sup>31</sup> Alfredsson, Gudmundur and Ferrer, Erika, 1998. *Minority Rights: a guide to United Nations procedures and institutions*

<sup>32</sup> Ghai, Yash, 2001. *Public Participation and Minorities*, p 11

<sup>33</sup> For further discussion along these lines, see Eide, Asbjörn, 1993. *New Approaches to Minority Protection*, p 12

<sup>34</sup> Ghai, 2001, p 10

## 2.4 Interpretations of the Right to Self-determination of Indigenous Peoples

As mentioned above, it is first and foremost during the past few decades and most notably since the end of the Cold War, that the rights of indigenous peoples and minorities have been under serious discussion and scrutiny.

It has also been seen above that a number of the principles that are today put forward as establishing rights were formulated in the aftermath of the Second World War. In the course of the developments in discussions on the rights of indigenous peoples, old principles have been re-formulated, re-interpreted and given a new meaning. Different scholars have developed slightly differing views, some of which are accounted for below. Notably, the works of the American scholar Hurst Hannum have been influential, but other interpretations are presented to give a more complete picture of the discussion on self-determination.

In this debate, one popular point of departure has been the term “consociationalism” as invented by Arendt Lijphart. In short, this means that minorities need a separate representation in decision-making processes and for participation in governmental bodies, a sort of “fragmentary autonomy”, where different entities enter into coalitions with one another. This would be an alternative to the now existing democracies, which often bring about a rule of the majority, marginalising minorities. To create a functioning system according to this model, minority groups need however be clearly defined, e.g. in linguistic, religious, cultural and ethnic groups.<sup>35</sup> Other scholars state that minority groups should instead be more integrated in the existing system, without being assimilated. Therefore, special incentives should now be created to encourage minority groups to participate in the existing political processes, so that the final result could be a pluralist system of representation.

Hannum started discussing the rights of IPs early on. His works have continued to be influential, not the least in the field of right to self-determination. Hannum states that self-determination has without doubt reached the status of a right in international law today. He furthermore points out that despite the formulations of the 1966 Covenants and other UN instruments, indicating the character of self-determination as an absolute right, it has not been applied as absolute in practice. Instead, it has been applied after a certain balancing of different interests in the specific context. The “standard work” of Hannum, *Autonomy, Sovereignty and Self-determination* was published in 1990, with a revised version in 1996. Since then, major changes have occurred in the field. Hannum himself expressed a revised version of his views, in an article published in 1993, stating that the right to self-determination should be interpreted in light of all UN

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<sup>35</sup> Eide, 1993, p 14

instruments issued since the end of WWII, not the least the instruments concerning minority and indigenous peoples' rights. Self-determination can thus be interpreted as "self-government", in accordance with UN instruments. This would lead to restructuring existing constitutional arrangements or autonomy regimes on the national level.<sup>36</sup>

Two scholars in particular have discussed the notion of self-determination in terms of "internal" and "external" rights to self-determination.

First, Antonio Cassese defines "self-determination" in terms of customary law and treaty law. He argues for the existence self-determination in international law, as *jus cogens*.<sup>37</sup> Cassese then makes a clear divide of the different scopes of external and internal forms of self-determination. The denomination "external self-determination" would cover situations of colonial rule, of peoples subjected to foreign domination or occupation, and finally, economic self-determination. The term "internal self-determination" would cover the "remaining" claims to self-determination.

Gudmundur Alfredsson has also made distinctions in terms of the external and internal rights of self-determination. Discussing the external aspect of self-determination, Alfredsson notes that there is indeed a reference to possibilities for secession in the UDHR of 1948; "recourse...to rebellion against tyranny and oppression". So, systematic exclusion of groups, political non-representation at the national level, could justify external self-determination, in the form of rebellion against the rulers. However, Alfredsson argues that the principles of sovereignty and territorial unity prevail over the right of peoples to form separate political entities or countries. He furthermore points to the difficulties in justifying violent uprisings to achieve self-determination. Who is to decide whether they can be justified, and where the line should be drawn? An alternative is introducing autonomy or self-government. It is argued that these arrangements however fall short of the normal understanding of "self-determination". Federalism, pluralism etc. should not be understood as forms of self-determination. Alfredsson furthermore warns not to use the term self-determination lightly, for fear of watering down the concept. The term could also become counter-productive, if it is used

Christian Tomuschat, on his side, states that the right to self-determination has first and foremost turned into an instrument for "amending wrongs" of the past, that have emerged and been cemented over decades, even centuries. He questions whether it is indeed possible to amend imbalances in allocation of power simply within a country simply by way of claiming self-determination for minority groups. Since states are subjects of treaties as well as those formulating treaties and international custom, they will guide

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<sup>36</sup> Hurst Hannum, 1993. "Re-thinking Self-determination", *Virginia Journal of International Law*. No 34

<sup>37</sup> Cassese, Antonio, 1995. *Self-Determination of Peoples – a Legal Reappraisal*. Cambridge: Cambridge University Press

the right to self-determination in the direction they wish. Tomuschat points out that neither states nor the UN have accepted a right to secession, citing the cases of Cyprus and Western Sahara, and among other Article 6 of the Friendly Relations Declaration, warning not to put the territorial integrity into question. On the other hand, the named Declaration admits that territorial integrity must cede if the government is not legitimate in the sense that it represents the whole people. Tomuschat does however not see this statement as founding any “right” to secession.<sup>38</sup>

Martti Koskenniemi starts by pointing out that in the classical positivist literature, the State has normally been taken in its existing form for granted, without asking the question if its existence could be questioned. To be able to truly discuss the issue of self-determination, one must go beyond this reasoning. Koskenniemi therefore sees an inherent paradox in a right to self-determination. On the one hand, the state is given a near absolute right to decide over its territory. On the other hand, no formation of State is of value *per se*, but is only worthwhile as long as it is a legitimate representative of the people living within its borders. The presumption for a state’s legitimacy can be broken if a group feels excluded from participation in exercise of powers. The paradox of the principle of self-determination lies in its both supporting and challenging self-determination over a certain territory.<sup>39</sup>

The question of the national electoral and political systems, and their importance for self-determination, has been elaborated upon by Yash Ghai. If a small minority is proportionally represented it will not have any real influence over politics. In most countries minorities are under-represented. Nonetheless, it is important that minorities participate in processes from legislation to decision-making. For example, they can take part in committees, be given veto in certain issues, or demand that certain questions be put under a special decision-making procedure. Other alternatives are establishing special councils or committees for the members of the minorities only, that will then enjoy consultative status with the government or parliament. This is a particularly interesting solution when minority group members are not citizens and entitled to vote in the country of residence.<sup>40</sup>

Frederick Kirgis Jr. defines the right to self-determination drawing from empirical examples. He takes his point of departure in reality, as he sees it, and makes a classification of self-determination in eight different types of self-determination. These range from the “well-established” right to freedom from colonial rule, over a right to secession, a right of re-unification of states, the right of a group to choose its own government.

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<sup>38</sup> Tomuschat, Christian, 1993. ”Self-determination in a post-colonial world”, p 1-20, in Tomuschat, Christian (ed.), 1998, *Modern Law of Self-Determination*.

<sup>39</sup> Koskenniemi, Martti, 1994. ”National Self-determination Today: Problems of Theory and Practice”, p 245 ff in Steiner, Henry J. And Alston, Philip, 2000. *International Human Rights in Context – Law, Politics, Morals*.

<sup>40</sup> Ghai, 2001.

Kirgis furthermore claims that it is impossible to discern what the current legal status is in this respect, and what is merely a wish of particular groups. He claims the answer to the question is to be found in the Declarations of 1970 and 1993. His interpretation of the self-determination according to these instruments makes it clear that at one end of the scale there is the dissolution of a state, followed by a number of more or less destabilising measures, as shown by his empirical study. Therefore, Kirgis claims that there are many degrees of self-determination. The right of certain people to self-determination, can be determined by looking into its degree of participation or representation in decision-making processes. In order to assess the scope of the right in a specific case, one must weigh the above-mentioned degree of representation/legitimacy of the government towards the possible destabilising effects of potential measures. So, a group that has a degree of representation in the government cannot claim autonomy or a right to secede. This is the case if a group is utterly ignored in decision-making, with an unquestionable right to secession in cases of persecution, or even genocide, of a group within a country.<sup>41</sup>

## 2.5 Comments

The human rights regime in its current form has developed over a long time, and is undergoing constant change. Many like to derive the HR of today to the thoughts expressed by philosophers of the Enlightenment. These developed and were put in print after the Second World War, later codified in the important International Covenants of 1966. Notwithstanding the almost universal accession to the most important binding instruments as well as declarations of the UN, notably the Vienna Declaration of 1993, the notion of HR is still controversial and debated in various cultural and religious contexts in different corners of the world. The principle of State sovereignty has been subjected to limitations through the accession of states to international instruments, as well as through the increasing number of actors on the international arena, influencing politics. When it comes to indigenous peoples, binding texts, policy documents, and commissions have seen the light in recent years. Discussions about group or collective rights seem to have concluded that these exist, although individual rights prevail, according to practice. Issues often revolve around sensitive questions of power; in decision-making as well as in the control over and use of lands. The debate on self-determination has in many places been heated, and in others been suppressed by the government, as it puts the constitutional arrangements, if not the very existence, of a State into question. The right to self-determination has its legal basis today in customary law (the principle of self-determination, the *usus* drawn from practice of states) as well as in treaty law.

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<sup>41</sup> Kirgis Frederick, jr. 1994. "The Degrees of Self-determination in the UN Era", p 1270-1272 in Steiner, Henry – Alston, Philip, 2000. *International Human Rights in Context - Law, Politics, Morals*.

Several scholars have tried to assess the scope of the right to self-determination for indigenous peoples. The interpretations differ slightly as for the extent of the right. All of these proposals include a right for IPs to decide in matters relating to their own affairs, specific to them as a people. This latter definition would correspond to “internal self-determination”, whereas “external self-determination” includes a right to secede from the state structure. None of the scholars put forward an interpretation including an unconditional right to external self-determination, which is considered too far-reaching and contrary to basic principles of international law, guaranteeing for example sovereignty and territorial unity.

# **3 Rights for Minorities and Indigenous Peoples – Human Rights Instruments**

As mentioned above, it is in particular in the past few decades that the rights of indigenous peoples have been under serious discussion and development. The general principles and certain formulations that are prevailing or discussed today were elaborated at the end of the Second World War. However, some documents pertaining to colonised peoples and slaves were adopted already in the beginning of the 20<sup>th</sup> Century.

## **3.1 The UN system**

### **3.1.1 General documents**

The Charter of the United Nations establishes the cornerstones of the organisation. All other UN-documents are interpreted in the light of the Charter. It states, among other, that: “The purposes of the United Nations are to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace” (Article 1(2)). Article 55 of the Charter reiterates the formulation of the first article, adding that a number of improvements of conditions of living are necessary to create the stability which is the foundation for achieving the goals set in article 1(2). Many different proposals have been put forward as for the interpretation of the first article. Controversial questions include among other the definition of peoples – does the concept include only peoples defined by the nation state or any people considering itself as such?

The United Nations’ Declaration on Human Rights (1948) is by many considered to be the most important HR instrument. Notwithstanding the fact that the document is merely a “declaration”, it has gained wide dissemination and recognition. Declarations are furthermore important declarations of intent, or principle. They set the guidelines for the actions of States and are the foundations of a continued development of rights. Declarations can lead to the codification of the principles they express, creating binding international law.

As previously mentioned, the rights of the UDHR were divided into two sets of rights, expressed in two different covenants; International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenants came into force a decade after their formulations, after the necessary number of ratifications.<sup>42</sup> Since 1976 they constitute a couple of the most important as well as basic documents in the field of human rights.

The Covenants have a common first article (see appendice). The Human Rights Committee (hereafter the Committee), is the treaty monitoring body of the ICCPR. The Committee carries out its work for example through the supervision of annual reports on the implementation of HR in member states (submitted to the Committee accordance with provisions in the ICCPR). The Committee also issues comments on the interpretation of the various articles of the Covenant. It is remarkable to note that the comment elaborated in relation to the important Article 1, does not take a stand on whether there is a right of self-determination, and possibly secession, encapsulated in the article.<sup>43</sup> In the ICCPR there is also a special reference to indigenous peoples' and minorities' rights, in Article 27 stating that:

“In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their religion, or to use their own language”.

The same right is already accorded every individual in other statements of the Covenant. The above article thus aims at strengthen the rights of the persons belonging to minorities in particular. According to the Committee, Article 27 shall not be read together with Article 1, and hence does not accord a right to self-determination to minorities. On the other hand, the Committee states that it is possible that the rights of Article 27 might only be exercised if the minority possess a given territory, which they also control. This could be particularly true for IPs. Furthermore, it is said that special measures might be indispensable for the actual enjoyment of the minority members' actual exercise of their specific rights. Such special measures are contrary to the principle of equality, but can be justifiable if they aim at correcting an unequal starting position.<sup>44</sup>

Sweden, obligated to present its report to the Committee, had to defend its record with respect to compliance with Article 27 in the *Ivan Kitok* case.<sup>45</sup> The case considered the possible illegality of the exclusion of a member to a Saami village. In this matter, the Committee decided that the Swedish State was not in breach of Article 27. At the same time, the Committee pointed out that it undertakes a case-to-case judgement, and that it might be

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<sup>42</sup> GA Resolution 2200A (XXI) 16 Dec. 1966. Available at UNHCHR, [www.unhchr.ch](http://www.unhchr.ch)

<sup>43</sup> See UNHCHR, "Treaties", ICCPR, General Comment 1. [www.unhchr.ch](http://www.unhchr.ch)

<sup>44</sup> See UNHCHR, "Treaties", ICCPR, General Comment 23, [www.unhchr.ch](http://www.unhchr.ch)

<sup>45</sup> *Ivan Kitok v. Sweden*, CCPR/C/33/D/197/1985



concluded that the State does not fulfil its obligations, in a case with slightly different circumstances.

In practice, the Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>46</sup> has been of importance also for IPs. Contracting States are obligated to report to the treaty monitoring committee in accordance with the Convention (see article 9), and regardless of the fact that contracting states are under no obligation to elaborate on the situation of IPs in these reports, this is often the case in practice.<sup>47</sup> The question on discrimination by the Swedish State against the Saami was put before the Committee on CERD in August 2000. The Committee expressed concern over presumed limitations in the right of the Saami to use traditional lands for grazing for the reindeer. The Committee recommended that Sweden solve the question, in particular considering the central place of reindeer herding in Saami culture.<sup>48</sup> The discriminatory practices of States towards indigenous peoples were moreover emphasised at the World Conference against Racism (WCAR), convened in Durban in 2001. Indigenous groups have expressed their disappointment that their concerns were not given enough attention in the WCAR context.

Other UN documents, mentioned above in passing and repeated here, are the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, as well as the 1970 Friendly Relations Declaration. They both constitute a development and enforcement of the thoughts on self-determination and equality between peoples, although the former took aim at a special episode in time.

### 3.1.2 Special Instruments for Indigenous Peoples

The document that States should keep in mind when dealing with indigenous peoples is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Declaration on Minorities), adopted by the UN General Assembly in 1992.<sup>49</sup> It is the first modern document addressing the situation of minorities from a pure rights perspective. It falls back upon the above mentioned instruments. The principles contained therein are also a result of the work of the Human Rights Committee; its supervisory work through control of state reports, of judgements in single cases and interpretation in the form of General Comments. The nine articles of the Declaration on Minorities state many precise obligations on states *vis-à-vis* minorities. According to Article 2, Paragraph 2, “persons belonging to minorities have the right to effective participation in the cultural, religious, social, economic and public life”. According to Paragraph 3 of the same article, minorities have a right to

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<sup>46</sup> GA Resolution 2106 (XX), 21 December 1965

<sup>47</sup> Hanmu, Hurst, 1996, p 78

<sup>48</sup> Direktiv 2002:7, ”En gränsdragningskommission för renskötselområdet”

<sup>49</sup> GA Resolution 47/135, 18 Dec. 1992. Available at UNHCHR, [www.unhchr.ch](http://www.unhchr.ch)

effective participation in decision-making on national and regional level, in matters pertaining to the minority or to the region in which they live. Article 3 states that the rights can be exercised either individually or by the group. The Declaration does not make reference to the terms “peoples”, self-determination or autonomy. On the other hand, it seems to give wide powers to minority groups. Furthermore, article 4, Paragraph 5 states that the member states shall contemplate “suitable forms of participation” to achieve the goals of the declaration. Of course, the extent of these concepts can be discussed. Different suggestions include for example that minorities should have representatives in different consultative and decision-making bodies and committees. This would come into question regarding the areas covered by the Declaration, such as education, religion, culture and “self-administration”. It aims at the fields important for the development and special identity of the group, such as developing language, religious rituals, local forms of government and measures to ensure the actual representation in national legislative authorities.

Through various conferences and seminars in the year following the adoption of the Declaration, attempts were made with a view to elaborating more practical guidelines for the realisation in practice of the provisions of the Declaration. A workshop held in Åbo concluded that the so-called special measures are the basis of minority protection on the national level. The meeting recommended that states promptly carry out changes in national laws, disseminate information about these changes as well as arrange human rights training. It was considered crucial that minority groups take active part in this work. A workshop in New York particularly emphasised the role of the UN in the promotion of minority rights. Every individual agency and body within the organisation should evaluate its special obligations and strive for increased co-operation, and the groups should to the largest extent possible be given the opportunity to participate in processes involving their interests.<sup>50</sup> Both of these workshops set ambitious goals, possibly difficult for states to accept. However, the recommendations on the establishment of a Voluntary Fund for the furthering of minority groups in the work of the UN, as well as a Working Group on Indigenous Issues, were followed by the UNHCHR.

Some of the first international treaties purporting to IPs were elaborated by the International Labour Organisation (ILO). Work commenced already in the early 1920s and resulted in a couple of documents. The task of the organisation was mainly to draft special guidelines for safeguarding the rights of IPs who started working in modern industries.<sup>51</sup> A few decades later, in 1957, ILO Convention no. 107 was adopted, according a unique position to IPs within the state. However, even the title – “Convention Concerning the Protection and Integration of Indigenous and Other Tribal

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<sup>50</sup> ”Report on Workshop, Åbo, Finland, May 1993”, ”Report on Workshop, New York, USA, October 1993”, accounted for in Eide, 1993, p 16-17

<sup>51</sup> Lâm, 2000, p 42

and Semi-Tribal Populations in Independent Countries” – suggests that the people was still looked upon without understanding for its own identity, as a group apart, which should be integrated into the society of the majority.<sup>52</sup> Notwithstanding its many shortcomings, the Convention does secure certain rights for IPs regarding the keeping of their own custom and usage, ownership of land and compensation from the state in case of expropriation.

Ultimately, mention will be made of the Convention that could have been relevant in the present context, namely the ILO Convention no. 169 on the rights of Minorities and Indigenous Peoples.<sup>53</sup> The Convention has not been ratified by Sweden, but by 14 other countries, including Norway and Denmark.<sup>54</sup> Sweden chose not to ratify, arguing that the conditions laid out in articles 13 and 14 concerning the right to land were contrary to national law. However, the Swedish Public Commission appointed to inquire a possible future ratification of the Convention, indicated that such a ratification could come through in a not too distant future.<sup>55</sup> Still, no ratification has been made so far. Many critics have questioned the Swedish failure to pass the necessary changes in national legislation or simply to ratify the Convention no. 169, making reservations regarding the articles that are to be interpreted less extensively than in other contracting States.<sup>56</sup> Convention no. 169 was meant to be a modern instrument for replacing the earlier treaties concerning IPs, drawn up by the ILO. Nonetheless, also this new instrument has been criticised for taking on a paternalistic attitude, and for not letting the peoples concerned participate in the drafting process to a larger extent.<sup>57</sup>

### 3.1.3 Other Mechanisms in the UN System

The above mentioned instruments are the only ones specifically regulating the situation of indigenous peoples on a global level. However, within the UN system the focus on indigenous peoples has taken on various shapes. The first major step was the establishment of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, including indigenous issues. The Sub-Commission recently changed its name to Sub-Commission on the Promotion and Protection of Human Rights (hereafter the Sub-Commission), following a decision by ECOSOC. Hence, the Sub-

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<sup>52</sup> ILO Convention no. 107. 328 UNTS 247. Available at [www.ilo.org](http://www.ilo.org) (29.04.02)

<sup>53</sup> ILO Convention no. 169 Concerning Minorities and Indigenous Peoples, adopted on June 27, 1989 by the General Conference of the ILO, and entered into force on September 5, 1991.

<sup>54</sup> ECOSOC, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, Mr. Rodolfo Stavenhagen, E/CN.4/2002/97, February 2002, p 7

<sup>55</sup> SOU 1999:25. *Samerna – ursprungsfolk i Sverige*, p 30 f

<sup>56</sup> For further discussion on the non-ratification by Sweden, see for example Gudmundur Alfredsson, 2000, ”Ratificera ILO-konventionen 169: kommentar till rapporten SOU 1999:25 angående Sveriges antagande av ILO-konvention 169”. Fjärde världen, 2000, no.1-2.

<sup>57</sup> Ghai, 2001, p 9

Commission today acts as a forum for a wide range of HR issues. At its meeting in August 2001, the Sub-Commission recommended that an international conference on indigenous peoples be held. It should be part of the IPs decade, and therefore be held as a *finale* in 2003.<sup>58</sup>

By an initiative of the Sub-Commission, a study on discrimination of minorities and IPs was carried out by Mr. José Martínez Cobo. The result became a landmark study, revealing the poor conditions of minorities and indigenous peoples in many parts of the world. Mr Martínez Cobo was appointed Special Rapporteur in 1984, and presented his report on the problem of discrimination against indigenous peoples in 1986. It presented among others a definition on indigenous peoples (then applicable to the peoples of the Americas, Australia and the Pacific). This often quoted definition includes “indigenous peoples, communities and nations”, and defines them as a group of people who consider themselves distinct from other parts of today’s society, normally forming the non-dominant sector of a society. They are furthermore a group that has a historical continuity and ties to a certain territory, inhabited before invasion or colonisation.<sup>59</sup> This definition already included the subjective side of a definition (“consider themselves distinct from the other”) and an objective side (“having a historical continuity”), and furthermore ties indigenous peoples closely to a certain territory, inhabited by the people.

Following the so-called “Martínez Cobo report”, it was thought that there was a need for establishing special Working Group on Indigenous People (WGIP), dealing with indigenous peoples issues exclusively. This Working Group, established in 1982, acts as a subsidiary organ to the Sub-Commission and consists of five experts. The tasks of the WGIP include, but are not limited to, facilitating dialogue between groups of peoples and governments, and also the development of international instruments in the field.<sup>60</sup>

As part of the latter task, the Working Group started working on a “Draft Declaration on the Rights of Indigenous Peoples” in 1985. The drafting process was terminated in 1994, when the text was presented to the Sub-Commission. It has as not yet been adopted as a binding document, and deliberations on the final formulations are still on going.<sup>61</sup> The declaration should be seen as a compromise – between the peoples on the one hand, and the WGIP on the other, whose five members tried to achieve a text they believed would be acceptable to states.<sup>62</sup> The declaration is a further

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<sup>58</sup> See the Pressrelease of August 15, 2001, UNHCR, [www.unhchr.ch](http://www.unhchr.ch) (30.08.2001)

<sup>59</sup> “[...]In short, indigenous peoples are the descendants of the original inhabitants of a territory overcome by conquest or settlement by aliens”. For the full text, see Martínez Cobo, José, 1986. Study of the Problem of Discrimination Against Indigenous Populations. E/CN.4/Sub.2/1986/7/Add.4, par 37.

<sup>60</sup> UNHCHR, “WGIP”, [www.unhchr.ch/indigenous/ind\\_wgip.htm](http://www.unhchr.ch/indigenous/ind_wgip.htm) (01.10.2001)

<sup>61</sup> Lâm, Maivan Clech, 2000, p 43 f

<sup>62</sup> Lâm, 2000, p 50

development of the earlier existing, more general instruments (not the least ILO Convention no.169), but the Draft Declaration focuses on IPs only. The purpose of creating a specialised instrument was to assemble all the different regulations purporting to IPs in one place, thus arriving at one sole comprehensive document, with a higher status than any of the now existing documents and procedures. Article 3 of the Draft Declaration almost exactly reiterates the formulation of the two 1966 Covenants (see appendice), thus finally settling the question on whether the provisions be applicable also to IPs. Part VI of the Draft Declaration regulates the right to participate in decision-making processes in questions affecting indigenous peoples themselves. Article 31 expresses among other that the peoples should have a “right to autonomy or self-government in questions affecting their internal and local matters”. Article 33 expresses the right to keep and develop own institutions and legal customs and procedures, in accordance with internationally renowned HR standards. The aim of the General Assembly is to adopt the Draft Declaration at the end of the International Decade for Indigenous Peoples (1995-2004).<sup>63</sup> However, as pointed out by Rodolfo Stavenhagen, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people at the 58<sup>th</sup> session of the UN Commission on Human Rights, only two of the 34 articles of the Draft Declaration have been fully agreed upon so far.<sup>64</sup> Among others the Saami Council have expressed the importance of adopting the Draft Declaration in the near future, as well as stressing its importance for Saami interests.<sup>65</sup>

In 1992, ECOSOC established the post of a Special Rapporteur (SR) in the field; the Special Rapporteur on Prevention of Discrimination and Protection of Minorities. The mandate of the Special Rapporteur covered investigating possibilities for strengthening and the protection of intellectual and cultural rights of minorities and indigenous peoples. Considering the efforts made lately to bring out the special needs of indigenous peoples, it was believed to be of value to establish a SR specifically for indigenous peoples. Therefore, ECOSOC created a post in April 2001 for the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, for a period of three years.<sup>66</sup> The mandate of the SR on indigenous people is wide, including but not limited to, the collection of material from “relevant sources”, such as governments, the indigenous peoples themselves, and NGOs. The SR is furthermore able to communicate with governments or carry out fact-finding missions. He or she shall also draw up recommendations on for the protection of the rights of indigenous peoples. The SR shall of course strive to co-ordinate efforts and to the largest extent possible co-operate with other UN bodies working with

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<sup>63</sup> UN Fact Sheet no. 9 rev. 1, ”The Rights of Indigenous Peoples”. Available at UNHCHR, [www.unhchr.ch](http://www.unhchr.ch) (01.10.2001)

<sup>64</sup> Statement by Mr. Rodolfo Stavenhagen, Special Rapporteur on Indigenous Peoples at the Commission on Human Rights, Palais des Nations, Geneva April 27, 2002.

<sup>65</sup> Statement by Mrs. Katia Eriksson at the Commission on Human Rights, Palais des Nations, Geneva April 27, 2002.

<sup>66</sup> E/CN.4/RES/2001/57, adopted on April 24, 2001.

indigenous issues.<sup>67</sup> The Special Rapporteur presented his first report in February 2002 under his mandate. He points out the most pressing issues to solve regarding indigenous peoples, also putting forward an agenda for these questions. Among the issues are to be found the right to self-determination, self-government, participation in the political process, along with the right to lands of their own, as well as a fair system of justice.<sup>68</sup> The Special Rapporteur, in his statement at the 2002 Commission on Human Rights, furthermore emphasised the existence of a “protection gap” between theory/existing instruments and reality. In order to achieve results the already existing provisions must be implemented in practice.<sup>69</sup>

### 3.1.4 UN Permanent Forum for Indigenous Issues

A resolution by the General Assembly in December 1995 established an investigation of the existing mechanisms and procedures existing for indigenous peoples within the UN framework.<sup>70</sup> In the ensuing final report, the Secretary General declared that there was no mechanism assuring a continuous exchange of information and opinions between governments and indigenous peoples. It was furthermore observed that the exchange between UN bodies dealing with indigenous issues was insufficient.<sup>71</sup>

In 1997, a conference was convened, “First International Indigenous Peoples’ Conference”, with the purpose of looking into possibilities for creating an international forum. At this Conference, the Saami Council issued a statement stressing that the aim should be the creation of a forum for dialogue between government representatives, indigenous peoples and the UN. All participants should have equally weighted votes. The Saami Council also expressed that deliberations should not be halted by attempts at drawing up a definition of “indigenous peoples” in the context, since such a definition already existed through diverse UN documents (ILO Convention no. 169, the 1986 Martinez Cobo report, and the World Bank’s operational document concerning IPs). The Council also stressed the importance of separating indigenous peoples and nations on the one hand, and indigenous NGOs on the other. Only the former should have a right to membership, whereas the latter could be granted observer status.<sup>72</sup>

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<sup>67</sup> UNHCHR, “Indigenous Issues”, [www.unhchr.ch](http://www.unhchr.ch) (26.04.2002)

<sup>68</sup> ECOSOC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*, Rodolfo Stavenhagen, E/CN.4/2002/97, February 2002, pp 3 and 24 f

<sup>69</sup> Statement by the SR on indigenous peoples at the Commission for Human Rights, April 27, 2002

<sup>70</sup> GA Resolution 50/157, December 21, 1995

<sup>71</sup> Document A/51/493

<sup>72</sup> “Statement submitted by the Saami Council”, p 88-95, in García Alix, Lola (ed.), 1999. *The permanent forum for indigenous peoples: the struggle for a new partnership*, p 89

Through ECOSOC Resolution 2000/22,<sup>73</sup> the Permanent Forum on Indigenous Issues (the Forum) was established, as a consultative body to the ECOSOC. It can be noted that the name of the Forum side-steps the tricky issue of the “s-debate” (c.f. above 1.2) by not using the name of “Permanent Forum of Indigenous Peoples”, which was the working name before its establishment. Instead, it is a forum of “Issues”.

The Forum consists of 16 members. Eight of those will be nominated by governments and elected by the ECOSOC. Eight members will be appointed by the President of the ECOSOC, after consultations with indigenous groups. Members serve for a period of three years, with a possibility of re-election for one additional year. The Permanent Forum shall hold annual sessions of ten working days, at UN offices in either Geneva or New York, or at any other place it wishes, within the frame set by financial considerations. The Forum has a mandate to discuss questions on human rights, environment, education and health. It shall also disseminate information on indigenous issues, as well as raise awareness on the special needs of indigenous peoples in all processes of the UN system. It shall provide advice and recommendations to the ECOSOC. It should also review existing UN mechanisms within its field, with a view of rationalising activities, and avoiding duplication of work, notably with the WGIP. The principle of consensus shall guide its work.<sup>74</sup> There are different interpretations on the exact scope of the mandate of the Forum, and certain influential statements have suggested that the mandate is rather far-reaching. The former chairperson of the WGIP, Erica-Irene Daes, has suggested in her report that “the recently established Permanent Forum for Indigenous People should consider playing a constructive role regarding problems pertaining to land and resource rights and environmental protection”. She adds that possible steps to be taken include creating a fact-finding body, an Ombudsman for indigenous land and resources, a complaint mechanism, a body for preventing or ending violence regarding IPs, and finally, that governments submit periodic reports.<sup>75</sup> These tasks stretch far beyond the current mandate, as expressed in the ECOSOC Resolution 2000/22.

The first meeting of the Forum was convened in New York on 13-24 May 2002. Hundreds of indigenous representatives attended this first meeting, and delivered more than a thousand statements. Different UN bodies presented documents on their respective work in the field of indigenous issues.<sup>76</sup> A number of prominent speakers delivered statements at the inaugural meeting of the Forum, such as the then UN High Commissioner

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<sup>73</sup> UNHCHR, [www.unhchr.ch](http://www.unhchr.ch) (29.04.02)

<sup>74</sup> ECOSOC Resolution 2000/22, paragraphs 2-4, 8

<sup>75</sup> Erica-Irene Daes, *Indigenous Peoples and their Relationship to Land*, E/CN.4/Sub.2/2000/25, paragraph 152, quote in Carey, John - Wiessner, Siegfried, 2001. “A New United Nations Subsidiary Organ: The Permanent Forum on Indigenous Issues”, *The American Society of International Law*, available at [www.asil.org](http://www.asil.org)

<sup>76</sup> Information from UNDP, Unicef, UNESCO, UN-Habitat, WHO etc. See UNHCHR, “Indigenous peoples”, “Permanent Forum” at [www.unhchr.org](http://www.unhchr.org)

for Human Rights, Mary Robinson, who expressed that the work of the Forum could be particularly important in countering discrimination and also provide a voice for young people.<sup>77</sup>

The first session resulted in a document pointing out matters of special concern for the Forum. It called upon UN bodies to examine indigenous issues in their respective fields. It furthermore pointed out issues pertaining to indigenous children and youth as a focal point for its work in the near future, especially in the fields of education and culture.<sup>78</sup> The Report of the meeting calls for a number of important steps, in line with the aforementioned document. The Report notably requests a Secretariat, consisting of five professionals, to facilitate its work. The Secretariat would be placed in New York, and be tied to that of the ECOSOC.<sup>79</sup> Demands for a Secretariat for the Forum have been raised earlier, too. The Report of the Forum furthermore states the need for the UN system to produce a Report on the State of the World's Indigenous Peoples, on a triennial basis, presenting data and discussing issues of importance to indigenous peoples.

The Permanent Forum is important and innovative on a number of counts. It formally integrates IPs into the structure of the UN. It also puts representatives of governments and non-governmental actors in the same body, on equal footing. Then again, representatives are not expected to serve in their capacities of representatives of a certain organisation, but as independent experts. Nonetheless, the Forum has been criticised for putting the sixteen representatives on parity, as this is not a true reflection of the relationships between governments and IPs.<sup>80</sup>

The Saami Council was one of the first indigenous groups to register for membership in the forum. Many North American and Australian organisations registered early on, too. It can be assumed that mostly indigenous groups of Western countries will show interest in the Forum. These groups however already have a conception of their rights and a fairly good position within their nation states, when compared to other IPs living in remote parts of the world. In this context, the UN Voluntary Fund may be extra helpful, enabling all indigenous peoples to participate in work at UN level.

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<sup>77</sup> Europaworld, "Inaugural Meeting of UN Forum on Indigenous Issues", [www.europaworld.org](http://www.europaworld.org) (01.06.02)

<sup>78</sup> Permanent Forum on Indigenous Issues. *Matters calling for action by the Economic and Social Council or brought to its attention*. Permanent Forum on Indigenous Issues, first session. E/CN.19/2002/CRP.824, May 2002.

<sup>79</sup> See Draft decision 1, Report of the first session of the Permanent Forum on Indigenous Issues, unedited version. C/2002/42/supplement no. 43. 1 June 2002, ECOSOC.

<sup>80</sup> Carey, John - Wiessner, Siegfried, 2001.



## 3.2 Regional Level

### 3.2.1 Council of Europe

As for the rights of indigenous peoples, Council of Europe has had an active role to play in the creation of new instruments. The Council of Europe is a regional organ, open to “European states with a democratic government”.<sup>81</sup> The organisation today counts 41 member States.<sup>82</sup> It has developed the protection of human rights in general through the European Convention on Human Rights from 1950. The Convention is applicable in Sweden through a national law passed in 1994<sup>83</sup>, and is therefore directly applicable in Swedish courts. The Convention does not contain any special provision on the rights of IPs. They can however be considered to be covered by the general provision on non-discrimination, Article 14.

Regulations for the protection of minorities are laid out in the Council of Europe’s Framework Convention for the Protection of National Minorities from 1993 (The Framework Convention).<sup>84</sup> The Convention today has been ratified by 34 States. This Convention was the first multilateral instrument protecting minorities, that is, legally binding for states. Its purpose is to protect the existence of minorities within the territory of each member State. The Framework Convention in particular aims at furthering the full and actual equality of minorities, through the creation of conditions for these to uphold and develop their culture and identity. The Convention covers many different fields in society and establishes principles among other relating to freedoms of assembly, speech, and opinion, freedom of conscience and religion, and freedoms relating to access to the media, language, education, and transnational co-operation. The rights expressed in the Convention should be realised in each member state through both legislation and policy-making processes.<sup>85</sup>

Sweden ratified this Convention rather recently, in February 2000. It was of course the result of an in-depth investigation in the form of a governmental Commission. The proposal for ratification was put forward in Bill 1998/99:143 entitled “National Minorities in Sweden”. The government lays down the criteria that must be fulfilled in order for a group to be viewed as a national minority in Sweden. These include that the group cannot have a dominant position in society, and that it must have a manifest “togetherness” as a group, and that it must have certain distinctive features (religious, linguistic, cultural), separating it the majority population. Moreover, the

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<sup>81</sup> Danelius, 1997, p 21

<sup>82</sup> Council of Europe, [www.coe.int](http://www.coe.int) (30.03.2002)

<sup>83</sup> *Lag (1994:1219) om tillämpning av Europeiska Konventionen om Mänskliga Rättigheter*

<sup>84</sup> Framework Convention for the Protection of National Minorities. European Treaty Series no. 157. Available at [www.humanrights.coe.int/Minorities/Eng](http://www.humanrights.coe.int/Minorities/Eng) (01.10.2001)

<sup>85</sup> Council of Europe, [www.humanrights.coe.int/Minorities/Eng](http://www.humanrights.coe.int/Minorities/Eng) (01.10.2001)

minority population needs to have far-reaching historical ties to Sweden, which, according to the author of the bill, means that the group needs to have existed in Sweden since the late 19<sup>th</sup> Century.<sup>86</sup> These criteria are all met by the Saami since they differ from the majority population, for example through the language and the reindeer herding culture (central to all Saami, even the non-herding) as well as manifestations of culture such as clothing, handicraft and food.<sup>87</sup>

Article 15 of the Framework Convention regulates the right to self-determination of minorities at large:

“The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”

Two different parts can be observed. First, the national minority should be able to participate in decisions in the enumerated fields in an effective way. Second, they shall in particular participate in decisions affecting themselves. Consequently, the Framework Convention places rather high demands on contracting states to bring minority populations into national deliberations and decision-making.

### 3.2.2 OSCE

The Organisation for Security and Co-operation in Europe (hereafter OSCE) was founded in the 1970s, under the name of Conference on Security and Co-operation in Europe (CSCE).<sup>88</sup> Its purpose was at the time primarily to function as a multilateral forum for discussions and negotiations between Eastern and Western blocs, notably on security issues. After the end of the Cold War, the organisation took on the role of a regional organ for conflict prevention, management of crises and rehabilitation/rebuilding after conflicts in Europe, in accordance with Chapter VIII of the UN Charter.<sup>89</sup> Within this frame, indigenous peoples and their living conditions become an important part of work. The OSCE established a “High Commissioner on National Minorities” at the Helsinki meeting in 1992. The task of the High Commissioner was in particular to look after the situation of minorities, in the light of the mandate of the OSCE. The High Commissioner should therefore concentrate on issues of internal strife, demands for secession and the like. The High Commissioner was predicted to have a more preventive role, and he has indeed up until now worked mainly through quiet diplomacy.<sup>90</sup>

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<sup>86</sup> Proposition 1998/99:143, *Nationella minoriteter i Sverige*, p 32

<sup>87</sup> Proposition 1998/99:143, *Nationella minoriteter i Sverige*, p 22

<sup>88</sup> OSCE today counts 55 member states all over the Northern hemisphere, not being limited to Europe, despite its somewhat misleading name.

<sup>89</sup> OSCE Fact Sheet, “What is the OSCE?”, [www.osce.org](http://www.osce.org) (30.03.2002)

<sup>90</sup> OSCE Fact Sheet, High Commissioner on National Minorities”, [www.osce.org](http://www.osce.org) (30.03.2002)

The OSCE works through “Recommendations” and “Documents” in its areas of competence. As for minorities, work resulted in the Hague Recommendations concerning the Rights to Education of Minorities, and the Oslo Recommendations concerning their linguistic rights. An important addition to this work was the “Lund Recommendations on the Effective Participation of Minorities in Public Life” from 1999. These Recommendations divide the right to participation of minorities in two; on the one hand representation in the national parliament and decision making processes, on the other hand self-government over certain internal and local issues. The Recommendations cover several aspects of the effective participation. They start with the government and actual representation in parliament and government, continue to the importance of the electoral system, participation on regional and local levels, and on to different advisory organs. Self-government on certain matters can be based on territory or other limitations. Furthermore, it is important to create efficient channels for communication and mechanisms for conflict resolution, including anything from court system to special bodies. The recommendations were drawn up by many of the leading academics and advocates for the rights of indigenous peoples. In other words, these recommendations are the essence of what the leading HR advocates in the field of IPs rights believe should be the aims of democratic states.<sup>91</sup>

### 3.3 Comments

Within the UN system, the special problems that can touch upon minorities have been paid attention to during a long period of time. It can be discussed whether the basic HR covenants and treaties did, at their coming into force, include the right to self-determination of “all peoples”, even those who define themselves as a people. However, new interpretations have been put forward. Big breakthroughs have been achieved over the past decades. Today, indigenous issues are of a high priority at the UN Office of the High Commissioner for Human Rights. This has resulted in the creation of the Permanent Forum on Indigenous Issues, as well as the Draft Declaration on Indigenous Peoples, which hopefully will be adopted in the near future. Control of the implementation of the existing provisions is made through a number of mechanisms, the control of State reports to the UN Committees (treaty monitoring bodies), the work of the Special Rapporteur, the control by NGOs with a consultative status at the UN, as well as those working on the local level. Most build on the thought that states will take steps to not look bad in the eyes of the rest of the world.

On regional level, the realisation of treaty provisions should be easier than in the UN system. The member states to a regional organisation normally

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<sup>91</sup> See “*The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*”. September 1999. OSCE, Office of the High Commissioner on National Minorities

constitute a more homogenous group, and the systems of control are on a “closer” level. In Europe, as on the international level, the basic document on HR was created shortly after the end of the Second World War. The ECHR is the creation of the Council of Europe, but also acts as the guiding light for the EU. The Framework Convention, in particular Article 15, lays down a rather clear goal for states to strive towards. The OSCE has reached far in its work for minorities and indigenous peoples. The High Commissioner on National Minorities plays an active role in supervising the situation of IPs in member States. The OSCE has also reached out on national levels with their operational documents, in particular the Lund Recommendations of 1999, providing more practical advice to member States.

There are a plethora of documents and mechanisms to ensure the rights of IPs, as well as the actual realisation thereof on a national level. The problem today is, as observed by the SR, the large “protection gap” between theory and reality.

# 4 The Saami – the Indigenous People in Sweden

## 4.1 Historical development

According to traditional Saami accounts for history, the Saami have lived in the same territory since time immemorial. This oral tradition can today be confirmed by modern research using genetic engineering.<sup>92</sup> The Kingdom of Sweden took shape and was made a hereditary kingdom in the 16<sup>th</sup> Century, and also became a more unified country at that time. From the 16<sup>th</sup> Century and onwards, the Saami were not viewed as exotic or different, but rather as a natural part of the then multicultural and multilingual Swedish kingdom.<sup>93</sup> During the 16<sup>th</sup> Century, Swedes started moving up north, to *Lappmarkerna* (literally “Lapplands”). Both Sweden-Finland and Denmark-Norway, as well as Russia, tried to claim the northern territories (the Arctic area of the countries), and the Saami were the victims of strife between the States. In some cases, the “Lapps” were forced to pay taxes to three different States.<sup>94</sup>

In Sweden, the first “Bill of the Lapplands” (*Lappmarksplakatet*) was issued in 1673, laying out the legal prerequisites for the further colonisation of the territories. The Bill was founded on the so-called “parallel theory”, meaning that the settlers and the Saami should be able to live side by side and derive their different livelihoods without interfering in one another’s businesses. The theory however did not consider possible problems of competition, such as in fishing. At this time, the Crown and government started seriously pushing for settling the North. The number of fixed settlements therefore increased at a steady rate.<sup>95</sup>

Sweden and Denmark-Norway did not at the time have any fixed borders between states in their northern parts. Borders were settled through the 1751 Border Treaty, with its addendum, the so-called 1751 Codicil of the Lapps (“*Codecill till Gränsse Tractaten emellan Konunga Rikena Sverige and Norge, Lappmännerna beträffande*”). The Codicil was the first document regulating the citizenship, rights and duties of the Saami. Consequently,

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<sup>92</sup> Bäck, Madeleine, 2001. ”Samerna kom först till Sverige”, *Dagens Nyheter*, 01.03.2001

<sup>93</sup> SOU 1999:25, ”Samerna - ett ursprungsfolk i Sverige”, p 54

<sup>94</sup> *Lappekodisillen – den förste nordiske samekonvensjon?* 1998, Guovdageaidnu: Sámi Intituhtta, p 36

<sup>95</sup> Kvenangen, Per Guttorm, 1999. *Samernas historia*, p 50

families were divided into Swedish or Norwegian citizens without having any say.<sup>96</sup>

The Reindeer Grazing Act of 1886 ties the definition of “Saami” to reindeer herding for the first time. In earlier times, the Saami had had the right to use the so-called Taxed Lapp Lands any way they wished to. One of the purposes of the 1886 Act was to regulate conflicts between settlers and Saamis. Therefore, the Saami were divided into new legal entities, so-called “Saami villages” (Sw.: *samebyar*), placing the responsibility for any damages caused on the village as a collective. This new order was supposed to create incentives for the Saami to keep track of their deer, as well as ensure the settlers compensation for possible damages, since the Saami village was collectively responsible.<sup>97</sup>

As forestry and mining became increasingly important in the north in the early 1900s, the Saami were slowly marginalised from their old territories. Their legal rights to land were now constructed as “privileges” given by the State. The development was codified and reinforced in the 1928 Reindeer Grazing Act. The criteria for membership in a Saami village were tightened. Only reindeer keepers actively working with reindeer and their families could become members of a Saami village. This definition still prevails in the Reindeer Herding Act of today. The basis for the Swedish Saami policy was formulated at the time and has to a large extent lingered on. As for territories, the basic rule is that the State gives the Saami the privilege to use the lands of the State in order to practice their culture. Ownership however remains with the State.<sup>98</sup>

When the Swedish welfare state was erected in the mid-20<sup>th</sup> century, there was an ambition to include the Saami too. The plan the State put forward was for rationalisation; of structures and of production. This meant that fewer Saamis should take care of the reindeer, and that yield should increase. The excess work force should be incorporated in other sectors. These attempts at “improvement” were unfortunately often contrary to traditional Saami life and culture.<sup>99</sup>

## 4.2 The Saami today

The Saami are today spread out all over the Arctic areas of Norway, Sweden, Finland and Russia. The territory is known as “Sápmi” in Saami language. Since 1986, Sápmi has its own flag and national anthem.<sup>100</sup>

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<sup>96</sup> *Lappekodisillen – den förste nordiske samekonvensjon?* 1998, p 15

<sup>97</sup> Kvenangen, 1999, p 91 f

<sup>98</sup> Frank Orton and Hugh Beach, 1998. ”A New Era for the Saami people of Sweden” p xxx in Cynthia Price Cohen, *Human Rights of Indigenous Peoples*, p 94 f

<sup>99</sup> *Ibid*, p 96

<sup>100</sup> Samernas Riksförbund (SSR), ”Historia”, [www.sapmi.se/ssr/historia.html](http://www.sapmi.se/ssr/historia.html) (01.10.2001)

The number of Saami is estimated at some 85,000 people, of which about 15-20,000 live in Sweden. The number is a rough estimate since there has never been a separate census for the Saami. The register of voters could possibly be used as a pointer. In Sweden, some 2,500 Saamis live of reindeer herding, i.e. about 12 % of the people.<sup>101</sup> The remaining part of the group is working within various sectors, both in traditional Saami and in Swedish occupations. So, the part of the Saami actually taking care of reindeer is comparatively small. However, the reindeer, the herding of deer and the nature are essential parts of the language, culture and beliefs of all Saami. This is furthermore a mark distinctive for the Saami as an indigenous or minority people, a characteristic that other groups lack or have lost throughout the years.<sup>102</sup>

Within the Saami population there are several ways of dividing the group into sub-groups. The point of departure can be taken in language, which results in three new groups within Sweden – Lule Saami, Southern Saami, and Northern Saami.<sup>103</sup> It is also possible to make distinctions along occupational lines, which would result in the categories reindeer herding Saami, hunting-, fishing- and forest Saami.<sup>104</sup>

Minority groups within a group cannot invoke HR arguments to claim rights as a “sub-group” (with the right to claim group rights). This fact can be of special importance to the Saami. Although the Swedish government seems to be moving towards a wider recognition of rights of the Saami as an indigenous people, the old definition of “Saami” remains in national legislation (inadequate according to international law). As a result, the Saami that have lived off hunting, fishing, and the trade of handicrafts are excluded from the Swedish definition of Saami. The unwillingness of the State to acknowledge the rights of these sub-groups was manifested in the passing of a law in 1993, according the hunt for small game on traditional Saami lands to all Swedish citizens, not only the Saami living off hunting and fishing.<sup>105</sup> Consequently, the Party of the hunting- and fishing Saami demonstrated against the new law shortly after it had been passed. This group had previously not been very active to defend their particular interests, but expressed a will to also lift their demands to an international level.<sup>106</sup>

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<sup>101</sup> Sametinget, ”Samerna idag”, [www.sametinget.se](http://www.sametinget.se) (01.10.2001)

<sup>102</sup> Statement by Åtsi, 10.07.2002. Compared with other peoples and minorities in the EU linguistic co-operation programme EGLO, the Saami have a stronger and more elaborated identity based on the above-mentioned factors.

<sup>103</sup> SSR, ”Kultur”, ”Språk”, [www.sapmi.se/ssr/giella.html](http://www.sapmi.se/ssr/giella.html) (01.10.2001)

<sup>104</sup> For a further discussion on different groups, see Hurst Hannum, 1996, p 247 ff. Hannum divides the entire Nordic Saami population into four geographical groups, the Northern Saami living north of the Arctic circle being the largest.

<sup>105</sup> Rennäringsförordning (1993:384), 3 §

<sup>106</sup> Uttalande av Håkan Jonsson, ordförande för Jakt-och fiskesamerna, i *Samefolket*, ([www.samefolket.se](http://www.samefolket.se)) (01.10.01)

## 4.3 Swedish legislation and policy concerning the Saami today

### 4.3.1 Government Commissions

In Sweden, new draft bills are prepared in Commissions. These are appointed by the Government, through a Commission Directive specifying the scope of the task assigned to the Commission. Its work is documented in a report that is put before the government and Council of Legislation that determines the concordance of the draft with Swedish laws and policies.

The Saami have been called “the investigated people” – not the least during the past twenty years, numerous governmental Commissions have looked into the situation of the Saami.<sup>107</sup>

The Swedish parliament expressed in 1977 that the Saami are indeed an indigenous people, a statement that has been confirmed in reports of later dates, so the definition of the people is not a matter of dispute.<sup>108</sup> However, the governmental Commission that resulted in the report “*Samernas folkrättsliga ställning*” (The Status of the Saami under International Public Law), stated that the Saami are not a “people” in the sense of the international treaties.<sup>109</sup> The investigation accounted for thirteen years later in the report “*Samerna – ett ursprungsfolk i Sverige*” (The Saami- an indigenous people in Sweden) seems to have taken up the thought of the Saami as a people.<sup>110</sup> The definition of a Saami person in Swedish law is very narrow, as mentioned earlier. Since it is completely based on the herding of reindeer, that in turn permits membership in a Saami village, it excludes large part of the population, defining themselves as Saami.

Following the final decision in the drawn-out proceedings in the Taxed Mountains Case in 1981, it was clear that there was need for establishing an authority for co-ordinating and dealing with Saami matters only. Therefore, yet another Saami-Commission was appointed in 1983. It resulted in two different reports; “*Samernas folkrättsliga ställning*” (mentioned above)<sup>111</sup>, and “*Samerätt och sameting*” (Saami Legislation and Saami Parliament)<sup>112</sup>. The subsequent draft laid out in “*Samerna och samisk kultur mm*”. (The Saami and Saami culture, etc.)<sup>113</sup> was passed as a bill by the Swedish parliament in 1993. It is true that it meant a step forward for the Saami, in establishing the Saami parliament (Sametinget). It was also a step

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<sup>107</sup> Se bl.a. *Samernas folkrättsliga ställning* (1986:36), *Samerätt och sameting* (SOU 1989:41), *Samerna – ett ursprungsfolk i Sverige* (SOU 1999:25) och många fler.

<sup>108</sup> SOU 1999: 25 *Samerna – ett ursprungsfolk i Sverige*, s 52

<sup>109</sup> SOU 1986:36, *Samernas folkrättsliga ställning*, s 117f

<sup>110</sup> SOU 1999:25 *Samerna – ett ursprungsfolk i Sverige*, s 53

<sup>111</sup> SOU 1986:36 *Samernas folkrättsliga ställning*

<sup>112</sup> SOU 1989:41 *Samerätt och sameting*

<sup>113</sup> 1992/93:32 *Samerna och samisk kultur mm*.



backwards, when according the right to hunt for small game in the northern territories to all Swedes (not only to the Saami). The people that had previously lived off hunting and fishing on the traditional Saami lands had to see their exclusive right taken away from them. The bill did not include the original proposal of the draft, to amend the Constitution with a special definition of the Saami as an indigenous people. Neither did it accord the Saami language the status as an official language, giving the right for the Saami to use their own language in certain enumerated cases.<sup>114</sup> The right to use the Saami language became a reality through a bill passed in 1999, stating the right to use Saami in contacts with authorities and in courts.<sup>115</sup>

In 1999, a governmental Commission reported for the first time on the possible Swedish accession to the ILO Convention no. 169. The report concluded among other that a Swedish accession would be possible within five years, provided that certain changes in national legislation were made, notably concerning the rights of the Saami to land. The changes would include a definition of the traditional Saami lands and the extent of the rights to hunting and fishing in these territories. It was considered that further looking into these issues would be necessary.<sup>116</sup>

To solve among other the above mentioned issues, the Reindeer Herding Commission was appointed with the task of assessing the different forms of financial support given to the Saami and the reindeer herding industry, Saami culture and schools, and also to revise the Reindeer Herding Act of 1971 (no. 1971:437) and the Reindeer Herding Decree (no. 1993:384).<sup>117</sup> The Commission reported its findings in the government report SOU 2001:101<sup>118</sup>, which has, at the time of writing, been sent to various government bodies and others for opinions. It has solved some of the issues related to a possible Swedish accession to ILO Convention no. 169. The issues relating to hunting and fishing have however not as yet been solved, and in all likelihood, another Commission will be appointed for treating these matters specifically.<sup>119</sup>

The last of these Commissions is the Border Commission, appointed by a decision made at a meeting of the Government in January 2002. The directive to the Commission states that its underlying purpose is to make a

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<sup>114</sup> See Orton & Beach, "A New Era for the Saami People of Sweden", p 102-103

<sup>115</sup> "Lag 1999:1175 om rätt att använda samiska hos förvaltningsmyndigheter och domstolar", [rixlex.riksdagen.se](http://rixlex.riksdagen.se) (30.04.02)

<sup>116</sup> Kristian Myntti, 2000. "The Nordic Sami Parliaments", s 203-222 i Pekka Aikio & Martin Scheinin, *Operationalizing the Right of Indigenous Peoples to Self-Determination*, p 216

<sup>117</sup> Direktiv 1997:102, Jordbruksdepartementet. ([www.riksdagen.se](http://www.riksdagen.se) : Riksdagen, Debatt&Beslut, Rixlex, Kommittédirektiv) (01.10.01)

<sup>118</sup> SOU 2001:101 *En ny rennäringspolitik – öppna samebyar och samverkan med andra markanvändare.* ("A new reindeer herding policy – open Saami villages and co-operation with other landusers")

<sup>119</sup> Information from Birgitta Hansson, Swedish Government (Regeringskansliet), 19 July 2002.

Swedish accession to ILO Convention no. 169 possible. In order to achieve this goal, it must establish which lands that the Saami on the one hand “use” and on the other hand “own”. The lands in question are today referred to in the RHA paragraph 3 as “the lapplands”, “the border of the lapplands”, “the cultivation border”, and “the reindeer grazing mountains”.<sup>120</sup> Only the northern parts of these territories have clearly defined borders, whereas the major part of the lands is undefined. The importance of the question of land to indigenous peoples has been stressed repeatedly at international level, as it ties into issues of culture and identity, and the investigation of these questions at a national level is encouraging. Nonetheless, results will have to come out of all the above Commissions.

The question on why Sweden had not ratified ILO Convention no. 169 was raised by an Expert of the Committee on CESCR, at the questioning of the Swedish government delegation in November 2001, following the submission of Sweden’s fourth periodic report to the Committee. The Swedish delegation was also asked why no measures had been taken to enable the Saami to actually own their ancestral lands, beyond the current provisions on the use of land. The Swedish delegation in turn pointed out that concrete steps had been taken towards ensuring land rights, that legal consultation had taken place with a view of ratifying ILO Convention no. 169, and finally, that measures to strengthen the Saami parliament had been taken. In addition, the “Swedish NGO Foundation”<sup>121</sup> submitted a report to the Committee, concerning the performance of the Swedish state under the CESCR. Its section on indigenous peoples relates only to the non-ratification of Sweden of the ILO Convention no. 169. So, the ratification of this convention has been the major concern of NGOs for HR and indigenous peoples in Sweden over the past years.

### 4.3.2 Applicable legislation

Despite all the governmental Commissions appointed, only little actual change has come about. Nonetheless, the Commissions may have contributed to a larger understanding for Saami claims and a change in attitude, thus paving the way for reforms.<sup>122</sup>

The applicable Swedish legislation as of today, concerning the Saami, is to be found in notably the Reindeer Herding Act and the Saami Parliament Act, as well as in the Swedish Constitution (*Regeringsformen*).

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<sup>120</sup> “lappmarkerna”, “lappmarksgränsen”, “odlingsgränsen” and “renbetesfjällen”

<sup>121</sup> The report of the Swedish NGO Foundation For Human Rights was produced with the support of several large Swedish NGOs, such as Caritas, the Stockholm Chapter of the UN Association in Sweden, International Women’s Association for Peace, and the Swedish Tornedalians Association (the latter representing the views of the Swedes in the northern parts of the country)

<sup>122</sup> For further information, see ([jordbruk.regeringen.se/index.htm](http://jordbruk.regeringen.se/index.htm)) Questions concerning the Saami are within the area of the Department of Agriculture, *Jordbruksdepartementet*.

The Reindeer Herding Act (RHA) of 1971 stipulates that “all” Saami “have” the right to exercise the herding of reindeer, with support in prescription from time immemorial. The right to reindeer herding also includes a right to hunt, fish and take material for handicrafts on certain lands in Lapland. Consequently, the latter rights are only derivatives of the right to herd reindeer and cannot be exercised in their own right.<sup>123</sup> These rights may only be “exercised” by the Saami who are members in a Saami village. A member is a person who is actively herding deer, or who has been actively herding deer and not taken up any other profession, or a person who is family member to such a person. In practice, only a small part of the Saami population in Sweden, defining themselves as Saami, have the right to legally define themselves as Saami, and to live accordingly.

The first chapter of the Swedish Constitution establishes the grounds for the form of government. The chapter mentions the right of minorities to developing their own culture and community.<sup>124</sup> The second chapter of the Constitution stipulates the basic freedoms and rights belonging to each citizen, consisting first and foremost of civil and political rights. Chapter 2 paragraph 15 lays out the basic provision on the non-discrimination of minorities in Sweden.<sup>125</sup> This paragraph was ruled to not include the Saami, in the important “Taxed Mountains Case”, decided in 1981.<sup>126</sup> The interpretation by the High Court (HC) in this case, can be considered rather unfavourable towards the Saami. However, one of the HC members, Mr. Bertil Bengtsson, had a different opinion, and used the right to have his opinion inserted after the judgement, in accordance with the Swedish Administrative Act. In his opinion, Mr. Bengtsson stated that the Saami do indeed enjoy a certain right to the lands in question based on prescription of time immemorial. Furthermore, the interpretation of the HC is also contrary to the opinion that the Human Rights Committee has expressed in its practice. The Committee states that as long as a population group counts for less than half of the population, they may invoke minority rights.<sup>127</sup>

The application of the above-mentioned laws has so far been carried out in Swedish courts of law. The rulings are often the result of long drawn-out proceedings and normally have effects that are very much of a political nature. As mentioned above, the Supreme Court stated in the Taxed Mountains Case that the Saami have not established a right to the territories then in question, through prescription from time immemorial.<sup>128</sup> A similar case was decided in February 2002, twelve years after the matter was raised at the Court of First Instance. The Court of Appeal for the Lower Northern Territories (*Hovrätten för nedre Norrland*) then decided that the Saami

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<sup>123</sup> par 1 RGA, cf par. 17 och 25

<sup>124</sup> The Swedish Constitution (*Regeringsformen, RF*) Ch.1 par.2, item 4

<sup>125</sup> The Swedish Constitution, *RF*, Ch.2 par.15 (see text in appendice)

<sup>126</sup> *Nytt Juridiskt Arkiv (NJA)* 1981:1

<sup>127</sup> Gudmundur Alfredsson, 1998 ”Indigenous Peoples and Autonomy”, p 125-137 i Suksi, Markku, *Autonomy: Applications and Implications*, p 125

<sup>128</sup> *Nytt Juridiskt Arkiv (NJA)* 1981:1

villages do not possess the right to winter grazing in the region of Härjedalen without remuneration to the landowners.<sup>129</sup> This interpretation follows in the footsteps of the 1981 case. However, High Court judgements are not of an inflexible precedential character in the Swedish legal system, which allows courts of lower instance to deviate from the outcome of High Court decisions to a certain degree, although seldom done in practice. Given that two decades have passed since the Taxed Mountains Case, and that the legal situation seems to undergo change when it comes to ownership and rights of use of the territories in question (cf. the governmental Commission on the possible future ratification of the ILO Convention no. 169), it is remarkable that the Court of Appeal did not apply a less restrictive view in the case decided in early 2002.

The Minister for the Saami (first and foremost Minister of Agriculture, Department of Agriculture, but also Minister of Gender Equality), Mrs. Margareta Winberg, held the opening speech on the first day of the last plenary session of the Saami parliament, on February 20, 2002. In this speech, Mrs. Winberg pointed out the work that the government is currently involved in, regarding different aspects of the conditions of the Saami. The governmental Commission on the ILO Convention no. 169 has been followed by several new initiatives. The commissioner Mr. Sven Heugren presented a number of measures essential to the Swedish ratification of ILO Convention no. 169. The on-going governmental information campaign on the Saami and their culture is another concrete result of earlier Commissions.

The support to Saami culture has had results such as new exhibitions on Saami handicrafts, new Saami plays, and several fairly new TV-programmes such as the daily news programme “Oddasat”, and the debating programme “Arran” as well as children’s programmes. All initiatives on Saami culture are not new - mention should be made of the Saami channel of the Swedish public service radio (*Svensk Radio*), which started broadcasting in 1952. When it comes to the work of the Swedish government, it is noteworthy that the Government internet home page displays only a few lines on the Saami population and the work carried out by the government in Saami issues. Neither is it possible to find any information about these issues at the official information centre of the Swedish government.<sup>130</sup> Perhaps this lack of information can be countered by the latest of government initiatives on Saami culture; a Saami information centre. According to a press release issued by the Ministry of Agriculture, three million Swedish kronor (some 300 000 euro) have been allocated to this end. The task of setting up the new centre has been given the Saami Parliament, with the motivation that the dissemination of information already falls under its mandate.<sup>131</sup> Efforts have

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<sup>129</sup> Lars Hillås, 2002, ”Samebyar förlorade i hovrätten”, *Svenska Dagbladet*, 15.02.2002

<sup>130</sup> Located at the Swedish government office at Rosenbad, Drottninggatan, Stockholm

<sup>131</sup> See ”Pressrelease” dated 29.08.2002, available at [jordbruk.regeringen.se/pressinfo/index.htm](http://jordbruk.regeringen.se/pressinfo/index.htm)

previously been made in the field of education, ranging from Saami daycare centres in the core of “Sapmi”, to Saami schools, a Saami education centre in Jokkmokk, and a special Saami department at the University of Umeå.

The Reindeer Herding Commission has presented its report and there is also a draft on a Swedish-Norwegian Reindeer Grazing Convention. Current ongoing activities initiated by the government are the Commission on the Saami parliament, as well as mediation efforts in connection to the processes on reindeer grazing, in the regions of Härjedalen and Dalarna.<sup>132</sup>

## 4.4 Comments

Modern research concludes that the Saami were the people first colonising the northern territories of today's Scandinavia. They were forced into subordination, to live under the rule of other states, perhaps because they did not have a strong state structure themselves. Swedish law today regulates who is to be regarded as Saami, as well as what rights these persons may claim in their capacity as Saami. The definition and policy first established in the RHA of 1928 has more or less been followed until this day. In the past few years, serious attempts have been made by the Swedish government to develop and emphasise the culture and handicraft of the Saami. Concrete proposals have been given in other fields, too.

The Reindeer Herding Act is based upon a definition of The Saami, indigenous people, that is obsolete and not in concordance with international HR instruments. The Saami Parliament Act is based on a more modern view of the indigenous people, more in line with international definitions. It uses a subjective requisite for defining a person as being Saami or not. However, this subjective requisite is limited to linguistic belonging, and is thus rather limited. As for the Swedish Constitution, it should include a mentioning of the Saami and their special status as an indigenous people.

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<sup>132</sup> Samelandspartiet, [www.sapmi.se/samelandspartiet/akt\\_txt103.html](http://www.sapmi.se/samelandspartiet/akt_txt103.html) (02.05.07)

# 5 Existing Fora for the Saami

## 5.1 The Saami Parliament – organisation and function

At the end of the 19<sup>th</sup> century, discussions were initiated on the establishment of a Saami organisation. It was clear that times were changing and that the people would need to adapt to the State structure, in order to look out for their interests. The very first formal organisation for Saami was founded in Norway in 1903. The following year, the Central Organisation for the Lapps (*Lapparnas Centralorganisation*) was founded in Sweden.<sup>133</sup> Many different Saami organisations have seen the light of day since. In Sweden, the *Saminuorra* (the Organisation for Saami youth) and the National Association of the Swedish Saami (*Svenska Samernas Riksförbund*)

The Saami demands for increased influence in the political process was to some extent satisfied through the establishment of the Saami parliament in 1993. Corresponding institutions had at the time existed since 1973 in Finland and since 1989 in Norway.<sup>134</sup>

The Saami Parliament counts 31 members. These are elected from and by the Saami. This means that only a person who has the right to vote may be registered as a candidate and run in the election. A person has the right to be registered in the register of voters if he or she is to be considered Saami, if he or she has attained 18 years of age, is a Swedish citizen or at least has fiscal residence in Sweden. The Saami Parliament Act gives the definition on who can be considered a Saami in this context. The definition is based firstly on linguistic characteristics, but also on kinship (“...has or has had Saami as mother tongue”).<sup>135</sup> Consequently, it is much more inclusive than the narrow definition in the RHA. Furthermore, non-Saami spouses, to a person fitting the aforementioned description in the SPA, may register in the register of voters.

Elections take place every four years.<sup>136</sup> The first election took place in 1993. The elections in 1997 resulted in the representation of eleven different

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<sup>133</sup> Henriksen, 1999, p 26

<sup>134</sup> Myntti, 2000, ”The Nordic Saami Parliaments”, p 204

<sup>135</sup> SPA (*Sametingslagen*), (1992:1433) Ch. 1 kap §2

<sup>136</sup> SPA (*Sametingslagen*), Ch. 3 §1

parties in the Parliament. Elections took place again, on schedule, on May 20, 2001. The result was challenged by the parties “The hunting and fishing Saami” and “The Reindeerowner’s Association”. The Electoral Examination Committee of the Swedish Parliament decided to nullify the results on July 11, 2001, and decided that a new election be held.<sup>137</sup> Re-elections were held on October 23, 2001. The rate of participation was some 65 per cent of the estimated total population. The result of these elections is that nine different parties now are represented in the Saami Parliament.<sup>138</sup> This is a couple of parties less than in the previous period. Nonetheless, as nine parties share 31 mandates, decisions normally require deliberations before decisions can be taken. There have earlier been problems for the Parliament to reach consensus on what areas should be prioritised, and where to spend time and energy.

The members of Parliament all have other jobs on the side of their mission. The Parliament is in ordinary session four times per year. A Board decides on matters of lesser importance in-between sessions. The Saami Parliament Act (SPA) does not give any guidelines on how this Board should be elected. It merely states that the Board shall have seven members, and makes provision for the Parliament to draw up guidelines on the Election of the Board and its chairman. A Secretariat manages everyday work. Most matters are decided upon after a so-called “*föredragning*”, an oral presentation of a proposal. The budget for everyday work is relatively small. Currently, there is for example one official dealing with environmental matters and one dealing with cultural matters.

The Saami Parliament is thus both a representative body, elected by the people, and a public authority, answering to the Swedish Government. Its main tasks include the promotion of a living Saami culture and Saami livelihoods.<sup>139</sup> In practice, this means that the tasks include, but not are entirely limited to, the following: decisions on the distribution of government subsidies to Saami culture, appointing the Board of the Saami School, taking measures to promote the Saami languages, participating in societal planning and representing Saami interests in this work, and disseminate information on the situation of the Saami. It also disburses the state fund for damages on the deer population by wild animals to deer-owners, a fund of approximately 35 million SEK (approximately 3,5 mn USD). The formal warrant of the Parliament is relatively narrow. Except the above-mentioned mandates, the Parliament only has the authority to take initiatives in matters purporting to Saami culture. Neither City Councils nor Government Committees and the like are under an obligation to consult the Parliament before making decisions in matters concerning the Saami. The Saami Parliament is moreover not one of the government authorities to

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<sup>137</sup> Sametinget, ”sametingsval”, [www.sametinget.se](http://www.sametinget.se) (01.10.01), Förordning (2001:725) om valdag m.m. för omval till Sametinget, [rixlex.riksdagen.se](http://rixlex.riksdagen.se) (01.05.07)

<sup>138</sup> Samelandspartiet, [www.sapmi.se/samelandspartiet/akt\\_txt96.html](http://www.sapmi.se/samelandspartiet/akt_txt96.html)

<sup>139</sup> Sametingslagen (1992:1433) och förordningen (1993:327) med instruktion för Sametinget

which draft bills are referred to for consideration before passing them, even in Saami matters.<sup>140</sup>

The “dual character” of the Saami Parliament has been discussed over the past decade. These two roles are at present inherent in the mandate of the Saami Parliament. According to the Saami Parliament Act and the Saami Parliament Decree, the parliament shall promote Saami interests, which do not necessarily converge with those of the national Government. Since the Saami Parliament is a Government Authority, it is subjected to the Administrations Decree (*Verksförordningen*) and Administrative Act (*Förvaltningslagen*), applicable to all state Authorities. The Parliament should furthermore in principle follow the Saami policy of the State, and Parliament employees are persons of authority. Therefore, the Parliament can, for example, not be a party against the State in a case taken up by any international organ.

A session of the Government in October 2000 decided that a Commission be appointed for looking into the organisation of the Saami Parliament, and the possible conflicts that the “dual nature” of the Parliament, discussed above, might give rise to. The Directive to the Commission states that “...it cannot be overlooked that the organisation of the Saami Parliament is unorthodox and lacks any precedent in Sweden.” The Commission should also make an overview of the Saami Parliament Act and Decree. According to the Government Directive to the Commission, the main points of departure for its future work should be “...that the Saami shall have a representative body elected by the people, and that the Saami people has support in international instruments for deciding on their cultural development themselves. This presupposes a certain degree of self-rule and a body where the rights can be properly exercised.” The report should present proposals for changes necessary in the Saami Parliament Act and Saami Parliament Decree. These might include more detailed rules on elections and daily work of the Parliament, proposals for change of organisation following a possible division of the tasks assigned to the Parliament in the current SPA.<sup>141</sup> The Commission has been a one-man investigation, led by commissioner Mr. Ingemar Eliasson. However, additional experts were appointed to advice on the report. It was expected to be reported by January 2002, but the mandate was prolonged and stretched until end of September 2002.

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<sup>140</sup> Myntti, 2000. ”The Nordic Sami Parliaments”, p 218-219

<sup>141</sup> ”Översyn av Sametingets organisation” (Overview of the organisation of the Saami Parliament), Dir. 2000:70, decision by Government Session on October 19, 2000. Available at [www.riksdagen.se](http://www.riksdagen.se) ”Riksdagen”, ”Debatt&Beslut/Rixlex” (01.07.01)



## 5.2 Global level - The World Council of Indigenous Peoples

The World Council of Indigenous Peoples (WCIP) was established as an NGO in 1975. The following year, the Saami Conference voted that the Saami Council should join the WCIP.<sup>142</sup> This worldwide organisation functions as a forum for all indigenous peoples, where different peoples can develop and exchange ideas. The Council works through research and education, but its task is also to disseminate information on the situations of indigenous peoples over the world. The Council has furthermore worked on a Draft for an international treaty, the International Covenant on the Rights of Indigenous Nations, stipulating the rights of indigenous peoples in 35 articles. This document is aimed at indigenous peoples in their capacity of “nations”, and regulates anything from their relations with nation States, to the right to self-determination, peace, culture, knowledge, land, etc.<sup>143</sup>

## 5.3 Regional level

The first formal meeting between Saami living within different states was convened in Trondheim, Norway, in 1917. At the end of the Second World War, Saami groups in the different countries tried to deepen political co-operation. The Nordic Saami Council was established in 1956, as an organ for co-operation between the Saami associations of Finland, Norway and Sweden. At the fifteenth Saami Conference convened in Helsinki in 1992, the Russian Saami were accorded observer status. At this time, the union was furthermore renamed the Saami Council. Since 1994, American indigenous people have observer status by the Council, too.<sup>144</sup> The goal expressed by the Council is to establish protection for Saami rights in each respective country. It can be done through legislation or treaties between the elected Saami representatives and the State. The Council shall furthermore act to see to that all Saami are considered one people, regardless of citizenship.<sup>145</sup>

Since 1989 the Saami Council has consultative status with ECOSOC. So, in its capacity of an NGO, the Saami Council can participate in all the meetings and processes of the ECOSOC, concerning matters on indigenous peoples. The fact that the Council occupies this place apart is of great importance for possibilities of bringing questions to the international agenda. There are currently 15 organisations for indigenous peoples that

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<sup>142</sup> See the Saami Parliament, ”Sametinget”, ”Organisationer”, [www.sametinget.se](http://www.sametinget.se) (01.10.01)

<sup>143</sup> World Council of Indigenous Peoples, ([www.cwis.org/wcip.html](http://www.cwis.org/wcip.html))

<sup>144</sup> The Saami Parliament, Sametinget, ”Samiska organisationer ”. [www.sametinget.se/st/samorg.html#kapitel8](http://www.sametinget.se/st/samorg.html#kapitel8) (01.10.01). Sedan 1993 består Rådet av fyra finska samer, fem norska samer, fyra svenska medlemmar och två ryska samer.

<sup>145</sup> Henriksen, 1999, p 26

have consultative status with the ECOSOC. During the 70s and 80s, before the establishment of the Nordic Saami parliaments, the Saami Council could be said to be the legitimate representative for all Saami. This is no longer the case today, but the Saami should preferably be represented by members of the Saami parliaments. In the future, the Saami Council will play an important role in the co-operation in culture and with the Russian Saami. Moreover, the Council is not a part of the national administrative structures, as the parliaments are in varying degrees. Above all, the Council is an organ that can speak with one voice, to represent pan-Saami interests towards other actors, such as regional and international bodies.

According to the declaration of programme of the Board for the Saami Parliament, for the previous period for mandate (1997-2001), a Nordic Saami convention should be elaborated. The purpose of the creation of a new Nordic Convention "...for a joint responsibility for the Saami culture and for giving better possibilities for the harmonisation and co-ordination the different governmental rules, laws and measures."<sup>146</sup> Furthermore, the establishment of a Nordic Saami parliament is on the agenda.<sup>147</sup>

Through the Saami Parliamentary Council, the current three Parliaments in the different Nordic should co-operate. The role of this Council is to assess and co-ordinate common interests. This means that the Council should deal with questions concerning Saami living in the different countries.<sup>148</sup>

In addition to the above, the Saami ministers of the national governments in Norway, Sweden and Finland, and the Presidents of the Respective Saami Parliaments, have agreed on establishing a new co-operation organ between the countries. It will deal with Saami issues of common interest. There are currently different suggestions of name and the Charter of this new organ. Among the proposals on the charter, is that the group should consist of delegations including at least three government officials from the governmental Secretariats and the Saami Parliaments of Norway, Sweden and Finland. The government in each country should appoint the delegation that will also designate the chairman for the group. Representatives of the Nordic Council of Ministers shall also have the right to participate in the meetings of the group.<sup>149</sup>

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<sup>146</sup> Sametinget, "Styrelsens programförklaring", [www.sametinget.se/st/Program.htm](http://www.sametinget.se/st/Program.htm) (01.10.01)

<sup>147</sup> Orton - Beach, 1998, p 97

<sup>148</sup> Protocol from the meeting of the Board of Sametinget, 21-24 September 1998. [www.sametinget.se/st/protokol/St980921.htm](http://www.sametinget.se/st/protokol/St980921.htm) (01.10.01)

<sup>149</sup> The "Samefolket", "Nordiskt Samarbetsorgan i samefrågor", [www.samefolket.se](http://www.samefolket.se), article dated 08.05.2001

## 5.4 Comments

Elections to the Saami Parliament are important as they include all people defining themselves as Saami, and not only those considered Saami according to the Reindeer herding Act. However, the formal capacities of the Parliament as a body elected by a people are rather limited. As it has a strong legitimacy among the Saami, it could become a stronger force on the Swedish political scene in the future. The Saami Parliament has not been able to show more concrete results so far, due to splits within its ranks.

The Saami living in Sweden do not only operate on national level but have possibilities to work on several different levels, and they do so. On a global level, the Saami Council has so-far been the most important organ, as it has been the only body where all Saami of the Nordic countries are represented, and may express an opinion *vis-à-vis* the international community.

## 6 Conclusions

Human rights are inherent, interdependent and inalienable (Vienna Declaration, Article 5). This means that human rights influence all aspects of life – political, moral, religious, philosophical, and legal.

The legally binding HR instruments existing today are the results of a constantly ongoing process, involving the hard work of many different actors, and, finally, lengthy negotiations between States. So, political considerations to a large extent determine the elaboration of HR instruments. Also, political considerations will decide the signing and ratification of those instruments.

When it comes to the actual implementation on the national level of HR, political considerations by the rulers as well as opposition play a part. Implementation is furthermore dependent on resources set aside for this purpose. Legal obligations bind States to the duty of implementing the provisions in question. Most States will also implement or “take measures” to implement the principles and treaties agreed upon, in order not to lose credit in the international or regional communities, that are also responsible for the drafting or supervision of certain instruments. Political motives for implementation might be influenced by internal or external pressure. A change of position by the central government may be the result of internal pressure – from a variety of actors such as NGOs, indigenous groups themselves, human rights activists, researchers and academics. A change of position might also be the result of external pressure – from regional or global IGOs, and their special procedures or mechanisms, or from other actors. Such international pressure would follow on ratification of instruments pertaining to IPs, but could also be aiming at the ratification of a certain instrument.

The right to self-determination as expressed in international instruments has been interpreted and re-interpreted over the years, leading to the creation of new documents in the field. It developed from a mere expression of the sovereignty of a people, i.e. leaders, of a nation State to determine their own affairs, to being interpreted as expressing rights of colonised peoples in notably Africa to break away from the former colonisers. Today, the provisions on self-determination are widely recognised, albeit not unchallenged, as including also indigenous peoples. So, the interpretation of “self-determination” has come a long way. It is doubtful whether the extent of the right to self-determination can be stretched out further. Most scholars

do not advocate an unconditional right to secession/external self-determination, and States naturally vehemently oppose such a development. Conversely, it can be noted that many indigenous peoples take on a rather different approach and designate themselves as “indigenous nations”. The main argument for not accepting external self-determination is that it would lead to insecurity and instability world-wide. The right, in its “internal” sense, could possibly be widened, so that the peoples in question enjoy a large degree of decision-making in the matters relating to themselves, to the extent that they have near autonomy.

The question of problems of implementation of international treaties on the national level, is highlighted by the human rights of indigenous peoples, especially concerning self-determination. In their “rights” there is an inherent paradox. While the peoples exercise and use the right, it is the nation state that decides its exact scope in the national context.

Considerations of indigenous issues are relatively new in many States today. In support of the demands of indigenous peoples, the obvious argument would be that these people should not be suppressed merely for reasons that they did not have the same forms of government as the colonisers, or did not possess the same material advantages. However, this argument has not been sufficient for many States, which instead have turned to the principle of sovereignty for legitimising their rule over the indigenous peoples, sometimes taking on rather dictatorial forms, and in some cases leading to HR abuses.

According to UN estimates, there are currently some 5,000 indigenous groups, composed of 300 million people, living in more than 70 countries on five continents.<sup>150</sup> Studies have furthermore shown that the living conditions of indigenous peoples are in general notably worse than those of the majority population in a given country; for example showing shorter average length of life, lower levels of education etc. So, the issues of indigenous peoples certainly are a matter to give serious attention on the global as well as the national level.

## **6.1 The Obligations of Sweden Regarding the Right to Self-determination**

The first question asked initially was what treaties and instruments have been ratified by Sweden, relevant for the rights to self-determination of indigenous peoples?

The international obligations of Sweden in the field of human rights are found on the regional level as well as international level. Sweden has

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<sup>150</sup> Europaworld, information forum in part financed by the EU. [www.europaworld.org](http://www.europaworld.org) (01.06.02)

ratified the most important HR-instruments. Consequently, the obligations laid out therein should be implemented in national legislation and policies. In order to achieve an efficient participation in political processes at all levels, basic human rights need of course be realised – such as freedoms of opinion, expression and religion, and the right to education.

The treaty monitoring bodies may come to binding decisions that Sweden will have to follow. Breaches of provisions in treaties or conventions, or the failure implement the same, do usually not lead to sanctions. Nonetheless, (as argued previously) most States that like to be regarded as democratic, try to follow the decisions by treaty monitoring bodies. If not, they will be put under scrutiny and criticised by NGOs or IGOs as well as other states.

On the international level, the Human Rights Committee decides on whether State parties conform to the ICCPR. The Committee gathers its information from different types of sources, State and NGO reports. The most noteworthy case involving Saami rights in Sweden is the Kitok case, where the Swedish State was found not to be in breach with its obligations. However, the Committee pointed out that non-compliance might be under hand in a case with slightly different conditions. So, it can be assumed that the fact of being under scrutiny by the HRC was a rather uncomfortable experience for the Swedish government. As a consequence, Saami issues have remained on the political agenda of the Swedish government the past couple of decades, as proven by the numerous Commissions appointed for looking into various aspects of Saami livelihoods, land rights, and political rights. The committees supervising the CERD and the CRC can also have a part to play in more specific questions, under their particular mandate.

On a regional level, Sweden would be under an obligation to comply with the legally binding judgements of the European Court in Strasbourg. Its mandate covers alleged breaches of the human rights contained in the European Convention from 1950. As for the Saami, a complaint could be lodged based on article 14, regulating non-discrimination. As argued previously, regional agreements might be more acceptable to States as these normally reflect the policies of particular member States more accurately than could be expected at the international level. In the case of Swedish relations towards the Saami, the State was up for review before the European Court of Human Rights in 2001. At that time, the complaint concerned the right to a fair trial, in accordance with article 6 of the ECHR. The Saami had not been given the possibility to appeal against a decision concerning the use of land for reindeer herding. After the European Court had declared the case admissible, the issue was settled between the two conflicting parties, and hence never came to decision by the Court.

The above only refer to general provisions on human rights, inherent in every individual. As previously shown, there are also a number of instruments specifically aiming at the rights of indigenous peoples, signed and ratified by Sweden. Mechanisms exist either separate from or under

these instruments too, with a potential for speeding up the implementation process. The newly appointed UN Special Rapporteur on indigenous people can, through state and NGO reports, as well as visits, supervise the implementation of rights under his mandate. The current SR, Mr. Stavenhagen, has emphasised the existence of a “protection gap” between theory and reality today. If states would only comply with the existing provisions, it would probably be unnecessary to push for the development of even more instruments and the like, specifically aimed at indigenous populations. Such a development was advocated by among others Ms. Daes at the opening of the first session of the Permanent Forum for Indigenous Issues.

Sweden has ratified most instruments important for indigenous issues. However, the ILO Convention no. 169 should, according to the first government report in the field, of 1999, also be ratified. Two government Commissions have been appointed to this end. The government directive setting the guidelines for the work of the second of these Commissions, noted the international critique that had been directed thus far at Sweden for not ratifying ILO Convention no.169. So, international pressure is important not only in the context of implementing ratified instruments, but also for making states continuing work, taking further steps in the international human rights regime. In this context, it would of course be commendable if the Swedish government already started taking into account the principles of the UN Declaration on Indigenous Peoples, currently under elaboration, in its work relating to Saami issues, looking into the compliance of national laws and policies with the future Declaration. Although declarations are not legally binding, they are a “declaration of intent”, and might become codified in treaties, or turn into *usus*. However, considering that work with the future UN Declaration on indigenous peoples has been very slow so far, it might be premature to ask the Swedish government to incorporate possible future provisions in its work today.

It has also been stated previously that indigenous peoples may fall back upon general HR-arguments, like any citizen, but that they also may invoke collective human rights in their quality of being a group. These rights would be inherent and inalienable like individual human rights. In Sweden, the Saami have been recognised by the government as an indigenous people. However, the people is not mentioned in the Swedish Constitution (as opposed to the Norwegian and Finnish Constitutions). The Saami have not been accorded the status of indigenous people nor any rights to special measures. Paragraph 2:15 of the Constitution refers only to minorities. In the official government report, the Swedish State concluded that the Saami do not enjoy any right to the lands they use. The official position on other group rights, and the extent to which they may be realised in Sweden, is unclear.

Saami culture has strengthened its position in Sweden. The currently ongoing government campaign to this end, has special resources set aside in the government budget. The last big step in this direction is the setting up of

a Saami information centre, for which special funds have been set aside, which will be managed by the Saami Parliament. It can be asked whether such a campaign on Saami culture and livelihoods will have a “spill-over” effect, legitimising claims to exercise rights in other fields than culture and language. Also, when discussing government efforts as for Saami issues, it can be noted that there are indeed several people at the government office dealing exclusively with these. However, it can be noted that little information is available in print or off the Internet, from the same source. It can also be noted that the minister for the Saami, primarily is minister of agriculture and gender equality, both important in Swedish government work.

When discussing different debates on the Saami and Saami rights, something should be said about the Swedish backdrop to these debates. Decision-making in these fields is not limited to national level, but also takes place at municipal and county level. The municipal government handles questions in many areas, for example schooling, and conduct of discussions in this forum is therefore of importance. The climate of debating is somewhat different in the southern, central and northern parts of Sweden. The debate in Norrland is often, at least seemingly, more heated than in other parts of the country. It has also been characterised by a certain distrust and jealousy on behalf of both the Saami population and the majority population. Swedes in general have either been ignorant about Saami issues, or considered them as putting forward unjustified claims for resources and rights. This might be one factor contributing to the sometimes ambivalent attitude of the Swedish Government regarding the “Saami question”. Swedish politicians do generally not like heavy confrontation in national political debate, or handling “hot potatoes” in national politics. At the same time, the government has been aware of the need for clarification on many points concerning the Saami. So, numerous government Commissions have been appointed in the past two decades, and change real has come about albeit slowly. However, the process is a constantly on-going one.

So, in conclusion, it can be stated that the Swedish state has indeed gone through a change of attitude over the past decades. The Saami are no longer regarded as a people completely lacking rights or even the rights to claim HR. The government campaign aims at creating a greater understanding for Saami issues by the majority population. Perhaps the main purpose of the campaign is to create legitimacy on the national level for political measures that have been taken, and will be taken in the future, regarding the rights of the indigenous people. The Swedish state is aware of the fact that it cannot lag behind its neighbouring countries on these issues. It must comply with obligations undertaken when signing and ratifying relevant treaties.



## 6.2 The Position of Sametinget visavi International Law, Applicable in Sweden

The second question asked initially was whether the Swedish Saami Parliament of today is a sufficient guarantor for the realisation of the right to self-determination, to the extent Sweden is bound to implement that right through adhering to international instruments?

The establishment of the Saami parliament about a decade ago, following in the footsteps of Finland and Norway, can be viewed as a first step by the Swedish government towards meeting the demands of self-determination laid out in international human rights treaties. Or was it a half-hearted attempt to soothe criticism, not the first but the final step in a process? If it was at the outset, this is not true any longer. However, up until today, the answer to the above question would be a “no, not quite”. This is due to a number of factors.

Already in the Government report concerning the Saami parliament, put forward prior to the establishment of the Parliament, the question on the “double character” of the parliament was raised. It is a democratically elected body, but its mandate only covers representing the views of its electors on certain matters, decided beforehand by the majority government. It answers to the national parliament – elected by Saami as well as electors of the majority population and other groups. The Saami parliament furthermore has a purely consultative role in a limited number of areas. It is not the organ for deciding on “matters concerning themselves”, as required by the HR regime – the ICCPR and the Framework Convention for Minorities. Furthermore, participation in political processes should take place at all levels where decisions are made, concerning indigenous issues. It can be asked how this is to be implemented in the Swedish context, with its divide between national and municipal decision-making. The Saami Parliament would be influential at the national level. However, at the municipal level, where many important questions are negotiated, the Saami have to rely on their possible political representatives on the municipal level. It would be difficult to incorporate the Saami parliament into this decision-making process, although it can act as a consultative organ on matters important to the Saami – which would probably cover the lion part of issues raised at municipal level.

Some obstacles relate to the organisation of the parliament. The Swedish Saami Parliament Act does not govern the details of the work of the Parliament. As a consequence, it has been forced to spend a lot of time and resources on drawing up procedural guidelines. The legislator cannot be blamed for wanting to leave some leeway to the Parliament, although these matters would usually be regulated in a government decree (“*förordning*”).

Also, the parliament has been characterised by internal difficulties in getting along and achieving results. Perhaps this is due to the relatively large number of political parties and the ensuing difficulties in reaching a common stand and political agenda. Had the Saami parliament been able to show a more efficient and united front towards decision-makers at the national level, they might have been more successful in influencing matters, even more than formal competence laid out in the SPA suggests.

When it comes to the material competence of the Saami Parliament, it has been stated that its mandate is rather limited. The Swedish Government fully acknowledges the right of the Saami to self-determination on cultural matters, and to some extent on economical matters relating to reindeer herding. There is, at present, apparently no will to let go of decision-making powers over lands or natural resources. However, one of the tasks of the Commission due to report in September, is to look into possibilities for the Parliament to participate to a larger extent in societal planning. As the reindeer and traditional lands are central to the Saami, the “societal planning” should include a larger extent of the right to decide on these matters.

As a concluding remark, the Saami Parliament in Sweden seems to be moving towards the requisites for self-determination in its internal sense, as interpreted by scholars today. Nonetheless, to achieve this goal, on-going measures are needed.

### **6.3 Future Development**

The last question asked was how the on-going and future development on the rights of indigenous peoples will affect the Swedish state and the Saami?

The ILO Convention no. 169 has been discussed at several places. When it comes to the issue of the use of land, this has been and still is, is a hot potato. Living up to international obligations on this matter often means rocking the foundations of the nation state, and has been looked upon with sceptical eyes by Sweden as well as the vast majority of states. However, the position of the Swedish government seems to be changing in this respect, and change can be expected in the near future.

The Saami people of northern Europe will, in all likelihood, continue to be divided by the borders of the nation states. Therefore, the countries concerned should not only look to what obligations they have towards the Saamis, citizens of their own country. States should strive towards harmonising legislation and rights of the Saami, notably by following all international and regional instruments, but also through overview of national legislation. The co-operative organ for the Nordic Saami Parliaments might have a large role to play in this work. Such a holistic take on the Saami issues puts rather high demands on states. An easy way of ensuring

harmonisation is to apply the legislation of the country which has the one most favourable to the Saami. This is of course easier said than done in practice, since differences in administration and economy set the limits.

In order to ensure that the voices of indigenous peoples are actually heard at national levels, it is important that the currently on-going development of instruments and fora for indigenous peoples at the international level show actual results. The future success of the Permanent Forum on Indigenous Issues or the realisation of the UN Draft Declaration on indigenous peoples, is in many respects a The future of these mechanisms is not only decided by legal-political considerations, but also by political-economical ones. It is easy to slow down development if money is not set aside to achieve the goals set. So far, the fields concerned have not been showered with money. The establishment of the UN Voluntary Fund for Indigenous Peoples is a large step forward in this respect. However, the Fund is rather meagre as of yet.

The question can be asked whether regional organs should take up the idea of the UN, and create special fora for indigenous peoples, too. The OSCE and the Council of Europe work with indigenous peoples' issues from mainly a security perspective, building peace and stability through the promotion of HR. Would it be desirable to establish special fora for IP within the regional framework, too? A special forum certainly is the best way for voicing concerns, a rapid and straightforward mechanism for putting current developments on the political agenda. However, the limitations of the UN Permanent Forum in terms of economic restraints has already been mentioned. It is reasonable to believe that the same problems would follow any new Forum. Also, IP themselves already have limited resources to put into lobbying activities etc. The existing resources and efforts are likely to be better spent if directed towards one end only.

Ultimately, a final remark should be made regarding the rights mentioned in this text. Mention has been made of both individual and collective rights. It should be pointed out that citizens in a state never can claim only rights, but that those in practice carry with them certain obligations. In the context of self-determination, this could mean that obligations to respect the HR instruments mentioned above, apply also to the Saami parliament. However, it is ultimately the state that is responsible for up-holding HR within its territory, and that will have to answer to international mechanisms of control.

Finally, a few thoughts that occurred to me while finishing work on this thesis, on possible further research in the field

The actual influence of indigenous peoples in the political, decision-making process requires an empirical study of processes at all levels. In the Swedish context, a lot of the decision-making powers have, as emphasised, in many important fields have been transferred to municipal level, in part as a result

of the principle of subsidiarity of the EU. Still, the State is ultimately responsible for ensuring that the right to self-determination is respected.

What if the Parliament is given a more autonomous position within the Swedish administration? And if the Parliament is made more autonomous, will it be a separate body that can bring complaints against the State, or answer to such complaints, before the international mechanisms? Would Saami electors participate in municipal and national elections as well as to the Saami parliament? Would this not be practice discriminatory against non-Saami electors, going beyond what would be acceptable for a “special measure”? Government sources have firmly stated that a separation of the Saami parliament from the national administrative system is highly undesirable.

As a rule, the government is responsible for assuring human rights for all its citizens. Will the Swedish government be liable for possible HR breaches committed by the Saami Parliament, towards individuals as well as international bodies? Certain scholars have argued that in particular the HR of women would suffer if the indigenous way of governing would become the norm for indigenous peoples within a state. Most indigenous peoples have a more patriarchal organisation than the majority population. This might be due to the fact that their lifestyle is still in many ways closely tied to the territories they inhabit, and the use thereof for their traditional livelihoods, also in the case of the Saami. As this type of life style requires more force, gender divides in occupations become more clear than in the society of the majority population. Nonetheless, the question remains – would the State be made responsible for possible HR breaches of the indigenous population towards individuals, or towards other indigenous populations or minorities, claiming collective rights? To answer these questions is a task of another project.



# Appendice

## Swedish Law:

### *Regeringsformen, 1 kap 2 §*

Etniska, språkliga och religiösa minoriteters möjligheter att behålla och utveckla ett eget kultur- och samfundsliv bör främjas.

### *Regeringsformen, 2 kap 15 §*

Lag eller annan föreskrift får ej innebära att någon medborgare missgynnas därför att han med hänsyn till ras, hudfärg eller etniskt ursprung tillhör etnisk minoritet

## Treaty Law:

### *International Covenant on Economic, Social and Cultural Rights - International Convention on Civil and Political Rights, 1966 (UN)*

#### Article 1

All peoples have the right of self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development

#### Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

### *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, 1992 (UN)*

#### Article 1

States shall protect the existence and the national or ethnic, cultural, religious and linguistic identities of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

#### Article 2

(...)

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

(...)

#### Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

*Vienna Declaration and Programme of Action, 1993 (UN)*

Article 5

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

*Framework Convention for the Protection of National Minorities, 1995 (COE)*

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

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