

Human Rights Council
Universal Periodic Review process with regard to the State party
Sweden, 3rd Cycle – 35th session, communication by the Saami
Council (NGO)

Communicating organization

The Saami Council, established in 1953, is a non-governmental organization with consultative status with the Economic and Social Council (ECOSOC) and the International Labour Organization (ILO). It is also a Permanent Participant to the Arctic Council.

As far as the organization's human rights work is concerned, the Saami Council has since the 1970s represented the rights and freedoms of the Sami and other indigenous peoples through participating in various UN processes and meetings organized under the auspices of a number of UN system organizations. By example, we had a leading role in the deliberations leading up to the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Outcome Document of the so called World Conference on Indigenous Peoples (ODWCIP). The Saami Council also played a key part in the establishment of the UN Permanent Forum on Indigenous Issues and the Special Rapporteur on the Rights of Indigenous Peoples institute. We have also on a regular basis provided input to relevant treaty bodies and the Universal Periodic Review (UPR) process, enunciating how state laws, policies and practices fail to live up to the standards set by international indigenous rights law.

The traditional land of the indigenous Sami people stretches over what today constitute Finland, Norway, the Russian Federation and Sweden. The Saami Council is an umbrella organization, with the national Sami organizations in the four countries as members. In this capacity, the Saami Council provides this input on the human rights situation of the Sami population residing within the part of the Sami land situated within Sweden.

Previous UPR recommendations

1. The 2nd UPR Cycle reportⁱ contained 228 recommendations. Of these, six targeted the situation of the Sami as an indigenous people. A majority concerned ratification of ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries (ILO 169), and all but one recommended Sweden *to consider* ratification.ⁱⁱ As considering is free, these

recommendations lacked substantive content. One called on Sweden *to ratify* ILO 169,ⁱⁱⁱ but Sweden has not moved towards ratification.^{iv} It is relevant to repeat this recommendation. UN treaty bodies etc. too have repeatedly called on Sweden to ratify ILO 169.^v

2. Sweden was also recommended to enhance Sami self-determination, including through increasing the Sami parliament's remit^{vi}, and to advance Sami communities' participation in land, water and resource rights issues.^{vii} Sweden has taken no tangible steps towards acting on these recommendations either. As to what Sweden writes in its mid-term report,^{viii} one may note that consultation is not self-determination and that the proposed Nordic Sami Convention falls well below international legal standards. It is relevant to repeat the first recommendation, although reformulated so that it calls for a real commitment. As to the second, the communication returns to land rights below. (A number of recommendations also addressed minority rights. Since the Sami are an indigenous people, these are not dealt with here.)

Generally on the human rights situation of the indigenous Sami

Introduction

3. As seen, the UPR process has so far largely by-passed the human rights situation of the indigenous Sami. Hence, there are almost no recommendations from previous cycles to follow up. Consequently, the Saami Council's input focuses on new recommendations to direct at Sweden during the 3rd Cycle.

4. The recommendations submitted are grounded in that Sweden (as other states) has agreed that the UN Charter, the Universal Declaration on Human Rights and human rights treaties to which it is a party should serve as yardstick for measuring Sweden's human rights performance for the purposes of the UPR review.^{ix}

5. The recommendations are presented at the end of the document. Prior to that, we provide a succinct encapsulation of the human rights situation of the indigenous Sami, to place the recommendations in context.

The underlying rationale resulting in the human rights concerns the indigenous Sami face

6. Sweden is generally held as a country with a strong human rights record. One area where it has failed, however, as enshrined in repeated criticism from various UN institutions etc,^x is in its treatment of the indigenous Sami. The root cause is what can only be labelled structural discrimination.

7. The Sami are not structurally discriminated in the sense that members are systematically disadvantaged compared with members of the Swedish majority population when it comes to *opportunities within the Swedish society*. On the contrary, Sweden should be commended for, in contrast to some other states with indigenous populations, providing a level playing field in this regard. The structural discrimination consists of Sweden in critical respects systematically *failing to treat the Sami different* compared with the majority population, i.e. to treat the Sami as indigenous, thereby violating international law.^{xi} Although formally recognizing the Sami as indigenous, Sweden is not allowing this formal recognition to saturate its laws, policies, practices etc. Rather, it in many instances applies laws etc. accustomed to the situation of the majority population in the same manner to the Sami, ignoring their particular situation as an indigenous society and culture, and that preserving that particular society, culture and way of life presupposes not being treated as the majority population. Sweden thus fails to respect the rights the Sami enjoy as indigenous, in an institutionalized manner. Particularly obvious is this structural discrimination with regard to the principal traditional livelihood of the Sami, reindeer husbandry, where the conflict of interest between the Sami and Swedish societies are most apparent.

8. As mentioned, this feature of Swedish laws, policies, practices etc. is not consonant with international law. The fundament of the international indigenous rights regime is recognition of indigenous peoples' unique interconnectedness with the lands, territories and resources they have traditionally used. This acknowledgement of *fact* has further prompted international law to embrace a *legal norm* pursuant to which indigenous peoples are entitled to preserve this unique bond with their lands, as this is a pre-requisite should they be able to maintain their distinct cultures, societies and ways of life. The *de facto* inseparableness between indigenous peoples and their lands has resulted in international *law* firmly calling on states to recognize this particular feature of indigenous societies and cultures in all their actions, including legislative such.^{xii}

Briefly on the Sami culture

9. Reindeer husbandry is an indigenous way of life; a nomadic traditional livelihood practiced by family based communities. It is a model of sustainable management of northern terrestrial ecosystems, founded on knowledge amassed during centuries.^{xiii} There are 24 indigenous reindeer herding peoples in the circumpolar Arctic, of which the Sami is one.

10. The reindeer has been integral to the Sami as long as there has been a Sami people and identity. Collectively, without traditional reindeer husbandry, the Sami people is destined to perish. Individually, reindeer husbandry is the constitutional element of the Sami reindeer herder's cultural identity. Of course the Sami culture encompasses more critical elements. The Sami have distinct language, traditions, customary norms, knowledge systems etc. Reindeer

husbandry is, however, paramount to preserving and developing also these aspect of the Sami culture, as doing so presupposes thriving Sami local communities where the language etc. is used on a daily basis and thus living as opposed to frozen at a particular moment in time.

11. It follows that the most relevant UPR recommendations call on Sweden to provide the building blocks that allow the indigenous Sami to preserve and develop the keystones of its society, culture and way of life.

12. In this communication, the Saami Council has refrained from submitting general, non-measurable, recommendations, in the aspiration that States will do the same. It is our hope that result-oriented recommendations could be targeted at Sweden, calling for realization of rights pertaining to specifically identified boulders of the Sami way of life etc.

Mining legislation

13. A considerable threat to Sami reindeer husbandry is loss and fragmentation of pasture lands due to industrialization. Of the 24 Arctic and Sub-Arctic reindeer herding peoples, the Sami have faced the most substantial cumulative loss of reindeer pasture.^{xiv} A top culprit is the extractive industry, particularly in Sweden.

14. Sweden perceives itself as and is a 'mining nation', but more than 95 per cent of the value mineral extraction brings is generated on Sami reindeer herding lands. The proportion is the same with regard to prospecting for new mines.^{xv} Mineral exploitation in Sami reindeer herding areas is actively promoted; the mining industry itself ranks Sweden as one of the 'mining-friendliest' countries in the world.^{xvi} Lack of protection of indigenous rights contributes to this appreciation.

15. Swedish law formally acknowledges that Sami reindeer herding communities hold property rights to their respective lands.^{xvii} But these rights must regularly yield in conflict with mining interests, in the same manner as those of Swedish property right holders.^{xviii} Swedish mining legislation largely treats *indigenous Sami* communities as it does *Swedish* property right holders. With regard to both, the legislation takes for granted that expropriating land for mining purposes is lawful, provided that monetary compensation is provided. It is simply assumed that since monetary compensation makes taking of land legal in relation to non-indigenous right holders, the same is true also for Sami reindeer herding communities. That the Sami society, way of life and cultural identity is tied to the land is disregarded. The structurally discriminating mining legislation inflicts ongoing detrimental harm to Sami reindeer herding communities' traditional way of life and cultural identity, and by implication to the Sami people's society and culture.

16. UN treaty bodies etc. has repeatedly called for rectification of the situation.^{xix}

17. With reference to HRC Res. 5/1, the Swedish mining legislation violates, among other international human rights instruments, the CERD, the ICCPR, the Convention of the Rights of the Child (CRC) and the ECHR. Sweden is a party to all of these.

Predators

18. Another serious threat to Sami reindeer husbandry is the untenable concentration of carnivores (wolf, brown bear, lynx, wolverine and eagle) in the reindeer herding areas. Sami reindeer husbandry and carnivores have always co-existed, without one constituting an existential threat to the other. Things changed with state interference. Sweden now completely regulates the relationship between the Sami and carnivores, distorting natural order. It has committed to maintaining carnivore populations at high levels,^{xx} simultaneously largely locating these to the Sami reindeer herding areas. The result is an unnatural and untenable concentration of carnivores there, where in particular the wolverine and lynx populations essentially feed on Sami reindeer.^{xxi}

19. As a consequence, Sami reindeer herding communities lose unsustainable amounts of reindeer to carnivores. Annual losses of around a quarter of the herd is common, and some communities lose close to 40 per cent of the herd.^{xxii} In such an environment it is simply not possible to pursue traditional Sami reindeer husbandry. Active Sami reindeer herders are forced to quit and the young do not dare entering the traditional way of life of their forefathers. Those remaining must distort their reindeer husbandry to limit the losses, approaching something that is not Sami reindeer husbandry. The development is a serious threat to Sami reindeer husbandry, and by implication to the entire Sami culture and society.

20. In 2013, the Swedish parliament responded to the untenable situation by entering into an agreement with the Sami pursuant to which no Sami reindeer herding community should have to sustain annual losses to carnivores exceeding ten per cent of the herd. Sweden has, however, not honored the agreement. It has taken no tangible steps towards implementing it.

21. UN treaty bodies etc. have repeatedly called for rectification of the situation.^{xxiii}

22. With reference to HRC Res. 5/1, Sweden's carnivore policy violates among other international instruments the CERD, the ICCPR, the CRC and the ECHR. Sweden is a party to all of these.

Sami language

23. Effective implementation of Sami language rights are paramount to preserving the Sami society and culture. The Sami languages is endangered.^{xxiv} Today, a substantial majority of the Sami have lost their language. To maintain and develop a language in which few are proficient requires positive measures. As a rich country, Sweden both has a strong obligation^{xxv} and is in an excellent position to adopt such.

24. Preserving and reinvigorating a threatened language starts with the young. A major threat to the Sami languages is a significant lack of language proficient teachers.^{xxvi} This root cause has been well known for years.^{xxvii} Yet, only tentative attempts have been made to rectify the situation, where immediate, substantive and overarching measures are needed.

25. As mentioned, the Sami territory stretches over four countries, and so does the Sami languages. It is thus natural, and enhance efficiency, that efforts to strengthen the Sami language cross national borders. For said purpose, the Sami Parliamentarian Council has established an institution – *Giellagáldu* – to coordinate work with promoting the Sami language across borders. However, public funding ended in 2018, placing the institute in jeopardy. If it had to close due to lack of funding, this would set back efforts to preserve and develop the Sami language considerably. This setback could easily be avoided, as the funding commitment is negligible.

26. With reference to HRC Res. 5/1, Sweden's language law and policy violate among other international instruments the ICCPR, the CRC and the CERD. Sweden is a party to all these.

Proposed recommendations

27. It is recommended that Sweden:

1. Ratifies ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, no later than prior to the 4th UPR Cycle.
2. Takes tangible measures to implement Sami self-determination, and reports back on progress made at future UPR cycles.
3. Ends structural discrimination of the Sami, by reviewing all relevant legislation to ensure that it also de facto treats the Sami as indigenous, prior to the 5th UPR Cycle.
4. Reviews its mining legislation and makes necessary amendments to ensure that it de facto conforms with the rights the Sami enjoy as indigenous, prior to the 5th UPR Cycle.
5. Reviews its legislation relevant to industrial activities in the Sami areas, and makes necessary amendments to ensure that such legislation de facto conforms with the rights the Sami enjoy as indigenous, prior to the 6th UPR Cycle.



6. **Immediately honors and effectuates its agreement with the Sami on a carnivore policy, and no later than during the 4th UPR Cycle.**
7. **Ensures that both the number of students in higher education training to become Sami proficient language teachers, and the number of active teachers at all levels proficient in the Sami languages at a minimum doubles prior to the 4th UPR Cycle and doubles again prior to the 5th UPR Cycle.**
8. **Immediately commits permanent funding to the joint Sami institute for promotion of the Sami language (*Giellagáldu*).**

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- ⁱ A/HRC/29/13 and A/HRC/29/13/Add. 1.
- ⁱⁱ Recommendations by Uzbekistan, Guatemala, Nicaragua (A/HRC/29/13, para. 145.2), Brazil (A/HRC/29/13, para. 145.3) and Norway (A/HRC/29/13, para. 146.7).
- ⁱⁱⁱ Recommendation by Denmark and Honduras (A/HRC/29/13, para. 146.6.).
- ^{iv} Compare Sweden's national mid-term report, Universal Periodic Review of the United Nations Human Rights Council, 8 May 2018. p. 11 (at the top).
- ^v E.g. CERD/C/SWE/CO/19-21, para. 19; CERD/C/64/CO/8, para. 13; CCPR/C/SWE/CO/7, para. 39 (d); E/C.12/SWE/CO/6, para. 14 (f).
- ^{vi} Recommendation by Albania (A/HRC/29/13, para. 145.101).
- ^{vii} Recommendation by Austria (A/HRC/29/13, para. 145.102).
- ^{viii} Sweden's national mid-term report, Universal Periodic Review of the United Nations Human Rights Council, 8 May 2018, p. 10.
- ^{ix} HRC Res. 5/1, 18 June 2007.
- ^x Parts of this criticism is referenced below.
- ^{xi} E.g. The Committee on the Elimination of Racial Discrimination (CERD/Cee), General Recommendation No. 32, para. 8; the European Court on Human Rights ruling in *Thlimmenos v. Greece* [2001] 31 EHRR 411, para. 44 (repeated in subsequent rulings). Sweden is a party to both CERD and ECHR. The norm is also reflected in jurisprudence from the Inter-American Court on Human Rights (*Saramaka*) and the African Commission on Peoples and Human Rights, *Centre of Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Enderois Welfare Community v. Kenya*, AfCommHPR 276/2003, paras. 174-238.
- ^{xii} E.g. Study of the Problem of Discrimination Against Indigenous Populations: Final report submitted by the Special Rapporteur, Mr. José Martínez Cobo, UN Doc. E/CN.4/Sub.2/1986/7/Add. 4, paras. 379-80; CERD Decision 2 (54), A/54/18, 5-7, para. 4; The UN Committee on Economic Social and Cultural Rights E/C.12/GC/21, para. 36; Enderois, paras. 174-238; Inter-American Court on Human Rights, Case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, IACtHR Ser. C, No. 79, para. 149 and *Sawhayamaya Indigenous Community v. Paraguay* (Merits, Reparations and Costs); IACtHR, Ser. C., No. 146, para. 118.
- ^{xiii} Ole Henrik Magga et al (2009), *Reindeer Herder, Traditional Knowledge and Adaptation to Climate Change and Loss of Grazing Land*, Arctic Council Report
- ^{xiv} I. I. Vistnes et al (2009), *Reindeer Husbandry and the Barents. Impacts of Future Petroleum Development on Reindeer Husbandry in the Barents Region*, in Report by the International Centre for Reindeer Husbandry.
- ^{xv} Rebecca Lawrence and Mattias Åhrén, "Mining as Colonisation", in *Nature, Temporality and Environmental Management*, Lesley Head et al eds. (2017).
- ^{xvi} A. Wilson and M. Cervantes, *Fraser Institute Annual Survey of Mining Companies* (2014).
- ^{xvii} Supreme Court cases NJA 1981 s. 1 and NJA 2011 s. 109.
- ^{xviii} Swedish Mineral Act.
- ^{xix} E.g. CERD/C/SWE/CO/22-23, para. 17 (a) and (b); CERD/C/SWE/CO/19-21, para. 17; CERD/C/SWE/CO/18, para. 19; CCPR/C/SWE/CO/7, paras. 38 and 39 (c); CCPR/C/SWE/CO/6, para. 20; E/C.12/SWE/CO/6, para. 14; Report of the Special Rapporteur on the Rights of Indigenous Peoples James Anaya, The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland (A/HRC/18/35/Add.2), para. 85.
- ^{xx} The Berne Convention on the Conservation of European Wildlife and Natural Habitats and the EU Habitats Directive.
- ^{xxi} Vegar A. Pedersen et al [1999] 'Lynx predation on semi-domestic reindeer', *Wildl. Biol.* 5, s. 203-211.
- ^{xxii} Source: Sweden's Agricultural University.
- ^{xxiii} CERD/C/SWE/CO/22-23, para. 17 (d); CERD/C/SWE/CO/19-21, para. 18; Report of the Special Rapporteur on the Rights of Indigenous Peoples James Anaya, The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland (A/HRC/18/35/Add.2), para. 87.



^{xxiv} Source; UNESCO.

^{xxv} E.g. the ICCPR, art. 27, as interpreted by the Human Rights Committee (e.g. General Comment No. 23); similarly the CRC, art. 30, as interpreted by the Committee on the Rights of the Child (e.g. General Comment No. 11); UNDRIP art. 13.

^{xxvi} Compare "The Sami languages in Sweden 2018: A status report from the Sami Language Center" (2019), p. 7-8, 26-27 and 42. (The status report on the Sami language was prepared in accordance with the criteria for evaluating the vitality and endangerment of languages established by UNESCO in 2003 in its "Language Vitality and Endangerment".

^{xxvii} E.g. Governmental Bill 2017/18:199, "A Strengthened Minority Policy"; Swedish Official Commission (SOU) 2017:91.