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# SAMI SELF-DETERMINATION

## LAND, RESOURCES AND TRADITIONAL LIVELIHOODS
## SELF-DETERMINATION AND THE MEDIA

**John B. Henriksen**
**(Editor)**

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*Views and conclusions presented in this publication do not necessarily represent the view of Gáldu – Centre of Competence for the Rights of Indigenous Peoples. The editor is currently employed as the international representative of Sámediggi – the Sami Parliament. The views and conclusions in this publication, however, do not necessarily represent the view of Sámediggi – the Sami Parliament.*

## Contents

## Preface

This edition of Gáldu Čála is the fourth publication within the framework of the project "Sami Self-Determination: Content and Implementation. The project is funded by the Ministry of Government Administration, Reform and Church Affairs and Sámediggi – The Sami Parliament of Norway.
On the basis of two working seminars held by Gáldu – Centre of Competence for the Rights of Indigenous Peoples, in Guovdageaidnu in November 2011, this edition of Gáldu Čála seeks to highlight on issues related to Sami rights to land, water and economic activity in the light of the rights of indigenous peoples to self-determination. The purpose is also to encourage more public debate on the way in which issues related to Sami self-determination are discussed in the media.
The publication should be viewed in the context of three previous editions of the journal. Gáldu Čála No. 2/2008 contains the report from an international conference on Sami self-determination, organised by Gáldu and Sámi allaskuvla/Sámi University College, in Alta in February 2008. Gáldu Čála No. 02/2009 deals with issues related to Sami self-determination in the areas of education, research and cultural matters, based on three seminars held by Gáldu in 2009. However, Gáldu Čála No. 02/2010 throws light on some central problems relating to the authority of Sámediggi – The Sami Parliament and the funding of Sami autonomy, as well as questions concerning Sami autonomy in the health and social services sector.

Through the project, Gáldu has tried to involve Sami resource persons and competence establishments in discussions on Sami self-determination, and thereby attempted to illustrate the potential content and implementation of self-determination in a Sami context.

Gáldu – Centre of Competence for the Rights of Indigenous Peoples, is convinced that the project on Sami self-determination will contribute to the public debate on Sami self-determination in a constructive and informative manner.

*Janne Hansen*
*Acting Director*

## Introduction

One of the main objectives of the Gáldu project "Sami Self-Determination: Content and Implementation," has been to contribute to the public debate on the rights of indigenous peoples in light of the recognition by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)[1] to self-determination. Article 3 of the Declaration recognises the right of indigenous peoples to self-determination. This provision reflects existing standards of international law regarding the right to self-determination.[2] The principles of equality and non-discrimination forms a central part in the interpretation of the provisions of UNDRIP, including the provisions regarding self-determination. Among other things, this follows from UNDRIP Article 2 where it is stated that "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights". The recognition by UNDRIP of the right of indigenous peoples to self-determination is based on the view that the right to self-determination is a universal right for all peoples.

Over the years, the right to self-determination has constituted an important argument for establishing independent national states as shown, for instance through the process of decolonisation in Africa. It is evident, however, that the UN General Assembly, when adopting UNDRIP in 2007, did not recognise the right of Indigenous Peoples to unilaterally establish separate national states. The great majority of indigenous peoples in the world, however, have never put forward any claims or wishes for secession from existing national states. This is an important clarification since in the public debate on Sami self-determination there is often a focus on problems related to secession. An approach with a focus on secession has no basis in applicable international provisions, and it also contributes to overshadowing the potential of the right to self-determination as a means of constructive solutions to conflicts between states and indigenous peoples.

Respect for, and implementation of, the right of indigenous peoples to self-determination within the framework of existing national states has the potential of preventing new conflicts and resolving historical ones between states and indigenous peoples. This was also voiced by the UN General Assembly through its adoption of UNDRIP in 2007, in which it expressed its conviction that through its recognition of the rights of indigenous peoples, UNDRIP would contribute to a more harmonious relationship and better cooperation between states and indigenous peoples based on the principles of justice, democracy, and respect for human rights, non-discrimination and good faith.[3]

Within the framework of the project "Sami Self-Determination: Content and Implementation" Gáldu has managed to bring resource persons and competence establishments together to discuss issues related to the implementation of Sami self-determination in a way that, to the greatest possible degree, is in accordance with the more recent development of relevant international standards. Within the framework of the project, Gáldu has also organised an international conference on the right of indigenous peoples to

1 UN Declaration on the Rights of Indigenous Peoples

2 Including a joint Article 1 (1) of the UN Covenant on Civil and Political Rights and the UN Convention on Economic, Social and Cultural Rights.

3 See introduction to UNDRIP.

self-determination (2008), as well as eight sector-based working seminars on Sami self-determination (2009 – 2011). Gáldu, through this process, has succeeded in involving a large number of Sami, Norwegian and international experts and resource persons in discussing the right of indigenous peoples to self-determination. In the working seminars the focus has primarily been on how the right to self-determination may possibly be implemented in a Sami context – through practical policies – within the framework of existing national states. The project has resulted in four Gáldu Čála publications, including the current one, on Sami self-determination with a focus on content and implementation.

This edition of Gáldu Čála contains three main chapters. Chapter 1 attempts to recount the main points in the discussion on Sami self-determination in relation to land, resources and livelihoods during a seminar held by Gáldu on 2nd and 3rd November, 2011. Chapter 2 aims at highlighting on the main elements of the discussions during Gáldu's seminar on Sami self-determination and the media that took place on 8th and 9th November, 2011. Based on written contributions and discussions within the scope of the project, Chapter 3 seeks to draw some general conclusions on the content and implementation of the right of self-determination in a Sami context

# 1. Seminar on Sami Self-Determination: Land, Resources and Traditional Sami Livelihoods

Gáldu's seminar on Sami self-determination regarding land management, natural resources and traditional livelihoods in Sami areas was held at *Diehtosiida* at Guovdageaidnu from 2nd to 3rd November 2011.

The programme of the seminar consisted of introductions to selected thematic areas with subsequent discussions. The seminar was attended by experts with key competence and broad experience within research, politics and public administration. See attached programme for the seminar (Annex 1) and list of participants (Annex 2). The Chair of Gáldu's Board, Lars Anders Baer, acted as moderator during the seminar. The following problems formed the basis and framework of the discussions during the seminar:

1) Is the right to self-determination of any importance to the right of indigenous peoples to land, resources and the exercise of economic activity, and if so, of what importance?
2) Is the right to self-determination of any importance to the right of indigenous peoples to any benefit from the utilisation of resources in their areas?
3) Should the Sami Parliament have any authority in the administration of the saltwater fish resources in Sami areas, and if so, what authority and why?
4) Should the Sami Parliament play any role in the development and administration of the Sami reindeer husbandry in Norway, and if so, which role and why?
5) Does the right to self-determination have any relevance to the issue of a larger degree of local Sami administration of natural resources?
6) What importance, if any, does the right to self-determination have for the protection and development of the South Sami community?

## 1.1 Land, Resources, Economic Activity and Benefit-sharing

In an introduction to *The Resource Dimension of self-Determination* Mattias Åhrén, Doctor of Law (Dr. juris) opened the discussion on the right of indigenous peoples to land, resources and economic activity, as well as their right to benefit-sharing from the use of resources in their own areas – in a context of self-determination. By way of introduction he stated that the right of self-determination and the right to land and natural resources are the most important rights of indigenous peoples, because respect for and implementation of these rights are essential to the existence of indigenous peoples as peoples and to their development, culture and livelihoods. The international breakthrough for the recognition of the right of indigenous peoples to self-determination and the relatively quick and positive legal development in favour of the right of indigenous peoples to land and resources appear as the most important development in the efforts to securing the rights of indigenous peoples.

The resource dimension of self-determination and the right of indigenous peoples to land and resources are closely related. However, they also differ both in a material and procedural sense. One of the differences implies that land rights may be made subject to court proceedings differs from the right to self-determination, which may normally not be brought before a court of law. The consequence of this is that the implementation of the land rights of indigenous peoples is taking place much faster than the implementation of their right to self-determination. On certain conditions indigenous peoples may, through the individual appeals arrangement established in pursuance of an optional protocol to the UN Convention on Civil and

Political Rights (CP),[4] initiate individual appeals cases regarding rights related to land and resources.[5] No corresponding opportunities are available to indigenous peoples to refer appeals regarding alleged non-implementation of the right to self-determination to the Committee on Human Rights, since an appeals procedure for collective rights does not currently exist. This implies that the UN Committee on Human Rights is barred from dealing with appeals from a people related to alleged violations of their rights to self-determination in pursuance of CP Article 1. However, on certain conditions, the Committee may deal with appeals from individuals or groups belonging to indigenous peoples regarding alleged violations of CP Article 27.[6] This difference means that the right to self-determination depends more on the political will of a state to implement it than what is the case with respect to the land rights of indigenous peoples. Åhrén stated that this difference is an important reason why progress towards putting the rights of indigenous peoples to self-determination into effect has been so slow, including the resource dimension of self-determination. On the other hand, relatively strong progress has been made in recognising and safeguarding the land rights of indigenous peoples; for instance within the Inter American Human Rights System.

*The resource dimension of self-determination* is most clearly expressed in the joint Article 1 (2) of the UN Covenant on Civil and Political Rights (CP) and the UN Convention on Economic, Social and Cultural Rights (ESC). The joint Article 1 (2) states that: "all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law". It further states that "in no case may a people be deprived of its own means of subsistence". According to Åhrén any right to self-determination that excludes the right to natural resources appears as a right without content; and concluded that the right of the Sami to self-determination, in no doubt, also includes self-determination related to the natural resources traditionally used by the Sami.

The resource dimension of self-determination as expressed in the joint Article 1 (2) is not rendered literally in UNDRIP.[7] This does not imply, however, that the resource dimension of the right to self-determination is not included in UNDRIP, as an overall interpretation of the provisions of the Declaration clearly shows that UNDRIP recognises and safeguards the resource dimension of the right of indigenous peoples to self-determination. Among other things, Article 20 of UNDRIP states that indigenous peoples have the right to their own means of subsistence and development, and to engage freely in any type of traditional and other economic activity.

This formulation reflects the core content of the joint Article 1 (2) of the UN conventions. Article 20 of UNDRIP, together with the specific provisions of the Declaration relating to the right to self-determination and the right to land and resources, indicates that the resource dimension of self-determination is comprised by UNDRIP. Åhrén also proposed that the provisions of UNDRIP on the right of indigenous peoples to land and resources must be construed to include the resource dimen-

4 The first optional additional protocol to CP: [First Optional Protocol to the International Covenant on Civil and Political rights].

5 States that have acceded to the first optional protocol to CP have recognised that the UN Committee on Human Rights has the competence to receive and deal with requests from individuals subject to this jurisdiction, and who maintain that they are exposed to violation by the state of some of the rights established by the Covenant. Requests concerning a State that is not a party to the Optional Protocol may not be dealt with by the Committee on Human Rights. For appeals to be dealt with, the appellant must have exhausted all available domestic legal remedies. This normally means that the matter must have been made subject to a hearing by the Supreme Court of the country in question or that an interlocutory appeal has been refused.

6 Even though CP Article 27 does not specifically deal with the land rights of indigenous peoples, the practice of the UN Committee on Human Rights shows that the land rights of indigenous peoples are comprised by this provision due to an extended interpretation of the concept of culture. CP Article 27 establishes a protection of the culture, religion and languages of minorities and indigenous peoples.

7 oint CP and ESC Article 1:
"(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
(2) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

sion of the right to self-determination. He also referred to Article 4 of UNDRIP stating that "Indigenous Peoples have the right to autonomy or self-government in matters relating to their internal and local affairs," and that the right of indigenous peoples to land and natural resources must be considered as an internal and local affair for indigenous peoples. He further said that in the discussions on the resource dimension of self-determination has to distinguish between two categories of natural resources: the traditional resources of indigenous peoples and non-traditional resources in the areas of indigenous peoples.

Åhrén maintained that in the discussions on the resource dimension of the right to self-determination, it is necessary distinguish between two categories of natural resources, i.e. the traditional resources of indigenous peoples and non-traditional resources in areas of indigenous peoples. He used the concept of "traditional resources" as a term for natural resources that have been utilised by indigenous peoples by common practice and through traditional livelihoods; whereas by the term "non-traditional resources" he referred to natural resources in areas of indigenous peoples that have traditionally not been utilised, e.g. mineral and oil resources. He concluded that the traditional natural resources of indigenous peoples are undoubtedly, and fully included in the resource dimension of the right of indigenous peoples to self-determination. He also said that non-traditional resources, i.e. resources that have not traditionally been utilised by the Sami, must be regarded as included in the resource dimension of self-determination, but not, however, in the same way as traditional resources. Åhrén said that the Sami People must be considered as having a right to exert a certain influence with regard to the utilisation of non-traditional resources and be entitled to benefit sharing from the utilisation of such resources in Sami areas. He further concluded that the Sami People must be considered to have the final say regarding the utilisation of non-traditional resources if such utilisation or exploration would materially damage the future Sami utilisation of their traditional resources.

Åhrén indicated that as of today there are limited sources of law expressly supporting the right of indigenous peoples to benefit sharing based on their right to self-determination. With the exception of the benefit scheme in Greenland, which is based on the right to self-determination, benefit schemes are normally based on the right of ownership.

He referred to the fact that in cases where indigenous peoples have been awarded a right to benefit sharing, e.g. Australia, Canada and New Zealand, this is based on the right of ownership. Moreover, the right of ownership forms the basis for the relevant provisions relating to benefits in the Nagoya Protocol (additional protocol to the UN Convention on Biological Diversity).[8] Åhrén concluded that even if there is no express support in international sources of law for the right of indigenous peoples to benefit sharing on the basis of their right to self-determination, it would still be fair to argue in favour of such a right on the basis of the right of indigenous peoples to funding for their autonomous arrangements, cf. Article 4 of UNDRIP. He argued that it is natural to assume that the funding of the autonomous arrangements of indigenous peoples must partly take place through a sharing of the benefits arising from the utilisation of natural resources in the areas of indigenous peoples because, among other things, it would not be satisfactory if the funding of Sami autonomous arrangements were solely subject to annual political budgetary decisions by the State. A situation where indigenous peoples are completely dependent on government budgetary decisions makes it difficult to talk about real autonomy for indigenous peoples; at the same time as such a scheme would expose indigenous peoples to the risk of political changes in the society in general.

8 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

He concluded that even if currently there were few sources of law that expressly link the right of indigenous peoples to benefit sharing to the right to self-determination, it must still be possible to argue that the right to benefit sharing is based on the general right to self-determination. He said that the right to self-determination is based on a recognition of the fact that more than one people may have the right to self-determination within the boundaries of a national state. This must also affect the understanding of the content of the right to self-determination. In situations where two peoples in a state have a right of self-determination – as is the case in a Sami context– it is natural that both peoples have a right to a sharing of benefits in connection with the utilisation of natural resources. It was concluded, however, that unless the Sami are granted the right to participate in the management of non-traditional resources and to share the benefits from the utilisation of such resources, one could not talk about real Sami self-determination.

Åhrén then elaborated on the relationship between the right to self-determination and the right of indigenous peoples to participate in decision-making processes. Initially, he stated that the right of indigenous peoples to self-determination involves more than just the right to participate in decision-making processes in the form of consultative arrangements. He said that the right of indigenous peoples to be consulted in matters affecting them has been recognised internationally for a very long time, and that the recognition by UNDRIPof their right to self-determination, including their right to autonomy or self-rule must, therefore as per definition, have a different content from the right of consultation. He emphasised that the recognition of the right to self-determination is based on a different legal doctrine than the legal basis for the right of consultation.

According to Åhrén, this implies that in certain cases the Sami Parliament, on the basis of the right to self-determination, is entitled to make independent and binding decisions. It was emphasised that independent decisions made by the Sami Parliament must be respected by national authorities, even if they are not in agreement with the views of such authorities. Among other things, he referred to the fact that the report of the Special Rapporteur (UN Special Rapporteur on the Rights of Indigenous Peoples) on the situation of the Sami in Finland, Norway and Sweden supports such a conclusion.[9]

Åhrén stressed that the relative authority and influence of the Sami must be determined on the basis of the importance of the issue to the Sami and the majority population respectively. It follows from this that the Sami influence in matters that, for instance, affect traditional Sami livelihoods must be strong, because such livelihoods form an important material basis for Sami culture and the Sami community as such. According to Åhrén this implies that the Sami view must take precedence over the opinion of the State if there is any conflict between the views of the Sami and the State in matters relating to traditional Sami livelihoods. He stated that this, among other things, is supported in an analogous interpretation of sources of law that may be applied to supplement the understanding of the right to self-determination, including the interpretation by the Committee on Human Rights of Article 27 of the UN Convention on Civil and Political Rights (CP).

According to Åhrén, the consequence of a relativistic approach to the issue of authority is also that the Sami influence in matters relating to non-Sami livelihoods in Sami areas must be assumed to be weaker than what would have been the case with decisions affecting traditional Sami livelihoods. The reason for this is that the Sami people cannot claim a greater interest in matters related to non-Sami livelihoods than can the Norwegian people. This, however, only

9 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; 06.06.2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-35-Add2_en.pdf

applies to the extent that such matters do not affect traditional Sami livelihoods. He stated that it is reasonable, for instance, that the Sami people be allowed to participate in the management of and benefit from the utilisation of oil and mineral resources in Sami areas even if the Sami have no veto in such matters, unless such activities materially negatively affect Sami culture, Sami livelihoods and the Sami community..

Åhrén then discussed a few internal Sami matters that in his opinion pose a challenge to the Sami community in relation to the implementation of self-determination. These challenges concern the responsibility and rights of local Sami communities in the context of self-determination as compared to the responsibility and rights of the Sami Parliament by virtue of the right to self-determination.

Åhrén said that the Sami bodies in Finland, Norway and Sweden elected by popular vote (the Sami Parliaments) constitute a new development with no roots in the Sami community, where traditionally there have been no central or superior decision-making bodies. Traditionally, the Sami community has been based locally, with local decision-making mechanisms. He said that this local rooting is still quite viable. He also said that the social development has created a need for a central Sami decision-making authority in the form of a Sami Parliament, since many of current challenges cannot be met through local processes. He stated that the Sami Parliament should only represent the Sami in matters of a general nature, since matters and issues of a local nature should be dealt with at the local level, to the extent that local decision-making structures or legal persons exist in the relevant areas. Åhrén pointed out that in the field of reindeer husbandry local decision-making structures and legal persons exist. He also said that we will probably see a development where a larger number of local Sami communities and legal persons will be identified as the right decision-makers in local matters, partly through legal proceedings. He drew attention to the "Svartskog" case as an example of how it can be expected that local decision-makers will be identified in the future. He was of the opinion that the Sami Parliament in Norway often disregards the right of local Sami communities to participate in decision-making processes. This, according to Åhrén, is particularly the case in matters relating to property law. He illustrated this by referring to the proposal of the Committee on Coastal Fisheries and the proposal of the Committee on Sami Rights for the offshore areas of Finnmark. Åhrén concluded therefore that an internal Sami process is required to clarify the division of competence and responsibility between the Sami Parliament and local Sami communities, because it is important to arrive at a joint conclusion regarding what matters are to be dealt with centrally (by the Sami Parliament) an what is to be addressed locally.

By way of conclusion Åhrén addressed some problems concerning the internal financial distribution of benefits in the Sami community. He said that Sweden has an arrangement where all financial benefits arising from the utilisation of resources in Sami areas go to the local Sami community or to the Sami legal persons affected by the activities of which the benefits result from. This, for instance, applies to the financial benefit resulting from undertakings such as windmill parks and mining in Sami reindeer grazing land. This means that all benefits belonging to the Sami rather go to the so-called Sami townships instead of the Sami people in general or to the Sami Parliament. This is based on the principles of property law. Private companies who are planning to start or are already carrying out activities in Sami areas accept that the Sami townships have rights to land and resources in their traditional areas. This enables the Sami townships to put forward claims for financial benefits. He made reference to the current annual financial benefit of about SK 30 000 per windmill[10]

10 This amounts to SK 3 million for 100 windmills

awarded to Sami townships. Even though Åhrén agrees that the Sami townships and local legal persons receive the financial benefit – since primarily they have to endure the negative consequences of such developments – he was also of the opinion that this may contribute to hampering the realisation of Sami self-determination. He further stated that it does not seem fair that all the benefits go to the local community and that nothing falls to the Sami people collectively. Explaining further, he said the right of the Sami to financial benefits resulting from economic activities in their areas depends on a dual legal basis; i.e. the right of ownership and the right to self-determination. Åhrén said that the consequence of this is that the benefit must go to both the local Sami community that is affected and to the central Sami authorities.

The discussion following the introduction showed a general agreement that Sami self-determination comprises land, resources and livelihoods. None of the participants in the seminar opposed Åhrén's conclusion that the resource dimension must be regarded as an integral part of the Sami's right to self-determination and that it includes traditional as well as non-traditional resources. The participants also agreed that it is necessary to distinguish between traditional and non-traditional resources, because the right of the Sami to self-determination must be regarded as stronger as regards traditional resources as compared to the management of non-traditional resources.

Several participants emphasised the Sami's right of decision-making regarding the management of traditional resources, particularly if the resources of a specific area forms the basis of traditional Sami livelihoods, such as Sami reindeer husbandry, fishing and hunting. It was stated that in such situations the Sami should be entitled to make independent and binding decisions even if such decisions are not in line with the will and opinion of the State. No participants in the seminar opposed the conclusion that the Sami also have a right to exert a certain influence on the administration of non-traditional resources, and that the Sami must be considered to have a right to a certain financial benefit from the utilisation of such resources in Sami areas.

A consensus among the participants in the seminar in support of the principle laid down in Article 16 (2) in the proposal for a Nordic Sami Convention was evident. This provision is based on the assumption that the states are not to be allowed to adopt or permit measures that may materially harm the basic conditions of Sami culture, Sami livelihoods and Sami community life, unless agreed upon by the Sami Parliament in question. The wording of Article 16 (2) of the proposed convention implies that the Sami Parliament is granted a veto as it presupposes that decisions in such matters cannot be made without the consent of the Sami Parliament. On the contrary, no participants in the seminar argued that the Sami should have a corresponding veto regarding the utilisation of non-traditional resources, unless such activities affect and materially harm the basic conditions for Sami culture, Sami livelihoods or Sami community life.

In discussing problems related to the internal Sami organisation, different views were expressed regarding the best approach to implementing the right to self-determination. The introductory speaker, as mentioned above, was of the opinion that the exertion by the Sami Parliament of the Sami right to self-determination must take into account, and respect, that in matters related to the utilisation of resources in Sami areas there is normally a local Sami community or legal persons directly affected by any infringements. In this approach importance was attached to property law rights to resources that local communities and other legal persons may have. The introductory speaker, therefore, was of the opinion that the Sami Parliament, above all, must play an active role if there are no local Sami communities or legal persons in the relevant area. Some seminar partic-

ipants, however, were of the opinion that the Sami Parliament, as the highest body of the Sami, must be considered to have a right and a duty to exert the Sami right to self-determination in all matters relating to the Sami without this impairing the respect for local rights under property law. Some of the participants stated that in certain cases Sami majority decisions are necessary in spite of the possible resistance by certain groups in the Sami community. The reasons stated for this were that, there is a need for a superior and central authority in the Sami community as well, to avoid an impairment of Sami areas through "bit-by-bit" processes. Some level of concern was expressed about the possibility of this happening if local Sami communities are given a disproportionate degree of authority at the expense of the Sami community in general.

One participant in the seminar, whose occupation is reindeer husbandry, expressed dissatisfaction for the fact that the Sami Parliament of Norway is not entitled to exert an influence on priorities relating to policies of reindeer husbandry. She believed that the current funding scheme and policy on the reindeer husbandry strongly contribute to a 'norwegianisation' of Sami reindeer husbandry in Norway. On the basis of this, it was proposed that the Sami Parliament should have a superior role and responsibility for the general development of the community and that this responsibility cannot be left unconditionally to the industry and the state.

There was a general consensus that the Sami Parliament possesses a strong legitimacy for addressing general Sami interests. It was said that even if it is important to secure and protect local Sami rights, there will always be general Sami interests that can best be taken care of by the Sami Parliament. Among other things, reference was made to the fact that in Norway, for instance, since independence, local rights have been recognised, for example waterfall rights, at the same time as licencing laws were adopted to secure overall Norwegian interests. It was said that there is a similar need to secure overall Sami interests. This was illustrated by reference to the award of fish-farming licences at Tysfjord, where certain members of the local Sami community were granted licences free of charge by the Government. The purpose of this was to stimulate Sami economic activity. The Sami licences, however, were later sold in the open market. Some believed that this shows that the Sami Parliament must have a certain superior authority to take care of general Sami community interests.

With respect to the economic aspects of the utilisation of resources, a distinction was made between compensatory damages and the financial benefit resulting from such activities. The participants agreed that compensatory damages must be awarded to the injured parties. At the same time there was a large degree of unanimity that the financial benefit or return should not exclusively go to the local Sami community affected by the activity, but that the whole Sami community should benefit from it. Some found that a special Sami fund ought to be established to manage such financial return on behalf of the complete Sami community, based on a certain internal Sami norm of distribution. Some said that the distribution model must be adapted to the relevant circumstances. It was also stated that in connection with financial return from the utilisation of resources in areas of reindeer husbandry, for instance, this could be resolved through an award of a specific share of the financial benefit to the *siida*(reindeer town), the reindeer husbandry and the Sami community in general. It was argued that a fund arrangement like this would make the Sami Parliament, Sami livelihoods and the Sami community less dependent on political budgetary decisions by the State. This was considered an important contribution to the realisation of real Sami self-determination.

In connection with a subsequent item on the agenda the participants in the seminar discussed the question of whether the right

to self-determination is relevant in relation to the claim for a stronger degree of local Sami management of the natural resources. Only to a limited extent did this discussion introduced new factors in addition to those that had been discussed during the general discussion on the resource dimension of self-determination (see above). A few new elements, however, were introduced. It was said, among other things, that local Sami administration would ensure that traditional Sami knowledge[11] to a larger extent would be applied to the management of resources as compared to what would be the case if no such local administration exists. It was stated that the use of traditional knowledge would contribute to ensuring a sustainable use of the natural resources and that this would in turn be essential to the survival of local Sami communities.[12] There was broad agreement that ensuring the ability of local Sami communities to survive was at the core of the resource dimension of self-determination, since this has to do with the basis of existence for local Sami communities.

Senior adviser, Leif Dunfjeld, opened the discussions on the importance of the right of self-determination for the preservation and development of the South Sami community. In an attempt to encourage a debate on whether Sami self-determination is of any importance for the preservation and development of the most endangered Sami communities, Gáldu had listed this as a separate topic of the seminar. Dunfjeld gave an account of the historical development of the South Sami area and the challenges facing the South Sami. Historically, the South Sami community, like the other Sami communities, has been organised in the form of "siidas" / "sijt"[13]. This forms the basis for how the use of resources is organised. Through a period of several centuries the South Sami have gradually been marginalised and lost access to resources in their own areas due to conflicts over land with Norwegian farmers, mining, regulation of waterways, and competitive use of land, as well as government policies and legislation. Among other things, the fact that the total South Sami population is relatively small, and also that strong economic forces are focusing on competing for land use and interests in the South Sami area, the situation in the South Sami area in Norway is rather different from the situation in the North Sami area. Consequently, the South Sami language, culture and way of life are under strong pressure from the greater society.

Dunfjeld emphasised that the rights issues related to land and resources in South Sami areas are an important matter for the South Sami community, and that the South Sami community needs a quick clarification of these issues. He expressed concern regarding the slow process of clarifying these rights and feared there would be major infringements in South Sami areas before this clarification would possibly be made. Dunfjeld further said that there is a general dissatisfaction among the South Sami regarding the proposals of the Committee on Sami Rights that has made a report on Sami rights in areas outside the County of Finnmark. Among other things he pointed out that the proposed administration model would split up the South Sami community along the county border between Trøndelag and Nordland. He argued that this would have negative consequences for the South Sami community because among other things this might lead to a further marginalisation of the South Sami community. Dunfjeld opined that strengthened self-determination both at the central and local levels might have a positive effect on the South Sami community. He underlined that it is important, also for the South Sami community, to find a good balance between the role and authority of the central Sami level (the Sami Parliament) and local South Sami rights and interests.

Some participants pointed out that a different Sami strategy is required for securing Sami rights and interests in South Sami areas as compared to the County of Finnmark. It was said that with respect to Finnmark the focus has been on securing area rights rath-

11 The Sami concept árbediehtu was used as a term for traditional Sami knowledge.
12 The Sami concept birgejupmi was used as a term for ability to survive.
13 Traditional Sami village with its own structure and organization.

er than Sami proprietary rights. It was said that this might work in certain parts of the County of Finnmark because the Sami population constitutes a majority in these areas. In South Sami areas, however, this strategy would not be particularly successful, given that the pressure of development in these areas is much stronger and also that the Sami population in these areas is rather small. It was said that an attempt should be made at identifying or demarcating the collective land area of the reindeer husbandry in the South Sami area.

Other suggestion was that a quick clarification of Sami rights to land and resources in South Sami areas would be essential to the development of the South Sami community; including South Sami language, culture and livelihoods. Several participants maintained that this would be crucial to the survival of the South Sami community in its current form. Even though several participants believed that Sami self-determination would be an important condition for a positive social development in the South Sami area, there was general agreement that securing South Sami property law rights is essential to the ability of the South Sami community to survive.

## 1.2 Marine resources in Sami areas

Steinar Pedersen, PhD, opened the seminar discussions on the problem of whether the Sami Parliament should have some degree of authority in the administration of the saltwater fish resources in Sami areas.[14] He based his introduction on the fact that traditionally the Coastal Sami in Finnmark have built their economic activities on different elements; including saltwater fishing for cod, saithe, halibut and salmon in home waters. Others include economic activities in outlying fields, hunting, freshwater fishing, berry picking and animal husbandry.[15] He then raised the question of whether the Norwegian regulations applying to these livelihoods take into account traditional Sami uses and practices, or whether other considerations and interests have been taken catered for by the regulations. He said that it can be stated without reservation – as an indisputable fact – that a great part of the Coastal Sami population, like the rest of the local population in the same areas, has been gradually deprived of the right to make a living through traditional local and regional marine resources. Pedersen was concerned that these resources have simply been transferred to other users. He believed that the resistance against the report from the Committee on Coastal Fisheries[16] shows the strength of the political resistance against improving the situation by correcting part of the old injustice and returning to the Coastal Sami and the local population some of their rights. Pedersen said that public authorities and organisations want to cement a principle implying that there is no other right to conduct fisheries than the right that can be purchased – if, then, one needs sufficient capital to buy such rights. According to him this may be connected with the assertion from leading political and administrative quarters among others, that the most important material cultural base of the South Sami – saltwater fisheries and utilisation of the marine resources – is not "sufficiently Sami" to be protected through Norway's international obligations relating to minorities and indigenous peoples.

He continued that the public consultative round on the report of the Committee on Coastal Fisheries shows, unfortunately, that many bodies and organisations want to preserve the current situation, because the refrain is that neither the right of indigenous peoples nor custom or consuetudinary rights give the Sami or the population of Finnmark any right to saltwater fishing. He noted with regret that unfortunately this also seems to be the opinion of the Attorney General. Pedersen compared this with the work done by the prestigious Havressurslovutvalget (Committee on the Marine Resource Act) that was appoint-

14 Pedersen holds the position of Associate Professor at Sámi allaskuvla(Sámi University College) at Guovdageaidnu/Kautokeino, Norway

15 Pedersen cited Finnmark as an example. Traditionally, the Coastal Sami population as such settled in a much larger area, at least from Helgeland (the southernmost part of the County of Nordland) and northwards.

16 NOU 2008:5, Retten til fiske i havet utenfor Finnmark (The right to saltwater fishing off Finnmark)

ed in 2003. According to its mandate the Committee was to consider Norway's obligations pertaining to international law, as well as political obligations to which

Norway is committed regarding the rights of indigenous peoples and local populations.[17] He noted that this very comprehensive and far-reaching mandate was dealt with in a single page of a report totalling 285 pages. As regards the connection between historical use and rights, the Committee on the Marine Resource Act simply stated that: "*…international law does not provide people living in Sami areas with any specific historical right to fishing.*" The majority of the Committee concluded "*…. that neither does the new Marine Resource Act (Havressursloven) provide any basis for adopting a rule relating to the recognition of specific historical right to fishing for the Sami or that the Act establishes particular conditions for such rights*" (Official Norwegian Report 2005:10, p. 44).

Pedersen said it is rare for a committee to arrive at such a comprehensive conclusion on such a scant empirical basis. The main justification provided by the Committee on the Marine Resource Act for the non-existence of such right for indigenous peoples in Norway was that the Sami in Norway, as different from indigenous populations elsewhere, do not maintain so-called traditional fisheries, but participate in the fisheries with modern vessels and modern efficient equipment. He further wondered if people in Coastal Sami areas, in the view of the Committee on the Marine Resource Act, would have retained their historical rights and their rights as indigenous peoples if they had not fitted their vessels with modern engines, but instead had been rowing and sailing, as was the custom at the time of chieftain Ottar more than 1200 years ago.

Pedersen then gave an account of the historical use of marine resources in Finnmark – a part of the country with settlement dating back more than 10 000 years. According to him, the basis of the common law and that provided through the settlement history are based on the fact that the Sami constitute the oldest known ethnic group in the area. He pointed out that archaeologists believe that the Sami culture in this area, at least extends back to 2000 – 3000 years in time. Throughout this period utilisation of marine resources has constituted the most important basis of existence for the Sami population and for those who later settled in this northernmost part of the country. He said that this, among other things, is documented in Ottar's accounts to King Alfred of England, where he informed the King about the presence of Sami fishermen along the coast of Finnmark, towards the end of the 9th century. During his period no one contested the right of the population to utilise the marine resources in their own localities. He pointed out that in earlier times there were a number of formal provisions that gave the local population in Finnmark priority to fishing, partly on the basis of legal rights for indigenous peoples. Pedersen said that neither the Sami's use of marine resources nor the use of such resources by the rest of the population during thousands of years has resulted in any formal legal recognition and protection of the right of the population to use these traditional resources. In connection with this he pointed out that it is possible, throughout the 20th century, to trace the intense fight by the coastal population to prevent overtaxing of the resources through the use of active equipment. Their opponents in this fight were the fisheries authorities, as well as strong economic interests that wanted to keep up the fisheries through the use of active equipment even in the narrowest fjords.

Further, Pedersen referred to a scheme introduced by the authorities towards the end of the 1980s which made fish quotas transferable: this was a huge blow to local small-scale fishermen. According to Pedersen this meant that in the midst of Norway's great positive turnaround in relation to the Sami and Sami culture, it is observed that the authorities "at the other end" produced formal

17 Norwegian Official Report 2005:10, p 42.

rules that repudiated the custom-based and indigenous people-based right to still making a living from the resources which has always sustained the settlement and culture of these areas.

An important element in this context was that as from 1990 the authorities introduced the so-called vessel quotas for the cod fisheries. Cod is by far the most important species in the Coastal Sami areas. The condition for being granted a vessel quota in 1990 was to catch a certain quantity of cod in one of the years from 1987 – 1989. Many fishermen in the northernmost part of the country – with small fishing boats adapted to traditional fishing in the fjords – were not able to meet this requirement due, among other things, to the fact that there had been no fish to catch during the relevant period. He said that the reason why many people in the North had mo catch during the three qualification years was a natural disaster in the form of continuous invasions of Greenland Seal, which prevented the cod from moving into the fjords and within the reach of the small boats. He pointed out that it was a very negative thing for many of the small local communities that the vessel quotas introduced in 1990 have later become individually transferable.

Pedersen concluded that though people in these Coastal Sami areas had been fishing for cod for thousands of years, it was the missing "historical catch" during the years 1987 – 1989 that was used as an excuse by the Government to deny them the right to fishing and hence to adequate livelihood. He said that "these people, with the blessing of the Norwegian Fishermen's Associations (Norges Fiskarlag), were pushed out into the cold, due to the fact that they were not granted any vessel quotas and thus had to rely on a maximum quota scheme where during the first years they had only had a theoretical possibility to an income of a few tens of thousands NOK per year."

Pedersen then gave an account on the situation after the king crab invasion of the coastal areas of Finnmark. The king crab is a species from the Pacific that was introduced along the Kola coast during the 1960s. Since 1990 the growth of the species in the typical Sami fjords, including Varanger and westwards, has been explosive. In 2002 the fishing for king crab was made subject to licencing. The regulations were formulated in a way that excludes small boats from participating in the fishing. This happened in spite of the fact that the smallest boats risked losing any possibility of income from ordinary fishing – exactly due to the king crab invasion.

Boats shorter than 8 metres were automatically excluded from these fisheries. Alternatively, smaller boats were disqualified because they did not catch a certain limited quantity of cod. This was a tragic situation because the population of crab in these fjords was so big that it had become almost impossible to catch the quantity of cod required for a crab quota. The nets were filled with crab as soon as they were set up, and in connection with line fishing the crabs ate the line bait or the fish that occasionally managed to take the bait. He continued that many of the persons who were refused participation in the crab fishing were the same persons that were excluded from the vessel quota scheme for cod during the 1990s. Pedersen described this as a double penalty – first in the form of the king crab destruction of the traditional fisheries of the Coastal Sami and then through the fact that the authorities refused to give them an opportunity to catch the introduced species that destroyed their traditional fishing.

He, however, acknowledged that the regulations on crab fishing have been improved over the last few years, and that crab fishing has been opened for small fjord fishing boats. Nonetheless, he also pointed out that the legal basis of those who carry out fishing in the fjords is still not recognised and established as suggested by the Committee on Coastal Fisheries. This means that in practical terms only a "stroke of the pen" is required to leave the fjord fishermen with nothing but the disadvantages connected with the crab while others reap the benefits from it.

Furthermore, the effect the salmon farming industry has had on lowering the price levels for salmon products was dealt with. This is also a result of Government policies. Pedersen said that during the past 30 – 40 years the salmon farming industry has knocked the bottom out of a previously "gilt-edged" seasonal fishery for salmon in the sea by the use of specialised equipment.

The rules and the catching periods during which the use of this fishing equipment is allowed are becoming increasingly restrictive, and the salmon fishing is thus about to disappear as an important element of the coastal-based combination of livelihoods. In particular, this affects the small Coast Sami settlements along the fjords. He also pointed out that about 30 years ago the authorities strongly reduced the number of places on so-called government grounds in Finnmark where salmon fishing was allowed. The reasons stated for this was that the salmon stock had to be protected. At the same time the complete Norwegian drift-net fleet was allowed to gather off Western Finnmark to fish the same salmon that people in Finnmark were not allowed to.

Pedersen concluded that the Government's policy on fisheries has not had the intended effects at all. When people in the local Coastal Sami communities no longer have any income from fisheries, they are deleted from the register of fishermen. They are then referred to as non-occupational fishermen without significant rights. The consequence of this is that many local Coastal Sami communities have already disappeared and that large areas along the fjords are uninhabited. He said what has happened to small-scale fishermen in Sami coastal and fjord areas is parallel to rather depressing historical events that Norway - as a state governed by law – has later strongly dissociated itself from. He illustrated this by referring to the more than 100-year long period of "norwegianisation" that started around the middle of the 19th century, as well as the Finnmark Land Act of 1902 that made it legal to refuse the selling of land in Finnmark to those who did not have a command of the Norwegian language or used Norwegian daily. After 1989 many of the descendants of those who were hardest hit by this policy have also been refused the right to make a livelihood from the resources existing just off the boat landing sites.

Pedersen underlined that his presentation should not be understood as a general description of Norway's policies in relation to indigenous peoples, but rather as a reminder that central social players should acknowledge how regulations of fisheries have ruthlessly hit the Coastal Sami culture. He concluded that a large number of those who have been fishing in the most sustainable and resource-friendly way do not, according to applicable administrative principles and rules, have any right to make a living from the local and regional marine resources. He further pointed out that the authorities, as well as all other parties, have to acknowledge and recognise that the Coastal Sami culture is as basic an element in the total Sami culture as is reindeer husbandry.

Continuing from this Pedersen dealt with the question of whether the Lapp Codisil of 1751 should be regarded as a source of law for Coastal Sami rights. He stated that the Lapp Codisil should increasingly be regarded as an important source of law or legal basis for the right of the Coastal Sami to practice their traditional livelihoods. He justified this by stating that securing the material basis for the Sami population is the basic element of the Lapp Codisil. Against a small charge, the Sami who had a need for this, by custom, were allowed to freely utilise the renewable natural resources on both sides of the border. Primarily this was related to reindeer husbandry, but hunting and fishing, including saltwater fishing and seal hunting were included in the provisions of the Codisil. He then dealt with the main elements of the Codisil.

Pedersen pointed out that the Lapp Codisil actually contains provisions relating to the

use of the marine resources. It is laid down in section 12 of the Codisil that the Swedish Sami moving across the new border would have the right to hunting and fishing "*in the same way as Norwegian subjects.*" In principle this implied that in return for a small additional charge they were granted an unlimited right to saltwater fishing, as well as a right to hunt seals among other things. In all probability they were also granted the right to egg and down collection in hatching grounds. Based on his own research on this topic, Pedersen said:

"*one sees that in the northernmost part of the border area it was in fact not only Sami from Sweden occupied with reindeer husbandry that benefited from this opportunity. The other, almost sedentary Sami both on the Swedish, and after 1809, the Finnish side of the border also benefited from this opportunity. Thus, saltwater fishing became an important element in the industrial adaptation of the Swedish and later Finnish Sami from Utsjok and Enare until the so-called border closure in 1852. What then about the Coast Sami in this picture? Did the provisions from 1751 have any relevance to them?*"

Pedersen said that until very recently the general opinion expressed in research literature is that the purpose of the Lapp Codisil was to secure the rights of the Sami nomads occupied with reindeer husbandry. He said that weighty reasons absolutely exist for questioning whether this is an absolute truth. The reason he gave for this, among other things, was the intent of the Lapp Codisil. He said that in light of the theoretical and legal-political basis for the creation of the Codisil, one should bear in mind the instructions of the Danish-Norwegian King to the border commissioner in 1749, where the concept of the Sami nation was central. According to these instructions the border commissioner, in cooperation with his Swedish colleague, were to look into and decide on everything that had to do with the "*Lapp Nation*" on both sides of the border, and endeavour to establish a sensible and lasting arrangement for *"the benefit of this nation."* He noted that the King's legal advisers, Hielmstierne and Stampe, who wrote the instructions of 1749 and thus established the theoretical basis for the Codisil on the Norwegian-Danish side, built on what for them were familiar legal principles; any people had the right to a future.

This explains why the basis of existence for the Sami had to be secured. Furthermore, Pedersen pointed out that the principle of equality between nations and groups of people was important as part of the prevailing ideas of the Age of Reason and the natural law of the time. In light of this, he concluded, it is easy to understand the emphasis on the necessity to "preserve the Lapp Nation" in the preparatory works for the Codisil, which indicated that in principle the whole Sami population was comprised by the Codisil. In this context he pointed out that Section 28 of the Codisil, among other things, establishes that in the north easternmost part of Sweden, i.e. Utsjok with Enare, the inhabitants were to be secured permanent rights to trade on the Norwegian side. At this time, according to Pedersen, Sami were the only people living in this area. This means that in this district the Codisil, even in the mercantile field, had provisions to prevent any disadvantages for the Sami population on the Swedish side due to the new border. He maintained that this was in line with the principle of preserving the "Lapp" nation.

Pedersen continued to say that this raises the question of why the Codisil had no clear provisions regarding the rights of the Coastal Sami. He said that perhaps it simply has something to do with geography. He pointed out that along most of the border only Sami with reindeer husbandry as their livelihood crossed the border in connection with this. Therefore, a detailed set of rules had to be adopted for this occupation. This may subsequently have resulted in a conception of the Codisil being a legal basis only for transboundary reindeer husbandry.

He cautioned that great care must always be taken when contra factual hypotheses are dealt with. However, he still dared make a cautious attempt at formulating a hypothesis saying that if the livelihoods of the Coastal Sami had been affected by the new border, it is difficult, on the basis of the principles on which the Codisil is built, (securing the future of the Sami People) to see that Danish-Norwegian authorities in 1751 would have placed less emphasis on securing the future of the Coastal Sami than that of the Sami who based their livelihood on reindeer husbandry. The fact that the Coastal Sami are not explicitly mentioned in the Lapp Codisil is probably due to the fact that they did not carry out any transboundary economic activities.

Pedersen concluded that even though most of the provisions of the Lapp Codisil relate to reindeer husbandry, it has to be assumed that the rights of the Coastal Sami as well – not least with reference to the concept of the "Lapp Nation" – may be related to the intentions of this international law document and legislation from 1751. Furthermore, he said that because of this the Codisil is certainly of great interest with regard to the possible rights of the Coastal Sami to use marine resources in traditional waters. He said that since the Codisil is recognised as a source of law in Norway, it would be relevant to consider more closely the question of what legal standard, if any, the Codisil provides for dealing with Coastal Sami rights. He pointed out that the basis today is the same as in 1751. Now as then, the official objective of government authorities is that the Sami culture is to continue, at the same time as it has been recognised that the need for a material basis is essential to achieving this objective.

Pedersen said that if the report from the Committee on Coastal Fisheries – in which one of the most important purposes is to secure the future of the Coastal Sami culture through a formalisation of the right to fish – had been presented just after the middle of the 18th century, there would have been no discussion on the concrete proposals to achieve this. Based on the principle of the preservation of the "Lapp Nation" which is the basis for the Lapp Codisil, the measures necessary to secure the future of Sami culture, according to Pedersen, would have been taken, as proposed by the Committee on Coastal Fisheries.

He said that today, in an assessment of the legal basis of Coastal Sami rights, and the right of the Sami Parliament to the co-administration of these rights, it would be natural to make a comparative review of the Codisil against Article 37 of UNDRIP. Article 37 establishes that indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements. It is further stated that nothing in the Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.[18] Pedersen concluded that it would be very remarkable if the Lapp Codisil does not fall within the concept of "*other constructive arrangements*".

His two main points were that the Coastal Sami had obvious rights to marine resources in their own areas, acquired through their historical use and presence. These rights have not been recognised and secured. The Lapp Codisil must also be regarded as a source of law for the historical recognition of Coast Sami rights, based on the overall content of the Codisil, which was to secure the future of the Sami People. As regards the issue of whether the Sami Parliament should have any authority relating to the administration of marine resources in Sami areas, Pedersen concluded

18 Article 37
1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

that the Sami Parliament should be granted a right of co-determination. The justification for this is that the Coastal Sami have clear rights to marine resources and that the continued use and utilisation of such resources are essential to the survival of the Coastal Sami

culture. Pedersen did not, however, discuss how such co-determination may best be realised except for this reference to and support of the report of the Committee on Coastal Fisheries, which contains concrete proposals as to the influence of the Sami Parliament regarding the management of marine resources.

In the discussions that followed there was a broad consensus that the Sami Parliament must be granted authority and influence with regard to the administration of marine resources in Sami areas. Overall, the participants supported Pedersen's conclusion and justification. Several participants also expressed agreement with his interpretation and understanding of the Lapp Codisil based on the main purpose of the Codisil of securing the future of the Sami People. Some participants argued that the Sami Parliament, to a much larger degree than today, ought to use the Codisil as a source of law, also with respect to the rights of the Coastal Sami population. One participant stated that the Codisil must be considered to comprise all traditional Sami livelihoods and custom. Some participants maintained that no legal basis exists for treating Sami fishing rights differently from other Sami rights to resources. Reference was also made to the fact that in some states, including New Zealand and British Columbia in Canada, indigenous peoples have obtained recognition of their historical fishing rights.

It was pointed out that Sami rights relating to reindeer husbandry were previously considered in the same way as is the case with Sami fishing rights today, i.e. the historical use does not constitute law making rather a normal rights to a livelihood rather than rights possessed by local communities or individuals. The legal basis for reindeer husbandry was previously considered to rest solely on the legislation applicable to reindeer husbandry at any given time. The independent legal basis of reindeer husbandry based on consuetudinary rights was not recognised in the form of law until the adoption of the Reindeer Husbandry Act of 2007 (Reindriftsloven). The fact that until relatively recently the legal basis of reindeer husbandry was considered as consisting of applicable relevant legislation at any time, gave room for the administration to regulate the reindeer husbandry, including the internal use of land and distribution. After the adoption of the Reindeer Husbandry Act of 1933, the right to participate in reindeer husbandry was just referred to as a right to pursue economic activities, and it is not until relatively recently that the right to participate in reindeer husbandry has further been recognised as a private law right of use. The view that the right to participate in reindeer husbandry is only a right to carry out economic activities has affected the rights situation related to reindeer husbandry, since such a right is something that is more indefinable and that may therefore, to a larger extent, be regulated through law and administrative decisions than the right of use to land. In the Norwegian legal tradition a right to pursue economic activities is normally conceived as less protected than for instance a right of use to something. In many ways the positive development regarding the recognition and acquisition of rights related to reindeer husbandry appear as a model for the development necessary to securing Sami fishing rights. The independent legal basis of Sami fishing rights, based on the historical utilisation and management of marine resources in Sami areas, has to be recognised. The historical rights are independent of Norwegian legislation and administrative practices. Consequently, the right of the Sami to utilise marine resources in their own areas must be viewed beyond an ordinary industry-related legal perspective.

Some participants expressed great surprise at the main reasons stated by the Commit-

tee on Marine Resources for the view that the Sami may not claim any rights applicable to indigenous peoples with respect to marine resources. The reasons stated by the Committee was that such rights related to indigenous peoples do not exist in this country because the Sami in Norway – being different from indigenous peoples elsewhere – do not maintain so-called traditional fishing, since the Sami participate in the fisheries with modern vessels and modern, efficient equipment. It was, however, pointed out that these reasons do not agree with the practice developed by the UN Committee on Human Rights as regards the interpretation of Article 27 of the UN Covenant on Civil and Political Rights (CP). In connection with a Sami appeal, the UN Committee on Human Rights, whose mandate is to monitor the States' implementation of the CP, clearly states that the use by the Sami of new technical equipment in a traditional industry has no effect on the protection of the cultural activity of indigenous peoples established by Article 27. The Human Rights Committee makes the following statement as to whether the use of modern equipment in reindeer husbandry has any effect on the legal protection of the Sami laid down in Article 27 of the Convention on Civil and Political Rights.[19]

*«The right to enjoy one's culture cannot be determined in abstract, but has to be placed in context. In this connection, the Committee observes that article 27 does not only protect traditional means of livelihood of national minorities, as indicated in the State party's submission. Therefore, that the authors may have adapted their methods of reindeer herding over the years and practice it with the help of modern technology does not prevent them from invoking article 27 of the Covenant.»*

Some participants commented on and supported Pedersen's statement as to whether Article 37 of UNDRIP is relevant to the Lapp Codisil and the States' obligations under it to ensure that its object is fulfilled. Article 37 establishes that states have a duty to respect and comply with treaties, agreements and constructive arrangements entered into with indigenous peoples. Even if the Sami are not a party to the Lapp Codisil, this does not affect the duty of the parties to the Convention to respect and comply with the Codisil. From a Sami perspective, as a third party to the Codisil, the Lapp Codisil may be regarded as a constructive arrangement, its implementation of which the Sami have not opposed.

Based on statements by different Sami institutions and organisations, including the Sami Parliaments, it may be said that the Sami People have subsequently given their free and informed consent to the Lapp Codisil. The final declaration from the first conference for members of the Sami Parliaments, for instance, held at Jokkmokk on 24th February 2005, may be conceived as a Sami's acceptance of the Lapp Codisil. The conference consists of all the representatives of the Sami Parliaments in Norway, Sweden and Finland; elected by popular vote. Also included are some representatives of Russian Sami. The conference, among other things, states that the Lapp Codisil recognises that the Sami constitute a people with a right to their own future and that it also recognises the right of the Sami to use and manage their own natural resources.[20]

Article 37 of UNDRIP is based on a specific UN study on treaties, agreements and other constructive arrangements between states and indigenous peoples. This special study refers to the Lapp Codisil and finds that it is relevant to the current topic. To some extent, it is also of interest that in the final report it is stated that the Sami Parliaments in Norway and Sweden have a role to play regarding the interpretation of the Lapp Codisil. In the final report, moreover, the following statement is made:[21]

19 UN Human Rights Committee: Communication No. 511/1992, Ilmari Länsman et al. v Finland, Report of the Human Rights Committee, Vol. II, GAOR, Fiftieth Session, Suppl. No. 40 (A-50-40), p. 66–76.

20 http://www.Sami Parliamentet.se/1431

21 Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations. Author: Special Rapporteur Miguel Alfonso Martinez. Final report, July 1997, §§ 47–49, http://www1.umn.edu/humanrts/demo/TreatiesStatesIndigenousPopulations_Martinez.pdf

> «… regarding the relevance, for this Study, of bilateral and multilateral treaties binding non-indigenous powers but affecting indigenous peoples as third parties, it should be stressed that lack of time and resources have prevented the Special Rapporteur from ascertaining in situ the practical import of those instruments for indigenous peoples and from further examining the existing documentation on said instruments.
> *Nonetheless, clearly at least one instrument already considered in the first progress report (E/CN.4/ Sub.2//1992/32, paragraphs 367/370) continues to be relevant, namely the so-called Lapp codicil of the 1751 border treaty between Sweden/Finland and Norway/Denmark. This codicil has never been abrogated and continues to be the object of legal interpretation regarding Saami rights within the context of bilateral (Sweden/Norway) negotiations.*
> *In this connection, it is worth underscoring the role of the Saami parliaments both in Norway and Sweden – but especially in Norway where it seems to have a stronger impact than in Sweden – and their potential contribution to the interpretation of the codicil.»*

Several participants referred to the question of what form of authority the Sami Parliament should potentially be given with respect to the administration of marine resources in Sami areas. Many maintained that the influence of the Sami cannot be limited to ordinary consultations and that the Sami Parliament must be given far more influence than that. It was said that with respect to some issues consultations may be sufficient, whereas others require real negotiations between the Sami Parliament and the fisheries authorities. In matters that may substantially harm the basic conditions for the means of livelihood of the Coastal Sami and their culture, it must be assumed that no decisions be made without the consent of the Sami Parliament.

## 1.3 Sami reindeer husbandry

The former head of the Reindeer Husbandry Administration, Ellen Inga O. Hætta, opened the discussion on whether the Sami Parliament should play a role in the development and administration of Sami reindeer husbandry in Norway. Hætta started by saying that she had previously been uncertain as to whether the Sami Parliament should be responsible for the administration of Sami reindeer husbandry in Norway. She said that her own previous position as head of reindeer husbandry had made it necessary for her to reflect on the situation on the basis of the question as to whether the current form of organisation is sensible. Hætta said that based on her experience, she had now arrived at the conclusion that the Sami Parliament should play a central part in the development and administration of Sami reindeer husbandry.

She continued that there are additional reasons why she had drawn this conclusion. One reason is that the administration of Sami reindeer husbandry implies that one does not only have to deal with matters relating to means of livelihood, since to a very large extent issues relating to indigenous peoples are also involved. She said that based on her experience from the State reindeer husbandry administration it can be said that many people have strong views on Sami reindeer husbandry, without necessarily any connection between the views and the level of knowledge among those who express their opinions. She said that in certain cases the impression is that almost anyone may claim sufficient knowledge on Sami reindeer husbandry hence have a legitimate right to state their opinions. She emphasised that keeping reindeer as a means of livelihood for indigenous peoples is important for the preservation of Sami culture and language, and that this is an important reason why the Sami Parliament should play a central part, both in the development and administration, of the reindeer husbandry. Reindeer husbandry is special in the sense that in Norway, according to the Reindeer Husbandry Act, only Sami may carry out this activity; this makes

the industry unique, and that constitutes a sufficient reason why the reindeer husbandry should be administered by the Sami Parliament.

Hætta pointed out that a public debate on the future organisation of the Reindeer Husbandry Administration in Norway was underway, and that Government's position was that the regional administration should be transferred to the County Governor of the different counties, whilst the central administration was to be maintained as the National Reindeer Husbandry Administration. Hætta said that already in connection with the amendment of the act in 2007 it was thought that the Reindeer Husbandry Act should also indicate something about the administration. The matter was suspended, however, after consultations between the Sami Parliament, Norske Reindriftssamers Landsforbund – NRL (Sami Reindeer Herders' Association of Norway) and the Minister of Agriculture and Food. In connection with the proposed changes to the reindeer husbandry administration, the Sami Parliament and NRL have demanded that a public report on the organisation and administration of reindeer husbandry be prepared, including the role of the Sami Parliament. The Ministry, however, has concluded that the challenges related to the public administration of reindeer husbandry have existed for some time, and that the issues raised by the Sami Parliament and NRL during the consultative round have already been thoroughly elucidated through a number of evaluations and reports over the past decade. The Ministry justifies their point of view by maintaining that a new report on the administration of reindeer husbandry will not provide any new and important information as regards the challenges.. Hætta said she was greatly surprised that the Sami Parliament is no longer participating in the debate on the Reindeer Husbandry Administration since, among other things; the Sami Parliament has previously expressed its scepticism to the division of the Reindeer Husbandry Administration. She then explained further why she believed the Sami Parliament should be responsible for the administration of reindeer husbandry and listed nine points in favour of the transfer of administrative responsibilities to the Sami Parliament, which are:-

(1) *Equality of treatment*
(2) *Administrative considerations*
(3) *Ministerial affiliation*
(4) *The objection institute*
(5) *Financial framework conditions and reindeer husbandry negotiations*
(6) *The Reindeer Husbandry Act and its application*
(7) *Knowledge of traditions*
(8) *Changes in the northern areas*
(9) *Report to the Storting on reindeer husbandry*

**Equality of treatment**
As far as the administration of indigenous people's means of livelihood is concerned, equality of treatment is important. The proposed intention of transferring the regional responsibility to the County Governors and keeping the central administration will imply less equality of treatment: it may result in different treatment of matters relating to reindeer husbandry in different parts of the country. It is of particular importance that livelihoods relating to indigenous peoples are given the same framework conditions irrespective of geographical location. This is one of the reasons why the administrative responsibility for reindeer husbandry should be transferred to the Sami Parliament.

**Administrative considerations**
Today the Reindeer Husbandry Administration – both at the local and central levels – is the responsibility of the same ministry. In the proposal for reorganisation, the regional aspect is placed under the County Governors and will thus be linked to the Ministry of Government Administration, Reform and Church Affairs (FAD), whereas the central Reindeer Husbandry Administration will still be part of the Ministry of Agriculture and Food (LMD). This will result in a situation where reindeer husbandry is administered by two ministries, and may end up as a "shuttlecock" between different ministries. In many

cases this type of division of the responsibility has resulted in a "crumbling" of competence. Politically, it is difficult to understand that the administration of a small industry is to be the responsibility of two ministries; administratively, this would be a downside.

**Ministerial affiliation**
Today the reindeer husbandry is placed under the Ministry of Agriculture and Food. In most matters where there is a conflict of interest between reindeer husbandry and other parties, agriculture is normally the counterparty. The reason for this is that both are nature-based livelihoods that in many cases compete for the same areas of land. The reindeer husbandry is frequently the loser in such conflicts, partly due to the fact that in LMD there is a strong focus on other agricultural activities, leaving little room for nomad reindeer herding. In addition, there is very little knowledge of the Sami culture in the ministry, which results in a greater scepticism in the ministry on proposals of reindeer husbandry interests.

**The objection institute**
In the consultative note on the future administration of reindeer husbandry, LMD states that "*through the instructions for the Area Boards the Ministry of Agriculture and Food has given these Boards a competence to submit objections related to planning matters under the Planning and Building Act. The right of the Area Boards to submit objections has been practised differently. Moreover, the follow-up of these matters has been dealt with differently by the area offices. At times the use of objections in certain areas has contributed to a certain amount of distrust towards the Boards from other community players and a perception of the reindeer husbandry as little cooperative and an impediment to the development of the community in general. This is an unfortunate development for the reputation of the reindeer husbandry as a trade and as an important social player.*"

The consultative note is characterised by a strong lack of confidence in the Area Boards. Hætta found this surprising since it is generally known that reindeer husbandry in Norway has lost a great deal of land. Research showns that if developments continue at the same pace as today, there will not be any reindeer husbandry left in its current form after a certain time. Over time, the current expertise and Sami competence of the Reindeer Husbandry Administration will gradually erode in the Offices of the County Governors. The experience of the Reindeer Husbandry Administration indicates that in matters relating to land use reindeer husbandry will always have to give way to the building of holiday houses, roads, power lines, windmill parks, mining, etc. The reindeer husbandry will never receive compensation for lost land in the form of new land.

**Financial framework conditions and reindeer husbandry negotiations**
"After having participated in the negotiations related to reindeer husbandry for a period of nine years, I (Hætta) have concluded that the negotiations are not real since they appear as the fight between David and Goliath".

**The Reindeer husbandry Act and its application**
The intent of the Reindeer Husbandry Act of 2007 was to give reindeer husbandry a greater measure of self-determination. However, the Reindeer Husbandry Act can hardly be characterised as legislation for self-determination. During the past year the reindeer husbandry has worked energetically to produce rules of use that have otherwise been rejected by the Ministry of Agriculture and Food. The focus has always been on ecological sustainability, but there has been little will to optimise cultural and economic sustainability. This is one of the main reasons why the Sami Parliament ought to be responsible for the administration of reindeer husbandry.

**Knowledge of traditions**
Hætta stated that knowledge of Sami traditions is not taken seriously in the current Reindeer Husbandry Administration. She said that the strong Government control of reindeer husbandry has made it impossible to take knowledge of Sami traditions into account in the administration of reindeer

husbandry. Hætta concluded that this is an important reason why in the future the Sami Parliament should be responsible for the administration of reindeer husbandry.

**Changes in the northern areas**

Great changes are rapidly taking place in the northern areas. This results in a more focus on the livelihoods and societies of indigenous peoples. Consequently, there will and should be a focus on knowledge and self-determination. Self-determination implies that indigenous peoples will themselves be responsible for administering and developing their own livelihoods in interaction with other groups in the northern areas. Reindeer husbandry is a central industry for indigenous peoples; therefore its administration must be transferred to the Sami Parliament, which will also be in accordance with international agreements and processes.

***Report to the Sorting on reindeer husbandry***

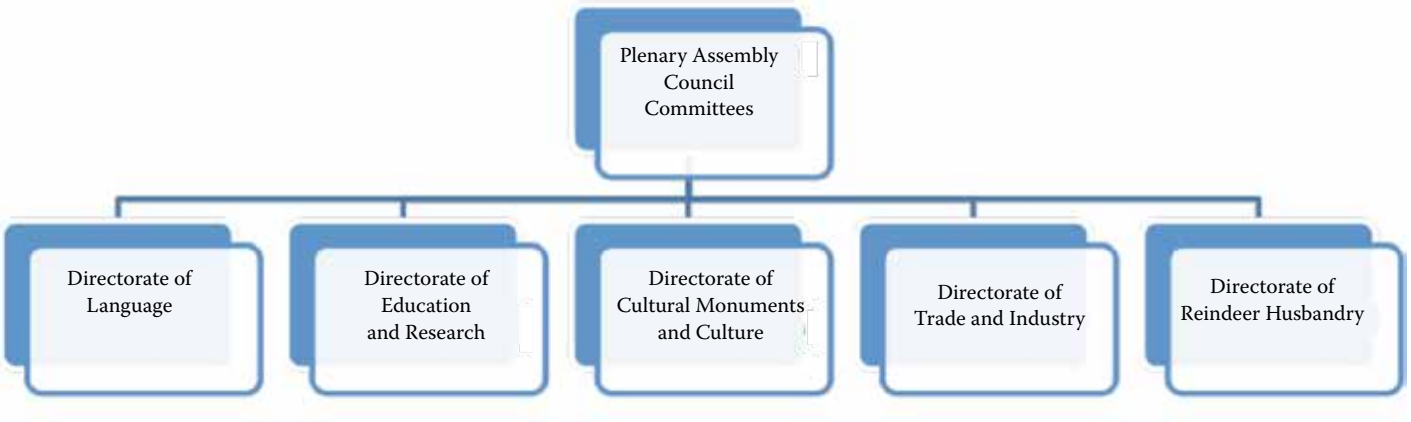
For a period of nine years the Reindeer Husbandry Administration – in connection with the preparation of the resource statement for reindeer husbandry – proposed that a separate report to the Storting on Sami reindeer husbandry should be prepared. Such a report would have opened up for a discussion of the different aspects of Sami reindeer husbandry, including the administration of the reindeer husbandry. The Reindeer Husbandry Administration, however, did not meet with any approval for this. Hætta said that this shows that central authorities have no will to review reindeer husbandry in a holistic perspective. This reluctance on the part of the Government also indicates that in the future the Sami Parliament should be responsible for the administration of reindeer husbandry.

***Organisational model***

Hætta then presented her proposal for a model of how the Sami Parliament might have organised its activities on taking over the administrative responsibility for the reindeer husbandry. She said that the model draws a clear line between politics and administration. The purpose of this is to enable the Sami Parliament system to better cultivate the different administrative responsibilities. She also said that the scepticism about the reindeer husbandry, suggesting that the Sami Parliament takes over the administrative responsibility for the industry, has resulted from a fear of a mixing up of politics and administration. Hætta presented a model for organizing the administrative part of the Sami Parliament. Her proposed model included several expert directorates, including a directorate of reindeer husbandry. She explained that, among other things, the model would contribute to a clearer division between politics and administration. Hætta presented the following framework for the organisation of the Sami Parliament:

***Proposal for the organisation of the Sami Parliament***

An assumption for Hætta's proposal is that the directorates receive annual appropriations from the Sami Parliament and that the latter also provides the necessary political framework for the activities of the directorates. She said that the directorates should be given administrative and



supervisory responsibilities, as well as the responsibility for the implementation of political decisions. Another assumption is that the directorates would prepare expert reports as a basis for political decisions, keeping in contact with government directorates, as well as establishing and keeping in touch with Sami, Norwegian and international expert environments on matters for which each directorate is responsible. The discussion following the introduction showed that in principle many of the participants in the seminar agreed to Hætta's proposal for reorganizing the Sami Parliament, or that at least a process be started to assess, more closely, how the authority and influence of the Sami Parliament can be strengthened in different fields. Several participants opined that Hætta's proposal be closely considered as it represents a possible procedure for establishing a clearer division between politics and administration, which today constitutes a challenge to the Sami Parliament. Another comment was that the Sami Parliament ought to consider the best way of strengthening its competence in the different fields, including those incorporated in Hætta's proposal. Some believed that a reorganisation might contribute to a necessary increase in the level of knowledge.

Several participants agreed with the idea of transferring the responsibility for the development and administration of Sami reindeer husbandry to the Sami Parliament, whilst others doubted this. It was pointed out that the Sami Parliament currently has a good dialogue with the reindeer husbandry trade, for instance in connection with negotiations and dialogue between the Sami Parliament and international mining companies. It was also said that it would hardly be possible for the Sami Parliament to take over the administrative responsibility of reindeer husbandry if the Government was still to be responsible for developing the policy on reindeer husbandry. It was pointed out that the Sami Parliament in Sweden was as at the time having an administrative responsibility for reindeer husbandry, however, a possibility for changing this and exempting the Sami Parliament from this responsibility was being discussed. This is mainly due to a great deal of dissatisfaction with the existed arrangement within the reindeer husbandry trade in Sweden.

Some of the participants said that a further clarification of the concept "administration of the reindeer husbandry" should be provided. In connection with this it was stated that the Sami Parliament ought to have no authority in determining the borderlines between the areas of use of the siidas, since such matters must be clarified on the basis of custom, consuetudinary rights and principles of property law. Others added that the Sami Parliament should also not have any authority to determine the highest number of reindeer and that matters related to any infringements on the reindeer grazing areas should be dealt with by the relevant siida. One participant, however, whose daily work is within reindeer husbandry, said that it would be a good thing to transfer the administrative responsibility for reindeer husbandry in Norway to the Sami Parliament. The reasons he stated for this was that the current arrangement furthers a "norwegianisation" of reindeer husbandry, that the main organisation of the reindeer husbandry is very well aligned with the Government and that together they contribute to a "norwegianisation" of reindeer husbandry. It was said that it is not true that the whole industry is against a transfer of the administrative responsibility for the reindeer husbandry to the Sami Parliament. This view was supported by the assumption that, among other things, the Sami Parliament promotes Sami culture and development in accordance with the Sami's own principles and values, and that the Sami Parliament is much more knowledgeable about reindeer husbandry than are government authorities. None of the participants in the seminar absolutely rejected the idea that the Sami Parliament should be given an important role and authority in the administration of Sami reindeer husbandry, even if some participants expressed reservations of various kinds.

# 2. Sami self-determination and the media

The theme of the eighth Gáldu seminar within the framework of the project "Sami self-determination: content and implementation" was "Sami self-determination and the media." The seminar was held at Diehtosiida at Guovdageaidnu on 8th and 9th November, 2011. The organiser invited representatives of Sami media institutions in Norway to participate in the seminar (Ávvir, NRK Sápmi and Ságat). However, NRK Sápmi sent two representatives whereas there were no participants from the newspapers, Ávvir and Ságat. The participants in the seminar were persons with experience from the media and who with had interest in the problems that were dealt with. See the attached seminar programme (Annex 3) and list of participants (Annex 4). The seminar was chaired by John Trygve Solbakk.

The right of indigenous peoples to establish their own media is a central element of their right to self-determination. The organiser of the seminar, however, chose to focus on the question of whether the media and, in particular, the Sami media should play a role with respect to informing and furthering a debate on the content and implementation of the right to self-determination in a Sami context. The organiser considered the fact that today the Sami in Norway have their own media in their own languages (Sami and Norwegian), even though this may not be fully reflected in the ownership structure of these media. The choice of thematic focus for the seminar was also based on the assumption that Sami media institutions have full editorial independence to determine what matters to prioritise for coverage and how the selected matters are actually covered.

The objective of the seminar was to initiate discussions on the role and responsibility of the media in connection with the coverage of topics related to Sami self-determination. The following problems formed the basis and framework of the discussions at the seminar:

1) *How do Norwegian and Sami Media cover the debate on Sami self-determination?*
2) *Does Sami media have a particular responsibility regarding the coverage of matters related to Sami self-determination?*
3) *Does Sami media have any responsibility for covering the international debate on the right of indigenous peoples to self-determination?*

## 2.1 The coverage of Sami self-determination by Sami media

Kari Somby, a PhD Candidate, gave an introduction to this topic through a presentation of the results from a survey on the coverage by Sami media on issues related to Sami self-determination she had carried out in 2011. By way of introduction she said that even if the method applied does not form a basis for absolute conclusions, the survey, nevertheless, provides a certain indication of how the debate on Sami self-determination was covered by Sami media in 2011.

The survey of the coverage by Sami media of Sami self-determination in 2011 is based on a review of the news archive for 2011 of NRK Sápmi (TV, radio and web) and the newspapers Ávvir and Ságat (the printed editions). For the review of the news archives the terms «self-determination», «iešmearrideapmi» and «iešmearrideami» were used as search queries.[22]

22 The terms «iešmearrideapmi» and «iešmearrideami» are Sami concepts for self-determination

Somby stated that Sami media is a central supplier of conditions for the Sami population and the Sami general public in matters related to the Sami. This therefore results in expectations regarding Sami media on the part of the Sami in such matters that are different from the expectations related to Norwegian media regarding the coverage of Sami matters. She said that Sami media also have a responsibility to informing the majority population on Sami matters. She said that primarily the Sami media should function as suppliers of conditions for the Sami population, even if this is not necessarily in keeping with the perspective of the majority population regarding Sami matters.

It was stated that the interest of Sami media in the question of Sami self-determination varies a lot. It was pointed out that Sami media have a stronger focus on Sami self-determination in connection with elections of representatives to the Sami Parliament compared to the coverage of self-determination in Sami media that is normally seen. The increased media interest in Sami self-determination in years of election is assumed to be due to the fact that some political parties and organisations have included references to Sami self-determination in their political platforms. According to Somby, the political debate prior to the election of representatives to the Sami Parliament has contributed to a change in the view on Sami self-determination. This was illustrated by reference to the fact that the contribution to the debate by the Sami representatives of the Labour Party was previously limited to a call for a more detailed clarification and concretisation of the content of Sami self-determination. It was said that this is different from the current situation, since now the Sami representatives of the Labour Party support the claim for strengthened Sami self-determination.

Somby then elaborated on her survey on the media coverage of topics related to Sami self-determination by Sami media in 2011. According to her the Sami language newspaper Ávvir had no articles on Sami self-determination (iešmearrideapmi) in 2011. She said that the newspaper's coverage of problems related to Sami rights primarily took place in connection with matters related to reindeer husbandry and in connection with the newspaper's views on the proposal of the Committee on Coastal Fisheries. Somby concluded that questions and problems related to Sami self-determination did not therefore seem to be a prioritised field for the Sami language newspaper.

According to Somby, NRK Sápmi provided news stories in 2011 where the terms «iešmearrideapmi» and «iešmearrideami» or self-determination were applied. "This does not, however, mean that we are here talking about the absence of a rights debate or the coverage of rights matters on radio and TV," she said. She further stated that neither do the results of her survey mean that the terms «iešmearrideapmi» and «iešmearrideami» or self-determination are not used in news reports even if the concepts are not used in the introduction to the news item. Consequently, she said that she was not able to draw absolute conclusions regarding NRK Sápmi's radio and TV coverage of problems related to the right to self-determination. Somby stated that she had detected two references to Sami self-determination on NRK Sápmi's web-based news page in 2011. One of these items was related to Sami self-determination compared with a "Sami State". [23]

According to Somby, the Sami language newspaper, Ságat, was the Sami media institution with the largest number of news items on Sami self-determination in 2011. She pointed out that in 2011 the newspaper dealt with the concept of Sami self-determination and problems related to self-determination in its editorial columns through its coverage of Norwegian Sami policies, interviews, accounts from public meetings and reports, as well as by printing letters to the editor on problems related to Sami self-determination. She indicated to have found no references to "Sami State" in

23 Katri Somby presented her survey on November 8, 2011. It is assumed that here she refers to the period January 1 to November 8, 2011.

the newspaper's coverage of the Sami right to self-determination.

Somby concluded that essentially the Sami media seeks to cover Sami self-determination by following the political trends in the form of news items based on actual news and reports. According to Somby, this indicated that the Sami media does not have a deliberate agenda or objective to promote or cover the problems associated with self-determination.

In the debate following the introduction the speaker was asked what she thought might be the reason for this limited focus on Sami self-determination in the Sami media. She responded by referring to her conclusion: Sami media does not seem to have a conscious objective for covering topics related to Sami self-determination. She was also surprised that Ávvir – as the only Sami language newspaper in Norway and successor to the newspaper, Sámi Áigi – had neither at all mentioned Sami self-determination in its news reporting in 2011, nor been visible in the public debate on Sami self-determination. She further expressed her surprise at the fact that NRK Sápmi did not have a special focus on Sami self-determination, particularly as compared to the coverage of such problems by the newspaper Ságat. Somby pointed out that Ságat's editorial line has changed substantially over the years – from being against the establishment of the Sami Parliament and in favour of developing the Alta-Kautokeino watercourse to now being the media institution that more than any of the others is dealing with issues related to Sami self-determination.

One of the participants in the seminar said that the survey on the coverage of the debate on Sami self-determination by Sami media gives the impression of not being particularly scientific and academic. One of its weaknesses, it was pointed out, is that it is mainly based on the use of (only) three search queries, viz. «iešmearrideapmi» and «iešmearrideami» and self-determination.

The introductory speaker agreed that the survey may possibly be characterised as less academic and scientific, but that in her opinion it still provides interesting indications on the coverage by Sami media of topics related to Sami self-determination. In connection with that she said that NRK Sápmi, in her opinion, had contributed to associating Sami self-determination with the myth of a "Sami State". One of the other participants supported the view that in spite of limitations regarding method and depth, the survey still provides some insight into the way in which Sami media deals with the topic of Sami self-determination. This speaker questioned whether Ávvir's limited interest in and coverage of Sami self-determination might be related to the ownership structure of the newspaper, and whether the coverage by NRK Sápmi might be related to the institution's view on the requirements that have to be met regarding the "objectivity" of Sami media when covering Sami issues.

One participant pointed out that Sami media, particularly NRK Sápmi, to a large degree cover issues that naturally fall under the label of self-determination even if the term Sami "self-determination" is not necessarily used in the relevant news stories. This person, however, expressed his surprise that Sami media is dealing with Sami self-determination as a separate topic to such a limited extent, because this ought to be a natural development in light of the fact that the international community has formally recognised the right of indigenous peoples to self-determination, e.g. through the adoption by the General Assembly of UNDRIP.

The moderator invited the participants to express their views on what might be the cause of the fact that Sami media are dealing with Sami self-determination to such a limited extent, as well as their views on the question of whether Sami media may have a greater responsibility to cover the debate on Sami self-determination than is the case for Norwegian media.

One of the participants pointed out that it would not be right to judge Sami media on the basis of how frequently the term "self-determination" is used in Sami media coverage as the content of the news stories is the most important thing in such an assessment, and not whether the term "self-determination" is expressly used in the news story. It was said that in NRK Sápmi's coverage of Sami matters, for instance, issues that are regarded as central elements of the right to self-determination are often dealt with. It was further stated that Sami political parties and organisations also bear some responsibility for promoting problems related to Sami self-determination. Media are community oriented and to a large degree media institutions will often only respond to and reflect on-going social debates. Self-determination is for instance referred to frequently in connection with the election of representatives to the Sami Parliament, because then the issue is on the political agenda. A participant with a media background said that the concept of objectivity – or the requirement for objectivity – constitutes a special challenge to Sami media, at the same time as it was pointed out that it is important to acknowledge that the Sami community is in no way a homogeneous community. It is a fact that in the Sami community there are different views on self-determination and the importance of self-determination for the future development of the community.

Some participants said that self-determination is a complex and very comprehensive issue, and that journalists may be reluctant to deal with these problems. It was pointed out that insufficient knowledge on the topic might be one of the reasons why Sami media institutions deal with this matter only to a limited extent. Some suggested that the level of knowledge in media institutions may always be improved and that this is something for which the media institution in question and the individual journalist are responsible. One of the participants stated that it is in no way to be expected that all journalists possess thorough knowledge of the right to self-determination, and therefore there should be a clearer focus on the editorial prioritisation in Sami media institutions. The reason given for this was that media institutions might be able to acquire knowledge and expertise in this area if the topic is given sufficient editorial priority.

One of the participants believed that the interest of Sami media in Sami self-determination may be improved through better communication between those who seek to promote Sami self-determination, journalists and media institutions. It was said that this might mainly be a communication problem resulting from the inability of persons who seek to promote Sami self-determination to communicate the message in a sufficiently interesting and relevant manner.

Towards the very end of the seminar Bjarne Store-Jacobsen, a political adviser, gave an introduction. Originally his introduction had been scheduled for the beginning of the seminar, with the development of the coverage of rights matters by Sami media as topic. Store-Jacobsen, however, was prevented from attending the seminar and he therefore participated via Skype.

By way of introduction Store-Jacobsen gave a brief explanation of the basis of the right of indigenous peoples to self-determination with reference to UNDRIP, the joint Article 1 of the UN Covenant on Civil and Political Rights and the UN Convention on Economic, Social and Cultural Rights. He said that personally he called for better information on self-determination from the media and particularly from Sami media. In his opinion, providing this type of information for the general enlightenment of people is part of the duty of the media. He believed that the media had often neglected their duty to provide information and that in some cases they had provided the wrong information regarding the objective behind the Sami claim for strengthened self-determination, particularly by referring to the "Sami State" myth.

Store-Jacobsen expressed disappointment at the media coverage of topics related to Sami self-determination. He was of the opinion that in certain situations Sami media, to a large extent, consciously or unconsciously, adopt the same editorial line as Norwegian media regarding Sami issues. He expressed disappointment at this and pointed out that the Sami are entitled to their own media that base their work on a Sami perspective. He acknowledged, however, that it is not only Sami media that have a responsibility to elevate Sami self-determination as a topic in the public debate. Sami politicians and academic institutions also have an independent responsibility for articulating and explaining the right to self-determination.

He concluded that the coverage of Sami self-determination by Sami media has not changed substantially since the 1970s. He said that this was the situation, in spite of the fact that Sami self-determination was not recognised in the 1970s, and that it was not officially recognised until the adoption of UNDRIP in September 2007. According to him, it is only fair to expect that by now both Norwegian and Sami media focus more strongly on Sami self-determination, since the international community has expressly recognised that indigenous peoples have a right to self-determination. By way of conclusion he showed a trailer for a then forthcoming NRK Brennpunkt (NRK Focal Point) programme with the title "*First Claim*" where in his opinion the problem of Sami rights was mixed up with genetic research in such an unfortunate way that it bordered on racism. He said that that showed how important it is to have Sami media that are able to correct the media coverage of matters related to the Sami.

In the debate following the introduction a participant pointed out that at times central Norwegian politicians reject the Sami claim for increased self-determination by saying that the Sami do not precisely formulate the content of self-determination. The speaker said that this contributes to a shading of the issue and therefore an attempt at muzzling the public debate on Sami self-determination. This person also argued that in such contexts it is often emphasised that the debate on Sami self-determination is not an "academic exercise" but a political issue.[24] The participant believed that neither Norwegian nor Sami media have been particularly good at questioning and following up on such statements by central Norwegian politicians. The introductory speaker responded by expressing surprise at the limited knowledge among central Norwegian politicians of the right of indigenous peoples to self-determination and their lack of will to secure the full realisation of this right. In connection with this he pointed out that Norwegian municipalities have extensive local government and that this is natural and not causing any problems and that in principle enhancing Sami self-determination should be as less problematic and just as natural.

One of the participants in the seminar challenged Store-Jacobsen to elaborate on his statement that in certain contexts Sami media provide incorrect information on Sami self-determination and to clarify whether he believes that Sami media deliberately provide wrong information in such matters. Moreover, Store-Jacobsen was challenged to expand on the assertion that Sami media often adopt the editorial line of Norwegian media in matters relating to the Sami.[25] Several other participants also said that since Sami media have full editorial freedom, it is wrong to characterise Sami media, including NRK Sápmi, as "hangers-on" to Norwegian media. One participant also pointed out that the Sami Parliament did not seem to be particularly interested in obtaining any influence with NRK, for instance in the form of a member on the NRK board. Reference was made to the fact that up until today the Sami Parliament has not made any claim to have a Sami member on the NRK Board.

24 This participant here referred to a statement made by Helga Pedersen, leader in the Storting for the Labour Party, during a debate on the movie "Fjellfinnhua" during the Riddu Riđđu Festival in July, 2010.

25 This was a reference to the statement by the introductory speaker that Sami media often appear as "hangers-on" to Norwegian media in Sami matters.

Store-Jacobsen said that he did not have a satisfactory empirical basis for his assertions, but that he has tried to throw light on the assertion through some examples, including the use by some Sami media of the term "Sami State" in the context of self-determination. He was of the opinion that if Sami media, due to insufficient knowledge or by accident, contribute to establishing a theoretical connection between Sami self-determination and a "Sami State", this is forgivable. It is very serious, however, if this linking is deliberate. Store-Jacobsen believed that if Sami media deliberately establish such a connection, they do exactly what Norwegian media do when they deal with Sami self-determination, which is to draw attention to the notion of the "Sami State" and present it as a threat. He called upon NRK Sápmi to produce a comprehensive broadcast series on the topic of Sami self-determination in order to provide more information and knowledge about the topic.

One of the seminar participants employed by NRK Sápmi, said that in principle such programmes could be produced. The condition, however, is that the Sami community has a clear perception of the content of the right of self-determination. "Unless the community itself is able to define the more specific content of self-determination, it will be difficult to produce something on Sami self-determination", he said. In connection with this it was pointed out that Gáldu's project on self-determination is important, since it contributes to establishing a certain basis for the further debate and process on the subject. It was stated that the main responsibility for promoting Sami self-determination lies with the elected Sami politicians and not with Sami media institutions.

Store- Jacobsen responded by identifying several topics that in his opinion may, relatively easily, be made subject to interesting media coverage, including:- (1) how the consultation duty of the Government is practiced in Norwegian politics, (2) how the principle of the free and informed prior consent of indigenous peoples is respected by the Government in matters that materially affect the Sami community, (3) the importance of self-determination for indigenous peoples in a Sami context, (4) whether today Sami autonomy exists in matters related to internal and local Sami issues, and (5) how the Government funding scheme for Sami policy actions functions in Norway.

Even though it is not possible to draw any clear conclusions on the basis of the debate on the coverage by Sami media of topics related to Sami self-determination, the debate, nevertheless, contributed to identifying a number of basic problems and challenges. It also contributed to identifying some basic differences in the conception of what responsibility Sami media have to cover Sami matters, which may form the basis for future discussions on the responsibility and role of Sami media regarding the coverage of Sami issues, including issues related to the right to self-determination.

## 2.2 The coverage of issues related to Sami self-determination by Norwegian and Sami media

Nils Johan Heatta, Director and Editor in Chief of NRK Sápmi, gave an introduction to the discussion on the coverage, by Norwegian and Sami media, of Sami self-determination. He started by stating that the condition for increased media coverage of the topic of Sami self-determination is that the problems be simplified and illustrated by means of concrete examples of what is meant by the term Sami self-determination. He believed that those who try to promote Sami self-determination do not simplify and exemplify the problems sufficiently. He said that it was always important to adapt the language to the purpose of the information that is provided. According to him, one must always ask whether the sender or the receiver is to blame if the information does not have the intended effect. He illustrated this point by saying that NRK Sápmi for instance can-

not blame its listeners, viewers or readers if they do not understand or care about what is communicated through news reports, because in such cases the media have not succeeded in its endeavours. The user cannot be blamed for the media's inability to bring information across as intended. According to Heatta, persons who want to influence the media coverage, must themselves actively participate in the public debate in the places and through the channels where the debate is taking place. He said that the traditional Sami approach – which is silence in case of disagreement with what is written or expressed – could not be used if the purpose is to influence the public debate. It was pointed out that Sami representatives are frequently not sufficiently brave or quick in grasping opportunities to influence the public debate.

Heatta further explained NRK Sápmi's general vision for its activities. He said that the vision implies that NRK Sápmi through its broadcasts is to contribute to enabling 'Sami to be', and 'want to be Sami'. This vision dates back to 1992 but it is just as valid in 2011 because it describes NRK Sápmi's overall objective and activity in an appropriate manner. With reference to the statement by Torolf Elster, former Head of NRK, made in connection with the opening of NRK Sámi Radio in 1976, saying "*Sámi Radio is not to be an activist radio*" he said that those who wanted to convince national media and national politicians of their view on Sami self-determination needed lobbyists and PR-firms, but not NRK Sápmi, because NRK Sápmi is neither a channel for activists nor a PR-firm.

Heatta said that NRK Sápmi has a responsibility for providing correct information and for doing its best to allow different Sami views to be voiced and heard in the public realm, within the framework of its own working methods and strategies, and in accordance with the ethical norms of the press. With respect to the latter he made specific reference to points 2.2 and2.9 of the Ethical Code of Practice for the Norwegian Press. Point 2.2 states that "*Each editorial desk and each employee must guard their own integrity and credibility in order to be free to act independently of any persons or groups who - for ideological, economic or other reasons - might want to exercise an influence over editorial matters*". Heatta said NRK Sápmi neither can, nor will establish cooperation with anyone contrary to these norms. With reference to the fact that on the first day of the seminar it was pointed out that NRK Sápmi and Norwegian media sometimes use the term "Sami State" when dealing with topics related to Sami self-determination, Heatta asked the question of whether lack of information might be the reason why the public and the media themselves give content to the term "self-determination". He stated that correct information seemed to be the main challenge regarding the media coverage of Sami self-determination: an important condition for adequate media coverage of problems related to Sami self-determination was that the media receive comprehensible and trustworthy information on topics related to self-determination. He said that if no one in the Sami community gave some content to the concept of "self-determination," then the "Sami State" was perhaps the most obvious approach for the media. He also said, however, that he was not particularly pleased with NRK Sápmi's use of the term "Sami State" in connection with the coverage of Sami self-determination, and that that was an area where the institution should be able to improve rather quickly.

He pointed out, however, that NRK Sápmi does not only communicate the "Sami State" concept, but that the institution also rejects and makes nothing of the concept. He said that this concept seems to appear more often in Norwegian media than in NRK Sápmi, and are mainly in letters to the editor but less in articles and news reports.

According to Heatta the media coverage of Sami self-determination also depends on the geographical location of the media and the distance to the central Sami areas. The media's interest in, and knowledge of, the topic are reduced almost proportionally with the geographical distance between the media institutions and the central Sami areas. He exemplified this by pointing out that

there are Norwegian journalists living in the County of Finnmark who are very familiar with and possess extensive knowledge of matters relating to Sami self-determination. Heatta said that even if sometimes he had been sceptical about the coverage of Sami matters in the Finnmark Dagblad, he still acknowledged that this paper had contributed to strengthening public knowledge of Sami matters through the balanced content of the news stories. He said that a balanced media coverage of Sami matters forces people to reflect on their own point of departure and any prejudiced opinions. Heatta alleged that Norwegian media and journalists in Finnmark cannot, however, get away from the fact that they belong to one of the groups affected by problems related to Sami self-determination. The reason he gave for this was that the journalists' ethnic background and identity would always affect their priorities, emphasis, focus and form of presentation in matters such as these.

Heatta then discussed what he considered to be the difference between Norwegian and Sami media in their coverage of Sami matters. He said that the boarder lines are between "knowledge" and "lack of knowledge" and in the comprehension of "us" and "them" in such contexts. Sami media, he said, usually had intimate knowledge of Sami matters, whereas the opposite was often the case with Norwegian media institutions. He exemplified this by referring to the Sami media coverage of the draft for the Finnmark Act in 2005, which was far better than the coverage by Norwegian media. He pointed out, for instance, that two of the journalists of NRK Sápmi won the award of both Finnmark Journalist Association and the Sami Journalist Association for their coverage of the work of the Committee on Sami Rights on the draft for the Finnmark Act. According to him that showed that Sami journalists were very well informed about Sami matters. That, he said, was in contrast to how little Norwegian media still knew about Sami matters and circumstances. He exemplified this by referring to the fact that a respected Norwegian journalist, whose name was not stated, in one of the largest Norwegian media institutions had declared that it was difficult to cover the process related to the draft for the Finnmark Act because the comprehensive amount of information available made it difficult to communicate this to the public. In practice, according to Heatta, that appeared as the journalist's defence and justification for that media institution's prevailing lack of knowledge of the Finnmark Act. He further pointed out that the core of the justification for inadequate coverage of the process was allegedly the large amount of information that made it difficult to follow the process. However, Heatta said, he would not criticise the editors for not being been able to cover the process, but that the statement showed the institution had not prioritised the acquisition of the necessary knowledge on the matter, or to make use of the knowledge that already existed at the institution in question.

Heatta said that journalism might not always be as objective as it appears in matters like these. He said that the journalists' ethnic identity and belonging, and implicitly their perception of who "us" and "them" are, may adversely affect the coverage of Sami matters in the media. He pointed out that Sami journalists and editors had consistently been accused of having interests as parties, in Sami matters. The reason stated for their alleged interest as parties is that they are Sami and are therefore also considered as Sami representatives. Heatta pointed out that those who put forward such accusations against Sami journalists and editors often seemed to forget that in this context they belong to "the other group" themselves. It is problematic, he said, and that those who voiced such accusations do not pause to reflect on their own identity, background and any interests as parties to Sami-related matters.

Among other things, Heatta pointed out, journalism includes the selection of sources, editing, focus and topic. This process is governed by journalists and editors. It would be surprising if journalists and editors, just like everybody else, were not influenced by their personal background and experiences. Thus, there is little doubt that

the personal background and experiences of journalists and editors have an effect on the final journalistic product. Therefore, he said that personally he was not surprised by conclusions drawn by journalists on the basis of so-called journalistic research in matters where the journalists themselves belonging to one of the relevant ethnic groups, since Norwegian as well as Sami journalists belonged to their own separate communities. "At times, when there is a conflict of interest between the two groups, this aspect comes to the fore", he said. According to Heatta, this is something one has to accept, but at the same time one has to be honest to oneself and to the public, and admit issues just as they might be.

According to Heatta, the tendency of the media to generalising the Sami on the basis of isolated matters involving Sami individuals or groups is a great challenge associated with the media coverage of Sami-related matters. He pointed out that the media frequently ascribes responsibility for opinions or actions expressed or undertaken by Sami individuals to the Sami in general. He said that this type of generalisation is a big problem in the media coverage of Sami-related matters. He exemplified this by referring to a news story in the NRK regional news report for Troms and Finnmark with the headline "Asks for assistance from the Government to deal with Swedish Sami."[26] In this case a few Sami reindeer husbandry operators from Sweden, from the same family, had erected some cottages for reindeer herding purposes on the Norwegian side of the border without the required public building permits from Norwegian authorities. The impression left in that case was that that was something that affected all Sami even though in reality only a few Sami individuals were involved. He said that this type of news stories tend to stigmatise the whole Sami population. Heatta also pointed out that such kind of generalisation results in the presentation of occupational conflicts, where one of the parties has a Sami background, as ethnic conflicts between Sami and Norwegians. He concluded that it is important that the media institutions realise that the Sami are not a homogeneous group and that the Sami collectively should not have to answer for or defend the attitudes and actions of individuals.

Heatta further said that generalisation in matters and issues that may somehow be related to Sami may also lead to racist utterances and attitudes towards the Sami as a group. According to Heatta this may be the result if the utterances and actions of Sami individuals are presented in the media in a way that leaves the general public with an impression of the Sami collectively as a conflict-seeking, unreasonable and criminal group. Certain individuals and groups may be conceived to use such presentations to legitimise hateful and degrading comments about the Sami as a group. He said that in some cases one comes across utterances by which one attempts to attribute the responsibility for generalizations and degrading utterances to the Sami themselves. Heatta exemplified this by referring to a statement by Helga Pedersen, Deputy Chair of the Labour Party, who made the following statement:[27] *"I believe that a number of the initiatives of the Sami Parliament have been unwise and provoked people unnecessarily. This applies to moves regarding the Mineral Act and a lot of talk about Sami self-determination. That is the reason why the Government has stated clearly that decisions are taken by us and not by the Sami Parliament."*

Heatta underlined that even if he was not responsible for providing training or advice regarding the way in which individuals relate to the media, he still found it natural to comment on how challenges such as those described here may be met and dealt with. First of all, anyone who tries to achieve a breakthrough for a message through the media must present the matter in a professional way. It is important, for instance, that erroneous utterances from

26 www.nrk.no/nyheter/distrikt/troms_og_finnmark/1.7707353

27 www.nordlys.no/nyheter/article4537278.ece

others – for instance in respect of Sami self-determination – are corrected and met with correct and easily understood facts and rhetoric. He added that it is important that experts, communication professionals and people in general participate in the public debate by offering knowledge and accurate information. The goal must be to provide the general public with sufficient and correct information on the matter. He also believed that those who promote Sami self-determination should endeavour to identify the areas where increased Sami self-determination is sought, such as the training and education of Sami children, Sami livelihoods, Sami language and culture, etc. He added that it was important to explain what such self-determination would possibly imply and how it could be implemented. It would also be natural to try to make people aware of how the whole population in the relevant areas may benefit from Sami self-determination and to focus on the joint challenges the total population in these areas are facing. He said that it was important not to focus too strongly on issues where conflicting interests existed between the different groups, because it was also important to deal with matters representing a challenge to the total population of the area.

Heatta said that in the debate on Sami self-determination one should try to agree on certain central and historical facts that were important to make the Sami claim for increased self-determination legitimate. He attempted to illustrate this in the form of a few "fantasies":

*Fantasy 1:*
*Norwegian prosperity is built on the exploration of resources from Sami territories.*

Justification: This statement is based on the fact that historically there is a traditional Sami territory. This clarification is important to the understanding, legitimacy and recognition of the Sami claim for participation in the management of the resources in these areas. Historical conditions justify the right of the Sami to a certain part of the State's profit from the utilisation of the resources in these areas, which would secure a greater benefit for the Sami community from the utilisation of such resources.

*Fantasy 2:*
*Sami industries and politics are funded by resources taken from Sami territories. Norwegian industries and politics are funded by resources from Sami territories.*

Justification: It is legitimate to ask the question of who is financing whom in this country. This is a relevant question in relation to the proposal of abolishing the Sami Parliament, as well as closing down Sami industries and discontinuing Sami political activity because these things are too expensive for the State. Government appropriations to the activities of the Sami Parliament, Sami political actions and Sami industries only amount to thousandths of the economic benefit derived by the Government and others from the utilisation of resources in historical Sami areas.

Heatta then identified some matters that, in his opinion, are important to the Sami media in the debate on self-determination. Firstly, Sami media should be so well informed about the case circumstances that appear to be the most important and best source of information in such matters. Secondly, it is important that Sami media provide correct information and rectify any errors related to their own activity and ensure that Sami views emerge in the debate on self-determination. Heatta said that it was important that Sami media constituted an "objective" Sami counterbalance to Norwegian "objectivity" in the debate on self-determination.

By way of conclusion Heatta proposed measures that may remedy the reduced factual knowledge of the media institutions in order to reduce group polarisation in contexts, where a certain amount of antagonism exist between the relevant groups of the community.

***Remedies for lack of knowledge***

- Provide press packages with factual infor-

mation at the right time.
- Find experts who have credibility among Norwegian journalists and arrange contacts.
- Obtain answers, interfere in all debates to correct wrong information and offer short and correct answers.
- Create "grassroots movements" where many individuals write letters to the editor, call in during debates, etc.

**Remedies for group polarization**
- Be aware that journalists and editors may have interests as parties to an issue.
- Point out joint challenges and benefits instead of emphasising differences.
- Point out that generalisation is wrong.
- Provide relevant and necessary documentation.
- Call for decency in the argumentation and debate.
- Refer to relevant examples and make comparisons.

In the debate following the introduction some participants pointed out that Sami politicians often have to answer for opinions they do not have; partly because Norwegian politicians frequently bring up the "Sami State" myth when Sami self-determination is dealt with in the media. The speaker believed that this is a good illustration of the prevalent premises in the media debate on Sami self-determination. It was said that even though the Sami Parliament has an independent responsibility for informing the media on what the claim for Sami self-determination implies, the media has a corresponding responsibility for providing the correct premises for the media debate on Sami self-determination. It was pointed out that the media frequently uncritically communicates statements relating to Sami rights problems, e.g. utterances to the effect that the Finnmark Act is contrary to the human rights ban on discrimination on the basis of ethnicity. It was said that the media have an independent responsibility – along with the responsibility of the Sami Parliament – to correct and follow up on statements that are obviously and undoubtedly wrong. By reference to the local newspaper coverage of the heated debate in Tromsø regarding the matter of whether the municipality of Tromsø should be part of the administrative jurisdiction for the Sami language, some participants said that certain newspaper editors consciously seem to polarise the debate on Sami matters to enhance the circulation of their own paper.

Furthermore, it was pointed out that it was difficult to obtain coverage of Sami matters in Norwegian media and that national media also seems to prefer using Norwegian journalists to deal with Sami-related matters in the media; due to their ethnic background Sami journalists are perceived as "parties" to the matter. This was said to be part of the reason why Sami journalists, only to a small degree, had managed to distinguish themselves on the national arena. Some pointed out that it seems NRK Sápmi has problems in obtaining national media coverage unless the relevant matters were considerably simplified, and in tabloids. It was said that the national media in many ways constitute a celebrity arena and therefore was difficult to obtaining coverage of Sami matters unless they are led by "Sami national celebrities," who are very few in the Sami community. General agreement was expressed that the media and Sami representatives, above all, the Sami Parliament, have an independent responsibility for contributing to correct and balanced media coverage of topics related to Sami self-determination.

## 2.3 Sami self-determination – the media's responsibility for coverage

Arne Johansen Ijäs, Associate Professor of journalism at Sámi allaskuvla (Sámi University College), gave an introduction to the topic of the responsibility of Sami media to cover issues related to Sami self-determination. With reference to the definition by the Ministry of Culture, he identified Sami news media in Norway as *NRK Sápmi* and the newspapers *Ávvir* and *Ságat.* Ijäs stated that issues relating to Sami rights are good news items and that

majority media, too, had shown an interest in this even since the power development project of the Alta watercourse. He said that the interest of the majority media in minorities and indigenous peoples normally increase if the time-honoured rights of such groups were threatened. He pointed out that there were many examples of this in the USA, where the majority media began to take an interest in the minorities when the blacks started to demand a right to vote, and in indigenous peoples when the Indians started to assert their claims for land.

Ijäs stated that Sami media has a responsibility to cover matters related to Sami self-determination. The reason for this, he said, is that Sami media has a special responsibility towards the Sami community due to its social responsibilities, including the duty to provide information, comments, criticism, etc.

***The social responsibilities of the media***

According to Ijäs one of the most important social responsibilities of the media is to provide information. Providing readers, listeners and viewers with information on various matters in society is the most important duty of the news media. Providing information, certainly, constitutes the major part of the activities of newspapers and broadcast media as well. He further added that the social debate on Sami rights issues can hardly occur unless someone provides information on the matters and the views maintained in the debate. This, for instance, applies to decisions made by international forums such as the UN, and decisions made by the Storting, as well as county and municipal councils. He concluded that it is the duty of the media to inform the public of on-going social debates.

Ijäs further pointed out that the role of *commentator* is an important responsibility of the media. He referred to the theory introduced by the Swedish media researcher Olof Petterson, which says that one of the journalists' duties was to explain the events taking place in our society, and that this goes beyond the media's pure responsibility of information. According to Ijäs, the responsibility of commentator implies that one of the duties of journalists is to inform the public about and explain to it the decisions and provisions adopted by the authorities. One reason for this is that, due to differences in language and style between the news media and the authorities, the media is better able to communicate its message than the authorities do. Ijäs stated that undoubtedly modern man receives most of his knowledge and understanding of society through the media, including knowledge on and understanding of rights issues: the media has an important part to play when it comes to making it easier for the general public to understand complex rights issues.

Then Ijäs pointed out that the media has a responsibility of functioning as *a forum for the public debate.* He said that this function is very important in a modern, knowledge-based society. Ijäs said that Sami media, with the exception of the newspaper Ságat, had not succeeded very well in becoming a forum for the public debate in the Sami community. According to Ijäs, Sami rights issues should naturally form a part of the public debate on Sápmi as well as in the majority society. He said that the newspapers Ságat and Nordlys have been able to create forums for the debate on Sami rights issues.

It was further pointed out that *defining the agenda* is an important function of the media. First and foremost, Ijäs said, this applies to the national media in the capital for which this is an expressed objective. It was said that the Sami media also, to a larger degree than currently, should try to define the agenda for the public debate, particularly with respect to Sami rights, and that even if the development of such an agenda function is both resource and time consuming, remained an important function for Sami media.

Ijäs underlined that the media has a very special role as a *critic* of the activities and

decisions of national as well as international authorities. Among other things, Sami media institutions are to monitor whether decisions related to rights are implemented, how they are implemented and whether there are any weaknesses related to the decisions or their implementations. This applies both to the authorities of the majority society as well as Sami authorities, including the Sami Parliament's administration and the implementation of its own responsibilities. Ijäs pointed out that the Sami Parliament has gradually acquired considerable influence and power in a number of rights issues, partly through the consultative agreement between the Government and the Sami Parliament. In this context it was pointed out that the Sami Parliament, among other things, has contributed to halting planned mining activities in 'Finnmarksvidda' (the Finnmark Plateau), since such activities would have affected Sami reindeer husbandry. Ijäs also stated that many individuals were affected or afraid of be affected by decisions related to Sami rights, for instance in the wake of the adoption of the Finnmark Act, and that this shows the importance of the media's role as a critic.

***The special responsibility of Sami media***

By way of conclusion Ijäs dealt with the special responsibility of Sami media regarding the coverage of issues related to Sami rights. Among other things Sami rights issues are important, he said, because they often concur with the general rights issues of indigenous peoples in other parts of the world. Rights issues are also important because it is a fact that minorities and indigenous peoples – such as Sami – have been deprived of their rights in many countries including Norway and the other Nordic countries. He said that the 'norwegianisation' policy conducted by the Government during the period from 1850 until well into the 1970s in itself shows that it is important that Sami media covers Sami rights issues, partly because some people maintain that this policy is being continued, but in a somewhat concealed form. He found it important that Sami media focuses more strongly on matters and problems such as these. Ijäs underlined that it is important that Sami media has a conscious attitude to the fact that the Sami have been deprived of rights in many areas including rights related to culture, language and trades, and that the authorities' recognition of Sami rights must therefore not be conceived as an "award" of rights to the Sami by Norwegian authorities.

Furthermore, Ijäs emphasised that it is the responsibility of Sami media to provide accurate information and to correct wrong information on Sami rights issues. He pointed out that the media often gives the wrong impression that the Sami have special rights – just because they are Sami. Ijäs said that he did not mean that the Sami media were to blame for this media angle,

even if Sami media may have contributed to this development partly because not enough accurate information on such issues has been provided in the best way. He underlined that a determining factor for a good social debate is accurate information and knowledge to the media consumers as to what is actually correct and what is not in each individual case. He pointed out that wrong opinions seemed to exist as regards Sami rights issues, particularly in the county of Finnmark, and that erroneous views existed both as regards the rights of the Sami and the scope and nature of the power of the Sami Parliament. He concluded that Sami media has a special responsibility for providing complete and accurate information on Sami rights issues.

In conclusion Ijäs stated that Sami media must be considered to have a partial responsibility for the Sami nation building in the same way as the Sami Parliament, Sami higher education, the Sami court of law, etc. Based on this way of thinking, the Sami media must contribute in furthering and supporting the development in the Sami community, but with a critical attitude. Ijäs said that NRK Sápmi had a difficult and challenging social responsibility because it must cover the media needs of Sami lan-

guage as well as Norwegian language Sami, also the institution is expected to provide information to the majority population.

Ijäs underlined that Sami media can hardly "back more than one horse" because above all they exist for the benefit of the Sami community. He went on to underline that it is important that Sami media covers all types of rights issues – throughout the Sápmi – including Sami reindeer herding rights and fishing rights. In connection with this he pointed out that the newspaper Ságat writes a lot about the rights of the Coastal Sami and that the paper obviously takes the side of the fjord fishermen in the fight against the fish-farming industry. The paper, however, is not equally clear in respect of rights related to reindeer husbandry. The Sami media, he said, largely takes the same approach to reindeer husbandry as Norwegian media does by focusing, to a large degree, on matters of conflict, and by making use of their knowledge of Sami traditions only to a limited extent when covering legal issues related to reindeer husbandry.

In the debate following the introduction, several participants, with different points of departure, commented on the point made by the introductory speaker that Sami media has a special responsibility to contribute to the Sami nation building in the same way as other public Sami institutions. One participant, an employee of Sámi University College, had the impression that certain Sami media unduly criticise the College, and that that was not a positive contribution to the Sami nation-building. He believed that NRK Sápmi frequently draws attention to negative aspects of the activities of the College at the expense of the many positive aspects. This was exemplified by reference to the fact that in 2005 Sámi University College was given a national education award in Norway, without any mention of that by NRK Sápmi. One of the representatives of NRK Sápmi stated that the institution did not have a negative attitude to Sámi University College and that the criticism against NRK Sápmi was unjustified. He maintained that, naturally, Sami media has a duty to both contributing to the nation building and also being critical to what happens in the Sami community. It was said that the ability to be critical in a constructive way possibly constitutes the greatest change in Sami media over the past few years, since previously Sami media outlets were at times reluctant to criticise the activities of Sami leaders and institutions. In this connection it was pointed out that through critical journalism, Sami media has actually contributed to strengthening the Sami community in an important way. Another participant said that it was important to take into account that media criticism is also a contribution to the community building and reflects a concern for this community. Broad agreement was expressed regarding the responsibility of the Sami media to inform the Sami community on international developments, particularly when such developments concern Sami rights and interests.

### 2.4 Comments

Media and journalists do not only impart information, since through their activities, they may also contribute to minimising intolerance and conflicts and also to increase intolerance and kindle conflicts. The media are responsible for the way stories and information get communicated and who the storytellers are. Unfortunately, experience shows that a positive development in the relationship between States and indigenous peoples – partly through the recognition by States of the rights of indigenous peoples – in some cases may lead to increased tension and conflict between the indigenous peoples and the majority populations, particularly the part of the majority population living in traditional areas of indigenous peoples. In some cases the media coverage, consciously or unconsciously, contributes to maintaining and or strengthening tensions and conflicts between indigenous peoples and majority populations. In a Sami context one sees for instance, that at times the media generalise, in matters where there is a Sami party,

by not distinguishing between the Sami as a group and Sami individuals. Likewise industrial conflicts, e.g. between reindeer husbandry and agriculture, are presented in a way that leaves the impression of this being an ethnic conflict between Sami and Norwegians. The media's tendency to present news in tabloids may also in some cases contribute to Sami matters being presented in such a way that, in the worst case, may increase the level of conflict, for instance by questioning whether the Sami claim for increased self-determination may be connected with a goal of establishing a separate "Sami State".

It is not unusual that indigenous peoples are subject to unfavourable media coverage in cases where progress is made with respect to recognition and safeguarding of the rights and interest of indigenous peoples. This has also happened in Norway, for instance after the adoption of the Finnmark Act. Norwegian media has at times uncritically contributed to conveying views to the effect that the Sami, particularly the Sami involved in reindeer husbandry, are favoured on the basis of ethnicity and granted special rights through the Finnmark Act at the expense of the rest of the population in Finnmark. Sami media has not made any strong efforts to balance the impression that has been created through repeated news stories and letters to the editor where it is maintained, directly or indirectly, that the Sami are awarded special rights based on ethnicity. It must be assumed that this media coverage in its own way has contributed to increased tension between Sami and non-Sami, reflected, for instance, through letters to the editor and commentaries on various webpages with a contents that, at times borders on racist utterances against the Sami as a group.

The reasons stated in the media for the assertion that the Sami, through the Finnmark Act, have been granted ethnically-based special rights is to some extent based on the fact that ILO Convention 169 on indigenous peoples and native peoples in independent states (the ILO Convention) has been given precedence over the Finnmark Act in case of any contradiction between the provisions of the Convention and the Act. The media cannot be blamed for conveying such statements. At the same time, however, the media has a duty to try to make it clear whether the Finnmark Act actually favours the Sami at the expense of the rest of the population. If statements to the effect that the Finnmark Act "gives" the Sami special rights on the basis of ethnicity are not contradicted, this may contribute to increasing the ethnical tensions in society.

So far, the argument that the provision of the Finnmark Act on the precedence of the ILO Convention gives special rights to the Sami has basically been accepted without any attempt by any media to clarify if this is actually the case. Media and journalists do not need any expert legal competence to check a contention like this, because to begin with it is possible to invite those who put forward such assertions to identify such contradictory situations or identify cases where theoretically such a contradictory situation may arise. So far, as a matter of fact, there have been no examples of situations where the Finnmark Act contradicts the ILO Convention. Consequently, the relatively comprehensive media coverage of problems of contradiction is very surprising. There are at least two possible answers to the question of why there is such a relatively strong focus on this in spite of the fact that it does not appear to be a practical problem: deficient knowledge among the editors or a deliberate journalistic approach.

Those who are familiar with the preparatory work on the Finnmark Act also know that the provision regarding precedence was included as a result of the requirement specified by the ILO Convention that the state must establish satisfactory procedures in its national legal system in order to decide on legal claims related to land from the indigenous people concerned. This provision is based on the fact that from a historical point of view the legal claims to land and resources by indigenous peoples

have not been dealt with fairly, and this has also been the case in Norway. The provision of precedence, therefore, was also a reason for establishing the Finnmark Commission and the Outfield Land Court for Finnmark, as well as the identification of the Supreme Court as the highest national instance in the rights clarification process. Rights clarification must be based on applicable Norwegian legal principles, including the legal institutes of prescription, custom and consuetudinary right, which is assumed to be in agreement with the provisions of the ILO Convention. Until now, no contradiction has been shown between the national legal principles she referred to and the provisions of the Convention.

Article 16 of UNDRIP establishes the right of indigenous peoples to establish their own media in their own language and their right of access to all forms of other media without discrimination. The provision also indicates that the states shall take action to ensure that state-owned media reflect the cultural diversity of indigenous peoples in a proper way, and that they should also encourage privately owned media to adequately reflect the cultural diversity of indigenous peoples. Article 16 of UNDRIP must be understood in the context of freedom of expression and the right to information as being a basic human rights.

Høstmælingen (2003) describes freedom of expression as one of the "original" human rights, with reference to the fact that lines can be drawn far back in time, to the "democracy" of antiquity, the philosophers of the Age of Reason and the Declaration of the Rights of Man and of the Citizen from the French Revolution in 1789.[28] The freedom of expression is protected through the UN Universal Declaration of Human Rights (Article 19), the European Convention on Human Rights (Article 10), the UN Covenant on Civil and Political Rights and the Norwegian Constitution, Section 100. From democratic point of view, freedom of expression is of fundamental importance since it is a basic condition for a well-functioning and efficient democratic society. The freedom of expression also enables

people to distinguish between true or good utterances and false or poor arguments. This aspect is often described as the truth argument, since freedom of expression is regarded as a necessary condition for seeking the truth. Freedom of expression is also crucial to the self-realisation and individuals' personal development.

Article 19 of the UN Covenant on Civil and Political Rights (CP) states that everyone shall have the right to seek, receive and impart information and ideas of all kinds. Traditionally, the right to information has been regarded as part of the right to freedom of expression. The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression,[29] for instance, emphasizes that the right to information is an independent human right. Among the reasons stated for this are the social and political role, and importance of information. Information thus, is a condition for the participation of individuals and groups in decision-making processes affecting their lives:[30] «… because of the social and political role of information, the right of everyone to receive information and ideas has to be carefully protected … [as] this is not simply a converse of the right to impart information but it is a freedom in its own right.»

The media plays a crucial role in imparting information of importance for democratic decision-making processes in any society. Thus, the media has an independent responsibility for ensuring that the necessary and correct information is conveyed. As a matter of fact the media to a large degree contributes to the realisation of the freedom of expression and the right to information. In the same way the media – consciously or unconsciously – may contribute to preventing the

28 Høstmælingen, Njål (2003), Internasjonale menneskerettigheter (International Human Rights), p. 249. Universitetesforlaget.

29 UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

30 Report of the Special Rapporteur, E/CN.4/1995/32, § 35, http://www.unhchr.ch/huridocda/huridoca.nsf/70ef163b25b2333fc1256991004de370/f8f2d02f188e7d828025666ff00406f76?OpenDocument

freedom of expression and the right to information from being fully realised in society.

The media is also supposed to play an important part in promoting human rights, both through information and by promoting the implementation of the applicable international standards for human rights, including the rights of indigenous peoples. The coverage by the media of single matters and general social issues is one of the cornerstones of democratic debate in any society. A study on the role of the media in promoting human rights and democracy in Africa, for instance, shows that media coverage is the general public's most important source of information on the content and implementation of the UN Convention on the Rights of the Child.[31] The study identifies a number of challenges for the coverage by African media of human rights problems. In well-developed democratic states many of these challenges are normally not relevant, for instance challenges related to government control and checks of editors. The study, however, identifies a number of challenges of a more universal nature; it is stated, for instance, that an important condition for the respect for human rights is that journalists and the public have knowledge of human rights:[32]

> «…if human rights are to be respected journalists and the public have to know something about them. Regrettably, in Africa ignorance and lack of awareness abounds. Few journalists or public officials are able to identify with confidence even half a dozen of the basic rights supported by the Universal Declaration of Human Rights or by the African Charter of Human and People's Rights.
> *The question of raising awareness, improving training and developing skills for the promotion of democracy remains a potent challenge for media professionals and policy makers alike. The African Charter needs to be more widely known and discussed and needs to be made meaningful to citizens.* »

The African study takes as its basis that one of the conditions for the respect for human rights in a society is that journalists have knowledge of human rights, and thereby knowledge of such rights will also be imparted to the general public. The study concludes that very few African journalists are able to – with any particular degree of self-confidence –identify 5-6 basic human rights recognised by the UN Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights. This is considered to be a problem regarding the respect for and implementation of human rights in Africa.

No similar study has been conducted among Norwegian and Sami journalists to map out their knowledge of internationally recognised human rights and rights of indigenous peoples. It cannot be ruled out, however, that the media coverage of Sami rights issues in Norway – and thus the knowledge among the general public of Sami rights – to a large degree is governed by strong variations in the level of knowledge of internationally recognised human rights among journalists. This is something that affects society as a whole, but it is only the media institutions themselves that are able to improve the situation through prioritisation and training.

The media is normally regarded as a tool for imparting information. The media, however, has power and influence far beyond this, for instance in identifying and influencing social issues, including issues related to the rights of indigenous peoples. Professor Graham makes the following statement on the role of the media regarding matters related to indigenous peoples:[33]

> «Often we think about media as a tool for transmitting information. However, media also has the power to identify, name and shape issues. This is particu-

31 International Federation of Journalists, The Role of Media in Promotion of Human Rights and Democratic Development in Africa, http://africa.ifj.org/assets/docs/106/024/74d866a-e7eb518.pdf

32 Ibid., p.3.

33 Lorie M. Graham, A Right to Media?, Columbia Human Rights Law Review [41:429/2010], s. 429, http://www3.law.columbia.edu/hrlr/hrlr_journal/41.2/Graham.pdf

larly true when mainstream media is reporting (or choosing not to report) on events that involve marginalized groups, as is the case of indigenous peoples. Recent scholarship from journalism and psychology explores the role that media plays in shaping our views of 'self' and 'other'. This same scholarship explores how media coverage can shape intergroup relationships, silencing or promoting voices in the process of public deliberation. »

Graham underlines that media has the power to identify and shape issues through their coverage of the issues, and that this also applies to the coverage by majority media of issues related to indigenous peoples – through their coverage or decision not to cover such issues. It is also pointed out that the media contribute to social polarisation by influencing people's view on who constitute "us" and who, "them".

Graham makes the following observation on the connection between the right of indigenous peoples to self-determination and their right to establish their own media in accordance with Article 16 of UNDRIP:[34]

«Similar to other aspects of *UNDRIP [UN Declaration on the Rights of Indigenous Peoples], the right to establish indigenous media reflects broadly defined principles of self-determination. Freedom of expression and access to information through media is critical tothe maintenance of indigenous peoples' culture and language, and to the elimination of racism and discrimination based on ethnic and linguistic identities. Self-determination through indigenous-controlled media can directly combat the erosive effects of discrimination and assimilation through the nurturing of indigenous traditions, customary law, language and culture. Moreover, by ensuring access to information and opening up modes for communication, indigenous-controlled media can enhance and strengthen other key aspects of indigenous self-determination, such as development of economic, social, cultural and educational institutions. In the end, being able to utilize media resources in the indigenous group's own language, and within the groups own community can go a long way in levelling the playing field between indigenous peoples and the state in terms of bringing attention to and addressing issues most critical to the indigenous group.* »

As a whole, UNDRIP is based on the recognition of indigenous peoples' right to self-determination. The provision in Article 16 of the Declaration, that indigenous peoples have the right to establish their own media must be understood in light of the right to self-determination, in the same way as Article 14 of the Declaration lays down, that indigenous peoples have the right to establish and control their own educational systems and institutions. The freedom of expression and access to information through media is of fundamental importance for the strengthening and preservation of indigenous peoples' language, culture, values, etc. Indigenous-based media may also contribute to establishing a counterbalance to the way the majority media approach Sami issues, particularly in situations where majority media provide insufficient or wrong information on matters related to indigenous peoples. Indigenous media also constitutes an important condition and supplier of premises for the internal public debate in indigenous societies. Graham argues that in principle indigenous peoples must be considered to have "a right to media," and that this must not be considered as divergent from general rights thinking, because this articulates the idea that indigenous peoples - as a marginalised group – can no longer be denied freedom of expression and the right to information.[35]

34 Ibid., p. 439-440

35 Graham: «Thus the objective of recognizing a right to media in international human rights law is simple: to ensure that the well-established fundamental rights to freedom of opinion and expression, and the right to information through the exchange of ideas, are no longer denied of indigenous peoples and others. Long recognized as the foundational rights upon which many other human rights depend, freedom of expression and the right to information must be respected and nurtured throughout all communities everywhere.» http://www3.law.columbia.edu/hrlr/hrlr_journal/41.2/Graham.pdf

The human rights approach, which has been dealt with here, constituted an important basis for Gáldu's decision to organise a separate

seminar on Sami self-determination and the media.

In other words the priority given to this field within the scope of the project is due to a view that the media – Sami media as well as non-Sami media – have an important role to play as regards the realisation of indigenous peoples' human rights, including the fight against discrimination, rights to land and resources, protection and promotion of language and culture, as well as the realisation of the right to self-determination. The media's respect for the right to freedom of expression and the right to information is crucial to the Sami people and to the development of the country in agreement with fundamental universal human rights norms.

# 3. Summarising conclusions

The project "Sami Self-determination: Content and Implementation" has enabled Gáldu to bring together Sami as well as other resource persons and competence establishments to exchange views on the right to self-determination and its relevance and importance to the development of the Sami community. The debate on Sami self-determination has developed in step with the international development. Until the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007, there was focus on whether indigenous peoples have a right to self-determination. Since the UN General Assembly in 2007 expressly recognised the right of indigenous peoples to self-determination through the adoption of UNDRIP, the focus of the debate has shifted to issues related to the content of self-determination and how it can best be implemented at the national level.

In spite of the fact that the duty to respect the territorial integrity or political unity of sovereign states is laid down by international law as an integral part of the implementation of self-determination, e.g. Article 46 (1) of UNDRIP, the problem of secession, nevertheless, has emerged in the debate on Sami self-determination. The relatively strong focus on secession at times has contributed to overshadowing the potential of self-determination as a means of resolving and preventing conflicts. It is important to underline that from the Sami side a wish for self-determination in the form of a separate state has never been expressed. Thus the policy of secession should not be a topic for discussion in the debate on Sami self-determination. Sami political leaders have repeatedly emphasised that the sole objective is to realise Sami self-determination in accordance with internationally recognised standards of human rights.[36] From the Sami side it has also been pointed out that the content and implementation of the right to self-determination must be concretised and secured through national legislation.[37]

The objective of Gáldu's project has not been to define the content and implementation of self-determination. The purpose of the project was to involve resource persons and competence establishments – particularly Sami resource persons and competence environments – to participate in the discussion on how Sami self-determination might be implemented in terms of practical political activities within the framework of existing national states. Through the project, Gáldu has tried to focus on a few selected community areas in the context of self-determination. Resource persons have been invited to throw light on the current situation and assess it in the light of internationally recognised standards for indigenous peoples' rights and international human rights.

The outcome of the project shows that there seems to be general agreement that currently no real Sami self-determination exists in Norway, and that the situation is not fully in accordance with the most recent developments of international standards in the field – as based on a natural interpretation of the current standards. Moreover, the conclusion must be drawn that the understanding of the content and implementation of the right to self-determination to a large degree seems to be situational, in the sense that this understanding varies somewhat with the contexts and social sectors to which one attempts to apply this right.

36 See Gáldu Čála nr. 02/2008, Chapter 1.1 (Egil Olli) and Chapter 1.6. (Laila Susanne Vars), inter alia http://www.galdu.org/govat/doc/samisk_selvbestemmelse.pdf

37 Ibid., Chapter 1.1.

As regards some fields or sectors, the general view seems to be that the Sami should be entitled to make autonomous and independent decisions without any interference by government authorities; clearest examples are matters related to Sami language and culture. There is broad agreement that Sami culture and language[38] are internal Sami affairs. There also seems to be broad agreement that the role and function of the Government in relation to Sami culture is primarily limited to securing the necessary legal protection and arranging for the funding of Sami cultural autonomy.[39] Furthermore, there seems to be a large degree of agreement that areas such as education,[40] traditional knowledge, customs, industries, spiritual values, local environments, joint institutions, management of own history and knowledge, as well as Sami local administration of natural resources are to be regarded as internal Sami affairs.[41]

With respect to some other sectors of society, there seems to be general agreement that Sami self-determination can best be implemented through different forms of Sami participation in external decision-making processes. Here, in other words, we refer to different forms of interaction between Sami and government authorities and other players as the case may be. There was broad agreement, for instance, among the resource persons participating in Gáldu's working seminar on Sami autonomy in the health and social services sector, that it was difficult to envisage a situation where the Sami have "full autonomy" in the health and social services sector, partly because it was not considered expedient to establish and administer separate Sami health and social institutions outside the existing system.

There was general agreement that Sami self-determination within the health and social services sector can best be implemented in the form of effective Sami participation in, and influence on, the development and structuring of the health and social services for the Sami population in Norway.[42]

Another example in this category is the conception of Sami self-determination in the research sector. In spite of the fact that there seems to be a certain amount of agreement that certain aspects of the research activities may be considered as internal Sami affairs, e.g. research prioritisations, one also gets a clear impression that the area of research is not regarded as an "internal Sami affair", in the same way as Sami culture and language.[43]

It was pointed out in a number of contexts that the Government funding arrangement for Sami political measures, including the activities of the Sami Parliament, had to be changed in order to secure real Sami autonomy.[44] The fact that the possibilities of the Sami Parliament to influence the Government's budgetary process regarding appropriations for Sami purposes and that the major share of the transfer of funds from the Government are earmarked by the Government, was regarded as rather unsatisfactory. There seems to be a general view that the practice of earmarking fund transfers for Sami purposes tends to limit the ability of the Sami Parliament, on its own responsibility, to regulate and administer important public matters in the Sami community. There also seems to be general agreement that a satisfactory funding arrangement for the activities of the Sami Parliament and Sami political measures is a fundamental condition for real Sami self-determination. It is somewhat surprising that the Government and the Sami Parliament have not been able to reach better agreement

38 Gáldu Čála nr. 2/2010: Samisk selvbestemmelse: Autonomi og økonomi, Sami Parliamentets myndighet og autonomi innenfor helse- og sosialsektoren, kapittel 1 (Sami self-determination: Autonomy and Economy, the authority and autonomy of the Sami Parliament in the health and social services sector, Chapter 1.)

39 Gáldu Čála nr. 2/2009: Samisk selvbestemmelse: Autonomi og selvstyre: utdanning, forskning og kultur, kapittel 2.3.4. (Sami self-determination: Autonomy and self-government: education, research and culture, Chapter 2.3.4.)

40 Ibid., Chapter 2.1.2.

41 Gáldu Čála nr. 2/2010: Samisk selvbestemmelse: Autonomi og økonomi, Sami Parliamentets myndighet og autonomi innenfor helse- og sosialsektoren, kapittel 3.3; Gáldu Čála nr. 2/2010: Samisk selvbestemmelse: Autonomi og økonomi, Sami Parliamentets myndighet og autonomi innenfor helse- og sosialsektoren, kapittel 1. (Sami self-determination: Autonomy and Economy, The authority and autonomy of the Sami Parliament in the health and social services sector, Chapter 3.3; Gáldu Čála nr. 2/2010: Sami self-determination: Autonomy and economy, the authority and autonomy of the Sami Parliament in the health and social services sector, Chapter 1.)

42 ; Gáldu Čála nr. 2/2010: Samisk selvbestemmelse: Autonomi og økonomi, Sami Parliamentets myndighet og autonomi innenfor helse- og sosialsektoren, kapittel 1. (Sami self-determination: Autonomy and Economy, The authority and autonomy of the Sami Parliament in the health and social services sector, Chapter 4.3.

43 Gáldu Čála nr. 2/2009: Samisk selvbestemmelse: Autonomi og selvstyre: utdanning, forskning og kultur, kapittel 2.2.2. (Sami self-determination: Autonomy and self-government: education, research and culture, Chapter 2.2.2.)

44 Gáldu Čála nr. 2/2010: Samisk selvbestemmelse: Autonomi og økonomi, Sami Parliamentets myndighet og autonomi innenfor helse- og sosialsektoren, kapittel 1. (Sami self-determination: Autonomy and Economy, The authority and autonomy of the Sami Parliament in the health and social services sector, Chapter 1.)

on the State budgetary process for appropriations to Sami-related policies, since increased influence on the part of the Sami Parliament is a declared political objective of the Government.[45]

In drawing an overall and general conclusion it must be noted that broad general agreement seems to exist, that the authority and influence of the Sami Parliament should be strongest in areas considered as internal Sami affairs and with respect to matters or measures that affect basic conditions for Sami culture, industries and social life.

Furthermore, there seems to be broad agreement that in matters of minor importance to the Sami community, various forms of Sami participation in external decision-making processes, including co-determination, consultations, submissions and consultative rounds would be natural. This may be characterised as a sliding scale for Sami authority and influence, based on the importance of the issue or action for the Sami community as a whole or the relevant local Sami community. The Nordic group of experts who prepared a proposal for Nordisk samekonvensjon (Nordic Sami Convention) has tried to codify such a sliding scale for Sami Self-determination.[46] In matters of fundamental importance to the Sami community, it is assumed that the Sami themselves should make independent and binding decisions, even if in some cases these are not necessarily in agreement with the view of government authorities. In matters of less importance to the Sami community a lesser degree of Sami influence might be sufficient. This view corresponds well with the prevailing international understanding of indigenous peoples' right to self-determination and their right to participate in decision-making processes.[47]

Further, there seems to be broad agreement that it is necessary to achieve a satisfactory balance between the authority and role of the Sami Parliament and the role and influence of local Sami communities in local affairs. This also applies to matters where the issue in question affects the rights of groups or individuals. In short, many believe that the Sami Parliament should have no monopoly to represent the Sami in decision-making processes, since in some contexts it might be naturally better that the Sami representation or participation in decision-making processes is done by others, including affected Sami legal persons, local communities and industrial and special interest organisations.

## 3.1 The Interdependent Relationship between the Right of Self-Determination and the Right of Participation

The right to participate in public decisions and affairs is recognised as a human right. Article 21 of the Universal Declaration of Human Rights recognises that anyone has the right to take part in the government of his/her country, directly or through freely chosen representatives, and on universal and equal terms everyone has access to public service in his country and to cast his/her vote in free and periodic elections. Furthermore, the Universal Declaration recognizes that the will of the people shall form the basis for the Government's authority. It follows from this that the right of participation is recognised as an individual as well as a collective human right. The individual right to take part in decision-making is specified more clearly in Article 25 of the UN Covenant on Civil and Political Rights. The collective aspect of the right of participation, as formulated in the Universal Declaration, refers to the right of peoples to self-determination. It appears clearly, that the formulation in the Universal Declaration regarding the collective aspects of the right of participation (that the will of the people shall be the basis of the

45 Report to the Storting No. 28 (2007 – 2008).

46 Gáldu Čála nr. 2/2009: Samisk selvbestemmelse: Autonomi og selvstyre: utdanning, forskning og kultur, kapittel 1.7, s. 19-20. (Sami self-determination: Autonomy and self-government: education, research and culture, Chapter 1.7, p. 19-20.)

47 Progress report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/15/35, 23.08.2010, http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf Final report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/18/42, 17.08.2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42_en.pdf

authority of Government) refers to the total population of the State.[48] However, the development of international law after the adoption of the Universal Declaration indicates that this collective aspect must be interpreted in light of the broad international recognition today that more than one people within a territory or state may have the right to self-determination. The consequence of the adoption of UNDRIP and the acknowledgement that indigenous peoples, as well, have a right to self-determination and that indigenous peoples must be considered to have the right to organise themselves and be represented in a way that is in agreement with the will of the indigenous people in question. This will is crucial as regards the exertion, by the people in question, of their right to self-determination and with respect to their collective participation in the execution of government matters by which they are affected.

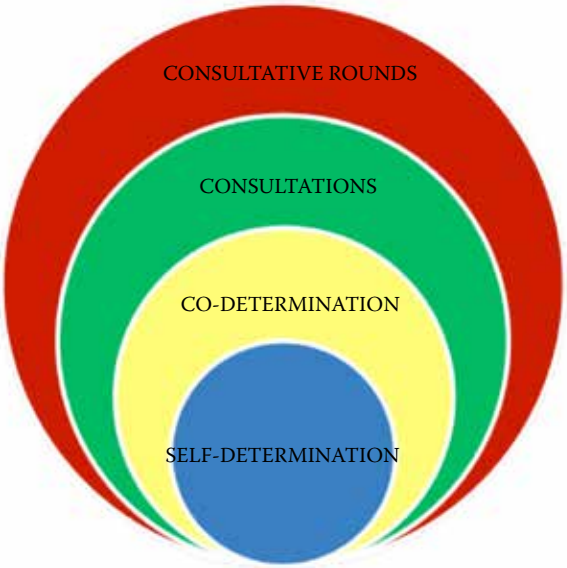



*Figure 2: The figure illustrates the principle that the degree of Sami authority and influence in decision-making processes is related to the nature of the relevant issue and its importance to the Sami community, as well as the interaction between the right of indigenous peoples to self-determination and their right to take part in decision-making processes.*

In other words, indigenous peoples' right to self-determination forms the basis for their collective participation in decision-making processes in situations where the decisions are made by others rather than themselves. In the same way as other peoples, including peoples organised in the form of national states, indigenous peoples must relate to other peoples and their rights, and the right of indigenous peoples to self-determination, thus, cannot be limited to issues where they make decisions alone, since through participation in other decision-making processes indigenous peoples also exercise a certain form of self-determination through various mechanisms for interaction with other players, including co-determination, consultations and consultative rounds. This may be characterised as a sliding scale for the authority and influence of indigenous peoples in matters that affect them.

The sliding scale for indigenous peoples' authority and influence on issues and decision-making processes that affect them, spans from the independent and binding decisions of indigenous peoples to various forms of participation in decision-making processes. In principle, the provisions in Chapter II of the proposal for Nordisk samekonvensjon (Nordic Sami Convention) (Articles 14 -22) are based on such a sliding scale.[49] A recent UN study on the right of indigenous peoples to take part in decision-making also assumes that the right of participation of indigenous peoples goes from the right to self-determination through autonomous and independent decisions to a right to be heard and consulted – on the basis of the nature of the issue and its importance to indigenous peoples.[50] Discussions and processes completed within the framework of Gáldu's project show that the general view on Sami self-determi-

48 The Universal Declaration, Article 21 (3) "The will of the people shall be the basis of the authority of government."

49 Nordisk samekonvensjon (Nordic Sami Convention)

50 Progress report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/15/35, 23.08.2010, http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf Final report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/18/42, 17.08.2011,http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42_en.pdf

nation corresponds well with this conception of the interaction between the right to self-determination and the right of participation in decision-making processes.

The UN Declaration on Indigenous Peoples (UNDRIP) distinguishes between the internal decisions of indigenous peoples (cases in which indigenous peoples make independent and binding decisions) and external decisions relating to indigenous peoples (cases in which the decisions are made by others rather than the indigenous peoples themselves, for instance by government authorities). UNDRIP contains clear provisions relating to indigenous peoples' right to self-determination, including a key provision laying down the right of indigenous peoples to autonomy and self-government in internal and local affairs.[51] The Declaration does not, however, give a more detailed definition of what is to be regarded as the "internal and local affairs" of indigenous peoples beyond what may be derived from an interpretation of the provisions of the Declaration. The clearest wording of the distinction between internal and external decision-making processes is found in Article 5 of UNDRIP. Here it is stated that "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State." In addition, the Declaration contains many provisions recognising the right of indigenous peoples to take part in external decision-making processes in the form of consultations, deliberations, cooperation, etc.[52]

In the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)[53] the following is stated on the connection between the right of indigenous peoples to self-determination and the right to take part in decision-making processes:[54]

> «The principle of participation in decision-making also has a clear relationship with the right of indigenous peoples to self-determination, including the right to autonomy or self-government, and the State obligation to consult indigenous peoples in matters that may affect them, based on the principle of free, prior and informed consent. These legal concepts form an inherent part of any discussion of the right of indigenous peoples to participate in decision-making …»

In Article 3 of UNDRIP it is stated that indigenous peoples have a right to self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. In principle, this is an important element of the right of indigenous peoples to self-determination. Indigenous peoples, however, live in a situation where their development is increasingly affected and governed by external decisions and processes including measures adopted or introduced by government authorities. Consequently, indigenous peoples may not normally promote their own economic, social and cultural development in an effective manner unless a suitable interaction for this purpose exists between indigenous peoples and government authorities. This means, among other things, that the right of the Sami to promote their own economic, social and cultural development cannot be realised unless the Sami's own priorities regarding the development of their own society are respected and catered for, through the policy pursued by the Government. In addition, it is necessary to equip the Sami Parliament with such authority that, through its own political decisions, it can implement measures related to its internal affairs. Even if it is difficult to establish absolute dividing lines between the general population and the Sami community and the development of local Sami communities, it may be appropriate to distinguish between these two aspects in the context of self-determination. Article

51 Article 3 and 4.
52 Article 5, 10–12, 14–15, 17–19, 22–23, 26–28, 30–32, 36, 37, 38, 40–41.
53 Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx
54 Progress report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/15/35, 23.08.2010, §§ 1–6, http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf

4 of UNDRIP acknowledges that indigenous peoples – in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their "internal" and "local" affairs. In a Sami context the Sami Parliament, as the highest body of the Sami, seems to be the appropriate administrator of the right of the Sami to autonomy or self-government in "internal" affairs of a general nature. It also seems natural, however, to assume that with a large degree of legitimacy, local Sami communities, partly by virtue of Article 4 of UNDRIP, may claim a right to local autonomy and self-government in "local" affairs.

Government authorities seem to have a somewhat different understanding of what issues should naturally fall under Sami autonomy arrangements compared to what seems to be a general Sami conception of this right. It appears from Report to the Storting No. 28 (2007-2008) that the Government is of the opinion that Sami self-determination may imply a right for the Sami Parliament to make decisions on its own on issues related to language and culture. The reason stated for this is that such issues only relate to the Sami.[55] Discussions and events carried out within the framework of the Gáldu project show that there seems to be relatively broad Sami agreement that fields such as education, traditional knowledge, customs, industries, spiritual values, local environments, joint institutions, management of own history and knowledge, as well as administration of natural resources should be regarded as internal Sami affairs. One of the reasons stated for this was that in certain cases it should be possible to consider a specific field as an internal or local Sami affair even if others, other than Sami, are affected by decisions and measures in the relevant area. Local administration of natural resources in Sami areas is an example of this. The underlying justification for this is that the natural resources are part of the material basis of Sami culture, and that apart from this the natural resources are crucial to the development of the Sami community. This can also be justified by reference to the fact that the human rights protection of the cultural exercise of indigenous peoples, impose limitations on the right of government authorities to weigh interests in favour of the general national social development, should such a weighing of interests contribute to reducing the rights of indigenous peoples in pursuance of Article 27 in the UN Covenant on Civil and political rights.[56] The immediate challenge facing the realisation of Sami autonomy or self-government in internal and local affairs is the lack of agreement between the Sami and the Government as to what should be considered "internal or local Sami affairs".

UNDRIP contains a number of provisions that, in different ways, recognize and affirm the right of indigenous peoples to participate in external decision-making processes.[57] Article 18 of UNDRIP contains an overall provision on the right of indigenous peoples to participate in external decision-making processes. It is stated here that indigenous peoples have the right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. The more specific formulation of the right to take part in external decision-making processes is expressed in various ways, including:- (1) the right of indigenous peoples to be actively involved in decision-making processes, (2) the duty of States to seek agreement with indigenous peoples, (3) the duty of States to consult and cooperate with indigenous peoples, (4) the duty of States to implement measures together with indigenous peoples and (5) the duty of States to respect the customs and traditions of indigenous peoples in decision-making processes. In certain cases it

55 Report to the Storting No. 28 (2007-2008) p. 35-36.

56 UN Committee on Human Rights: I, Länsman et al. v. Finland (Communication No.511/1992).

57 Article 5, 10–12, 14–15, 17–19, 22–23, 26–28, 30–32, 36, 37, 38, 40–41.

is assumed that the external decisions are not to be made unless the indigenous people in question has given its free and informed prior consent. A further condition, for instance, is that in certain situations the State shall carry out consultations and establish cooperation with indigenous peoples prior to the adoption and implementation of measures that may affect them.

UNDRIP establishes a division between the duty of the State to consult indigenous peoples and its duty to obtain the free and informed prior consent of indigenous peoples; the principle of prior consent presupposes that indigenous peoples have a right to determine the outcome of the issue. The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP),[58] a body under the UN Human Rights Council,[59] states the following on the difference between consultations and the free and informed prior consent of indigenous peoples:[60]

> «As mentioned above, the right to free, prior and informed consent is embedded in the right to self-determination. The procedural requirements for consultations and free, prior and informed consent respectively are similar. Nevertheless, the right of free, prior and informed consent needs to be understood in the context of indigenous peoples' right to self-determination because it is an integral element of that right.
>
> The duty of the State to obtain indigenous peoples' free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes. Consent is a significant element of the decision-making process obtained through genuine consultation and participation. Hence, the duty to obtain the free, prior and informed consent of indigenous peoples is not only a procedural process but a substantive mechanism to ensure the respect of indigenous peoples' rights.»

EMRIP here concludes that the principle of indigenous peoples' free and informed prior consent is embedded in the right to self-determination and that its content is somewhat different from the right of consultation. EMRIP states that not only does the principle of prior consent give indigenous peoples a right to be involved in external decision-making processes, but also a right to effectively determine the outcome of decision-making that affects them.

The draft for the Nordic Sami Convention – as submitted by the Nordic group of experts who was mandated to prepare – seeks to apply UNDRIP and other international human rights instruments to a Sami context.[61] The draft convention recognizes that the Sami are one people who have the right to self-determination in accordance with international law, and that the Sami people, in pursuance of these rules and provisions, have a right to decide on their economic, social and cultural development and to dispose of their natural resources for their own purposes.[62]

Chapter II of the draft convention related to Sami administration is based on the assumption that the Sami people have a right to self-determination, but at the same time it is based on recognition that this right must be adapted to the right to self-determination of the Finnish, Norwegian and Swedish peoples. The result of this is a proposal for a sliding scale for Sami authority and influence, where competing rights are taken into account, and where the degree of Sami authority and influence is linked to the importance of the issue to the Sami community. This scale goes from the independent and binding decisions of the Sami

58 Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx

59 UN Human Rights Council, http://www2.ohchr.org/english/bodies/hrcouncil/

60 Final report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/18/42, 17.08.2011, ("Annex", art. 20–21), http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42_en.pdf

61 Nordic Sami Convention, draft submitted by a Finnish-Norwegian-Swedish-Sami group of experts on 26 October 2005. The draft for the Convention was submitted two years prior to the adoption of UNDRIP by the UN General Assembly. The final version of UNDRIP, however, is insignificantly different from the negotiated proposal available at the time the Nordic group of experts submitted their proposal.

62 Article 3.

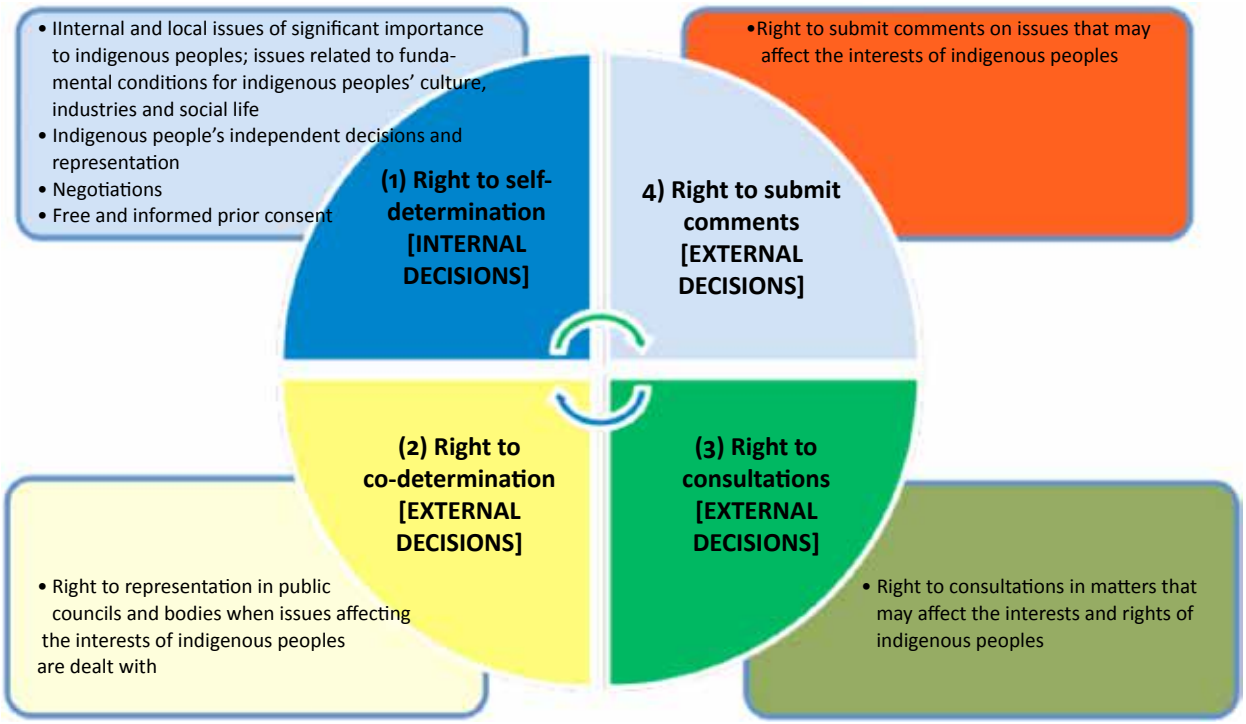



*Figure 3: Based on the draft Nordic Sami Convention and UNDRIP, the figure attempts to illustrate the lines of connection between the right to self-determination and indigenous peoples' right to take part in decision-making in matters that affect them.*

Parliament to its influence through consultations. The figure below (Figure 3) attempts to provide a visual illustration of the main elements in the lines of connection between the right to self-determination and the right to participate in decision-making, on the basis of the draft Sami Convention and the UN Declaration on the Rights of Indigenous Peoples.

The Nordic group of experts that prepared the draft Nordic Sami Convention makes the following statement on the lines of connection between the right to self-determination and the right to participate in external decision-making processes in matters affecting them:[63]

> *"The right to self-determination does not mean an unconditional right to make unilateral decisions. For some types of issues the right to self-determination will imply a right to decide alone, whereas for other types of issues interaction in various forms is required. Article 15 [in the draft convention] applies where the Sami Parliaments are entitled to act on their own. In the following articles [in Chapter II of the draft convention] the interaction between the Sami Parliaments and other authorities is regulated more in detail."*

Article 15 of the draft convention establishes that the Sami Parliaments have a right to make independent decisions on issues where, in pursuance of national or international law, they have an authority to do so. It further establishes that the Sami Parliaments may enter into cooperation agreements with national, regional and local units to strengthen Sami culture and social life. The draft Convention presupposes that the Sami Parliament, like other bodies, needs a legal authority to make decisions involving the exercise of authority. Decisions not implying any exercise of authority can be made by the Sami Parlia-

63 Nordic Sami Convention, draft submitted by a Finnish-Norwegian-Swedish-Sami group of experts on 26 October 2005, p. 216-217.

ment without any legal authority. This is the core of the reference to national law in Article 15 of the draft Convention. The reference to international law is first and foremost future-oriented. The justification given for this future-orientation is that the international rules relating to the legal position of indigenous peoples may be developed in such a way they will give indigenous peoples an extended right to make decisions, and concludes that if so, the Sami Parliament shall exert this right on behalf of the Sami people. The group of experts submitted the draft Convention in 2005. A little less than two years later the UN General Assembly adopted a special UN declaration on the right of indigenous peoples ((UNDRIP), which contains comprehensive provisions relating to indigenous peoples' rights in decision-making processes. UNDRIP obliges states, in consultation and cooperation with indigenous peoples, to take the appropriate measures, including legislative measures, to achieve the ends of the Declaration. The most loyal follow-up of UNDRIP would be for government authorities, in cooperation with the Sami Parliament, to carry out a complete review of the provisions of the Declaration with the purpose of securing, as loyal, an implementation of the Declaration as possible, e.g. through legislative measures. Such review and codification might, among other things, contribute to a stronger formalization of the authority of the Sami Parliament.

Formally, UNDRIP does not establish legal obligations for the states in the same way as a ratified convention. This does not mean, however, that UNDRIP does not confirm and affirm certain obligations for the states. The sources of law in international law are not limited to ratified conventions. In the statutes of the UN International Court of Justice in The Hague a list of the general sources of such law is provided. Even if the statutes are not directly binding for anyone but the International Court, they nevertheless express what other international bodies, including the monitoring bodies for human rights, will use as sources of law in connection with concrete issues or legal issues. Article 38 of the Statues describes the sources of law on which the International Court shall base its decisions; identified as primary and secondary sources respectively. Primary sources of law consist of treaties acceded to by the states [ratified conventions], international custom and general principles of law recognized by civilized nations, cf. the Statutes, Article 38 (1) letters a-c.

It is clear that UNDRIP is not to be considered as a treaty or a convention. The issue, then, is whether the Declaration contains provisions expressing international custom and/or general principles of law. If this is the case, UNDRIP cannot be disregarded on the basis of its not establishing any obligations for the State.

The UN Special Rapporteur on the Rights of Indigenous Peoples has emphasized that UNDRIP is a manifestation of an international consensus as regards the content and scope of the rights of indigenous peoples. He underlines that UNDRIP is established on the basis of already existing international human rights norms and practices, including the practice that has developed regarding the understanding of the UN Covenant on Civil and Political Rights (CP). The Special Rapporteur underlines that UNDRIP does not establish any new or special rights for indigenous peoples, but rather applies these rights to indigenous peoples' special cultural, historical, social and economic situation. Furthermore, the Special Rapporteur emphasises that in many respects UNDRIP reflects international customary law and general international principles of law:[64]

> «Albeit clearly not binding in the same way that a treaty is, the Declaration relates to already existing human rights obligations of States, as demonstrated by the work of United Nations treaty bodies and other human rights mecha-

64 A/HRC/9/9, 11.08.2008, Chapter III C, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/149/40/PDF/G0814940.pdf?OpenElement

> nisms, and hence can be seen as embodying to some extent general principles of international law. In addition, insofar as they connect with a pattern of consistent international and State practice, some aspects of the provisions of the Declaration can also be considered as a reflection of norms of customary international law. In any event, as a resolution adopted by the General Assembly with the approval of an overwhelming majority of Member States, the Declaration represents a commitment on the part of the United Nations and Member States to its provisions, within the framework of the obligations established by the United Nations Charter to promote and protect human rights on a non-discriminatory basis»

The Special Rapporteur points out that in certain cases UNDRIP may be considered as a reflection of international customary law. International customary law is developed through the practice of states. In a human rights context such practice is largely limited to the multilateral behaviour of States. The practice of the State in connection with human rights, therefore, is primarily developed through the speeches and votes by representatives of the State at the General Assembly of the UN. The Supreme Court of Belize has expressed a similar view in a hearing of a matter related to the right of indigenous peoples' to land. The Court concluded, among other things, that the sources of law in international law are not limited to binding conventions, and that Article 26 of UNDRIP reflects general international principles of law. The justice delivering the leading judgement of the court stated the following regarding the position of UNDRIP as a source of law:

> «…importantly in this regard is the recent Declaration on the Rights of Indigenous Peoples adopted by the General Assembly of the United Nations on 13 September 2007. Of course, unlike resolutions of the Security Council, General Assembly resolutions are not ordinarily binding on Member States. But where these resolutions or Declarations contain principles of general international law, states are not expected to disregard them. This Declaration – GA Res. 61/295 - was adopted by an overwhelming number of 143 states in favour with only four states against with eleven abstentions. It is of some signal importance, in my view, that Belize voted in favour of this declaration. And I find its article 26 of special resonance and relevance in the context of this case, reflecting, as I think it does the growing consensus and the general principles of international law on indigenous peoples and their lands and resources»

The right of indigenous peoples to self-determination is linked to the right to participate in decision-making in various ways. Indigenous peoples have the right to make independent decisions in matters affecting their internal and local affairs and to promote their own economic, social and cultural development. Indigenous peoples' independent decisions made by virtue of their right to self-determination also form the basis for their collective participation in external decision-making processes that affect them.

In principle, with respect to indigenous peoples' internal and local affairs, government authorities have no role except functioning as a guarantor to make sure that individual human rights are not violated. From Article 46 (2) of UNDRIP, it is stated that the rights enunciated in the Declaration shall be exercised with respect for all human rights and fundamental freedoms. The provision underlines, however, that the exercise of the rights set forth in the Declaration shall not be subject to any other limitations than those determined by law and in accordance with international human rights obligations. Thus, any legislation that is not in accordance with the international human rights obligations of the State will not impose any such limitations.

Indigenous peoples are in a situation where the decisions of government authorities

affect their rights and interests in various ways, and therefore it is not possible to establish an absolute division between indigenous peoples' decisions in internal and local affairs and their effective participation in external decision-making processes. The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) states the following on the connection and interaction between indigenous peoples' independent decisions and their right to take part in external decision-making that affects them:[65]

> «As affirmed in articles 5, 18, 36 and 37 of the Declaration on the Rights of Indigenous Peoples, and within the ambit of the right to self-determination, indigenous peoples have the right to make independent decisions in all matters relating to their internal and local affairs, and to effectively influence external decision-making affecting them if they choose to participate in such processes …»

If this conclusion is applied to a Sami context, it implies that in certain cases the Sami Parliament has the right to make independent and binding decisions. This conclusion is important in regard to the conception of Article 15 in the draft Nordic Sami Convention. As mentioned above, it must be assumed that in certain cases the Sami have right to decide alone. Among other things this applies to internal and local Sami affairs. In other cases various forms of interaction between the Sami and the state, county and municipal authorities would be natural.

In matters of material importance to the Sami, and which are dealt with in external decision-making processes, it must be assumed that the Sami are given a real opportunity to affect the decision, e.g. through negotiations with government authorities. However, it must also be assumed that in matters dealt with through external decision-making processes, the Sami possess real authority as a consequence of the duty of the State in certain cases to obtain the free and informed consent of the Sami prior to the implementation of or permission to implement any measures.

The Nordic group of experts is of the opinion that in matters of material importance to the Sami, the Sami Parliament has a right to negotiate before a decision is made by public authorities and at an early enough stage in the process that the Sami Parliaments are able to influence the procedure and the outcome. The group of experts states that the objective of such negotiations must be that the negotiating parties reach agreement, which should not necessarily be an absolute requirement.[66] The group of experts emphasises that the Sami Parliament does not have a negotiating right in any question, and that the right to negotiations only applies in matters of significant importance to the Sami. The group of experts states that land and resource management, as well as environmental management will be important areas where the Sami Parliament will have right to negotiations, because such issues are of significant importance to the Sami. The group also underlines that the right of the Sami Parliament to negotiations applies to all levels and to all types of issues of significant importance to the Sami, including legislation, administration and issues related to Sami interests, and the budget for the Sami Parliament.[67] The right to negotiations is given rise by the right to self-determination. The right to negotiations is more comprehensive than the right to consultation. Consultations with the Sami Parliament and affected Sami shall be conducted in all matters that may affect Sami interests and rights, whereas the right to negotiations applies to all matters of significant importance to the Sami. In other words, it is the nature of the issue and its significance and importance to the Sami

65 Final report on the study on indigenous peoples and the right to participate in decision-making; Expert Mechanism advice No. 2 (2011), Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/18/42, 17.08.2011, § 19 (p. 26).

66 Nordic Sami Convention, draft submitted by a Finnish-Norwegian-Swedish-Sami group of experts on 26 October 2005, see draft Convention, Article 16, as well as comments on p. 218 ff.

67 Ibid.

that determine whether consultations or negotiations are required.

The purpose of the proposed right to negotiations is that in relevant matters agreement between the negotiating parties should be sought. The proposed general right to negotiations does not give the Sami Parliament a veto. In principle, therefore, public authorities may make decisions in such matters even if agreement with the Sami Parliament is not obtained.

In matters that may significantly harm the fundamental conditions of Sami culture, Sami industries or Sami social life, however, the situation is different. The Nordic group of experts proposes that the State should not have a right to adopt or allow measures that, to a significant degree, may harm the basic conditions of Sami culture, Sami industries or Sami social life, unless consented to by the Sami Parliament.[68]

Article 16 (2), then, in the draft Convention is formulated as a veto for the Sami Parliament as regards measures that may harm the basic conditions of Sami culture, Sami industries or Sami social life. This proposal is in accordance with the right to self-determination and the principle of the free and informed prior consent of indigenous peoples. It is also in accordance with the practice developed by the UN Committee on Human Rights as regards the understanding of Article 27 in the UN Covenant on Civil and Political rights (CP). The Sami Rights Committee that reported on the right to, and disposal and use of, land and water in traditional Sami areas outside Finnmark, has concluded that CP Article 27 establishes an absolute bar against infringements on the material Sami cultural exercise, because under no circumstances may infringements be implemented that place them on an equal footing with a refusal of the right to cultural exercise.[69] In such cases the free and informed prior consent of indigenous peoples is required before the implementation of any measures or permission to implement them.

The State's obligation to obtain indigenous peoples' free and informed prior consent in matters of great and crucial importance to indigenous peoples is closely linked to the

right of indigenous peoples to self-determination. As mentioned above, the Nordic group of experts that prepared the draft Nordic Sami Convention is of the opinion that the consent of the Sami Parliament is required in matters that may materially harm the basic conditions of Sami culture, Sami industries and Sami economic life. In practical terms this means that in such matters the Sami Parliament shall have the final say, as to whether such measures may be implemented or whether their implementation should be permitted.[70]

With reference to the requirement for indigenous peoples' free and informed prior consent in matters of fundamental importance to their rights and their dignity and welfare, established by the Declaration on the Rights of Indigenous Peoples (UNDRIP), the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has drawn a similar conclusion. EMRIP states that in the assessment of whether an issue should be regarded as of fundamental importance to the indigenous people in question, a number of considerations have to be made, including indigenous peoples' own priorities, the nature of the issue and potential effects on the relevant indigenous people, including the cumulative effects of previous infringements.[71] EMRIP states that for instance the free and informed prior consent of indigenous peoples is required in connection with large-scale extraction of natural resources in areas of indigenous peoples and in connection with the establishment of national parks in their areas.[72]

68 Ibid., footnote 29.
68 NOU 2007:13, p. 918.

70 Nordic Sami Convention, draft submitted by a Finnish-Norwegian-Swedish-Sami group of experts on 26 October 2005, p. 218.
71 Final report on the study on indigenous peoples and the right to participate in decision-making; Expert Mechanism advice No. 2 (2011), Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/18/42, 17.08.2011, (Annex: Expert Mechanism Advice No. 2, Section 22).
72 Progress report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/15/35, 23.08.2010, § 34, http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.35_en.pdf

> «Particular emphasis is placed on free, prior and informed consent for projects or measures that have a substantial impact on indigenous communities, such as those resulting from large-scale natural resource extraction on their territories or the creation of natural parks, or forest and game reserves on their lands and territories.»

UNDRIP presupposes that the free and informed prior consent of indigenous peoples must be obtained for a number of types of issues: forced removal from their own areas [Article 10]; transfer of property of a cultural, intellectual, religious or spiritual nature [Article 11 (2)]; adoption and implementation of legislative or administrative measures that may affect indigenous peoples [Article 19]; compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent [Article 28 (1)]; storing or depositing dangerous materials on the land and territories of indigenous peoples [Article 29 (2)]; projects affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources [Article 32 (2)].[73]

Article 19 of UNDRIP can be used to illustrate the importance and relevance of self-determination in relation to external decision-making processes. This provision indicates that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that affect them. This illustrates the importance and relevance of self-determination in relation to external decision-making processes, since Article 19 presupposes that the free and informed prior consent of indigenous peoples is the result of their internal collective decision-making processes.

In other words, free and informed consent of indigenous peoples must be the result of internal processes and mechanisms whereby indigenous peoples make independent and collective decisions. The obligation of the State to obtain the free and informed consent of indigenous peoples also implies that indigenous peoples have a right to retain their consent and a right to set forth terms and conditions for a possible consent.[74] The principle of indigenous peoples' free and informed consent – as a right – must be interpreted in the light of the right to self-determination.[75] There are many procedural similarities between an ordinary consultation process and a process whereby State authorities obtain the free and informed prior consent of indigenous peoples. The difference is that the principle of the free and informed prior consent of indigenous peoples recognizes their right to retain their consent and set forth terms and conditions for it. This implies, for instance, that the State may not implement measures or permit the implementation of measures that may materially harm the fundamental conditions of the Sami community unless consented to by the Sami Parliament.

Another important element of the right to self-determination is the right of representation for indigenous peoples. This is often characterised as an external aspect of the right of indigenous peoples to self-determination[76] and implies, among other things, that the Sami have the right to represent themselves in national, regional and international contexts.

The Sami Act of Norway establishes the scope for the business and authority of the Sami Parliament. Section 2-1 of the Sami

73 See Annex 6: The UN Declaration on the Rights of Indigenous Peoples.

74 Final report on the study on indigenous peoples and the right to participate in decision-making; Expert Mechanism advice No. 2 (2011), Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/18/42, 17.08.2011, (Annex: Expert Mechanism Advice No. 2, § 23).

75 Ibid., § 63; Annex: Expert Mechanism Advice No. 2, § 20.

76 Nordic Sami Convention, draft submitted by a Finnish-Norwegian-Swedish-Sami group of experts on 26 October 2005, p. 205.

Act clarifies that the business of the Sami Parliament is any matter that, in its view, particularly affects the Sami people. The Sami Parliament may
on its own initiative raise and pronounce an opinion on any matter coming within the scope of its business. It would be natural to interpret the formulation "any matter that in its view particularly affects the Sami people" to also include international matters affecting the Sami as an indigenous people. It is a fact that international issues increasingly affect the Sami community directly. The UN, for instance, has established a number of mandates or mechanisms that deal exclusively with problems related to indigenous peoples: UN Permanent Forum on Indigenous Peoples, Expert Mechanism on the Rights of Indigenous Peoples, and Special Rapporteur on the Right of Indigenous Peoples. The independent representation of the Sami Parliament is based on the right to self-determination, and its political mandate comes from the Sami people and the provisions of the Sami Act.

The Finnish Sami Act recognizes the national and international right of representation of the Sami Parliament. The Act states that the Sami Parliament shall represent the Sami in Finland both in national and international contexts in matters falling within its scope of responsibility and mandate.[77] The Swedish Sami Act has no similar provision; nevertheless it is stated in SOU (Swedish Official Report) 2002:77 that there is no basis for refusing the Sami Parliament to represent the Sami internationally.[78] SOU 2002:77 establishes that «att det inte kan komma i fråga at Sami Parliamentet skulle kunna få en partsställning i FN, eftersom FN er en sammanslutning mellan nationer. […] Samtidigt bör det inte heller vara ett hinder att Sami Parliamentet företräder samerna vid möten med andra länder eller organisationer och myndigheter i såväl Sverige som i främmande länder.» ("it is out of the question to make the Sami Parliament a party in the UN, since the UN is an organization of states […] At the same time the Sami Parliament should not be prevented from representing the Sami at meetings with other countries or organisations and authorities both in Sweden and abroad.")

The Nordic group of experts suggests that a future Sami Convention must recognize the right of the Sami Parliaments in the respective countries to represent the Sami in intergovernmental matters and that the States are responsible for promoting Sami representation in international institutions and participation in international processes (Article 19 of the draft Convention). The group of experts concludes that such right of representation follows from the role of the Sami Parliaments as the natural administrators of the Sami right to self-determination.

The latest international development shows that indigenous peoples' independent representation is a current issue with the UN. In September 2011 the UN Council on Human Rights adopted a resolution on indigenous peoples and human rights, in which one of the topics was the issue of indigenous peoples' representation within the UN.[79] Through this resolution the UN Secretariat has been requested to provide a report on the issue on how collective indigenous peoples' institutions – that are not organized as non-governmental organizations (NGOs) can best be secured independent representation within the UN system.

This development is in accordance with the provisions of UNDRIP, where it is established, inter alia, that necessary measures must be implemented to secure the participation of indigenous peoples in international processes affecting them (Article 41).

77 The Sami Act of Finland, Section 6.
78 SOU 2002://, p. 135

79 Council on Human Rights resolution 18/23, September 2011 (A/HRC/18//L.23), Section 13: «Requests the Secretary-General, in cooperation with the Office of the High Commissioner, the Office of Legal Affairs and other relevant parts of the Secretariat, to prepare a detailed document on ways and means of promoting participation at the United Nations of recognized indigenous peoples' representatives on issues affecting them, as they are not always organized as non-governmental organizations, and on how such participation might be structured, drawing from, inter alia, the rules governing the participation in various United Nations bodies by non-governmental organizations (including Economic and Social Council resolution 1996/31) and by national human rights institutions (including Human Rights Council resolution 5/1 of 18 June 2007 and Commission on Human Rights resolution 2005/74 of 20 April 2005), and to present it to the Council at its twenty-first session.»

UNDRIP (Article 36) further establishes that indigenous peoples have the right to maintain and develop contacts, relations and cooperation with members of their own people across borders (in cases where an indigenous people is divided by international borders), as well as with other

peoples. A corresponding provision is found in ILO Convention No. 169, cf. Article 32. The difference between Article 36 of UNDRIP and Article 32 of the ILO Convention is that the former specifies that the right of representation also applies in relation to "other peoples", whereas the provision of the ILO Convention is limited to cooperation between indigenous peoples across international borders. The reason for this distinction is that UNDRIP recognizes indigenous peoples' right to self-determination whilst the ILO Convention does not deal with self-determination.

The independent representation of the Sami is also a central element in relation to the right to self-determination. As apparent from the above, self-determination does not entail an unconditional right for indigenous peoples to make unilateral decisions, since in some contexts this right must be exerted through various forms of interaction, including co-determination, with other bodies or peoples. In a Sami context, for instance, self-determination may imply that the decision-making authority and responsibility in certain areas are shared between the State, local authorities, the Sami Parliament and any other natural players or parties. The administration of the Finnmark Property is an example of an arrangement that employs Sami co-determination in the management of land and resources in the County of Finnmark.[80] Even if it has been questioned by some as to whether this administrative arrangement fully meets current international provisions on the rights of indigenous peoples, it must nevertheless be concluded that the Sami, through the Sami Parliament, have given their free and informed prior consent to the co-determination arrangement established by the Finnmark Act. It might also be possible to realize co-determination through more moderate forms of Sami influence, e.g. by a representation of the Sami Parliament and other Sami parties in public councils and committees when issues related to Sami

interests are dealt with. The draft Nordic Sami Convention contains a provision relating to this type of co-determination (Article 17). This shows that there are different forms and degrees of co-determination. Effective Sami co-determination presupposes that the relevant public body is operating on the basis of a consensus arrangement or that the Sami are secured a minimum representation and authority of 50/50 in the relevant body.

Consultation arrangements secure a certain influence and participation in decision-making processes for indigenous peoples. However, such arrangements may hardly be construed as co-determination in the above sense, since the decision-making power and responsibility remain with the external decision-maker – normally government authorities. Co-determination presupposes a certain form of shared authority and responsibility between indigenous peoples and other parties. This does not imply, however, that consultation arrangements are insignificant as regards the right of indigenous peoples to participate in decision-making processes, because such arrangements secure a certain influence for indigenous peoples in external decision-making processes. Consultation arrangements between government authorities and indigenous peoples may be an adequate and effective way of securing indigenous peoples' participation in external decision-making processes, provided that the consultations are conducted in a way that is in full agreement with internationally recognized provisions on the states' duty of consultation, in formal as well as in real terms. Fulfilment of the condition that consultations must be carried out in good faith with the objective of agreement or consent

80 The Finnmark Act, Chapter 2, 17 June 2005, http://www.lovdata.no/all/nl-20050617-085.html

to the proposed measures is crucial in an assessment of whether consultation arrangements between states and indigenous peoples function in a satisfactory manner. It does not help much, however, that consultations are conducted in accordance with agreed formal procedures if the political will to take the views of indigenous peoples into account is lacking on the part of the State. The lack of political will on the part of the State to take the views of indigenous peoples into consideration during consultation processes is a big challenge for the world's indigenous peoples.

The ILO Convention (Article 6) and UNDRIP (Articles19 and 32 (2) establish specific requirements and guidelines for the way consultations with indigenous peoples through their representative institutions should be carried out. The requirements regarding consultations indicate that public consultative rounds and a general right to submit statements do not meet the requirements specified regarding consultations.[81] Consultations must be carried out in good faith, in forms that are adapted to the relevant circumstances and with the objective of reaching agreement on or consensus on the proposed measures. The most recent international development shows that increasingly, stricter requirements are established with respect to the consultation duty of the State with indigenous peoples in various fields.

As apparent from the above review, self-determination does not entail an unconditional right for indigenous peoples to make unilateral decisions, since in some contexts different forms of interaction between indigenous peoples and authorities would be natural, e.g. through arrangements of co-determination, consultations and consultative rounds. Discussions and processes carried out within the scope of Gáldu's project show that the general view among Sami resource persons and competence establishments as regards the content and implementation of the right to self-determination in a Sami context is on the whole concurrent with a sliding scale as accounted for here.

81 Final report on the study on indigenous peoples and the right to participate in decision-making; Expert Mechanism advice No. 2 (2011), Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/18/42, 17.08.2011, (Annex: Expert Mechanism Advice No. 2, § 8).

## Annex 1: Programme for seminar on Sami self-determination with respect to land, resources and traditional industries

### Seminar on Sami self-determination: Land, resources and traditional industries

Diehtosiida, Guovdageaidnu 2–3 November 2011

**Programme**

**Wednesday 2 November 2011**

| | |
|---|---|
| 11.30–12.30 | Lunch, Diehtosiida |
| 12.30–14.40 | Registration |
| 12.40–12.50 | Welcome<br>*Lars Anders Baer, Gáldu, Chairman of the Board* |
| 12.50–13.00 | Background and objective<br>*John B. Henriksen, Project Coordinator* |
| 13.00–13.30 | Indigenous peoples' right to land and resources, livelihood and benefit from the utilisation of resources in their areas, assessed in the light of international provisions on indigenous peoples' right to self-determination<br>*Dr. juris Mattias Åhrén, Head of the Sami Council Section on Human Rights* |
| 13.30–14.00 | Questions, comments, discussions |
| 14.00–14.30 | The importance of the right to self-determination for the preservation and development of the South Sami community<br>*Leif Dunfjeld, Senior Adviser, Section for Rights, Industries and Environment of the Sami Parliament* |
| 14.30–15.15 | Questions, comments, discussions |

**Thursday 3 November 2011**

| | |
|---|---|
| 09.00–09.30 | Should the Sami Parliament have any authority in the administration of the saltwater fish resources in Sami areas, and if so, what authority and why?<br>*PhD Steinar Pedersen, Associate Professor Sámi University College* |
| 09.30–10.00 | Questions, comments, discussions |
| 10.00–10.20 | Coffee break |
| 10.20–10.50 | Should the Sami Parliament play any role in the development and administration of Sami reindeer husbandry in Norway, and if so what role and why?<br>*Ellen Inga O. Hætta, Head, Sami Upper Secondary and Reindeer Husbandry School, Guovdageaidnu* |
| 10.50–11.30 | Questions, comments, discussions |
| 12.30–13.00 | Plenary discussion: Local administration of natural resources in Sami areas in the light of Sami self-determination |
| 13.30–14.30 | any other relevant problems |
| 14.30–15.00 | Summary and conclusion |

## Annex 2: List of participants in seminar on Sami self-determination with respect to land, resources and traditional industries

**List of participants**

1) Lars Anders Baer
2) Marianne Balto
3) Karen Marie Eira Buljo
4) Gro Dikkanen
5) Leif Dunfjeld
6) Ellen Inga O. Hætta
7) Aili Keskitalo
8) Sven Roald Nystø
9) Nils Oskal
10) Steinar Pedersen
11) Sigvald Persen
12) Laila Susanne Vars
13) Johan Vasara
14) Mattias Åhrén
15) Máret Kemi
16) May Britt Utsi
17) John B. Henriksen

## Annex 3: Programme for seminar on Sami self-determination and the media

### Seminar on Sami self-determination and the media

Diehtosiida, Guovdageaidnu 8–9 November 2011

**Programme**

**Tuesday 8 November 2011**

| | |
|---|---|
| 11.30–12.30 | Lunch, Diehtosiida |
| 12.30–12.40 | Registration |
| 12.40–12.50 | Welcome<br>*Máret Kemi, Gáldu, adviser* |
| 12.50–13.00 | Background and objective<br>*John B. Henriksen, Project Coordinator* |
| 13.00–13.15 | Introductory comment by the moderator<br>*John Trygve Solbakk, ČálliidLágádus, Publisher* |
| 13.15–13.45 | The coverage of Sami self-determination by Sami media<br>*Katri Somby, PhD student, Sámi University College* |
| 13.45–14.15 | Questions, comments, discussions |
| 14.15–14.30 | Coffee break |
| 14.30–15.30 | Plenary discussion: The responsibility of Sami media regarding the international debate on the right of indigenous peoples to self-determination |

**Wednesday 9 November 2011**

| | |
|---|---|
| 09.00–09.30 | The coverage of issues related to Sami self-determination by Norwegian and Sami media *Nils Johan Heatta, NRK Sápmi, Director and Editor in Chief* |
| 09.30–10.00 | Questions, comments and discussions |
| 10.00–10.30 | Do Sami media have a responsibility for covering issues related to Sami self-determination, and if so, what responsibility and why?<br>*Arne Johansen Ijäs, Sámi University College, Associate Professor of Journalism* |
| 10.30–11.00 | Questions, comments, discussions |
| 11.00–12.00 | Lunch, Diehtosiida |
| 12.00–12.30 | How has the coverage of issues related to Sami rights, including the right to self-determination by Sami media developed since the 1970s?<br>*Bjarne Store-Jakobsen, Political Adviser to the Sami Parliament Council, the Sami Parliament* |
| 12.30–13.00 | Questions, comments, discussions |
| 13.15–14.30 | Any other problems |
| 14.30–15.00 | Summary and conclusion |

## Annex 4: List of participants in seminar on Sami self-determination and the media

**Deltakerliste**

1) John Trygve Solbakk
2) Nils Johan Heatta
3) Katri Somby
4) Arne Johansen Ijäs
5) Bjarne Store-Jakobsen
6) Liv Inger Somby
7) Roger Østby
8) Carl Erik Moksnes
9) Siljá Somby
10) Máret Kemi
11) May Britt Utsi
12) John B. Henriksen
13) Janne Hansen

## Annex 5: Expert Mechanism Advice No. 2 (2011):[82]

***Indigenous peoples and the right to participate in decision-making***

1. Indigenous peoples are among the most excluded, marginalized and disadvantaged sectors of society. This has had a negative impact on their ability to determine the direction of their own societies, including in decision-making on matters that affect their rights and interests. This can still be a major factor contributing to their disadvantaged position. Decision-making rights and participation by indigenous peoples in decisions that affect them is necessary to enable them to protect, inter alia, their cultures, including their languages and their lands, territories and resources. In many cases, however, indigenous peoples practiced or continue to practice their own forms of governance.

2. The right of indigenous peoples to participation is well established in international law. More recently, the indigenous-rights discourse has seen increased focus on rights not only allowing indigenous peoples to participate in decision-making processes affecting them, but to actually control the outcome of such processes.

3. This spectrum of rights is well illustrated by the Declaration on the Rights of Indigenous Peoples, which contains more than 20 general provisions pertaining to indigenous peoples and decision-making. These rights range from the right to self-determination encompassing a right to autonomy or self-government to rights to participate and be actively involved in external decision-making processes. Other provisions establish specific duties for States to ensure the participation of indigenous peoples in decision-making, inter alia, to obtain their free, prior and informed consent; to consult and cooperate with indigenous peoples; and to take measures in conjunction with them.

4. As a normative expression of the existing international consensus regarding the individual and collective human rights of indigenous peoples in a way which is coherent with already existing international human rights standards, the Declaration on the Rights of Indigenous Peoples provides a framework for action aiming at the full protection and implementation of the rights of indigenous peoples, including their right to participate in decision-making.

5. With regard to participatory rights, international human rights law refers to the right to participate in public affairs in both general and specific forms, including as set out in various human rights treaties, such as in article 25 of the International Covenant on Civil and Political Rights and in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO).63 Participation in public affairs in its general form includes involvement in the conduct of public affairs. Electoral participation is only one specific expression of the right to participation. Moreover, the right to take part in public affairs is not limited to participation in formal political institutions, as it also includes participation in civil, cultural and social activities of a public nature. The right to participate in public affairs has conventionally been understood as a civil and political right of the individual. In the context of indigenous peoples, however, the right also takes on a collective aspect, implying a right of the group as a people to exercise decision-making authority.

6. The right of indigenous peoples to participate in decision-making is also affirmed in international jurisprudence more generally, such as in the decision of the Inter-American Court of Human Rights in which the Court recognized indigenous peoples' right to organize themselves in ways that are consistent with their customs and traditions under State electoral laws

82 EMRIP: Expert Mechanism advice No. 2 (20011), Final report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, Annex, s. 22–29, UN Document A/HRC/18/42, 17.08.2011. Please note that footnotes have not been reproduced in this annex. For complete reference, please see the original document at http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42_en.pdf

6. The African Commission on Human and Peoples' Rights has expressed concern about the exclusion of indigenous peoples from decision-making about the treatment of their lands.

7. Article 6 of ILO Convention No. 169 requires that consultations with indigenous peoples be carried out through institutions that are representative of indigenous peoples. Indigenous peoples should control the process by which representativeness is determined, in accordance with human rights standards as set out in, inter alia, the Declaration on the Rights of Indigenous Peoples.

8. The requirement that consultations be carried out through appropriate procedures implies that general public hearing processes are not normally regarded as sufficient to meet this procedural standard. Consultation procedures need to allow for the full expression of indigenous peoples' views, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and consensus may be achieved.

9. Moreover, consultations should be undertaken in good faith and in a form appropriate to the relevant context. This requires that consultations be carried out in a climate of mutual trust and transparency. Indigenous peoples must be given sufficient time to engage in their own decision-making process, and participate in decisions taken in a manner consistent with their cultural and social practices. Finally, the objective of consultations should be to achieve agreement or consensus.

10. As indicated above, the duty to consult indigenous peoples is further reflected in a number of provisions of the Declaration on the Rights of Indigenous Peoples. Like ILO Convention No. 169, Declaration articles 19 and 32(2) require States to consult indigenous peoples in good faith, through appropriate procedures, with the objective of obtaining their agreement or consent when measures that may affect indigenous peoples are considered.

11. Moreover, a number of United Nations human rights treaty bodies have established that States have a duty, within the framework of their treaty obligations, to effectively consult indigenous peoples on matters affecting their interests and rights and, in some cases, to seek to obtain the consent of indigenous peoples.

12. The duty of States to consult with indigenous peoples and to obtain their consent are also expressed in the jurisprudence of, inter alia, the universal periodic review of the Human Rights Council, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, the Special Rapporteur on the rights of indigenous peoples, and in international policy, some of which is described in the Expert Mechanism's progress report on indigenous peoples and the right to participate in decision-making. In the progress report, the Expert Mechanism noted that several treaties between States and indigenous peoples affirmed the principles of indigenous peoples' consent as an underpinning of the treaty relationship between States and indigenous peoples.

13. The right to full and effective participation in external decision-making is of fundamental importance to indigenous peoples' enjoyment of other human rights. For instance, the right of indigenous peoples to identify their own educational priorities and to participate effectively in the formulation, implementation and evaluation of education plans, programmes and services is crucial for their enjoyment of the right to education. When implemented as a treaty right, the right to education can offer a framework for reconciliation. Truth and reconciliation commissions offer a model for improved relations between States and indigenous peoples as well.

14. The participation of indigenous peoples in external decision-making is of crucial importance to good governance. One of the objectives of international standards on indigenous peoples' rights is to fill the gap between their rights on the one hand and their implementation on the other hand.

15. Many indigenous peoples remain vulnerable to top-down State interventions that take little or no account of their rights and circumstances. In many instances, this is an underlying cause for land dispossession, conflict, human rights violations, displacement and the loss of sustainable livelihoods.

16. The duty to consult indigenous peoples applies whenever a measure or decision specifically affecting indigenous peoples is being considered (for example, affecting their lands or livelihood). This duty also applies in situations where the State considers decisions or measures that potentially affect the wider society, but which affect indigenous peoples, and in particular in instances where decisions may have a disproportionally significant effect on indigenous peoples.

17. With regard to the right to self-determination, the Declaration on the Rights of Indigenous Peoples affirms that indigenous peoples, in exercising their right to self-determination, have the right to develop and maintain their own decision-making institutions and authority parallel to their right to participate in external decision-making processes that affect them. This is crucial to their ability to maintain and develop their identities, languages, cultures and religions within the framework of the State in which they live.

18. Article 3 of the Declaration on the Rights of Indigenous Peoples mirrors common article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Consequently, indigenous peoples have the right to determine their own economic, social and cultural development and to manage, for their own benefit, their own natural resources. The duties to consult with indigenous peoples and to obtain their free, prior and informed consent are crucial elements of the right to self-determination.

19. As affirmed in articles 5, 18, 36 and 37 of the Declaration on the Rights of Indigenous Peoples, and within the ambit of the right to self-determination, indigenous peoples have the right to make independent decisions in all matters relating to their internal and local affairs, and to effectively influence external decision-making affecting them if they choose to participate in such processes.

20. As mentioned above, the right to free, prior and informed consent is embedded in the right to self-determination. The procedural requirements for consultations and free, prior and informed consent respectively are similar. Nevertheless, the right of free, prior and informed consent needs to be understood in the context of indigenous peoples' right to self-determination because it is an integral element of that right.

21. The duty of the State to obtain indigenous peoples' free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes. Consent is a significant element of the decision-making process obtained through genuine consultation and participation. Hence, the duty to obtain the free, prior and informed consent of indigenous peoples is not only a procedural process but a substantive mechanism to ensure the respect of indigenous peoples' rights.

22. The Declaration on the Rights of Indigenous Peoples requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance for their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include

the perspective and priorities of the indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous infringements or activities and historical inequities faced by the indigenous peoples concerned. Premised on the right to self-determination, article 10 of the Declaration prohibits the forcible removal of indigenous peoples from their lands and territories. In contrast, ILO Convention No. 169, article 16(2), includes procedural elements that permit forced relocation as an exceptional measure, without the consent of the indigenous peoples concerned. The Declaration moreover requires States to obtain the free, prior and informed consent of indigenous peoples in certain other situations, as reflected in its articles 11(2), 19, 28(1), 29(2), 32(2) and 37.

23. The duty to obtain the free, prior and informed consent of indigenous peoples presupposes a mechanism and process whereby indigenous peoples make their own independent and collective decisions on matters that affect them. The process is to be undertaken in good faith to ensure mutual respect. The State's duty to obtain free, prior and informed consent affirms the prerogative of indigenous peoples to withhold consent and to establish terms and conditions for their consent.

24. The elements of free, prior and informed consent are interrelated; the elements of "free", "prior" and "informed" qualify and set the conditions for indigenous peoples' consent; violation of any of these three elements may invalidate any purported agreement by indigenous peoples.

25. The element of "free" implies no coercion, intimidation or manipulation; "prior" implies that consent is obtained in advance of the activity associated with the decision being made, and includes the time necessary to allow indigenous peoples to undertake their own decision-making processes; "informed" implies that indigenous peoples have been provided all information relating to the activity and that that information is objective, accurate and presented in a manner and form understandable to indigenous peoples; "consent" implies that indigenous peoples have agreed to the activity that is the subject of the relevant decision, which may also be subject to conditions.

***Measures***

26. Reform of international and regional processes involving indigenous peoples should be a major priority and concern. In particular, multilateral environmental processes and forums should ensure full respect for the rights of indigenous peoples and their effective participation including, for example, in relation to the negotiation of the Nagoya Protocol.

27. Respect for indigenous peoples' right to participate in decision making is essential for achieving international solidarity and harmonious and cooperative relations. Consensus is not a legitimate approach if its intention or effect is to undermine the human rights of indigenous peoples. Where beneficial or necessary, alternative negotiation frameworks should be considered, consistent with States' obligations in the Charter of the United Nations and other international human rights law.

28. Free, prior and informed consent implies that States have a duty to obtain indigenous peoples' consent in relation to decisions that are of fundamental importance for their rights, survival, dignity and well-being. States should ensure that consultations and negotiations with indigenous peoples as required by article 18 of the Declaration on the Rights of Indigenous Peoples and consistent with other human rights standards.

29. States have a duty to respect indigenous peoples' right to participate in all levels of decision-making, including in external decision-making, if the indigenous peoples concerned so choose and in the forms of

their choosing, including, where appropriate, in co-governance arrangements.

30. States should respect and assist both traditional and contemporary forms of indigenous peoples' governance structures, including their collective decision-making practices.

31. States should enact and implement constitutional and other legal provisions that ensure indigenous peoples' participation in decision-making consistent with the Declaration on the Rights of Indigenous Peoples, in particular where that is sought by affected indigenous peoples.

32. Indigenous women often face exceptional impediments to participation in decision-making. States, international organizations, indigenous peoples and other decision-making entities should therefore conduct more intensive studies and design appropriate mechanisms to facilitate the participation of indigenous women in their activities and increase their access to address difficulties facing indigenous women seeking to fully participate in decision-making. Likewise, the inclusion of indigenous youth in decision-making is essential in both internal and external, including legislative, decision-making.

33. States and relevant international and domestic organizations should ensure that indigenous peoples have the financial and technical capacity to engage in consultation and consent-seeking exercises and to participate in regional and international decision-making processes.

34. States should also recognize that the right to self-determination of indigenous peoples constitutes a duty for States to obtain indigenous peoples' free, prior and informed consent, not merely to be involved in decision-making processes, but a right to determine their outcomes. Treaties, as evidence of the right to self-determination, and the relationship they represent are the basis for a strengthened partnership, consistent with the Declaration on the Rights of Indigenous Peoples.

35. States shall respect indigenous peoples' right to self-determination consistent with the Declaration on the Rights of Indigenous Peoples and other international standards. States shall ensure that indigenous peoples have the means to finance their autonomous functions.

36. The United Nations should, in accordance with the Declaration on the Rights of Indigenous Peoples, establish a permanent mechanism or system for consultations with indigenous peoples' governance bodies, including indigenous parliaments, assemblies, councils or other bodies representing the indigenous peoples concerned, to ensure effective participation at all levels of the United Nations.

37. ILO should enable effective representation by indigenous peoples in its decision-making, and especially with regard to the implementation and supervision of ILO Conventions and policies relevant to indigenous peoples.

38. UNESCO should enable and ensure effective representation and participation of indigenous peoples in its decision-making, especially with regard to the implementation and supervision of UNESCO Conventions and policies relevant to indigenous peoples, such as the 1972 World Heritage Convention. Robust procedures and mechanisms should be established to ensure indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites.

39. National human rights institutions, as independent bodies, should play an important role in bringing together representatives of Government and indigenous peoples, thus promoting indigenous peoples' participation in discussions and decisions on issues that concern them. National

human rights institutions can also stress the need for all stakeholders to ensure indigenous representatives are involved in decision-making. Such institutions, through their own programmes, could also actively involve indigenous peoples in decision-making on related issues.

## Annex 6: United Nations Declaration on the Rights of Indigenous Peoples

United Nations A/61/L.67*
**General Assembly**

Distr.: Limited
12 September 2007
Original: English

**Sixty-first session**
Agenda item 68
**Report of the Human Rights Council**

Belgium, Bolivia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Estonia, Finland, Germany, Greece, Guatemala, Hungary, Latvia, Nicaragua, Peru, Portugal, Slovenia and Spain: draft resolution

**United Nations Declaration on the Rights of Indigenous Peoples**

*The General Assembly*,

*Taking note* of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006, by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

*Recalling* its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

*Adopts* the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

**United Nations Declaration on the Rights of Indigenous Peoples**

*The General Assembly*,

*Guided by* the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

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

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,
*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing also* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

*Article 1*
Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

*Article 2*
Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

*Article 3*
Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 4*
Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

*Article 5*
Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

*Article 6*
Every indigenous individual has the right to a nationality.

*Article 7*
1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

*Article 8*
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
d) Any form of forced assimilation or integration;
e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

*Article 9*
Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

*Article 10*
Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

*Article 11*
1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

*Article 12*
1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

*Article 13*
1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

*Article 14*
1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

*Article 15*
1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

*Article 16*
1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

*Article 17*
1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

*Article 18*
Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

*Article 19*
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

*Article 20*
1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

*Article 21*
1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

*Article 22*
1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

*Article 23*
Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

*Article 24*
1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

*Article 25*
Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

*Article 26*
1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

*Article 27*
States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

*Article 28*
1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*Article 29*
1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

*Article 30*
1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or

requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

*Article 31*
1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

*Article 32*
1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

*Article 33*
1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

*Article 34*
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

*Article 35*
Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

*Article 36*
1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

*Article 37*
1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the

rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

*Article 38*
States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39*
Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40*
Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*
The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*
The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*
The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*
All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*
Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

*Article 46*
1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

## Gáldu – an independent, relevant and reliable source of information covering the rights of the Sami and other Indigenous peoples

***GÁLDU – Resource Centre for the Rights of Indigenous Peoples*** **is located in Guovdageaidnu/Kautokeino, Norway, and aims to increase general knowledge about and understanding of Sami and indigenous rights. Our principal activity consists of collecting, adapting and distributing relevant information and documentation regarding indigenous rights in Norway and abroad. Targeted are seekers of knowledge about indigenous rights, including schools, voluntary organisations, public institutions and authorities.**

GÁLDU

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