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Another One Bites the Dust? A Critical Appraisal of the New Draft of the Nordic Saami Convention from the Perspective of Indigenous Rights

The Nordic Saami Convention is a proposed agreement between Norway, Sweden and Finland that will create the legal framework for the protection of the Saami peoples' rights. Saami parliaments and communities expressed their disagreement with the initial text. The article analyses the Draft of the Nordic Saami Convention from the perspective of protection of indigenous rights. The methodology used is desk analysis of the scientific literature and policy documents. The provisions given in the Draft are compared against documents concerning indigenous and Saami rights. Particular attention is paid to land rights, the right to self-determination, traditional occupations and language. The analysis shows that the Draft does not acknowledge the indigenous rights of the Saami people to the fullest, nor the specific cultural, economic, historic or linguistic context of the Saami.

Keywords: Saami, Nordic Saami Convention, indigenous peoples, Norway, Sweden, Finland.

Še en propadel poskus? Kritična ocena novega osnutka Nordijske konvencije o Samijih z vidika pravic domorodnih ljudstev

Nordijska konvencija o Samijih je predlagani sporazum med Norveško, Švedsko in Finsko, ki prinaša pravni okvir za zaščito pravic ljudstva Samijev. Samijski parlamenti in skupnosti so izrazili nestrinjanje z osnutkom besedila. Članek analizira osnutek Nordijske konvencije o Samijih z vidika zaščite pravic domorodcev. Pri tem metodološko sloni na analizi znanstvene literature in političnih dokumentov. Določbe osnutka smo primerjali z dokumenti, ki se nanašajo na pravice Samijev in domorodnih ljudstev. Poseben poudarek je na zemljiških pravicah, pravici do samoodločbe, tradicionalnih poklicih in jeziku. Analiza je pokazala, da osnutek domorodnih ne priznava v celoti pravic ljudstva Sami, prav tako pa tudi ne specifičnega kulturnega, ekonomskega, zgodovinskega in jezikovnega konteksta njihovega življenja.

Ključne besede: Samiji, Nordijska konvencija o Samijih, domorodna ljudstva, Norveška, Švedska, Finska.

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1. Introduction

The year 2017 is very important for the Saami people in Norway, Sweden, Finland and Russia, since it marks the centenary of the first Saami Congress. The historic event took place from 6-9 February 1917 during the Tråante 2017 festival in Trondheim, Norway. The meeting was organized by Elsa Laula Renberg and the Saami Women's Association at the Trondheim Methodist Church. Around 150 Saami from Norway and Sweden, many of whom were women, gathered to discuss the future of the Saami people. At the time, all the Nordic countries conducted assimilation policies and supported settlers' activities on the Saami land, which made the political task even harder. Although Elsa Laula Renberg is celebrated today as the most influential Saami political pioneer, Daniel Mortenson, editor, activist and reindeer herder from Sweden, also played an important role in the organization of the first Saami Congress and in Saami political life at that time. He was elected chairman and led the first Congress that laid the cornerstone for modern Saami politics (Larsen 2017b).

The programme for this year's celebration included all year around activities such as exhibitions, music, theatre and film festivals, traditional handicraft workshops, presentations of different publications, lectures on Saami history, culture and art and many other public events (Tråante 2017). The central event, the opening of the Tråante 2017 centennial celebration, took place in the town square, where, on the open stage, many congratulated Saami on their national day. Mrs. Vibeke Larsen, the president of the Saami parliament in Norway, and Mrs. Erna Solberg, Norwegian Prime Minister, gave short speeches, and even King Harald of Norway was present. The Norwegian National Bank contributed to the celebration by issuing a special edition 20 kronor coin (Norges Bank 2017). However, all eyes were directed towards the eagerly anticipated new draft of the Nordic Saami Convention. Many had hoped that this was going to be the year when the hopes and dreams of Elsa Laula Renberg, Daniel Mortenson and many other Saami politicians and activists would be realised. Unfortunately, by the time the colourful Saami flags were raised and the first line of the Saami national song, *Saami soga lávlla* (Song of the Saami People) was sung, it had become clear that it might not be so. Since the Draft was published in mid-January 2017, prominent Saami politicians from all three Nordic states have been expressing their discomfort with the proposed text (Larsen 2017a, Varsi 2017). To understand why the proposed text caused so much agitation, dismay and frustration, a wider context must be taken into account.

2. Methodology

Preparatory work for this paper included desk analysis of the scientific literature and policy documents. An examination of the scientific literature has been

carried out to study the specific historic, social, cultural, economic, political and geographic situation of the Saami people in all three Nordic states. The policy documents included the international treaties relating to the indigenous peoples, national laws in all three Nordic countries relating to the Saami people and the newly issued Draft of the Nordic Saami Convention. At the time this article was submitted, extensive debates within the Saami communities and the Saami Parliaments were about to begin. Those debates will, in the months to follow, produce an important body of literature that was at the time unavailable to the author.

3. The Saami People

The Saami are an indigenous people living in northernmost parts of Norway, Sweden, Finland and the Kola Peninsula in the Russian Federation. They consider themselves to be one people, they have their own distinct languages, culture and society, and call the territory they traditionally inhabit Sápmi. By the time Norwegian, Swedish and Russian explorers reached the far north, the Saami had already established their own social, economic and political institutions. The most important unit of organization was the *siida*, which consisted of individuals who jointly managed land, water and resources. The Saami were engaged in reindeer herding, fishing, hunting and gathering. The traditional occupations and social organizations remain to this day.

There are two main groups of Sami languages spoken today; the Western Saami and the Eastern Saami. All the language variations have many dialects and sub-dialects (Sammallahti 1998). All of the Saami languages are characterized as endangered, seriously endangered or nearly extinct. The preservation of languages is one of the most important political agendas in contemporary Saami politics. During the colonization period, the state borders in Sápmi changed frequently, but the Saami always considered themselves to be one people with collective identity indigenous to Sápmi (Rovaniemi Declaration 2008, Murmansk Declaration 2013).

4. International Law and Indigenous Peoples

The Nordic Saami Convention has its roots in both the international legal framework protecting indigenous peoples and the national laws of Nordic countries. It is aimed at providing better, more comprehensive protection of the Saami people's rights, taking into consideration their specific historic, social, cultural, economic, political and geographic situation.

The international community began to show an interest in protecting the rights of indigenous peoples relatively recently, in the mid-1980s. The first to lead the way was the International Labour Organization, followed by the United

Nations Sub-Commission on the Prevention of Discrimination of Minorities (Vik & Semb 2013). But very early on, both organizations faced the problem of definition. Not only can indigenous peoples be found in all parts of the world, but they make a very diverse group. Given their different cultures, languages, belief systems, internal organizational systems, relationships with nation states and the diverse discriminatory policies they suffer from, it is extremely difficult to find a common denominator. Indigenous peoples do not have a uniform way of dealing with their past, nor similar visions for building their future. In addition, many indigenous groups expressed a desire to define themselves. While this enormous diversity represents one of the greatest treasures of humankind, it proved to be a challenge when it came to creating a universal, inclusive definition for all indigenous peoples. A desire for self-identification became a defining moment in implementing working definitions. The International Labour Organization (ILO), in Article 1 of its Indigenous and Tribal Peoples Convention No. 169 (ILO 1989), uses self-identification as a fundamental criterion and emphasizes indigenous peoples' own social, economic, cultural and political institutions, customs, traditions or special laws or regulations (ILO 1989, Art. 1). Mr. José Martínez Cobo, Special Reporter of the United Nations Sub-Commission on the Prevention of Discrimination of Minorities, fully acknowledges self-determination of indigenous peoples and their sovereign right and power to decide who belongs to them, without external interference (Cobo 1983). The need for flexibility and the respect for the desire and the right of each indigenous group to define itself is the prevailing argument in the work of the founding Chairperson and Special Reporter of the United Nations Working Group on Indigenous Populations, Erica-Irene A. Daes. Ms. Daes also emphasizes priority in time with respect to the occupation and use of a specific territory, voluntary perpetuation of cultural distinctiveness, self-identification and an experience of subjugation, marginalization, dispossession, exclusion or discrimination, regardless of whether these conditions persist (Daes 1996). A definition of indigenous peoples has never been adopted, but work of the United Nations Working Group on Indigenous Populations led to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007 (UNDRIP 2008). The problem of definition is not purely an academic matter, but a real challenge in legal battles for the rights of indigenous peoples, as will be demonstrated by the case of the Nordic Saami Convention.

The ILO Indigenous and Tribal Peoples Convention No. 169 (further ILO Convention) and the United Nations Declaration on the Rights of Indigenous Peoples (further UN Declaration) deal exclusively with the rights of indigenous peoples and form the most important framework for the protection of these populations. The ILO Convention, being a legally binding agreement, offers a greater level of protection than the UN Declaration. The ILO Convention is primarily oriented towards protection of indigenous peoples' social and

economic rights, like recruitment and conditions of employment, vocational training, handicrafts and rural industries, social security and health, education and means of communication (ILO 1989). Self-determination of indigenous peoples is not an integral part of this Convention, but the Convention has significant provisions regarding cross borders co-operation and contacts, consultation and the participation of indigenous peoples in development plans regarding their lands. The UN Declaration on the Rights of Indigenous Peoples incorporates the right to self-determination as a right of indigenous peoples to freely determine their political status and pursue economic, social and cultural development. In exercising this right, indigenous peoples are entitled to autonomy or self-government in matters relating to their internal and local affairs, as well as the resources to finance their autonomous functions (UNDRIP 2008). The UN Declaration also regulates the rights to freely develop political, economic and social systems or institutions, the relationship with and rights within the states. When it comes to the question of indigenous lands, the UN Declaration gives indigenous peoples the right to own, use, develop and control their lands and once again emphasizes the right to consultation. There are number of other international conventions that have significance for indigenous people, such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD 1965), the International Convention on Economic, Social and Cultural Rights (ICESCR 1966) and its Optional Protocol (2008), the Framework for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages (1992). Comparison of definitions used in international law on the Saami case clearly shows that they are indigenous people.

The Saami population is estimated to be between 70,000 and 100,000, with about 40,000-60,000 in Norway, about 15,000-20,000 in Sweden, about 9,000 in Finland and about 2,000 in Russia. The Saami constitute a numerical minority in most of the Sápmi region, except in the interior of Finnmark County in Norway and in the Utsjoki municipality in Finland (Anaya 2011, 4).

All Nordic countries have recognized the Saami as indigenous people. Norway was the first country to ratify the ILO Convention in 1990, but only after the report of the Ministry of Justice that claimed that Norway had, by that point, already fulfilled the Convention's requirements on land rights (Vik & Semb 2013). The question of land rights still prevails in the relationship between the Saami and the Nordic states and, as will be presented below, plays an important role in the proposed Draft of the Nordic Saami Convention. The constitutional recognition of the Saami as indigenous peoples in Norway is expressed, although without mentioning the word indigenous, in Article 108 of the Constitution: "The authorities of the state shall create conditions enabling the Saami people

to preserve and develop its language, culture and way of life” (Constitution of Norway, Art. 108). The term Saami people refers to all Norwegian Saami regardless of where they live or work, and to Russian, Finnish and Swedish Saami in Norway (Niemiuvuo 2015). The ILO Convention and Constitutional provisions are important sources for the domestic legal framework protecting Saami rights, such as the Sámi Act (1987), the Finnmark Act (2005) and Chapter 6 of the Education Act (1998), the Kindergarten Act (2005), the Reindeer Husbandry Act (2007) and the Action Plan for Sami Languages (2009).

Article 17 of the Finnish constitution states that: “The Saami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture” (Constitution of Finland, Art. 17). Article 121 states that: “In their native region, the Saami have linguistic and cultural self-government, as provided by an Act” (Constitution of Finland, Art. 121). The Finnish Constitution mainly protects the Saami collective rights to language and culture. The Sámi Language Act (2003) protects the rights to use Saami languages before the courts and other public authorities; the Reindeer Husbandry Act (2000) deals with reindeer herding, the traditional Saami occupation. While the Saami have exclusive right to reindeer herding in Norway and Sweden, in Finland it is open to every citizen of the European Economic Area who has permanent residence in the reindeer herding area. The Skolt Act (1995) is developed in accordance with the rights and needs of the Skolt Saami. The Act on the Sámi parliament (1995) regulates the legal matters of the Saami parliament, a body whose main role is protection of Saami culture and language. Finland has not ratified the ILO Convention.

Sweden has on several official occasions emphasized the position of the Saami as indigenous people (Niemiuvuo 2015, Åhrén, Scheinin & Henriksen 2007). Saami are mentioned in the Swedish Constitution twice, in the Article 2: “The opportunities of the Saami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted” (Constitution of Sweden, Art. 2) and in the Article 17: “The right of the Saami population to practice reindeer husbandry is regulated in law” (Constitution of Sweden, Art. 17). The indigenous status is not mentioned. The law that regulates reindeer husbandry, the Swedish Reindeer Herding Act (1971), specifies that the right to own a reindeer is the exclusive right of the Saami, based on ancient tradition. The biggest obstacle to reindeer herding experienced by the Saami is forestry and overlapping property and land use regimes. Saami became an official minority language in 2000 and since 2008 education in Saami and other minority languages is considered equal to the education in Swedish. (Heikkilä 2010). Sweden also has the Saami parliament which was established through the Sami Parliament Act in 1992.

5. The New Draft of the Nordic Saami Convention

One of the most important international documents concerning the Saami people is the Lapp Condil, an addendum to the Stromstad Treaty of 1751, which established the Norwegian-Swedish border. At the time, Norway was part of Denmark and Finland was part of Sweden. After the countries agreed on borders, the Lapp Condil was negotiated with the purpose of regulating the position of the Saami people living on both sides (Alfredsson 1999, Eide 2001, Koivurova 2008a, 2008b, Jebens 1986). The Lapp Condil is sometimes referred to as Magna Carta' of the Saami people and it is the foundation of the Nordic Saami Convention.

Work on the Nordic Saami Convention was initiated in 1986 during a Saami conference in Åre, Sweden. The Saami Conference is the highest body of the Saami council, a non-governmental organization, with member organizations in Norway, Finland, Sweden and Russia. The Saami Conference takes place every four years and adopts declarations and resolutions concerning important Saami matters. Representatives at the Helsinki Conference in 1992 emphasized that the Saami do not demand the establishment of a Saami national state or any changes to the existing borders (Niemivuo 2015). This Conference is also famous for adopting 6 February as Saami National Day. Since 1992, the necessity of the Nordic Saami Convention became a regular topic at the Saami Conferences and eventually made its way into public discourse. Soon after, a working group consisting of members from all three Nordic countries gave a positive opinion and creation of the Nordic Saami Convention had begun. During 2002, members of all three governments, together with the representatives of Saami parliaments, formed an expert working group and started preparing the draft. After long and extensive work, the proposed draft was presented in 2005. Its aim was to harmonize the legislation concerning the Saami in all three countries, to confirm the indigenous status of the Saami, regulate cross-border activities and clarify Saami rights to land and water. The negotiations of these difficult issues led to tensions between representatives of the states and the Saami parliaments, but the mutual conclusion reached in 2007 was that the proposed draft would form the basis for the future negotiations. A new round of negotiations started in 2011, and the resulting Draft of the Nordic Saami Convention (further Draft) was presented in January 2017.

One of the key problems and setbacks in this process was the fact that Norway ratified the ILO Convention and Sweden and Finland did not. Norway was, and still is, under international obligation to preserve the level of legal protection of the Saami as indigenous people according to the ILO Convention, which is not the case with the other two countries. There have been some attempts of ratification in Finland (Niemivuo 2015), but Sweden is persistent in ignoring its obligations toward the Saami people contained in international law.

For these two countries, a Nordic Convention that is fully in line with the ILO Convention, or offers a higher level of protection, would mean that the domestic legal framework had to be changed.

The ILO Convention protects indigenous peoples' rights to self-management and to participation in decisions regarding development on their lands. In practice, this would mean an increase of power of the Saami parliaments and stricter rules for consultations. Section 9 of the Finnish Act on the Sámi parliament (1995) stipulates that the state has an obligation to negotiate with the Saami parliament on those matters which may directly and in a specific way affect the status of the Saami as an indigenous people. On the other hand, the Saami parliament in Sweden, although publicly-elected, is a regulatory body under the Swedish Government, and not primarily a body for Saami self-government (Josefsen 2010). According to the Saami Parliament Act (1992), the primary task of the Swedish Saami parliament is to monitor questions related to Saami culture in Sweden. There are no provisions on negotiations or consultations. Such differences in the domestic regulations concerning the Saami people in Finland and Sweden offer insights into why the negotiations on the Draft of the Nordic Saami Convention were so long and difficult.

The new Draft begins with a preamble and consists of 46 articles divided into seven chapters: the Saami people's universal rights, self-determination, language and culture, land and water, Saami livelihoods, implementation of the Convention and final provisions (Draft 2017). The preamble states that Saami are indigenous peoples of Norway, Sweden and Finland with their own culture, society and languages that span national borders. The Lapp Condil is acknowledged as the basis for the Saami cross-border cooperation. The Preamble also emphasizes the importance and protection Saami have under the UN Declaration of the Rights of Indigenous Peoples, ILO Convention No. 169 and other international conventions on human rights. It is stated that Finland and Sweden are not signatories to the ILO Convention. The Preamble mentions the Saami right to self-determination and access to land and water, as well as the impact that natural resource extraction has on the Saami communities.

The first Chapter deals with the Saami people's universal rights and confirms the Saami people's indigenous status in all three Nordic states. It guarantees that the Nordic Saami Convention will embody minimum rights and every state can enhance Saami rights through its national legislative and that it cannot be used in any way to limit the Saami rights that follow from international law or other provisions. The first chapter further refers to the protection against discrimination on the basis of Saami origins, gender equality, the rights of the Saami children and cross-border cooperation on cultural matters, language, society and economic activities. The right to self-determination is explained in one single article:

The Saami people have the right to self-determination. By virtue of that right they freely determine their political status and their economic, social and cultural development. Self-determination is exercised through autonomy in internal issues, as well as through consultations on issues that may have a particular significance for the Saami (Draft 2017, Art. 4).

While the Convention acknowledges the Saami right to freely determine their political status and economic, social and cultural development, the means for achieving this are vague. The question of self-determination is a complex one. The right of self-determination has been granted by two international treaties: the International Covenant on Civil and Political Rights (ICCPR 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966). Article 1 of both documents states:

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 (ICCPR 1966, Art. 1, ICESCR 1966, Art. 1).

Self-determination can be external or internal. External self-determination challenges territorial integrity in attempts to create a new state. Internal self-determination is most often achieved through language, cultural or economic autonomy. With respect to indigenous peoples, there is a broad consensus that self-determination is to be gained through internal means (Genugten & Perez-Bustillo 2004, Baer 2005, Vik & Semb 2013). As mentioned before, the Saami have never expressed a desire for their own nation state, but rather a desire for independent decision-making on matters important for the preservation of their livelihoods, languages, culture and society, or, in other words, the Saami desire political autonomy. Such autonomy would require a special set of rules determining the relationship between the Saami minority and the majority population in nation states (Broderstad 2001). The proposed Draft does not guarantee the balance of power. Saami are given autonomy on internal matters, but only consultative status on issues of particular importance for the Saami people. The process of distinguishing internal matters from matters of particular importance has not been explained, and neither has the question of who can decide on these issues. Further chapters of the Draft reveal that internal matters do not include decisions regarding extractive industries on Saami land, or the management of traditional livelihoods.

The imbalance of power between the two actors is further bolstered in chapter two on Self-determination. It states that the Saami parliament's tasks are determined by law, meaning that it is an internal matter of every Nordic state. It takes the pressure off Sweden and Finland to enhance the scope of the functioning of the Saami parliaments. This short chapter deals exclusively

with the Saami parliaments, and it includes two potentially problematic topics from the Saami perspective: the electoral roll in Article 13, and consultations in Articles 17 and 18.

To be able to vote in the Saami parliamentary election, one must be enrolled in the Saami parliament's electoral register, and to do so, one must prove one is a Saami. Article 13 of the Draft stipulates that those who perceive themselves as Saami must meet one of three additional criteria:

/.../ to have Saami as their domestic language or, to have a parent, grandparent or great grand-parent who had Saami as the domestic language, or to have a parent who is or has been enrolled in the Saami parliament's electoral register (Draft 2017, Art. 13).

These rules can be seen as the legal framework for formal recognition of Saami identity. At first glance, they are very inclusive and broad, but there are certain problems. The Convention points to national law regulating this matter, meaning that states can make these rules stricter or looser. While it is easy to prove a parent's enrolment in the electoral register, it might not be as easy with the language requirement, which is a very complex matter. Speaking Saami languages was forbidden in Nordic states from the 19th century till as late as the 1970s. Because of this long period of official language discontinuity, many Saami lost their language. It is still one of the biggest wounds colonization left on these indigenous communities. For more than a century no education in Saami was possible. Written proofs of Saami language proficiency are scarce and it can be impossible to prove the home language of a distant relative. The question of the Saami electoral roll is inseparably connected to the question of who is Saami. Many Saami are married to non-Saami partners, and while their children have the right to vote, the marital partners, even when they speak the language and feel like a part of the community, believe they are not entitled to do so. Also, people who do not have a Saami partner, or Saami ancestors, but speak a Saami language, feel part of the Saami community and have a genuine interest in wellbeing of that community, and feel the same, excluded and pushed aside (Aslaksen 2008, Aslaksen 2012, Larsson & Buljo 2013). The Draft does not resort to the principle of self-identification, making Saami vulnerable to arbitrary decisions by third parties. Recently, the Supreme Administrative Court of Finland accepted nearly a hundred people as Saami against the will of the Saami Parliament (Näkkäljärvi 2015). Situations like this undermine the autonomy of the Saami parliaments as well as the right to self-determination.

Articles 17 and 18 stipulate the right to consultation with Saami parliaments and other Saami-interested actors. The right to consultation is a weak instrument of self-determination, because it does not imply that the states are legally bound to acknowledge or follow the opinions of the interested parties. Free, prior and informed consent offers a greater level of protection. The already mentioned UN

Declaration and ILO Convention are among the international legal documents that form the normative framework for free prior and informed consent (FPIC). FPIC is a right that allows indigenous peoples to give or withhold consent to a project that affects their land, culture or societies. The reason this right is not mentioned in the proposed Draft could be that neither Sweden nor Finland have signed the ILO Convention.

The Saami rights to language and culture are the best protected. The Saami parliament's main task is to protect, preserve and promote culture, and the parliaments have full authority in these matters. These rights are mentioned in chapter three of the Draft, but again, the Saami might find this chapter inadequate. The states' responsibilities for protection of the Saami languages are not explicitly stated. Expressions such as 'the state shall promote' and 'shall protect' are rather weak, compared to 'the state shall ensure' and 'shall guarantee'. The Draft does not protect language diversity by addressing the affirmative actions aimed at the preservation and development of the many dialects of Saami languages, nor does it stipulate the obligation to make Saami languages available in official use from kindergarten to university, in all spheres of public and social life, through all available media.

The Draft offers a weak protection of the Saami traditional knowledge and traditional cultural expressions. As indigenous people of the Arctic, the Saami have, over the centuries, gathered substantial knowledge of flora and fauna, the management of natural resources, climate and weather; they have developed unique skills and engaged in many different forms of art. As indigenous people, the Saami have the right to preserve and protect it, but the Draft does not stipulate the states' obligations in this regard, nor the means to protect the Saami traditional knowledge from unauthorized or commercial use by the third parties. The Draft pays special attention to these rights only in the case of *doudji*, a traditional Saami handicraft, in chapter six. In general, this chapter offers protection of a wide spectrum of cultural and language rights, but the mechanisms of protection are comparatively weak.

Saami rights to land and water are the cornerstone of their rights to traditional livelihoods. Fishing, hunting and reindeer husbandry are resource extensive occupations and unhindered access to water and land is necessary for these activities. Chapter four together with the preamble deals with rights to water and land and chapter five with the right to traditional livelihoods.

The areas that the Saami have traditionally used form a basis for the Saami to be able to preserve, practise and develop their culture, their language and way of life. In the states, the Saami have through prolonged traditional use of land and water acquired a collective or individual ownership or usage rights in Saami areas (Draft 2017, Art. 27).

States shall take measures to ensure the Saami's right to access and opportunities to use the natural resources that have traditionally been used by Saami in the Saami areas.

States shall ensure that there are appropriate procedures in national law with binding effect to determine Saami rights to land and water. In assessing whether the rights exist it should be taken into account that Saami often do not leave permanent traces in nature (Draft 2017, Art. 28).

These provisions should be understood in connection with the articles that stipulate the Saami rights to self-determination. If the instruments for independent management of natural resources are weak, the usage rights, even ownership, are questionable. Indeed, Article 30 deals with the situation in which the states interfere with or change the use of natural resources. In such cases the Saami will be compensated in accordance with the national rules. The Saami parliaments have little, if any, power to influence compensation rules and it is worrisome that this provision does not include the power of veto or the right to the free prior and informed consent by the Saami parliaments. Instead, the Draft states that: “The Saami as indigenous people shall not, through intervention in or change in use of natural resources, be denied the right to practise their own culture, their language and way of life” (Draft 2017, Art. 31).

The interference or changes to the use of natural resources mentioned above are mostly connected to the extractive industries. The diversity and abundance of projects connected to the extractive or energy industries on the Saami traditional land make land rights a very difficult topic. For a long time, Saami rights to the land were based on old doctrines: “immemorial usage” in Norway and “immemorial prescription” in Sweden and Finland (Allard 2011), and in most cases the use of land has been connected to reindeer herding. The legal disputes between the reindeer herding Saami and the authorities of three Nordic states have been settled according to these doctrines (Jebens 1986, Oskal 2001, Baer 2005, Allard 2011, Ravna 2013). While Sweden and Finland still use the old system, Norway has made progress in the protection of the Saami land rights. In June 2005, the Norwegian parliament adopted the Finnmark Act in order:

/ ... / to facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Saami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life (Finnmark Act, Section 1).

The Act made possible the transfer of land previously held by the state to the inhabitants of Finnmark, regardless of their ethnicity (Minde 2001, Broderstad 2015, Josefsen, Søreng & Selle 2016). The body managing the 45,000 square kilometers, the Finnmark Estate, is the first case of Saami co-management in relation to traditional occupations, but its importance is much wider. Due to this Act, many others had to be changed, such as the Minerals Act (2009) according to which the Directorate of Mining has to grant a special permit for exploration

or pilot extraction. The permit may be refused if granting the application would be contrary to Saami interests. If the Saami parliament opposes the permit, the Ministry shall decide, and if the Saami parliament opposes the Ministry's decision, it has the possibility of an appeal to the King. Although there are many complaints regarding the Finnmark Act and the Finnmark Estate, by Saami and non-Saami alike, it is a good example of the state working to achieve its obligations under the ILO Convention.

The Draft recognizes reindeer herding as a traditional Saami occupation and guarantees its protection, as well as the promotion of cross-border cooperation. It does not grant the Saami people the exclusive right to reindeer herding, leaving Finnish Saami reindeer herders, which are not granted that right under the national law, in an disadvantageous position. The reindeer herding Saami in Norway could find themselves in a similar position, due to emerging demands for a change of law that would allow non-Saami into the reindeer herding sector (The Local 2015). At the moment, all three Nordic countries have separate, slightly different, reindeer husbandry acts, but in each case, reindeer husbandry is an activity heavily regulated by the states.

From the perspective of the economy and security, control over water resources and territorial seas is a crucial question in every sovereign state. The Saami base their right to water on the traditional use of rivers, lakes and the sea. As the Draft acknowledges, the Saami have been using water in a sustainable way without leaving a trace. Today, they have little opportunity to protect this resource from overuse or misuse, especially for commercial purposes, as best exemplified by fishing. With 10.1 per cent of world exports, Norway is the second largest exporter of fish and fishery products (FAO 2016). According to the Register of Norwegian Fishing Vessels in 2014, there were 5,939 modern, heavily equipped vessels registered in Norway (Fiskeridirektoratet 2016). The harvesting of fish stocks is managed under a system of licenses and quotas. Marine management heavily depends on regulations, control and enforcement scheme. The fishing industry is of great importance for the national gross domestic product and employment. When quotas for fishing in Norwegian seas are concerned, every single crab matters (Staalesen 2017). Coastal Saami were fishing in the waters of northern Norway long before any nation state was formed, and thus earned their right to the protection of fishing as a traditional livelihood. Regardless, the Norway has never acknowledged the coastal Saami's traditional occupation. Rather, the state protects the rights of all small-scale fishermen of northern Norway (Søreng 2007, Brattland 2010, Sunde 2010, Pedersen 2012). The situation is similar with Saami river fishermen, such as those living on the shores of the River Tana, which separates Norway and Finland, and is one of the most important salmon rivers in Europe. The two states have recently entered into negotiations over a new legal framework regarding fishing rights, but they have not included local Saami communities (Maasø 2016). Article 37 of the

Draft discusses fishing in the context of marine resources: “In coastal Saami area particular emphasis shall be placed on the regulation and distribution of wild marine resources, due to the significance of special Saami use for Saami culture, language and society” (Draft 2017, Art. 37). The Draft fails to include different Saami fishing communities, like those Saami engaged in freshwater fishing. It does not offer a greater level of protection to this traditional occupation and does not recognize Saami rights to water to the fullest. Fishing is as important to the Saami people as reindeer herding or *duodji*, or any other traditional occupation. The importance of fishing for the economic sustainability of Saami communities is also not mentioned.

The Draft takes a rather narrow view of Saami economic activities. It does not assume that the Saami people might want to collectively engage in non-traditional activities, such as mining or operating power plants. Even when the Saami land rights are recognized, they do not include what that land might cover, but only surface that must be used for traditional occupations only. In a way, it constrains the Saami to a predetermined place in a Nordic society. The Saami are to reindeer herd, to fish, make *doudji*, and *joik*, because that is what makes them Saami. They cannot be regarded as indigenous people while they collectively engage in non-traditional occupations. The Saami identity is defined and understood through culture, language and tradition; it is static and determined by the past. But the Saami, like any other people, change, adapt and grow with time and their collective identity transforms. They have very strong roots in the past and a very strong desire to preserve their traditions, but that does not mean that they do not have the potential or desire to be contemporary indigenous people on a par with fellow Nordic citizens, and to freely express their right to self-determination right across Sápmi by balancing tradition and modernity in every sphere of their lives. The new Draft of the Nordic Saami Convention does not open the door to this possibility.

Chapter six is dedicated to the means of implementing this Convention. As stated, a working group comprised of ministers responsible for Saami matters of all three countries and representatives of all Saami parliaments shall meet regularly. Members can make proposals or present reports, and decisions shall be made through dialogue and consensus. Expenditures shall be divided equally between Norway, Sweden and Finland. Final provisions are given in chapter seven. The Convention should be presented to the Saami parliaments before it is signed by the states who are parties in this agreement. It is not explicitly stated that the Saami parliaments must approve the proposed Draft, but it is highly unlikely that any state would go on with the Draft if the Saami parliament was opposed. All parties to the Convention will ratify it, and every party has the right to denounce the Convention. The final provisions do not give instructions in case any of the Saami parliaments wants to denounce the Convention.

6. Conclusion

When the Draft was presented, the Saami communities expressed their dissatisfaction and disappointment, and at first it seemed that the document would never be given the green light. However, the Saami parliaments have not officially rejected it. Instead, numerous consultations are scheduled and are already taking place. The new Draft recognizes Saami indigenous rights and it also acknowledges diversity in Saami communities, livelihoods and cultures. A special place has been given to women and children, and to education in and through Saami media. The rights to water and land have been recognized and connected to the preservation of the Saami societies, languages and cultures. The drawbacks can be noticed in the inadequate instruments for the achievement of self-determination especially with regards to land rights. The Draft does not offer the same level of recognition and protection to all Saami traditional occupations, leaving the fishing communities in a disadvantageous position. Furthermore, the Draft does not imply possibilities of new, modern collective business endeavours among indigenous communities. The language diversity is not recognized to the fullest and the Draft offers weak instruments for the protection of Saami cultural identity. In conclusion, the Saami Parliaments would welcome more autonomy in the management of the Saami political, economic and cultural life. This could be achieved through the instrument of free prior and informed consent.

The Draft will now undergo intensive examination. The Saami parliaments in all three Nordic states will discuss it separately and decide on its fate. It is important that these discussions are not held behind closed doors, but among the Saami communities, so that all the different voices are heard and taken into consideration. However, the responsibility for the Nordic Saami Convention lies on the shoulders of its signature parties, the Nordic states, who should work towards achieving a mutually acceptable solution with full respect for the international legal agreements regarding indigenous peoples' rights, as well as the specific Saami context.

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