

WORKING GROUP ON INDIGENOUS POPULATIONS
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Agenda Item 5: Indigenous peoples and their relationship to land

THE SAAMI COUNCIL

by
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Madam Chairperson,

The Saami Council expresses its sincere gratitude to you, for your important work on indigenous land rights. We expect that your important work will continue in the form of a full-fledged United Nations study on indigenous land rights. Such a study would give you the opportunity to visit indigenous territories, which would provide you with first hand information about indigenous peoples struggle for their land rights. We invite you to visit our territories as part your work on indigenous land rights whenever it is convenient for you.

Lands, territories and natural resources are the most fundamental concerns for indigenous peoples around the world. Besides the question of self-determination; the access to and control over lands, territories and natural resources are central for indigenous peoples throughout the world. We depend on our lands for our material and cultural survival. In order to survive, we need to be able to own, use, conserve and organise our own lands, territories and resources.

Since time immemorial we have reaped the fruits of our lands and resources without threatening or damaging the ecosystem. Our traditional concepts based on traditional knowledge and experience of subsistence use and conservation of lands and resources are therefore also essential in any attempts at rethinking the present resource demanding and environmentally damaging economic activities.

Indigenous peoples around the world evidence their concepts of law and land rights, based on their own laws, customs and traditions, to support the fact that their lands and resources belong to them and not to the nation state. Even if the legal strength of the principle of *terra nullius* is getting weaker today, it is still de facto very much in force when it comes to indigenous land rights. The reason why indigenous rights to land, water and resources still remains unsolved is due to the adaptability of legal arguments and concepts which corresponds with the principle of *terra nullius*. It occurs in many form, and by different sophisticated arguments, as to why past injustices towards indigenous peoples should continue. The present legal situation in most countries is a result of this grim unlawful past.

Madam Chairperson,

Allow me briefly to up-date you on the land rights situation in the Saami territory:

1. Norway

The Saami ownership and possession of traditional lands, waters and resources are not recognized by the Norwegian state. As you know, the Norwegian Government appointed a Saami Rights Commission in 1980, which, inter alia, was to look into the Saami rights to land and water. The Commission has now submitted its recommendations to the Norwegian Government. Unfortunately, the Commission has to a very limited degree elaborated on the question of Saami ownership, it has focused on practical and administrative issues related to traditional Saami territories. Neither has it taken into account Saami customary law. The majority of the Commission is of the opinion that even if the original takeover of the Saami territory did not take into account existing Saami rights, then today it must be considered as lawful due to the time which has passed.

We expect that the Norwegian Government, in its consideration of the recommendations from the Saami Rights Commission, will take into account Saami customary law.

Moreover, Norway has ratified ILO Convention No. 169. Norway is therefore legally obliged to recognize the rights of ownership and possession of the Saami people over the lands which we traditionally have occupied. The Norwegian Government is of the opinion that strongly protected usufruct must be regarded as sufficient for fulfilment of Article 14 of the ILO Convention. This argument has no legal foundation. The rights of ownership and possession are cumulative rights, and therefore only simultaneous implementation is acceptable under the Convention. Permanent usufructuary rights do not satisfy the requirements of this provision. The Norwegian position is incompatible with the plain legal meaning of the requirements of Article 14.

We expect that the Norwegian Government, without any further delays, implement its legal obligation under ILO Convention No. 169.

2. Sweden

Like the Government of Norway, the Swedish Government has not recognized Saami rights of ownership and possession of lands, waters and resources. However, the Swedish Government is currently considering the possibility of ratifying ILO Convention No. 169. The question of landrights is the most complicate issue, both judicially and politically in the context.

3. Finland

The current Finnish legislation does not acknowledge any special land rights to the Saami people in their own Homeland, neither does the legislation acknowledge any exclusive rights for the Saami people to pursue their traditional livelihoods. In principle all citizens of Finland and the other European Union members states have the same right to land and resources as the indigenous Saami people themselves in their own traditional Homeland. Most of the land within the demarcated Saami Homeland in Finland is regarded as state property. That also means that State authorities can sell and lease the land and water in the Saami Homeland.

The Government of Finland has appointed a special rapporteur to investigate the measures which should be taken in order to ratify the ILO convention nr 169 on the rights of Indigenous Peoples. It should be noted that the question is of the usufruct rights of land in the possession of the State in the Saami Homeland concerning both the Saami people and the local Finns living in the Saami Homeland. The Saami Parliament has undertaken an investigation on the right to land, water and natural resources of the Saami People. But no economical resources were granted for this investigation by the Government of Finland.

We expect the Finnish Government to grant necessary funds for the investigation of the Saami Parliament.

4. Russia

Madam Chairperson,

In conclusion, allow me briefly to draw the attention to the situation in the Russian federation.

In Russia there are about 2,000 Saami, which is the smallest Saami population among the four countries where we live. The fishing, in rivers, lakes and the Barents sea, has always had great importance for the Saami in Russia. Before the State took control over the Saami territory, we divided the fishing waters between ourselves according to the size of our communities.

Traditional Saami lands and waters are now leased to private companies, foreign as well as Russian. These companies in return sell exclusive fishing rights to wealthy foreign tourists. Due to this system of leasing rivers to private companies, the Saami and other indigenous peoples in Russia, have hardly any opportunities for fishing for their own daily subsistence needs.

Although, the Russian Constitution gives indigenous peoples certain rights, including right to land and natural resources in their own regions, without the necessary political and legal implementation measures these rights do not have much practical value for the people concerned.

Thank you.