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The Convention on the Rights of the Child and Sámi children in Norway

Hadi Khosravi Lile

Preamble by
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Children are the most defenceless of all people. If there is anyone who needs protection from the law, it is the new generation that is growing up. Children are the future of the world.

Indigenous people all over the world are weak in the political world. They are small minorities in most countries. It is not the indigenous people that create national legislation. It is exactly because of this they have a special need for protection by international laws.

Children received the Convention on the Rights of the Child (CRC) in 1989. It has been incorporated into Norwegian legislation via the Human Rights Act of 1999, with a supplement to the law in 2003. At the same time, the Convention was given an especially strong status, that in cases of conflict, the Convention shall take precedence over other laws. This UN Convention has been ratified by practically all states.

Indigenous peoples got the Declaration on the Rights of Indigenous Peoples in 2007. It was approved by the UN General Assembly with a large majority. The declaration is not a convention and thus it is not legally binding in the same way as a convention. However, it determines in article 42 that all UN bodies and all states shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of the declaration. In Norway, work is continuing in several areas to incorporate the Declaration into our national legislation. Examples are the proposals for a Nordic Sámi Convention and a new Act pertaining to fishing rights in the ocean off the coast of Finnmark. This law will protect the coastal Sámi culture. Both proposals are now in the hands of the government.



Photo: Andreas Fadum / SCANPIX

It is here the two worlds – the children and the indigenous peoples – meet on the legal arena. Both with strong needs for the protection of the law, materially and culturally, but not least for the protection of the right to participation and self determination, as individuals and peoples. At the same time we are talking about two areas of law with different legal points of departure. Children's rights apply to individual rights – it is the best interest of each individual child that is important. The rights of indigenous peoples are about collective rights – it is the peoples and their culture that is the primary concern. However, both areas of law have in common that international law has significantly intervened (in domestic affairs and law) in the last decades.

These two legal worlds merge in the life of indigenous children. In legal terms it is about analysing and harmonizing the different legal sources from both worlds. The question for Norwegian law is what juridical status the Sámi children have.

Internationally the work to find this common legal treatment has begun. The CRC is controlled and developed by The Committee on the Rights of the Child. The Declaration on the Rights of Indigenous Peoples is controlled and developed by the UN Permanent Forum on Indigenous Issues. In its General Comments no. 11 from 2009, the Committee addressed the legal protection for indigenous children and it has actively sought to incorporate the Declaration on the Rights of Indigenous Peoples in its interpretation of the CRC.

It is necessary for Norwegian legal science to deal with these vital questions forcefully, and it is a joy that Hadi Lile has chosen to write about this.

These words are written by two lawyers that have worked for many years in both of these two different legal areas, one with children's rights and the other with indigenous rights, and who have seen the similarities in these two areas. We have seen these similarities both internationally as part of the larger development of human rights, and domestically as questions on how to carry out international principles.

Lucy og Carsten Smith

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1. Introduction

The United Nations Convention on the Rights of the Child (CRC), adopted on the 20th of November 1989, contains 41 articles on rights and principles concerning children and youth. The Convention has a strong international legal status and ranks among the UN's most important human rights conventions. No other human rights conventions have been ratified by more states (192). The UN has seven core human rights conventions.¹ These are regarded as the most central and most important human rights conventions. The CRC is the only one of the core UN conventions that specifically mentions indigenous peoples. It is therefore especially relevant for Sámi children. The articles that mention indigenous specifically are article 30, article 29 and article 17.

Article 30 is the most general and states that children of indigenous origin shall not be denied the right to their culture, language and religion. Article 29 concerns the aims of education and highlights the issue of respect for diversity and that all children must learn to understand indigenous peoples. Article 17 concerns the right to information and the mass media. The mass media shall, among other things, disseminate information in accordance with the spirit of article 29 and have particular regard to the linguistic needs of indigenous children. All of the provisions in the CRC are relevant for Sámi children. However, there are also some articles that have particular relevance for Sámi children with regard to their cultural background. In addition to the three articles mentioned there are also a number of other articles that are particularly relevant for the Sámi (indige-

nous) children with regard to their Sámi heritage.² In this essay, I will focus especially on the three articles that mention indigenous peoples in particular.

In 2003, the CRC was incorporated into the Act pertaining to the reinforcement of the position of human rights, adopted on the 21st of May 1999, no. 30 (Human Rights Act). This act gives the articles of the CRC precedence over all the Norwegian non-constitutional laws (§ 3). Carsten Smith (the former chairman of the Supreme Court) have stated that the conventions incorporated in this Act have been given a «semi-constitutional.»³ The CRC has therefore given a very prominent legal status in Norwegian law, compared to many other human rights conventions. See more on this subject in Chapter 7.

In Norway, there are currently a number of healthy and alert individuals who are illiterate. They never learned to read or write. In fact, they learned almost nothing at school, as the teacher spoke a strange language that they could not understand. If they tried to speak their own mother tongue they were punished. The teachers were even instructed to ensure that the children did not speak their mother tongue when at home with their parents. Many children were also placed in boarding schools, in order to become as Norwegian as possible. The state insisted that this was in their own best interests, like humanitarian aid to a «primitive» people. This Norwegianization process continued for well over 100 years, from 1850 until the end of the 1970s. The experience, for many, was one of shame and humiliation.⁴ There is

1 The six other core conventions are: The UN International Convention on the Elimination of All Forms of Racial Discrimination of 21 Dec 1965 (CERD), The UN International Covenant on Civil and Political Rights of 16 Dec 1966 (CCPR), The UN International Covenant on Economic, Social and Cultural Rights of 16 Dec 1966 (CESCR), The UN Convention on the Elimination of All Forms of Discrimination against Women of 18 Dec 1979 (CEDAW), The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 Dec 1984 (CAT) and the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 Dec 1990

2 A brief summary of the most relevant directives is given in Chapter 2: Relevant directives, page. 7

3 Smith, Carsten (1999) Fra konvensjon til lov. in Mennesker og rettigheter no. 3 1999. Oslo: Universitetsforlaget, page 272.

4 Minde, Henry (2005): Assimilation of the Sami – Implementation and Consequences. Kautokeino: Gáldu Čála – journal of indigenous peoples rights No. 3/2005, pages 6 and 27.

no doubt that some of the worse state controlled abuses in Norway have affected Sámi children. Human rights for Sámi children are therefore an important theme in Norway. In any case, the CRC's importance for Sámi children and the Sámi community has until now been more or less disregarded. In addition, very little has been written on the theme in relation to other indigenous children. It is my hope that more people will open their eyes to the CRC's importance for Sámi children and other indigenous peoples.

In this essay, I will first deal with some general issues concerning the global status of the Convention on the Rights of the Child. I will address that which is of special relevance for Sámi children and other indigenous children. Then I will review each of the named articles that specifically mention indigenous peoples. I will begin with article 30, as this is the most general provision. Subsequently, I will move on to article 29, which is more specific and concerns the purpose and aims of education. Finally, I will address article 17, concerning the mass media. This regulation refers in particular to the spirit of article 29 and must therefore be interpreted in this context. I will, in regard to article 17, attempt to view this in relation to how the provision works in actual reality. Here, it is especially Eli Skogerbø's study of Sámi media that form the basis for the description of the reality.⁵ In chapter 6, I will examine more closely the regulations concerning children's rights within the ILO Convention no. 169, regarding indigenous and tribal peoples in independent states and the UN Declaration on the Rights of Indigenous Peoples.⁶ Neither of these instruments can be said to give significant priority to children's rights. As a basis, both of these documents place great emphasis on education. In chapter seven, I approach the general legal aspects of the convention's incorporation in Norway. Here, I will evaluate the Human Rights Act and the principles of legal conflict and precedence. Finally, in chapter eight, I

have included some general principles on how the convention should be interpreted. This essay is, in principle, just a small contribution to a much bigger theme. It is only meant to serve as an introduction.

1.1 Global values

What is the best interest of the child and how should children be raised? Few questions are so closely associated with the issue of what it means to be a good human being, and the eternal question about the meaning of life itself. In a global world, in which all nations must relate to steadily increasing cultural and religious diversity, nations need common values that can form a basis for the legal framework. A nation cannot claim that its own definition of how a human being should be - and therefore how a child should be brought up - is universal. Human rights are vital sources for global common values. The CRC was adopted in 1989. Since that time, the Convention has achieved an incomparable global acceptance. At the time of writing, apart from USA and Somalia, every country in the world has ratified the CRC. The convention is a result of many years of debate and discussion between political, religious and cultural perspectives in the UN that has resulted in a convention that is extremely sensitive in relation to different perspectives. Philip Alston writes that:

In cultural terms, however, the Convention, while by no means perfect, is probably more sensitive to different approaches and perspectives than most of the principle human rights treaties adopted earlier.⁷

In other words, it may be said that the CRC represents a set of global values that the vast majority can agree upon, regardless of religion or culture. On the other hand, it can also be claimed that the reason why the Convention has been ratified by so many countries has something to do with the lack of restrictions on reservations. Most Muslim states, for

5 Skogerbø, Eli (2003) *Mediene og det samiske samfunnet: Stereotypier og identitetskonflikter*. I Bjerkli, Bjørn og Per Selle (2003) *Samer, makt og demokrati: Sametinget og den nye offentligheten*. Oslo: Gyldendal Akademisk

6 I will from now on refer to these two instruments as »ILO Convention no. 169» and »UN Declaration on Indigenous peoples»

7 Alston, Philip (1994) *The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights*. In: Alston Philip (1994) *The Best Interest of the Child: Reconciling Culture and Human Rights*. Oxford: Oxford University Press, page 7.



example, have made reservations against all articles in the convention that (according to the states) are in conflict with Islamic laws.⁸ This might be the price for achieving a Convention that contains both important provisions and many ratifications. Lucy Smith writes:

In my opinion, it has been extremely important that the Convention does contain the provisions that are most controversial, such as article 12 on the right to be heard, article 13 on freedom of expression and article 14 on freedom of thought, conscience and religion. A majority of states have accepted these articles; without them, the Convention would have been without much impact regarding the active rights of the child, and thus be without its innovative character. Without the possibility of making reservations, the Convention could not have been ratified by many Muslim states, and this would have impaired the effect of the Convention.⁹

Some states (for example Brunei, Indonesia, Singapore and Tunisia) have made reservations against all regulations in the convention that are in conflict with their national laws, without specifying which articles are to be excluded or modified. This type of general reservation would most likely be contrary to the objectives of the CRC, and could thus be regarded as a violation of the Vienna Convention on the Law of Treaties (article 31).¹⁰

8 Smith, Lucy (2003) Human rights for children. in: Bergsmo, Morten (2003) Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide. Leiden: Brill Academic Publisher, page 741-742.

9 Ibid, page 742.

10 See more in chapter 8.1 , page 45.

2. Relevant regulations

The CRC protection for Sámi children as indigenous and as a minority is comprised of no less than 13 provisions. The CRC refers specifically to minorities in article 17 (concerning information and the mass media) and article 30 (concerning culture, religion and language). Reference is made to children of indigenous origin three times in the text; in article 17, article 30 and article 29 (regarding the purpose of education). In addition, there are a number of other provisions that are important for children of minorities and indigenous peoples. In addition to the above mentioned articles, the following provisions are important:

Article 2 (protection against discrimination)

Article 5 (recognition of parents' and the local community's responsibility, rights and obligations)

Article 8 (the right to retain one's identity)

Article 16 (protection from arbitrary interference in the family and home)

Article 18 (recognition of both parents' responsibility for the upbringing of the child)

Article 20.3 (the right to cultural, religious and language continuity when placed in foster care)

Article 24.3 (abolition of traditions that are hazardous for the child's health)

Article 27 (a standard of living that develops the child physically, mentally, spiritually, morally and socially)

Article 28 (the right and obligation to education for all, compatible with the child's human value)

Article 40.2.b (vi) (right to an interpreter when a child has been charged with a criminal offence)

In addition to the wording of the articles, it is also worth noting article 12 in the preamble that emphasises that the convention has been accepted for member states that «Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child». In addition there are four superior principles that apply for the implementation and interpretation of all articles in the convention with relevance for children of minorities and indigenous peoples. These are: a) the right to non-discrimination (article 2), b) consideration for the child's best interests (article 3), c) the child's right to life and development (article 6) and d) the child's right to participation and to be heard (article 12).

2.1 The Drafting History of the CRC

When the Polish government presented a proposal on a convention for the protection of children's rights, in connection with the International Year of the Child (1979), there were no indications that this convention would include rights for indigenous children. During the process, the Polish government presented a draft proposal to the Human Rights Commission in 1978, based on the Declaration of the Rights of the Child (1959). The proposal was rejected as too vague and so the Commission created a working group that was assigned to prepare a more detailed proposal for children's rights.¹¹ The working group was given the name *The Open-Ended Working Group on a Draft Convention on the Rights of the Child*.¹² Based on a new and revised draft document from Poland, the working

11 Cohen, Cynthia Price (1998) International Protection of the Rights of Indigenous Children, in: Cohen, Cynthia Price (1998) Human Rights of Indigenous Peoples. New York: Transnational Publishers, page 38-39.

12 I will simply refer to this group as the «working group».

13 For those interested in further reading concerning the history of the negotiations on the Convention on the Rights of the Child, I recommend Detrick, Sharon. Jaap Doek and Nigel Cantwell (1992) United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher.

group started the meticulous task of preparing the convention, until a final draft was presented in 1989. Rights for indigenous children were introduced for the first time in 1983, when the *International Bahá'í Community* presented a five-paragraph text to the working group. The proposal concerned article 17, about the mass media. See more on this matter in Chapter 5, concerning article 17.¹³

13 For those interested in further reading concerning the history of the negotiations on the Convention on the Rights of the Child, I recommend Detrick, Sharon. Jaap Doek and Nigel Cantwell (1992) *United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires»*. Dordrecht: Kluwer Academic Publisher.

3. Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 30 is directly inspired by article 27 in the UN Convention on Civil and Political Rights (CCPR).¹⁴ The regulation is almost the same, except that article 30 specifically mentions indigenous peoples and is aimed at children. The protection of rights that have been developed in the light of CCPR article 27 may, according to Patrick Thornberry, be interpreted *mutatis mutandis*, in relation to article 30.¹⁵ The Committee also confirms the strong linkages between the two provisions.¹⁶ CCPR article 27 states as follows:

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

The Human Rights Committee has dealt with a number of individual complaints in which they have invoked the CCPR article 27. They have also issued a general comment (no. 23) specifically on this provision. CCPR article 27 has a very special position in the UN

as the mother principal for the organisation's protection of minorities. The Committee that prepared the proposal for the UN Universal Declaration on Human Rights (UDHR) could not agree on a single article that provides protection for minorities or indigenous peoples. When the General Assembly adopted the UDHR in 1948, they pointed out that: «*the United Nations cannot remain indifferent to the fate of minorities.*»¹⁷ The covenant that was to follow and expand the UDHR's somewhat general articles was in fact split into two conventions. One of these became the Covenant on Civil and Political Rights (CCPR) and the other became the Covenant on Economic, Social and Cultural Rights (CESCR). Both of these were adopted in 1966. These two covenants, along with the UDHR, are regarded as the UN «Bill of Human Rights». Protection for minorities was incorporated into CCPR (article 27) as a consequence of the General Assembly's request, and in many ways the article represents the UN's founding principles on the rights of minorities.¹⁸ In other words CCPR article 27 is very relevant for the interpretation of CRC article 30. The CCPR is also incorporated into the Norwegian Human Rights Act. The covenant is thus on the same level as the CRC in the Norwegian legal system, and in addition it has a strong position within international law.

3.1 The Drafting Article 30

In 1986, the indigenous organisation *Four Directions Council* put forward a proposal

14 CCPR article 27: «In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.»

15 Thornberry, Patrick (2002): *Indigenous Peoples and Human Rights*. Manchester: Manchester University Press, page 236.

16 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 16.

17 Eide, Asbjørn (1999) *The Non-Inclusion of Minority Rights: Resolution 217C (III)*, in: Alfredson, Gudmundur and Asbjørn Eide (1999) *The Universal Declaration on Human Rights: A Common Standard of Achievement*. Hague: Kluwer Law International, page 701.

18 Nowak, Manfred (2005): *U.N. Covenant on Civil and Political Rights: CCPR Commentary, 2nd revised edition*. Strasbourg: Norbert Paul Engel, page 638-642.

for a new regulation in the convention, which did not have its roots in the Polish proposals. The proposal from Four Directions Council was originally aimed exclusively at indigenous children and was as follows:

The State parties to the present Convention recognize the special needs of children belonging to indigenous populations, which include the rights of the child:

- a) *To have, learn, and, if he chooses, adopt the culture and language of his parents;*
- b) *To enjoy growing up in his family of birth and, if alternate family care or adoption is provided, to care or adoption in an otherwise suitable family or community of the same culture wherever possible;*
- c) *To be educated, at least at the primary level, and to the extent practicable within national resources, in the language of his parents as well as an official language of the State.¹⁹*

The proposal was supported by Mexico, which felt that the proposal should be handled in detail at the next meeting. Australia's representative felt that it was an interesting proposal; however, they did not agree that the regulation should only encompass indigenous children; they felt that minorities should also be included. At the working group in 1987, Norway presented an alternative text that was more concise and included *both* minorities and indigenous peoples. The proposal was based on CCPR article 27 and was as follows:

In those states in which ethnic, religious or linguistic minorities or indigenous populations exist, a child belonging to such a population shall not be denied the right, in community with other members of its minority or indigenous population to enjoy its own culture, to profess and practice its own religion, or to use and be trained in its own language.²⁰

This text was supported by several countries, including Australia. However, they insisted that the working group should also discuss the draft proposal of Four Directions Council. USA, Japan and Mexico were critical of both proposals as they imposed responsibility on the state for ensuring that indigenous children and minorities were offered education in their own language. The Norwegian delegation therefore agreed to omit the sentence «*and be trained in.*»²¹ On the basis of these proposals the chairman of the working group (Professor Adam Lopatka from Poland) appointed a committee (comprised of Norway, Four Directions Council, Australia and Finland) to draft a proposal that all parties could agree upon. The committee presented the following proposal:

1. *The States Parties to the present Convention shall take all appropriate measures to preserve and enhance the linguistic, cultural and religious heritage of children belonging to indigenous populations or ethnic or religious minorities.*
2. *In particular States parties shall, where the best interest of the child render foster care or adoption necessary, avoid where possible the removal of the child from their own group or community²²*

The proposal was met by criticism from several states. The Canadian delegation argued among other things that it would be better to incorporate the content of paragraph 2 into the convention's article concerning adoption. The final outcome was that the working group returned to the original proposal from Norway. This text remained in place until the working group's last meeting in 1989. Several representatives felt that the regulation was in conflict with the non-discrimination principle and that the entire regulation should be removed from the convention. A representative from an NGO argued strongly that the use of the word

19 Detrick, Sharon (1999) A Commentary on the United Nations Convention on the Rights of the Child. The Hague: Martinus Nijhoff Publisher, page 535.

20 Detrick, Sharon. Jaap Doek and Nigel Cantwell (1992) United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher, page 409

21 Despite the fact that this sentence was removed there is no doubt today that indigenous peoples and minorities have the right to language training in their own language. See chapter 3.4 , page 12

22 Detrick, Sharon. Jaap Doek and Nigel Cantwell (1992) United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher, page 410-411

«population» should be replaced by the word «peoples», or another more neutral term. The representative explained the negative implications that the use of the word «population» had for indigenous peoples. Indigenous peoples have fought for a long time to be recognised as peoples with the same rights in international law as other peoples.²³ A proposal was also put forward arguing that the provision should be formulated in a positive way. The proposal was that the phrase «*shall not be denied the right*» should be changed to «*shall have the right*». After some discussion that did not bring about any consensus, once more it was proposed that the entire article should be removed. However, the Canadian delegation, supported by several other delegations, insisted on keeping the provision. Finally, after a somewhat heated debate, Professor Adam Lopatka (the chairman) put forward a proposal based on the Norwegian draft that was based on CCPR article 27. The Lopatka proposal was unanimously passed by the working group and constitutes the text of the convention to this day.²⁴

3.2 Positive initiatives

The wording of article 30 is negatively formulated («*shall not be denied the right*»). However, the article requires the state to actively promote certain rights. The Committee on the Rights of the Child argues that:

*Although article 30 is expressed in negative terms, it nevertheless recognizes the existence of a «right» and requires that it «shall not be denied». Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation.*²⁵

Specifically referring to indigenous children the committee emphasise that:

*The Committee, through its extensive review of State party reports, notes that indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children. In particular, States parties are urged to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice.*²⁶

Thus indigenous children are among those who specifically require positive measures, and special attention should be given to «*health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice.*» The committee also makes reference to the position of the Human Rights Committee and concurs with that. CCPR article 27 is identical on this point and must, according to General Comment No. 23 of the Human Rights Committee, be interpreted positively. They argue that:

*Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a «right» and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.*²⁷

It is worth noting that the negative formula-

23 Here, there were also several others that wanted a formulation similar to the one that the working group had passed in connection with article 17 (during the process it was known as article 9). The term used here was »persons of indigenous origin«. See further information in chapter 5.1 , page 32.

24 Detrick, Sharon. Jaap Doek and Nigel Cantwell (1992) United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher, page 413-414. See also: Cohen, Cynthia Price (1998) International Protection of the Rights of Indigenous Children, in: Cohen, Cynthia Price (1998) Human Rights of Indigenous Peoples. New York: Transnational Publishers, page 47-49.

25 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 17.

26 Ibid, paragraph 25.

27 The Human Rights Committee (8th April 1994): CCPR/C/21/Rev.1/Add.5, General Comment no. 23: The rights of minorities (Art. 27), paragraph 6.1

tion («shall not be denied») was not repeated in the UN Declaration on Persons Belonging to National, Ethnic, Religious or Linguistic Minorities (1992). In this declaration, the rights are formulated explicitly in positive terms in the form of sentences such as; «States shall protect» (article 1) and «States shall take measures» (article 4). The Human Rights Committee also makes it clear that positive measures must not lead to an unfair discrimination between groups and requests that the state respects CCPR article 2.1 and CCPR article 26 concerning non-discrimination. CRC article 2 is also on non-discrimination and corresponds to CCPR article 2. This regulation must therefore be seen in correlation with CRC article 30 in the same way. At the same time it is clear that the Human Rights Committee does not accept the non-discrimination principle as an excuse for avoiding positive measures.²⁸

The Committee on Racial Discrimination, which is one of the most competent UN bodies on discrimination issues, specifically requests states to «recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation».²⁹ The Committee on the rights of the Child specifically supports this statement in its General Comment no. 11 (paragraph 18).³⁰ The Committee on Racial Discrimination also refers specifically to the importance of restoring justice and calls on states to return or compensate land areas that have been taken from indigenous peoples without their free and informed consent.³¹ The logic is founded on the fact that if one opposes negative discrimination as a principle, one must also accept the principle of restoring justice when such negative discrimination has indeed occurred.

In Norway The Act pertaining to the pro-

hibition of discrimination on the grounds of ethnicity, religion etc. of 3rd April 2005 no. 33 (Discrimination Act) § 8 states specifically that; «positive discrimination that contributes to the promotion of the objectives of this Act, is not regarded as discrimination in view of the law here. Any positive discrimination shall be discontinued when the objectives have been met». The objective of positive discrimination must be to compensate for a poorer starting point and to combating oppression. The objective is to avoid actual inequalities between groups or to even out existing differences – not to provide some groups with better opportunities than other groups in society. Positive discrimination for Sámi children are therefore a legal right if the objectives are to promote equality, to secure equal opportunities and rights or to prevent negative discrimination.³² It will also be relevant to apply positive discrimination in different ways and with a variation in degree to different Sámi groups. The issue that then arises is to what degree children from one certain Sámi group will be able claim that they are subjected to unlawful discrimination, if positive discrimination is implemented for children belonging to another group.³³

3.3 The constitution § 100a³⁴

CCPR article 27, the mother of CRC article 30, have had a great influence on the development of the rights of minorities in Norway, and especially the development of rights of the Sámi. CCPR article 27 was very important for the Sámi Rights Committee's work, that in turn led to the establishment of the Sámi Parliament, Norway's ratification of the ILO Convention no. 169, the Finnmark Act and not least the Norwegian Constitution's §110a.³⁵ §110a, is directly inspired by CCPR article 27 and is as follows:

28 The Human Rights Committee (8th April 1994): UN Document: CCPR/C/21/Rev.1/Add.5, General Comment no. 23: The rights of minorities (Art. 27), paragraph 2 og 6.2

29 The Committee on Racial Discrimination (18th August 1997): UN doc: CERD 18/08/97: General Recommendation No. 23: Indigenous Peoples, paragraph 4a

30 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 18.

31 The Committee on Racial Discrimination (18th August 1997): UN doc: CERD 18/08/97: General Recommendation No. 23: Indigenous Peoples, paragraph 4a and 5.

32 Kirkøen, Christel (2005): Norsk Lovkommentar: 3rd June 2005 no. 33 Lov om forbud mot diskriminering på grunn av etnisitet, religion mv. (diskrimineringsloven), paragraph 29.

33 Ibid, paragraph 29.

34 The sign «§» is the equivalent to «article.» Norwegian articles in different laws are labelled this way.

35 Smith, Carsten (2007): Samerettsutvalget – tyve år etter. Oslo: Torkel Oppsahl's minneseminar.. Oslo: Torkel Oppsahl seminar, s.4. Available at: http://www.galdud.org/govat/doc/samerettsutvalget_tyve_ar_etter.pdf

It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life.

The regulation is not formulated in general terms to include all minorities (as in CRC article 30 and CCPR article 27), but is specifically aimed at the Sámi. By way of explanation, it is highlighted in the Sámi Rights Committee's first report that Sámi culture is in a special position in relation to other minorities:

The entire Sámi culture is to a decisive degree dependent on the type of management it receives from the Norwegian authorities. If the Sámi culture is not allocated sufficient living conditions in Norway, it is highly doubtful that it will be capable of further existence in our neighbouring countries [...]. To a considerable degree therefore the culture is at the mercy of the policies of the Norwegian authorities, and it is the only culture [in Norway] in this vulnerable position.³⁶

Based on the principle that all minority cultures are held equal, there was a minority of six members that did not want a separate constitutional provision for the Sámi, before the issue of constitutional protection for other minorities had been clarified. In order to solve the dilemma, the Committee recommended, as a prerequisite for a Sámi constitutional provision, that the government should also take the necessary steps to form a new committee, with representatives for other minorities, to incorporate their rights into the constitution.³⁷ 24 years has passed and this committee has still not been established, thus there is no specific article that provides protection for other minorities in the Norwegian constitution.

§110a of the Norwegian Constitution is a principle associated with the new generation of constitutional provisions in Norway. In

the same group, we also find §110b, concerning environmental rights and §110c concerning human rights. These provisions, in addition to preliminary works and case law will be relevant for the interpretation of §110a.

From the preliminary work on the §110b, it follows that the provision has legal significance in four respects: It provides guidelines for the legislators, it places restrictions on the administration's arbitrary position in environmental issues, it is an important element in the interpretation of environmental law and it can also give an independent legal ground for issues that the legislators have not addressed. §110a must also be interpreted in this manner. Regarding the interpretation of the concepts of «language», «culture» and «society», this is meant to be interpreted in a broad sense. There are 10 different Sámi languages, in which, for example, Northern Sámi and Southern Sámi are as linguistically distinct from each other as Norwegian and Icelandic. Nevertheless §110a use the term «language» in the singular. The Sámi Parliament points out that the regulation is meant to encompass all the Sámi languages. «Culture» too should be interpreted in the broadest sense, in which the Sámi Rights Committee declares that:

We speak of culture as the sum of norms, values, methods of operation and common conceptions in a society. Culture defined in this way includes lifestyles, customs and traditions and religious beliefs.⁴⁰

To make sure that the concept in practical policymaking would not be subject to a limited understanding, the concept «community life» was also added.⁴¹

3.4 The mother tongue

Article 30 is clear on the point that the children of minorities and indigenous peoples shall not be «denied the right» to «use his or her own language.» Language rights must

36 NOU 1984: 18 Om samenes rettsstilling. Oslo: Universitetsforlaget, punkt no. 10.8.12.2. page 440.

37 NOU 1984: 18 Om samenes rettsstilling. Oslo: Universitetsforlaget, paragraph 10.8, page 442.

38 Skogvang, Susann Funderud (2002): Samerett: om samenes rett til en fortid, nåtid og en framtid. Oslo: Universitetsforlaget, page 97.

39 Sami Parliament web pages: Language, available 10th June 2007 at: <http://www.samediggi.no/artikkel.aspx?AId=56&back=1&Mid1=11&Mid2=123>

40 NOU 1984: 18 Om samenes rettsstilling. Oslo: Universitetsforlaget, paragraph 10.8.6 page 435

41 NOU 1984: 18 Om samenes rettsstilling. Oslo: Universitetsforlaget, paragraph 10.8.7. page 436

especially be seen in relation to CRC article 17c, article 29.1 and article 42.2b. The Committee on the Rights of the Child firmly establishes that «*indigenous children shall be taught to read and write in their own language besides being accorded the opportunity to attain fluency in the official languages of the country.*» According to the Committee «*education in the child's own language is essential*» in order to implement the rights under CRC article 30.⁴² According to Will Kymlicka (2003), the choice of language and language education in schools is essential for the survival of the whole culture. He writes that:

*When the government decides the language of public schooling, it is providing what is probably the most important form of support needed by societal cultures, since it guarantees the passing on of the language and its associated traditions and conventions to the next generation. Refusing to provide public schooling in a minority language, by contrast, is almost inevitably condemning that language to ever-increasing marginalization.*⁴³

According to UNICEF measures to secure mother tongue education for children in schools are the norm in the great majority of developed countries.⁴⁴ The Committee on the Rights of the Child has expressed its concern to a number of countries, concerning the absence of mother tongue education and inadequate translations of school materials to all the minority languages.⁴⁵ The Committee recommends that the State Party allocate resources to translate school materials into minority languages with the objective to encourage, in the appropriate regions, schools and teachers to provide education in minority languages.⁴⁶ At the same time, the committee highlights the issue that education

should not only be given in the mother tongue, but should also include language education in the country's national majority language.⁴⁷ The right to a mother tongue must also be seen in relation to ILO Convention no. 169 article 28, that refers specifically to indigenous children's right to learn their original language. At the same time article 28 also specifically refers to the right to learn fluency in the national language or one of the official languages of the country.⁴⁸ The Committee on the Rights of the Child makes specific reference this ILO provision, adding that «*Bilingual and intercultural curricula are important criteria for the education of indigenous children.*»⁴⁹ The UN Declaration on the Rights of Indigenous Peoples article 14 also concerns the right of indigenous children to receive education in their own mother tongue. This article also specifies that the right should also apply to children living outside of their communities, when possible.

Sámi children, in contrast to other minorities in Norway, are given an entire chapter (Chapter 6) in the *Act pertaining to primary and high school education* of 17th July 1998, no. 61 (Education Act), which determines the right to mother tongue education. It is worth noting that children who are not of Sámi origin also have the right to learn Sámi and also to be thought other subjects in one of the Sámi languages. Outside of the Sámi districts, however, there must be at least ten students that request such an education before non-Sámi students can have this right fulfilled (§ 6-2). Outside the Sámi districts the Sámi children have a right to learn Sámi regardless of numbers, but not the right to learn other subjects in the Sámi language. Within the Sámi districts all children (regardless of origin) have this right. Outside the Sámi districts there needs to be at least ten other students (regardless of origin) who

42 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 62

43 Kymlicka, Will (2003) *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press, page 111.

44 S. Mehrotra, J. Vandemoortele and E. Delamónica (2000): *Basic services for all? UNICEF Innocenti Research Centre*, page 27. See: Hodgkin, Rachel and Peter Newell (2002) *Implementation Handbook for the Convention on the Rights of the Child*. Genève: United Nations Children's Fund, page 459.

45 Committee on the Rights of the Child (30.oktober 1996) CRC/C/15/Add.60: Concluding observations of the: Morocco, paragraph 14. Hodgkin, Rachel and Peter Newell (2002) *Implementation Handbook for the Convention on the Rights of the Child*. Genève: United Nations Children's Fund, page 460.

46 Committee on the Rights of the Child (24th January 1997) CRC/C/15/Add.69: Concluding observations of the: Myanmar, paragraph 39.

47 Committee on the Rights of the Child (7th June 1996) CRC/C/15/Add.56: Concluding observations of the: China, paragraph 19.

48 *Infra* chapter 6.1 ILO Convention no. 169, page 37.

49 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 62

wants it. Of course it has never actually happened in reality that there are ten non-Sámi children outside the Sámi districts who insist on getting their entire education in Sámi. In the government's new national curriculum plan there is a separate Sámi curriculum plan, which apply in parallel to all students in the Sámi districts. The education plans also apply to students outside of Sámi districts that receive Sámi education.

According to a report issued by the Sámi Parliament (2001), there is limited knowledge of the law, both among school management and the administration in many municipalities, especially outside of the Sámi districts. This creates many unnecessary difficulties for children and parents. In addition, the Sámi language is often looked upon as a «problem» and a «burden» for the school and the municipality government. Often parents have to fight hard for their children to get the Sámi education that they are entitled to. Many children feel it is hard to be singled out and they may get bullied because of it.⁵⁰ Recently (2008), there has also been a great deal of intense discussion on Sámi curriculum textbooks. Sámi children have the right to learn Sámi and a right to education in the Sámi language; however, it is not easy to fulfil these rights, when there are no good textbooks available.⁵¹

3.5 Geographic differences

There is a distinction in the Norwegian Education Act and in chapter 3 of the Act pertaining to the Sámi Parliament and other Sámi legislative issues, 17th June 1987 no. 56 (the Sámi Act) regarding Sámi people that live inside or outside of the administrative areas for Sámi language (The Sámi districts). This geographic distinction is reflected in CRC article 30 when it specifies that the right must be applied «*in community with other members of his or her group*».⁵² The first report from the Sámi Rights Committee (NOU 1984: 18) considers the issue in relation

to CCPR article 27 with reference to the so-called Lovance vs. Canada case. The committee concluded that in order for individuals to have access to culture and language, they must be resident in an area of the country where such a community exists.⁵³ *The Sámi Rights Committee modified this distinction to some degree. They pointed out that CCPR article 27 in principle applies to the country as a whole; however, the «the broadest rights under article 27 are relevant in the minority's central settlement areas».*⁵⁴ The rights of the Sámi in Oslo are thus limited because Oslo is not regarded as a Sámi district. This is so despite the fact that Oslo is often referred to as the largest Sámi municipality in the country. One might also ask whether Oslo as the capital city of Norway may have «capital» obligations towards the Sámi as well as the Norwegians.

3.6 Natural resources

Land rights and other rights pertaining to the use of natural resources, based on CRC article 30, apply specifically only to indigenous (Sámi) children. With reference to General Comment No. 23 (paragraph 7) of the Human Rights Committee and ILO Convention No. 169, the Committee on the Rights of the Child states that:

*[...] the enjoyment of the rights under article 30, in particular the right to enjoy one's culture, may consist of a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.*⁵⁵

The committee further asserts in General Comment no. 11 that:

In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and

50 Sami Parliament (2001) Utredning om samisk opplæring utenfor forvaltningsområdet for samisk språk. Karasjok: Sami Parliament, page 91-104.

51 NRK Sámi Radio: Alt om læremiddelbråket: http://www.nrk.no/kanal/nrk_sami_radio/1.5598965

52 See briefly on the theme in relation to CP article 27 in: Skogvang, Susann Funderud (2002): Samerett: om samenes rett til en fortid, nåtid og en framtid. Oslo: Universitetsforlaget, page 45-46.

53 NOU 1984: 18 Om samenes rettsstilling. Oslo: Universitetsforlaget, paragraph 6.8.6, page 284.

54 NOU 1997: 5 Urfolks landrettigheter etter folkerett og utenlandsk rett., paragraph 3.6.5, page 81

55 Committee on the Rights of the Child (3rd October 2003): 34th session: Day of General Discussion on the Rights of Indigenous Children, paragraph 4.

enjoyment of culture.⁵⁶ States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible.⁵⁷

Within a reindeer herding family children are given their own reindeers from the time of their birth. Then, as they grow up, they must learn about summer and winter pastures, about the snow conditions and how it affects the animals and about cooking, etc. The Sámi children living by the coast are early on brought along for fishing, they must learn about fishing grounds, about the currents, the significance of the direction of the wind, how to prepare and repair salmon nets, etc. All of these things are closely associated with the use of natural resources. Thus it is obvious that it is impossible for the State to fully recognize the cultural rights of Sámi children without recognizing land rights or territorial rights. Further details of exactly what land rights entail must be seen in the context of the ILO Convention no. 169 (article 13-19). I would like to highlight especially article 14, which states that:

1. *The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.*
2. *Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.*
3. *Adequate procedures shall be established*

within the national legal system to resolve land claims by the peoples concerned.

This article underscores indigenous peoples' right to ownership and procession of the land and areas that they have traditionally occupied. It also requires the state to establish procedures to identify these areas, to clarify the rights associated with these areas and «*guarantee effective protection*» of these rights. It has been 18 years since the Norwegian government ratified the ILO-Convention 169. However the work to establish the procedures has just begun in Norway. The Finnmark Act⁵⁸ establishes, among other things, a Finnmark Commission «*which, on the basis of current national law, shall investigate rights of use and ownership to the land*» (§29). However it is quite a tedious and expensive process. In fact, while I am writing this essay, the Finnmark Commission has not yet identified the rights associated to a single area yet. The chairman, Jon Gauslaa, has announced that the process will take at least another 10 years, given that the commission gets enough funding and good working conditions.⁵⁹ The Finnmark Act also establishes a tribunal (The Uncultivated Land Tribunal for Finnmark) to deal with complaints on the decisions by the Finnmark Commission. It is important to note that it is not «Sámi rights» as such that are subject to investigation. Anybody, regardless of their cultural background, can put forward a claim that they have ownership rights or rights to procession of an area in Finnmark. Another body established by the Finnmark Act is the Finnmark Estate, which is an independent legal entity that functions as the owner of the former state property land in Finnmark. 96 percent of the area of Finnmark (46 000 km²), which is the size of Denmark, was owned by the state up until the adoption of the Finnmark Act. The Finnmark Estate is comprised of three representatives from the Sámi Parliament and three representatives from the Finnmark County Council.

56 UNICEF (2004) Innocenti Digest No. 1: Ensuring the Rights of Indigenous Children, page 8

57 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 35.

58 The act relating to legal relations and management of land and natural resources in the county of Finnmark 17 June 2005 No. 85

59 NRK (17.09.09) Krevende med rettigheter i Finnmark: http://www.nrk.no/nyheter/distrikt/troms_og_finnmark/1.6779779

However, although the Finnmark Estate has been transferred the ownership rights to the land they do not really know what areas that in reality belongs to somebody else. They cannot do that much until the Finnmark Commission has finished its work. Professor Kirsti Strøm Bull explains that:

The Finnmark Estate are today the formal owners of an area of 46 000 km², however this area could become considerably smaller when the Finnmark Commission has finished its work. And on the remaining areas in which the Finnmark Estate is considered the owner, others may have such considerable rights to use the land that it will strongly restrict the Finnmark Estate's freedom of action.⁶⁰

One weakness of the Finnmark Act is that it only applies to areas in Finnmark. The need to identify rights to ownership, procession and use of land areas south of Finnmark is certainly there. In addition the Finnmark Commission has no mandate to investigate and identify rights associated with fjords and coastal waters. On 3rd December 2007, the Sámi Rights Committee presented its latest report, «The New Sámi Law». It concerns mainly the clarification of land rights in the county Troms and further south, including traditional Sámi areas in the North and South of Trøndelag and Hedmark. Among the things that the report proposes is the establishment of a commission and a tribunal similar to those in Finnmark. However the report proposes a wider mandate for these institutions than for the institutions in Finnmark. In addition to land rights the commission and the tribunal for Troms and the areas further South should also clarify and identify rights based on historical use associated with salt water fishing and other marine resources. But the report still remains a proposal, no institutions for Troms and the areas further south have been established yet.⁶¹

Although the investigation of rights is not yet completed, it does not mean that the rights in themselves do not exist per se. The identification process is just a clarification to formalise and clarify the already existing rights of the peoples in these regions. For those who cannot wait one could, if one has the material means, claim one's right in court. In this context, two Supreme Court judgements should be mentioned: The Selbu case (2001) and the Svartskog case (2001). The Selbu case concerned a dispute as to whether Essand and Riast/Hylling Reindeer Herding Districts had grazing rights in privately-owned areas in Selbu in the county of South Trøndelag. The Supreme Court found in favour of the reindeer herders, on the basis of the principle of historical use, in line with the Reindeer Farming Act of 9th June 1978 no. 49 § 2.⁶² The Svartskog case concerned a dispute regarding whether Sámi landowners and rights owners in Manndalen (in the county Troms) based on the principle of historical use had acquired the property rights to a 116 km² area at the top of the valley, known as «Svartskogen». The area was purchased by the state in 1885, in favour of the reindeer herders. The Supreme Court found that the state had lost the right to ownership of that area. The Supreme Court did not assume any position as to who should be the recipient of the ownership status that the state had lost. Thus the village council, which was largely comprised of Sámi, was awarded the property rights to a large area, which the village had used since time immemorial.⁶³

The same principles should apply to inshore waters as to land rights in terms of CRC article 30. Sámi culture in coastal areas is closely associated with the use of fjords and coastal waters. A culture that is associated with the use of coastal waters cannot be offered adequate protection without rights pertaining to these coastal areas. The Sámi coastal culture was particularly hit hard by the 100 years of Norwegian assimilation policy (The

60 Bull, Kirsti Strøm (2007) Finnmarksloven – Finnmarkseiendommen og kartlegging av rettigheter i Finnmark. Norsk juridisk tidsskrift. vol. 46, 9. Oslo: Universitetsforlaget, page 560

61 NOU 2007: 13 Den nye sameretten

62 Rettstidende 2001: Selbu-dommen, page 769. See also Ot.prp. nr. 53 (2002–2003): Om lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke (Finnmarksloven). Oslo: Justis- og politidepartementet, paragraph 3.4.2

63 Rettstidende 2001: Svartskog-dommen, page 1229. See Ot.prp. nr. 53 (2002–2003): Om lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke (Finnmarksloven). Oslo: Justis- og politidepartementet, paragraph 3.1.8

Norwegianization policy). One could thus argue that the government has a special responsibility to ensure the survival of Sámi coastal culture and to safeguard its right to develop. On 6th June 2005, responding to the criticism of the Finnmark Act and the need for clarity of Sámi coastal rights, the Norwegian parliament requested that the government «*as soon as possible, should carry out an assessment of Sámi and others' rights to fishing in the ocean off the coast of Finnmark*». On 30th June, the Ministry of Fisheries and Coastal Affairs established the so-called Coastal Fishing Committee of Finnmark, led by the former Supreme Court justice and former leader for the Sámi Rights Committee, Professor Carsten Smith. A unanimous committee presented its report on 18th February 2008, without a single dissenting opinion. The committee found that people living along the fjords and coast of Finnmark have the right to fish in the ocean off the coast of Finnmark. The right shall apply to all groups that live along the coast. The committee proposed that the rights should be incorporated into a separate law. In addition, the committee put forward other individual proposals with the objective of reinforcing fjord and coastal fishing rights in Finnmark. However as the last act of office by Helga Pedersen, the Minister of Fisheries and Coastal Affairs, she dismissed the report by the *Coastal Fishing Committee of Finnmark* in October 2009. She proposed to give the people of Finnmark a small general quota of 3000 tons of fish. However the 574 page report by the Coastal Fishing Committee of Finnmark outlining the historical rights of the Sámi people and their relationship with the coastal areas was trashed.

3.7 The best interest of the child

The Committee on the rights of the Child emphasise the importance of land rights and recognise that it is essential for the protection of indigenous children's culture. However they also issue a warning to the indigenous peoples, stating that:

*Indigenous children have not always received the distinct consideration they deserve. In some cases, their particular situation has been obscured by other issues of broader concern to indigenous peoples, (including land rights and political representation). In the case of children, the best interests of the child cannot be neglected or violated in preference for the best interests of the group.*⁶⁴

Land rights and the fight for natural resources have dominated the agenda for many indigenous peoples for hundreds of years. The fight to preserve the traditions and the culture could sometimes be blinding to some indigenous peoples. In fact sometimes I get the feeling that it is more important to be a 'good Sámi' than it is to be a good human being. The best interest of indigenous children cannot be sacrificed on the 'altar of culture.' The best interest of the child is a fundamental principal of the CRC. According to CRC article 3:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Having said that the committee also emphasise that when State authorities seek to assess the best interests of an indigenous child; «*they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group.*»⁶⁵ Furthermore the committee emphasise that; «*the best interests of the child is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights.*»⁶⁶ Thus there is a distinction between the best interest of each individual child and Sámi (indigenous) children as a group. If there is a conflict between the best interest of an individual child and that

64 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 30.

65 Ibid, paragraph 31

66 Ibid, paragraph 30

of the group «*it is the best interests of the specific child that is the primary concern.*»⁶⁷ However, the collective cultural right of the child is part of determining the individual child's best interests.

3.8 Consultations

The principle enshrined in CRC article 3 on the best interest of child has different meanings in different cultures. People that belong to a specific cultural group will, as a general rule, know what is best for their own peoples.⁶⁸ Thus the Committee on the Rights of the Child has, on several occasions, urged governments, to consult minorities and indigenous peoples on issues that affect their children, and ensure that the children themselves are consulted.⁶⁹ The committee explains that:

*As regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way.*⁷⁰

And these consultations should to the extent possible also «*include meaningful participation of indigenous children.*»⁷¹ Thus, states parties should consult with indigenous communities and directly with indigenous children. This last point must be viewed in relation to CRC article 12 (1), which states that children have the right to express their views freely in «*all matters affecting the child.*» And the views of the child shall be «*given due weight in accordance with the age and maturity of the child.*» There is a distinction to be made between the views of a single child in relation to his/her specific situation

and the views of children as a group. It might be more difficult to assess the maturity of children when they express themselves collectively. Nevertheless the committee points out that:

*Even when confronting difficulties in assessing age and maturity, States parties should consider children as a group to be heard, and the Committee strongly recommends that States parties exert all efforts to listen to or seek the views of those children speaking collectively.*⁷²

It is important to provide an environment that enables the child to exercise their right to be heard. According to CRC article 12 (1) the child has the right «*to express those views freely.*» This means that the child must not be manipulated or subjected to any undue influence or pressure.⁷³ States parties must ensure conditions for expressing views that account for the child's individual and social situation and an environment in which the child feels respected and secure when freely expressing her or his opinions.⁷⁴ Also the committee points out that: «*Children should be supported and encouraged to form their own child-led organizations and initiatives, which will create space for meaningful participation and representation.*»⁷⁵ The Committee points out that governments are obliged, in connection to «*all matters affecting them*» to ascertain the views of particular groups of children on particular issues.⁷⁶ In connection with the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention, the Committee points out that the government must consult «*those living and working with them*»⁷⁷ The Committee points out that the governments should work closely with indigenous organisations to reach agreement on all projects and policy

67 Ibid, paragraph 32

68 Kymlicka, Will (1995): Multi-cultural Citizenship: A liberal theory of minority rights. New York: Oxford University Press, page 139.

69 Committee on the Rights of the Child (2009) General Comment no. 11: Indigenous children and their rights under the Convention, paragraphs 12, 20, 31, 37, 39, 42, 43, 48, 55, 60, 66, 71, 73, 75 and 81.

70 Ibid, paragraph 31

71 Ibid

72 Committee on the Rights of the Child (2009) CRC/C/GC/12: General Comment no. 12: The right of the child to be heard, paragraph 10

73 Ibid, paragraph 22

74 Ibid, paragraph 23

75 Ibid, paragraph 128

76 Committee on the Rights of the Child (3rd October 2003) CRC/GC/2003/5: General Comment no. 5: General measures of implementation of the Convention on the Rights of the Child, paragraph 12

programmes designed to carry out the implementation of the CRC.⁷⁸ Also the Committee urges the state to strengthen direct cooperation with indigenous communities.⁷⁹ Thus we are not just talking about consultations in which the government asks the indigenous peoples what they think and then going of to do what they want without listening. They are obliged to try to «reach agreement» and strengthen «cooperation».

The Sámi Parliament is the natural body for the government in Norway to consult. On the 11th of May 2005, based on the ILO Convention article 6, a consultation agreement between the Norwegian government and the Sámi Parliament was adopted. The agreement applies to the government, ministries, directorates and other underlying offices. The consultations with the Sámi Parliament must be held in good faith and with the objective of reaching agreement on proposed initiatives.⁸⁰ Experience so far indicates however that the consultations are characterised by a number of challenges.⁸¹ Also, neither the Sámi Parliament nor the government has established any systematic ways of consulting Sámi children and youth on matters that affect them as a group.

3.9 Discrimination and prejudice

Non-discrimination is one of the most important principles of the CRC. Article 2 of the convention codifies the principle. Article 30 does not explicitly concern discrimination; however, the provision of «not be denied the right [...] to enjoy his or her own culture» is definitely affected by discrimination, racism and prejudice. The Committee has, on several occasions, highlighted the importance of combating prejudice, and they have expressed particular concern for the children in Norway:

Despite the on-going measures of the State party in this area, the Committee is concerned about the discrimination faced by some children in schools and society on the basis of their religious or ethnic backgrounds.⁸²

The Committee therefore urge Norway to intensify efforts to eliminate all forms of discrimination against children.⁸³ In order to effectively protect children from discrimination, the state must ensure that the principle of non-discrimination is reflected in all domestic legislation and can be directly applied and appropriately monitored and enforced through judicial and administrative bodies. Effective remedies should be timely and accessible.⁸⁴ Furthermore the Committee highlights that the «obligations of the State party extend not only to the public but also to the private sector.»⁸⁵ Also the state should organise awareness raising campaigns, education programmes, change curricula, change text books and promote legislation aimed to address stereotypes, hostile attitudes, prejudices and racism.⁸⁶ However, this is an important theme for the chapters following concerning article 29 and article 17. The CRC and the Committee provide clear recommendations on how the state should combat prejudice and discrimination of indigenous children, both with regard to education and the mass media.

77 Committee on the Rights of the Child (3rd October 2003) CRC/GC/2003/5: General Comment no. 5: General measures of implementation of the Convention on the Rights of the Child, paragraph 29.

78 Committee on the Rights of the Child, 34th session (3rd October 2003) Day of general discussion on the rights of indigenous children, paragraph 8.

79 Committee on the Rights of the Child (2009) General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 82.

80 Arbeid- og Inkluderingsdepartementet (11. mai 2005): Prosedyrer for konsultasjoner mellom statlige myndigheter og Sametinget. Oslo, paragraph 6.

81 Sami Parliament (2006): Protokoll fra det halvårslige konsultasjonsmøte 30.06.06 mellom arbeids- og inkluderingsministeren og sametingspresidenten, page 1.

82 Committee on the Rights of the Child (21st September 2005) CRC/C/15/Add.263: Concluding observations: Norway, paragraph 18.

83 Committee on the Rights of the Child (21st September 2005) CRC/C/15/Add.263: Concluding observations: Norway, paragraph 19.

84 Committee on the Rights of the Child (2009) General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 23

85 Ibid

86 Ibid, paragraphs 22, 27 and 58

4. Article 29 (1)

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.

What should determine the substance of education and its purpose? What should our children grow up to become? These are fundamentally difficult questions deeply

rooted in some of our deepest ethical and moral beliefs. They are ultimately linked to what it means to be a good human being. CRC Article 29 (1) is essentially about the fundamental purpose and aims of education. It is not formulated as a right or freedom, but codifies the consensus of world opinion on the basic principles of the purpose of education that the governments should protect, respect and facilitate. The whole article is relevant for indigenous children, but paragraphs (c) and (d) are of special significance. Given the holistic nature of the CRC there are several other articles that must be viewed in relation to article 29 (1).⁸⁷ Also there are several regional and global human rights instruments that are relevant.⁸⁸ Article 29 (1) was subject for first General comment by the Committee on the Rights of the Child. No less than 11 paragraphs of this general comment have a direct relevance for indigenous children (paragraphs 4, 6, 9, 10, 11, 13, 15, 18, 19, 21 and 24).⁸⁹ Since the aims of education «*apply to education for all children*»⁹⁰ the Committee chose not to say much about the aims of education in its general comment specifically on indigenous children. States are: «*encouraged to refer to the Committee's general comment No. 1 on*

⁸⁷ In addition to article 28 (on the right to education), article 29 can be seen in relation to article 2 (on non-discrimination), article 3 (the principle of the best interest of the child), article 6 (on the right to development), article 8 (on the right to identity), article 12 (respect for the views of the child), article 13 (freedom of expression), article 14, (freedom of thought, conscience and religion), article 17 (on the right to appropriate information and the media), article 19 (protection from all forms of violence), article 23 (3) (disabled children's right to education), article 24 (2) (e) (health education), article 30 (indigenous right to culture, language and religion) and article 42 (obligation to make the CRC widely known).

⁸⁸ Among these instruments are The Universal Declaration on Human Rights (UDHR): article 26, Covenant on Economic, Social and Cultural Rights (CESCR): article 13, Convention on the Elimination of All Forms of Racial Discrimination (CERD): article 7, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): article 10, ILO Convention 169: articles 26-31, ILO Convention 107: articles 21-26, UN Declaration on the Rights of Indigenous Peoples: articles 14 and 15, UN Declaration on the Rights of Persons Belonging to National, Religious and Linguistic Minorities: article 4 (4), UNESCO World Declaration on Education for All: Meeting Basic Learning Needs: article 1, Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education - lessons for life: paragraph I (2), UNESCO Convention Against Discrimination in Education: articles 1-5, UNESCO Declaration of the Principles of International Cultural Co-operation: articles 1-11, UNESCO Declaration on Race and Racial Prejudice: article 5, World Conference on Human Rights: The Vienna Declaration: paragraphs 33 and 34, World Conference on Human Rights: Program of Action: paragraphs 78-82, Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance: paragraphs 95 and 118, Program of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance: paragraphs 117, 126-132 and 136, European Framework Convention for the Protection of National Minorities: articles 12-14, European Charter For Regional or Minority Languages: article 8, Protocol 1 of The European Convention on Human Rights: article 2, The American Declaration of Rights and Duties of Man: article XII, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador): article 13, African Charter on Human Rights and Peoples' Rights: articles 17 and 25, African Charter on the Rights and Welfare of the Child: article 11, Cairo Declaration on Human Rights in Islam: article 9, Arab Charter on Human Rights: articles 34, 36 and 37, Draft Nordic Saami Convention: articles 12, 26 and 28.

⁸⁹ Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment nr. 1: The Purpose of Education.

⁹⁰ Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 56

the aims of education for further guidance on this matter.»⁹¹

4.1 The Drafting of Article 29

CRC article 29 was subject to many suggestions from several states, NGOs (including the Bahá'í International Community again) and UN organisations (including UNICEF, UNESCO and ILO). In 1988 on the basis of all the proposals the Drafting Working Group established a committee which included Norway, Canada, Yugoslavia, UNESCO and ILO. The committee proposed a text, which in its subparagraph 1 (d) suggested that education of children should be directed to:

The preparation of the child for a responsible life in a free society, in a spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, religious and indigenous groups.⁹²

The proposal was vigorously debated. Some suggested that the reference to indigenous was unnecessary since, according to them, it was included in the concept «ethnic». However the observer from Canada objected and explained that in Canada and other countries, indigenous persons were not considered to be members of ethnic groups and therefore a specific reference was necessary. The observer from Canada then proposed that after the words «all peoples» it should be added: «[...] and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin». Since there were no objections to the proposal from Canada it was adopted by the Working Group.⁹³

4.2 The International Aims of Education

The first time nations formulated a principle on the purpose of education was in 1924. The League of Nations adopted the Geneva Declaration of the Rights of the Child, in

which article 5 stated that: «*The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.*» CRC article 29 (1) is the most detailed and widely recognized standard of today. The provision states that education of the child shall be directed to «*the development of respect for human rights and fundamental freedoms*» and «*the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*». These aims form part of some of the most fundamental and earliest principles of the United Nations. The purpose of education is defined and codified as one of the fundamental principles of human rights by the Universal Declaration of Human Rights (UDHR). Article 26 (2) proclaims that:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

When the UN adopted the Universal Declaration on Human Rights (UDHR) it was the very first attempt to define the concept of human rights in the UN Charter. Today it is the cornerstone of international human rights. It has become a powerful document that codifies an important part of international customary law. According to Asbjørn Eide and Gudmundur Alfredson (1999) all governments are bound to feel its influence both domestically and internationally.⁹⁴ The principles of UDHR article 26 were later repeated by the Covenant on Economic, Social and Cultural Rights (CESCR) article 13 (1). CESCR also added that all persons

⁹¹ Ibid.

⁹² Detrick, Sharon. Jaap Doek og Nigel Cantwell (1992) United Nations Convention on The Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher, p. 406

⁹³ Detrick, Sharon. Jaap Doek og Nigel Cantwell (1992) United Nations Convention on The Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher, p. 407

⁹⁴ Alfredson, Gudmundur og Asbjørn Eide (1999) The Universal Declaration on Human Rights: A Common Standard of Achievement. Hague: Kluwer Law International, pp. xxv og xxx

should be thought «*understanding, tolerance and friendship*» towards «*ethnic*» groups. The CRC article 29 (1) have added «*persons of indigenous origin*» and the preparation of the child for responsible life in a free society, in the spirit of «*equality of sexes*». The focus of respect for indigenous peoples has since been established as part of the definition of the concept of human rights education. When the UN adopted the Plan of Action for the United Nations Decade for Human Rights Education (1995-2004) they needed to define the concept of «*human rights education*». Paragraph I (2) states that:

2. *In accordance with those provisions, and for the purposes of the Decade, human rights education shall be defined as training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes and directed to:*
 - (a) *The strengthening of respect for human rights and fundamental freedoms;*
 - (b) *The full development of the human personality and the sense of its dignity;*
 - (c) *The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;*
 - (d) *The enabling of all persons to participate effectively in a free society;*
 - (e) *The furtherance of the activities of the United Nations for the maintenance of peace.*

The concept of indigenous peoples is included here without any wavering.⁹⁵ One might say that the concept of Human Rights Education is vague and illusive, but nevertheless it is one of the most fundamental principles of human rights that specifically include indigenous peoples. However, the label «*Human Rights Education*» is misleading and confusing. It seems to suggest that the purpose and aims of education, negotiated for centuries is only a matter of teaching about human rights. It seems to suggest that

it is only a small part of the purpose and aim of education that is addressed, when in fact it should be regarded as the constitutional cornerstone of all educational acts for children. The principles should form the basis of every curriculum design for the education of all the children of the world. Indeed the special rapporteur on education Vernor Muñoz Villalobos points out that Human Rights Education is a fundamental prerequisite for the quality of education. He eloquently explains that:

Quality cannot be reduced to a matter of quantifiable efficiency; rather, it encompasses the depth of human commitment to the present and future generations.⁹⁶

But he does not challenge the label «Human Rights Education.» Maybe he does not want to sound negative towards human rights? I think that label should be abolished, because it diminishes the true nature of the principals. The correct label for the principles should be the «*International Aims of Education*» or something of the sort. The governments are obliged by these principles of education to promote understanding for indigenous peoples and promote respect for their human rights through education. The only question is how?

4.3 Non-discrimination

One of the most important principles of human rights for indigenous children is non-discrimination. This is a fundamental overarching principle of human rights law. When the UN Charter was adopted in 1945 non-discrimination clauses applying to every individual became an important part of written and recognized international law. Keeping the atrocities of the World War II in mind it is hardly surprising that non-discrimination became one of the most important principles of the new world order. Non-discrimination is in fact the only specification of the content of human rights in the UN Charter.⁹⁷ The principle of non-discrimi-

⁹⁵ When the CRC was adopted the parties worded the convention very carefully to avoid any stance on how indigenous should be labeled.

⁹⁶ Report submitted by the Special Rapporteur on the right to education, Mr. Vernor Muñoz Villalobos (2004) E/CN.4/2005/50: The right to education, paragraph 108

nation is based on the principle of dignity and equality of all human beings as expressed in UDHR article 1 that: «All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.»

4.4 Discrimination within the education system

The Committee on the Rights of the Child emphasises the importance of the principle of non-discrimination in relation to CRC article 29 (1). The Committee elaborates two main state obligations. First of all the school system itself should not be discriminatory towards indigenous children. This obligation must be seen in relation article 2 of the CRC which specifically codifies non-discrimination as an overarching principle for the interpretation of the whole convention.⁹⁸ The Committee states that:

Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. [...] All such discriminatory practices are in direct contradiction with

*the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.*⁹⁹

Although the Committee here refers to gender discrimination as an example they could have just as easily been referring to discrimination of indigenous peoples. The curriculum and the teaching methods should not be discriminatory towards indigenous children. Further the educational environment should be friendly and safe. ILO Convention 169 article 27 also elaborates on this and obliges the states to develop educational programs in co-operation with indigenous peoples themselves to address their special needs, and incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. In addition, «governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples».¹⁰⁰

4.5 The teaching of non-discrimination

The Committee strongly emphasise that one of the most important purposes of education should be to combat racism and discrimination. States parties are responsible for protecting children from all forms of discrimination as set out in article 2 of the Convention and for actively combating racism. This duty is particularly pertinent in relation to indigenous children. In order to effectively implement this obligation, States parties should ensure that the curricula, educational materials and history textbooks provide a fair, accurate and informative

97 See the UN Charter articles 1 (3), 13 (1b), 55 (c) and 76 (c) and (d). See also: Skogly, Sigrun (1999) Article 2: in Alfredson, Gudmundur and Asbjørn Eide (1999) The Universal Declaration of Human Rights: A Common Standard of Achievement. The Hague: Martinus Nijhoff Publisher, pp. 76-77.

98 CRC article 2: 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

99 Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment no.1: The Aims of Education, paragraph 10

100 See also the UN Declaration on the Rights of Indigenous Peoples article 14.

portrayal of the societies and cultures of indigenous peoples. Discriminatory practices, such as restrictions on the use of cultural and traditional dress, should be avoided in the school setting.¹⁰¹ In accordance with the obligations of article 29 (1) to prepare all children for a responsible life in the spirit of understanding, tolerance and friendship among all peoples and persons of indigenous origin, the Committee points out that:

*Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena.*¹⁰²

This obligation of the states to accord education one of the highest priorities in all campaigns against the evils of racism should be viewed in relation to Convention on the Elimination of All Forms of Racial Discrimination (CERD). CERD article 7 spells out the obligations of states in relation to education:

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the

Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Important to note is that we are talking about combating discrimination according to the standards of the UDHR, the CERD and the CRC. Thus for example affirmative action and land rights for indigenous peoples cannot be regarded as discrimination against the majority.¹⁰³ Also the adoption of temporary special measures intended to bring about de facto equality for indigenous peoples is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.¹⁰⁴ The special rapporteur on education, Vernor Muñoz Villalobos, emphasise the importance of including indigenous peoples in the development of educational policies and points out that:

*This special consideration obliges States, pursuant to article 29, paragraph 1 (d), and article 30 of the Convention on the Rights of the Child and the Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization (ILO), to work harder to inculcate respect for cultural diversity, empowering population groups that are discriminated against and extending public education efforts among social groups that practise discrimination, in such a way that neither rights nor responsibilities are watered down.*¹⁰⁵

4.6 Teaching of history

It is interesting to note that the teaching of

101 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 58

102 Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment no.1: The Aims of Education, paragraph 11

103 See Committee on the Rights of the Child (2003) CRC/GC/2003/5: General Comment no. 5: General measures of implementation of the Convention on the Rights of the Child, paragraph 12. Committee on the Elimination of Racial Discrimination (1997) CERD 18/08/97: General Recommendation No. 23: Indigenous Peoples, paragraphs 4a and 5. Human rights Committee (1994) C/21/Rev.1/Add.5: General Comment no. 23: The rights of minorities (Art. 27), paragraphs 6.2

104 Committee on Economic Social and Cultural Rights (1999) E/C.12/1999/10: General Comment No. 13: The right to education, paragraph 32.

105 Report submitted by the Special Rapporteur on the right to education, Mr. Vernor Muñoz Villalobos (2004) E/CN.4/2005/50: The right to education, paragraph 97

history is singled out as a subject of special importance by the Committee. And not just history in general, but the teaching of racism as it has been practised historically. The Committee writes that:

*Emphasis must also be placed upon the importance of teaching about racism as it has been practised historically and particularly as it manifests or has manifested itself within particular communities. Racist behaviour is not something engaged in only by "others". It is therefore important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance.*¹⁰⁶

One might note that the emphasis is not on indigenous children as such. Thus the teaching of non-indigenous children (and indigenous children) of the history of racism against indigenous peoples should be an important part of the aim of education in all of the 192 countries that have ratified the CRC. Please note how the Committee emphasise the importance of focusing on the children's own communities adding that racist behaviour is not something engaged in only by «others». The focus on history as a key subject in the fight against prejudices is strengthened by the ILO Convention 169 article 31 which provides that:

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accu-

rate and informative portrayal of the societies and cultures of these peoples.

In addition to the ILO Convention 169 the teaching of history as a key subject is also emphasised by several other human rights instruments.¹⁰⁷

However one thing is what international law provides another what reality is like in different countries and communities. Norway has a long history of racism and discrimination against the Sámi. The assimilation of the Sámi and Kvens in Norway lasted more than 120 years. It was a policy literally called «norwegianisation», based on the assumptions of Norwegian racial and cultural superiority.¹⁰⁸ One would thus expect that this part of the history would be an important part of education for all children in Norway, due to the Committee's emphasis on the importance of «teaching about racism as it has been practised historically». Nevertheless the norwegianisation history is not mentioned at all in the governmental curriculum design on history teaching at any level of education.¹⁰⁹

4.7 Diversity

Article 29 (1) (c) provides that education of the child shall be directed to «*The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own*». Thus indigenous children should learn respect for their own culture, language and values. In addition they should learn about the other national values and other civilizations. One may also argue that non-indigenous children should learn about the values of the indigenous peoples in their countries. Many indigenous peoples regard themselves as nations. The children should thus learn to respect all the *national values of the country*. In addition the

106 Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment no.1: The Aims of Education, paragraph 11

107 See the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Programme of Action: paragraph 129, UN Declaration on the Rights of Persons Belonging to National, Religious and Linguistic Minorities: article 4 (4), European Framework Convention for the Protection of National Minorities: article 12 (1), European Charter for Regional or Minority Languages: article 8 (1) (g)

108 Minde, Henry (2005) Assimilation of the Sami – Implementation and Consequences. Kautokeino: gáldu čála – journal of indigenous peoples rights No. 3/2005, pp. 6-7 and p. 16.

109 The Norwegian National Curriculum for Knowledge Promotion in Primary and Secondary Education and Training: http://www.utdanningsdirektoratet.no/templates/udir/TM_UtdProgrFag.aspx?id=2103

children should learn about *civilizations different from their own*, which should include indigenous civilizations. The Committee emphasise the importance of diversity pointing out that:

*[...] part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.*¹¹⁰

While knowledge of one's own culture and language constitute crucial contributions to personal evaluations of identity, the lives of others are assumed to have equal value. Individuals shape their identity in relation to others.¹¹¹ According to special rapporteur on the right to education Vernor Muñoz Villalobos education is a cornerstone of education:

*Diversity is a cornerstone of education [...] Homogeneity in education is an impossible undertaking. Pressure to entrench the use of one language for all peoples, for example, is a sign of intolerance. Such is the case in schools where, human rights norms notwithstanding, indigenous children or children from other minorities are forbidden from using their native languages.*¹¹²

Monocultural and monolingual approaches to education are perceived through the corpus of international standards as having questionable merit, even as questions continue to be asked.¹¹³ Diversity of education applies also to institutions run by indigenous peoples. Asbjørn Eide (1998) points out that it is important to distinguish between multicultural and intercultural education:

Multicultural education involves the

*educational policies and practices which meet the separate educational needs of groups in society which belong to different cultural traditions, while intercultural education involves educational policies and practices by which members of different cultures, whether in a majority or minority position, learn to interact constructively with each other. As a minimum, it requires that majorities learn about the minorities, their culture and tradition, and similarly that minorities learn about other minorities in the same society and majorities. Intercultural education requires more however: it requires the development of respect, mutual tolerance and cooperation. Respect and tolerance must be based on a common recognition of general human rights which constitute the basic framework applicable to all and which must be respected by all, whether in majority or minority position.*¹¹⁴

4.8 Word of caution

The objective of eliminating prejudice through education is not an easy task. If done in the wrong way one might just increase prejudices. Former special rapporteur on the right to education, Katarina Tomaševski (2001), points out that:

*The words of caution about educational programmes merit repeating: «Forcing a prejudiced person to read or hear exhortations on tolerance may only increase his prejudice. Overenthusiastic appraisals of the contributions of a minority may create a reaction of distaste for members of that minority; and programmes improperly presented, even with the best intentions, may create an awareness of group difference that did not previously exist.*¹¹⁵

There are numerous models of education

110 Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment no.1: The Aims of Education, paragraph 4.

111 Talyor, Charles (1991) *The Ethics of Authenticity*. Cambridge: Harvard University Press

112 Report submitted by the Special Rapporteur on the right to education, Mr. Vernor Muñoz Villalobos (2004) E/CN.4/2005/50: The right to education, paragraphs 70 and 72.

113 Thornberry, Patrick (2007) *Education*. In Weller Marc (2007) *Universal Minority Rights: a Commentary on the Jurisprudence of International Courts and Treaty Bodies*. New York: Oxford University Press, p. 362.

114 Eide, Asbjørn (1998) *Multicultural Education and Group Accommodation in the Light of Minority Rights*; in Åkermark, Sia Spilopoulou (1998) *Human rights Education: Achievements and Challenges*. Åbo: Institute for Human Rights at Åbo Academy University, p. 61.

115 Annual report of the Special Rapporteur on the right to education, Katarina Tomaševski (2001): E/CN.4/2002/60, paragraph 36. The reference she quotes is from the: Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, report on the prevention of discrimination (1949), E/CN.4/Sub.2/40 of 7 June 1949, paragraphs 17 (c) and 177.

that seek to achieve the objective of combating prejudices. Local and Global Citizenship Education in Northern Ireland was such a project. It was a single subject grounded on human rights principles as its value reference. However it was implemented in a segregated school system and the methods of teaching seemed more important than the actual content of the curriculum.¹¹⁶ Also a problem faced by them was «*group polarization*», which is a well-documented phenomenon in social psychology. It describes a process by which persons within a group with similar opinions on a subject tend to become more extreme in their views. When group members share their views a person will get more arguments supporting their initial view – arguments that they had not thought about before.¹¹⁷ Other models of education seek to focus more on the content of the curriculum. However some of these models are based on one mans views or one religion. Sometimes the values are not expressed explicitly making it virtually impossible to justify in a multi-religious class. It is my view that the values underpinning any substance of a curriculum aimed at changing hearts and minds, making pupils love their fellow human beings, must be grounded on a multi-religious platform. Human rights could be such a platform. Another concept worth mentioning is the Virtues Project. It is a concept based on 52 virtues which are common to all the major religious and sacred texts. It is one the few education models focused on the content of the curriculum and designed to change behaviour in accordance with humanities greatest virtues.¹¹⁸ It might also be possible to design a model similar to the Virtues Project based on 52 human rights principles?

4.9 The importance of teacher-training

However carefully planned the curriculum designs and the school programs might be in

the interest of human rights education and promotion of respect for indigenous peoples, it will have little impact in the hands of teachers who lack the necessary knowledge, attitude, motivation and training to carry it out. It is therefore essential that the education policies designed to combat discrimination and prejudices against indigenous peoples, in accordance with the obligations of article 29 (1), starts with the teachers. The Committee explains that:

Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are thus essential for teachers, educational administrators and others involved in child education. It is also important that the teaching methods used in schools reflect the spirit and educational philosophy of the Convention on the Rights of the Child and the aims of education laid down in article 29 (1).¹¹⁹

Any thinking about action to promote education for human rights should logically begin with teacher training.¹²⁰ Nancy Flowers and David A. Shiman (1997) profess that human rights should belong to every teacher's professional education, explaining that:

Human rights should be a fundamental organizing principle for professional practice, so that all prospective teachers come to see themselves as human rights educators and advocates. They must know the UDHR and the CRC. This convention [CRC], in particular, is the raison d'être for any professional teacher preparation program.¹²¹

They propose a model for pre-service training with five dimensions, based on a Kevin Ryan (1986).¹²² The five dimensions are: (1) «*explanation*», requiring intellectual examination and understanding of human rights

116 Lile, Hadi Khosravi (2001) Education for Peace in Northern Ireland: Featuring Citizenship Education as a new response to the conflict. Derry: Masters dissertation. University of Ulster Magee College

117 Moscovici, S. and Zavalloni, M. (1969) The group as a polarizer of attitudes. In Journal of Personality and Social Psychology. Volume 12, issue no. 2, pp. 125-135.

118 The Virtues Project: www.virtuesproject.com

119 Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment no.1: The Aims of Education, paragraph 18.

120 The importance of teacher training has been promoted by UNESCO as early as in 1968: Kidd, Sheila (1968) Some Suggestions on Teaching about Human Rights. Geneva: UNESCO, p. 27

121 Flowers, Nancy & David A. Shiman (1997) Teacher Education and the Human Rights Vision: in Andreopoulos, Georg J. & Richard Pierre Claud (1997) Human Rights Education for the Twenty-First Century. Philadelphia: university of Pennsylvania Press, p. 162.

122 Ryan, Kevin (1986) The New Moral Education. Phi Delta Kappan (November 1986), pp. 228-233.

focussing especially on the relevant issues in their own communities; (2) «example», identifying or serving as models of human rights activists to emulate; (3) «exhortation», the teacher program itself must stand for human rights principles in an explicit, public way; (4) «experience», providing opportunities to act to improve human rights conditions; and (5) «environment», creating a classroom and institutional culture grounded in human rights principles. They also propose some topics for in-service education for teachers: (1) definition of human rights; (2) definition of human rights education; (3) human rights in a historical context; (4) principal human rights documents; (5) contemporary human rights issues and events; (6) human rights in the curriculum; (7) human rights in the community; and (8) obstacles to the teaching of human rights.¹²³ Nancy Flowers and David A. Shiman (1997) focus mainly on the teaching of human rights. However the concept of human rights education enshrined in article 29 involves much more including eradication of discrimination and prejudices against indigenous peoples and the development of understanding and respect for their culture, history and rights.

4.10 Non-theoretical education

The teaching of human rights education cannot be carried out with purely theoretical means. The content of the text books is crucial, but in addition the Committee emphasise the importance of «walking the talk»:

Approaches which do no more than seek to superimpose the aims and values of the article on the existing system without encouraging any deeper changes are clearly inadequate. The relevant values cannot be effectively integrated into, and thus be rendered consistent with, a broader curriculum unless those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance.¹²⁴

There is a hidden curriculum in the message transmitted by the way pupils and teachers behave towards each other. Children cannot be taught respect for rights unless members of the school community practice what is preached. It should be noted that the word «respect» implies more than just tolerance and understanding. It means acknowledging the equal worth of all cultures, without condescension.¹²⁵ Again one might distinguish between the obligation not to discriminate and the obligation to teach non-discrimination.

4.11 Subtle discrimination

There are a myriad of subtle ways a teacher can discriminate children without even doing it intentionally. The concept of self-fulfilling prophecies is a well documented phenomenon. In a social psychology experiment by Rosenthal & Jacobson (1993) a group of teachers were informed, by expert psychologists, that some of their pupils (a random selection) would most probably experience a significant intellectual growth and that these pupils had a great potential. Not surprisingly, the concluding results showed that the pupils that were expected to grow intellectually did in fact experience a significant intellectual growth. The teachers also tended to regard them as more social, mentally alert and healthier than the others. In addition these chosen ones were also regarded more positively when they experienced growth. However, according to Rosenthal & Jacobson (1993):

Not so, however, for the children who were not expected to show any particular growth in intellectual functioning. The trend, in fact, was for these children to be regarded less favourably the more they gained intellectually. That finding suggests the hypothesis that there may be hazards to unexpected intellectual growth.¹²⁶

The study shows in fact that children who

123 Flowers, Nancy & David A. Shiman (1997) Teacher Education and the Human Rights Vision: in Andreopoulos, Georg J. & Richard Pierre Claud (1997) Human Rights Education for the Twenty-First Century. Philadelphia: university of Pennsylvania Press, p. 161-174.

124 Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment no.1: The Aims of Education, paragraph 18.

125 Hodqkin, Rachel & Peter Newell (2002) Implementation Handbook for the Convention on the Rights of the Child. Geneva: UNICEF, pp. 441-443.

126 Rosenthal, Robert and Lenore Jacobson (1993) Self-Fulfilling Prophecies in the Classroom: Teachers' Expectations as Unintended Determinants of Pupils' Intellectual Competence, in: Arson, Elliot and Anthony R. Pratkanis (1993) Social Psychology Volume I. New York: New York University Press, p. 498

perform well are punished for doing so if the teacher expects them to perform poorly. A fairly normal prejudice against many indigenous children is that they are not as intellectually equipped as the non-indigenous children. Given the conclusions of Rosenthal & Jacobson (1993) one can imagine the consequences for indigenous children that have a teacher with such a mindset. Also one should not overlook the fact that discrimination breeds prejudices. According to Katarina Tomaševski:

Literature on discrimination abounds with assertions that prejudice breeds discrimination, yet the reverse is also true. Discrimination as a medium of indoctrination breeds prejudice; it is meant to do so. Children learn through observation and imitation. They are likely to start perpetuating discriminatory practices long before they learn the word discrimination.¹²⁷

4.12 The school environment

In addition to the education and training of teachers the Committee is greatly concerned with the broader school environment. The school environment itself must reflect the spirit of understanding, peace, tolerance, and friendship towards persons of indigenous origin called for in article 29 (1) (b) and (d). The Committee specifically points out that: «A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1)». ¹²⁸ It might be worth noting that the assimilation (norwegianisation) policy in Norway was especially effective in schools with mixed classes with both Sámi and Norwegian children. The stigma and the shame associated with the Sámi culture was reinforced by bullying and teasing. The Sámi children learned very quickly to hide the fact that they came from a Sámi family and pretended that they were Norwegian. In the boarding schools in which all the children were Sámi the policy was not so effective.

4.13 The broader community

The schools should be a focal point for human rights education. However the rest of society cannot remain indifferent to the values enshrined in article 29. The obligation of human rights education extends beyond the school yard. The Committee explains that:

The term «human rights education» is too often used in a way which greatly oversimplifies its connotations. What is needed, in addition to formal human rights education, is the promotion of values and policies conducive to human rights not only within schools and universities but also within the broader community.¹²⁹

This obligation should also be viewed in relation to article 42 which obliges the states to «make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike». One must also take into account article 17, which provides that state parties shall «encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29». The Committee points out that it is important for the state to ensure that the activities of the media does not undermine the efforts of other institutions (including educational institutions) to promote the objectives of article 29.¹³⁰ The states have an obligation to do what it can to encourage the media to promote respect for indigenous peoples and stop the distribution of harmful and prejudice information. The Committee explains that:

[...] in the interests of healing and trust-building within the country and in the spirit of article 17 of the Convention, that the State-controlled mass media should play an active role in the efforts to secure tolerance and understanding between different ethnic groups, and that the broadcasting of programmes which would run counter to this objective come to an end.¹³¹

127 Tomasevski, Katarina (2003) Racism and education: in Boyle, Kevin (2003) Dimensions of Racism. Geneva: OHCHR and UNESCO, p. 42

128 Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment no.1: The Aims of Education, paragraph 19.

129 Ibid, paragraph 19.

130 Ibid, paragraph 21.

However the specific obligations of the states set out in article 17 might appear to be rather weak in nature, considering the use of the term «encourage». The Committee has shed little light on how this obligation should be implemented.¹³²

4.14 Separate indigenous institutions

The second paragraph of CRC article 29 more or less repeats word for word CECSCR article 13 (4). CRC article 29 (2) states that:

No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

The right to opt out of state education is an important one, especially for indigenous peoples. According to a Hodqkin, Rachel & Peter Newell (2002) this right is important «not only to protect individual freedoms, but also, particularly because there is no blueprint for «good education», and education systems should allow for diversity and flexibility».¹³³ If one were to single out one thing that indigenous peoples have in common one might mention distrust towards their governments. Historically educational institutions have been used by governments to eradicate indigenous cultures, languages and religions. Thus the right of indigenous peoples to establish their own educational institutions has been explicitly recognised. The UN Declaration on the Rights of Indigenous Peoples article 14 (1) states that: «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». Similarly the ILO Convention 169, article 27 (2) and (3) also provide that:

The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate. [...] governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

According to the Convention once educational programmes have begun, management and control should be gradually transferred to the indigenous peoples themselves, if they so desire, so that in the end they are the ones with full responsibility for their educational programmes and systems. To make this possible, the concerned government also needs to provide the necessary financial assistance and resources.¹³⁴ The special rapporteur on the right to education also emphasise the right of indigenous peoples to establish their own institutions:

*The Special Rapporteur supports indigenous peoples' right to develop their own educational proposals (especially now that the indigenous question is starting to become an urban issue), taking account of human rights and their inherited sense of self-esteem, in a setting of thoroughgoing equity and equality.*¹³⁵

The institutions of indigenous peoples must however meet the minimum requirements of CRC article 29 (1) and CECSCR article 13 (1). This means, as mentioned above, that

131 Committee on the Rights of the Child (1996) CRC/C/15/Add.52: Concluding observations of the Committee on the Rights of the Child: Croatia, paragraph 20.

132 Detrick, Sharon (1999) A Commentary on the United Nations Convention on the Rights of the Child. Hague: Kluwer Law International, p. 288.

133 Hodqkin, Rachel & Peter Newell (2002) Implementation Handbook for the Convention on the Rights of the Child. Geneva: UNICEF, p. 448.

134 Rasmussen, Henriette & Chandra Roy (2003) ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual. Geneva: International Labour Organization, p. 66.

135 Report submitted by the Special Rapporteur on the right to education, Mr. Vernor Muñoz Villalobos (2004) E/CN.4/2005/50: The right to education, paragraph 96

respect for diversity and other cultures and religions is an important part of education. The Committee explains that the school environment itself must reflect the aims of article 29 (1) in practise, not just in theory¹³⁶. It is my understanding that indigenous educational institutions therefore must include children from a diversity of cultural and religious backgrounds. Within these standards indigenous institutions are free to develop their own curriculum, to apply specific admissibility criteria's (even if these would be considered discriminatory in public schools)¹³⁷ and teaching methods.¹³⁸

136 Committee on the Rights of the Child (2001) CRC/GC/2001/1: General Comment no.1: The Aims of Education, paragraph 19.

137 One might require that the children attending the school should speak an indigenous language or that they at least should be willing to learn it.

138 Nowak, Manfred (2001) The Right to Education. In Eide, Asbjørn, Catarina Kraus & Allan Rosas (2001) Economic, Social and Cultural Rights: A Text-book (second revised edition). The Hague: Kluwer Law International, p. 264

5. Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;*
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;*
- (c) Encourage the production and dissemination of children's books;*
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;*
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.*

Article 17 is especially focused on the mass media. It concerns the child's right to correct and appropriate information from a diverse range of national and international sources. It is the obligation of the government to encourage the mass media to disseminate such information. Article 17 must, among other provisions, be viewed in context with article 6 (freedom of thought and religion), article 28 (the right to education), article 29 (the purpose of education), article 30 (the right of indigenous peoples to culture, language and

religion) and article 42 (the state's duty to disseminate information about the convention). According to Sharon Detrick (1999), article 17 is the only human rights provision of its kind.¹³⁹ Although there are no provisions that are identical to the CRC article 17 there are several provisions that address the media and the right to information. *The UNESCO Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War (1978)*, has some articles that are relevant. Article IV determines that:

The mass media have an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings and all nations, and economic and social progress. Equally, they have an important role to play in making known the views and aspirations of the younger generation.

Thus the mass media has an educational role in relation to young people. This education must be based on, among other things, mutual respect for all human rights. However, it must also be said that this UNESCO declaration is somewhat peripheral and it is not among the essential human rights documents of the UN. In addition to the UNESCO declaration, the following international regulations are relevant in relation to the media: The UNESCO Declaration on Race and Racial Prejudice; article 5 (3), The European Charter for Regional or Minority Languages; article 11, The UN Declaration on the Rights of Indige-

¹³⁹ Detrick, Sharon (1999) A Commentary on the United Nations Convention on the Rights of the Child. Hague: Kluwer Law International, page 284.

nous Peoples; article 16, The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Programme of Action; paragraph 136 and The Draft Nordic Sámi Convention; article 25. With regard to the right to information I would like to mention the UDHR article 19, CCPR article 19 and European Convention on Human Rights; article 10.

5.1 The Drafting of Article 17

Article 17 was the first provision that introduced the concept 'indigenous' into the CRC. In 1983, the *International Bahá'i Community* presented a proposal comprised of a five-paragraph text. The proposal concerned article 17 and urged states, among other things, to:

*Encourage mass media agencies to disseminate their child-oriented programmes not only in the official language (s) of the State but also in the language (s) of the State's minority and indigenous groups;*¹⁴⁰

However, the working group concluded their meetings without paying much attention to the proposal of the Bahá'i International Community. The proposal remained untouched until 1984, when a coalition of voluntary organisations (the Informal NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child) presented a slightly modified version of the Bahá'i proposal. Finland also presented a proposal based on the Bahá'i proposal. Subsequently Ukraine presented a proposal, based on a Soviet draft from 1982. The second sentence in the first paragraph states that:

*Information shall be produced and disseminated in both the official language (s) of the State and the State's minority groups and indigenous peoples.*¹⁴¹

In other words, there were a number of proposals put forward, designed to protect indigenous children during the drafting process of article 17. Interestingly enough, none of these proposals were put forward by indigenous peoples' organisations. On the basis of the many proposals, a committee was appointed, comprised of Canada, France, Netherlands, Ukraine, U.K., USA and the Bahá'i International Community. The committee presented a four-paragraph proposal that did not mention indigenous at all. Paragraph (c) in the proposal was the most relevant. It stated that the State should encourage the mass media to take minority group's language needs into consideration. Ukraine once again presented a new proposal in which they insisted that 'indigenous' should be included. However, it was decided that the proposal from the appointed committee was going to form the basis for consultations. When the debate opened concerning paragraph (c), Canada put forward a request that if the regulations were to contain a clause with the term «minority groups», the term «indigenous peoples» should also be added. The Canadian delegation explained that indigenous peoples dislike being referred to as «minority groups».¹⁴² Thereafter, questions were raised as to the use of the word «peoples» instead of the term «population». The discussion in 1984 ended with the working party passing a resolution to use the words «indigenous population». Item (c) became thus:

*Encourage the mass media agencies to have particular regard to the linguistic needs of the child who belongs to a minority group or an indigenous population.*¹⁴³

In 1989, the indigenous concept was once more put on the agenda. Three alternative formulations of «indigenous population» were proposed. The alternatives were: «indigenous child», «indigenous people» and

140 Cohen, Cynthia Price (1998), page 43. And Detrick, Sharon. Jaap Doek and Nigel Cantwell (1992) United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher, page 281.

141 Cohen, Cynthia Price (1998) International Protection of the Rights of Indigenous Children: Cohen, Cynthia Price, Frank Orton and Hugh Beach (1998) The Human Rights of Indigenous Peoples. New York: Ardsley, page 43

142 Detrick, Sharon. Jaap Doek and Nigel Cantwell (1992) United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher, page 285.

143 Cohen, Cynthia Price (1998) International Protection of the Rights of Indigenous Children: Cohen, Cynthia Price, Frank Orton and Hugh Beach (1998) The Human Rights of Indigenous Peoples. New York: Ardsley, page 44.

»child who is indigenous«. The term «indigenous people» was met with an expected opposition; however, the issue remained open. The last alternative, »child who is indigenous« was finally approved and currently stands as the accepted text – despite strong protests from the Turkish delegation, who contended that the entire paragraph on minorities and indigenous was «useless». ¹⁴⁴ Despite the heated debate concerning the formulation of the indigenous concept and the united agreement to abandon the concept «population», the Norwegian translation of the convention has used the term «indigenous population» (urbefolkning).

5.2 The right to language

The State should according to paragraph (d) «*Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous*». The regulation must be viewed in relation to article 30, which proclaims that indigenous children shall not be denied the right to enjoy their own language. Paragraph (d) should also be seen in relation to article 42 that obliges the State to «*make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike*». The Committee on the Rights of the Child emphasises that the convention itself and information about the convention must be translated into the languages of the indigenous peoples. ¹⁴⁵ There is no reference to paragraph (d) in the Committee's recommendations from the day of general discussion concerning the media. ¹⁴⁶ However, in the recommendations from the Committee's general discussion on the rights of indigenous children, the Committee:

[...] recommends that States parties take all necessary measures to ensure that indigenous children enjoy their own culture and can use their own language. In that

regard, States parties should pay particular attention to article 17 (d) of the Convention which calls on States parties to encourage the mass media to have particular regard to the linguistic needs of the child who is indigenous. ¹⁴⁷

NRK Sámi Radio is the focal point of the Sámi media world. In 1991 the company began broadcasting regular Sámi programmes for children. According to NRK Sámi Radio, the programming for children represents 25 percent of the total Sámi TV programme production. The Sámi Radio broadcasts mainly in the Northern Sámi language. However, news programmes and Mánáid-TV (Sámi children's television) is also subtitled in Norwegian. In addition, there is Norwegian news on the web pages. There are a few programmes in Lule Sámi and Southern Sámi dialects. ¹⁴⁸ The Northern Sámi newspaper Ávvir is a newspaper that was established by a merger of the newspapers Min Áigi (based in Karasjok) and Áššu (based in Kautokeino). ¹⁴⁹

These newspapers have traditionally been read by those who live in the municipalities in which their editorial centre were located; they have had a limited number of readers outside of Karasjok and Kautokeino. In Kautokeino, there is also a local radio station, Guovdageainnu Lagasradio (GLR). 40 percent of the broadcast material is in Norwegian and 60 percent is in Northern Sámi language. Ságat is a Norwegian language newspaper based in Lakselv, which writes about Sámi issues. Occasionally there are articles in the Eastern Sámi and Northern Sámi languages. Further South, there are two magazines; Gába and Samefolket (Swedish), which are published monthly (in Norwegian and Swedish). Gába is a woman's magazine that is published both in Northern Sámi and Norwegian. Regarding internet sites, Infonuorra Sápmi is worth a special mention. This is an internet site for young people, which contains information on education, jobs, culture, recreational activities and international issues. The web pages are written in Norwegian, Northern

144 See the entire history of article 17 in: Detrick, Sharon. Jaap Doek and Nigel Cantwell (1992) United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires». Dordrecht: Kluwer Academic Publisher, page 279-291.

145 Hodgkin, Rachel and Peter Newell (2002) Implementation Handbook for the Convention on the Rights of the Child. Genève: United Nations Children's Fund, page 235 and 613.

146 Committee on the Rights of the Child (1996) Day of General Discussion: The Child and the Media

147 Committee on the Rights of the Child (2003) Day of General Discussion on the Rights of Indigenous Children: Recommendations, paragraph 16.

148 NRK Sámi Radio, information brochure: http://www.nrk.no/contentfile/file/1.5033205!info_no.pdf

149 <http://www.minaigi.no/>

Sámi, Lule Sámi and Southern Sámi. Infonuorra Sápmi stands out as one of the very best and most inclusive media channels for Sámi youth.¹⁵⁰ Lately though the future for this website has become uncertain. It has been administrated by the Nordland County Council; however now the Government is currently looking for new administrators. Gáldu's website is also worth a mention. It contains information and news about Sámi rights – along with other indigenous peoples' rights – in Northern Sámi, Norwegian and English.¹⁵¹ All of the Sámi media agencies regard their role partly to support of the Sámi culture.

The long Norwegianization history unravels a dilemma for the Sámi media. More than one 100 years of assimilation policy has left a considerable number of Sámi people that not speak the Sámi language. The CRC does not specify which language the media should publish in. The text simply emphasise that the media should «have particular regard to the linguistic needs» of indigenous children – regardless of the language they actually speak. Children (and adults) would not have much to gain from publications and broadcastings in a language that they cannot understand, whether this is Sámi or Norwegian. Language-segregated mass media may therefore just as easily split as unite the Sámi media consumers.

According to a media political analysis led by Eli Skogerbø (2003), more than half of the informants in Karasjok and Kautokeino responded negative to questions as to whether Ságat was a Sámi newspaper. Between 85 % and 95 % regarded Min Áigi and Áššu as Sámi publications. In Central Nordland, however, fewer regarded the newspapers Min Áigi (54 %) and Áššu (42 %) as Sámi media than defined Ságat (69 %) as Sámi.¹⁵² The conflicts concerning language, according to Skogerbø (2003), may be considered a conflict between publishers that desire linguistic and cultural separatism versus those that take the consequences of previous assimilation policies for granted, and therefore wants linguistic equali-

ty. The study carried out by Eli Skogerbø (2003) concludes that:

This conflict can also be read as a centre/periphery-conflict in Sápmi (Sámi-land), in which the centre is represented by the least Norwegianized areas in Inner Finnmark, and the periphery stretching from the coast of Finnmark to the border area between Norway and Sweden in the South of Norway. This is also reflected in the Sámi public's view on the role of the Sámi media. The media political aspects of this conflict are based on the fact that the majority of Sámi media are largely centrally oriented and, to a lesser degree, reach out to the entire Sámi area. For the Sámi language media, the language issue exacerbates these problems. At the same time, the publication in Sámi language weakens the media's competitiveness, as the potential market for Sámi news is greatest within the Norwegian language media.¹⁵³

It is, however, possible that the overall media picture has altered somewhat since the study by Eli Skogerbø (2003) was concluded. There is reason to presume that NRK Sámi Radio has been less divisive, in that they subtitle news and children's programmes in Norwegian. In addition, web pages are in Norwegian. Ávvir is the only newspaper that has a clearly defined separatist policy. However, this could also be an issue of available resources. It requires considerable resources to translate stories into several languages. Š nuoraid magasiidna (or just Š) is a Sámi youth magazine that comes out four times each year. It started in 1993. The language is dominated by Northern Sámi, but occasionally there are articles in Lule Sámi and Norwegian.

5.3 The spirit of article 29

The mass media shall also be urged to disseminate information that is: «of social and cultural benefit to the child and in accordance with the spirit of article 29». This means,

150 <http://www.infonuorra.no/>

151 www.galdu.org

152 Skogerbø, Eli (2003) Mediene og det samiske samfunnet: Stereotypier og identitetskonflikter. In Bjerkli, Bjørn and Per Selle (2003) Samer, makt og demokrati: Sametinget og den nye offentligheten. Oslo: Gyldendal Akademiske, page 393.

153 Ibid, page 396.

among other things: «*a spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*». ¹⁵⁴ In other words the media should be encouraged to promote a spirit of understanding, friendliness and tolerance in relation to Sámi culture. In addition, article 29 (1) states that children shall: «*development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living [...] and for civilizations different from his or her own*». ¹⁵⁵ Sámi children, in other words, via the media, shall develop respect for Sámi culture, language and values and in addition learn respect for Norwegian culture and other cultures. In addition, the media has a responsibility to Norwegian children, to promote respect for Sámi culture.

The Committee also recommends, in the interests of healing and trust-building within the country and in the spirit of article 17 of the Convention, that the State-controlled mass media should play an active role in the efforts to secure tolerance and understanding between different ethnic groups, and that the broadcasting of programmes which would run counter to this objective come to an end. ¹⁵⁶

In other words the mass media should play an active role in trust building and promoting understanding between groups – including Sámi and Norwegians. However, this is not a living law in Norway. In practice, there is little to indicate that the mass media in Norway, and especially in Northern Norway, is conscious of its role in this context. Here, it must be differentiated between Sámi mass media and Norwegian mass media. The study led by Eli Skogerbø concluded that the Norwegian national media cover Sámi issues to a minimal degree. ¹⁵⁷ Sámi issues are inconspicuous or at best made something

exotic in the Norwegian national media. This also applies to local media in Nordland, Troms and Trøndelag. In Finnmark, however, there is an active public debate on Sámi issues in both the Sámi and the Norwegian newspapers. However, the debate here is often characterised by exaggeration of conflicts and Sámi people are presented negatively, often as immoral and threatening. The study summarizes as follows:

Our expectation that Sámi issues would be covered regularly were only partly fulfilled: even though the media in Finnmark cover all types of issues, it was conflicts concerning Sámi rights and other political matters that generated the most publicity, both in the Finnmark newspapers and other publications. Beyond this, there was little to indicate that Sámi culture was a natural part of Norwegian society. The media's coverage and lack thereof reflected controversial and unresolved issues in regard to the relationship between the Norwegian majority and the Sámi minority. In the Finnmark newspaper's coverage of the debate on the Sámi Rights Committees' recommendations, the conflict was blown open. In the newspapers outside of Finnmark the representation of Sámi was marginal. The Sámi stood out as either exotic or as a minority group in conflict with the Norwegian society. ¹⁵⁸

The debate that exists in the Norwegian media takes place first and foremost in Finnmark, and it concerns largely conflicts surrounding Sámi rights. The discouraging thing is that the debate does not reflect the principal foundation of the rights. Sámi (indigenous) rights are presented as a form of special treatment of the Sámi, to the detriment of Norwegians. The rights are regarded as privileges granted to the Sámi people based on public authorities' goodwill and gnawing conscience. Nils Oskal writes:

154 Article 29 (1) (d)

155 Article 29 (1) (c)

156 The Committee on the Rights of the Child (1996) CRC/C/15/Add.52: Concluding observations of the Committee on the Rights of the Child: Croatia, paragraph 20.

157 Skogerbø, Eli (2003) *Mediene og det samiske samfunnet: Stereotypier og identitetskonflikter*. In Bjerklie, Bjørn and Per Selle (2003) *Samer, makt og demokrati: Sametinget og den nye offentligheten*. Oslo: Gyldendal Akademiske, page 361-397.

158 Skogerbø, Eli (2003) *Mediene og det samiske samfunnet: Stereotypier og identitetskonflikter*. In Bjerklie, Bjørn and Per Selle (2003) *Samer, makt og demokrati: Sametinget og den nye offentligheten*. Oslo: Gyldendal Akademiske, page 373

The abiding picture is that the reasons usage rights and privileges in the form of licences is that they are Sámi. The use by Sámi of land and water is not presumed to impart rights in line with that which otherwise is normal within Norwegian legislation. It is essential to appear as to be Sámi, as this gives grounds for rights to land and water – or so it would seem. This presentation of rights appears to represent a state selection process, for determining ‘Sáminess’, or the selection of a group of fortunate souls as recipients of rights to utilise public benefits that state-owned land areas represent. Time and time again, this has prompted discussion as to who shall be allowed to belong to the selected group with usage rights acquired merely on the basis that they are Sámi, not on the basis of common domestic legal principles.¹⁵⁹

Thus Sámi rights are often presented as ethnic privileges that are granted to some selected Sámi groups. At the same time, the real reasons for the rights are blurred and distorted. Sámi rights appear as unjust and as an infringement on the remaining population. This picture stirs anger and hostility towards the Sámi people. In a survey by Eva Josefsen (2006) 68 percent of the Sámi respondents agree (more or less) that the debate on the Finnmark Act have created more negative attitudes towards Sámi.¹⁶⁰ There is reason to believe that many Sámi children in the Norwegian-dominated areas in the Northern, and especially Finnmark, pay a bitter price for this debate. In any case one might ask whether the state does enough to «encourage the mass media to disseminate information and material [...] in accordance with the spirit of article 29?»¹⁶¹

For the Norwegian national media, it must be said that 2008 has been a relatively good year for Sámi issues. Both the television series «Reinlykke» and the film «The Kautokeino-opprøret» have generated a

great deal of positive publicity about Sámi community and the Sámi culture. However, it might just be a lucky year. There is nothing to indicate that the Norwegian national media has fundamentally changed its attitudes and now regards positive stories about Sámi-related issues more newsworthy. Eli Skogerbø argues that NRK Sámi Radio and other Sámi media acts as an alibi for the Norwegian national media:

This initiative (to establish NRK Sámi Radio) could have contributed to a perception in other parts of the Norwegian Broadcasting Corporation (NRK) that they are relieved of the obligation to report on Sámi news.¹⁶²

An alternative explanation to that presented by Skogerbø is that Sámi issues simply do not reach the media desks in the south. It is simply not profitable enough in terms of viewers, listeners or readers. This explanation is reinforced by the fact that also TV2, Aftenposten and Adresseavisen (a regional newspaper in Trøndelag) have not given priority to Sámi issues.

5.4 Encourage

As in the case of all other human rights conventions, the primary responsible duty bearer for the fulfilment of the convention is the State. This is also the case with article 17. It is up to the Government to «encourage» the mass media. In other words the regulation does not address the media directly, but at the State. This is also confirmed by the Committee on the Rights of the Child:

The Convention on the Rights of the Child is formally addressed to Governments and does not interfere with the independence of the media; however, it does have an indirect message for media institutions: as with human rights in general, the press and

159 Oskal, Nils (2003) Sami public authorities and democracy in Norwegian. I Bjerkli, Bjørn and Per Selle (2003) Sami, power and democracy: The Sami Parliament and the new general public. Oslo: Gyldendal Akademiske, page 335-336.

160 44.3 % completely or partially agreed, whilst 23.7 % replied «either or». See: Josefsen, Eva (2006) Selvpolevd diskriminering blant samer i Norge. Alta: Norut NIBR Finnmark as, page 35.

161 See also chapter 4.11, page 28

162 Skogerbø, Eli (2003) Mediene og det samiske samfunnet: Stereotypier og identitetskonflikter. In Bjerkli, Bjørn and Per Selle (2003) Samer, makt og demokrati: Sametinget og den nye offentligheten. Oslo: Gyldendal Akademiske, page 372.

163 Committee on the Rights of the Child (1996) Day of General Discussion: The Child and the Media, page 1, paragraph 3.

*other media have essential functions in promoting and protecting the fundamental rights of the child.*¹⁶³

The mass media, in their enterprises, must remain critical and independent of other authorities, and it is clear from the Committee on the Rights of the Child's analysis that article 17 does not interfere with the independence of the media. However, there is an indirect message to the media in the article. The media has educational role, according to article 17, which means that they shall promote understanding and friendliness towards indigenous peoples. But what happens if an agency does the exact opposite – if they disseminate offensive and derogatory information about Sámi people? The obligation of the state in this case is relatively weak, taking into account the use of the term «encourage». In addition, there is not much guidance from the Committee on what the government should do to implement article 17.¹⁶⁴ What does it mean to «encourage»? One might thus ask how the State should give effect to this article without the voluntary assistance of the media? The media industry is experiencing rapid development and the internet has led to major changes. This particular dimension creates a whole new set of challenges. It should be mentioned that in connection with article 42, the Committee on the Rights of the Child emphasises the importance of education and training of relevant professions.¹⁶⁵ The training of journalists and editors can be an important first step in making the media aware of their role in regard to the CRC.

164 Detrick, Sharon (1999) A Commentary on the United Nations Convention on the Rights of the Child. Hague: Kluwer Law International, page 288.

165 Hodgkin, Rachel and Peter Newell (2002) Implementation Handbook for the Convention on the Rights of the Child. Genève: United Nations Children's Fund, page 615.

6. Other human rights provisions for Sámi children

Despite the fact that indigenous children have been victims of some of the worst state-controlled abuses in recent history, in many parts of the world, children have not been given a prominent position in human rights instruments that deal especially with indigenous peoples. There are largely two human rights instruments besides the CRC that codify rights of indigenous children: *The ILO Convention (169) on Indigenous and Tribal Peoples in Independent Countries* and *the UN Declaration on the Rights of Indigenous Peoples*. It is worth highlighting that the ILO Convention no. 169 only applies to Sámi children in Norway. Sweden, Finland and Russia have not yet ratified the convention.

6.1 ILO Convention no. 169

ILO Convention no. 169, on Indigenous and Tribal Peoples in Independent Countries has two articles that concern children (articles 28 and 29). Both of these regulations are associated with education and training. The regulations are as follows:

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 28 concerns indigenous children's right to learn their mother tongue or the language that is mostly used by the indigenous group that they are a part of. For Sámi children, this means that they have the right to learn one of the Sámi languages mostly used among the Sámi in Norway (Northern Sámi, Southern Sámi, Lule Sámi or Eastern Sámi). Article 28 also specifies that indigenous children have the right to learn one of the national languages in their country fluently. For Sámi children in Norway, this means that they have the right to learn Norwegian fluently (either Bokmål or Nynorsk). Article 29 spells out a general aim and purpose of education for indigenous children. It specifies that children shall learn to participate fully and on equal terms in their own community and in the national community. Cynthia Price Cohen (1998) summarizes the ILO Convention no. 169 thus:

In other words, as exhibited in the language of these two articles, the aim of the ILO Convention is to protect indigenous peoples' traditional ways, while also assuring their children's future access to modern life.¹⁶⁶

With the exception of the somewhat unfor-

¹⁶⁶ Cohen, Cynthia Price (1998) *International Protection of the Rights of Indigenous Children*, in: Cohen, Cynthia Price (1998) *Human Rights of Indigenous Peoples*. New York: Transnational Publishers, page 55.

tunate use of the term «*modern life*», it is easy to agree with Cohen's analysis of the ILO Convention. It is aimed first and foremost at the preservation of the culture, at the same time it attempts to secure children's opportunities to participate on equal terms in the community in general. One might ask if the ILO Convention is somewhat weak in terms of children's rights. What, for example, of children's rights on decisions determining their own future – an issue which is of great importance for many indigenous children (including Sámi children)? Who will continue family traditions and who will take care of the farm or continue the reindeer herding? Children's rights to be heard, their right to participation and respect for their viewpoints are important principles in the CRC (especially article 12). In the ILO Convention, children are consistently referred to as a form of property: «*children belonging to the peoples concerned*». This formulation raises questions whether the child's own viewpoint (in relation to age and maturity) is adequately considered in the ILO Convention no. 169.¹⁶⁷

6.2 The UN Declaration on the Rights of Indigenous Peoples

Children are mentioned in five of the 46

articles of the UN Declaration on the Rights of Indigenous Peoples. Article 7 (right not to be forcibly removed from their group), article 14 (education), article 17 (child labour), article 21 (socio-economic rights) and article 22 (when implementing of the declaration particular attention shall be paid to the rights and needs of children and they should be protected from all forms of violence and discrimination). In addition, in the preamble, there is a reference to «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.» The term; "consistent with the rights of the child" can be interpreted as a reference to the CRC. Just as in the ILO Convention no. 169 the Declaration makes no references to provisions that state anything about respect for children's right to be heard. For Sámi children, article 14 is of special relevance. It states that:

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*



167 Cohen, Cynthia Price (1998) International Protection of the Rights of Indigenous Children, in: Cohen, Cynthia Price (1998) Human Rights of Indigenous Peoples. New York: Transnational Publishers, page 55.

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.

This article determines that indigenous peoples have the right to establish and control their own education systems that provide education in their own language and are adapted to their own educational methods. In addition, children have the right to all other forms of education at all levels, otherwise in the country, without any discrimination. Finally, it specifies clearly that the state shall ensure that indigenous children have access to education about their own culture and in their own language and that this also applies to children that live outside of their communities (the core indigenous areas). This final point is especially important for Sámi children in Oslo and other municipalities that do not have the status as core area for Sámi language.¹⁶⁸ The fact that indigenous peoples have the right to establish and control their own education systems in line with their own cultural methods for education must be seen in the light of the CRC article 29 (2). This article determines that the right to establish educational institutions is a basic human right; however, these institutions must follow the same requirements that are laid down in the aims of education in the first paragraph of CRC article 29. The first paragraph places great emphasis on the importance of teaching respect for diversity and that children must learn respect and understanding for different cultures and religions.¹⁶⁹ This must also apply to indigenous children, but should not be detrimental to the teachings of their own culture. The Committee on the Rights of the Child also emphasises that education must first and

foremost be demonstrated in practice. A school established exclusively for one special cultural group and controlled exclusively by «the group themselves» will only, to a limited degree, reflect cultural diversity in practice.¹⁷⁰ One might thus ask if the CRC and the UN Declaration on the Rights of Indigenous Peoples is on a collision course. I believe that it depends on how one attempt to incorporate the diversity. A Sámi institution cannot be reserved for Sámi people; however, it must be possible to determine that the teaching language shall be Sámi.

Article 22 in the UN Declaration on the Rights of Indigenous Peoples is also of relevance to Sámi children. It states as follows:

- 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.*

The first paragraph spells out a general principle that shall guide the government in its implementation of the declaration. In implementing the declaration the government must give sufficient attention to the rights and special needs of children and young people. The second part requires the state to implement initiatives in cooperation with indigenous peoples in order to protect children and women from all types of violence and discrimination. In many Sámi communities, alcohol abuse is a considerable problem. Both physical and psychological violence against children often follows in the wake of alcohol abuse. Discrimination in the form of bullying and similar is also a common problem for many Sámi children in school.¹⁷¹

¹⁶⁸ Infra Chapter: 3.5 Geogra, page 14

¹⁶⁹ Infra chapter: 4.2 – 4.7 on article 29

¹⁷⁰ Infra chapter 4.8 , page 25

¹⁷¹ Infra chapter 4.11 , page 28

7. The Human Rights Act

In 2003, the CRC was incorporated into the section 2 (§ 2) of the Act relating to the strengthening of the status of human rights in Norwegian law of 21st May 1999 no. 30 (The Human Rights Act). The Act fulfils the Constitution § 110c and the purpose is to strengthen the status of human rights in Norwegian law (§ 1). Section 3 (§ 3) specifies the position of the selected convention's in Norwegian law:

The provisions of the conventions and protocols mentioned in section 2 shall take precedence over any other legislative provisions that conflict with them.

The provisions of the CRC shall, in other words, in the event of conflict, take precedence over any other Norwegian legislation. One can say that the CRC, via this Act, is given a «semi-constitutional» status – a position in between constitutional law and formal law.¹⁷² The Storting (The Parliament) could, in principle, change the Human Rights Act, just as easily as with other non-constitutional law. However, it would cost the Storting dearly in political terms, to change the act such that it reduces the effect of human rights protection in Norwegian law.¹⁷³

7.1 Precedence

There are two key concepts in the Human Rights Act; »conflict» and »precedence». Let me address the latter first. Precedence means that in the case of conflict, the provisions of the convention shall apply as the applicable law (the convention has precedence). However, The Ministry of Justice argues that the precedence rule is more or less just symbolic because in reality there will be no conflicts.

The Ministry point out that Norwegian law is normally reviewed before ratification so that the laws will correlate with the convention. Secondly, the courts are required, via the so-called presumption principle, to interpret Norwegian law in such a way that no conflicts arise with conventions to which Norway is bound. Thirdly, the conventions that are incorporated into the Human Rights Act have become part of domestic law giving it precedence based on normal Norwegian legal principles of interpretation. New laws take precedence over old laws and special laws take precedence over general laws. It is therefore assumed that the judicial primary area for the precedence rule will be under circumstances in which a more recent law is in conflict with the provisions of the convention.¹⁷⁴ However, even though the precedence rule primarily applies to new laws, one should in any case remember that Norwegian law did not correlate with the ILO Convention no. 169 when it was ratified. In addition, the Committee on the Rights of the Child's interpretation of the convention may change over time, which can lead to conflict with established laws or practice. The Standing Committee on Justice gives this explanation on why human rights conventions should be incorporated into Norwegian legislation:

Before Norway ratifies human rights conventions, a review is carried out with regards to the provisions of the conventions in relation to Norwegian law, and the necessary adaptations or amendments are made. This procedure makes sure that Norwegian law, as a rule, meets the requirements of the human rights conventions that Norway is bound by. However, there may be certain areas of legislation that are

172 Smith, Carsten (1999) Fra konvensjon til lov, i Mennesker og rettigheter no. 3 1999. Oslo: Universitetsforlaget, page 272.

173 Eckhoff, Torstein and Jan E. Helgesen (2005) Rettskildelære, 5th edition. Oslo: Universitetsforlaget, page 325

174 Ot. prp. no. 3 (1998-99): Om Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven), page 40. And see Smith, Carsten (1999) Fra konvensjon til lov, i Mennesker og rettigheter, no. 3 1999. Oslo: Universitetsforlaget, page 272.

*overlooked. Also, one cannot exclude the possibility that the convention bodies' interpretation of the convention is amended over time and that this may lead to conflict with a Norwegian law or practice.*¹⁷⁵

One should note here that the Standing Committee on Justice places considerable emphasis on the convention bodies' interpretation of the convention. This means that the Committee on the Rights of the Child's statements is very important for the interpretation of the convention and to determine if there is conflict with Norwegian legislation. In certain circumstances, the Storting knowingly adopts a law that is in conflict with international legal obligations. Due to the Human Rights Act, it cannot knowingly pass a law that is in conflict with the CRC unless they at the same time change the Human Rights Act.

7.2 Conflict

A central and difficult issue is what «conflict» actually involves. The term in itself describes a situation in which two laws are in conflict with one another. To determine whether conflict occurs one must interpret the convention and the relevant domestic laws. Domestic laws adhere to the rules for Norwegian jurisprudence and principles of interpretation, whilst the CRC's provisions, in principle, must be interpreted based on international principles of treaty interpretation. In the process of interpretation what might have looked like a conflict at the start disappears. Norwegian law shall also, because of the presumption principle, be interpreted such that conflict does not arise. Another, more controversial issue, is how far the government can go in interpreting the convention so that it correlates with the domestic law. An example of how a convention can be interpreted in favour of Norwegian law and not the opposite, may be the debate concerning the proposal in *Odelsting proposition no. 53 (2002-2003) Relating to legal relations and management of land and natural resour-*

ces in the county of Finnmark (Finnmark Act). In this case the Ministry of Justice argued that article 34 of the ILO Convention no. 169 gives the State the freedom to implement the convention in a «flexible» manner that considerably weakens Sámi rights in relation to article 14 regarding land rights. In order to settle the issue two professors of law was appointed by the government to assess the matter. Professors Hans Petter Graver and Geir Ulfstein found that: «*In our view, this provision (article 34) cannot warrant the deviation from clear instructions that follow from the different provisions*».¹⁷⁶ The ILO Convention's article 6 also requires the government to consult indigenous peoples on issues that affect them, something the Ministry had not done when they drafted the legislative proposal. Finally, the Standing Committee on Justice found that they could not pass a law that was designed to protect Sámi rights, in conflict with wishes of the Sámi Parliament. This acknowledgement led to consultations with the Sámi Parliament and the Finnmark County Council. Finally, the Standing Committee on Justice went into direct negotiations with the Sámi Parliament regarding the legislation. The final proposal was therefore not in conflict with the ILO Convention no. 169; however, the story shows how tempting it can be for the government to interpret conventions (occasionally in a questionable manner) in favour of the law in order to avoid conflict. The presumption principle should be interpreted in such a way that domestic law is presumed to be in conformity with international obligations, not the other way around.

7.3 Self-executing provisions

Before addressing the interpretation in order to determine any conflict, the Ministry of Justice believes that the convention provisions should be self-executing.¹⁷⁷ In principle, Norway has a dualistic legislature that in principle means that ratified conventions must be incorporated into Norwegian law before they

175 Rec. O. no.51 (1998-1999): Innstilling frå Justiskomiteen om lov om styrking av menneskerettane si stilling i norsk rett (menneskerettsloven), paragraph 5.

176 Graver, Hans Petter and Geir Ulfstein (11.06.2004) Folkerettslig vurdering av forslaget til ny Finnmarkslov. Rapport til Justis- og politidepartementet, see conclusions: http://www.regjeringen.no/nb/dep/jd/dok/rapporter_planer/rapporter/2004/Folkerettslig-vurdering-av-forslaget-til.html?id=278377

177 Ot. prp. no. 3 (1998-99): Om Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettighetsloven), page 40



become a part of domestic law. In states that have a monistic system, conventions are regarded as internal legislation directly when a convention is ratified. In such monistic states, there is often a division between so-called *self-executing* and *non-self-executing* provisions of a convention. These are concepts that define the utility and applicability of international laws in domestic law. Non-self-executing provisions are exempt and not part of domestic law in monistic states, as they are not «directly applicable». Via the Human Rights Act, Norway has made the CRC to become part of Norwegian law in the same way as in monistic states. This is called «sector monism» or «partial monism». The Human Rights Act committee emphasises that the issue of applicability must be based on Norwegian legislation and concludes that:

It is not certain that the conclusion will correspond with the practice in other countries' regarding the «self-executing» criteria. It could be said that the reform, in principle, means that written rules are determined,

for certain types of jurisprudence, i.e. the Human Rights conventions, or some of them. The analysis must thus be based on Norwegian jurisprudence, which could be different from that of other countries'.¹⁷⁸

In other words, The Human Rights Act Committee leaves the question regarding self-executing provisions open. At this point in time, there is no case law in Norway that touches on the theme of self-executing provisions.

7.4 Clarity

An issue associated with self-executing provisions is the story of the requirement for clarity. In 1994, the Supreme Court formulated a general reservation, which required clarity and unambiguity with regard to human rights provisions.¹⁷⁹ The reservation demanded clarity and unambiguity as special requirements for the human rights provisions. This requirement went beyond what would normally be required from domestic sources of law.¹⁸⁰ This clarity principle was, some six years later, abolished by the so-called «Böhler judgment».¹⁸¹ In this judgment, the Supreme Court asserted that:

A conflict between an incorporated convention provision and other Norwegian law [...] cannot be resolved by applying a general principle, but must depend on a closer interpretation of the relevant legislative rules.¹⁸²

A conflict must thus be resolved by interpretation. Via interpretation an apparent conflict may also disappear.¹⁸³ The conclusion from the Böhler judgment was confirmed by the Supreme Court in 2003, in a judgment concerning a tax case. In this ruling, the Supreme Court explains that the Human Rights Act in itself was not the main reason for the interpretation of applied in the Böhler judgment. However they add that: «it can probably be said that the law [The Human

178 NOU 1993: 18 Lovgivning om menneskerettigheter, page 106

179 Rettstienende 1994, page 610

180 Smith, Carsten (1999) Fra konvensjon til lov, in Mennesker og rettigheter no. 3 1999. Oslo: Universitetsforlaget, page 273

181 Rettstienende 2000 page 996

182 Rettstienende 2000 page 1007

183 Eckhoff, Torstein and Jan E. Helgesen (2005) Rettskildelære, 5th edition Oslo: Universitetsforlaget, page 332.

Rights Act] provided a certain «climate», enabling greater approval for the convention and therefore was important as an interpretation factor».¹⁸⁴ However, it should be pointed out that even though the court shall interpret the CRC based on the principles used by the Committee on the Rights of the Child they cannot go for an equally dynamic interpretation as committee. That would, according to the court, pose a risk of going farther than necessary.¹⁸⁵ Such a reservation could be interpreted as a signal from the Supreme Court that they appear to have a certain humility regarding the convention bodies' interpretation authority. However, we must differentiate between the different convention bodies. Judgments by the European Court of Human Rights are regarded as legally binding. Requests, recommendations or views of The Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child are not legally binding. The Supreme Court determined in the so-called Dar judgment (Rt. 2008, page 513), that the views of The Committee Against Torture (CAT) were not legally binding. Judge Bruzelius explained that:

The parties agree that decisions of The Committee Against Torture are not binding in international law, and the same assessment appears in public documents and where the convention is interpreted [...] There is nothing in the text of the Convention Against Torture that supports the claim that temporary requests should be legally binding. Such requests are not referred to at all in the convention. And statements from the Committee regarding individual complaints are, as stated before, not legally binding [...]. Thus I find that Norway was not obliged under international law to comply with the request of Committee Against Torture for the temporary protection of A.

Statements from the Committee on the

Rights of the Child can be compared to those of the C. The Convention Against Torture is however not incorporated in the Human Rights Act with precedence over other Norwegian legislation. And the Dar judgment was purely a principle decision in which the issue was whether the views of the CAT are legally binding. The Supreme Court did not address the issue of whether the CAT made a mistake in their interpretation of the convention. The Supreme Court did not attempt to interpret the Convention Against Torture in conflict with the views of the CAT. On the contrary, Bruzelius states that:

*There is however, reason to add that the Norwegian position is that such requests shall be given strong emphasis and that in principle, these will be complied with as far as possible.*¹⁸⁶

The views of the CAT shall, in other words, be «*complied with as far as possible*». The Norwegian courts must interpret the CRC in accordance with principles of international law. The statements from the Committee on the Rights of the Child shall be given great emphasis and are of major importance in the interpretation of the Convention. It is very unlikely that a Norwegian court would interpret the CRC contrary to a clear and relevant statement by the Committee on the Rights of the Child. In principle, the statements from the Committee on the Rights of the Child are not legally binding; however, in practice some types of statements have an 'almost binding' character. It depends on the clarity and relevance of the statement, and if it is aimed directly at Norway, whether it is upheld despite contra arguments put forward by the government and whether it is issued by a unanimous committee.¹⁸⁷

184 Rettstsiende 2003 page 359, paragraph 59.

185 Rettstsiende 2000 page 1008.

186 Rettstsiende 2008 page 513

187 Ot. prp. no. 3 (1998-99): Om Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettighetsloven) page 67-70

8. Legal sources

There is no mathematical formula for interpretation of international human rights conventions. I will in this chapter thus merely attempt to provide a small overview of which legal sources that are commonly used for the interpretation of the CRC. The interpretation of the CRC is largely based on the following legal sources:

- *Vienna Convention on the Law of Treaties of 23rd May 1968*
- *The Committee on the Rights of Children's General Comments*
- *The Committee on the Rights of Children's recommendations based on the Days of General Discussion*
- *The Committee on the Rights of Children's comments on Norway's periodic reports*
- *The Committee on the Rights of Children's comments on the reports from other countries*
- *Provisions in other human rights conventions*
- *Relevant interpretations on provisions in other conventions by other convention bodies (like the Human Rights Committee or the Committee on Economic, Social and Cultural Rights)*

The CRC does not have any individual complaint mechanism, which could have been a very useful source of law. Such a complaint mechanism could also have reinforced the protection of children rights. However, according to Lucy Smith, an individual complaint mechanism could be said to favour children with resourceful parents, whilst children who suffer most will rarely be able to bring their case all the way up to the UN.¹⁸⁸ Another factor is that the individual complaint mechanism requires many, many

years of patience. First the case has to run through all the domestic courts and then wait to be admitted by the committee. By the time a conclusion is reached by the committee the individual child would no longer be a child. Currently there is a talk of adding a sort of complaint mechanism for the CRC. I would think that a complaint mechanism that opens up for collective complaints would be the best solution. Because of the time factor decisions made by the committee would have limited significance for the individual child who brings his/her case to the committee. The importance of such a mechanism would be the principal precedent it would have for children in general or special groups of children.

8.1 The Vienna Convention on the Law of Treaties

The most basic basis for interpreting any convention is the Vienna Convention on the Law of Treaties of 23rd May 1969. Norway has not ratified the convention; however, according to the Ministry of Justice it is «assumed that the principles [of the convention] codify applicable non-statutory international law [customary international law].»¹⁸⁹

Article 31

General rule of interpretation

1. *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
2. *The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*

¹⁸⁸ Smith, Lucy (2003) Human rights for children. in: Bergsmo, Morten (2003) Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide. Leiden: Brill Academic Publisher, page 743. See also: Smith, Lucy (2008) FNs konvensjon om barns rettigheter., In Høstmæling, Njål, Elin Saga Kjørholt and Kirsten Sandberg (2008) Barnekonvensjonen: Barns rettigheter i Norge. Oslo: Universitetsforlaget, page 21-22

¹⁸⁹ Ot. prp. no. 3 (1998-99): Om Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettighetsloven), page 66.

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
- a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 31 codifies the main principles for how international conventions are to be interpreted. The provisions in the convention must be interpreted «*in good faith*» and in accordance with the «*ordinary meaning to be given to the terms.*» The meaning must also be seen in the context of the convention as a whole (including the preamble and any appendixes) and in the light of the convention's «*object and purpose.*»¹⁹⁰ One cannot apply national understandings of the terms used in the convention - one must interpret the terms in light of the definition given to them in international law.¹⁹¹ All instruments that are associated with the convention (for example, the Committee on the Rights of the Child's comments) shall be regarded as part of the context, in the light of which, the convention is to be interpreted. In addition, all other international agreements and conventions that Norway is bound by can be applied in the interpretation of the convention. The travaux préparatoires of the convention, in contrast to the interpretation of Norwegian domestic legislation, have only a secondary status as source of law. Article 32 clarifies the rules for this:

Article 32 (Supplementary means of interpretation)

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

International conventions must also be interpreted based on its original language(s) (article 33). In the case of the CRC, this is either English or French. This is important, in that the CRC's reference to indigenous children is often translated incorrectly in the Norwegian versions. «*Persons of indigenous origin*» is often translated as «*persons belonging to an indigenous population*».

A population is not the same as peoples (indigenous peoples) and does not have the same rights.¹⁹²

8.2 General Comments

The Committee on the Rights of the Child is via CRC article 45 granted a mandate to develop so-called general recommendations (generally referred to as General Comments). The general comments elaborate, specify, limit and explain the provisions of the convention. The comments are based on the experiences that the committee has acquired through their work with the state reports, shadow reports and reports from UNICEF and other international agencies or experts, in addition to surveys that the Secretary General's office may have carried out for the committee. The committee may also ask for input from experts on children rights around the world in the drafting process of the comments. In General Comment no. 11 on indigenous children the Committee explains that:

¹⁹⁰ Brownlie, Ian (2003) Principles of Public International Law, sixth edition, page 604

¹⁹¹ Brownlie, Ian (2003) Principles of Public International Law, sixth edition, page 604.

¹⁹² See the debate on the term in chapter 5.1, page 32

*The primary objective of this general comment is to provide States with guidance on how to implement their obligations under the Convention with respect to indigenous children. The Committee bases this general comment on its experience in interpreting the provisions of the Convention in relation to indigenous children. Furthermore, the general comment is based upon the recommendations adopted following the Day of General Discussion on indigenous children in 2003 and reflects a consultative process with relevant stakeholders, including indigenous children themselves.*¹⁹³

Furthermore, the general comment seeks to encourage good practices and highlight positive approaches in the practical implementation of the convention.¹⁹⁴ General comments are supposed to reflect international practice and the authoritative interpretation of the committee. The comments are broadly distributed. They are used by the committee itself, international organisations, governments, NGOs and individuals, etc. The importance of the comments is so great that they may in turn pave the way for new legally binding customary international law.¹⁹⁵ The Norwegian Ministry of Justice states the following in regard to the general comments:

*These comments must probably, in regard to the issues they concern, be given considerable emphasis in a purely international law context. Their importance for the Norwegian courts will vary to a certain degree, dependent on how clear the actual statement is and whether the case under judgement indicates special circumstances in relation to the situations that the comment is assumed to address.*¹⁹⁶

Clarity and relevance appear to be the most important elements in order to determine how much legal weight that shall be given to a general comment. In addition, it is worth noting that the Norwegian Standing

Committee on Justice places great emphasis on the convention agencies and their interpretation of the convention, as a basis for the Human Rights Act and in the determination of any legal conflict, stating that:

*It cannot be excluded that the convention agencies' interpretation of the convention change over time and that this can lead to conflict with a Norwegian law or practice.*¹⁹⁷

Thus a general comment that is clear and relevant in relation to the convention shall, in case of conflict, be weighed sufficient enough to take precedence over other Norwegian legislation.

In addition to the general comments, the committee also produces recommendations from so called «General Discussion Days». These general discussions days focus on various themes. The recommendations from these days summarises the most important parts of the discussion. The recommendations do not have the same status as a general comment. The recommendations can be viewed as indications of how the convention may be interpreted, but they are not authoritative interpretations of the convention in the same way as a general comment.

8.3 Concluding Observations on the periodic reports

After Norway has sent in its periodic report to the Committee on the Rights of the Child, it will be scheduled a public meeting in which the government is invited to the committee in order to have a constructive dialogue. Relevant United Nations bodies and agencies are represented. Summary records of the meetings are issued and the United Nations Department of Public Information is invited to cover the proceedings for the purpose of their Press Releases. Other journalists are free to attend, as are representatives of non-governmental organizations and any interested individual. After the discussion with the

193 Committee on the Rights of the Child (2009) CRC/C/GC/11: General Comment no. 11: Indigenous children and their rights under the Convention, paragraph 12.

194 Ibid, paragraph 13

195 Høstmøling, Njål (2003) Internasjonale menneskerettigheter. Oslo: Universitetsforlaget, page 366

196 Ot. prp. no. 3 (1998-99): Om Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettighetsloven), page 68.

197 Innst.O.no.51 (1998-1999): Innstilling frå justiskomiteen om lov om styrking av menneskerettane si stilling i norsk rett (menneskerettsloven), paragraph 5.

State party, the Committee will, in a closed meeting, agree on written Concluding Observations which include suggestions and recommendations. The Norwegian Ministry of Justice states the following on how much emphasis these Concluding Observations shall be given:

It is difficult to say something general about the significance that the statements made in connection with the review of reports should have. Statements from a unanimous committee must in principle be attributed considerable authority if these are made in reply to a Norwegian report. However, one must consider that such statements can be based on a limited understanding of how the relevant Norwegian legislation actually functions, since the statements often are not based on specific events, but are based on the committee's understanding of the Norwegian law. In any case, this attributed authority will depend on how clear the statement is and whether it is upheld despite any contra arguments made by the state.¹⁹⁸

In other words, one can say that a statement made by a unanimous committee, that is clear and unambiguous and that is upheld despite contra arguments put forward by the state, must be attributed considerable authority.

8.4 Concluding Observations on the reports of other countries

When reviewing Concluding Observations directed to other countries emphasis should be placed on whether the statement concerns issues that are directly comparable to similar circumstances here in Norway and the clarity of the statement.¹⁹⁹ The practice of other member states could also be a relevant source of law.²⁰⁰ The practices of many member states can lead to principles of customary international law, provided that the Committee on the Rights of the Child does

not issue another interpretation on the relevant issue.²⁰¹ Different practice among many states can also be of importance for the interpretation in that it can imply that each state has an increased margin of appreciation, which can mean that Norwegian case law could be of importance for the interpretation. (See more on this issue below, chapter 8.6)

8.5 Other conventions

Provisions in other conventions and declarations may have considerable importance for the interpretation of the provisions in the CRC. Patrick Thornberry writes, for example that:

The minority rights elements adapted from Article 27 of the CCPR can be interpreted, mutatis mutandis, to apply to [CRC] Article 30.²⁰²

It follows from the Vienna Convention article 31.1 (c) that the interpretation of treaties must take into consideration the context in which the treaty is part of, including «*any relevant rules of international law applicable in relations between the parties.*» Any international law that Norway is bound by, either through ratification or as a consequence of customary international law, is therefore an important part of the context in which the CRC shall be interpreted. In addition human rights, according to the World Conference on Human Rights, shall be: «*universal, indivisible and interdependent and interrelated.*»²⁰³ Also, according to the UN Declaration on the Right to Development, article 6: «*All human rights and fundamental freedoms are indivisible and interdependent.*» Thus one cannot regard the CRC as a separate and independent convention alone and lonely. It must be viewed in context with other human rights instruments and international law.²⁰⁴ This principle is also reflected in the CRC itself, in article 29, on the objectives of edu-

198 Ot. prp. no. 3 (1998-99): Om Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettighetsloven), page 68.

199 Ibid, page 69.

200 Ibid, page 67

201 Malanczuk, Peter (1997): Akerhurst's Modern Introduction to International Law (seventh edition). London: Routledge, page 39

202 Thornberry, Patrick (2002): Indigenous Peoples and Human Rights. Manchester: Manchester University Press, page 236.

203 Vienna Declaration and Programme of Action (Vienna, 14-25 June 1993), article 5.

204 For a thorough review of the principles of human rights' interdependence see: Eide, Asbjørn (2007) Interdependence and Indivisibility of Human Rights. In: Donders, Yvonne and Vladimir Volodin (2007) Human Rights in Education, Science and Culture. Paris: UNESCO Publishing, page 11-51.



cation. The Committee explains that article 29 (1) reflects:

[...] the vital role of appropriate educational opportunities in the promotion of all other human rights and the understanding of their indivisibility. A child's capacity to participate fully and responsibly in a free society can be impaired or undermined not only by outright denial of access to education but also by a failure to promote an understanding of the values recognized in this article.²⁰⁵

In other words, children have the right to live in a society that respects all human rights and their mutual interdependence. The Committee on the Rights of the Child also places great emphasis on the issue that the education of children, including human rights education, shall not just be reflected in the textbooks, but must also be reflected in the society in which they live.²⁰⁶

When interpreting the legal weight of other conventions in relation to the CRC, consideration must be to how the conventions are incorporated into Norwegian legislation and how much authority the convention carries in relation to customary international law. The latter also applies to international declarations and programmes.

The most weighty international human rights instruments are the conventions and protocols that are incorporated in the Human Rights Act at the same level as the CRC (The European Convention on Human Rights, the CESCR and CCPR), accordingly in-between the Constitution and other national laws. The next level is the conventions that have been incorporated into Norwegian law that apply on equal terms as other formal laws, without precedence. This applies to the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Following these are conventions that are ratified, but not fully incorporated into the legislative system. Here, the legal weight of the conventions as legal sources will depend on both national legislation and criteria for customary international law. The ILO Convention no. 169 on Indigenous and Tribal Peoples will, for example, be given authority in national legislation, in that the Constitution § 110a refers directly to Norway's obligations in relation to Sámi (the only indigenous peoples in Norway).²⁰⁷ However, the convention is only ratified by 19 countries, which gives the convention a relatively weak authority internationally. However, the number of international

²⁰⁵ Convention on the Rights of the Child (17th April 2001) CRC/GC/2001/1: General Comment No. 1, The Aims of Education: Article 29 (1), paragraph 14.

²⁰⁶ Convention on the Rights of the Child (17th April 2001) CRC/GC/2001/1: General Comment No. 1 The Aims of Education: Article 29 (1), paragraph 19.

²⁰⁷ Further analysis of the ILO Convention's authority in Norwegian law see: Skogvang, Susann Funderud (2002): Samerett: Om samenes rett til en fortid, nåtid og framtid. Oslo: Universitetsforlaget, page 58-61.

instruments that refer to the convention and the authority of these instruments must also be taken into consideration.²⁰⁸ The fact that the Committee on the rights of the Child refers directly to the ILO Convention no. 169 when dealing with some issues (for example land rights), gives the convention more weight regarding those issues. It will also be of considerable importance how relevant and clear the provisions in other conventions and declarations are for the interpretation of the CRC. Regarding other expert agencies' statements, these will have to be evaluated based on their relevance, clarity and the stated criteria for legal weight concerning the convention that the expert body is monitoring. In addition, the competence of the expert agency in relation to the theme is important. If, for example, the theme is one of non-discrimination, statements by The Committee on the Elimination of Racial Discrimination will carry considerable weight, due to both

the committee's relevant competence and authority and the authority the CERD, in both national and international legislation.

8.6 Norwegian legislative practice

The provisions of the CRC must, as a rule, be interpreted based on international legal principles and sources of law. However, if there are considerable differences among member states in how they practice the provision of the convention, countries may have a higher degree of so-called «margin of appreciation». In such cases, Norwegian sources of law may be applied, to a certain degree. Interpretations based on Norwegian sources of law (preparatory works, case law, etc.) must in any case yield, if the Committee on the Rights of the Child issues a statement indicating another practice.²⁰⁹

208 Further analysis on customary international law see: Malanczuk, Peter (1997) *Akerhurst's Modern Introduction to International Law* (seventh edition). London: Routledge, page 39-41. Or: Høstmæling, Njål (2003) *Internasjonale menneskerettigheter*. Oslo: Universitetsforlaget, page 94-98.

209 Ot. prp. no. 3 (1998-99): Om Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettighetsloven), page 70-71.

Summary

The UN Convention on the Rights of the Child carries considerable weight, both in international law and in Norwegian law. It is the only core UN convention that mentions indigenous. There are several provisions in the convention that are relevant to Sámi children; however, I have chosen to concentrate on the provisions that specifically mention indigenous. Article 30 is the most general provision that specifically offers protection to indigenous children. This article stems from CCPR article 27 and provides that indigenous children shall not be denied the right to their culture, language or religion. Even though the provision is formulated negatively, the state must implement positive measures in order to protect Sámi children's rights to their culture and language. The constitution § 110a is positively formulated. Just like CRC article 30 § 110a stems from CCPR article 27. During the negotiations on CRC article 30 there were some states that insisted on deleting a sentence

giving indigenous children rights to receive education in their own language. They believed this would be far too expensive. However, despite the fact that the sentence was deleted, the Committee on the Rights of the Child found that CRC article 30 provides indigenous children with the right to learn their mother tongue. This right is confirmed by article 28 of the ILO Convention no. 169 and article 14 in the UN Declaration on Indigenous Peoples. The details of the language rights for Sámi children are described in the Norwegian Education Act, chapter 6. The rights are partially associated with certain geographical areas. In Norway, Sámi children that live within the core Sámi areas have a stronger rights to receive education in Sámi language, than those who live outside the core areas. However, all Sámi children have the right to education in Sámi language, regardless of where they live in the country. Experience thus far indicates, however, that many children find it difficult to exercise their rights. This applies especially to those living outside the Sámi administrative areas. CRC article 30 is also associated with land rights, in that Sámi culture (as with other indigenous peoples' cultures) is dependent on the use of natural resources. Without the rights to these resources, Sámi children are denied their rights to major aspects of their culture. Steps have been taken by the Norwegian government to identify and map property rights, rights to usage and ownership rights. CRC article 30 requires the government to consult the Sámi Parliament on questions of how to protect the rights of Sámi children and teach the Sámi culture to other (non-Sámi) children. In this regard, it is important that the Sámi Parliament gives children and young people an opportunity to express their opinions and views in conformity with CRC article 12.

CRC article 29 (1) concerns the aims and objectives of education. The article is not



formulated as a right. It expresses minimum aims and principles of education that have broad cross-cultural and cross-religious support. These aims of education were formulated by the UN as long ago as 1948, via the Universal Declaration on Human Rights (UDHR) article 26. The CRC introduced and established the aim that education shall prepare the child for a responsible life in a free society, in the spirit of understanding, tolerance and friendship towards persons of indigenous origin. The aims and objectives for education, often referred to as human rights education, are firmly established in a number of conventions and declarations as an expression of the world consensus on the minimum requirements for the content and quality of education for children. Non-discrimination is the mother of all human rights. This principle is carved into the UN Charter as the only indication of what the term «human rights» shall involve. The education system must eliminate all discrimination against Sámi children and in addition it must take on a leading role in the fight against prejudices and discrimination in society. One of the main aims of education must be to combat prejudices; however, this is no easy task. If done in the wrong way, it may only make things worse. The Committee on the Rights of the Child does not say much about what the content of education should be in order to reach the aims of CRC article 29 (1). However, the committee is clear about the teaching of history. The teaching of history must impart knowledge of how prejudice and discrimination have been practised in the children's own communities. The committee points out, with an almost ironic indignation that racist behaviour is not something engaged in only by «others.» It follows that all children in Norway must learn about the Norwegianization history, in particular. However, neither the Education Act nor the school curricula mention a single word about the Norwegianization history. In addition to non-discrimination respect for diversity is an essential part of CRC article 29 (1). Diversity is a cornerstone of the aims of education. It requires children to learn respect and understanding, both for their own culture and for others. However, the objectives of non-discrimination and diversity would not be

much worth in the hands of teachers that lack the necessary knowledge, attitudes, motivation and training. The Committee therefore places great emphasis on pre-service and in-service training schemes for teachers, as a premise for implementation of the convention. The Committee also places considerable emphasis on the issue that theoretical education is not enough. The educational methods and practices must correlate with the ideals. The same applies to the school environment and the entire administrative system. In addition, the Committee points out that the education of children is not the exclusive responsibility of the schools. The entire community, including the mass media, has a responsibility in relation to the aims of article 29 (1). A report commissioned by the Sámi Parliament shows that many Sámi children are bullied and rejected because of their Sámi background. They have received signals that Sámi culture is considered inferior to Norwegian. The report shows that many parents have problems dealing with municipal authorities and school administrations. They often have to struggle hard to get the Sámi education that their children have the right to receive.

Article 17 is aimed at the mass media. This was the first article that specifically mentioned the concept of indigenous peoples. This article requires the government to encourage the mass media «to have particular regard to the linguistic needs of the child [...] who is indigenous.» The Norwegian media has some way to go in regard to Sámi language - perhaps especially Radio Norge, which only broadcasts Sámi news after 00.30 at night. However, Sámi media must also consider how to develop a policy that could meet the linguistic needs of all Sámi children. Not all Sámi speak Northern Sámi and a large number of Sámi children do not in fact speak Sámi at all. The mass media, according to article 17, must also disseminate information that is of «social and cultural benefit to the child and in accordance with the spirit of article 29.» The fight against racism and prejudice in education will have little effect if the mass media do not share the responsibility. The spirit of article 29 requires the media to combat prejudice and racism, along with schools and the community in general. However, a study carried out by Eli

Skogerbø (2003) paints a depressing picture of the Norwegian mass media in Finnmark and gives a poor impression of the national media and regional media in Troms and Nordland. There is little to indicate that Sámi affairs are a natural part of Norwegian society. In Finnmark there is an active and lively debate about Sámi rights; however, the facts and realities that form the basis for the rights are clouded and distorted. The picture that remains is that rights are «allocated» on the basis of ethnicity, to a selection of a few «fortunate» Sámi. Skogerbø's study also showed that the debate on Sámi issues in the national media is more or less absent. On the rare occasion that such issues were addressed, the Sámi were portrayed as something exotic or as a minority in conflict with the rest of Norwegian society. In 2008, the TV series «Reinlykke» and the movie «The Kautokeino Rebellion» made headlines. Perhaps there is reason to hope that there will be increased interest in Sámi issues? But as a former journalist in NRK, I doubt it. Article 17 requires the government to «encourage» the mass media to follow the provision. «Encouragement» is a blurry concept. In this context it is a weak type of pressure. The government could at least, as a first step, provide information about the provision. In addition, courses and seminars should be offered about article 17 and on the human rights and basic indigenous rights associated with the use of resources.

The CRC is not the only human rights document that refers to the rights of indigenous children. The ILO Convention no. 169 on Indigenous and Tribal Peoples and the UN Declaration on The Rights Indigenous Peoples also includes provisions on children. However, considering the gross injustices that have been committed against indigenous children throughout the world, one would perhaps think that children's rights were a priority theme in these two instruments. The ILO Convention no. 169 refers to children in two of its 44 provisions. Language education is mentioned specifically. In addition it is pointed out that children should both learn about their own culture and language and about society in general. The UN Declaration on The Rights of Indigenous Peoples refers to children a little bit more than the ILO

Convention. However, it is especially article 14 that is relevant for Sámi children. This article emphasises, among other things, that indigenous children have the right to education about their own culture and in their own language, regardless of their geographical settlement. This is an important provision for all Sámi children that live outside the core Sámi municipalities. Article 14 also emphasises that indigenous peoples have the right to establish and control their own educational institutions adapted to their own culture. This provision can be interpreted as if it is in conflict with the CRC's provisions regarding respect for diversity and the CRC's clear request that the entire school environment should reflect this in practice; however, there is no conflict as long as the school fulfils the requirements of article 29 (1), including the aim of developing respect for diversity.

At the end of this edition of Gáldu Čála, I have included a chapter on the Human Rights Act. This is because the CRC, within the Norwegian legislative system, is given the highest ranking that Norway has for international human rights. The CRC is incorporated in such a way that its provisions, in cases of conflict, shall take precedence over other Norwegian laws. In order to determine whether a conflict exists, an interpretation of the CRC and the Norwegian law is necessary. For interpretation of the CRC, the Committee on the Rights of the Child's general comments, general discussions and The Concluding Observations, both to Norway and to other countries, are important in the interpretation. In general, one can say that the relevance and clarity of the Committee's statements are the most important criteria for how much weight these will be given. In addition other conventions and declarations are important for the interpretation. The authority of these must be evaluated in relation to the principles of customary international law and how they are incorporated into Norwegian law.

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Abbreviations

CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	Convention on Elimination of Racial Discrimination
CCPR	Covenant on Civil and Political Rights
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Covenant on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
GLR	Guovdageainnu Lagasradio
ILO	International Labour Organization
NGO	Non-governmental organisation
NOU	Official governmental reports
NRK	Norwegian Broadcasting Corporation
UNICEF	United Nations Children Fund
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UN	The United Nations
Working group	The Open-Ended Working Group on a Draft Convention on the Rights of the Child
The Committee	Committee on the Rights of the Child

The Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by UN General Assembly resolution 44/25 of 20 November 1989.

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and

assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and

Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, and the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions

as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order, or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and

- cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
 - (c) Encourage the production and dissemination of children's books;
 - (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
 - (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or

negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guar-

- dians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
 - (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
 - (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
 - (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain

information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitati-

on, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and

encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical know-

ledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected 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.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Par-

ties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty

shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner

consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judi-

- cial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
 (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving

the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at

the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;

- (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the

- scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
 - (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
 - (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twen-

tieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the

Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Hadi Khosravi Lile is a PhD candidate at the Norwegian Centre for Human Rights, which is part of the University of Oslo. His main subject is sociology of law focused on how human rights conventions are carried out in practice. His PhD is mainly focused on the CRC in relation to Sámi culture. Article 29 on the purpose of education has become the main focus for the thesis, and an important question is what Norwegian children learn about Sámi culture and history. Before he started his PhD he was working in Kautokeino as an advisor for Gáldu. Hadi has an MA in the Theory and Practice of Human Rights from University of Oslo and an MA in Peace and Conflict Studies from University of Ulster. He has also worked as a journalist for the Norwegian Broadcasting Corporation.



Gáldu – an independent, relevant and reliable source of information covering the rights of the Sámi 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 Saami 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.



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